

Reassessing the Legitimacy of Civil Disobedience: A Maqasid al-Shari'ah and Sociological Analysis of Legal Authority and Public Rejection of Government Policy

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Abstract

This research analyses the sociological and normative lawfulness of the civil disobedience initiated by the Agam community against the implementation of Government Regulation (PP) No. 84 of 1999, examined through the dual lenses of Maqasid al-Shari'ah and sociolegal theory. Employing a sociolegal research framework, the study integrates a normative-doctrinal analysis of Islamic legal literature with empirical field investigations to deconstruct the occurring legal tensions in West Sumatra. The findings demonstrate that the resistance against the proliferation of *Nagari* territories does not constitute an act of rebellion (*bughat*); rather, it represents a form of *mu'aradhab shar'iyyah* (legitimate constitutional opposition) and an implementation of the principle of *amr ma'ruf nahi munkar*. State policies that potentially disenfranchise communal land sovereignty (*ulayat*) are found to contravene the Shari'ah principles of preserving communal property (*hifz al-mal*) and lineage (*hifz al-nasl*), thereby failing to satisfy the legal maxim that government policies must be predicated upon the welfare of the people (*tasharruf al-imam manuthun bi al-maslahah*). From the perspective of Shari'ah jurisprudence, this civil disobedience is justified as a mechanism for preventing harm (*dar'u al-mafasid*) caused by repressive centralized regulations. This study underscores the imperative of harmonizing the laws of the state, customs (*adat*), and Shari'ah to avert structural injustice within the framework of regional autonomy.

Keywords: *Civil Disobedience, Maqashid al-Shari'ah, Sociolegal Research, Ulayat Land, Regional Autonomy.*

Introduction

Civil disobedience has evolved and solidified its position as a fundamental discourse and a crucial praxis instrument in contemporary studies of political sociology and global legal frameworks. In global academic discourse, the efficacy of non-violent resistance has been empirically proven to possess a structural transformative power that is far superior, more resilient, and sustainable in driving political change compared to armed resistance methods.¹ Schock explores the strategic power of civil disobedience in confronting authoritarian regimes, highlighting how power asymmetries can be dismantled when civil society collectively withdraws its consent and compliance with state law.² This phenomenon has become increasingly essential and transnationally institutionalized over the last two decades, as reflected in the Umbrella Movement in Hong Kong³, the Black Lives Matter movement in the United States⁴, Extinction Rebellion in Europe⁵, to the series of resistances in Myanmar, Iran, and the Middle East during the Arab Spring⁶. These massive events confirm that civil disobedience has metamorphosed into a highly adaptive transnational political instrument in responding to various socio-political contexts.⁷

In Indonesia, the historical lineage and epistemological roots of civil disobedience can be traced back to the early national movements against colonialism⁸, reaching its zenith in the 1998 reformist movement that transformed the political landscape from New Order authoritarianism into an electoral

¹ Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York: Columbia University Press, 2012)

² Kurt Schock, *Unarmed Insurrections: People Power Movements In Nondemocracies* (London: University of Minnesota Press, 2004).

³ Stephan Ortmann, "The umbrella movement and Hong Kong's Protracted Democratization Process," *Asian Affairs* 46, no. 1 (2015): 32–50, <https://doi.org/10.1080/03068374.2014.994957>.

⁴ Christopher J. Lebron, *The making of Black Lives Matter: A Brief History of an Idea* (New York: Oxford University Press, 2017).

⁵ Emily Westwell dan Josh Bunting, "The Regenerative Culture of Extinction Rebellion: Self-Care, People Care, Planet Care," *Environmental Politics* 29, no. 3 (2020): 546–51, <https://doi.org/10.1080/09644016.2020.1747136>.

⁶ Marc Lynch, *The Arab Uprisings Explained: New Contentious Politics in the Middle East* (New York: Columbia University Press, 2014).

⁷ Jason Brownlee, Tarek Masoud, dan Andrew Reynolds, *The Arab Spring: Pathways of Repression and Reform* (New York: Oxford University Press, 2014).

⁸ Taufik Abdullah, *Indonesia, Towards Democracy* (Singapore: Institute of Southeast Asian Studies, 2009).

democracy.⁹ Post-reformation, manifestations of civil disobedience have continued to emerge across an increasingly complex spectrum of issues. Civil disobedience, philosophically conceptualized in the works of John Rawls¹⁰ and further developed in movement praxis by figures such as King¹¹, has become a strategic choice for citizens when formal democratic mechanisms are deemed no longer effective.¹² This sociological symptom represents a rational response to the democratic deficit perceived by citizens.¹³ Aspinall argues that civil disobedience in Indonesia possesses distinctive characteristics because it arises from the friction between participatory democratic values and the remnants of the authoritarian legacy.¹⁴

Comprehensive academic studies on civil disobedience in Indonesia currently remain focused on formal legalism and secular politics. Several authoritative studies have dissected this phenomenon, such as the study by Hepridayanti & Fauzi on the mass resistance against the Job Creation Law, which was motivated by a deficit in participation and corporate bias.¹⁵ Research by Angela et al. on non-compliance with Covid-19 policies reveals complex dynamics between citizen rationality and state authority.¹⁶ Muthmainnah's study on student mobilization against fuel price increases, manifested through blockades and boycotts, also highlights similar issues.¹⁷ These empirical studies resonate with philosophical arguments regarding the moral dimensions of civil disobedience, based on the premise that the legitimacy of the rule of law rests upon moral and

⁹ Edward Aspinall, *Opposing Subarto: Compromise, Resistance, and Regime Change in Indonesia* (California: Stanford University Press, 2005).

