Revitalization the Function of Traditional Nagari Density in Handling Criminal Cases Based on Restorative Justice

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Abstract: The criminal justice system, which was previously focused on the criminal aspect or retributive perspective, is now confronted with the reality that there are only a few legal structures, ranging from judges, prosecutors, and police to a small number of prison institutions that serve as execution venues. The author is concerned with this legal fact, so he uses primary data sources and sociological juridical studies to try and find a remedy. According to the author's findings, to prevent the issues mentioned above, criminal cases in Minangkabau can be resolved through the Nagari Traditional Meeting Institution using the restorative justice idea, which aims to repair the social discord caused by criminal acts. When applying restorative justice, the Nagari Customary Association makes use of the relevant legal source of the Nan Salapan Law, while the formal legal procedures can use the Nan Duo Puluah Law.

Keywords: Revitalization, Nagari Traditional Density, Crime, Restorative Justice

INTRODUCTION

Comparative study of Restorative justice has been carried out by many previous writers and can be mapped in several forms, including Restorative Justice To Build Equity-Oriented Crisis Standards Of Care (Long et al., 2022), Non-Timber Forest Products As Livelihood Restoration In Forest Conservation: A Restorative Justice Approach (Lo, 2021), The Necessity Of Restorative Justice On Juvenile Delinquency In Indonesia, Lessons Learned From The Raju And Aal Cases (Fathurokhman, 2013), Violence and Conflict in Schools: Analysis of Proposals Based on Restorative Justice in Brazil (Adam & Scotuzzi, 2013), Mapping Restorative Justice And Restorative Practices In Criminal Justice In The Republic Of Ireland (Marder, 2022),
Restorative Justice in Children (Riedl et al., 2015).

From the previous research above, it was found that restorative justice is a concept of justice that has been applied in almost all parts of the world with different legal systems, as well as in Indonesia. This writing will later attempt to provide alternative solutions to criminal cases in Indonesia that are not solely oriented towards retributive justice or retaliatory justice, considering that modern criminal law has shifted the pattern of punishment towards corrective justice, restorative justice, and rehabilitative justice. Retaliatory justice is no longer relevant to the philosophy of punishment in Indonesia, where sanctions are not the only solution in resolving criminal cases or what is more familiarly known as the principle of ultimum remedium.

Ultimum remedium is the antithesis of Herbert L. Packer's thinking relating to criminal justification, stating that criminal sanctions are the best tool or means available (Widayati, 2015). Ultimum remedium is the basic principle of punishment by prioritizing administrative sanctions that are more humane, effective, and efficient, and criminal sanctions are the last tool of defense and can only be used if there are no other legal instruments (Fitri, 2021). This study is based on a basic theory of Pointless Punishment Theory, as a theory of unnecessary punishment. This theory is based on the utilitarian theory of excuses or the theory of the use of forgiving reasons as a part of the utilitarian theory of punishment. If punishment is pointless in a part class of cases, it inflicts pain without a commensurate benefit and therefore should not be permitted (Hidayat et al., 2022). This means that the punishment paradigm for certain cases is used as a last resort or ultimum remedium and seeks to restore social disharmony caused by criminal acts. Below we will outline several basic considerations for shifting this pattern of punishment.

