



The Dynamics of Land Control in Forest Areas by the Customary Law Community of Nagari Simpang, Pasaman Regency

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ARTICLE INFO	ABSTRACT
<p>Keywords: Indigenous Legal Community, Forest Area, Land Control Conflict</p> <p>Date logs: Received: Oct 8, 2024 Reviewed: Oct 27, 2024 Accepted: Nov 24, 2024 Published: Nov 29, 2024</p> <p>How To Cite: Kurnia, A., Nugroho, A., Andari, D.W.T. (2024). The Dynamics of Land Control in Forest Areas by the Customary Law Community of Nagari Simpang, Pasaman Regency. <i>Marcapada: Jurnal Kebijakan Pertanahan</i>, 4(1), 17-36, 2024 https://doi.org/10.31292/mj.v4i1.65</p>	<p>Forests in Indonesia are a vital ecosystem, covering 64% of the country's total land area, according to data from the Ministry of Environment and Forestry (LHK) released in 2020. Forests serve not only as a source of livelihood but also as a place for meeting the needs of communities, including customary law community (MHA) that have long controlled and utilized forest land prior to the establishment of the nation. One example of a land control conflict in forest areas by MHA occurs in Nagari Simpang Utara. The MHA, led by Datuk Putiah, claims the forest area as ulayat land under Minangkabau customary law. The government, through the Ministry of LHK, has designated this area as state forest land according to Law No. 41 of 1999 on Forestry, reinforced by Minister of Forestry Decree No. 35/Menhut-11/2013. This study aims to identify the dynamics of land control by MHA and find conflict resolution solutions in accordance with applicable regulations. The research method used is qualitative with a descriptive approach. The findings indicate that the recognition and existence of MHA often conflict with government policies, causing friction between indigenous communities and state authorities. In this regard, conflict resolution efforts must consider both sides to achieve a fair and sustainable solution.</p>

A. Pendahuluan

Forests are vital ecosystems, characterized by a large number of trees with varying heights and biodiversity, including various species of flora and fauna. According to data released by the Ministry of Environment and Forestry (LHK) in 2020, the forest area in Indonesia spans 120 million hectares, approximately 64% of the country's total land area (Nurbaya et al., 2020). Forests not only serve as ecological life support systems but also as sources of livelihood for the communities living within and around them. There are approximately 25,863 villages located in or near forest areas, encompassing 92 million households (Indriantari, 2021).

Various arguments exist for the presence of communities in and around forest areas; some cite ancestral heritage and long-standing land tenure practices, including those who reside in forest areas because they believe they have inhabited the land since before the formation of the state (Salim, Pinuji, Wulan, 2021). Furthermore, the lack of viable land for living outside forest areas is another

reality faced by these communities. Meanwhile, indigenous legal communities residing in forest areas have a much stronger justification, as the majority of their presence predates the formation of the state itself (Damiati, dkk., 2015, Komnas HAM, 2016, Salim et al., 2018,). An customary law community (MHA) is a group of people who inhabit a specific area, possess their own leadership system, and adhere to customary laws (Widowati, dkk., 2014). These communities rely on forests to meet their daily needs. The control of land by these indigenous legal communities often leads to conflicts with the government, which designates forest areas as state forests based on Law No. 41 of 1999 on Forestry (Tamarasari, 2022, Jannah, dkk., 2022).

One such conflict occurred in Nagari Simpang Utara, Pasaman Regency, where the customary law community of Simpang Utara claims the forest area as ulayat land inherited from their ancestors. Their land control is based on the traditional "babingkah tanah" system, a land ownership system practiced in Minangkabau, including in Nagari Simpang Utara, which asserts that each *ninik mamak* (tribal leader) or clan head has ownership of ulayat land (Praditya, 2016).

However, from the government's perspective (specifically the Ministry of Environment and Forestry), the designation of forest areas is based on the prevailing positive legal framework in Indonesia, as outlined in Law No. 41 of 1999 on Forestry. This law governs the classification of forest status, including state forests and customary forests. As a result, the Rimbo Simpang area has been designated by the government as a state forest, specifically a protected forest. This designation is further reinforced by the issuance of Minister of Forestry Decree No. 35/Menhut-11/2013 on the Designation of Forest Areas in the Province of West Sumatra. The total forest area amounts to approximately 2,380,057 hectares, which includes conservation forests, protected forests, and production forests. For Pasaman Regency, as of 2023, the total forest area is approximately 394,778 hectares (Statistik, 2021).

The designation of the forest area has led to differing interpretations of ownership and control of the forest area in Nagari Simpang Utara between the Datuk Putiah clan and the Ministry of Environment and Forestry, as previously explained. As a result, tensions often arise between members of the Datuk Putiah community and Ministry of Environment and Forestry personnel. Therefore, the author aims to further examine and identify the various issues that have emerged and explore potential solutions to the problems or conflicts in accordance with the applicable laws and regulations. The main issue advocated by the Datuk Putiah indigenous community is justice and equality in utilizing the land (forest), as practiced by their ancestors through generations. Clearly, without compromise or resolution, the conflict between the two parties will only intensify, as differing interpretations and claims will persist.

Numerous studies have been conducted on indigenous legal communities and land, but studies directly related to the author's focus, namely the indigenous community in Nagari Simpang Utara, Pasaman, have not been found, particularly those addressing efforts to resolve land claims. However, several studies related to indigenous communities and forest land claims have been carried out by other researchers. For example, Manshur (2013) conducted a legal analysis of land

control in forest areas. Manshur's findings show that the control of forests by communities has been passed down through generations, and according to the community's beliefs, ownership rights over the land are based on customary law. Meanwhile, Sati (2019) found that the prolonged conflict has made the position of the indigenous community increasingly critical, resulting in legal uncertainty in land tenure management. On the other hand, legal instruments have been insufficiently supportive of the existence of MHA, further weakening indigenous communities in the political struggles over land claims for their members. The interpretation of the State's Right to Control should be reconsidered by aligning Article 33 of the 1945 Constitution with other regulations and provisions that recognize the protection of human rights and the constitutional recognition of indigenous legal communities (Sati, 2019). Other studies similar to the ones mentioned above have been conducted, and the author attempts to integrate these studies into a framework for resolving the land claim conflicts of indigenous communities in Nagari Simpang, Pasaman Regency. This implies that the issues of existence, land claims, resistance, and efforts to maintain the land, which are central to the beliefs of the Simpang Utara indigenous community, are not baseless, as they have strong foundations and convictions. However, the state also persists in interpreting its policies. Therefore, this study proposes several solutions to make the community's claims part of a compromise framework between the indigenous community and the state.

