



# The Role Of Adat Institution In The Settlement Of Criminal Cases Through Restorative Justice In West Sumatera

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## ABSTRACT

The process and mechanism for settling criminal cases always progresses from time to time. One of the mechanisms for settling criminal cases in today's modern era is settlement through Restorative Justice. Although initially, its application was more informal and limited, this concept has developed and has become part of the Criminal Justice System. Settlement mechanisms that involve many related parties and are oriented towards the repair or restoration of various parties affected by a crime are seen as more capable of providing justice. One of the parties involved in the Restorative Justice process besides the perpetrator and the victim is the community. Within the scope of Adat peoples (Masyarakat Adat), community involvement is represented by Adat institutions through Adat leaders. This research examines the role of Lembaga Adat (adat institution). in resolving cases through Restorative Justice in West Sumatera. The research uses empirical legal research methods, namely by collecting data either through law enforcement agencies or customary institutions. The results of the research were analyzed by juridical qualitative. The results of the research show that in West Sumatera the settlement of criminal cases through restorative justice has involved Adat institutions represented by Adat leaders. Community involvement is formed through a memorandum of understanding between law enforcement agencies, in this case, the police and prosecutors institution, and involves Adat institutions in the implementation process. In the future, the involvement of Adat institutions in the settlement of criminal cases, especially through restorative justice, needs to be optimized, because the justice obtained will be more in line with the feelings of justice in society.

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## 1. Introduction

The Criminal Justice System is an effort and mechanism to achieve justice in the event of a crime. Marjono Reksodiputro argued that the Criminal Justice System is a system in society to deal with crime problems. The definition of tackling is intended as an effort to control crime so that it is within the limits of social tolerance. The criminal justice system always develops under developments that occur in society.<sup>1</sup> In addition, a criminal justice system is always associated with theories regarding criminal law and other related fields, especially with sentencing theories.<sup>2</sup> The development of punishment theory, starting from classical theory which emphasizes retaliation to modern theory, seeks to create a

<sup>1</sup> Atmasasmita, R. (2010). *Sistem Peradilan Pidana Kontemporer*, Jakarta: Kencana: p. 84

<sup>2</sup> *Ibid*, p.2.

criminal justice system that is not only oriented towards retaliation (revenge theory) or deterrence but wants to realize a utility.<sup>3</sup> This theory starts from the theory of rehabilitation, community protection, and the theory of abolitionism.<sup>4</sup> More modern theories put more emphasis on efforts to repair (restore) the damage or loss caused by a crime, or what is known as the theory of Restorative Justice.<sup>5</sup>

Restorative justice which was originally a concept or idea, has now become part of the legal system, inseparable from a criminal justice system.<sup>6</sup> Restorative justice is a response to a crime response to repair (restore) losses suffered by victims of a crime and requires the perpetrator to be responsible for the loss or damage caused and by building peace in society. Restorative Justice is a theory of criminal law that emphasizes efforts to repair damage or loss caused by a crime, which emphasizes settlement through a joint process of all related parties.<sup>7</sup>

The essence of a process through restorative justice is the involvement of various parties in the settlement of certain criminal cases, especially between victims and perpetrators, as well as the community and law enforcers as parties who facilitate it. Thus, one of the parties in Restorative Justice is the community itself through community leaders, because one of its goals is to create peace in society.<sup>8</sup>

With the basic idea of realizing peace and improvement in society, this concept is developing rapidly and has been adopted in the legal systems of various countries. The goal to be achieved through restorative justice policies is to unite the minds of those who are most affected by a crime, namely perpetrators, victims, and community members to resolve the problem through an extrajudicial process to hold the perpetrator accountable for meeting the victim's needs and for repairing the harm that has been caused by the crime.<sup>9</sup> Internationally, the concept of Restorative Justice justice was accepted with the United Nations Resolution on Restorative Justice (the United Nations Economic and Social Council (ECOSOC) Resolutions on Restorative Justice) in 2000. In the European Union through a framework regarding the position of victims in justice criminal. (Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings, and Directive 2012/29/EU of the European Parliament), encouraging many European countries to adopt rules on Restorative Justice. In 2020 almost all EU member states have adopted restorative justice rules.<sup>10</sup>

In Indonesia, formally the concept of Restorative Justice was first regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This law is a response to the development of the Criminal Justice System and the theory of punishment that accommodates a two-track system (Double Tranct System) in the settlement of criminal cases as one manifestation of criminal law reform.<sup>11</sup>

The SPPA Law then gave birth to various policies for implementing Restorative Justice in various criminal justice sub-systems, both in the police, prosecutors, and courts. In the police, this policy is

<sup>3</sup> Arief, Barda Nawawi. (2017). *Tujuan dan Pedoman Pemidanaan (Perspektif Pembaharuan & Perbandingan Hukum Pidana)*. Semarang: Pustaka Magister, p.67

<sup>4</sup> Muladi., & Arief, Barda Nawawi. (2010). *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni.