**Overcapacity**

Efforts to enforce criminal law can be carried out with a double-track system policy as a consequence of the adoption of the Neo-Classical school (Ramadhani, 2012). Firstly, penal policy is the concept of punishment to provide retributive justice. As the umbrella act (Roni Efendi, 2021) Article 10 of the Criminal Code (KUHP) provides legal certainty regarding this penal policy, namely the Death Penalty, Imprisonment Penalty, Confinement Penalty, Fines, and Closing Penalty (Roni Efendi, 2016). Second, criminal law enforcement can be pursued using a non-penal approach (non-penal policy) (R Efendi, 2019). This means
several crimes that have fulfilled the element of guilt (geen straf bijzonder schuld) (Judge, 2020) do not have to be subject to criminal sanctions, but can take action. Examples of the action paths in question are peace, rehabilitation, and other administrative sanctions. This needs to be thought about together because there is an imbalance between the UPT Corrections and State Detention Centers and the number of inmates, causing overcapacity (Wibawa, 2017). Currently, there are 114,000 (one hundred and fourteen thousand) people in state detention centers. As a legal fact, the number of convicts in Indonesia currently reaches 274,000 (two hundred and seventy-four thousand) people, and the total number of prisoners should be a maximum of 160,000 (one hundred and sixty thousand) people. (Deputy Minister of Law and Human Rights of the Republic of Indonesia), out of a total of 525 correctional institutions (Lapas) and state detention centers (Rutans) that report data regularly to the Ministry of Law and Human Rights, it was recorded that 404 prisons and detention centers had more than their capacity or the equivalent of 77% (Compas, 2021).

Based on these facts, it seems that we should think about new patterns that can be offered to this nation to obtain the punishment patterns needed in the current era of modern criminal law. So it will not increase the number of prisoners and reduce the burden on the State from one sector of financing prisoners.

Court fee

In the integrated criminal justice system element, where each sub-system requires operational costs to resolve each criminal case. Operational costs in each sub-system also have limitations, while criminal statistics show that the growth of crime is not commensurate with the case costs of each element of the Criminal Justice Sub-System (SPP). For example, in the Police sub-system, a maximum budget of Rp. 7,000,000, in carrying out investigations into criminal acts regulated in Articles 362 to 370 of the Criminal Code concerning theft with criminal losses of Rp. 5,000,000, Not to mention the costs that must be incurred for prosecution purposes by the Prosecutor's Office and trial costs by the Court, it appears that there is an imbalance between the losses resulting from the crime of theft and the costs of investigation to trial and even costs in correctional institutions.

Limitations of law enforcement

Population growth and developments over time are always accompanied by the growth and development of crimes, both the qualifications of offenses and their modus
It is not enough to anticipate the crimes that arise by reforming the criminal law through criminalization, but also to think about the legal structure of all SPP elements in Indonesia. In 2022 the number of members of the Indonesian National Police (Polri) will be 428,543 people (National Police Chief Tito Karnavian, 2021). Furthermore, the number of prosecutors at the Attorney General's Office of the Republic of Indonesia (Kejagung RI) as of August 3 2021 includes 10,621 prosecutors, while throughout 2021 approximately 147,624 cases have been handled by the Attorney General's Office of the Republic of Indonesia (Kejaksaan.go.id). Furthermore, the number of Judges at the Supreme Court of the Republic of Indonesia (MA RI) In 2018, the ideal number would be 11,000, but the availability of judges is only 8,000, meaning there is still a shortage of 4,000 functional judge positions in the Supreme Court of the Republic of Indonesia. (CNN Indonesia, 2018).

Decriminalization

Discusses the issue of criminalization and decriminalization or that an act must be by the criminal politics adopted by the Indonesian nation (Handoko, 2015). Criminalization is a policy through legislation to make an act that was previously not a prohibited act into a prohibited act and punishable by crime (Efendi, 2019). Meanwhile, decriminalization is a process of removing the prohibited and criminally punishable nature of an action that was initially a criminal act to become an act that is not prohibited and not punishable by crime. (Handoko, 2015). Decriminalization efforts have been carried out on articles in Book II of the Criminal Code, namely, Articles 105, 130, 132, 133, 135, 136, 138, 139, 153, 153bis, 161bis, 171 and 230 which have been abolished/removed based on the law Number 1 of 1946 concerning Criminal Law Regulations. Furthermore, Article 109 was deleted/abrogated based on Staatsblad 1930 Number 31. Then Articles 134, 136bis, and 137 of the Criminal Code were abolished/deleted based on Constitutional Court Decision Number 013-022/PUU-IV/2006. Then Articles 154 and 155 of the Criminal Code were abolished/deleted based on Constitutional Court Decision Number 6/PUU-V/2007. Furthermore, Articles 209, 210, 388, 415, 416, 417, 418, 419, 420, 423, 425, and 435 were deleted based on Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. Article 241 of the Criminal Code was abolished/removed based on Emergency Law Number 8 of 1955 concerning
Immigration Crimes. Article 243 of the Criminal Code was abolished/deleted based on Staatsblad 1931 Number 240. Article 248 of the Criminal Code was abolished/deleted based on Staatsblad 1938 Number 593. Articles 265, 272, and 273 of the Criminal Code were abolished/deleted based on Staatsblad 1926 Number 359 in conjunction with Number 429 and many more articles have been removed/eliminated through the decriminalization policy. (Handoko, 2016)

