



PROPOSING CUSTOMARY CRIMINAL OFFENCES AS THE ABSOLUTE COMPETENCE OF THE *NAGARI* CUSTOMARY COURT WITH LEGAL CERTAINTY IN WEST SUMATRA



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Abstract

This study aims to examine and formulate a proposal for future law-making (*de lege ferenda*) by adding customary criminal offences to the absolute competence of the Nagari Customary Court, in order to strengthen the standing and authority of that court as the judicial customary institution of West Sumatra Province. The proposal is grounded principally in Law No. 1 of 2023 on the Criminal Code and Government Regulation No. 55 of 2025 on the Procedures and Criteria for Determining the Living Law in Society. The inquiry matters because the existence of the Nagari Customary Court is at present regulated normatively only by West Sumatra Provincial Regulation No. 7 of 2018 on Nagari, shaped by Minangkabau custom and culture as the defining characteristic of the province affirmed in Article 5(c) of Law No. 17 of 2022. Article 15(3) of that Regional Regulation confers a narrow absolute competence limited to the amicable settlement of customary civil matters and the imposition of customary sanctions, without legal certainty as to the scope of matters covered, and no certainty whatsoever as to authority over customary criminal offences. The study employs normative juridical research using statutory, conceptual and historical approaches. It finds that, first, the Nagari Customary Court presently stands as a judicial institution outside the state court structure; second, its relative competence is confined to the territory of the Nagari in which it sits; and third, customary criminal offences may be conferred as its absolute competence by reference to Article 2 of Law No. 1 of 2023 juncto Article 16(1) of Government Regulation No. 55 of 2025.

Keywords: Absolute competence, Nagari Customary Court, legal certainty, customary criminal law, living law in society

Abstrak

Penelitian ini bertujuan untuk mengkaji dan merumuskan gagasan pembentukan hukum di masa yang akan datang (*de lege ferenda*) dengan cara menambahkan Tindak Pidana Adat sebagai Kompetensi Absolut Peradilan Adat Nagari untuk memperkuat kedudukan dan kewenangan Peradilan Adat Nagari selaku Lembaga Adat yudikatif di Provinsi Sumatera Barat. Terutama dengan merujuk kepada Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana dan Peraturan Pemerintah Nomor 55 Tahun 2025 tentang Kriteria Penetapan Hukum yang Hidup dalam Masyarakat. Hal ini menjadi penting, sebab pada dasarnya eksistensi Peradilan Adat Nagari secara normatif diatur



dalam Peraturan Daerah Provinsi Sumatera Barat Nomor 7 Tahun 2018 tentang Nagari. Dipengaruhi oleh adat dan budaya Minangkabau sebagai karakteristik Provinsi Sumatera Barat, sebagaimana ditegaskan dalam Pasal 5 huruf c Undang-Undang Nomor 17 Tahun 2022 tentang Provinsi Sumatera Barat. Pasal 15 ayat (3) Perda Nagari memberikan Kompetensi Absolut yang terbatas kepada Peradilan Adat Nagari, yakni pada penyelesaian sengketa secara damai, dengan objek Perdata Adat dan pemberian sanksi adat terhadap pelanggaran adat, tanpa kepastian hukum mengenai lingkup penanganan yang dimaksudkan. Tidak ditemukan kepastian hukum mengenai wewenang untuk menangani Tindak Pidana Adat. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan, konseptual dan sejarah. Hasil penelitian menunjukkan bahwa Kedudukan Peradilan Adat Nagari dalam Sistem Peradilan Nasional saat ini adalah sebagai lembaga yudikatif yang berada di luar badan Peradilan Negara; Kompetensi Relatif Peradilan Adat Nagari terbatas pada masing-masing wilayah Nagari; dan Tindak Pidana Adat sebagai Kompetensi Absolut Peradilan Adat Nagari dapat diwujudkan dengan merujuk kepada Pasal 2 Undang-Undang Nomor 1 Tahun 2023 juncto Pasal 16 ayat (1) Peraturan Pemerintah Nomor 55 Tahun 2025.

Kata kunci: Kompetensi Absolut, Peradilan Adat Nagari, Kepastian Hukum, Hukum Pidana Adat, Hukum yang Hidup dalam Masyarakat

INTRODUCTION

In West Sumatra the customary law community is known as the nagari, and nagari are found across almost all of the province's eighteen regencies and municipalities. Under Article 1(2) of the Regional Regulation on Nagari, a nagari is a unity of customary law community constituted genealogically and historically, possessing defined territorial boundaries and its own communal property, competent to select its leaders by deliberation and to regulate and administer the interests of the local community on the basis of the customary philosophy and precept Adat Basandi Syara' — Syara' Basandi Kitabullah, or on the basis of local origins and customs within the territory of West Sumatra Province. A nagari may hold the position of a customary village and thereby form part of the governmental structure of a regency (Tanjung, 2024). It may equally exist as a customary law community subsisting naturally by virtue of genealogical, territorial and historical unity, situated within a municipality and recognised on the strength of custom alone, without forming part of the governmental structure (Irawan & Hanida, 2010). In either configuration the nagari retains its standing as a legal subject, a standing affirmed by the Constitutional Court in Decision No. 35/PUU-X/2012 and anchored in Article 18B(2) of the 1945 Constitution, which provides that the existence of customary law communities is recognised and respected together with their traditional rights.

Criminal-law protection of the traditional rights of customary law communities in the field of customary criminal offences has acquired firmer certainty. It is expressly regulated in Law No. 1 of 2023 on the Criminal Code, particularly in Article 2(1), which provides that the provision referred to in Article 1(1) does not diminish the applicability of the law living in society which determines that a person deserves punishment even though the act is not regulated in that Law, read together with Article 597(1), under which any person who commits an act declared prohibited by the law living in society is threatened with punishment. The same protective intention is represented in the first paragraph of the General Elucidation of Government Regulation No. 55 of 2025 on the Procedures and Criteria for Determining the Living Law in Society, which affirms that the State recognises and respects units of customary law communities together with their traditional rights insofar as they remain living and consistent with societal development and the principles of the Unitary State of the Republic of Indonesia. The issuance of that Government Regulation gives effect to the mandate of Article 2(3) of the new Criminal Code and consolidates the position of customary institutions throughout Indonesia as bodies competent to resolve customary criminal matters, reinforcing customary law as a component of the Indonesian legal system. This legislative turn belongs to a longer trajectory of statutory re-engagement with adat that scholarship has traced since the fall of the New Order (Bedner & van Huis, 2008), a trajectory driven as much by regional political mobilisation as by legal principle (Henley & Davidson, 2008) and mediated by civil-society actors pressing for the formal recognition of adat communities (Arizona et al., 2019). Recent commentary reads Article 2 as the most consequential accommodation of the living law yet achieved in Indonesian penal legislation (Hiariej, 2023), while others caution that recognition of substantive customary norms does not by itself resolve which forum is competent to apply them (Faisal & Rustamaji, 2023).