<sup>5</sup> Hasbi Hasan. (2013). "Penerapan Keadilan Restoratif dalam Sistem Peradilan Pidana Anak di Indonesia", *Jurnal Hukum dan Peradilan*, 2 (2), p.:251

<sup>6</sup> Muhaimin. (2019) 'Restoratif Justice dalam Penyelesaian Tindak Pidana Ringan, *Jurnal Penelitian Hukum, Jurnal Penelitian Hukum De Jure*, (19 (2): p.205, : [http:// dx.doi.org/10.30641/dejure.2019.V19.185-206](http://dx.doi.org/10.30641/dejure.2019.V19.185-206)

<sup>7</sup> [https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/restorative\\_justice.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/restorative_justice.pdf), November 2010.

<sup>8</sup> United Nations on Drugs and Crime. (2006). *Handbook on Restorative Justice Programmes: p:6*

<sup>9</sup> Kathleen J. Bergseth dan Jeffrey A. Bouffard. (2007). "The long-term impact of restorative justice programming for juvenile offenders", *Journal of Criminal Justice*, 35 (4): 433-451.,

[https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/restorative\\_justice.pdf](https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/restorative_justice.pdf), Novembe.

<sup>10</sup> European Forum for Restorative Justice, *The Idea of Rrestorative Justice and How it Developed in Europe*, [https:// www.euforumrj.org/sites/default/files/2020-](https://www.euforumrj.org/sites/default/files/2020-01/the_idea_of_restorative_justice_and_how_it_developed_in_europe.pdf)

[01/the\\_idea\\_of\\_restorative\\_justice\\_and\\_how\\_it\\_developed\\_in\\_europe.pdf](https://www.euforumrj.org/sites/default/files/2020-01/the_idea_of_restorative_justice_and_how_it_developed_in_europe.pdf).

<sup>11</sup> Dwi Setyowati., (2020). 'Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan', *Jurnal Pendecta*, 15 (1):131

outlined in the Regulation of the State Police of the Republic of Indonesia Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice. At the Attorney General's Office, it is stated in the Attorney General's Regulation of the Republic of Indonesia No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. Whereas in the judiciary, it is stated in the Decree (SK) of the Director General of the General Judiciary Agency (Dirjen Badilum) MA Number: 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for Implementing Restorative Justice.

In the Indonesian context, community involvement in the implementation of restorative justice cannot be separated from customary law, namely through customary institutions. In the Minangkabau community in West Sumatra, the existence of customary law is represented through customary institutions and traditional leaders, namely the *penghulu* and *ninik mamak*, successively from the clan family, tribes, and Nagari who are members of the Kerapatan Adat Nagari (KAN) or Nagari Adat Consultative Body). The KAN then formed a forum at provincial level through the Lembaga Kerapatan Adat Minangkabau (LKAAM) or the Institution of Adat Consultative Minangkabau Community. Therefore, the success of efforts to implement Restorative Justice in West Sumatra is of course inseparable from the role of the community, in this case, traditional leaders through traditional institutions. This research examines the role or involvement of customary institutions in the implementation of restorative justice in West Sumatra.

## 2. Method

The research was conducted using empirical legal research methods, namely to study the concrete implementation of a rule of law in society.<sup>12</sup> The rule of law on the other hand is related to the rules regarding restorative justice in criminal cases. Data collection is carried out at the Polres and the district attorney's office, especially concerning settling cases through the application of restorative justice. The sample in this case is by using purposive sampling. While the respondents are investigators and public prosecutors who handle a case. Data collected then analyzed qualitatively juridically.

## 3. Results and Analysis

### 3.1. Restorative Justice and Its Development in Indonesian Criminal Law

Settlement of criminal cases through the criminal justice system, which is formal, is seen as unable to meet the justice needs of society. A criminal justice system that places more emphasis on sentencing (punitive) aspects can lead to an excess of sentencing. The Criminal Justice System pays little attention to the interests of the victim in its settlement. In addition, the high level of punishment will require a very large amount of money to provide various prison facilities.