Based on the principle of ultimatum medium and efforts to overcome the problems above, for certain crimes, it is very rational to shift criminal law enforcement towards non-penal policy through a Restorative Justice approach. Restorative Justice is the completion of the criminal case involving the perpetrator, the victim, the perpetrator's family/victim, and other relevant parties to work together to find a fair settlement with the emphasis on restoring to the original condition and not retaliation. Restorative Justice not only provides an alternative to prosecution and imprisonment (Hendarto & Ma’ruf, 2018).

Furthermore, Article 1 Number 3 (Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif, n.d.) confirmed that Restorative Justice is the resolution of criminal acts by involving the perpetrator, victim, perpetrator's family, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just resolution through peace by emphasizing restoration back to its original state. This provides a legal umbrella for law enforcement officials to shift the paradigm of resolving criminal cases using a non-penal approach (AGO Regulation No. 15 of 2020).

Implementation of Perpol No. 1 of 2021 with a restorative justice approach in West Sumatra is related to the source of material law in Minangkabau customary criminal law, known as the Nan Salapan Law (Zailul Daulay. dkk, 2011). To implement the Perpol and the Nan Salapan Law, one effort that can be made is to involve community leaders, religious leaders, and traditional leaders, this is very possible to be implemented in all regions of Indonesia, including West Sumatra. As an autonomous region, West Sumatra with the Adat Basandi Syara’, Syara’ Basandi Kitabullah can be used as a basis for implementing the National Police Regulations above by involving the Nagari Customary Council (KAN)/or the Customary Court.

KAN's authority in West Sumatra to deal with crimes and violations is mandated based on a joint agreement to optimize the empowerment of customary law between the West Sumatra Natural
KAN's position as an inseparable part of the life of Minangkabau society has a very central role in restoring social disharmonization resulting from criminal acts. This is stated in Article 1 paragraph (2) of the Joint Agreement between LKKAM and the West Sumatra Regional Police: This agreement aims to develop guidelines as a guide for the parties to apply customary law as long as it does not conflict with positive law.

Furthermore, Article 2 paragraph (1) requires the application of the nan duo puluah law in Minangkabau customs to actualize Restorative Justice or dispute resolution as long as it does not conflict with positive law.

The Joint Agreement between LKKAM and the West Sumatra Regional Police above as a source of law in development Restorative Justice in the Minangkabau region, as is the position of KAN in the Kumanis village, Sumpur Kudus District, Sijunjung Regency. Nagari Kumanis was designated as research because Nagari Kumanis is a nagari under the guidance of the Institute for Writing and Community Service, Mahmud Yunus Batusangkar State Islamic University based on the Memorandum of Understanding between UIN Mahmud Yunus and the Sijunjung Regency Government Number: B-2185/In.27/R/HM.01/10/2021 and Number: 139/8/Pem-2021 concerning the Implementation of the Tri Dharma of Higher Education in Sijunjung Regency. The MoU was stated in the Cooperation Agreement between the Institute for Writing and Community Service and the Government of Nagari Kumanis Number: B-155/In.27/LI/HM.01/01/2022 and Number: 30/243/Kesra/2022 concerning the Implementation of Writing and Community service. However, based on the results of observations on October 28, 2022, legal facts were found that in the locus research, minor crimes often occurred while KAN did not yet understand the Joint Agreement between LKKAM and the West Sumatra Regional Police regarding the implementation of Justice of this, realizing KAN as a customary court which will be the leading sector in implementing restorative Justice. To this day we don't understand what offenses can be resolved through
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restorative Justice including internal procedures Restorative Justice or formal law.

