

The Existence of Kerapatan Adat Nagari in Minangkabau Community, West Sumatra for the Juvenile Criminal Justice System

Nur Rochaeti
University of Diponegoro Semarang
etikfh@live.undip.ac.id

Pujiyono
University of Diponegoro Semarang

Abstract. The existence of customary justice in Indonesian society today is still recognized as one of the efforts to resolve the criminal problems, violations of customs, and juvenile delinquency. Indigenous people generally use norms that are very close to the reality of everyday life, because the norms are simple in nature as customs. The customs of indigenous peoples are considered as the laws that apply in the communities because these laws are products of an acceptance and agreement of their whole opinions. This study aims to answer two formulations of the problem. First, how is the formulation policy on indigenous justice in the legal system in Indonesia? Second, how is the existence of the “*Kerapatan Adat Nagari*” traditional institution of Minangkabau community in West Sumatra in the mechanism of restorative justice of the juvenile criminal justice system? This study was conducted in Padang, West Sumatra. The method used was the socio-legal research approach. The location of the study was at the *Kerapatan Adat Nagari* traditional institution of Minangkabau community in Padang, West Sumatera. The results showed that the formulation policy on judicial restorative justice in indigenous people exists in international legal instruments as well as national legal instruments in Indonesia. Furthermore, the existence of the “*Kerapatan Adat Nagari*” traditional institution of Minangkabau community in West Sumatra in the mechanism of restorative justice the juvenile criminal justice system is still recognized and implemented to resolve cases of juvenile delinquency.

Keywords: *Minangkabau community, juvenile criminal justice system*

INTRODUCTION

The structure of Indonesian society is marked by two unique characteristics that are horizontal and vertical characteristics. A horizontal characteristic is indicated by the existence of social units based on differences in ethnicity, religions, customs, and regionalism. According to Furnivall, Indonesian society is called plural societies. [1] A vertical characteristic means that the structure of Indonesian society is characterized by the presence of vertical differences in the form of upper and lower society, which are agrarians and industrials. This can also

lead to inequality to make changes in development, because some societies still do agricultural activities while the others have stepped into the industrial activities or even the information activities.

According to Hart, customary law is closer to the primary obligation rules order than the intentional state law; therefore, it is closer to the secondary obligation rules order. Customary law is closely related to local culture. The word culture shows a strong emotional traditional element in customary law. Customary law is filled with lords of certain values (value laden). [2]

Indigenous people generally use norms that are very close to the reality of everyday life, because the norms are simple to be fulfilled by elementary norms such as customs. However, it must be understood that the customs in indigenous people are the laws that apply in the community because they are products of an acceptance and agreement of the community’s opinion as a whole.

In the Article 103 paragraph A law No. 6 of 2014 concerning villages, it states that the regulation and implementation of governance by traditional villages are based on the original arrangement. The original arrangement is a system of indigenous village organizations known in their respective regions. In the Article 103 paragraph A, associated with Article 103 paragraph D and E of the village law, the traditional village court institution is a customary court known by the customary law community, both those who function to decide and reconcile customary disputes based on customary law. This means that the courts known by the customary law community are later recognized as the customary village courts in the law No. 6 of 2014 concerning the village.

According to the indigenous people, justice cannot be interpreted as a single concept because it is a complex concept. It cannot only be given by a formal court (state), but can also be provided by other forums such as customary justice.

A legal reformation should be oriented towards the principle of *Pancasila*, which comprises the balance of values, ideas, and paradigms of (1) religious morality (deity), (2) humanism, (3) nationality, (4) democracy, (5) social justice, [3] and (6) the need of harmonization, synchronization, and consistency between the development of national law and the values or aspirations

of both socio-philosophy and socio-culturae that exist in the community. Therefore, it is necessary to study and explore national values originated from *Pancasila* and based on the values that exist in society (religious values and cultural or customary values). [3]

Particularly for juvenile perpetrators, the agreement is considered as fair and proportional as well because the findings from previous quantitative studies showed that juvenile perpetrators are usually satisfied with their agreement and they consider it as fair (see, for example Palk et al. 1998; Maxwell and Morris 1999 ;[4] Trimboli 2000;[5] Maxwell et al. 2004). In Queensland, juvenile perpetrators have an understanding from the pre-conference meeting that they will be asked to implement the agreement (Hayes and Hayes 2008). [6] The findings of the study state an opinion that the agreement is considered unfair or usually exclusive because the juvenile perpetrators feel that they do not have an opportunity to talk about the agreement, or they consider the terms of the agreement are too substantial or have a very long period.