B. Methods

This study employs a qualitative approach, with data analysis and presentation conducted using a descriptive approach. This method was chosen to understand the process or reasons behind the occurrence of an event (Nugroho, 2020) and to explore the meanings derived from individuals or groups related to social or humanitarian issues or the local indigenous community (Creswell, 2012). Additionally, qualitative approaches generally emphasize a comprehensive and in-depth exploration of social phenomena occurring within a community (Azmi et al., 2018). In this research, data was collected through interviews, observations, and literature studies. The data obtained were processed using qualitative data analysis techniques. Primary and secondary data were analyzed by gathering information from informants, which was then reduced to produce more structured data. The data were subsequently organized into categories based on relevant topics, ultimately resulting in proportional statements that provide explanations about the phenomena being studied. The research was conducted in Nagari Simpang Utara, Simpang Alahan Mati Subdistrict, Pasaman Regency, West Sumatra. The author conducted field research for over a month, gathering various sources from the field, including primary data in the form of interviews, direct observations, and several documents held by the community. Below is a map of the research location, as shown in Figure 1.

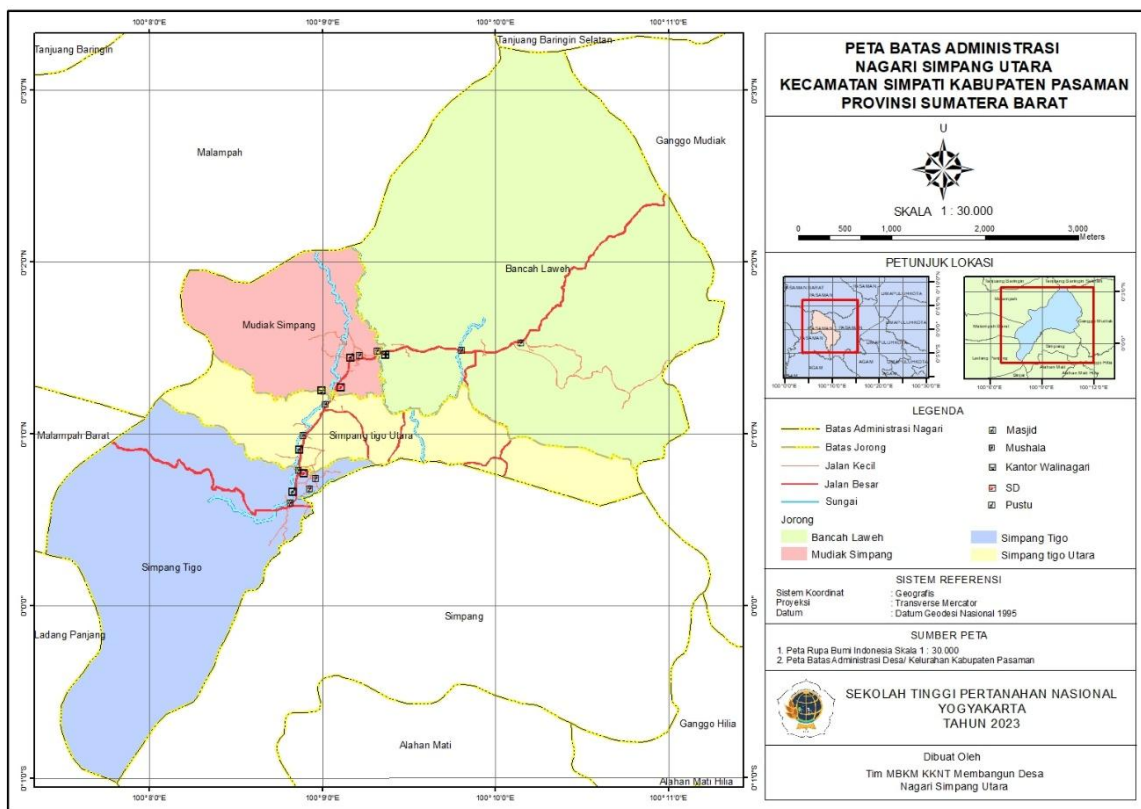


Figure 1. Administrative Map of Nagari Simpang Utara
Source: Processed by the Researcher, 2024

C. Results and Discussion

1. Existence of the Customary Law Community of Simpang Utara

The recognition of the existence of an customary law community (MHA) has become a serious concern of the government as a manifestation of the state. As evidence of the government's seriousness, the criteria for recognizing an MHA are outlined in Article 18(2) of the 1945 Constitution (Veronika & Winanti, 2021), which states that:

- The community must still be active;
- It must align with societal developments;
- It must not contradict the principles of the Unitary State of the Republic of Indonesia; and
- It must comply with the provisions set out in the law.

In line with this, Maria S. Soemardjono (Togatorop, 2020) stated that Law No. 41 of 1999 on Forestry also sets forth criteria for the existence of an MHA as follows:

- The community is still in the form of a kinship group (*rechgemeenschap*);
- There is an institutional structure in the form of customary authorities;
- There is a clearly defined customary law territory;
- There are customary norms and legal instruments, particularly the customary courts, which are still respected; and
- The community still harvests forest products from surrounding forest areas to meet their daily needs.

Based on the explanation above, the existence and recognition of an MHA must be obtained, requested, and proven according to criteria established by the community itself, which contrasts with the principle that indigenous communities historically did not require external recognition, particularly from the government. According to an interview with Masri Datuk Majo Indo, whether or not external recognition is granted, the MHA of Simpang Utara has existed since the past, governed by customary laws set by their *ninik mamak* (elders). Moreover, if the government's criteria are to be followed, they have already been fulfilled.

The customary laws applied throughout Minangkabau, which includes present-day West Sumatra, parts of Riau, and Jambi, are generally the same across all *nagari* (villages), although there are some differences in their implementation (Salmadani & Samad, 2002). These customary laws are still in force and continue to live today as a reflection of the spirit and characteristics of the MHA of Simpang Utara, passed down from generation to generation, in accordance with the saying *indak lakang dek paneh, indak lapuak dek hujan* (unchanged by heat, unaffected by rain). Throughout its long history, these customs have been open to the acceptance of new teachings and have adapted to the changing times, in accordance with the levels of *adat* (custom) in Minangkabau, namely *adat nan sabana adat* (true adat), *adat nan diadatkan* (customs that are made adat), *adat nan teradat* (customs that are accepted as adat), and *adat istiadat* (traditional customs) (Daryusti, 2018).