METHOD

This type of writing is empirical legal writing (socio-legal research). The writing approach method uses the empirical legal writing method related to the use and selection of methods, so the use of the method depends on the object and purpose of the writing in question (Siregar et al., 2020). This empirical writing uses a qualitative typology, namely by directly observing the imbalance in the practice of implementing Restorative Justice by the Nagari Traditional Council in resolving criminal acts.

RESULT AND DISCUSSION

Justice comes from the word fair, which according to the Big Indonesian Dictionary, fair is not arbitrary, impartial, or impartial. The primacy of the word fair means that all forms of action or decisions are always based on objective rules. Then basically justice is a relative concept, meaning that it is fair according to one group of people and other groups have different understandings (Santoso, 2014).

Quoting a concept of justice put forward by Plato, the theory of justice focuses on harmony. Plato views that any problem that requires regulation by law must reflect a sense of justice. For Plato, laws and regulations are not solely to maintain order and maintain the stability of the state, but the most important thing about laws is to guide society to achieve excellence so that they are worthy of being citizens of an ideal state. Laws and regulations are closely related to the moral life of every citizen (Nasution, 2014).

According to Aristotle, justice is the appropriateness of every human action. According to John Rawls, justice is the primary policy in social institutions, which means that no matter how effective a law is, it must be reformed or eliminated if it does not provide justice (Wafiyah, 2012).

The idea of the purpose of law must be considered in theories of justice. According to Rusli Effendi's position quoted by Shinta Agustina, three perspectives can be used to examine the objectives of the law, namely: (1) From the perspective of normative legal science, the aim of law is focused on the aspect of legal certainty. (2) From the perspective of legal philosophy, the aim of law is based on justice. (3) From the perspective of legal sociology, the purpose of law is focused on the aspect of benefit (Roni Efendi, 2019).

In one of his publications, "General Theory of Law and the State", Hans Kelsen stated that law, as a social order, can be said to be fair if it can control the behavior of fellow human beings satisfactorily so that happiness can be
achieved within it. According to Hans Kelsen, justice cannot be avoided as a product of nature, be it human nature, human reasoning, or God's will, to ensure the realization of a truly just and honest government system (Kelsen, 2011).

This explanation leads us to the three basic legal principles put forward by Gustav Radbruch: justice, expediency, and legal certainty. Although it is hoped that the judge's decision should be a reflection of these three things, in practice this is difficult to happen. In reality, what often happens is the opposite, between the three there is often tension or conflict. In one case, if the judge must decide fairly, legal certainty must be sacrificed, or vice versa, for the sake of legal certainty, because the current law no longer reflects society's sense of justice, then justice cannot be achieved for the sake of legal certainty. If the situation is like that If there is, Radbruch believes that the best course of action is to apply the principle of opportunity (opportunity principle), which states that if the three considerations must be ranked, the order is as follows: justice, benefits, and legal certainty (Roni Efendi, 2019).

The types of theories of justice can be seen in the explanation below:

**Commutative Justice**

Commutative justice is a type of justice that calls for the preservation of social order and the advancement of the common good. Commutative justice, in theory, regulates interactions between one party and another party in a situation where no one is harmed. This means that commutative justice requires the development of fair and impartial relations between the parties (Wafiyah, 2012). In simple terms, the concept of commutative justice can be concluded as a reciprocal justice relationship between one person and another (Santoso, 2014).

**Distributive Justice**

According to each person's position, distributive justice distributes equal portions. This implies that the type of justice provided will depend on the individual's standing (www.kompas.com). In the context of law and justice, distributive justice is understood as a component of justice between the state and its citizens, which means the state's responsibility to uphold justice in the form of shared justice, including opportunities for welfare, assistance, subsidies, and living together based on rights and obligations (Santoso, 2014).

