



The Status of Legal Entity of Nagari's Business Entity in District of Koto XI Tarusan, Pesisir Selatan Regency

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Abstract

The formation of Nagari's Business Entity is a hope to become one of the new approaches to encourage and advance the economy in a region, especially in Nagari. The presence of Nagari's Business Entity is arguably still new in its existence, so that in practice several obstacles arise related to the formation process, namely imperfect and comprehensive laws covering the existence of Nagari's Business Entity in each Nagari. Nagari's Business Entity must also obtain definite legal justification if categorized as a legal entity. This can be seen from the legal entities of Limited Liability Companies, Foundations and Cooperatives, all of which are legal entities when they get approval from the relevant ministers. The legality of the form of legal entity became a problem in the establishment of Nagari's Business Entity. In Koto XI Tarusan District, each Nagari has established Nagari's Business Entity and there is a Joint Nagari's Business Entity, but there is still inaccuracy in choosing the appropriate legal entity construction for Nagari's Business Entity. In this research, the researcher uses the research method that is the normative juridical legal method. The research result shows that the importance of the legal entity in the establishment of Nagari's Business Entity. In practice, the determination of the legal entity of Nagari's Business Entity in the law does not yet have a strong legal basis. Until now, there is still no specific regulation that clearly and expressly stipulates the legal entity of Nagari's Business Entity.

Keywords: *Nagari's Business Entity; Legal Entity; Statutory Regulations of Villages*

Introduction

Business entities as economic institutions can basically become government partners in implementing the development of the country's economy. Business entity is a legal, technical and economic entity that aims to make a profit. Business entities are regulated and recognized by law, whether they are individuals, associations or legal entities.¹ In general, a business entity can be categorized into 2 (two), namely a business entity that is not a legal entity and a business entity that is a legal entity. Form of

¹ Abdul Kadir Muhammad, *Indonesian Company Law*, PT. Citra Aditya Bakti, Bandung, 2010. page. 1.

the business entity can be further divided into 3 (three) basic types of a business entity namely individual ownership, partnership and company.²

Law Number 6 of 2014 concerning Villages, makes villages not only as an object of development but makes villages as agents of development in an effort to improve the quality and life and rural communities welfare. To achieve this goal, villages need to implement various strategies so that allocation, potential and resources in the village can be simplified to support the realization of village development and improve the quality of life and rural communities welfare.³ In the context of developing the economic aspects of the village, regulating the existence of business entities owned by the village. In principle, Nagari's Business Entity are village business institutions that are managed by the community and village government in an effort to streng then the village economy and are formed based on the needs and potential of the village.⁴

Article 6 of Law Number 6 of 2014 concerning Village Paragraph (1) The Village consists of Villages and Customary Villages and in paragraph (2) explains the mention of a village or customary village as referred to in paragraph (1) adjusted to the mention in force in the local area. In West Sumatra Province, the existence of Regional Regulation No. 7 of 2018 concerning Nagari explains that the lowest government is in Nagari (in West Sumatra Province, nagari called by village). Article 1 explains that Nagari is a genealogical and historical customary community unit, has boundaries within a certain area, has its own assets, has the authority to choose its leaders by deliberation and regulates and manages the interests of the local community based on a philosophy called "Adat Basandi Syara '-Syara 'Basandi Kitabullah" or based on local origins and customs in the territory of West Sumatra Province.

Nagari's Business Entity as an economic institution of business capital is built on community initiatives and adheres to the principle of self-reliance. In terms of fulfilling the business capital Nagari's Business Entity must be sourced from the community. Even so, it is possible for Nagari's Business Entity to apply for capital loans from outside parties, such as from the village government or other parties, even through third parties. In the case of applying for the loan, Mr. Elsander Saibi⁵ is also justified that Nagari's Business Entity can apply for loans on conditions which are in accordance with the procedure for applying for loans by legal entities. Moving on from these provisions, the true establishment of Nagari's Business Entity is based on the needs and potential of the village, as an effort to improve people's welfare. With regard to planning and establishment Nagari's Business Entity are built on community initiatives, and are based on cooperative, participatory, transpative, emancipatory, accountable, and sustainable principles with a member-based and independent business mechanism. Above all, the most important thing is that the management of Nagari's Business Entity must be done professionally and independently.