2. Structure of the Customary Law Community of Simpang Utara

As a part of the Minangkabau community, the customary law community (MHA) of Simpang Utara is organized according to a system of descent, where each member shares a spiritual and ancestral bond, believing that their origin traces back to a common ancestry. The lineage traced through the maternal side is referred to as the matrilineal system (Munir, 2016). This matrilineal system imposes a prohibition on marrying someone from the same clan, as they are considered to be kin. In the event of a marriage, the man is required to move into the woman's family home.

In the MHA of Simpang Utara, the matrilineal system positions women as the inheritors of ancestral wealth and kinship. Women hold a special status, referred to as *bundo kanduang*. The vital role of a *bundo kanduang* is symbolized by the *limpapeh rumah nan gadang* (the central pillar of the *rumah gadang*, or traditional house). The *limpapeh* serves to strengthen the structure of the *rumah gadang*, symbolizing the role of the mother in a family. A *bundo kanduang* plays an important role in executing decisions made by the male leaders, typically the maternal uncles, known as *mamak*.

On the other hand, the men who marry into the woman's family are referred to as *urang sumando*. Their presence in the wife's family home is due to marriage, but they are not considered part of the wife's family and do not have rights to the ancestral wealth. Based on an interview with Riko Anjuja Datuk Putiah, it was noted that with the passage of time, there has been a shift in the position of *sumando* within the MHA of Simpang Utara. Due to the strong ties of marriage, *sumando*

no longer live with their in-laws, especially with the prevalent culture of migration within the community.

The MHA of Simpang Utara is also a community structured by territorial organization. There is a strong sense of unity, with members having settled in the area together for a long period. In their daily life, they are subject to the authority of customary leaders who have established the foundational principles and customary laws. The highest customary leader in Simpang is Datuk Putiah, known as *pucuk bulek* or *pucuk nagari*, followed by Datuk Batuah, known as *batang gadang*, and Datuk Bando Basa, known as *urek tunggang*. These leaders are the first and foremost authorities in the Simpang region.

As time has passed and their descendants have multiplied, smaller leadership sub-units have formed, now known as *anak barampek* and *anak batujuah*. Additionally, there are other leadership subgroups that do not fall under *anak barampek* or *anak batujuah*, amounting to twenty individuals, collectively referred to as *pangulu duo puluah*. A clearer depiction of this structure can be seen in Figure 2 below:

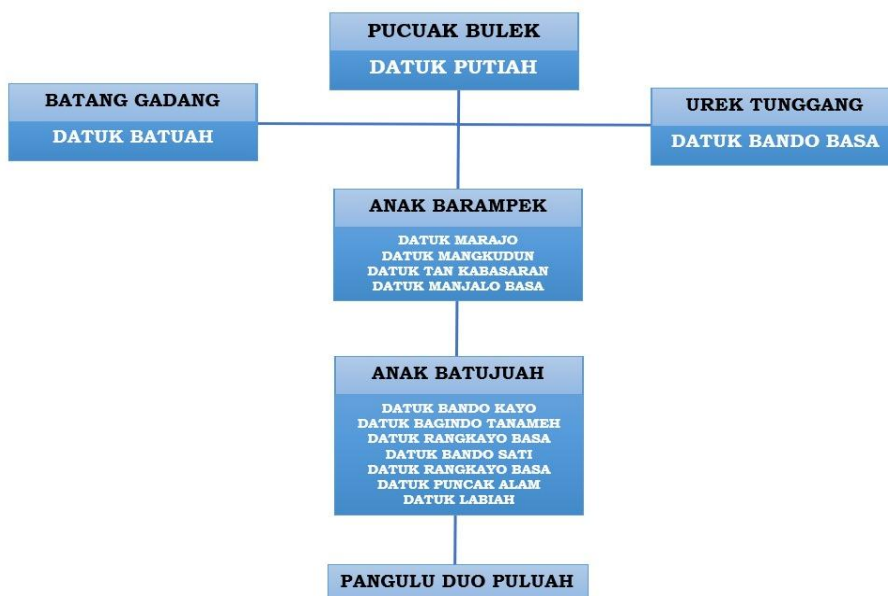


Figure 1. Structure of the Traditional Limbago
Source: Processed by the Researcher, 2024

The structure above is referred to as the *limbago adat bajanjang naiak batanggo turun*, meaning that the position of the *pangulu* within the *nagari* is hierarchical. In performing their duties, the *anak barampek*, *anak batujuah*, or *pangulu duo puluah* must not precede or bypass the *pangulu pucuk*. Below are the names of the *pangulu duo puluah*:

Table 1. *Pangulu Duo Puluah*

No	<i>Pangulu</i> Title Name	No	<i>Pangulu</i> Title Name
1	Datuk Marajo	1	Datuk Rajo Api
2	Datuk Mangkudun	2	Datuk Majo Indo
3	Datuk Tan Kabasaran	3	Datuk Rajo Lelo
4	Datuk Manjalo Basa	4	Datuk Sari Pado

5	Datuk Bando Kayo	5	Datuk Muncak
6	Datuk Bagindo Tanameh	6	Datuk Majo
7	Datuk Rangkayo Basa	7	Datuk Baram Nan Basa
8	Datuk Bando Sati	8	Datuk Rajo Pangulu
9	Datuk Puncak Alam	9	Datuk Rangkayo Basa
10	Datuk Labiah	10	Datuk Batuah

Source: Processed by the Researcher, 2024

3. Organization of the Simpang Utara Indigenous Community

As a Minangkabau society, which traces its lineage through the maternal line (matrilineal), the organizational structure of the Simpang Utara customary law community (MHA) is also based on family grouping along the maternal line (Munir, 2016). This consequence is reflected in the saying, “*Sabarih rueh jo buku, pangarek pisau sirauik, dikarek batuang tuonyo, batuang tuo elok ka lantai, nagari baampek suku.*” This means that within a clan, there is a division of roles, where elder family members are highly respected. The organizational structure consists of households, *paruik*, *jurai* or *kaum*, *kampung*, *suku*, and *nagari*.