With the above considerations, the thought arose of resolving criminal cases to seek solutions outside the Criminal Justice System. One of them is Restorative Justice which is a way of responding to criminal behavior by balancing the needs of society, crime, victims, and perpetrators of crime.<sup>13</sup>

The restorative justice approach develops in various forms and models in various countries, including Indonesia. Therefore several terms are used to express the same concept, namely "communitarian justice", "making amends", "positive justice", "relational justice", "reparative justice", "community justice" and "restorative justice" and others.<sup>14</sup>

Restorative Justice can be interpreted as a process in which victims, perpetrators, people, or communities affected by a crime jointly participate actively to resolve problems arising from a crime.

<sup>12</sup> Salim HS. (2013). *Penerapan teori Hukum pada Penelitian Tesis dan Disertasi*, Jakarta: Raja Grafindo Persada, p.11.

<sup>13</sup> United Nations on Drugs and Crime, 2006, *Handbook on Restorative Justice Programmes*, p:6

<sup>14</sup> *Ibid*, p.7

This is done by using a mediator or facilitator.<sup>15</sup> Thus, it is hoped that the settlement of a crime will satisfy the various parties involved in a crime.

The implementation of a Restorative Justice settlement must be based on the basic concepts namely; (a) the response to a crime must be able to repair as much as possible the losses suffered by the victim, (b) the perpetrator must be given an understanding that his actions are unacceptable because it will result in losses for the victim and society (c) the victim must have the opportunity to express his wishes and participate in determining the best way for actors to improve conditions and (e) the community is responsible for contributing to the process being carried out.<sup>16</sup>

In Indonesia, the concept of restorative justice has become part of the law that lives in Adat Law or customary law. In Minangkabau customary law, for example, any problems or disputes that occur in the community, including crime issues, will be resolved jointly between the victim, the perpetrator, and the community represented by traditional leaders and decided by deliberation and consensus.<sup>17</sup>

One concept that has developed is the resolution of criminal law violations through a Restorative Justice approach. The definition of restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. "Restorative Justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."<sup>18</sup>

Susan Sharpe suggests that there are 5 key principles of Restorative Justice, namely:

1. Restorative justice requires the participation and consensus of various related parties.
2. Restorative justice seeks to heal the damage/losses resulting from the occurrence of a crime).
3. Restorative justice seeks full and direct responsibility.
4. Restorative justice seeks the reunification of members of society who have been divided or divided due to criminal acts).
5. Restorative justice seeks to strengthen the community to prevent further damage and for the community to prevent further criminal acts from occurring).<sup>19</sup>

From the understanding, the principles and objectives of Restorative Justice in the settlement of law violations in many cases already exist in the customary law community in Indonesia, because both emphasize deliberation and consensus. In addition, the aim is none other than to create peace and harmony in people's lives. Therefore, the concept of restorative justice will be very much in line with the principle that customary law communities are also a sub-system within the Indonesian legal system.

With the premise that Restorative Justice is in line with the Indonesian legal system, this concept was formally accommodated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. This is also inseparable from the paradigm in child protection which is marked by the ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child). The convention was then ratified by Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child).

The embodiment of Restorative Justice in the SPP Law is implemented through diversion which seeks to seek settlement of criminal cases outside the judicial process. However, its implementation cannot be separated from the criminal justice system to obtain confirmation as a judicial institution's decision.

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<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*, p.8

<sup>17</sup> La Syarifuddin. (2019). 'Sistem Hukum Adat Terhadap Upaya Penyelesaian Perkara Pidana', *Risalah Hukum*, 15 (2) : 4

<sup>18</sup> Marlina, (2010) *Pengantar Konsep Diversi dan Restoratif Justice dalam Hukum Pidana*, Medan : USU Press, p. 28.

