



## Implementation of Restorative Justice for Misdemeanor Offenders with the *Bajanjang Naik Batanggo Turun* Customary Approach

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### Article Process

### Abstract

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The large number of criminal acts committed by criminals who crowd the prisons. The application of criminal sanctions in the form of imprisonment has resulted in prisons becoming increasingly full. The form of punishment that places more emphasis on punishing the perpetrator of the crime causes attention to be paid to the victim and other parties to be neglected, a new approach is needed that does not only focus on the victim but also on all parties involved, such as the restorative justice approach which emphasizes that the resolution of criminal cases does not have to be based on a spirit of revenge, but can be achieved through peace, where the perpetrator and victim can reach an agreement to restore the relationship and overcome the psychological and social impacts arising from the crime. This study uses a normative legal research type with a conceptual and legislative approach. The source of legal materials uses primary, secondary and tertiary legal materials obtained from literature studies and obtained through interviews with sources related to this study, namely *Ninik Mamak Suku*, namely the Head of the Sikabau Nagari Customary Council. The analysis of legal materials used in this study uses qualitative descriptive. The results of this study provide an overview of the application of restorative justice using the traditional *bajanjang naik batanggo turun* approach to customary crimes in Minangkabau. The results of this study are that the approach is carried out hierarchically with the principle of deliberation and consensus.

**Keywords:** *bajanjang naik batango turun*, Minangkabau, misdemeanour, restorative justice

## I. Introduction

The development of increasingly modern societal dynamics greatly affects daily life, including criminal acts. The phenomenon in Indonesia shows that the variety of criminal acts committed, both in terms of number and type of crimes committed, is not only serious crimes such as corruption, but minor crimes are also fair in crowding the justice system in Indonesia. Based on this, according to the Supreme Court report data in 2023, there were 28,529 cases of

theft, 5,482 cases of assault and 4,086 cases of fraud and other cases included in minor crimes. This situation creates new problems in law enforcement in Indonesia, where the justice system tends to focus more on punishment than on recovery.<sup>1</sup>

Misdemeanors in general must be handled properly, in other words, there are still legal consequences that are accountable to the party who committed the crime. So far, misdemeanor cases have been resolved in criminal court proceedings, but these crimes should be reinterpreted because justice is a fundamental pillar but has various interpretations. The modern legal system tends to define justice by measuring it from a legalistic perspective, which focuses on providing sanctions and punishment for the perpetrators of existing crimes and does not pay attention to the social and cultural dimensions by providing a more comprehensive solution for all parties involved.<sup>2</sup>

The most used punishment is imprisonment, which in turn creates a high reliance on the use of this instrument without considering the interests of victims. As a result, problems such as an increase in the number of inmates in detention centers and correctional institutions continue to occur, and this figure tends to increase every year. This form of punishment is often not aligned with the need for recovery for victims. Therefore, another approach has emerged, namely restorative justice, which emphasizes that the resolution of criminal cases does not have to be based on the spirit of revenge, but can be achieved through peaceful means, where the perpetrator and victim can reach an agreement to restore relationships and overcome the psychological and social impacts arising from criminal acts. With this approach, justice can be achieved without necessarily leading to imprisonment, but rather in ways that are more humane and consider the interests of victims and society.<sup>3</sup>

Restorative justice is a process of resolving cases outside formal justice that has a new way of thinking and paradigm in overcoming and viewing a crime. Restorative justice can consider the wider impact on the parties involved such as victims, perpetrators and the community. The restorative justice approach focuses on the losses resulting from criminal acts that must be restored both in the losses suffered by victims and those felt by the community, thus restorative justice becomes an alternative effort to resolve criminal cases that occur. Alternatives in settlement are carried out as a settlement effort that creates humane justice.<sup>4</sup>

The concept of restorative justice emphasizes healing for both victims and perpetrators, more than just providing compensation and emphasizes dialogue between the parties involved to resolve the conflict. Providing space in the process of dialogue, mediation and reconciliation to prevent greater negativity, both for perpetrators, victims and society.<sup>5</sup> The principle of restorative justice is recognized in the current criminal justice system in Indonesia, one of which is in Law Number 11 of 2012 concerning the Juvenile Justice System which has contained restorative justice for the first time in the law.