¹⁰ John Rawls, *A Theory of Justice* (New York: Harvard University Press, 1999).

¹¹ William Smith, *Civil Disobedience and Deliberative Democracy* (New York: Routledge, 2013).

¹² Daniel Markovits, "Democratic Disobedience," *The Yale Law Journal* 114 (2005).

¹³ Zeynep Tufekci, *Twitter and Tear Gas: The Power and Fragility of Networked Protest* (London: Yale university press, 2017).

¹⁴ Edward Aspinall, "The Irony of Success," *Journal of Democracy* 21, no. 2 (2010): 20–34, <https://doi.org/10.1353/jod.0.0157>.

¹⁵ Hepridayanti dan Agus Machfud Fauzi, "Resistensi Masyarakat Terhadap Pengesahan UU Cipta Kerja Dalam Perspektif Sosiologi Hukum," *Reformasi Hukum* 25, no. 1 (2021): 77–91, <https://doi.org/10.46257/jrh.v25i1.171>.

¹⁶ Theresia Yacintha Angela, Marchelo Ivan Darmawan, dan Rr. Elizabeth Marcia, "Perspektif Pembangkangan Sipil (Civil Disobedience) Terhadap Peraturan Pembatasan Kegiatan Masyarakat Untuk Pencegahan dan Pengendalian Covid-19," *Praxis: Jurnal Sains, Teknologi, Masyarakat dan Jejaring* 5, no. 2 (2024): 117–26, <https://doi.org/10.24167/praxis.v5i3.11263>.

¹⁷ Lailiy Muthmainnah, "Analisis Filsafat Hukum Atas Gerakan Pembangkangan Sipil Dalam Konteks Masyarakat Demokrasi Modern," *Jurnal Filsafat Indonesia* 6, no. 3 (2023): 316–27, <https://doi.org/10.23887/jfi.v6i3.55610>.

just authority.¹⁸ Muthmainnah concludes that the effectiveness of a movement depends on strong leadership and the cohesion of mass support.¹⁹

However, the primary weakness of current literature on civil disobedience in Indonesia lies in the absence of a normative analysis that explores theological roots and Islamic legal sociology. The mainstream discourse overly emphasizes purely political perspectives without connecting acts of disobedience to the principles of Shari'ah and the discourse of *Fiqh Siyasah*.²⁰ In the sociological context of West Sumatran society, which firmly adheres to the philosophy of '*Adat Basandi Syarak, Syarak Basandi Kitabullah*' (ABS-SBK), religion serves as a normative superstructure that legitimizes or delegitimizes state policy.²¹ The absence of this Shari'ah lens causes existing literature to fail in demonstrating the moral legitimacy or ethical boundaries imposed by Islamic teachings on acts of civil resistance. Current discourse provides no references to clerical fatwas or jurisprudence literature regarding the harmonization or conflict between the state's positivistic norms, local customary legal frameworks, and Shari'ah principles within the context of legal pluralism in Indonesia.²² Consequently, readers are not provided with a holistic view of whether civil disobedience is essentially an act of rebellion (*bughat*), an act that causes public harm (*mafsadah*), or rather a legitimate act of resistance (*mu'aradhab syar'iyyah*) justified by a Shari'ah perspective.

To address the aforementioned research gaps, this study focuses on the civil disobedience against the implementation of Government Regulation No. 84 of 1999 concerning the Territorial Boundary Changes of Bukittinggi City and Agam Regency (PP No. 84/1999). Enacted during a transitional period, this policy was designed through a top-down and elitist approach to resolve the spatial crisis of Bukittinggi City by annexing 15 *Nagari* (traditional villages) in Agam Regency without adequate deliberation with indigenous communities. Since its promulgation, its implementation has reached a total standstill for over two decades due to massive resistance from 12 *Nagari* communities, which was subsequently endorsed by the local government institutions of Agam Regency. The uniqueness of this case lies in the pattern of organized civil non-compliance that was paradoxically supported by state institutions at the local level to defend

¹⁸ Bivitri Susanti, "Menolak Tunduk pada Hukum yang Jahat," *kompas.id*, 2024, <https://www.kompas.id/baca/opini/2024/08/29/menolak-tunduk-pada-hukum-yang-jahat>.