The strengthening of the standing and authority of customary institutions appears in Article 1(7) of that Regulation, under which a customary institution is a societal body, whether deliberately established or having naturally grown and developed together with the history of the customary law community within its customary territory, entitled and competent to regulate, administer and resolve the various problems of life by reference to customs, habits and customary law. That strengthening is nonetheless conferred only half-heartedly, for the customary institution is not affirmed as the sole official and lawful body for resolving customary criminal matters. The inclusion of the Civil Service Police Unit as a further institution in this respect is the decisive marker, with the consequence that customary institutions cannot exercise their standing and authority independently. This differs markedly from the position long conferred by the State upon the Customary Court in Papua Province, which stands on its own in exercising its authority to examine

customary criminal matters independently and without the intervention of other parties, pursuant to Article 51(1) and (3) of Law No. 2 of 2001 on Special Autonomy for the Province of Papua as last amended by Law No. 2 of 2021. The existing literature has examined this asymmetry only partially. Studies of constitutional recognition have questioned whether the acknowledgement of adat communities carries operative meaning where it is unaccompanied by institutional competence (Nurjaya, 2020), and work on legal pluralism has shown that access to justice for indigenous communities turns upon the standing of the forum rather than upon the availability of the norm (Irianto, 2020). Comparative accounts of Aceh and Papua have documented the institutional consequences of statutory recognition (Kurniawan & Hakim, 2023), while scholarship on adat law has warned against the essentialising assumptions that have historically distorted its treatment (von Benda-Beckmann & von Benda-Beckmann, 2011). What remains absent is a sustained normative analysis of West Sumatra, where adat dispute settlement is vigorous in practice (Rahmadi & Yusuf, 2021) yet its adjudicative institution is constituted at the lowest regulatory rank of the three provinces commonly compared.

It is precisely this certainty of authority to examine and adjudicate criminal matters that the Nagari Customary Court in West Sumatra lacks. Article 15(3) of West Sumatra Provincial Regulation No. 7 of 2018 on Nagari confines the standing of the Nagari Customary Court, as the customary institution competent to resolve customary matters, to the handling of civil matters alone; no express authority is conferred to examine, adjudicate or resolve customary criminal offences. The entry into force of Article 2(1) of the new Criminal Code, together with the implementing Government Regulation issued under Article 2(3), furnishes a normative impetus for the Government of West Sumatra Province not merely to enumerate the acts categorised as customary criminal offences but also to extend the competence of the Nagari Customary Court to resolve them. Such certainty would be consonant with the standing of that court under Article 5(c) of the Regional Regulation as the judicial customary institution of the nagari, and would constitute a concrete step by the State in fulfilling the constitutional rights of nagari communities under Articles 18B(2) and 28I(3) of the 1945 Constitution. This study therefore proposes future law-making by adding customary criminal offences to the absolute competence of the Nagari Customary Court, and to that end addresses three principal questions: the position of the Nagari Customary Court within the national judicial system; its relative and absolute competence in West Sumatra; and the prospect of customary criminal offences as its absolute competence.

METHODS

This research is normative legal research, which situates law as norm, precept, principle and doctrine governing legal relations in society. Normative legal research is employed here to analyse the consistency, synchronisation and completeness of the legal norms regulating the absolute competence of the Nagari Customary Court applicable in West Sumatra as a customary institution in the judicial field. According to Peter Mahmud Marzuki, normative legal research is the process of discovering a rule of law or legal doctrine in order to answer the legal issue at hand (Kristiawanto, 2022). A comparable view is advanced by Soerjono Soekanto and Sri Mamudji, who state that normative legal research, also termed library-based legal research, is legal research conducted by examining library materials or secondary data alone (Soekanto & Mamudji, 2009). Consistent with both positions, the legal materials in this study comprise primary, secondary and tertiary legal materials, assembled so as to permit the systematic tracing of the norms governing the institution under examination. The methodological conventions of normative legal scholarship in Indonesia, and in particular the requirement that doctrinal reasoning be rendered explicit and reproducible, are followed throughout (Nurhayati et al., 2021).

The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia; Emergency Law No. 1 of 1951 on Temporary Measures to Organise the Unity of the Structure, Authority and Procedure of the Courts; Law No. 14 of 1970 on the Basic Provisions of Judicial Power; Law No. 2 of 1986 on the General Courts; Law No. 48 of 2009 on Judicial Power; Law No. 6 of 2014 on Villages as last amended by Law No. 3 of 2024; Law No. 1 of 2023 on the Criminal Code; Law No. 17 of 2022 on the Province of West Sumatra; Government Regulation No. 55 of 2025; West Sumatra Provincial Regulation No. 6 of 2008 on Ulayat Land and Its Utilisation; West Sumatra Provincial Regulation No. 7 of 2023 on Ulayat Land; and West Sumatra Provincial Regulation No. 7 of 2018 on Nagari. The secondary legal materials derive from legal textbooks and journals together with the views of legal scholars (doctrine), while the tertiary (non-legal) materials consist of reporting in various media relevant to the object of the research. This composition permits the norms to be read against both their doctrinal foundations and their practical reception.

The study employs several approaches. First, a statutory approach is used to examine the various provisions bearing upon the absolute competence of the Nagari Customary Court. Second, a conceptual approach is used to examine the concept of the Nagari Customary Court as a customary institution in the judicial field in West Sumatra. Third, a historical approach traces the trajectory of customary adjudication from the colonial period through its formal abolition to its contemporary revival, since the present position of the institution cannot be understood apart from that trajectory. The technique of collecting legal materials is library research, conducted by

inventorying, identifying and classifying the legal materials in accordance with the legal issue under study, so that the relationship between the norms of different hierarchical levels can be assessed rather than merely described.

The analysis of legal materials is qualitative and is expounded descriptively, presenting the object of research as it emerges from the materials examined. The analysis proceeds through the stages of identifying the applicable legal norms (*ius constitutum*), testing the sufficiency of those norms in affording protection to the existence of the customary law community, and formulating the aspired legal concept (*ius constituendum*) with respect to the competence of the customary court. The results are presented prescriptively, that is, as research directed towards obtaining recommendations concerning what ought to be done to overcome particular problems (Soekanto, 1986). The study accordingly does not confine itself to exposition and the drawing of conclusions but also offers a way forward useful as a solution to the problem examined. Validity is supported by triangulating statutory text, doctrine and comparative practice, while reliability is supported by the transparent and reproducible ordering of the materials described above.

RESULT AND DISCUSSION

RESULT

The Position of the Nagari Customary Court within the National Judicial System

The position of the Nagari Customary Court within the national judicial system cannot be separated from its historical formation. The existence of customary adjudication during the Netherlands Indies administration rested upon Article 130 of the Indische Staatsregeling (Hadikusuma, 1989). Customary adjudication was not then the sole judicial institution able to resolve matters on the basis of customary law; a dualism of adjudication obtained in the settlement of disputes among the indigenous population. The colonial government applied a politics of legal identity which produced a classification of population groups according to origin. Under Article 163 of the Indische Staatsregeling the population was divided into three groups, namely the European, the Indigenous and the Foreign Oriental population groups. This classification was not a neutral administrative device but the organising principle of the colonial legal order, and it determined which body would hear a given dispute and by which body of law that dispute would be decided. Legal-historical scholarship characterises this arrangement as the foundation of a dualism whose dismantling became the central and still unfinished project of Indonesian legal unification (Wignjosoebroto, 2019).

For the indigenous population group, the fora competent to resolve conflicts on the basis of customary law were the Village Court (*dorpjustitie*) and the Customary Court (*inheemscherechtspraak*). The fundamental distinction between these two institutions lay in the degree of intervention by the colonial government. Customary adjudication was heavily influenced by such intervention, in contrast to village adjudication, which was conducted independently by the units of customary law community themselves (Baroroh *et al.*, 2015). Customary adjudication was instituted for the indigenous population as a consequence of the dualism of law founded on population classification — the European group being subject to European law and the indigenous group to customary law — and it was controlled by the colonial government (Baroroh *et al.*, 2015). The significance of this arrangement for the present inquiry is that the autonomy of customary adjudication has been contested from the outset, and the question of independence which arises today under Government Regulation No. 55 of 2025 is a recurrence of a much older problem rather than a novel one.