The establishment of Nagari's Business Entity must also be followed by capacity building and supported by local government policies by facilitating and protecting the businesses of Nagari's Business Entity from the threat of competition from large investors. This is also because Nagari's Business Entity are new enterprises operating in rural areas so that they need a strong foundation to grow up. Nagari's Business Entity are a pillar of economic activity in the nagari that functions as a social institution and commercial institution. Nagari's Business Entity as a social institution favors the interests of the community through its contribution in the provision of social services through increased Nagari Original Revenue, while as a commercial institution aims to seek profits through offering local resources (goods

² Prostrate Margono. Indonesian Company Law, CV. Novindo Pustaka Mandiri; Jakarta, 2008, page 3.

³ Busyra Azheri and Upita Anggun Sari, *The Anomaly of the Village Government in Developing Village Owned Entrepreneurs*, Hasanudin Law Review Vol.4 Issue 2, 2018. page. 257.

⁴ Arif Ahmad Risadi. Village-Owned Enterprises, Kitchen Books; Jakarta, 2012. page. 4.

⁵ Head of Bank Negara Indonesia Sub-Branch Office, Painan, based on a direct interview on September 14, 2018.

and services) to the market. In running its business the principle of efficiency and effectiveness must always be emphasized.⁶

Nagari's Business Entity which is a new economic institution operating in rural areas is expected to contribute directly as a source of nagari income which in turn will also have an impact on improving the welfare of the nagari community. This is very important considering the gap in economic conditions between people in the nagari and people in cities that are far different. The ultimate goal of the establishment of Nagari's Business Entity is to make Nagari's Business Entity as an instrument of social capital which is expected to be a liaison for villages with outside economic spheres so that the village economy becomes strong. Untuk itu diperlukan suatu langkah yang strategis dan taktis sehingga terintegrasinya potensi, kebutuhan pasar dan penyusunan desain lembaga tersebut ke dalam suatu perencanaan.

Koto XI Tarusan subdistrict also has tourism potential that can be developed. That location can be seen from the Mandehyang area which is used as a tourist area and included in the National Tourism Development Master Plan representing the western regions of Indonesia. In response to this the South Pesisir Regency Government took an alternative way by increasing the community economic improvement program and then supported by increasing human resources. One of them is through the establishment of a Nagari-owned business entity.

The South Coastal Regency basically has a legal basis in the establishment of Nagari's Business Entity, namely in the form of Regent's Regulation Number 18 Year 2017 concerning Procedures for the Establishment and Management of Nagari's Business Entity. In the Regent's Regulation in General Provisions number 9, defining Nagari's Business Entity is a nagari business formed / established by the Nagari Government whose capital ownership and management is carried out by the Nagari Government and the community. Regarding the development of Nagari's Business Entity in Koto IX District Tarusan from The existing 23 Nagari businesses have been established by Nagari's 23 Business Entities. While of the 23 Nagari's Business Entity, only 4 Nagari's Business Entity in 4 Nagari are active in running Nagari's Business Entity, Nagari government is expected to understand about the formation and management of Nagari's Business Entity, so that it can be used as a driver for the economy of the Nagari community and can improve the welfare and independence of the Nagari community, especially lagging nagari whose economy is low.

The legality of the proper form of legal entity turned out to be a bigger problem for the establishment of Nagari's Business Entity. Although in some regency / city regions, they already have Regional Regulations / Regional Head Regulations governing the procedures for the formation and management of Nagari's Business Entity, but often in several Regional Regulations / Regional Head Regulations occur inaccurate in choosing the right legal entity construction for Nagari's Business Entities. In Pesisir Selatan Regency in Regent Regulation Number 18 Year 2017 Regarding Procedures for Establishment and Management of Nagari's Business Entity does not clearly state that Nagari's Business Entity must be incorporated.

⁶Zulkarnain Rildwan. The Urgency of Village-Owned Enterprises (BUMDes) in Village Economic Builders, *Fiat Justisia Journal of Legal Studies* Vol.8 Number 3, 2014. page. 428.

Research Method

The type of legal research used in conducting this research is empirical juridical legal research type. Empirical legal research is defined as research that uses a method of approaching existing problems in society and looking at applicable legal norms.