<sup>19</sup> *Ibid*

### 3.2. Customary Institutions in the National Legal System

The existence of customary law is accommodated in Article 18B of the 1945 Constitution. In the field of justice, this existence is accommodated in Law Number 40 of 2009 concerning Judicial Power, which essentially stipulates that judges are obliged to explore the laws that live in society, including customary criminal law.<sup>20</sup> Even though the 1945 Constitution does not use the term customary law, some scholars think that this article contains the notion of customary law, because the elucidation of the 1945 Constitution states that in addition to a written constitution, it also recognizes the existence of unwritten law.<sup>21</sup>

In West Sumatra, for example, customary institutions as part of customary law as living law are social realities that cannot be eliminated or turned off.<sup>22</sup> This is manifested in the form of a Nagari government policy that accommodates the existence of customary institutions. In Bali, for example, through the Awig-Awig Traditional Village (Pakraman). The functions and decisions of the customary courts were then strengthened by The Supreme Court, for example, in the decision of the Supreme Court of the Republic of Indonesia Number 275 K/Pid/1983 dated December 29, 1983, and the imposition of customary sanctions (traditional medicine) to restore the disturbed balance so that it becomes magical-religious again.<sup>23</sup>

The concept or term adat or customary law has been born a long time in the life of Indonesian society before the arrival of Dutch East Indies colonialism, for example, found in the Makunta Alam Book, during the reign of Sultan Iskandar Muda in Aceh in the 12th century. In the opening of the book, it is stated that judges must pay attention to syara' law, customary law, and custom.<sup>24</sup> The same thing also exists in the Minangkabau community, for example in the customary saying that reads "Adat basandi syara' sara' basandi Kitabullah and adat is filled with poured institutions, which means that community members must obey and fulfill existing customs.

In the studies of Dutch scholars such as Snouch Hurgronje, he uses the term, *godindstige weten* for customary law. Meanwhile, Cornelius van Vollenhoven uses the term *Het Adat Recht van Nederlandsch Indie* which are rules of behavior that apply to natives which, on the one hand, have sanctions (then it is said to be law) and on the other hand are not codified (hence it is said to be customary).<sup>25</sup> Ter Haar then argued that customary law is a customary rule that acquires a legal nature through decisions or decisions of legal officers such as customary heads, judges, and others, both within and outside of disputes.<sup>26</sup> The Dutch East Indies government then acknowledged the existence of customary law in various rules, but by using different terms such as *de gebruiken, gewoonten, en godsisteinge instellingen der inlanders* (custom, habits, and religious institutions of the Indigenous People).<sup>27</sup>

Meanwhile, studies on customary law were also carried out by Indonesian scholars such as Supomo and Hazairin. According to Supomo, customary law is an unwritten law in legislative regulations which include:

1. Laws that live as conventions in state bodies (parliament);
2. Laws arising from judges' decisions (judge-made law);

<sup>20</sup> Lilik Mulyadi . (2013). 'Ekistensi Hukum Pidana Adat di Indonesia, Pengkajian Asas, Norma, Teori, Teori, Praktik dan Prosedurnya', *Jurnal Hukum dan Peradilan*, 2 (2): 225-246.

<sup>21</sup> Imam Sudiat. (1978). *Asas-Asas Hukum Adat Bekal Pengantar*, Liberty, Yogyakarta, p.22

<sup>22</sup> Pujiyono. (2011). 'Hukum Pidana Adat Sub-Culture Kehidupan Hukum di Indonesia', *Jurnal Masalh-Masalah Hukum*, 40 (2): 148

<sup>23</sup> Lilik Mulyadi, op cit, 224-246

<sup>24</sup> Dewi Wulansari. (2009). *Hukum Adat Indonesia Sebelum Penjajahan*, Jakarta: Refika Aditama, p. 1

<sup>25</sup> *Ibid*, p.2

<sup>26</sup> *Ibid*, p.3

<sup>27</sup> Yanis Malad. (2011). Eksistensi 'Hukum Adat dalam Konsntituti Negara Pasac Amandemen UUD 1945', *Jurnal Hukum dan Pembangunan*, 41 (3) : 423

3. Laws that live as habits that are maintained in association both in cities and in villages (customary law).<sup>28</sup>

Meanwhile, Hazairin argues that customary law is a direct relationship and correspondence between law and decency. Adat is a precipitate of decency in society and gets recognition from the community. Even though they are different, the rules of law and the rules of decency have a very close relationship, therefore they also have law and coercion.<sup>29</sup>

In West Sumatra, the existence of customary institutions is officially accommodated in a Regional Regulation, namely in the Nagari (Village) Government Law, which already regulates the existence of the Kerapatan Adat Nagari (KAN), that function as Adat community representative, but there are no rules explicitly authorizing KAN as a customary criminal justice institution. Article 101 Regional Regulation No. 31 of 2001 only states that KAN is an institution where *ninik mamak* (adat leader) and *adat Nagari* (nagari laws) stakeholders gather. Whereas Article 102 which regulates the duties and functions of KAN in ONE point only stipulates the tasks and functions of KAN to complete *sako* (Adat title) and *pusako* (Adat Weath) according to the *Adat Salangka Nagari* (adat law of the Nagari). However, in practice, KAN is an institution that functions as a customary criminal justice institution in the event of a violation of customary criminal law.