¹⁹ Muthmainnah, "Analisis Filsafat Hukum Atas Gerakan Pembangkangan Sipil Dalam Konteks Masyarakat Demokrasi Modern."

²⁰ Muhammad Iqbal, *Fiqh Siyasah Kontekstualisasi Doktrin Politik Islam* (Jakarta: Kencana Prenamedia Group, 2001).

²¹ A. A. Navis, "Alam Terkembang Jadi Guru: Adat dan Kebudayaan Minangkabau" (Jakarta: PT Grafiti Pers, 1984).

²² John Griffiths, "What is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (2013): 37–41, <https://doi.org/10.1080/07329113.1986.10756387>.

communal assets and essential agrarian resources, such as *ulayat* (ancestral) land and water management systems.

From the perspective of Islamic legal philosophy, the actions of the Agam community cannot be classified as *bughat* (subversive rebellion); rather, they are rooted in the concept of *mu'aradhab shar'iyyah* (constitutional opposition) and the doctrine of *amr ma'ruf nahi munkar* (enjoining good and forbidding evil) flowing from the grassroots to the upper structures.²³ The Indonesian Ulema Council (MUI), through the Decree of the 4th National Coordination of the Fatwa Commission in 2012, asserted that obedience to the *ulil amri* (government) is conditional and may be forfeited (*suqut al-ta'ab*) whenever a policy violates the principles of justice (*'adl*) and results in manifest harm (*mafsadab*).²⁴ While John Rawls' theory of justice justifies civil disobedience based on secular rationality and the violation of the social contract,²⁵ Islamic epistemology mandates that every state policy (*tasharruf al-imam*) must be dedicated solely to public welfare.²⁶ The forced demographic annexation that threatens the communal ownership of *Nagari ulayat* land directly infringes upon a fundamental pillar of *Maqashid al-Shari'ah*, namely the preservation of communal property (*hifz al-mal*) and the protection of lineage (*hifz al-nasl*).²⁷

This sociological tension represents a clash between three competing legal regimes within the arena of legal pluralism. State positive law operates under a centralized logic and the State's Right to Control (*Hak Menguasai Negara* or HMN) for the sake of spatial efficiency; Minangkabau Customary Law (*Adat*) rests upon absolute communal-collective ownership under the *Ninik Mamak* council, which is characterized by its inalienability; meanwhile, Islamic legal sociology positions *ulayat* land in alignment with communal rights (*milkiyyah ammah*), which must be protected from tyrannical exploitation to ensure the welfare of the *Ummah*.²⁸ The act of disobedience in the implementation of PP No. 84/1999 by the Agam community is predicated upon the legal maxim *dar'u al-mafasid muqaddamun 'ala jalbi al-masalib* (averting harm takes precedence over pursuing benefits), aimed at preventing the erosion of social cohesion and the loss of customary subsistence sovereignty.

²³ Imam Al-Mawardi, *Abkam Sulthaniyah (Sistem Pemerintahan Khilafah Islam)*, Diterjemahkan oleh Qisthi Press, (Jakarta: Qisthi Press, 2019).

²⁴ Hasil Keputusan Ijtima' Ulama Komisi Fatwa Se-Indonesia IV Tahun 2012 tentang Kriteria Ketaatan Kepada Ulil Amri (Pemerintah) dan Batasannya, Angka 4.

²⁵ Rawls, *A Theory of Justice*.

²⁶ Yusuf Al-Qaradhawi, *Fiqih Maqashid Syariah: Moderasi Islam Antara Aliran Tekstual dan Aliran Liberal* (Jakarta: Pustaka Al-Kautsar, 2007).

²⁷ Abi Ishaq Shatibi, *Al Muwafaqat fi usbul al Shari'ah* (Beirut: Dar al Kutub al Ilmiyyah, 2003).

²⁸ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).

Based on the aforementioned academic concerns, the approach employed to address the problems in this study is socio-legal research, which integrates normative legal research methods with empirical field investigations.²⁹ Normatively, this study examines law as a system of rules encompassing legislative documents (PP No. 84/1999), primary sources of *Fiqh Siyasah* literature, authoritative fatwas from the MUI, and the local resolutions of the *Kerapatan Adat Nagari* (KAN) and the community. This normative legal analysis is subsequently reinforced and tested through qualitative analysis via field studies (in-depth interviews and observations) with key actors involved in the resistance, including *Wali Nagari* (village heads), *Alim Ulama* (religious scholars), *Ninik Mamak* (customary leaders), and regional legislative stakeholders in Agam Regency. Data collection is focused on the tensions between state norms, religious norms, and local social norms. The intended objective of this research is to analyze how the mechanisms of civil disobedience in the Agam community are organized and validated through a Shari'ah perspective, as well as to formulate practical implications in the form of policy recommendations for spatial planning that are asymmetric, participatory, equitable, and respectful of the essence of legal pluralism in Indonesia.