Research on legal principles is a legal study that aims to find legal principles or positive legal doctrines that apply. This means that the initial research is secondary data, to then proceed with research on primary data obtained in the field. By looking at the applicable legal norms and linking them to the facts in the field in connection with the problems encountered in the study. Data for a research is material that will be used to answer the research problem. Therefore, the data must always be there so that the research problem can be solved.

Result and Discussion

The new Pesisir Selatan Regency has regulations regarding the Establishment and Management of Nagari's Business Entity in the form of a Regional Head Regulation (Perkada). As in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Regulations and Regulations, its existence is recognized and has binding legal force insofar as it is ordered by law. The establishment of the Regent's Regulation was to give birth to a policy in the form of a regional head regulation regarding Nagari Mililk Enterprises. Pesisir Selatan Regency itself has resources that have the potential to be developed and empowered through the Nagari's Business Entity. Arrangements regarding Nagari's Business Entity are urgently needed to provide legal certainty for relevant business actors regarding the empowerment of Nagari's Business Entity.

The existence of regional head regulations can provide guarantees and legal certainty for Nagari's Business Entity in the formation and management of Nagari's Business Entity, thus providing a legal basis and guidelines for the South Pesisir Regency Government in carrying out development and management activities of Nagari's Business Entity. In the end it will provide encouragement in managing Nagari's Business Entity in an orderly, directed, coordinated and beneficial manner. Regional Head Regulation on State-Owned Enterprises will have consequences including demanding consistency and commitment from the Regional Government of South Coastal Regency in the formation, development and management of Nagari's Business Entity, so that the development and management of Nagari's Business Entity that are integrated and synergistic can be realized.

South Pesisir Regent Regulation Number 18 Year 2017 Regarding Procedures for the Establishment and Management of Nagari-Owned Business Entities has governed material content consisting of fifteen chapters which contains the following :

- a. General
- b. The purpose, goals and objectives of establishing Nagari's Business Entity
- c. Roles, strategies, basic principles and principles
- d. Establishment
- e. Nagari's Business Entity
- f. Capital and Operational Costs
- g. Fiscal Year and Revenue Sharing for Nagari's Business Entity
- h. Administration and Financial Statements of Nagari's Business Entity
- i. Establishment of Joint Nagari's Business Entity
- j. Cooperation with Third Parties
- k. Guidance and supervision

- l. Bankruptcy of Nagari's Business Entity
- m. Transitional Provisions
- n. Closing

Judging from the aspect of the content that is regulated in the Regent Regulation No. 18 of 2017 concerning Procedures for the Establishment and Management of Nagari's Business Entity, in the second part of Chapter IV on Establishment, namely Article 10 does not clearly state how the legal entity must be owned by Nagari-Owned Enterprise when it was established. This will result in the absence of definitive guidelines for the Nagari Government apparatus in establishing Nagari's Business Entity. Even though the regulations above clearly state that Nagari's Business Entity must be a legal entity. The existence of this regulation has legal implications that Nagari's Business Entity before their establishment must determine the legal entity form of the business. However, in practice in the South Coastal Regency, it can be seen that there is no uniformity in the establishment of Nagari Owned Enterprises. Pesisir Selatan Regency in the establishment of Nagari's Business Entity was established with the Nagari Regulation of each nagari. Thus Nagari's Business Entity do not use the form of legal entities, but only in the form of business entities that are not legal entities. With the non-uniformity of the forms of Nagari's Business Entity becoming a complex problem in terms of choosing the right form of legal entity for the establishment of Nagari's Business Entity.

The implementation of the new system of Nagari's Business Entity will have an impact on the lives of people and other nagari-level economic institutions. With the regulation of Nagari's Business Entity in the Regulations the Regent also implies that there needs to be some adjustments to other nagari financial institutions so that the implementation of one-door nagari financial management in the Nagari-Owned Enterprise container does not clash with the implementing instructions or technical instructions of other nagari economic financial institutions. Based on data from the Central Statistics Agency for South Coastal District in 2017, the number of cooperatives and members of cooperatives in the South Coastal District decreased by 17.42 percent, from 333 units to 275 units and its members which previously numbered 19 thousand people to 16 thousand people or decreased by 16,92 percent. The largest number of cooperatives is in District IV Jurai with 57 units. Then followed by Lengayang District with 36 cooperative units. When viewed from its type, the most cooperative types in Pesisir Selatan District are 47 village unit cooperatives with a total of 1,059 members. However, in terms of its members, the Civil Servant cooperative has the most members, which is as many as 7,091 members. If you look at the population of South Pesisir Regency until the end of December 2017 amounting to 501,253 people, it means that only 3.2 percent of the population of South Pesisir Regency has been touched by financial institutions such as cooperatives.