After independence, and progressively pursuant to Article 1(2) of Emergency Law No. 1 of 1951 on Temporary Measures to Organise the Unity of the Structure, Authority and Procedure of the Courts, the Customary Court was gradually abolished. The culmination of that process was the promulgation of Law No. 2 of 1986 on the General Courts, which accorded no place to the Customary Court, and Law No. 14 of 1970 on the Basic Provisions of Judicial Power, in particular Article 39, which provided that the abolition of Customary and Self-Governing Courts is to be carried out by the Government. The abolition was thus not an incidental consequence of judicial reorganisation but a deliberate policy of unification, animated by the post-independence aspiration towards a single national legal order. What that policy did not and could not extinguish, however, was the social reality of customary dispute settlement, which continued to operate in the communities in which it had always been embedded.

The existence of customary adjudication in various regions did not disappear following that abolition. These customary institutions continued to exercise their standing and authority as alternative dispute settlement bodies. This certainty may be observed from Article 2(3) of Law No. 48 of 2009 on Judicial Power, which states that all courts throughout the territory of the Republic of Indonesia are state courts regulated by statute. The existence of customary adjudicative bodies in several regions, such as the Gampong Court and the Mukim Court in Aceh Province (Zainuddin, 2019), and the Customary Court in Papua Province, may further be categorised as quasi-judicial institutions, since they possess functions of judicial power and are regulated by statute (Tanjung, 2024). This is constitutively regulated

in Article 24(3) of the 1945 Constitution and given effect by Article 38 of the Law on Judicial Power, which recognises the existence of other bodies whose functions relate to judicial power, including the settlement of disputes outside the courts, and provides that such bodies are to be regulated by statute.

Having regard to the requirement in Article 38(3) of the Law on Judicial Power, the Nagari Customary Court in West Sumatra Province cannot be categorised wholly as a quasi-judicial institution, for it is not established on the basis of a statute. It is not provided for in Law No. 17 of 2022 on the Province of West Sumatra, but is instead affirmed normatively through West Sumatra Provincial Regulation No. 7 of 2018 on Nagari. This does not, however, constitute an impediment to the Nagari Customary Court resolving matters on the basis of Minangkabau customary law. The Nagari Customary Court exists not because it was enacted but because it lives, grows and develops together with the community as part of the local wisdom of the Minangkabau people in West Sumatra, in harmony with Minangkabau custom and culture as the characteristic of the province determined in Article 5(c) of Law No. 17 of 2022. The deficiency, therefore, is not one of social legitimacy but strictly one of normative rank. The interlocking of adat and religious precept expressed in the maxim *Adat Basandi Syara' — Syara' Basandi Kitabullah* is itself a documented instance of the plural normative ordering that characterises Indonesian law (Salim, 2021).

The presence of the Nagari Customary Court is of considerable importance within the system of nagari governance in West Sumatra, where it is expressly accorded a place as a judicial institution. Article 5 of the Regional Regulation on Nagari determines that nagari institutions comprise the *Kerapatan Adat Nagari*, the Nagari Government and the Nagari Customary Court. This tripartite arrangement mirrors the concept of *trias politica* advanced by Montesquieu, who considered state power to consist of three kinds, namely legislative power as the power to make laws, executive power as the power to implement laws, and judicial power as the power to adjudicate violations of law (Busroh, 2010). The architecture of nagari governance thus reproduces at the local and customary level the same functional separation that organises the State, which lends the judicial branch of the nagari a structural coherence that its present normative treatment does not fully acknowledge.

That judicial character does not, however, automatically determine the position of the Nagari Customary Court within the national judicial system. Like other customary adjudicative institutions, the Nagari Customary Court holds the position only of an alternative dispute settlement body. It is not vested with authority to carry out forced execution such as that possessed by state judicial bodies. The resolution of matters is conducted by deliberation in order to achieve consensus, on the initiative

of the customary head acting as mediator. This accords with Article 60(1) of the Law on Judicial Power, under which alternative dispute settlement is an institution for the settlement of disputes or differences of opinion through procedures agreed by the parties, namely settlement outside the courts by consultation, negotiation, mediation, conciliation or expert appraisal.

Voluntary implementation of the decision or conclusion reached through deliberation mediated by the customary heads is the key to the system. The authority of the customary head and of customary law as the law living in the midst of society (living law) are mutually reinforcing. The outcome of adjudication is implemented voluntarily by the disputing parties without coercion, and the implementation of the outcome of deliberation marks the completion of the matter (*inkracht van gewijsde*), restoring the condition of peace as it was before. Peace is indeed the principal objective of the resolution of matters by the Nagari Customary Court, achieved by restoring social equilibrium through the rendering of justice to the parties at the session conducted (Aliansi Masyarakat Adat Nusantara, 2003). The efficacy of the institution accordingly rests upon legitimacy rather than upon coercion, which is at once its distinctive strength and the source of its vulnerability where a party declines to comply. Ethnographic work on Indonesian adjudication has long observed that the authority of such settlement derives from the community's acceptance of the reasoning offered rather than from any power of enforcement (Bowen, 2000), and comparable observations have been made of customary justice elsewhere in the archipelago (Yusriadi, 2021).

Where the outcome of deliberation is not implemented, the party whose rights are prejudiced may pursue forced execution by suing upon that outcome before the local District Court in order to obtain a Deed of Peace, so that the matter is genuinely concluded, final and binding, and carries coercive executorial force. Article 36(1) of Supreme Court Regulation No. 1 of 2016 on Court Mediation Procedure determines that parties, with or without the assistance of a certified mediator, who have successfully settled a dispute outside the court by a Peace Agreement may submit that agreement to the competent court in order to obtain a Deed of Peace by filing a suit. The necessity of this additional step reveals the incompleteness of the institution's present recognition: its determinations acquire enforceable legal effect only by passing through the state judicial apparatus, which is precisely the deficit that the reform proposed in this study seeks to remedy. The interaction between court-annexed mediation and extra-judicial settlement has itself been analysed in detail, confirming that the Deed of Peace operates as the principal bridge between the two (Butt & Lindsey, 2021).

Table 3. Periodisation of the Normative Position of Customary Adjudication in Indonesia and Its Implications for the Nagari Customary Court

Period	Governing instrument	Position of customary adjudication	Criminal jurisdiction
Colonial (1848–1945)	Articles 130 and 163 Indische Staatsregeling	Recognised under legal dualism; subject to colonial control	Not expressly conferred
Early independence (1951–70)	Emergency Law No. 1 of 1951	Progressively abolished by unification policy	Withdrawn
Unification (1970–2009)	Law No. 14 of 1970; Law No. 2 of 1986	Formally abolished; no place in the state courts	None
Restoration (2009–2023)	Article 38 Law No. 48 of 2009	Recognised as a body related to judicial power	None at general level
Recognition (2023–present)	Article 2 Law No. 1 of 2023; GR No. 55 of 2025	Living law recognised; customary institutions competent	Recognised substantively

Source: Authors' historical-normative reconstruction (2026) from the statutory instruments examined in this study

The periodisation set out in Table 3 renders the trajectory just described in a single view and makes plain that the present position of the Nagari Customary Court is the product of successive policy choices rather than of any inherent limitation of the institution. Under colonial rule customary adjudication was recognised but subordinated; in the early years of independence it was withdrawn in the name of unification; through the era of the unified judiciary it possessed no formal place at all; from 2009 it was readmitted obliquely as a body whose functions relate to judicial power; and since 2023 the living law it applies has been expressly recognised in the Criminal Code itself. What the table also discloses, however, is that the criminal jurisdiction of customary institutions has never at any point been conferred in general terms. Even in the present period the recognition operates upon the applicable law rather than upon the forum, which is precisely the asymmetry this study seeks to resolve.