The current development of restorative justice is found to be regulated and based on the context of other laws and regulations such as circulars and decrees as well as in agreements between law enforcers in Indonesia at this time there are various rules that use the word

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<sup>1</sup> Mahkamah Agung RI, Laporan Tahunan Mahkamah Agung Republik Indonesia Tahun 2023, dikutip dari laman: <https://registrasi.mahkamahagung.go.id/>; diakses pada 14 Oktober 2024.

<sup>2</sup> Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, (Yogyakarta: Genta Publishing, 2009), 20.

<sup>3</sup> Efren Nova, "Penerapan Restorative Justice dalam Penyelesaian Tindak Kekerasan Terhadap Perempuan dan Anak Sebagai Perwujudan Hak Asal Usul di Sumatera Barat", *UNES Journal of Swara Justisia*, Vol. 1, No. 2, (2023): 820.

<sup>4</sup> Jean Calvinjin Simanjuntak, *Restorative Justice: Metamorfosa Kearifan Lokal Indonesia*, (Depok: Raja Grafindo Persada, 2023), 22.

<sup>5</sup> Muhammad Latif, "Restorative Justice dan Sistem Peradilan Pidana di Indonesia", *Jurnal Dinamika Hukum*, Vol. 18, No. 1 (2018): 46.

“restorative justice”, namely Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution. Based on Restorative Justice and Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice, passed on August 19, 2021, Decree of the Director General of the General Justice Agency Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice.<sup>6</sup> And in 2024 the Supreme Court issued Supreme Court Regulation of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

The values and principle of restorative justice has long been embedded in the sociological conditions of Indonesian society, where restorative justice practices have been carried out since the Nusantara era. Basically, the social values that exist in Indonesia emphasize the importance of maintaining personal relationships and avoiding disputes. This is reflected in customary justice which has concepts in line with restorative justice, both in terms of results, processes and goals. Restorative justice approaches are also found in many traditional cultures in Indonesia and by combining them with local wisdom, restorative justice can provide many benefits and become a positive part of the conflict resolution system.<sup>7</sup>

The participatory nature of restorative justice prevalent in customary law suggests that this approach can be a means of supporting customary justice systems as well as facilitating the self-determination of communities. The rights of indigenous peoples are reflected in the practices of customary justice systems which include traditional customs, values and language recognized by the courts as well as legal procedures. Customary norms and laws serve to regulate relationships between community members, where their existence is considered a necessity to create harmonious relationships. In addition, many cases in customary justice mechanisms are considered more accessible compared to the state justice system, mainly due to their cultural relevance. As such, restorative justice not only provides conflict resolution solutions, but also supports the preservation of local cultural values and increases community participation in the legal process.<sup>8</sup>

One of the traditional approaches is the Minangkabau custom known as “*Bajanjang Naik Batanggo Turun*”. Traditional conflict resolution in Minangkabau is based on the principle of *Bajanjang naik Batanggo Turun*, which means that conflict resolution must be done gradually. The purpose of this principle is to build peace and prevent divisions between indigenous communities caused by conflict. Customary case resolution in Minangkabau seems to be more effectively resolved through customary dispute resolution institutions, because kinship ties within clans and tribes are very close. This statement is supported by the fact that it is rare for general disputes in West Sumatra to be resolved through local courts.<sup>9</sup>

Settlement through customary law, for example, in the area in Sikabau village, Dharmasraya district, criminal offenses that can be carried out with the *Bajanjang Naik Batanggo Turun* approach, one of which is petty theft, which depends on what losses the perpetrator has stolen. Usually in these cases the process begins with a deliberation between the injured party, the perpetrator, the families of both parties and traditional leaders, which if at the *sekaum* level they have agreed to reconcile, the perpetrator must return the stolen goods or provide

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<sup>6</sup> Erasmus A.T. Napitupulu dkk, "Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia", *Al-Adl : Jurnal Hukum*, Vol. 10, No. 1 (2022): 8.