A household represents the smallest unit, the nuclear family, consisting of a husband, wife, and children. Traditionally, the family resides in a room or *biliak* within a *rumah gadang* (traditional Minangkabau house) belonging to the extended family. However, today, traditional *rumah gadang* are becoming increasingly rare. Typically, households now reside in separate houses built on the family’s ancestral land. A *paruik* refers to a collection of house-tangos from one extended family or *saparuik*, who live under one roof of a *rumah gadang* or *rumah tuo*. This extended family is led by the oldest male, called *tungganai*. Husbands who marry into the family are referred to as *sumando*. Each male relative and *mamak* in the *rumah gadang* of the wife is called the *mamak rumah* for the *sumando*. Next is *kaum* or *jurai*, which refers to a group of several *saparuik* families. This collective unit is also known as *keluarga sadapua*. They may build a *rumah gadang* or *rumah tuo* on their inherited land. The leader of this group is known as the *mamak kaum*. This position is usually held by the eldest *tungganai* within the group. The *kaum* or *jurai* can appoint a *pangulu* with the title of *datuk*, according to their family heritage.

The next organizational unit is the clan (*suku*), which refers to a group of families belonging to the same kinship groups. A clan is a collective unit of people who are related by blood and share the same maternal lineage. Thus, individuals from the same clan are considered part of the same family, and marriage between them is strictly prohibited. The area inhabited by the descendants of a clan is called *kampung*. The following table lists the names of the *kampung* and the clan residing in the Nagari Simpang Utara:

Table 2. Names of Clan in Nagari Simpang Utara

No	<i>Kampung</i> ’s Name	Clan	No	<i>Kampung</i> ’s Name	Clan
1	Aur	Chaniago	11	Bancah Laweh	Melayu
2	Simpang Tigo		12	Padang Baru	
3	Bt Marambuang		13	Sarang Bangau	Maih

4	Sianok		14	Silagun	
5	Padang		15	Maih	
6	Lubuak Daguang		16	Tengah	
7	Sitinjau		17	Pinang	
8	Chaniago		18	Tabu	
9	Tabek	Melayu	19	Sikumbang	Sikumbang
10	Parik Baru		20	Piliang	Piliang

Source: Processed by the Researcher, 2024

The leader of each clan is called *pangulu* and holds the title of *datuk* according to the heritage of their *kaum*. The names of these *datuk* are diverse and have remained consistent over time. The following table lists the names of the *pangulu* and their respective clan in Simpang Utara:

Tabel 3. Names of *Pangulu* for Each Clan

No	Clan	<i>Pangulu</i> Title Name
1	2	3
1	Chaniago	Datuk Putihah
2	Piliang	Datuk Marajo
3	Tanjung	Datuk Mangkudun
4	Melayu	Datuk Bando Basa
5	Maih	Datuk Labiah
6	Sikumbang	Datuk Bando Kayo

Source: Processed by the Researcher, 2024

Finally, *nagari* refers to a unit of customary legal territory. A *nagari* is established based on customary regulations regarding the formation of a *nagari*. A territory is considered a *nagari* if it meets the criteria of “*nagari baampeksuku, babalai, bamusajik, batapian tampek mandi,*” meaning that a region must have at least four clans, a market, a mosque, and a communal water source to be recognized as a *nagari*.

4. Leadership System and Traditional Council of Nagari Simpang Utara

In the customary law community (MHA) of Simpang Utara, leadership is composed of several key figures, including the *pangulu* (nirik mamak), *alim ulama*, and *cadiak pandai*. The *pangulu* is the leader of the clan in the *nagari*, selected through a rigorous and lengthy process. They hold a special title, known as *sako*, which is inherited. The requirements to become a *pangulu* include possessing leadership qualities in accordance with Islamic teachings, such as *siddiq* (truthful), *tabliq* (to practice and convey), *amanah* (trustworthy), and *fathonah* (knowledgeable) (Hasdiana, 2018).

The *alim ulama* are individuals regarded as possessing religious knowledge and understanding of Islamic law (*syariat*). Their role is equally crucial in the mission of developing the civilization of the *nagari*. The *alim ulama* are likened to the *suluh bendang* of the *nagari*, meaning they serve as the light that illuminates the community (Salmadanis & Samad, 2002). Titles for *alim ulama* vary depending on their expertise and role in both daily affairs and significant religious events, such as

katik for those who usually serve as khatib (sermon giver) and imam in prayer, and *bila* for those known for their melodious call to prayer (adhan) and leading communal prayers.

Next, the *cadiak pandai* are individuals considered to be intelligent and knowledgeable, with a wealth of experience in addressing contemporary issues in line with the progress of the times. The role of a *cadiak pandai* is encapsulated in the expression “*tau dek rantiang nan ka macucuak, tau di dahan nan ka maimpok,*” meaning one must be able to predict emerging issues and resolve them effectively and appropriately using their knowledge and expertise.

These three leadership components are referred to as *tungku tigo sajarangan*. Each element plays a distinct role but shares the common objective of developing the nagari, in accordance with the Minangkabau adat philosophy of “*adat basandi syarak, syarak basandi kitabullah.*” These three elements of leadership are united within an institution called the Traditional Council of Nagari (KAN).

The Traditional Council of Nagari Simpang Utara remains part of the parent nagari's KAN due to the historical and inseparable existence of both MHA communities as one unified entity. Below is the structure of the Traditional Council of Simpang:

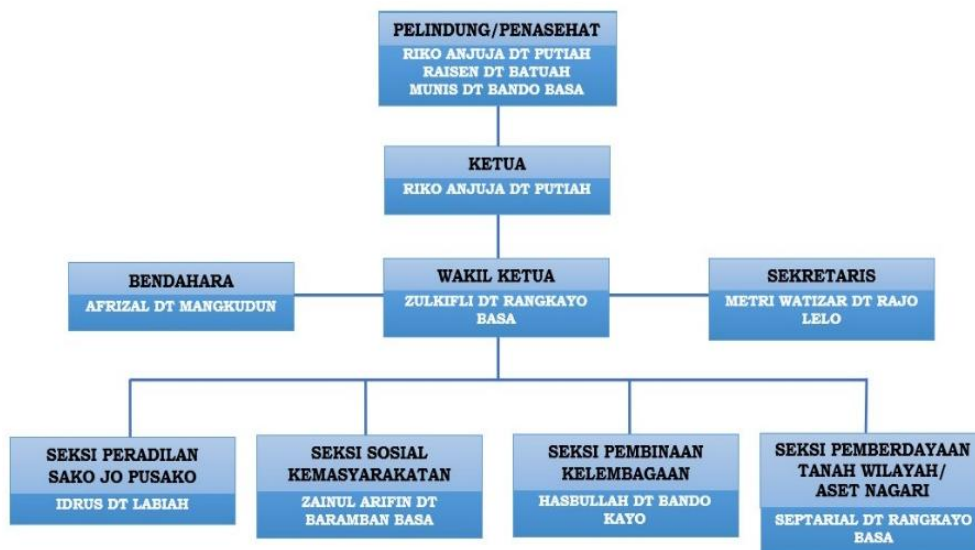


Figure 2. Structure of the KAN Institution
Source: Processed by the Researcher, 2024