Regulation of the South Pesisir Regent Number 18 of 2017 concerning Procedures for Establishing and Managing Nagari's Business Entity in Article 1 states that Nagari's Business Entity are nagari businesses established / established by the Nagari Government whose capital ownership and management are carried out by the Nagari Government and the community. The scope of objectives of Nagari's Business Entity is much broader than the objectives of other financial institutions such as cooperatives. In Article 2 it is explained that the establishment of Nagari's Business Entity is intended as an effort to accommodate all economic activities and public services managed by Nagari or cooperation between Nagari, both developing according to customs and economic activities submitted to be managed by the community through government programs and Regional Government. Based on Regent Regulation Number 18 Year 2017 Article 14, the types of businesses that can be run by Nagari's Business Entity are :

- a. Social Businesses That Provide Public Services Include:
 1. Nagari Drinking Water Business;
 2. Nagari Electricity Business;

3. Nagari Food Barns;
 4. Local Resources And Other Appropriate Technology.
- b. Rental Business Includes:
 1. Means Of Transportation;
 2. Agricultural Tools And Machinery;
 3. Party Equipment;
 4. Meeting Hall;
 5. Shop House;
 6. Land Owned By Nagari-Owned Enterprise;
 7. And Other Rental Goods.
 - c. Intermediary Business Or Services In The Form Of:
 1. Electricity Payment Services And Regional Water Supply Companies;
 2. Credit Payment Services;
 3. Nagari Market To Market Products Produced By The Community
 4. And Other Services.
 - d. Production Businesses And Regional Regulations Include:
 1. Regulatory Regulations On Agricultural, Plantation, Livestock And Fishery Products;
 2. Agricultural, Livestock, And Fishery Production Facilities;
 3. Ice Factory, Liquid Smoke Factory;
 4. Fish Processing, Animal Husbandry;
 5. Non-Timber Forest Product Processing Business
 6. Management Of Ex-Mining Wells And Land;
 7. Other Productive Businesses.
 - e. Financial Service Businesses That Meet The Needs Of Micro-Scale Businesses Run By Nagari Economic Businesses That Can Provide Access To Credit And Loans That Are Easily Accessed By The Public;
 - f. Joint Ventures As The Parent Of Business Units Developed By The Nagari Community Both On The Local Scale Of The Nagari And Rural Areas, In The Form Of The Development Of Large-Scale Fishing Boats, Tourist Villages, Jointly Managed Nagari Forests And Joint Business Activities That Consolidate Other Types Of Local Businesses.

Nagari's Business Entity Can Also Develop Business Units That Are Incorporated. The Form Of Business Units That Are Incorporated As Described In The Regulations Of The Regency Of South Coast Regency, Are :

- a. Limited Liability Company As A Capital Alliance, Is Formed Based On An Agreement And Conducts Business Activities With Capital Which Is Mostly Owned By Nagari's Business Entity, In Accordance With The Laws And Regulations Concerning Limited Liability Companies.
- b. Micro Financial Institutions With The Share Of Nagari's Business Entity Amounting To 60 Percent In Accordance With The Provisions Of The Legislation Concerning Microfinance Institutions.

Business Units With Legal Status Can Be In The Form Of Business Institutions Whose Share Ownership Comes From Nagari's Business Entity By 60 Percent And The Community 40 Percent. Further Provisions Regarding The Activities And Types Of Business Of Nagari's Business Entity Are Regulated In The Nagari Regulations And Articles Of Association Of Nagari's Business Entity. In Terms

Of Capital In The Regent Regulation No. 18 Of 2017 Concerning Procedures For The Establishment And Management Of Nagari's Business Entity States That The Initial Capital Of Nagari's Business Entity Is Sourced From The Nagari Budget. While The Capital Of Nagari's Business Entity Can Come From The Participation Of The Nagari Capital And The Participation Of The Nagari Community Capital.