According to Burt Galaway and Joe Hudson, the concept of restorative justice has three basic elements. First, a criminal act is seen as a conflict or dispute among individuals, and is not a public problem that harms the victims, the community, and the perpetrators themselves. Second, the purpose of the process (criminal justice) must create peace within the community itself by fixing the loss caused by the conflict. Third, the process must support an active participation by the victims, the perpetrators, and the community to find solutions to the conflict in question. [8].

According to Frank E. Hagan, restorative justice has evolved from a little known concept to be a widely used term in a different way. There is no doubt about its appeal, although it uses a variety of terms that cause confusion. The term of restorative justice has been applied comprehensively to be restorative by certain people.

These conditions lead an idea to conduct a study of how is the existence of *Kerapatan Adat Nagari* institution of the Minangkabau community in West Sumatra in the juvenile justice system.

METHOD

The research was carried out by using the Socio Legal Research approach. Based on this approach, legal pluralism in Indonesia would be identified, especially problems regarding the existence of the *Kerapatan Adat Nagari* institution of the Minangkabau community in West Sumatra in the juvenile justice system. The research took place in Padang, West Sumatra.

RESULT

A customary law is a *weergave* (mirror) of a society. Therefore, a statement by Vonsavigny's is very appropriate, as quoted by Notohamidjojo if, "*Das Recht*

wird nicht gemacht, en its und wird mit den volke", which means that law is a statement of the soul of the nation. [8] Regarding to this, Satjipto Rahardjo stated that law is a social regulation developed by people to create their own order. An order exists and is desired upon an agreement among a group of people, which appears naturally as a common need. Joint order is realized by the establishment of legal institutions, either in substance, structure, and its culture. According to Satjipto Rahardjo, the existence of law is rooted, peculiar, and based on society. [9]

Ayodele discussed the implications of the traditional justice system for controlling crime in Oshogbo. In the study, it found that traditional and formal judges each reduced customary violations and were full of norms and laws. It concluded that formal-traditional partnerships would reduce crimes. This reduced crimes and increased securities for people in Oshogbo. [10] Traditional justice system is considered to be primitive. The two systems do not maintain the same community orders. The partnership between the two systems is considered useful to achieve community stability. traditional justice system is more efficient in dealing with conventional crime, while formal justice system is more powerful in controlling sophisticated modern crimes. (IDI Wanita, February 15, 2013). [10]

Minangkabau people are characterized as devoted religious Muslims, *basandi sarak baandi kitabullah*. In its community association and life, they have very strong and institutionalized signs and handles called "*Tali Tigo Sapilin*". It also holds on to the well-arranged noble teaching and is taught in their everyday life, which is called the teaching of four good virtues (*Tau Jo Nan Ampek*). They always hold on it institutionally in their life.

Traditionally, the Minangkabau indigenous people have legal institutions, both in substance and structure. They are quite complete in the field of criminal law and civil law, both formal and material law. In reality, judicial practices that are still ongoing and adhered to and enforced as a means of resolving community problems are related to the settlement of civil cases, particularly disputes over inheritance and land issues.

Regarding the settlement of customary crimes, as the *Kerapatan Adat Nagari (KAN)* institution is considered as a customary institution to have an authority to adjudicate cases of customary crimes, the Minangkabau people are still reluctant or afraid to uphold customary criminal justice for imposing criminal sanctions. According to the chairperson of *LKAAM (Lembaga Kerapatan Adat Alam Minangkabau)*, due to this reluctance, the customary judge would be the subject of criminal cases are reported to the police [11]. This happened to one of the *Kerapatan Adat Nagari* institutions. A judge was actually interrogated by the police as a suspect of criminal offenses, when he conducted customary criminal investigations and imposed customary criminal sanctions.

To solve these problems, KAN and the FKPM (Police and Community Partnership Forum) collaborated, represented by the community leaders and police officers. Through FKPM, problem solving is carried out within the framework of community-based problem solving by focusing on a feeling of shared sense among all members and components of community to overcome the problems or resolve legal issues (including criminal cases) in a win-win solution (mutual benefit, satisfaction, and no resentment).