Based on an interview with Riko Anjuja Datuk Putiah, the implementation of the duties and authority held by the KAN overlaps with those of the Village Deliberation Body (Bamus), which was established under Regional Regulation of West Sumatra Province No. 2 of 2007 concerning the Fundamentals of Nagari Governance. As such, the primary responsibilities of KAN are related to the preservation of cultural traditions and the resolution of *sako* and *pusako* issues. In nagari governance, KAN collaborates with the government to successfully implement programs, based on the principle of mutual support and backing positive policies.

5. Land System of the Customary Law Community of Nagari Simpang Utara

According to an interview with Riko Anjuja Datuk Putiah, the lands in Nagari Simpang Utara are controlled by the clans in the region as *pusako* (inheritance) from the ancestors. The authority over *pusako* land lies with the eldest *mamak* (pangulu). In accordance with the matrilineal society, land ownership is vested only in the maternal or female side of the family. *Pusako* land is granted rights of management and utilization, but not individual ownership or usage rights, referred to as *ganggam bauntuak*. The *mamak*, as the land custodian, has the responsibility to protect and manage the *pusako* land. This includes overseeing the division of ownership, the management system, and safeguarding the land from external parties that may threaten its integrity (Thalib, 1985).

In terms of classification, *pusako* land is divided into two categories: *pusako tinggi* (high *pusako* land) and *pusako rendah* (low *pusako* land). *Pusako tinggi* refers to land inherited through the maternal side, which was acquired through *tambilang basi*, a method of land acquisition by opening new areas, known as *manaruko*, with the purpose of establishing settlements, rice fields, or plantations. This type of land is strictly supervised by the *ninik mamak*. In response to modern developments, the Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) has been actively implementing a land certification program.

According to an interview with Muni Datuk Bando Kayo, while land certification is viewed positively as a step towards identifying land areas, there are concerns among the *ninik mamak* that when land is certified by descendants, it could be pledged as collateral or sold, thus threatening the existence of *hak ulayat* (communal land rights). In fact, mortgaging or selling *pusako* land is considered taboo in the community and can only occur under certain conditions, which are:

- a. *Mayit tabujua di tengah rumah*, this refers to a situation where a family member has passed away, and there are insufficient funds to purchase a burial shroud and conduct the funeral rites;
- b. *Gadiah tuo indak balaki*, this refers to a situation where an unmarried girl or one who has not yet found a suitor will be married off, with the expenses covered by mortgaging *pusako* land.
- c. *Rumah gadang katirisan*, this refers to the condition where the *rumah gadang* or family home of the *saparuik* clan has sustained significant damage, and there are insufficient funds to repair it.
- d. *Mambangkik batang tarandam*, this refers to the condition of restoring the dignity of the family, which has been tarnished by poverty, ignorance, and destitution.

The next category, *pusako rendah* (low *pusako*), is land obtained through *tambilang ameh*, which refers to property acquired through the efforts of either parent during the marriage, typically by purchase. *Pusako rendah* can be inherited without the approval of the *mamak* or *pangulu*, and its division is determined according to the wishes of the parents or by agreement among the heirs.

In accordance with Regional Regulation of West Sumatra Province No. 7 of 2023 on *Tanah Ulayat* (Customary Land), provisions regarding the division, management, and utilization of *ulayat* land are regulated. The following is the division of *ulayat* land in Nagari Simpang Utara:

a. *Ulayat Nagari* Land

Nagari ulayat land refers to land controlled by the *ninik mamak* (customary leaders) in the region, gathered under the *Kerapatan Adat Nagari* (KAN). The customary leader of the *ninik mamak* in Simpang Utara is Datuk Putihah. *Nagari ulayat land*, including natural resources within it, is considered a reserve for the community. The management and utilization of *nagari ulayat land* follow the customary law of the region.

According to the customary law of boundaries as conveyed through oral traditions by previous *pangulu* (leaders) to their successors, as stated in interviews with Datuk Majo Indo, Datuk Bando Kayo, and Datuk Tan Kabasaran, the boundary is defined as follows: “*Batang katanahan (tanah taban) - data bukit limau panjuik (linjuang gadang di tapi lereang or sahabih data – batang talughan gadang (nan jatuh ka malampah) – malanca kaciak – batu karai tinggi – batu karai randah – paghaman sonsang – baghamban lasi – patamuan batang kinandam with batang lampah – sailiran batang kinandam – data kajai – bateh sigaga (sigaga mati) – bateh lambuai – lubuak cikalo – data kubuang – batu loncek tan kudo (anak aia kudo) – dama dibatu – padang ilalang bateh alai – silang ampek – lereang aie angek – pauah gadang – lubuak kalek batu madanguang – (sibusuak) – batu loncek tan kambiang (maghan) – ulu Sungai lasi – batuang ali.*”

These boundaries are derived from the customary *tambah petuah adat* (oral tradition) passed down by former *pangulu* to the succeeding leaders. However, the information regarding these boundaries is currently only verbal, and there are no formal written documents to substantiate them. As such, they lack legal standing as evidence of ownership or control under the applicable positive law of the Republic of Indonesia. There are also no definitive boundary markers on the ground due to the lack of resources and funding for measurement and marker installation.

b. *Suku Ulayat* Land

Suku ulayat land refers to land that is owned collectively by all members of a clan (*suku*) under the leadership of a *pangulu* (clan leader). This land serves as *pusako* and a reserve for all members of a specific clan within the *nagari*. The management and utilization of *suku ulayat land* are carried out through deliberation and consensus among all clan members. A portion of *suku ulayat land* includes the settlement area inhabited by the clan, which also encompasses public facilities such as roads, cemeteries, and prayer halls.

c. *Kaum Ulayat* Land

Kaum ulayat land is land owned by all members of a *kaum* (extended family) under the leadership of the eldest *mamak* (family head), also known as the *mamak kepala waris* (head of the heirs). The control of *kaum ulayat land* is referred to as *ganggam bauntuak pagang bamasiang*, which means that the land remains under the control of the *mamak kepala waris* but is designated for the benefit of the descendants (*kemenakan*). The management and utilization of *kaum ulayat land* are carried out based on deliberation and consensus between the *mamak kepala waris* and the members of the *kaum*.