<sup>7</sup> Riyanto Sigit, *Budaya Hukum dan Keadilan Restoratif di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2020), 45-60.

<sup>8</sup> Ahmad Suhardi, *Hak Masyarakat Adat dalam Sistem Peradilan: Keadilan Restoratif dan Hukum Adat*, (Jakarta: Rajawali Press, 2020), 48.

<sup>9</sup> Wiratman, Herlambang Perdana “Perkembangan Politik Hukum Peradilan Adat”, *Mimbar Hukum*, Vol. 30, No. 3 (2018), 490.

commensurate compensation to avoid further conflict. The principle of restoring existing social relations is at the core of Minangkabau customary law.<sup>10</sup>

The rights of origin and customs of the village or *nagari* are rights that live and develop in community life as regulated in Law 6 of 2014 concerning Villages. The rights of origin and traditional rights are expressed in a principle of recognition, namely that the state gives recognition and respect to the rights of origin and customs of the village or Nagari. The concept is regulated in Article 5 of West Sumatra Regional Regulation Number 7 of 2018 concerning Nagari that Nagari institutions consist of the Kerapatan Adat Nagari (KAN) which is used in resolving criminal cases.<sup>11</sup>

Resolution through Minangkabau customs carried out with the "*Bajanjang Naik Batanggo Turun*" approach is considered more effective in maintaining social harmony in the community because it involves traditional leaders and the community. The conflict resolution process focuses on the goal of reaching an agreement that can restore the situation so that it does not focus on imposing sanctions that can create a prolonged stigma of revenge. In practice, this process not only prioritizes problem solving, but also emphasizes the importance of communication and understanding between the parties involved. Discussing problems openly, listening to each other, emphasizing communication and the roles of the various parties involved is expected to find a solution that is fair and accepted by all parties. In the end, the "*Bajanjang Naik Batanggo Turun*" approach can not only help rebuild trust, build social relationships damaged by conflict, reduce recidivism rates but also restore relationships between individuals in the community, avoid disputes and create stronger social ties.<sup>12</sup>

## II. Research Problems

This research is centered around two main questions. First, what is the general overview of Minangkabau Customary Law, including its foundational principles, institutional structures, and underlying values? Second, how does the Minangkabau customary society apply the Bajanjang Naik Batanggo Turun approach in resolving customary criminal offenses? The study aims to explore the distinctive characteristics of the Minangkabau customary legal system and to examine how conflict resolution is carried out through local values and traditional wisdom inherent in the community.

## III. Research Methods

This study employs a normative juridical research method, which focuses on the examination of legal norms, principles, and doctrines within the context of Minangkabau Customary Law. The research is primarily based on secondary data, including statutory regulations, customary law texts, academic books, and peer-reviewed journal articles that discuss

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<sup>10</sup> Willa Wahyuni, Kedudukan Hukum Adat Terhadap Hukum Pidana, dikutip dari laman: <https://www.hukumonline.com/berita/a/kedudukan-hukum-adat-terhadap-hukum-pidana-lt6376b64d80528/>; diakses pada 19 Oktober 2024.

<sup>11</sup> Rudi Putra, Indah Dewi, "Asas Rekognisi dan Pengakuan Hak Asal Usul dalam Kelembagaan Nagari: Studi Implementasi Peraturan Daerah Sumatera Barat Nomor 7 Tahun 2018", *Jurnal Hukum dan Kearifan Lokal*, Vol. 12, No. 2 (2020), 215-230.

<sup>12</sup> Syahrial Syamsul, Kearifan Lokal dalam Penyelesaian Konflik Adat Minangkabau: Studi tentang Pendekatan "*Bajanjang Naik, Batanggo Turun*", (Yogyakarta: Pustaka Adat Nusantara, 2020), 32. Lihat pula Trisno Raharjo, "*Kebijakan Hukum Pidana dalam Penyelesaian Konflik antara Pelaku dan Korban Tindak Pidana Melalui Mediasi Pidana*", Disertasi, Program Studi Doktor Ilmu Hukum Universitas Diponegoro, 2011.

both the general structure of Minangkabau Customary Law and the application of *the Bajanjang Naik Batanggo Turun* approach in resolving customary criminal offenses.