Two further observations follow from that periodisation. The first is that the abolition effected between 1951 and 1970 was formal rather than social: the institutions continued to function, and their continued functioning is the reason they were available for readmission in 2009 and for recognition in 2023. Legal policy, in other words, has repeatedly proved unable to extinguish an institution sustained by the community it serves, which is itself an argument for regulating that institution

rather than ignoring it. The second observation is that each successive readmission has been partial, conferring something less than full judicial status, with the consequence that customary adjudication has occupied an ambiguous position for the whole of the period surveyed. The proposal advanced in this study would bring that sequence of partial recognitions to a coherent conclusion by aligning the competence of the institution with the function it has performed throughout.

The Relative and Absolute Competence of the Nagari Customary Court in West Sumatra

Nagari is the term used to designate the customary village in West Sumatra Province, consonant with Article 6(2) of Law No. 6 of 2014 on Villages as last amended by Law No. 3 of 2024, under which the designation of a village or customary village is adjusted to the designation prevailing in the locality concerned. The nagari originates from the unity of the Minangkabau customary law community in West Sumatra Province. Each nagari possesses a territory corresponding to its customary territory, within which its customs apply. Article 103(b) of the Law on Villages explains that a customary territory is the territory of life of a unity of customary law community. Alongside this, the ownership and utilisation of ancestral property in respect of civil entitlements falls within the regulation of the kaum, the assembly of families descended from one maternal ancestor, as expressed in the customary maxim adat salingka nagari, harato salingka kaum (Harun, 2020).

It is unsurprising, therefore, that the relative competence of the institution follows the territory of the nagari in which the Nagari Customary Court is constituted. Article 15(1) of the Regional Regulation on Nagari determines that in each nagari the Kerapatan Adat Nagari establishes a Nagari Customary Court as the highest institution for the settlement of community disputes in the nagari in accordance with adat salingka Nagari. This reinforces the territorial scope of law enforcement by the Nagari Customary Court, as reflected in the definition in Article 1(8) of the Regional Regulation, under which the Nagari Customary Court, or a body designated by another name, is the institution for the settlement of community disputes in the nagari on the basis of adat salingka Nagari and is mediatory in character. Relative competence is thus a function of customary territoriality rather than of administrative delineation.

The position of the Nagari Customary Court in each nagari in fact resembles a confluence of the concepts of the Customary Court and the Village Court under the colonial administration. Customary adjudication under Staatsblad 1932 No. 80 was accorded the following jurisdiction: the Customary Court was competent to adjudicate matters occurring within the territory of authority of the customary

adjudicative body; all indigenous persons of whatever origin could be defendants; and all population groups could be plaintiffs (Nasution, 2014). Village adjudication, by contrast, was accorded authority under Article 3a of the *Rechterlijke Organisatie* 1935 No. 102 concerning the powers of the village peace judge, namely that matters whose examination under customary law falls to the judges of small legal communities remain committed to their examination; that this in no way diminishes the entitlement of the parties to submit their matter at any time to the judges referred to in the relevant paragraphs; and that such judges adjudicate according to customary law and may not impose punishment (Baroroh et al., 2015).

Both the Customary Court and the Village Court of the colonial era were thus, in principle, not accorded express authority to resolve customary criminal matters. In practice, however, and as Hazairin observed, the power of the village judge was not confined to the power of reconciliation alone but extended to the power to decide all disputes in every field of law without distinguishing between matters of criminal, civil, public and private law (Soepomo, 1972). There is accordingly a long-standing discrepancy between the formal delimitation of customary jurisdiction and its actual social operation, and the present situation of the Nagari Customary Court reproduces that discrepancy: the institution in practice addresses conduct that is criminal in character, while the norms conferring its competence speak only of civil matters and customary sanctions.

So it is with the Nagari Customary Court. There is no express rule stating the jurisdiction of the Nagari Customary Court to handle customary criminal offences. Its absolute competence is expressly regulated in Article 15(3) of the Regional Regulation on Nagari, under which the Nagari Customary Court has the following duties: to settle disputes over *sako* and *pusako* in the graduated manner of *bajanjang naiak batanggo turun* through a process of peacemaking; to settle customary civil matters through deliberation and consensus on the basis of agreement in the session of the assembly of the *Kerapatan Adat Nagari*, constituting the *kato putuih* to be followed by judicial institutions; and to impose customary sanctions upon members of the community who violate customary law in accordance with the provisions of *adat salingka Nagari*. The enumeration is exhaustive in form and civil in substance.

This regulation of authority is in fact consonant with the mandate of Article 103(e) of the Law on Villages, which refers to the conduct of peace sessions of the customary village court in accordance with statutory provisions. The competence so conferred does not conflict with the means available for resolving civil disputes non-litigiously. Article 58 juncto Article 60(1) of the Law on Judicial Power determines that efforts to settle civil disputes may be conducted outside the state courts through arbitration or alternative dispute settlement, and that alternative dispute settlement is an institution

for the settlement of disputes or differences of opinion through procedures agreed by the parties outside the courts. The civil dimension of the institution's competence therefore rests upon a coherent and complete normative foundation, which throws into sharper relief the absence of any comparable foundation on the criminal side.

The regulation of the absolute competence of the Nagari Customary Court may accordingly be concluded to accord with the whole of the legal framework upon which the institution is normatively founded. Its standing, including its absolute competence in the field of customary civil matters with the ultimate objective of restoring social equilibrium through peace, has been further strengthened by the promulgation of West Sumatra Provincial Regulation No. 7 of 2023 on Ulayat Land, which by Article 27 expressly revoked the applicability of West Sumatra Provincial Regulation No. 6 of 2008 on Ulayat Land and Its Utilisation. That strengthening is evident in the affirmation of norms concerning the authority of the Nagari Customary Court which were entirely absent from the earlier instrument.

The Regional Regulation on Ulayat Land confers authority upon the Nagari Customary Court to settle disputes over ulayat land in the nagari. Article 23 determines that disputes over ulayat land in the nagari are settled by the Kerapatan Adat Nagari and/or the Nagari Customary Court according to the provisions of the prevailing custom, *bajanjang naiak batanggo turun*, and are to be pursued by way of peace through deliberation and consensus in the form of a peace decision; that such a decision may be registered with the local District Court in order to obtain legal certainty; and that where peace is not achieved the parties concerned may bring their matter before the District Court. The limits of relative competence in respect of ulayat land disputes thereby become more certain (Fitzpatrick, 2007), and the Nagari Customary Court is not competent where a dispute over ulayat land arises between nagari, such a dispute being settled under Article 24(1) by the Kerapatan Adat Nagari of the nagari concerned.

Where efforts at settlement do not produce peace, the disputing parties may request the Regional Government and/or the Regency or Municipal Government to act as mediator. Should peace still not be achieved, one or more of the parties may bring the dispute before the District Court, as provided in Article 24(3) and (4) of the Regional Regulation on Ulayat Land. It may therefore be concluded that the principle and objective of the settlement of disputes and matters by the Nagari Customary Court is deliberation directed towards consensus and peace. On the basis of the legislation presently in force, there exists no express authority for the Nagari Customary Court to resolve customary matters outside the civil field, and this absence constitutes the central normative gap addressed by this study. The practical difficulty

of converting customary entitlements into enforceable claims before state institutions is well attested (Simarmata, 2021).