6. Efforts to Strengthen the Legal Recognition of the Simpang Utara Customary Law Community

Article 18b, paragraph (2) of the 1945 Constitution, as amended, states: "The state recognizes and respects the unity of customary law communities along with their traditional rights, as long as they continue to exist and are in accordance with societal developments and the principles of the Unitary State of the Republic of Indonesia as regulated by law." Although the state has recognized and respects the existence of customary law community (MHA) and their customary land rights, this recognition remains declarative in nature (Abdurrahman, 2015).

To date, there is no specific regulation governing MHA, neither for recognition nor the mechanisms for its formal acknowledgment. The draft law expected to address this matter is still under process in the People's Representative Council (DPR). Regulations concerning MHA are scattered across existing laws under various regulatory bodies (Sumarja, 2018). The following are the regulations that govern the mechanism for recognizing MHA:

a. Law No. 32 of 2009 on Environmental Protection and Management

This law emphasizes the responsibilities and authority concerning the recognition of MHA. Both the central and regional governments (provincial, district, or city) have the authority to implement policies regarding the recognition of MHA. The central government, through the Ministry of Environment and Forestry or other relevant institutions, has the authority to formulate national policies related to environmental protection and management. Additionally, the central government is responsible for regulating and providing guidance on the recognition of MHA and the rights inherent to MHA. Meanwhile, local governments not only have the authority to implement national policies but also possess the authority to establish regional regulations (Perda) or local policies to manage the recognition of MHA, respect local wisdom, and protect the rights of communities concerning environmental management.

b. Law No. 6 of 2014 on Villages

Article 96 states, "The government and provincial and district/city governments shall arrange for the grouping of customary law communities to be designated as adat villages." The designation of an adat village must meet the following criteria: first, the community of MHA and its traditional rights. An adat village must be a community that has preserved its traditional rights, including territorial (land), genealogical (ancestral lineage), and functional (shared activities and interests) components. Second, the continuity of traditional life. Traditional life in an adat village must still be alive and able to adapt to changes in the environment and society without losing its cultural essence. Third, conformity with the principles of the Unitary State of the Republic of Indonesia. The establishment of an adat village must adhere to the principles of the NKRI while respecting national laws. Fourth, legitimacy and official recognition. The process of designating an adat village must go through a legally recognized and official mechanism, both by the central and local governments.

In principle, regional autonomy grants authority to local governments (provincial, district, or city) to regulate the lives of their communities based on local cultural values and wisdom. This means that local governments are given the freedom to regulate the procedures for the recognition

and protection of local community rights based on the values of local culture. This includes regulation of various aspects such as customary practices, traditional governance systems, and local resource management, as long as they remain within the framework of higher laws and regulations.

c. Minister of Home Affairs Regulation No. 52 of 2014 on Guidelines for the Recognition and Protection of Customary Law Communities

This regulation provides a detailed explanation of the recognition mechanism and the scope of authority for the recognition of MHA, although it is limited to the recognition of the communities themselves and does not explicitly address their territories. The first step involves the provincial, district, or city head establishing an assessment team composed of various relevant agencies through a Decree from the Regent or Mayor. Second, the identification process is carried out, which involves the MHA community to assess aspects such as history, customary land, customary law, cultural assets or items, and the structure of customary governance.

Third, the results of this identification process are subsequently verified and validated by the appointed team. Fourth, after the verification and validation process is completed, the results are announced to the local MHA to ensure their involvement and acceptance of the process. Fifth, based on the recommendations from the MHA assessment team, the regent or mayor may issue a Decree that formally recognizes the MHA status in the respective area.

In an effort to fulfill the declarative requirements and the recognition mechanism for customary law communities, Datuk Putiah, as the customary leader of Simpang Utara, has taken strategic steps together with the pangulu (community leaders) under his leadership through the KAN organization and in collaboration with the village government. These strategic steps include:

- a. Strengthening and internal improvement of the KAN organizational structure. This is evidenced by the election of KAN Simpang as the first runner-up in the achievement category of KAN at the provincial level of West Sumatra.
- b. Conducting indicative mapping of customary land, although without the installation of boundary markers in the field.
- c. Inventorying the assets under the management of KAN Simpang.

7. Implications of Forest Area Confirmation

To ensure the achievement of forestry management objectives, which include equitable and sustainable prosperity for the people, as well as effective and efficient administration, the government implements forestry planning. The implementation of forestry planning involves the confirmation of forest areas, which is carried out through collaboration between the Ministry of Environment and Forestry and various stakeholders. This process includes a series of activities such as designation, boundary setting, mapping, and the establishment of forest areas, with the goal of providing legal certainty regarding the status, location, boundaries, and extent of forest areas. These activities are carried out throughout Indonesia, including in the province of West Sumatra.

Overall, based on the 2022 performance report from the West Sumatra Forestry Department, the area of confirmed forest areas up to 2017 covers approximately 2,286,883.10 hectares, which is equivalent to 54.07% of the total area of the province, which is approximately 4,229,740.00 hectares. Meanwhile, according to the 2022 data from the West Sumatra Forestry Department and the Pasaman Raya Protected Forest Management Unit, the forest area in Pasaman Regency based on its function covers approximately 264,057 hectares, which is equivalent to 66.88% of the total area of the district, which is approximately 394,763 hectares. Details can be seen in the table below:

Table 4. Area of Confirmed Forest Zones

No	Forest Area Function	West Sumatra Province (± Ha)	Pasaman Regency (± Ha)
1	Conservation Forest or Natural Preservation	765,623.24	32,228
2	Protected Forest	775,304.94	196,709
3	Limited Production Forest	228,665.68	29,566
4	Conversion Production Forest	357,088.97	4,924
5	Tourism Park Forest	160,200.27	570
	Total	2,286,883.10	264,057