The collected legal materials will be analyzed using descriptive qualitative analysis. This approach involves interpreting the substance and structure of the customary legal system, uncovering the patterns, meanings, and values embedded within the Minangkabau tradition. Particular attention will be paid to identifying the socio-legal mechanisms that underlie customary dispute resolution processes. The analysis aims to provide a comprehensive understanding of how legal traditions and cultural values function together in the customary justice system of the Minangkabau society.

## IV. Result and Discussion

### 1. Overview of Minangkabau Customary Law

The basis of law in Minangkabau society is unwritten customs used in society and regulates morality, habits, practices, and legal sanctions. Although the provisions are not codified, they are embedded in the hearts of indigenous people as the customary saying "*suku indak buliah di injak, malu indak buliah di agiah*". Minangkabau customary law has advantages that characterize the provisions of the customary law of the Minangkabau people. All members of the community must comply with the rules that have been set to ensure and maintain mutual safety. People who do not comply and do not know the customs will get sanctions according to the offense.<sup>13</sup>

Minangkabau customary law is basically divided into 4 levels (*Adat Nan Ampek*), namely:<sup>14</sup>

a) *Adat Nan Sabana Adat*

"*Adat nan sabana adat*" refers to all the laws, traits, and provisions that are part of divine law and can be found in nature or in nature unchanging. The habit of the ocean waves, the habit of the cock crowing, and the habit of burning fire are examples of definite and unchangeable determinations although the term "*adat*" which usually implies habit is still used in each of these interactions, there seems to be some sort of habitual relationship between the attribute and the attributed in each of the situations mentioned above. This shows that there are no absolutes in our world.

b) *Adat Nan Diadatkan*

The ancestors of the Minangkabau people created, implemented and maintained *adat* as a set of rules for social life in all fields. The ancestors compiled the norms they had formed based on guidelines, examples and analogies from natural law. Minangkabau society has long recognized *Datuak Katumanggungan* and *Datuak Parpatiah nan Sabatang*, the two traditional heads of Minangkabau, as the people who created the customary law.

c) *Adat Nan Taradat*

It is a regulation with the preparation of consensus deliberations carried out by the *penghulu-penghulu*, *niniak-mamak* in each *nagari* in West Sumatra. The regulation is useful for implementing the rules or basic laws of *adat* nan mandated from ancestors that must be

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<sup>13</sup> A.Suriayam Muatari Pide, *Hukum Adat Dahulu, Kini dan Akan Datang*, (Jakarta: Prenadia Group, 2014), 5.

<sup>14</sup> Yulizal Yunus dkk, *Modul Penguatan Pemangku Adat*, (Padang: Dinas Kebudayaan Provinsi Sumatera Barat, 2018), 48.

adapted to the situation and conditions of the Nagari concerned, thus the rules of *adat nan taradat* are not the same in every traditional Nagari, as the traditional saying goes:

*Lain lubuak lain ikann*  
*Lain padang lain bilalangnyo,*  
*Lain nagari lain adatnyo.*

This means that the rules that exist in each *nagari* area have different implementations between one and the other, although there are differences in implementation, the basis used remains the same, which is equally based on *adat nan taradat*.

d) *Adat Istiadat*

Customs are habits that have prevailed in an area related to behavior in society. The custom is a provision that is familiarized by the *Ninik Mamak* customary leaders as a placeholder for advice in the life of the Minangkabau people. Customs do not apply in general and are more limited in their implementation.

The four types of adat mentioned above differ in the strength of their enforcement. Based on the source and extent of use of the four customs, the lowest level is *adat istiadat*. Customs can be upgraded if they have been widely practiced and do not violate the main rules that have been agreed upon previously. For example, from *adat istiadat* to *adat nan taradat*, and *adat nan taradat* can be upgraded to *adat nan diadatkan* based on mutual agreement so that it can be used more widely.