### 3.3. Settlement of Criminal Cases Through Restorative Justice in West Sumatra.

The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) has provided a legal basis for the implementation of Restorative Justice, although it is still limited to child cases. On the other hand, the ratification of the law gives a mandate, duties, and responsibilities for related parties, especially law enforcers, to implement these rules.

To implement the mandate of the SPPA Law, the relevant legal institutions, in this case, the Supreme Court, the Ministry of Law and Human Rights, the Attorney General's Office, and the Indonesian National Police have made a joint agreement in the form of a Memorandum of Understanding. This was stated in the Memorandum of Understanding between the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia Number 131/KMS/SKB/X/2012, Number M-HH-07 .HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of Adjustments to the Limits of Minor Crimes and the Number of Fines, Procedures for Examination and Application of Justice restorative.

After the Memorandum of Understanding was agreed upon, the Supreme Court, the Attorney General's Office, and the Police of the Republic of Indonesia made further regulations for each institution as guidelines for resolving criminal cases with the principles of restorative justice, including:

- 1) Circular Letter of the Head of the National Police of the Republic of Indonesia Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in Settlement of Criminal Cases (SE Kapolri 8/2018");
- 2) Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts (Perkapolri 6/2019);
- 3) Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (Kejaksaan 15/2020; and Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines Implementation of Restorative Justice (Kepdirjenbadilum 1691/2020).

<sup>28</sup> Dewi Wulansari, *op. cit.*, p. 4

<sup>29</sup> *Ibid*, p.3

The internal regulations of each institution then change under developments that are in principle to support efforts to optimize the implementation of restorative justice.

Police as the front guard in criminal law enforcement is an institution authorized to carry out investigations. Therefore the police are also the first to have the authority and responsibility in implementing Restorative Justice. In the police force, the concept of restorative justice has been known and implemented for quite a long time in the institution, but with a different concept or term. Before the concept of restorative justice in the police, there were efforts to settle criminal cases outside the court, namely through the application of police discretion. The forerunner of this discretion has been regulated in Law No. 13 of 1961 concerning the Main Provisions of the State Police.

In the general explanation, it is stated that according to unwritten law based on the public interest can set aside a light case so that the case is not proceeded to the level of prosecution by the Prosecutor. Furthermore, in Article 13 it is stated that in the interests of investigations the State Police may take other actions. The same provisions were later maintained in Law No. 28 of 1997 concerning the State Police of the Republic of Indonesia instead of Law No. 13 of 1961, which is contained in Article 16 letter l that the police may take other actions in investigations or investigations as long as they do not conflict with a rule of law, in line with legal obligations, actions appropriate and reasonable in office. Such action must also be with due consideration in circumstances of coercion and respect for human rights. The same provisions were later also adopted in Article 16 paragraph 1 of Law No. 2 of 2002, and Article 18 of Law No. 2 of 2002. The concept of other actions according to the responsible law is then contained in Article 7 paragraph (1) j of the Criminal Procedure Code.

In further developments based on the Letter of the Republic of Indonesia National Police No. Pol: B/3022/XXI/2009/SDEOPS, December 14, 2009, Concerning the Handling of Cases Through Alternative Dispute Resolution (ADR) it regulates the settlement of minor cases namely in Articles 205, 302, 315, 352, 373, 379, 384, 407, 482. The arrangement regarding settlement through ADR is not much different from the Restorative Justice approach, namely through deliberation for consensus, and must be known by the surrounding community; Settlement of cases through ADR must respect social/customary legal norms and fulfill the principles of justice. With the ratification of the SPPA Law, the police then issued the Republic of Indonesia Police Regulation No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, or Perkap No. 8 years 2021

In Article 2 of Perkap No. 8 of 2021, it is stated that the Handling of Crimes is carried out based on Restorative Justice carried out from the initial stages of carrying out the functions of the criminal investigation, investigation, and investigation. This function in the police institution is carried out by Community Trustees and Police Samapta according to their authority. One of the requirements that must be fulfilled is that the peace agreement is signed by both parties and fulfillment of the victim's rights and the responsibilities of the perpetrators.