Discussion

A Critical Review of Government Regulation (PP) No. 84/1999

In the Indonesian legal system, which adheres to the civil law and statutory law traditions, a Government Regulation (PP) serves as a regulatory instrument that bridges the gap in the implementation of Acts (UU). As elucidated by Apeldoorn, within a legalistic legal system, implementing regulations are essential to render the law concrete and enforceable.³⁰ The theory of delegation is highly relevant to understanding the legitimacy of a PP. Within this theoretical framework, the legislature delegates a portion of its authority to the executive to formulate technical legal norms, considering factors of efficiency, flexibility, and administrative expertise. Maria Farida asserts that a PP is a form of delegated legislation, arising from the delegation of regulatory authority by the legislator to the President, assisted by relevant ministries.³¹

Within the hierarchy of Indonesian legal norms, the PP is mandated under Article 5, paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which stipulates that the President shall establish government regulations to execute laws as appropriate. This confirms that a PP is an

²⁹ Sulistyowati Irianto dan Shidarta, *Metode Penelitian Hukum : Konstelasi dan Refleksi* (Jakarta: Yayasan Pustaka Obor Indonesia, 2017).

³⁰ L. J Van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnja Paramita, 1983).

³¹ Maria Farida Indrati, *Ilmu Perundang-undangan 1: Jenis, Fungsi dan Materi Muatan* (Yogyakarta: Kanisius, 2007).

implementing regulation hierarchically positioned below an Act (UU), serving as a normative instrument to operationalize statutory provisions. Pursuant to Article 7, paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as subsequently amended, most recently by Law Number 13 of 2022, a Government Regulation (PP) occupies the third rank in the hierarchy, following the 1945 Constitution (UUD NRI 1945) and Acts/Government Regulations in Lieu of Acts (UU/Perppu). Consequently, a PP is strictly prohibited from containing provisions that conflict with the Act that serves as its legal basis, nor may it introduce new regulations that deviate from the primary objectives of the superior Act.

Delays in the formulation of a Government Regulation (PP) frequently serve as a significant factor hindering the efficacy of law enforcement. Numerous Acts (UU) remain unenforceable because the mandated PPs have yet to be established. In practice, there is often a distinct disharmony between the substance of a PP and the Act that mandated it; in some instances, a PP may even introduce novel regulations that lack a primary legal basis.³²

Conversely, a PP serves as a legal instrument for the implementation of executive policy, thereby maintaining a close alignment with the direction of national legal politics. According to Satjipto Rahardjo³³, law is not merely a normative text but also a product of social and political construction. However, this approach is susceptible to overregulation and executive dominance in the absence of adequate judicial and public oversight. Should a PP deviate significantly from the Act, the Supreme Court (*Mahkamah Agung*) possesses the authority to examine its substance through judicial review.

However, following its promulgation, the regulation encountered fierce opposition from the people of Agam Regency.³⁴ This rejection originated not only from the grassroots but also from the Regional Legislative Council (DPRD) of Agam Regency, the Agam Regency Government, and various civil society organizations, including the Indonesian Ulema Council (MUI), the *Kerapatan Adat Nagari* (KAN), the Association of *Wali Nagari* of Agam Regency (PERWANA), the Coordination Body for Agam Migrants (BAKOR Agam), the Regional Board of the National Youth Committee of Indonesia (DPD KNPI) of Agam Regency, and influential diaspora figures.

³² Wicipto Setiadi, "Proses Pengharmonisasian sebagai Upaya untuk Memperbaiki Kualitas Peraturan Perundang-undangan," *Jurnal Legislasi Indonesia* 4, no. 2 (2007): 48.

³³ Satjipto Rahardjo, *Hukum dalam Jagat Ketertiban* (Jakarta: UKI Press, 2006).

³⁴ Haluan, "Bukittinggi Jangan Coba-coba Ambil Wilayah Agam," *Haluan*, 2006; Liputan6.com, "Ratusan Warga Agam Menolak Perluasan Kota Bukittinggi," *liputan6.com/*, 2017, <https://www.liputan6.com/news/read/31662/ratusan-warga-agam-menolak-perluasan-kota-bukittinggi>; Semangat, "Perluasan Bukittinggi Bakal Tersandung," *Semangat*, 1999.

Notably, the opposition was also echoed by the *Ninik Mamak Salingka Aua* and *Kurai Limo Jorong* of Bukittinggi City. The initial formal rejection was issued by the Agam Regency DPRD for the 1999–2004 period through Decree No. 07/SK-DPRD/AG-1999, dated October 28, 1999, which revoked the previous Bupati (Regent) Decision No. 05/SP-DPRD/AG-1995. The Regent of Agam subsequently followed suit by issuing Letter No. 100/1203/SPLK/X/2001 on October 18, 2001, effectively revoking the previous executive commitment stipulated in Letter No. 136/1053/Tepem/95, dated December 28, 1995.