Minangkabau customary law is a regulation that governs the social life of the Minangkabau people, especially those living in the Minangkabau region of West Sumatra and cannot be separated from Minangkabau customary criminal law. Customary criminal law arises because of irregularities and is an unwritten legislation with a religious character that is consistently feared and followed by the community from one generation to the next. According to the *Alam Takambang Jadi Guru* philosophical theory, which is the basis of Minangkabau customary law, Minangkabau people derive their "truth" and "wisdom" from their conception of the universe.<sup>15</sup>

The Minangkabau region practiced its customary law provisions by referring to its own law known as *Undang-undang Nan Duo Puluah (Undang Nan 20)*. According to *Plakat Panjang*, the indigenous people were authorized to decide civil and criminal cases, and the Dutch colonizers were not involved in this process. *Undang-undang Nan Duo Puluah (Undang Nan 20)* is divided into two groups, namely *Undang Nan Salapan (Undang Nan 8)* which is a material customary criminal law including regulating actions and an act in the sense of an offense and *Undang Nan Duo Baleh (Undang Nan 12)* which is a formal criminal law. *Undang Nan 12* is not as detailed as the National Criminal Procedure Law in general, which contains evidentiary issues which consist of two stages of proof.<sup>16</sup>

The first stage in Minangkabau customary criminal law is called "*ceso*" which is the stage of defense or admission of the wrongdoing committed by the perpetrator. The *ceso* stage is part of the customary dispute resolution process, which is often carried out through the Customary Peace Council and is an important stage because it provides an opportunity for the perpetrator

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<sup>15</sup> M. Rasjid Manggis Dt. Radjo Panghoeloe, *Minangkabau Sejarah Ringkas dan Adatnya*, (Padang, Sri Dharma, 1971), 111.

<sup>16</sup> I Made Widnyana, *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana*, (Jakarta: Fikahati Aneska, 2013), 111-112.

to explain the incident and provide arguments in support of himself. After the "cemo" stage is complete, the next stage is the accusation stage and the sanctioning stage.<sup>17</sup>

Minangkabau customary law experts have a slightly different view in presenting the systematics and various interpretations of *Undang Nan Duo Puluah (Undang Nan 20)* by agreeing that the law is divided into two parts. First known as *Undang Nan Salapan (Undang Nan 8)* which is also known as material criminal customary law. Second known as *Undang Nan Duo Baleh (Undang Nan 12)* which is also known as formal criminal law. The following systematic development for the Law of *Nan Delapan Salapan (Undang Nan 8)* and *Undang Nan Duo Belas (Undang Nan 12)* are:<sup>18</sup>

- a) *Dago-dagi*, "is fighting against something that is not worth fighting against";
- b) *Sumbang-salah*, "is committing an act that violates customary offense rules";
- c) *Samun-sakal*, "is a robbery carried out in a quiet place";
- d) *Maliang-curi*, "is stealing other people's belongings";
- e) *Tikam-bunuh*, "is taking another person's life by using a sharp weapon or pointed object";
- f) *Kicuah-kencong dan tipu-tepok*, "is committing an act of fraud against another person, either through subtle means or through violence";
- g) *Upeh-racun*, "is taking another person's life by using poison, starting from a low dose to a high dose"; and
- h) *Sia-baka*, "is carrying out burning, starting from igniting to burning".

*Undang Nan Duo Baleh* consists of two parts, namely the first six parts contain accusations "cemo" (defamation), and the second six parts contain accusations "tuduah". The following is the systematic *Undang Nan Duo Baleh*:

- a) *Talala-takaja*, "is being caught red-handed committing a crime, and being chased together by the villagers ";
- b) *Tacancang-tarageh*, "the perpetrator's body was injured by the weapon used to arrest him and the perpetrator's clothes were used as evidence.";
- c) *Talacuit-tapukua*, "the perpetrator will be arrested because he is fighting against time, will be whipped and beaten by the person who arrested him ";
- d) *Putuih tali*, "the perpetrator's alibi cannot be proven";
- e) *Tumbang ciak*, "the perpetrator was shouted at by the crowd";
- f) *Anggang lalu atah jatuah*, "when a crime occurs, someone passes by that place, then people have prejudices against him";
- g) *Bajalan bagageh-gageh*, "the perpetrator of the crime walks in a hurry, and his behavior is suspicious";
- h) *Pulang pagi basah-basah*, "the perpetrator's clothes were wet and his feet were muddy at the time the crime occurred. ";
- i) *Manjua bamurah-murah*, "if someone sells goods cheaply at below the normal price, then people suspect them of being criminals.";
- j) *Dibao pikek Dibao langau*, "word of mouth that someone is suspected of committing a crime because of observing his daily behavior";
- k) *Tabayang tatabua*, "when a crime occurs the person is not caught but from a distance the perpetrator can be seen faintly in a dark place."; and