Source: Processed by the Researcher, 2024

There are two types of land controlled by the community within forest areas: land within protected forest areas and land within conservation areas. For plantation land within protected forest areas, traditional farming methods are still permitted as long as they comply with the regulations set by law. However, no government assistance is provided, such as for road construction or plant seedlings. In contrast, plantation land within conservation areas not only receives no assistance, but there are also enforcement actions carried out by the Natural Resources Conservation Agency (BKSDA) as the managing body of protected natural areas. More details can be seen on the map below:

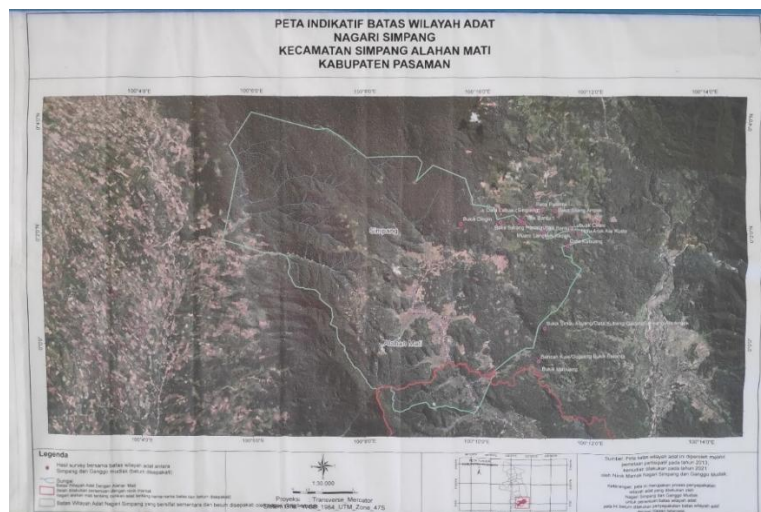


Figure 4. Indicative Map of the Traditional Territory of Nagari Simpang
Source: Processed by the Researcher, 2024

The enforcement actions carried out by the BKSDA have led to tensions with the community, particularly with the descendants of Datuk Putiah, culminating on August 16, 2023. These enforcement actions included the destruction of community garden huts and plants, as well as the confiscation of agricultural tools. This has clearly resulted in losses for the community members managing the gardens. The incident is regretted because it occurred without prior socialization or coordination with the local community. A similar situation exists in neighboring areas of Nagari Simpang Utara, but no enforcement actions have been taken there. This disparity has understandably caused resentment among Datuk Putiah and his community.

8. Resolution of Land Control Issues Within Forest Areas

The areas utilized and managed by the customary law community (MHA) in Labuah Lamo, Rimbo Simpang, and Rimbo Langkuik, as part of the Ministry of Environment and Forestry's policy, are classified as state forest areas through a series of forest designation activities. This policy has, however, faced opposition from the MHA of Simpang Utara, who assert that these areas are part of their customary land rights. Consequently, access to these areas for land management has been restricted.

Previously, the government, under Law No. 41 of 1999 on Forestry, categorized forests based on their status as either state forests or privately-owned forests. This meant that any forest not explicitly granted land rights was considered state forest, including customary forests that involve customary law communities and their communal land rights. Following the Constitutional Court's ruling in Case No. 35/PUU-X/2012, which determined that customary forests are no longer classified as state forests, recognition of MHA's territorial rights began to emerge (Sati, 2019).

However, the ruling did not automatically grant customary land rights to forests controlled by the MHA. Instead, a lengthy process is required to identify and inventory the forests under MHA control. Communities must first submit requests and receive acknowledgment from the local government. This process has generated new challenges, considering the complexities of securing recognition of these communities' existence. Ideally, the government should be proactive, as mandated by law, rather than placing the burden solely on the community.

Based on the author's field research regarding the land management system of the Simpang Utara customary law community over lands within forest areas, the following findings were identified:

- a. The land in question is part of the customary land of the Datuk Putiah clan, and no land transfer has occurred to individual clan members;
- b. The land control is based solely on customary oral traditions, with no authentic documentation or certificates from the village government or land office;

- c. The indicative map of the customary territory of the Datuk Putiah clan shows the area of their communal land exceeding the administrative map boundaries of Nagari Simpang and Simpang Utara as issued by the local government;
- d. No public facilities or social facilities have been constructed by the government in the garden land areas within the conservation forest, and only a connecting road between subdistricts is located within the protected forest area.

As a resolution to land control issues within these forest areas, a conservation forest scheme can be applied to the land controlled within the conservation forest area, and a social forestry scheme can be applied to land controlled within the protected forest area. This approach aligns with Presidential Regulation No. 62 of 2023 on Accelerating Agrarian Reform and the regulation on forest area designation as stipulated in Government Regulation No. 23 of 2021 on Forest Management. This scheme was agreed upon by the West Sumatra Natural Resource Conservation Center (BKSDA), the Simpang Alahan Mati Subdistrict Head, and the Datuk Putiah community representatives during mediation in September 2023.

The conservation partnership scheme, a policy of the Ministry of Environment and Forestry, emphasizes the development and empowerment of communities around conservation forests. This policy represents a collaboration between the Nagari Simpang Utara community and BKSDA, based on principles of mutual trust, respect, and benefit. The collaboration can take the form of agroforestry, a practice that involves using the space beneath forest trees to plant agricultural crops such as vegetables and chili peppers.

Applications for conservation partnership status can be submitted by Datuk Putiah, as the community leader, or individual clan members, to the Director General of Social Forestry and Environmental Partnerships (PSKL), facilitated by BKSDA West Sumatra. The application requires various documents, including identification cards, statements of livelihood based on forest products, and commitment to becoming a partner. If the application is approved, the partnership can last for five years and may be extended. During the partnership, the community can access non-timber forest products, engage in traditional cultivation and hunting methods that do not harm the forest, and improve forest product processing for added economic value. In return, the community as a partner has an obligation to protect the forest ecosystem, prevent fires, poaching, and other external disruptions. This will ensure the sustainable use of the forest while preserving its biodiversity.