When KAN applies customary criminal sanctions, such as *Dikucia* (being isolated from the customary group) or being paraded embarrassingly in public around *nagari* or *kampung* (village), there is no “opposition” since the sanction is done using a mediation (“penal mediation”) within the framework of customary justice; however, the police still involve in it as a part of FKPM. Thus, there is no legal process against KAN members, since the process is knowingly involved and decided by all parties, including the perpetrators who are the subject of the customary sanction. The perpetrator who receives the customary sanction does not report to the Police for criminal acts (insult – which in customary criminal sanction is termed as humiliated sanction) because besides as a win-win solution process, it is also considered as a devotion of the community members who receive criminal sanctions to the customs. Practically, the implementation of customary sanction in Minangkabau (including structural sanctions), such as isolated or public embarrassment, is conducted directly through customary justice carried out by KAN. In addition, the sanction is also given through customary criminal suits by involving FKPM. It is also regulated in Decree of KAN No. 196/KAN-SA/XII-2001, Decree of KAN No. 01/KAN-SA/XII-2005, *sarato* Solok District Regulation No. 8 of 2004, Article 94, paragraph A, C, and E concerning the *Nagari* Customary Court.

In the context of reforming national legal substances and resolving customary criminal acts, the New Criminal Code Bill Draft on customary criminal acts can be used as a source of positive law. By the live recognition of the existence of the community and customary law, it is hoped that in the future, efforts will be made to reform the criminal law of a judicial policy carried out by the Customary Court to accommodate the judicial mechanism by its indigenous people.

CONCLUSION

The results of the study show that the customary justice of Minangkabau community in West Sumatra has regulated and acknowledged the existence of customary justice as an effort to handle cases that occur in their

environment. Substantially, the customary law and legal sanctions still apply to indigenous peoples. Structurally, the customary justice mechanism still exists to be implemented. In legal culture, the people still behaviorally respect and do decisions made through customary justice.

This shows that in the future, justice in indigenous people needs to be regulated as a sub-system in the juvenile justice system in Indonesia.

REFERENCES

- [1] Nasikun, *Sebuah Pendekatan Untuk Mempelajari Sistem Sosial Indonesia*, Yogyakarta: Faculty Social and Political Science of UGM, 1974, page. 31
- [2] Satjipto Rahardjo, *Hukum Adat Dalam Negara Kesatuan Republik Indonesia*, Delivered at the Workshop of Customary Law, conducted by Constitutional Court, Jakarta , 4 – 6 June 2005, 2005, page. 3
- [3] Barda Nawawi Arief, 2005, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bhakti, page. 5
- [4] Maxwell, G. and Morris, A. (1999), *Understanding Reoffending: Full Report*. Wellington: Institute of Criminology, Victoria University of Wellington *Journal of Criminology*, 42: 596–615.
- [5] Trimboli, L. (2000), *An Evaluation of the NSW Youth Justice Conferencing Scheme*. New South Wales Bureau of Justice Statistics and Research.
- [6] Hayes, S. and Hayes, H. (2008), ‘Developing Ethical Identities in Young Offenders through Restorative Justice in Australia’, *QUT Law and Justice Journal*, 8: 381–91.
- [7] Burt Galaway and Joe Hudson, *Criminal Justice, Restitution and Reconciliation (Criminal Justice)*, Monsey, NY : Criminal Justice Press, 1990, page. 2, <http://www.restorativejustice.org>.
- [8] Notohamidjojo, *Pengantar Kedalam Filsafat Hukum*, (Salatiga, Universitas Kristen Satya Wacana, tt), hal. 12
- [9] Satjipto Rahardjo, *Teori Ilmu Hukum*, (Semarang, lecturing material of Doctoral Program of Law *Undip*) year 2005
- [10] Oluwole Ayodele, Johnson , A Qualitative Study Of The Crime-Control Potency Of Traditional Justice System In Oshogbo, doi:10.1093/bjc/azx060 *Brit. J. Criminol.* (2018) 58, 925–943 Advance Access publication 15 September 2017, p. 925, 933
- [11] Individual interview with M Sayuti Rajo Panghulu, Chairman of LKAAM Semarang, 24 of May, 2019