**Corrective Justice**

The idea of corrective justice is related to making wrong things right, compensating victims, or imposing appropriate punishment on perpetrators, to conclude in the context of corrective
justice, restitution (compensation) and punishment constitute justice (Santoso, 2014).

Corrective justice can also be interpreted as a type of justice that requires compensation or restoration as a step to balance something resulting from injustice (www.kompas.com).

**Restorative Justice**

An approach model called Restorative justice, sometimes known as restorative justice, was developed in the 1960s to resolve criminal cases. This method emphasizes the direct involvement of the perpetrator, victim, and community in the criminal case resolution process, different from that used in the traditional criminal justice system. Restorative justice is used in civil and criminal situations. However, apart from civil matters, this also applies to all disputes that can be resolved through a restorative process. A British criminologist, Tony F. Marshall, in his writings states that restorative justice is a process in which the parties interested in a particular violation meet together to solve problems together on how to resolve the consequences of the violation for the benefit of the future. The main aim of justice that has been completed is to create a situation as before (Amdani, 2016).

Restorative Justice can be understood from the general meaning of justice, namely "Restorative Justice is concerned with healing victims' wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community" (Aria Zurnetti, 2017) (restorative justice is interpreted as restoring victims' wounds, repairing the situation and damage to interpersonal and community relationships. Walgrave defines Restorative Justice as every action that was primarily oriented toward doing justice by repairing the harm that has been caused by the crime (O.C. Kaligis, 2006) (restorative justice is any action to uphold justice by repairing the damage caused by a criminal act).

Bagir Manan explained that the substance of Restorative Justice contains the principles of building participation between perpetrators and victims of criminal acts or crime victims as well as community groups in resolving criminal acts. Placement of perpetrators, victims, and the community as stakeholders who work together to find solutions that are considered fair or win-win solutions to criminal acts with actions that are beneficial for the perpetrators, victims, and the environment (Aria Zurnetti, 2017).

The application of the principles of Restorative Justice has been practiced in the civil law enforcement system known as Alternative Dispute Resolution (ADR), which was also formulated in Law No. 30
of 1999 concerning Arbitration and Alternative Dispute Resolution. Then, in Perma No. 1 of 2008 concerning Procedures for Mediation in Court and Perma No. 1 of 2016 concerning Procedures for Mediation in Court, the application of the definition of Restorative Justice with the mediation method in civil cases was developed (www.investor.id).

To identify answers and restore harmonious patterns of relations in society, Restorative Justice prioritizes an integrated approach between parties on the one hand and victims or society on the other. In addition, as an alternative to litigation, the basic principles of restorative justice are applied and become an important component of cases resolved through non-litigation channels (Masduqi, 2020).

The restorative justice method for implementing and enforcing the law is a theoretical and philosophical bridge that establishes the legitimacy of community legal principles as the basis for the formation and operation of law, the judiciary, and traditional judges, in the administration of justice. Instead of confronting the perpetrator with the authorities, restorative justice places greater emphasis on resolving conflicts between parties in interpersonal relationships. Pancasila as the main philosophy of the Indonesian nation is the source of the principles of the country's legal system and includes the idea of restorative justice. The philosophy of deliberation is emphasized in the fourth principle of Pancasila which reads, "The people are led by wisdom in representative deliberation". This philosophy believes that every decision must be morally accountable to God Almighty, uphold human honor and dignity, and prioritize unity for the common good (Maulidar, 2021).

The concept of justice in this mentoring study becomes a grand theory related to the revitalization of the role of the Nagari Traditional Council in resolving criminal acts based on Restorative Justice. Therefore, it is important to discuss the position of the Nagari Traditional Meeting in this article.