The central government, through the Minister of Home Affairs, has repeatedly attempted to enforce this policy, notably through Letter No. 188.31/905/PUM, dated July 7, 2006, which directed the Governor to implement the regulation. Various mediation efforts were also initiated but remained unexecuted. Remarkably, successive changes in government—at the ministerial and gubernatorial levels—failed to dampen the persistent opposition.³⁵

A compelling irony emerged during the tenure of Gamawan Fauzi as the Governor of West Sumatra (2004–2009); the implementation of this PP remained stagnant despite the issuance of the Instruction of the Minister of Home Affairs No. 1 of 2008, specifically aimed at resolving the disputes surrounding PP No. 84/1999. Furthermore, when Gamawan Fauzi ascended to the position of Minister of Home Affairs (2009–2014), he again directed the Governor of West Sumatra to execute the regulation, yet these directives proved futile. The continuous rejection underscores a profound inconsistency between central government mandates and local acceptance, highlighting a systemic resistance that transcends administrative hierarchies.

Government Regulation (PP) No. 84 of 1999 failed to establish technical implementation mechanisms on the ground; it lacked coordination instruments between the Agam Regency Government and the Bukittinggi City Government, and was not accompanied by specific budget allocations for public socialization, territorial re-mapping, or the strengthening of implementing institutions. Consequently, this PP can be characterized as a “dead regulation”, valid only on paper, yet entirely unenforceable in local government practice. This underscores the imperative for a robust Law on the Formation of Laws and Regulations to serve as a normative, technical, and political framework for building an Indonesian legal system that is orderly, coherent, and responsive to social realities.

This situation further reinforces the thesis proposed by Ann Seidman and Robert B. Seidman regarding “the law of non-transferability of law”; that the same legal norm will produce contradictory sociological behaviors when transferred to environments with differing historical constellations and social

³⁵ Haluan, “Generasi Muda Kab. Agam Tolak Perluasan Kota Bukittinggi,” *Haluan*, 2000; Padang Ekspres, “Warga Kurai Tolak Perluasan Wilayah,” *Padang Ekspres*, 2003; Singgalang, “DPRD Agama Tolak PP tentang Perluasan Bukittinggi,” *Singgalang*, 1999.

constraints. In Agam, the regulation collided with the wall of *ulayat* (ancestral land) resilience, proving that law cannot merely be transplanted without undergoing a process of negotiation with local sociological realities.³⁶

Dialectics of Legitimacy: Civil Disobedience in Local Contexts

The opposition of the Agam community toward Government Regulation (PP) No. 84/1999 represents a fundamental tension between the formal legitimacy of state policy and the moral legitimacy rooted in community values. As conceptualized by Rawls, civil disobedience is a public, non-violent, and conscientious yet political and legal act aimed at effecting change in government policy.³⁷ These essential characteristics are manifested in the collective rejection by the Agam community, which has been conducted openly through the Regional Legislative Council (DPRD), the regency government, and various civil society organizations. This resistance eschews physical violence, is grounded in a collective moral conviction, and demonstrates a willingness among the actors to accept the legal consequences of their non-compliance.

This phenomenon reflects what Berger and Luckmann describe as a crisis of legitimacy, wherein formal institutions lose their social potency due to a conflict with the values deeply internalized within the collective consciousness.³⁸ The tenacity of this resistance, persisting for over two decades and through successive changes in government regimes, ministers, and governors, confirms that this non-compliance is not merely a transient reaction. Rather, it is a manifestation of a profound structural misalignment between state policy and local social realities.

From the perspective of Friedman's legal system theory, this case underscores the dominance of legal culture over legal substance and legal structure.³⁹ The Agam community has developed a robust systemic resilience, enabling them to effectively paralyze a government regulation (legal inactivity) without precipitating destructive open conflict. As articulated by Rahardjo, such a situation demonstrates the existence of indigenous, authentic, and autonomous forces operating tangibly within society that significantly influence the functionality of the law.⁴⁰ In the Agam case, these forces are articulated through the mobilization of diverse societal elements, ranging from formal institutions like

³⁶ Ann Seidman dan Robert B. Seidman, *State and Law in the Development Process: Problem-Solving and Institutional Change in the Third World* (London: Palgrave Macmillan UK, 2016).

³⁷ John Rawls, *A Theory of Justice*. (New York: Harvard University Press, 1999)

³⁸ Peter L. Berger dan Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (London: Penguin Books, 1991).

³⁹ Lawrence M Friedman, "Legal Culture and Social Development," *Legal Culture and Social Development* 4, no. 1 (1969): 29–44, <http://www.jstor.org/stable/3052760>.

⁴⁰ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas Media Nusantara, 2010).

the DPRD to identity-based organizations such as the *Kerapatan Adat Nagari* (KAN) and the *Ninik Mamak* (customary elders).