The state courts operate along the dimension of right and wrong, whereas customary adjudication is the representation of the values of local wisdom of customary law as the embodiment of the spirit of the nation living within the conscience of the customary law community (Mulyadi, 2017). Alongside this, state judicial institutions possess various forms of absolute competence according to the judicial environment to which they belong, as regulated in Article 18 juncto Article 25(1) of the Law on Judicial Power, under which the judicial bodies beneath the Supreme Court are those within the general, religious, military and administrative judicial environments. Each of these bodies possesses its own absolute competence: the general courts are competent to examine, adjudicate and decide criminal and civil matters; the religious courts to examine, adjudicate, decide and settle matters between persons of the Islamic faith; the military courts to examine, adjudicate and decide military criminal offences; and the administrative courts to examine, adjudicate, decide and settle administrative disputes. The contrast is instructive, for every recognised judicial environment enjoys a subject-matter competence defined at the level of statute, while the Nagari Customary Court does not.

The distinction between relative and absolute competence merits closer articulation, since the two are frequently conflated in discussion of customary adjudication. Relative competence concerns the question which forum among several of the same kind is competent, and for the Nagari Customary Court it is determined territorially by the boundaries of the nagari, as Article 15(1) of the Regional Regulation on Nagari makes clear. Absolute competence concerns the anterior question of what kind of matter a forum may entertain at all, and it is here that the deficiency lies. A court may possess perfectly clear relative competence and yet be unable to act, because the subject-matter before it falls outside the class of matters assigned to it. That is the present situation of the Nagari Customary Court when conduct amounting to a customary criminal offence arises within its own territory: its relative competence is beyond doubt, while its absolute competence is silent.

The consequence of that silence is a species of jurisdictional vacuum. The conduct in question is, by hypothesis, prohibited by the living law and therefore punishable under Article 2(1) of the new Criminal Code; the community expects the customary forum to address it; the forum itself possesses the requisite knowledge of the applicable customary law; and yet the instrument that constitutes the forum does not say that it may. In practice the gap is bridged by recourse to the third limb of Article 15(3), which permits the imposition of customary sanctions upon those who violate customary law. That limb, however, speaks of sanction and not of adjudication,

and it therefore supplies a power to punish without a corresponding power to determine, which is an inversion of the ordinary sequence in which a finding precedes a sanction. The resulting practice is defensible in customary terms but precarious in terms of legal certainty, since the validity of any determination so reached is always open to challenge.

It should be emphasised that the reform proposed here would not enlarge the substantive customary law applied by the Nagari Customary Court, nor would it authorise the institution to impose sanctions of a kind unknown to Minangkabau custom. Article 2(2) of the new Criminal Code confines the living law to the place where that law lives and requires its conformity with Pancasila, the 1945 Constitution, human rights and the general principles of law recognised by the community of nations. Those conditions operate as substantive limits upon any customary criminal jurisdiction, and they would continue to apply with full force. What the proposal would alter is exclusively the allocation of competence: it would state expressly that the forum already applying that law may also determine matters arising under it. The distinction matters, because objections to customary criminal jurisdiction are frequently directed at the content of customary sanctions rather than at the identity of the adjudicating body, and the present proposal touches only the latter.

Customary Criminal Offences as the Absolute Competence of the Nagari Customary Court in West Sumatra

The Wetboek van Strafrecht, the former Criminal Code, applied for a very long period. It originated in the Netherlands, drafted in the Tweede Kamer in 1809 under the government of Lodewijk Bonaparte. That codification of 1809 applied for only two years, since from 1811 to 1813 the Netherlands was occupied by France, from which time the Code Pinal applied with amendments until 1886. The Netherlands spent approximately seventy-three years in forming its Criminal Code, which was completed only on 3 March 1881 (Prameswari, 2026). On 1 September 1886, pursuant to Staatsblad 1881 No. 35, the Wetboek van Strafrecht came into force in the Netherlands, and criminal law rules were then drawn up and applied to the colonised society of the Netherlands Indies.

On 10 February 1886 two criminal codes applied in the Netherlands Indies, namely Het Wetboek van Strafrecht voor Europeanen under Staatsblad 1866 No. 55, applicable to the European group from 1 January 1867, and, by the Ordinance of 6 May 1872, the criminal code for the Indigenous and Foreign Oriental groups, Het Wetboek van Strafrecht voor Inlanders en Daarmede Gelijkgestelde, under Staatsblad 1872 No. 85, in force from 1 January 1873 (Farid, 1995). Finally, a new criminal code, the Wetboek van Strafrecht voor Nederlandsch-India, was formed by Staatsblad 1915

No. 732 under the royal decree of 15 October 1915 and entered into force on 1 January 1918, replacing both of the foregoing codes and applying to the entire population of the Netherlands Indies (Kanter & Sianturi, 2012). The unification thus achieved was a unification of foreign law, not of the law living among the population to whom it was applied.

That codification of criminal law was in essence undertaken to sweep away and abolish customary law, so that only the foreign criminal law imported for the population of the colonised territory would apply (Saputra, 2025). The nuance of foreign culture was pronounced, while the indigenous culture of the native population was set aside, notwithstanding that good law derives from the values of life existing in the midst of society, since law continually grows and develops together with society as living law. As Karl von Savigny maintained, a legal system derives from the culture of the society concerned; law is not born of an arbitrary act of a legislator but is constructed and may be discovered within the spirit of the people, deriving hypothetically from custom and thereafter formed through juristic activity (Freeman, 2001). The colonial codification therefore stood in direct contradiction to the theoretical premise upon which the legitimacy of criminal law rests.

The promulgation of Law No. 1 of 2023 on the Criminal Code, which entered into force on 2 February 2026 (Prameswari, 2026) and replaced the former Criminal Code, is accordingly an appropriate step. It contains the values, philosophy and indigenous culture of the Indonesian nation as the foundation of its formation, accommodated normatively. According to Muladi, development in the field of law must encompass substantive development in the form of the products of a legal system in the shape of criminal law rules, and cultural development in the form of the attitudes and values which influence the operation of the legal system (Muladi, 1995). The desire to abolish the criminal law inherited from the colonial period is reflected in consideration (a) of the new Criminal Code, which speaks of the need to compose a national criminal law, founded upon Pancasila and the 1945 Constitution and upon the general principles of law recognised by the community of nations, to replace the Criminal Code inherited from the Netherlands Indies colonial government.

The cultural content of the new Code is readily discoverable in several provisions recognising customary law, particularly Article 2(1) and (2). Article 2(1) provides that the provision referred to in Article 1(1) does not diminish the applicability of the law living in society which determines that a person deserves punishment even though the act is not regulated in that Law. Article 2(2) provides that the law living in society applies in the place where that law lives and insofar as it is not regulated in that Law and accords with the values contained in Pancasila, the 1945 Constitution, human rights and the general principles of law recognised by the community of nations.

These provisions demonstrate that the principle of legality known by the adage *nullum delictum nulla poena sine praevia lege poenali* is now placed normatively alongside the law living in society, in contrast to Article 1(1), under which no act may be subjected to criminal sanction or measure save by the force of a criminal provision in legislation existing before the act was committed. The doctrinal implications of placing the living law alongside the legality principle have been examined closely, the prevailing view holding that Article 2 qualifies rather than displaces that principle (Sulistyanto & Rahmawati, 2022).