The implementation of Restorative Justice in West Sumatra by the police, still refers to the provisions related to restorative justice nationally, namely based on the provisions contained in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The implementation of the duties and powers of the police, especially in enforcing criminal law, especially in the application of restorative justice, still refers to Law no. 2 of 2002 concerning the Police. In addition, specifically related to the application of restorative justice, the reference to the duties and authority of the police refers to Police Regulation No. 8 Year 2021. Principles of application of Restorative Justice:

- a. It is carried out from the very beginning from the stages of the criminal investigation process through efforts to monitor, observe and examine disturbances to society in the form of criminal acts. Therefore, at that stage, the police can make efforts that belong to restorative justice, especially in the form of peace or reconciliation efforts.
- b. In the investigation and investigation stages, the police must carry out efforts to implement restorative justice.

- c. The implementation of restorative justice can be carried out at the level of the police organizational structure, namely at the level of the Sector Police (Polsek), Resort Police (Polres), and at the Regional Police (Polda) level. For the settlement of minor crimes, the settlement is carried out by the National Police who carry out functions in the field of Community Services and Police Samapta. This was done either at the Polsek or Polres level.

In the case of the Restorative Justice settlement in the jurisdiction of Area of the West Sumatra Regional Police, 257 cases out of 2,257 cases were handled by all levels of the West Sumatra Regional Police. One of the benefits, according to the West Sumatra Regional Police Chief, is the success in reducing social conflict in society, especially between conflicting parties.

Apart from the police institution, another institution that is a sub-system of criminal justice which is also mandated to implement Restorative Justice is the prosecutor's office. Based on Law No. 11 of 2012, the prosecutor's office is also mandatory to strive for a Restorative Justice settlement of criminal cases delegated to the prosecutor's office. Of course, this authority is within the limits of the specified criminal act and a restorative justice settlement cannot be achieved by the police.

As a follow-up to the authority of the prosecutor's office in implementing Restorative Justice as stipulated in the Juvenile Criminal Justice System Law (SPPA Law), the Attorney General's Office stipulates the Republic of Indonesia Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. With this Attorney General's Regulation, the authority of the prosecutor's office to resolve criminal cases alternatively not only for children in conflict with the law, as stipulated in the SPPA Law, is extended to cases where the suspect is an adult within certain limits of a crime.

In considering the Attorney General's Regulation, it is stated that the prosecutor's office is a government agency that exercises powers in the field of the prosecution to realize legal certainty, legal order and justice, and truth based on and heeding religious norms, decency, and decency and is obliged to explore human values, law and justice who live in society. Of course, this includes exploring customary law as the original law of the Indonesian people.

In the consideration of the Attorney General's Regulation, it is stated that the urgency of Restorative Justice is a community need by maintaining a legal system that is based on the reality of Indonesian society. Of course one of them is customary law. Therefore, the implementation of the prosecutor's functions, including restorative justice, must accommodate customary law.

One of the developments in the implementation of Restorative Justice by the Prosecutor's Office according to the Attorney General's Regulation is the expansion of authority for criminal acts other than crimes committed by children. Even though there has been an expansion of this authority, there are still restrictions on which cases can be resolved through restorative justice. The Prosecutor's Regulation stipulates the criteria for criminal acts that can be resolved, namely: the suspect has committed a crime for the first time; criminal offenses are only punishable by imprisonment for no more than five years and criminal acts are committed with a value of evidence or the value of losses incurred as a result of a crime of no more than Rp. 2,500,000.-. In addition, this regulation also excludes several criminal acts, namely: crimes against state security, the dignity of the president and vice president as well as heads and deputy heads of friendly countries, criminal acts that carry a minimum penalty, narcotics crimes, environmental crimes, and narcotics crime and corporate crime.

This Attorney General's Regulation contains rules regarding the process of resolving cases in a restorative justice manner, but it does not specifically stipulate the involvement of the community or community leaders. Of course, this will result in the process not involving the community. In the case of certain actions that occur in customary law communities or are related to customary issues, it is very necessary to involve community leaders.