These dynamics provide empirical validation for Locke's social contract theory, which posits that a government failing to protect the rights of its citizens forfeits its legitimacy, thereby providing a foundational basis for resistance.⁴¹ In rejecting PP No. 84/1999, the Agam community implicitly asserts that the policy violates the social contract between the State and society by failing to account for their aspirations and interests. Celikates reinforces this argument by stating that civil disobedience often emerges as a response to a legitimacy deficit within democratic systems when formal channels fail to accommodate the interests of specific groups.⁴²

Furthermore, this resistance reflects what Habermas terms as contestation within the deliberative public sphere. From a Habermasian perspective, civil disobedience serves as a vital mechanism enabling marginalized groups to participate in political discourse when formal structures are unresponsive to their needs.⁴³ Habermas even evaluates such disobedience as an essential "litmus test" for the strength and health of a constitutional democracy.⁴⁴ In the Agam case, civil disobedience has carved out an alternative deliberative space where the local community can express their rejection of policies perceived as a threat to their collective identity and existence.

Cultural-Religious Roots: The Convergence of Islam and Customary Law (*Adat*) in Civil Disobedience

The civil disobedience of the Agam community against Government Regulation (PP) No. 84/1999 did not occur within a normative vacuum; rather, it was shaped by a complex convergence of Islamic values and Minangkabau customary traditions deeply embedded in the community's collective identity. This resistance reflects the implementation of the principle of *amr ma'ruf nahi munkar* (enjoining good and forbidding evil), as elucidated by Cook, which has served as the foundation for various forms of socio-political activism throughout Islamic history.⁴⁵ In the Minangkabau context, this principle interacts with the philosophy of "*Adat Basandi Syarak, Syarak Basandi Kitabullah*" (ABS-SBK—Custom based on Shari'ah, Shari'ah based on the kitabullah), creating a normative

⁴¹ John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988).

⁴² Robin Celikates, "Rethinking Civil Disobedience as a Practice of Contestation: Beyond the Liberal Paradigm," *Constellations* 23, no. 1 (2016): 982–94, <https://doi.org/10.1177/0191453716638562>.

⁴³ Lasse Thomassen, *Deconstructing Habermas* (New York: Routledge, 2013).

⁴⁴ Jürgen Habermas, "Civil Disobedience: Litmus Test for the Democratic Constitutional State," *Berkeley Journal of Sociology* 30 (1985): 95–116.

⁴⁵ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (New York: Cambridge University Press, 2001).

framework that legitimizes the rejection of policies deemed inconsistent with the public interest (*maslahah ammal*).⁴⁶

The active participation of the Indonesian Ulema Council (MUI) of Agam Regency in rejecting PP No. 84/1999 illustrates the pivotal role of religious authority in providing the moral justification for civil disobedience. In Islam, civil disobedience is permissible when its objective is not the subversion of the ruling power, but rather serves as a means of *amr ma'ruf nahi munkar*—to rectify the errors and detrimental policies of the authorities.⁴⁷ Furthermore, organizing public demonstrations is regarded as a medium of *da'wah* (proselytization) through civil disobedience. In this context, demonstrations are not merely permissible (*mubah*) but are arguably commanded within the general framework of *da'wah* for the Muslim *Ummah*. The prevailing principle is that the means of *da'wah* are fundamentally permissible unless there is explicit evidence (*nasy*) from the Qur'an regarding their prohibition or evidence of non-compliance with established ethical conditions. Given the non-violent nature of these demonstrations, which aligns with the Islamic preference for non-violent resistance over the endurance of injustice, many scholars argue that Islam actively encourages public demonstrations rather than merely tolerating them.

The aforementioned justification aligns with Mohammad Fadel's argument that the Maqasidi approach (based on the objectives of Shari'ah) has been utilized by modern thinkers to develop a theory of principled non-violent resistance.⁴⁸ The civil disobedience practiced by the Agam community can be viewed as an endeavor to uphold the core values of *maqasid al-shari'ah*, specifically the preservation of property (*hifz al-mal*), manifested in collective land rights, and the preservation of cultural identity and generational continuity (*hifz al-nasl*), which, in a broader context, can be categorized as an aspect of the protection of religion (*hifz al-din*). Furthermore, within the Minangkabau cultural framework, land is not merely perceived as an object of economic value as understood in modern society; rather, it is interpreted as a cultural identity, a social ideology, and an instrument of social resilience. This is particularly evident in the matrilineal system, which fundamentally serves as the primary mechanism through which the management and control of land are transferred to women.

Traditional Minangkabau values, centered on the matrilineal system and ancestral land (*tanah ulayat*), further amplify the cultural dimension of this resistance. This becomes particularly critical in cases of territorial boundary

⁴⁶ Jeffrey Hadler, *Muslims and Matriarchs: Cultural Resilience in Indonesia through Jihad and Colonialism* (New York: Cornell University Press, 2011).

⁴⁷ Muhammad Haniff Hassan, *Civil Disobedience in Islam: A Contemporary Debate* (Singapore: Palgrave Macmillan, 2017).