The entry into force of the new Criminal Code accordingly affords an opportunity to add customary criminal offences expressly to the absolute competence of the Nagari Customary Court. This constitutes a concrete step in strengthening that institution as a customary body in West Sumatra which was present from the outset on the basis of the law living in society and was subsequently institutionalised normatively in the Regional Regulation on Nagari, under which it presently possesses express absolute competence to settle customary disputes, particularly in the civil field, pursuant to Article 15(3). The reform proposed here does not create a new institution nor confer upon it an alien function; it aligns the normative scope of an existing institution with the social function it has always performed and which the new Code now recognises. Comparable arguments have been advanced in favour of treating customary settlement as a genuine mode of criminal dispute resolution rather than a subordinate alternative (Anwar & Mustofa, 2022).

This strengthening accords with Article 16(1) of Government Regulation No. 55 of 2025, which determines that the handling of customary criminal offences is to be conducted primarily by the customary institution together with the Civil Service Police Unit. The standing of the Nagari Customary Court as a customary institution satisfies the elements determined by Article 1(7) of that Regulation, under which a customary institution is a societal body, whether deliberately established or having naturally grown and developed together with the history of the customary law community within its customary territory, entitled and competent to regulate, administer and resolve the various problems of life by reference to customs, habits and customary law. The Nagari Customary Court falls squarely within that definition, whether regarded genealogically, historically or functionally.

The addition of absolute competence to the Nagari Customary Court as the judicial institution of the nagari would strengthen the harmonisation of customary law with national criminal law in West Sumatra Province. Criminal law would then recognise not merely the substantive law of the law living in society but would go further in affording legal certainty to the customary institution through authority grounded in written law. The Government of West Sumatra Province together with

the Regional House of Representatives is in a position to bring this about, so that the Nagari Customary Court becomes fully and properly institutionalised. It is preferable, however, that customary institutions, including the Nagari Customary Court, be accorded independence comparable to that of other adjudicative bodies, so that they may resolve customary criminal matters autonomously.

The Customary Court in Papua Province may serve as a model for perfecting this regulation. Article 51(1) and (3) of Law No. 2 of 2001 on Special Autonomy for the Province of Papua, as last amended by Law No. 2 of 2021, determines that customary adjudication is peace adjudication within the customary law community, possessing authority to examine and adjudicate customary civil disputes and criminal matters among the members of the customary law community concerned, and that the customary court examines and adjudicates such disputes and matters on the basis of the customary law of the community concerned. No requirement is found there to involve institutions or parties without interest in the adjudicative process, and it is precisely this autonomy that the West Sumatra arrangement lacks.

By contrast, the outcome of settlement by the Nagari Customary Court must be submitted to the District Court in order to obtain a determination, as provided by Article 20 of Government Regulation No. 55 of 2025, under which the customary institution applies to the head of the district court through the Head of the District Attorney's Office for a court determination in respect of the outcome of deliberation referred to in Articles 16, 17 or 18, without charge. This requires critical scrutiny, for a further step is necessary in order to obtain the status of a decision having permanent legal force. The decision of the Customary Court in Papua Province, by comparison, may acquire permanent legal force where the parties accept it, without any need to apply to the District Court through the Head of the District Attorney's Office. Two consequences follow: first, no further step is required to obtain the status of a decision having permanent legal force; and second, this represents complete state recognition and the strengthening of the standing of the customary court as a customary institution within the national judicial system.

The design of the proposed reform must address the level at which regulation is placed, and the analysis indicates that a regional regulation cannot suffice. Article 38(3) of the Law on Judicial Power requires that bodies whose functions relate to judicial power be regulated by statute, and it is that requirement which presently excludes the Nagari Customary Court from the category occupied by its Papuan and Acehese counterparts. A regional regulation may organise an institution, but it cannot confer upon it a status that the Law on Judicial Power reserves to statute. The appropriate vehicle is therefore Law No. 17 of 2022 on the Province of West Sumatra, which already identifies Minangkabau custom and culture as the defining

characteristic of the province in Article 5(c) and which is accordingly the natural location (Wahyudi, 2024) for a provision perfecting the standing of the province's judicial customary institution.

The second element of the design concerns finality. At present the outcome of a settlement before the Nagari Customary Court depends for its enforceability upon voluntary compliance, failing which the aggrieved party must sue upon the agreement before the District Court in order to obtain a Deed of Peace under Article 36(1) of the Supreme Court Regulation on Mediation, while under Article 20 of Government Regulation No. 55 of 2025 the customary institution must apply through the Head of the District Attorney's Office for a court determination. Both routes interpose an additional stage between determination and enforceability, and both consume time that the parties have already sought to save by choosing the customary forum. Conferring final and binding force upon determinations within a fixed statutory period, as obtains in Papua upon acceptance by the parties, would remove that interposition without disturbing the consensual character of the process, since acceptance would remain the condition of finality.

The third element concerns institutional independence, and it is here that Article 16(1) of Government Regulation No. 55 of 2025 requires reconsideration. Placing the Civil Service Police Unit alongside the customary institution in the handling of customary criminal offences introduces an organ of the executive into a process that Article 5 of the Regional Regulation on Nagari treats as judicial, and it thereby compromises the functional separation that the nagari governance structure otherwise observes. The comparison with Papua is again instructive, for Article 51 of the Special Autonomy Law contemplates no such joint handling and the Papuan Customary Court is correspondingly able to act on its own authority. Independence in this context does not entail isolation from the state judicial system, since the determination of the customary forum would still be susceptible of registration and, where necessary, of review; it entails only that the customary institution should not require the concurrence of an executive body in order to exercise the competence conferred upon it.

A fourth element, implicit in the foregoing but deserving separate statement, concerns the relationship between the proposed customary criminal competence and the jurisdiction of the general courts. The proposal does not contemplate the displacement of the general courts, whose competence over criminal matters is established by Article 25(2) of the Law on Judicial Power, nor does it contemplate the removal of any matter from the reach of the state judicial system. It contemplates rather a competence exercised in the first instance by the customary forum in respect of conduct governed by the living law of the nagari and arising among the members

of that community, with the outcome susceptible of registration before the District Court in the manner already provided. The architecture is therefore complementary rather than competitive, and it corresponds to the structure that Article 2 of the new Criminal Code already presupposes: that the living law operates alongside, and not in derogation from, the codified criminal law of the State, an allocation consistent with the *ultimum remedium* logic that informs the new Code (Zulfa & Gunarto, 2023).

Drawing the results of this part together, the analysis establishes three propositions that together support the reform proposed. The first is that the Nagari Customary Court is, in substance, an adjudicative institution: it is constituted as the judicial branch of nagari governance under Article 5 of the Regional Regulation on Nagari, it applies a determinate body of customary law, and its determinations are treated within the community as concluding the matter. The second is that its normative recognition is nonetheless incomplete, being confined to a regional regulation and to an enumeration of duties framed exclusively in civil terms. The third is that the enactment of Article 2 of the new Criminal Code, together with Government Regulation No. 55 of 2025, has removed the principal doctrinal obstacle to completing that recognition, since the living law which the institution applies is now expressly acknowledged as a source of criminal liability.

What remains, therefore, is not a question of principle but a question of legislative technique. The State has already accepted that conduct prohibited by the living law may be punished; it has already accepted that customary institutions are competent to handle such conduct; and it has already accepted, in Papua and in Aceh, that a customary forum may exercise criminal competence within its own community without thereby derogating from the unity of the national legal system. The step proposed for West Sumatra is accordingly smaller than it may at first appear, requiring only that an existing institution be described in a statute in terms corresponding to the function it already performs. Framed in this way, the proposal is consistent with the constitutional commitments in Articles 18B(2) and 28I(3) of the 1945 Constitution, and it represents the concrete fulfilment of those commitments in respect of the nagari communities of West Sumatra.