Nagari Capital Investment As Referred To In Article 15 Paragraph (3) Consists Of :

- a. Government Assistance Be It Provincial Government, District Government Channeled Through The Nagari Apb Mechanism;
- b. Grants From The Private Sector, Community Socio-Economic Institutions And / Or Donor Institutions Distributed Through The Nagari Apb Mechanism;
- c. Business Cooperation From The Private Sector, Community Socio-Economic Institutions And / Or Donor Institutions That Are Ensured As A Collective Asset Of The Nagari And Channeled Through The Nagari Apb Mechanism; And
- d. Nagari Assets Submitted To Nagari's Business Entity Through Nagari Apb Are In Accordance With Statutory Provisions Concerning Nagari Assets.

The capital of Nagari's Business Entity can also come from revolving funds from government and local government programs which are submitted to the nagari or the community through the nagari government. The assets of Nagari's Business Entity can also come from separated Nagari assets, Nagari community savings and assistance from the central, provincial and district governments, loans and third-party capital investments. In the Regulation of the South Coastal Regent of Nonor 18 of 2017 Article 29 states that the Coaching is carried out by the Regent on the implementation of Nagari's Business Entity. Coaching is carried out in the form of facilitation by providing guidelines, guidance, training, direction and supervision in accordance with statutory provisions. Regulation of the South Coastal Regent Number 18 of 2018 concerning Procedures for the Establishment and Management of Nagari's Business Entity also regulates the establishment of Nagari's Business Entity together. In the case of inter-nagari cooperation and inter-nagari business services, joint Nagari's Business Entity may be formed which belong to two or more nagari. The establishment of Nagari's Business Entity can be carried out without having to form Nagari's Business Entity. The collaboration can be carried out in the scope of sub-districts, districts and provinces. Joint Establishment of Nagari's Business Entity must go through an interagency consultation consisting of the nagari government, bamus members and community organizations facilitated by the Regional Government.

Nagari's Business Entity can also collaborate with third parties. In Article 26 of the South Coastal Regent Regulation Number 18 Year 2018 Regarding Procedures for Establishment and Management of Nagari's Business Entity explains that Nagari's Business Entity can make cooperation with third parties with the provisions.

- a. In the case of cooperation requiring collateral for assets / assets owned or managed by Nagari's Business Entity, which incur a debt burden, the cooperation plan is agreed upon by the nagari to be consulted and approved by advisors and approved by village consultative body and not in conflict with applicable laws and regulations.
- b. In the case of cooperation does not require collateral of assets / assets owned or managed by Nagari's Business Entity and does not result in a debt burden, the said cooperation plan is sufficiently reported in writing to the advisors and supervisors of Nagari's Business Entity.

In Koto IX Subdistrict, every Nagari established a Nagari-Owned Enterprise. So that Nagari's Business Entity as a nagari economic institution becomes an important part of the nagari development process through strengthening the nagari economy. Eventually Nagari's Business Entity will be able to contribute to the increase of Nagari's Original Revenue sources. Following is the list of Nagari's Business Entity in Koto IX District Tarusan :

Table I:
List of Names of Nagari's Business Entity in Koto IX District Tarusan

No.	District	Village/ Nagari		Nagari's Business Entity
1	3	4		5
I	Koto XI Tarusan	1	Nanggalo	Nanggalo Indah
		2	Baruang2 Balantai Selatan	Binuang Sakti
		3	Ampang Pulai	Bahari Sakato
		4	Batu Hampa	Saiyo
		5	Duku	Duku Saiyo Sakato
		6	Baruang2 Balantai	Berlan Membangun
		7	Sungai Pinang	Mutiara Sungai Pinang
		8	Kapuh Utara	Satali Saiyo Sakato
		9	Taratak Sungai Lundang	Tabuah Aga
		10	Mandeh	Mande Rubiah
		11	Baruang2 Balantai Tengah	Lubuak Lenong
		12	Baruang2 Balantai Timur	Baltim Sepakat
		13	Kapuh	Kapuh Sabai Nan Aluih
		14	Siguntur	Siguntur Sakato
		15	Pulau Karam Amp. Pulai	Pulau Karam Mandiri
		16	Siguntur Tua	Sarasah Indah
		17	Duku Utara	Duku Utara Bersatu
		18	Batu Hampa Selatan	Batu Hampa Selatan Bersatu
		19	Setara Naggalo	Maju Bersama
		20	Sungai Nyalo Mudiak Aie	Andam Dewi
		21	Carocok Anau Amp. Pulai	Sarangkuah Dayuang Caroco Anau
		22	Jinang Kamp. Pasur	Batang Pulai Saiyo
		23	Kamp. Baru Kor. Nan IV	Maju Bersama