Furthermore, the social forestry scheme can be applied to the customary land areas within the protected forest area. This solution aligns with the statement made by West Sumatra Governor Mahyeldi at the opening of the Social Forestry-Based Natural Resource Management Dialogue in October 2023 at the Pagadiah Walinagari Office, Palupuh District, Agam Regency. According to a report from the Info Publik news portal, Mahyeldi, in his capacity as governor, instructed local government agencies (OPD) to support community empowerment through social forestry. The Forestry Department was instructed to facilitate the processing of social forestry permits, while the

Agriculture, Food Crops, and Horticulture Department would assist with seedling and fertilizer support. The Trade Department would provide processing, packaging, and market access support. Based on the land management practices of the Simpang Utara community within forest areas, the appropriate social forestry schemes are Village Forest (HD) or Community Forest (HKm).

The primary difference between these two schemes lies in the applicant: HD can only be applied by the Village Forest Management Institution (LPHD) formed by the Nagari Government, while HKm can be applied by a community group leader or a forest farmers group leader or cooperative. Datuk Putiah, as the leader of Nagari Simpang Utara, can serve as the leader of the LPHD for HD and as the leader of the community group for the HKm application. If the application is approved by the Ministry of Environment and Forestry, the community will be able to legally utilize the forest and its resources, protected by law from external interference. However, the community must fulfill certain obligations, including defining operational boundaries, developing activity plans, reporting, planting, maintaining, managing forest products, paying forest resource royalties, and preserving the forest's functions and protection. Approved HD or HKm schemes can last up to 35 years, with evaluations every five years.

The next step is the Social Forestry scheme, with the designation of the forest area controlled by the MHA Simpang Utara as a customary forest. Before a forest area can be designated as a customary forest, the recognition of the Simpang Utara community by the local government of Pasaman Regency must first be completed. This recognition can be formalized through a regional regulation or a decree from the regent. Given this process, it will inevitably take considerable time, as it requires verification and identification of the criteria for recognizing an MHA before proceeding with the application for customary forest designation. Political will and support from the government, from the local to the higher levels, are crucial to ensure that this process moves forward efficiently, particularly since this issue has previously sparked conflicts.

In the application process, the customary forest request is submitted by the MHA leader, Datuk Putiah, who must include the identity of the MHA, the customary land map, the regional regulation or the decree confirming the MHA, and a statement of agreement on the functions of the customary forest. Once the application is submitted, the Director General of Social Forestry and Environmental Partnerships, under the minister's assignment, will validate the administrative completeness of the documents. If the application meets the requirements, the Director General of PSKL will establish an integrated team to conduct field verification. The results of this field verification are documented in a report, which is submitted to the Director General on behalf of the minister. Subsequently, the Director General issues a decision to designate the area as a customary forest.

Even if the Simpang Utara MHA has not been officially recognized by the local government, the application for the customary forest designation can still proceed. The integrated team assigned by the Director General of PSKL will continue with the field verification. The results of the field verification will be considered by the Director General, who, on behalf of the minister, may

designate the area as an indicative customary forest and grant provisional approval for the customary forest status. This indicative customary forest area can be officially designated as a customary forest once a regional regulation or a decree from the governor or regent is issued to confirm the MHA.

According to an interview with Hendri Dunan, in West Sumatra Province, there is currently only one recognized customary forest in Mentawai Islands Regency, an area known for its many MHA communities. Efforts to apply for customary forest status outside of the Mentawai Islands are underway in Nagari Malalo in Tanah Datar Regency and one of the nagari in Pasaman Barat Regency, with expectations that these areas will be officially designated by 2024.

Meanwhile, as reported on the web portal <https://infopublik.id/kategori/nusantara/789419/perhutanan-sosial-di-sumbar-model-peningkatan-pendapatan-petani-dan-konservasi-alam> the Head of the Forestry Department of West Sumatra, Yoarwadi Usama Putra, announced that as of July 31, 2023, the area designated for Social Forestry in West Sumatra had reached 287,554 hectares, distributed across 205 permits for various Social Forestry schemes. Yoarwadi further stated that Social Forestry can help minimize forest degradation by raising awareness among communities that increasing income does not require forest destruction, which would ultimately harm the environment. Through Social Forestry, new microeconomic centers based on non-timber forest products are expected to emerge, such as honey, coffee, rattan, manau, pasak bumi, and eco-tourism. This will enable communities living near the forests, who have long struggled economically, to thrive while preserving the forest's sustainability.

D. Conclusions and Recommendations

1. Conclusions

The community of Nagari Simpang Utara, in terms of its status as a customary law community (MHA), has met the requirements set forth by the constitution for the establishment of such a community. However, further studies are required in accordance with existing regulations. The land tenure system among the MHA of Simpang Utara consists of both communal and individual rights. The communal rights are held by the *ninik mamak*, with ownership shared collectively, while the children and nieces/nephews manage the land. Individual rights are held by individuals who acquire the land through their own efforts, particularly once married.

The process of forest area designation is carried out to provide legal certainty regarding the status, location, boundaries, and extent of forest areas. This process results in the inclusion of the customary land of the Nagari Simpang Utara community within designated forest areas. Consequently, this restricts the community's access to their customary land and triggers conflicts. The appropriate land tenure resolution model in Simpang Utara is conservation partnerships for customary land within protected forest areas and social forestry for customary land within conservation forest areas.

2. Recommendations

Following the research on the dynamics of land tenure within forest areas in Nagari Simpang Utara, Pasaman Regency, several recommendations arise, including:

- a. The local government should formally recognize the Simpang Utara customary law community by issuing a regional regulation or local government decree to protect their existence and customary rights in accordance with applicable laws and regulations.
- b. The West Sumatra Provincial Forestry Department, in the process of forest area designation and its maintenance, must consider the communities living in and around these areas to prevent access difficulties that may lead to conflicts. Issues regarding land tenure within forest areas should be promptly addressed to prevent or minimize conflicts based on the characteristics of land control and local wisdom.

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Legislation

Law No. 41 of 1999 on Forestry

Law No. 32 of 2009 on Environmental Protection and Management

Law No. 6 of 2014 on Villages

Law No. 23 of 2014 on Regional Government

Government Regulation No. 23 of 2021 on Forestry Management

Presidential Regulation No. 62 of 2023 on the Acceleration of Agrarian Reform Implementation

West Sumatra Provincial Regulation No. 2 of 2007 on Nagari Governance

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Director General of Natural Resource Conservation Regulation No. P.6/KSDAE/SET/Kum.1/6/2018 on Technical Guidelines for Conservation Partnerships in Protected Forest Areas and Nature Conservation Areas.