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<sup>17</sup> Alfadrian, "Eksistensi Hukum Pidana Adat Minangkabau Dalam Penerapan Sanksi Denda Terhadap Pelaku Zina di Nagari Limo kaum Kecamatan Limo kaum", *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum*, Vol. 6, No.1 (2019), 2.

<sup>18</sup> Aria Zurnetti, *Kedudukan Hukum Pidana Adat dalam Penegakan Hukum dan Relevansinya dengan Pembaharuan Hukum Pidana Nasional*, (Depok: Rajawali Pers, 2020), 3.

1) *Kacondongan mato urang banyak*, "there were signs on the accused according to many people after the crime had occurred."

## 2. Implementation of Restorative Justice for Misdemeanor Offenders with the *Bajanjang Naik Batanggo Turun* Customary Approach

The customary justice structure in society is used as an alternative to resolving criminal cases so that it can reduce cases resolved in formal criminal cases. Basically, there are two types of criminal settlements in society. The first is settlement through litigation where the settlement is carried out in the district court or formally. The second is through non-litigation, namely in a settlement through deliberation and consensus known as the restorative justice approach.<sup>19</sup>

Many cases are resolved out of court through customary courts based on family relationships and customary law. According to Minangkabau norms, customary institutions use customary courts to try to resolve customary violations. The Minangkabau community uses amicable resolution outside the court through joint negotiations to solve problems in resolving customary criminal violations to reach a unanimous decision and be implemented together. Customary resolution has its own meaning because it contains religious values, culture, goals and benefits.<sup>20</sup>

Customary criminal sanctions are applied to violators who have committed customary violations that disrupt public order. According to Minangkabau customary culture, when someone commits a customary violation, the tribe is responsible for enforcing the punishment. This is because every Minangkabau person is a member of the tribe while parties outside the tribe have an obligation to enforce the punishment by carrying out the decision after proper customary deliberation and if a serious violation occurs, outside parties have no right to interfere in the affairs of the community.

Efforts to resolve criminal problems are carried out in stages from bottom to top in accordance with the customary saying "*Bajanjang Naik Batanggo Turun*". These efforts are carried out in stages, starting from the lowest institution and continuing to higher customary institutions. The resolution of criminal problems is attempted to be resolved at the lowest level because if a problem is resolved by being taken to a higher level, it is considered a disgrace to the tribe or family. According to a Minangkabau proverb "*tak ado kusuik tak akan salasai, tak ado karuah nan tak janiah*," Minangkabau people always hope that every problem can be resolved. The customary peace process between disputing parties is the focus of Minangkabau customary law. The shame experienced by the perpetrator, his family and his tribe prioritizes the punishment imposed in a customary court.<sup>21</sup>

Article 15 Regional Regulation of West Sumatra province Number 7 of 2008 concerning Nagari is also explained:

- (1) "In each Nagari, the Nagari Customary Council establishes the Nagari Customary Court as the highest community dispute resolution institution in the Nagari according to the *Adat Salingka Nagari*"
- (2) "Before the dispute as referred to in paragraph (1) is resolved by the Nagari Customary Court, it must first be resolved at the family, *paruik, kaum* and / or tribe level by *bajanjang naik batanggo turun*"; and
- (3) The Nagari Customary Court, as referred to in paragraph (1), has the following duties:

<sup>19</sup> Syahputra, Irwan, "Restorative Justice dalam Penyelesaian Perkara Pidana di Masyarakat Adat," *Jurnal Hukum & Pembangunan*, Vol. 49, No. 2 (2019), 198-214.