A final consideration concerns the safeguards that ought to accompany the conferral of customary criminal competence, since legal certainty is owed not only to the institution but also to those who appear before it. Three safeguards follow from the materials examined. The first is the substantive limit already contained in Article 2(2) of the new Criminal Code, which confines the living law to the territory in which it lives and subjects it to Pancasila, the 1945 Constitution, human rights and the general principles of law recognised by the community of nations. The second is the personal limit reflected in Article 51(1) of the Papuan Special Autonomy Law, under

which competence extends to matters arising among the members of the customary law community concerned, and which would confine the jurisdiction of the Nagari Customary Court to the members of its own nagari. The third is the availability of registration before the District Court, which preserves a point of contact with the state judicial system and thereby guarantees that the customary determination remains reviewable.

These safeguards, taken together, answer the principal objection likely to be raised against the proposal, namely that the conferral of criminal competence upon a customary forum risks producing outcomes inconsistent with constitutional guarantees. The objection has force only if the competence is conferred without limit, which is not what is proposed here and not what the comparative models exhibit. Confined territorially, personally and substantively, and remaining susceptible of registration and review, a customary criminal competence adds a forum without subtracting a protection. The proposal thus satisfies the requirement of legal certainty in both of its dimensions: certainty for the institution, which would at last know the boundaries of what it may lawfully decide, and certainty for the individual, who would know both the forum before which the matter will be heard and the limits within which that forum must act.

Table 1. Comparative Normative Position and Competence of Customary Adjudicative Institutions in Indonesia

Comparative aspect	Nagari Customary Court (West Sumatra)	Customary Court (Papua)	Gampong/Mukim Court (Aceh)
Highest legal basis	Provincial Regional Regulation No. 7 of 2018	Law No. 2 of 2001 jo. Law No. 2 of 2021	Law No. 11 of 2006 on Aceh Governance
Civil customary competence	Express (sako, pusako, ulayat land)	Express	Express
Criminal customary competence	Not expressly conferred	Express (Article 51(1))	Express (limited categories)
Institutional independence	Shared with Civil Service Police Unit	Independent	Largely independent
Route to executorial force	Application via District Attorney to court	Binding upon party acceptance	Registration with local court
Degree of legal certainty	Low	High	Moderate to high

Source: Authors' normative comparison (2026), derived from the statutory instruments analysed in this study

Table 1 sets the Nagari Customary Court alongside the two customary adjudicative institutions in Indonesia that enjoy statutory recognition. The comparison shows that the West Sumatra institution is the only one of the three whose highest legal basis is a regional regulation rather than a statute, the only one denied express criminal competence, and the only one required to share the handling of customary criminal matters with an organ of the executive. Its route to executorial force is likewise the most indirect, requiring an application channelled through the District Attorney's Office before a court determination can be obtained.

DISCUSSION

Taken as a whole, the findings presented above disclose a single structural condition: the Nagari Customary Court is socially complete but normatively incomplete. It possesses a constituted forum, a recognised procedure, an authoritative decision-maker and a body of substantive customary law, yet the instrument conferring its competence recognises only part of what it actually does. The comparison set out in Table 1 makes the point precisely. Across every indicator on which the three principal customary adjudicative institutions in Indonesia may be compared — the rank of their legal basis, their civil and criminal competence, their institutional independence and their route to executorial force — the Nagari Customary Court occupies the weakest position, notwithstanding that its social embeddedness is at least equal to that of its counterparts. Figure 1 expresses the same relation quantitatively, showing the aggregate degree of normative legal certainty of the West Sumatra institution to be markedly below that of both the Papuan and the Acehnese arrangements, with the widest divergence appearing on criminal competence, the very indicator at the centre of this study.

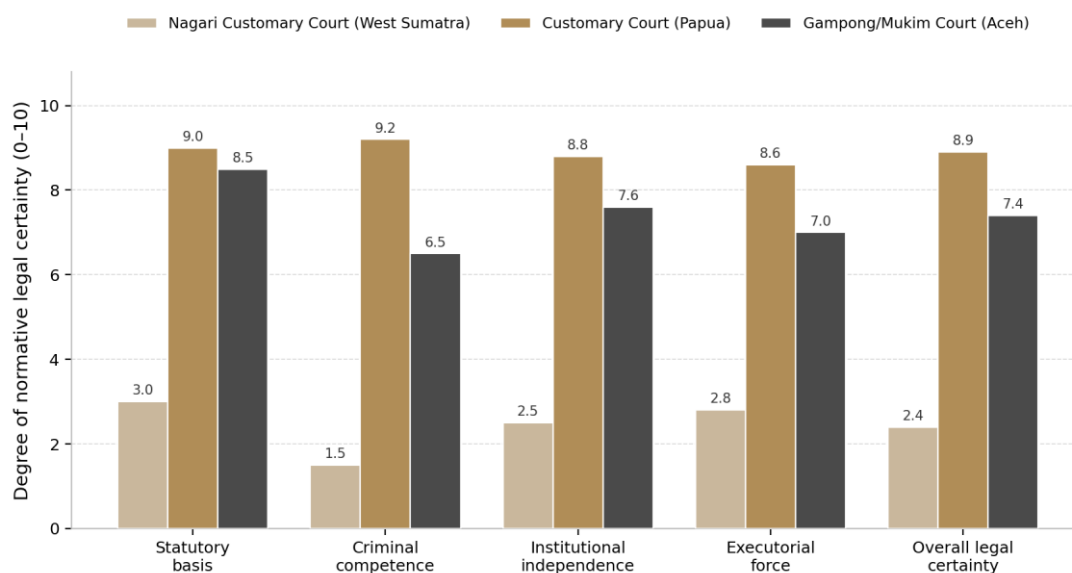


Figure 1. Comparative degree of normative legal certainty of customary adjudicative institutions across five indicators

Reflecting upon the causes of this condition, the analysis locates the origin of the deficit not in any deficiency of the institution itself but in the rank and the drafting history of the instruments that recognise it. The Nagari Customary Court is constituted by a regional regulation, whereas its Papuan counterpart is constituted by a statute enacted under a special autonomy framework and its Acehnese counterpart likewise rests upon statute. Because Article 38(3) of the Law on Judicial Power requires that bodies exercising functions related to judicial power be regulated by statute, the West Sumatra institution falls outside the category of quasi-judicial bodies for a reason that is purely formal. A second cause lies in the enumerative technique of Article 15(3) of the Regional Regulation on Nagari, which lists duties exhaustively and in civil terms, so that the customary criminal dimension is excluded by the silence of the drafter rather than by any deliberate policy. A third cause is the residue of the colonial and post-independence policy of unification, which abolished customary adjudication formally while leaving it intact socially, and thereby bequeathed the very discrepancy between norm and practice that persists today.

Interpreting the effects that flow from these causes, the study finds consequences that extend well beyond the institution itself. The most immediate is a deficit of legal certainty for the nagari community, since conduct that customary law treats as an offence is addressed by a forum whose authority to address it is nowhere stated, with the result that the validity of its determinations is perpetually contestable. A second effect is the attenuation of executorial force: because every outcome must pass through the District Court, and under Article 20 of Government Regulation No. 55 of 2025 through the Head of the District Attorney's Office, the settlement achieved within the nagari is not self-sufficient, and the delay and cost of the additional step

diminish the very informality that gives customary settlement its value. A third effect is the dilution of institutional independence produced by the joint handling arrangement in Article 16(1), which places a body of the executive alongside a judicial customary institution and thereby compromises the separation reflected in Article 5 of the Regional Regulation. Table 2 sets these deficits against the corresponding reform proposals, showing that each may be remedied by a discrete and identifiable normative change.