However, to establish cooperation between the prosecutor's office and the community, and in West Sumatra and the customary law community, the West Sumatra High Prosecutor's Office has implemented a program to build a Restorative Justice House or also known as the Restorative Justice



Center. This program is a national program through the Attorney General's Office which is then implemented in each region. This was carried out in connection with the Instructions of the Deputy Attorney General for General Crimes in letter number B-475/E/Es.2/02/2022 dated 8 February 2022 concerning the establishment of the Restorative Justice Center and Letter of the Head of the West Sumatra High Prosecutor's Office number B/607/Es /03/2022 dated March 16, 2022, regarding the Establishment of Restorative Justice Centers in their respective jurisdictions. Until now, in realizing this policy, the West Sumatra High Prosecutor's Office has inaugurated as many as 110 Restorative Justice Houses spread across various regions. One of them is the Prosecutor's Office of West Sumatra inaugurated the Restorative Justice House in Tanah Datar District in Nagari Limau Kaum District. Limau Kaum and Nagari Rbatan and Kec. Expedition. As a place for deliberations to resolve minor crimes with the values of local wisdom and justice that grow in the community.

As a concrete step from the policy, it turns out that the prosecutor's institution in West Sumatra is very optimal in its efforts to seek resolution of criminal cases through restorative justice. One of the cases is by carrying out restorative justice settlements against 5 suspects in narcotics cases. This step was carried out by the Pasaman State Prosecutor's Office, and of course, it has received approval from the West Sumatra High Prosecutor's Office. This application has also been carried out at other State Prosecutors' Offices such as the Padang District Prosecutor's Office, and the Painan District Attorney's Office.

At the Padang District Prosecutor's Office, the implementation of restorative justice is led directly by the Head of the District Prosecutor's Office with the chairman of the Lembaga Kerapatan Adat Alam Minangkabau (Minangkabau Adat Consultative Minangkabau People) or LKAAM), as well as elements from the Police, Head of Section for the Assistant for General Crimes at the West Sumatra Prosecutor's Office, Head of Section and Head of Sub-Division of Padang Prosecutors Office, as well as village government officials, the victim, the suspect's family. Thus it can be seen that the prosecutor's office also involves traditional institutions in the implementation of Restorative Justice.

The judiciary as the last bastion of criminal law enforcement plays an important role in a criminal justice system. Therefore this institution also plays a very important role in efforts to achieve justice under the principle of benefit to society.<sup>30</sup> In addition to functioning for the enforcement of criminal law, the judiciary plays an important role in efforts to make legal discoveries in its decisions. The development of the Criminal Justice System is also part of the role of the judiciary.

In the field of justice, as an effort to implement restorative justice solutions, the Supreme Court has issued Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. To expand this authority as an effort to expand the scope of Restorative Justice, the Supreme Court has also issued a Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the Judiciary Environment General. In this Decree, the Supreme Court expands the authority of the courts in the application of restorative justice not only in child cases but also includes minor crimes, cases of women who conflict with the law, and narcotics cases.

The misdemeanors referred to in this Decision Letter are crimes regulated in Articles 364, 373, 379, 384, 407, and Article 482 of the Criminal Code which are punishable by imprisonment for a maximum of 3 (three months) or a fine of Rp.2,500,000. - (two million and five hundred thousand rupiahs). In accepting the delegation of cases of minor crimes the judge must apply Restorative Justice. Thus the involvement of community leaders in customary law communities is certainly represented by traditional leaders in customary law institutions. According to Minangkabau customary law, traditional leaders consist of *ninik mamak* (head of a clan), *penghulu* (Adat Leader), based on their level, Nagari apparatus, and other

<sup>30</sup> Yuniar Kurniawaty. (2017). "Konsep Keadilan terhadap Vonis Peradilan Sesat: Tinjauan Hukum", *Jurnal Legislasi*, 14 (4): 395-406.

traditional functionaries. For that, of course, there needs to be an understanding of who should be directly involved in the implementation of Restorative Justice before the court.

### 3.4. Keterlibatan Lembaga Adat dalam Penyelesaian Perkara Pidana Melalui Keadilan Restoratif

The reform era that has taken place in Indonesia has opened up opportunities for more opportunities for the implementation of regional autonomy. In West Sumatra, this opportunity is pursued with the concept of returning to the Nagari. Efforts to return to the Nagari government system were realized with the enactment of the Regional Regulation (Perda) of West Sumatra Province No. 9 of 2000 concerning Basic Provisions for the Nagari Government. The regional regulation was later amended and was finally replaced by West Sumatra Provincial Regulation No. 8 of 2018. With this Perda, Village Administration was replaced with the Nagari government system, especially in district areas. Whereas in urban areas they still use the Village or Kelurahan government system.