The Nagari Traditional Council (KAN) is under the supervision of the Minangkabau Natural Customary Council (LKAAM) from the sub-district to the provincial level. Kerapatan Adat Nagari is an institution within the nagari that manages, maintains, and preserves the customs and culture of Minangkabau. KAN as a customary justice institution in nagari functions to resolve sako, pusako disputes, customary violations, and sharak violations. Nagari customary meetings resolve problems within customs or disputes within tribes (Norfan Wahyu Putera, 2020).
In Article 8 of West Sumatra Province, Regional Regulation Number 7 of 2018 concerning Nagari, the authority of the Nagari Traditional Meeting is: (1) Select and appoint Kapalo Nagari by deliberation and consensus; (2) Channeling the aspirations of the Nagari community; (3) Supervise the implementation of Nagari customs and culture; (4) Request accountability for the implementation of the Nagari Government from Kapalo Nagari; And (5) Preserving traditional and cultural values according to the Salingka Nagari Customs.

From the results of the writing, it was identified that KAN's main need was to translate the concept of Restorative Justice and its internalization into customary law. Through FGD, the author builds trust or trust building so that an equal relationship can be formed between the author and the community on 14 and 15 October 2023 by exploring information about restorative justice, so that all related elements have the same perception of restorative justice and its implementation in resolving criminal acts by KAN in Nagari Kumanis.

The author reveals holistically and comprehensively Restorative justice as an alternative form of resolution in the criminal case process, which in principle was born out of dissatisfaction with conventional criminal case resolution mechanisms (Zailul Daulay. et al, 2011). Many countries are starting to abandon repressive justice mechanisms due to the system's failure to improve the behavior of convicts and reduce the level of crime committed by society. Restorative Justice aims to empower victims, perpetrators, families, and communities to correct unlawful acts, using awareness and conviction as a basis for improving social life (Zainul Daulay, et al; 2011).

Based on the comparative criminal law of restorative justice practices in various European countries, empowerers use a Participatory Mapping approach to the implementation of restorative justice by the Nagari Kumanis Traditional Court, namely with the existence of a legal source as a legal umbrella, namely the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Furthermore, the joint agreement to optimize the empowerment of customary law between the West Sumatra Minangkabau Natural Traditional Council (LKKAM) and the West Sumatra Regional Police Number 111/LKAAM-SB/III/2012 and Number.B/1757/2012/West Sumatra Regional Police was carried out in several steps. Following (Aria Zurnetti, 2017).
Mediation between Perpetrator and Victim

This effort is a classic approach in the process of resolving cases in criminal, civil, customary civil cases, and other social issues. So in terms of resolving criminal cases, the Nagari Customary Meeting functions as a mediator who will bridge between the perpetrator and the victim. As a mediator, Kerapatan Adat Nagari will find a win-win solution to resolve the matter in question, and this concept has generally been implemented by Kerapatan Adat Nagari Kumanis so that it does not cause problems in its implementation.

Hold a Meeting

The Nagari Adat Meeting can schedule a meeting between the perpetrator and the victim, this activity is a form of consensus deliberation to restore social disharmony caused by the criminal act.

Circle

Circle of Stakeholders Those involved in resolution through restorative justice can be grouped into 2 (two). If the case has not been reported to the authorities, then the circle involved is only the Nagari Government Apparatus, the Nagari Customary Meeting, Perpetrator and/or Family and Victim and/Family. Meanwhile, the second concept of restorative justice can be carried out by involving police officers if the case has been reported to the authorities.

Help for Victims

The main concept of restorative justice is restoration, namely restitution of losses suffered by victims due to criminal acts committed by perpetrators. So the Nagari Traditional Council will work together as optimally as possible to restore the social disharmony resulting from criminal acts by the perpetrators. So, if the perpetrator has recovered the losses incurred, the Nagari Traditional Court will prepare an official report that includes a clause that the case has been resolved using restorative justice so that the victim cannot report the case back to law enforcement officials. On the other hand, if the perpetrator defaults on restorative justice, the victim can report it and the case will be processed through litigation (although the prosecutor's office and court will repeat the restorative justice process).