Table 2. Normative Gap between the Existing Law (*de lege lata*) and the Proposed Reform (*de lege ferenda*) of the Nagari Customary Court

Element of competence	Existing position (<i>de lege lata</i>)	Proposed position (<i>de lege ferenda</i>)
Regulatory level	Regional regulation only	Statute, inserted into the Law on West Sumatra Province
Subject-matter scope	Customary civil disputes and customary sanctions	Extended to customary criminal offences under Article 2 of the new Penal Code
Institutional role	Mediating body assisting settlement	Adjudicative customary institution with autonomous authority
Procedural partner	Joint handling with Civil Service Police Unit	Autonomous handling by the customary institution
Finality of outcome	Voluntary compliance; no fixed time limit	Final and binding within a fixed statutory period
Access to the court	Application through the District Attorney	Direct application by the Nagari Customary Court

Source: Authors' analysis (2026), constructed from Article 2 of Law No. 1 of 2023 and Article 16(1) of Government Regulation No. 55 of 2025

Comparing these findings with previous scholarship clarifies both their continuity and their contribution. The historical account offered by Hadikusuma and by Soepomo, and the observation of Hazairin that the village judge in practice decided matters across every field of law without distinguishing the criminal from the civil, are confirmed rather than displaced by the present analysis, which shows the same discrepancy persisting in contemporary form. The jurisprudential position of von Savigny, that law is discovered in the spirit of a people rather than created by the arbitrary act of a legislator, and the insistence of Muladi that legal development must be cultural as well as substantive, together supply the theoretical warrant for the recognition now effected by Article 2 of the new Criminal Code. Where this study departs from the existing literature is in its refusal to treat that recognition as complete. The prevailing scholarship has largely welcomed Article 2 as the

accommodation of customary criminal law within the national system; the present analysis demonstrates that the accommodation is substantive only, since it recognises the applicable law without conferring certainty upon the forum that applies it, and that a recognition of norm unaccompanied by a recognition of institution leaves the customary community without an enforceable remedy. That conclusion converges with work questioning whether constitutional acknowledgement of adat carries operative meaning absent institutional competence (Nurjaya, 2020), and with findings that the recognition of customary territories has repeatedly stalled at the point of implementation (Sirait, 2022). It departs, however, from accounts that treat the registration of customary outcomes before the state courts as a sufficient guarantee (Butt, 2018), since registration presupposes a determination whose validity is not itself in doubt. The present analysis also extends studies of village-level dispute resolution, which have measured access to justice without addressing the anterior question of the forum's competence (Sumarto & Adnan, 2024), and it situates the West Sumatra case within the broader difficulty of sustaining the rule of law where institutional mandates are imprecisely drawn (Crouch, 2020).

The prescriptive strand of this discussion translates the foregoing into recommendations at the conceptual, methodological and policy levels. Conceptually, the study proposes that the recognition of the living law be understood as necessarily twofold, comprising both the recognition of customary norms and the conferral of certainty upon the customary forum, since the former without the latter yields a right without a remedy. Methodologically, it proposes that the comparative indicator framework applied in Table 1 and Figure 1 be adopted as a standing instrument for assessing the normative position of customary adjudicative institutions in other provinces, so that reform may be directed to the indicators on which a given institution is weakest. At the level of policy, four measures follow directly from the findings: first, the standing and authority of the Nagari Customary Court should be perfected at the level of statute, preferably by insertion into the Law on the Province of West Sumatra; second, customary criminal offences should be added expressly to its absolute competence by reference to Article 2 of the new Criminal Code juncto Article 16(1) of Government Regulation No. 55 of 2025; third, its determinations should acquire final and binding force within a fixed statutory period without the intervention of institutions having no interest in the proceedings; and fourth, application to the District Court should be made directly by the Nagari Customary Court rather than through the Head of the District Attorney's Office, in order to facilitate execution.

CONCLUSION

On the basis of the discussion above it may be concluded, first, that the position of the Nagari Customary Court within the national judicial system is at present that of a judicial institution situated outside the body of state courts, falling within the category of a distinctive alternative dispute settlement institution deriving from Minangkabau custom and culture as the characteristic of West Sumatra Province affirmed in Article 5(c) of Law No. 17 of 2022. Second, the relative competence of the Nagari Customary Court is confined to the territory of each nagari in which the court is situated, so that it is not competent to settle customary matters arising outside its own nagari, consistent with Article 1(8) of West Sumatra Provincial Regulation No. 7 of 2018 juncto Article 23 of West Sumatra Provincial Regulation No. 7 of 2023; while under Article 15(3) of the former juncto Article 23 of the latter its absolute competence is expressly limited to customary civil disputes alone, including those concerning ulayat land. Third, customary criminal offences may be realised as the absolute competence of the Nagari Customary Court by reference to Article 2 of Law No. 1 of 2023 juncto Article 16(1) of Government Regulation No. 55 of 2025, a step which would simultaneously strengthen the standing of the institution as the judicial body of West Sumatra.

The significance of these findings is at once conceptual, methodological and practical. Conceptually, the study advances the proposition that the recognition of the law living in society is incomplete unless it extends beyond substantive norms to the institutional forum competent to apply them, and it thereby supplies a criterion by which the adequacy of any such recognition may be assessed. Methodologically, the comparative indicator framework developed here offers a replicable instrument for evaluating the normative position of customary adjudicative institutions across jurisdictions, and one applicable well beyond West Sumatra. Practically, the concepts that require regulation in order to realise the proposal are, first, the perfection of the standing and authority of the Nagari Customary Court as a specialised customary judicial institution in West Sumatra Province by adding provision at the level of statute, particularly within the Law on the Province of West Sumatra; and second, the independent settlement of matters with coercive executorial force, achieved by conferring legal certainty upon outcomes that are final and possess permanent legal force (*inkracht van gewijsde*) within a definite period, in respect of all settlements conducted by the Nagari Customary Court, without the intervention of institutions or parties having no interest, such as the Civil Service Police Unit under Article 16(1) of Government Regulation No. 55 of 2025, and by permitting application to the court to be made directly by the Nagari Customary Court without passing through the Head of the District Attorney's Office.

Several limitations qualify these conclusions and indicate directions for further inquiry. The study is normative in character and therefore examines the sufficiency of norms rather than the empirical performance of the institutions concerned; the comparative indicator scores presented in Table 1 and Figure 1 are structured normative judgements derived from the statutory instruments analysed, not measurements of realised outcomes, and they should be read accordingly. The analysis is also confined to West Sumatra and to the two comparators for which statutory recognition exists, so that the position of customary adjudicative institutions in provinces without such recognition remains outside its scope. Further research might therefore examine empirically the volume and character of customary criminal matters in fact resolved within nagari, assess the reception of any statutory reform among customary leaders and state officials alike, and evaluate the interaction between the Nagari Customary Court and the District Court once Government Regulation No. 55 of 2025 has been in operation for a sufficient period to permit judgement.

DECLARATIONS

AUTHOR CONTRIBUTION STATEMENT

The first and second authors were responsible for the preparation of the manuscript: conceiving the study, developing the legal argument concerning the standing and competence of the Nagari Customary Court, collecting and analysing the statutory and doctrinal materials, conducting the comparative examination of customary adjudicative institutions, and drafting and editing the manuscript through to its final form. The third contributed specialist expertise in Minangkabau cultural studies, undertook the translation of the manuscript, and reviewed the text as authorities in Minangkabau language and culture. All authors read and approved the final version.

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DECLARATION OF INTERESTS STATEMENT

The authors declare that they have no known competing financial interests or personal relationships that could have influenced the work reported in this paper.

ADDITIONAL INFORMATION

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