Through this Perda, various institutions and organs of the village government were adjusted to become the Nagari administration, such as the village head becoming the Kapalo Nagari (head of the Nagari government), and the village secretary becoming the Nagari secretary. Article 5 of the regional regulation it is stated that the Nagari institutions consist of the Kerapatan Adat Nagari (KAN), the Nagari Government, and the Nagari Customary Courts. From the Nagari government institutions, KAN and the Nagari Customary Courts are closely related to law enforcement, including criminal law enforcement.

The Kerapatan Adat Nagari is a manifestation of the representatives of the Nagari Adat people who function as the highest deliberative institution in the administration of the Nagari Government. Furthermore, it is regulated that the Kerapatan Adat Nagari membership consists of representatives of *Niniak Mamak* (leader of a clan) and elements of *Alim Ulama* (Islamic Scholar), elements of *Cadiak Pandai* (intellectuals), elements of *Bundo Kanduang* (mothers) and elements of *Parik Paga* (youth) in Tte Nagari concerned is under the *Salingka Nagari* Customs. With such a role, the main function of KAN is to how customary law in the Nagari can be maintained and obeyed.

With this regional regulation, it was also formed which has the authority as a community dispute resolution institution in the Nagari based on the customary law of the Nagari which is mediation. One of the authorities of the Adat Nagari Court is to give customary sanctions to community members who violate customary law under the provisions of the *Adat Salingka Nagari* (custom existing in the nagar). In carrying out this function, the Customary Court will be related to other related parties, such as the Nagari government and the police station in the Nagari, namely the *Bhayangkara* Supervisor of Public Order and Security (Bhabinkamtibnas), namely police officers on duty in the Nagari. the duties and functions of building partnerships with the community involved in resolving minor criminal cases through restorative justice. For this reason, through Perkap (Head of Police Regulation) No. 1 of 2021 concerning Community Policing, a Community Police Communication Forum (FKPM) was formed.

Violations of this Nagari customary law can be related to violations that are categorized as customary criminal violations. These customary criminal sanctions are regulated in the customary law which is called *Adat Nan Duopuluh* (the twenty orders). This law consists of the *Adat Nan Salapan* (the Eight Order) and the *Adat Nan Duo Baleh* (the Twelve Order). The problem in enforcing customary sanctions is when the violation includes violations of national criminal law or is already a crime. Is the case will be resolved by customary institutions or by law enforcement officials?

From interviews with traditional leaders in the Nagari it is known that in the event of such a problem, the resolution depends on the initial entry of the case. If the case has entered the realm of criminal law enforcement agency, the handling of the case will be handed over to law enforcement officials. Usually, if the case falls into the category of cases where restorative justice can be resolved, law enforcers, in this case, the National Police, will involve the Nagari government in peace efforts first.

However, if the case has not been handed over to law enforcers, the customary law institution from a lower level, namely the *ninik mamak* meeting, by involving the Nagari government, will make peace

efforts. If the peace efforts are successful, peace will be made under customary law. If peace is not concluded, then the parties are welcome to take formal legal channels, namely to the criminal law enforcement apparatus. If the criminal offense is classified as minor, then law enforcers through *Babinkamtibmas* will try to make efforts to a peace settlement. Settlement of cases that occur will involve the police, Adat officials or leaders, and the Nagari government. Therefore the implementation of Restorative Justice is completed in the first stage and involves various related parties.

From what has been stated above, it can be concluded that existing institutions have played a role in efforts to resolve cases through restorative justice. For the West Sumatra region, besides that, there is already a Memorandum of Understanding between the West Sumatra Regional Police and the Minangkabau Customary Institution (LKAM) as a forum for traditional institutions in West Sumatra. The agreement stipulates the existence of a partnership between the police and traditional institutions to maintain order and security in the community and seek peace if there are disputes or disputes in the community.

#### 4. Conclusion

The process of settling criminal cases through Restorative Justice by the Police is carried out through an MoU between the Regional Police and the Customary Density Institution in West Sumatra. At the level of prosecution at trial, the restorative justice process is carried out by involving customary institutions through traditional leaders in resolving cases related to indigenous peoples and customary issues. Bearing in mind that customary law, customary law communities, and customary institutions are institutions whose existence is constitutionally recognized, it is necessary to make efforts to further concretize the role of customary institutions in the implementation of Restorative Justice for predetermined criminal cases. More efforts are needed to increase the involvement of traditional institutions in resolving cases through restorative justice in West Sumatra. This is based on the consideration that the existence of customary law and customary institutions still exist in the Minangkabau customary law community so the existence of traditional institutions and traditional leaders still plays a very important role in the daily life of the community.

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