Compensation

Compensation or restitution is the concept of recovering victims' losses for criminal acts committed by perpetrators. So the Nagari Traditional Council can direct and supervise the implementation of the contents of the restorative justice agreement between the perpetrator and the victim in terms of recovering losses resulting from the criminal act. So if the
victim's losses have been recovered, restorative justice has been successfully implemented by the Nagari Traditional Court, thus the traditional justice institution has participated in the process of resolving criminal cases, reducing state operational costs, and reducing the number of inmates in correctional institutions. Another thing that is also important is that the Nagari Customary Meeting can restore perpetrators to be accepted back into community life without being stamped or labeled as convicts or convicts.

Society service

Whether we realize it or not, the Nagari Customary Meeting is also part of the implementation of public services, namely as an institution that has inherent attribution authority to provide services to the community in their respective administrative areas. Referring to Law Number 25 of 2009 concerning Public Services, the Nagari Traditional Council is obliged to serve every resident to fulfill their basic needs in the context of public services.

The participatory research step that the author took was to look at reflections or social changes regarding the characteristics of the implementation of Restorative Justice, namely:

**Make violators responsible for their actions**

The Nagari Adat Meeting seeks to make perpetrators aware that they are responsible for the actions they have committed along with the sanctions. Because the concept of restorative justice is not oriented towards retributive aspects, the responsibility that must be carried out by the perpetrator towards the victim is administrative sanctions in the form of restitution or restoration.

**Proving the ability and opportunity of the perpetrator to be responsible**

The doctrine of causality in criminal law can still be applied in this case, both in condition sine a qua non, individualizing teachings and generalizing teachings can be used as initial methods for determining the form of responsibility. Another approach, Keratan Adat Nagari, can also guide theories of evidence in formal law, namely conviction in time, conviction in reason, theory of evidence based on positive law, and theory of evidence based on negative law.

**Involvement of victims, perpetrators, parents of victims and perpetrators, school friends, playmates and the community**

The main element that the Nagari Traditional Council must follow in resolving criminal cases through Restorative Justice is the involvement of
the perpetrator and/or family, victim and/or family, community leaders, and law enforcement officials.

Create a collaborative forum

The collaboration forum here is the involvement of all elements in implementing the restorative justice process by the Nagari Traditional Council so it is hoped that the process will be carried out well.

Establish a direct and obvious link between errors and social reactions.

The Nagari Customary Meeting will seek to provide information from the perpetrator who is aware of and regrets the mistake so that the elements of mens rea and dolus are visible and related to the consequences. So it will not be difficult for the Nagari Traditional Council to find a reaction to the perpetrator's actions and restoration of the victim. Implementation step.

Restorative Justice requires certain prerequisites, including: (1) Statement of guilt from the perpetrator, (2) Victim's consent, (3) Approval of law enforcement officials, (4) Local community support, (5) Minor criminal offenses

The uriana above is a form of empowering advocacy for the Kumanis Nagari Traditional Village to provide an understanding of the concept of restorative justice. Because the process of resolving criminal cases has shifted from the concept of retributive justice or deterrence to restorative justice or restoration. So the universal values of justice theory have been accommodated comprehensively in the concept of resolving criminal cases using a restorative justice approach. This is by the objectives of law with its priorities, namely from a legal philosophy perspective, the law aims to provide justice; the sociological perspective of law is oriented towards the aspect of usefulness, and from the normative perspective the law is oriented towards the aspect of certainty;

Then, from the theory of authority, the Nagai Customary Meeting in carrying out restorative justice is by the attribution or authority inherent in the Nagari Customary Meeting institution. This is clearly stated in Law Number 30 of 2014 concerning Government Administration. So the resolution of criminal cases using the concept of restorative justice by Kerapatan Adat Nagari is a process of resolving criminal cases that is humane, provides aspects of justice for both perpetrators and victims, and provides benefits in reducing criminal statistics, state operational costs, suppressing the growth in the number of inmates and is useful in restoring disharmony social issues caused by criminal acts. In addition,
the Nagari Customary Meeting in implementing restorative justice in resolving criminal acts has fulfilled the aspect of legal certainty and is carried out based on its attribution of authority.