⁴⁸ Mohammad H Fadel, "Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights Law," *Chicago Journal of International Law* 8, no. 1 (2007): 1–20.

changes that directly impact the status of customary land. Under Law No. 5/1960 concerning the Basic Agrarian Law (UUPA), the position of indigenous legal communities (*masyarakat hukum adat*) is effectively recognized. However, the constrained application of customary rights—which must align with "national interests"—frequently results in overlapping entitlements, affecting both the public right to regulate territorial allocation and the communal civil right of usage.⁴⁹ Consequently, such disruptive regional spatial interventions can trigger horizontal conflicts and internal friction within the indigenous communities themselves.⁵⁰ Amidst this vulnerability, the involvement of the *Kerapatan Adat Nagari* (KAN) and the *Nimik Mamak* (customary elders) in rejecting PP No. 84/1999 reflects how cultural identity serves as a cornerstone for effective social mobilization.⁵¹ The interaction between Islamic values and customary traditions in shaping this civil disobedience reaffirms what Asma Barlas conceptualizes as a conditional rejection of policies that contravene a society's fundamental principles.⁵²

From the perspective of Khaled Abou El Fadl, the non-compliance of the Agam community can be understood as a manifestation of critical obedience, wherein obedience to state authority is circumscribed by a superior moral imperative.⁵³ When PP No. 84/1999 is perceived to violate the community's fundamental values, rejection becomes a moral obligation legitimized by both religious and customary interpretations. This aligns with Tariq Ramadan's concept of transformative resistance, which emphasizes that challenging unjust policies is an integral part of a Muslim's moral responsibility to foster a more just socio-political order.⁵⁴

The ethical legitimacy of this civil disobedience can further be elucidated through John Rawls' two theories of justice.⁵⁵ Rawls' first principle requires that each entity has an equal right to the most extensive scheme of basic liberties, while the second principle stipulates that socio-economic inequalities or state interventions must be designed to provide the greatest benefit to the least

⁴⁹ Harsono, *Hukum tata negara: pemerintahan lokal dari masa ke masa* (Yogyakarta: Liberty, 1992).

⁵⁰ Tengku Rika Valentina, "Kontroversi PP 84/1999 : Konflik Elite dengan Masyarakat Adat tentang Batas Wilayah antara Kabupaten Agam dan Kota Bukittinggi," *Demokrasi* VI, no. 1 (2007).

⁵¹ Franz von Benda-Beckmann dan Keebet von Benda-Beckmann, *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation* (New York: Cambridge University Press, 2013).

⁵² Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press, 2002).

⁵³ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001).

⁵⁴ Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (New York: Oxford University Press, 2009).

⁵⁵ Rawls, *A Theory of Justice*.

advantaged (the difference principle).⁵⁶ When the appropriation of administrative boundaries erodes the basic liberties of indigenous peoples to manage their cultural territories and marginalizes them, the policy fails to meet the parameters of distributive justice. In situations where these principles of justice and equality are openly violated, Rawls regards peaceful civil disobedience as a legitimate and justifiable moral instrument to protest and awaken the public to the structural tyranny of a policy.⁵⁷

The cultural-religious dimension of the Agam community's civil disobedience can also be analyzed through Weber's theoretical framework of traditional and charismatic authority, which often proves more potent than legal-rational authority in contexts where primordial ties remain resilient.⁵⁸ The authority of the *Ninik Mamak* and the *Ulama* within Minangkabau society provides a cultural and religious legitimacy for dissent, creating a basis for resistance that is far more formidable than mere administrative rejection.

Furthermore, An-Na'im's perspective on the negotiation of Shari'a within the context of the modern state is highly relevant; it posits that Muslim societies interpret and apply Islamic principles in response to local contexts and contemporary needs.⁵⁹ In the Agam case, Islamic values are not perceived in a monolithic manner but are instead negotiated through interaction with customary (*Adat*) values and socio-political realities, thereby constructing a contextual religious justification for civil disobedience.

Resilience of Non-Compliance: Implications for Legal Effectiveness

The non-compliance of the Agam community toward Government Regulation (PP) No. 84/1999 for over two decades represents an extraordinary phenomenon that challenges conventional assumptions regarding legal effectiveness and the coercive power of the State. The failure to implement this regulation—despite explicit instructions from the Minister of Home Affairs and support across various levels of government—clearly illustrates what Hogwood and Gunn characterize as policy non-implementation.⁶⁰ In the Agam case, this failure is primarily attributed to a flawed initial design that neglected the cultural

⁵⁶ Rawls.

⁵⁷ Hugo Adam Bedau, "On Civil Disobedience," *Journal of Philosophy, Inc* 58, no. 21 (2016).

⁵⁸ Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (New York: University of California Press, 1978).

⁵⁹ Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge: Harvard University Press, 2010).