Source: Report of the Community Empowerment Agency, Nagari Government, KB and Population Control.

Dari 23 Badan Usaha Milik Nagari yang telah berdiri, 4 Badan Usaha Milik Nagari yang telah aktif di Kecamatan Koto IX Tarusan pada umumnya memiliki jenis usaha yang beragam, tidak berpatok kepada jenis usaha simpan pinjam saja. Pendirian Badan Usaha Milik Nagari di Kecamatan Koto IX Tarusan dapat membentuk Perseroan Terbatas yang sesuai dengan Undang-Undang Perseroan Terbatas. Pemerintah Nagari dapat juga bekerjasama dengan pihak lain dalam hal pengelolaan Badan Usaha Milik Nagari. Dari 23 Badan Usaha Milik Nagari yang telah berdiri, 4 Badan Usaha Milik Nagari yang telah aktif di Kecamatan Koto IX Tarusan pada umumnya memiliki jenis usaha yang beragam, tidak berpatok kepada jenis usaha simpan pinjam saja. Adapun Badan Usaha Milik Nagari yang aktif di Kecamatan Koto IX Tarusan sebagai berikut :

Table II.
List of names of active Nagari's Business Entity and types of business of Nagari-owned business entities in Koto IX district until December 2018.

No.	District	Nagari's Business Entity	Village/ Nagari	Type Of Business
I	Koto XI Tarusan	Duku Saiyo Sakato	Duku	Lambung Padi, Bank Mini
		Tabuah Aga	Taratak Sungai Lundang	Air bersih, Heller, Listrik Desa, Pariwisata
		Kapuh Sabai Nan Alui	Kapuh	Bank Mini, Pariwisata, Peternakan
		Pulau Karam Mandiri	Pulau Karam Ampang Pulai	Dagang bahan bangunan

Regulation of the South Coastal Regent Number 18 of 2018 concerning Procedures for the Establishment and Management of Nagari's Business Entity also regulates the establishment of Nagari's Business Entity together. In the case of inter-nagari cooperation and inter-nagari business services, joint Nagari's Business Entity can be formed which belong to two or more nagari. The establishment of Nagari's Business Entity can be carried out without having to form Nagari's Business Entity. The cooperation can be carried out in the scope of districts, districts and provinces. Joint Establishment of Nagari's Business Entity must go through an interagency consultation consisting of the nagari government, bamus members and community organizations facilitated by the Regional Government.

Koto IX District Tarusan which has 4 Nagari's Business Entity that have been active also owns 1 Joint Nagri-Owned Enterprise. The Nagari Joint-Owned Enterprise was jointly established from 23 villages in Koto IX District Tarusan. The Nagari-Owned Business Entity was jointly established with a joint regulation of the nagari guardians of Koto IX District Tarusan. So there are 5 Nagari's Business Entity that have been active and carry out their business activities in Koto IX District Tarusan.

Conclusion

The constraints faced in the development of Nagari's Business Entity are more due to the weakness of human resources in the field of management, organizations that are less professional, weak mastery of technology and marketing as well as the low quality of entrepreneurship from micro

entrepreneurs. There are 2 (two) parties that can be expected to develop Nagari's Business Entity in the future, namely the Regional Government and the private sector. Regional Government in this case is expected to assist in regulation, programs as well as technical and capital assistance so that Nagari's Business Entity can develop properly.

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3. Interview

Head of BNI Painan Sub-Branch Office, based on a direct interview on September 14, 2018.

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