The Nagari Kumanis Traditional Council in implementing restorative justice begins by exploring the material legal sources of customary criminal law, namely the nan salapan law. After identifying material legal sources, empowerers identify formal legal sources in utilizing restorative justice as an alternative dispute resolution.

According to M. Rasjid Manggis Dt. Rajo Pangulu, Minangkabau customary criminal acts are contained in the Nan Salapan Law, among others (Aria Zurnetti, 2017): (1) Tikam-Bunuah. Tikam; proven by blood melting after being stabbed by a sharp object. Bunuah; Bunuah = proven by a lying corpse. (2) Upeh-Racun. Upeh; potion made into poison. Racun; Tuba, people immediately die from poison. The test is “siso is eaten”; meaning leftovers eaten by animals or the way it is now examined by a doctor at the hospital. (3) Samun-Saka. Samun; taking people's belongings by force in a quiet place, usually in the bath (border area), namely the border between Luhak and rantau, a place that is considered by thieves to be difficult for the law. Saka = means to steal by killing the person whose goods are being stolen. The law for thieves is to be imprisoned for a long time, then released again. The law for sufferers is internment for life, which is called andam-karam. (4) Maliang-Curi. The theft was carried out at night, as evidenced by the tokamak upang-upang, a ladder that was leaned on for climbing, and a hole at the top of the wall to be able to enter the house to take people's belongings. Curi = carried out both during the day and at night. (5) Sia-Baka. Sia means to suckle as evidenced by the butt of a torch. Baka is proven by burning until charred. (6) Umbuak-Umbi. Umbuak; defrauding things or corrupting someone's mind, which is done with a throat in the mouth or planting sugar cane in the lips, that is, by having a sweet mouth. Umbi; deceiving by threatening. (7) Sumbang-Salah. Actions or associations that are wrong in the eyes. Salah, an act that violates morals, for example, manggungguang mambao tabang, which means running away from someone's wife or marrying someone who violates customs. (8) Dago-Dagi. Dago; wrong mamak to kamanakan. A guilty mother is punished at night, meaning she is told to stop being a mother in secret, without the public knowing, so that she will not be embarrassed. Malu mamak means embarrassed kamanakan, because Mamak is the height of karano dijuang gadangnyo amba by kamanakan himself.
Mamak carries out orders from those who are ordered. It is enough if the mamak himself at birth resigns by saying Bukik lah Tinggi lurah lah in, old-moral, mamak's character is very important according to custom. Kamanakan did not hold a demonstration against Mamak’s injustice but protested it. The traditional proverb says: Rajo bana disambah.

Making a mistake towards Mamak is like an insult. Then, after determining the type of customary criminal offense that can be resolved using a restorative justice approach by the Nagari Traditional Court, the next step is the formal legal procedure for customary criminal law. It is hoped that this agreement can be understood and implemented by the parties who have succeeded in creating Guidelines for the Settlement of Minor Cases and/or Serious Crimes (Tipiber) based on Law No. 20 in Minangkabau Customs and the Laws of the Republic of Indonesia (Irsal Verry Idrus Dt. Lelo Sampono, 2017).

CONCLUSION

The revitalization of the role of Nagari traditional meetings in resolving crimes based on restorative justice can be concluded as follows: The researcher revealed the concept of restorative justice to the Nagari Traditional Village holistically and comprehensively, namely through the application of Restorative justice starting with an understanding of Minangkabau customary criminal law material in the Nan Salapan Law including: tikam-bunuah, upeh-racun, samun-saka, maliang-curi, in vain, umbuak-tubers, discordant, discordant. Apart from that, cases that can be resolved through a restorative justice approach are not offenses that are classified as the most serious crimes.


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