⁶⁰ Brian W. Hogwood dan Lewis A. Gunn, *Policy Analysis for the Real World* (New York: Oxford University Press, 1984).

sensitivities and contextual nuances of the stakeholders—variables highlighted by Mueller as critical determinants in successful policy implementation.⁶¹

This phenomenon provides empirical validation for Soerjono Soekanto's theory, which posits that law functions effectively only when it aligns with the norms and values of the society it aspires to regulate.⁶² From this perspective, PP No. 84/1999 remains ineffective because it fundamentally conflicts with the values and interests of the Agam community. Furthermore, this case reinforces Roscoe Pound's argument regarding *law in action* versus *law in books*, where the practical effectiveness of law is heavily contingent upon social dynamics and societal acceptance.⁶³

The persistence of non-compliance in this case also affirms Tyler's theory of procedural justice, which suggests that legal compliance is significantly influenced by public perceptions of fairness in the law-making and enforcement processes.⁶⁴ The Agam community perceives PP No. 84/1999 as a legal product with procedural flaws, as it failed to incorporate adequate consultation with the affected population. This perception was further solidified by the action of the Agam Regency DPRD, which revoked its prior approval through Decree No. 07/SK-DPRD/AG-1999, symbolically delegitimizing the process underlying the formation of the Government Regulation.

In his analysis of everyday forms of resistance, Scott demonstrates how subordinate groups often develop indirect resistance strategies that prove more effective than open confrontation.⁶⁵ In the Agam case, civil disobedience has evolved from explicit rejection into systemic delay and omission, creating a condition where the Government Regulation remains legally extant yet is effectively defunct in its implementation. This strategy reflects what Ewick and Silbey term as *resistance through persistence*—a constant, steadfast resistance that eventually erodes the coercive power of the law.⁶⁶

This case also contributes significantly to the understanding of legal pluralism within the post-authoritarian Indonesian context. As articulated by von

⁶¹ Jason C. Mueller, "The evolution of political violence: The case of Somalia's Al-Shabaab," *Terrorism and Political Violence* 30, no. 1 (2018): 116–41, <https://doi.org/10.1080/09546553.2016.1165213>.

⁶² Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum* (Jakarta: PT RajaGrafindo Persada, 2004).

⁶³ Roscoe Pound, *Law in Books and Law in Action* (Amerika Serikat: Harvard Law School Library, 1910).

⁶⁴ Tom R. Tyler, *Why People Obey the Law* (United Kingdom: Princeton University Press, 2006).

⁶⁵ James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

⁶⁶ Patricia Ewick dan Susan S. Silbey, *The Common Place of Law* (Chicago: University of Chicago Press, 2014).

Benda-Beckmann, state law must frequently compete with other regulatory systems that are perceived as more legitimate by the local community.⁶⁷ The disobedience toward PP No. 84/1999 demonstrates how customary systems (*Adat*) and communal values can effectively override formal legal authority when a fundamental conflict arises between the two.

Ultimately, the persistence of this non-compliance offers invaluable insights into the limits of state power within the context of Indonesia's decentralization and democratization. Aspinall argues that Indonesia's democratic transition has carved out new arenas of contention between the state and civil society, where national policies must frequently be negotiated against local realities and interests.⁶⁸ The Agam case underscores that regional autonomy does not merely entail the transfer of administrative authority; it also significantly bolsters the capacity of local communities to resist policies perceived as detrimental to their fundamental interests.

Conclusion

This study concludes that the civil disobedience of the Agam community toward PP No. 84/1999 possesses a robust theological legitimacy from the perspective of *Fiqh Siyasah* (Islamic Political Jurisprudence). These actions do not constitute an act of subversion (*Bughat*), but rather represent *Mu'aradhab Syar'iyah* (constitutional opposition) and the principle of *amr ma'ruf nahi munkar*, aimed at rectifying arbitrary policies. Within this framework, obedience to the government is conditional and may be revoked if regulations violate justice or inflict harm (*mafsadah*). The territorial annexation that threatens *ulayat* (ancestral) land clearly contravenes the Maqashid al-Shari'ah principles of preserving communal property (*hifz al-mal*) and generational lineage (*hifz al-nasl*). Given that state policies are mandated to prioritize public interest (*maslahah ammah*), this cultural resistance is jurisprudentially justified as a priority measure to prevent greater harm, following the legal maxim *dar'u al-mafasid muqaddamun 'ala jalbi al-masalib* (averting harm takes precedence over pursuing benefits). Moving forward, the government must reformulate spatial and agrarian regulations to be more participatory and harmonious with legal pluralism and the philosophy of *Adat Basandi Syarak, Syarak Basandi Kitabullah*. Such an approach is essential to realize distributive justice and prevent structural oppression (*zalim*).

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⁶⁷ Franz Von Benda-Beckmann, "Who's Afraid of Legal Pluralism?," *Journal of Legal Pluralism and Unofficial Law* 34, no. 47 (2002): 37–82, <https://doi.org/10.1080/07329113.2002.10756563>.

⁶⁸ Aspinall, *Opposing Suharto : Compromise, Resistance, and Regime Change in Indonesia*.

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