<sup>20</sup> A. Irzal Rias, 2013, "Decision Reinforcement of Village Adat Council Institution in Resolving the Disputes Based on Minangkabau Adat Community", *Academic Research International Journal*, Faculty of Law Andalas University, Vol.4, No.2 (2013), 90.

<sup>21</sup> Interview with Datuak Jati Ketua Kerapatan Adat Nagari Sikabau, Dec 19, 2024.

- a. resolving *sako* and *pusako* disputes by *bajanjang naiak batanggo turun* through the peace process.
- b. settlement of customary civil cases through deliberation and consensus based on an agreement in the assembly of the Nagari Customary Density which is "*kato putuih*" to be guided by the judiciary.
- c. giving customary sanctions to community members who violate Customary Law in accordance with the provisions of *Adat Salingka Nagari*.

Article 15 above explains about Nagari and the process of resolving disputes within the Nagari, the settlement when viewed from the law is resolved from the lowest level first to the highest level by *bajanjang naik batanggo turun*. Apart from these regulations, there are also in the Regional Regulation of Dharmasraya Regency Number 2 of 2008 concerning Nagari Government, which contains several articles, namely:

#### Article 104

- (1) Kerapatan Adat Nagari serves as a Consultative Representative and the highest customary consensus or is a Niniak Mamak density institution that has existed and is inherited from generation to generation in accordance with the customs prevailing in each Nagari.
- (2) The Nagari Customary Density that has existed in each nagari before the enactment of the Regional Regulation on Nagari Government is recognized.; and
- (3) The existence of Kerapatan Adat Nagari as referred to in paragraph (2) may oversee one or several nagari government areas.

Article 104 describes the Kerapatan Adat Nagari which has a high position and is needed by every nagari. Article 105 Paragraph 2 regulates the duties and functions, namely:

#### Article 105

- (1) Kerapatan Adat Nagari has the following duties:
  - a. carry out the mandate of the deliberation of *Ninik Mamak, alim Ulama, Cadiak Pandai (tali nan tigo sapilin)* and *Bundo Kanduang* in the task environment; study, protect and carry out the duties of customary institutions in the life of the Minangkabau people spread across the nagari-nagari;
  - b. resolving problems arising in adat density institutions in *nagari-nagari* based on the principle of adat *salingka nagari*, conducting deliberation and consensus based on *alue* and *patuik* according to adat *basandi syara', syara' basandi kitabullah, bajanjang naik batanggo turun*;
  - c. provide input to the Nagari Government in preserving the values of *adat basandi syara', syara' basandi kitabullah in the nagari*;
  - d. administering and managing matters relating to adat in connection with *sako, pusako and sangsako*;
  - e. resolving adat and customary civil cases;
  - f. to seek peace and provide legal advice to members of the community who are in dispute and to give legal force to a matter and other proof according to the custom or genealogy of descent/*ranji*;
  - g. developing Adat Nagari culture in an effort to preserve regional culture in order to enrich the repertoire of national culture;
  - h. fostering the Nagari Customary Law community according to adat *basandi syara', syara' basandi kitabullah*;
  - i. carry out guidance and develop Minangkabau traditional values in order to maintain the preservation of adat in the nagari;
  - j. together with the Nagari Government to protect, maintain and utilize Nagari assets for the welfare of the Nagari community.
- (2) The tasks as referred to in paragraph (1), are carried out after going through the *Bajanjang Naik Batanggo Turun* process and coordinating with the Nagari Government.

The *bajanjang naik batanggo turun* approach can be seen as follows:<sup>22</sup>

- a) Settlement by People (*Kaum*)
  - 1) Presenting both parties which consists of the mamak of both parties concerned.
  - 2) Holding a consensus meeting to find a way to resolve the dispute; and
  - 3) Finding the best way to solve the problem if a consensus has been reached.
- b) Tribal settlement (*Suku*)
  - 1) Presenting tribal level Ninik Mamak from both sides.
  - 2) Conducting deliberations to find a solution to the problem.
  - 3) If there is consensus, then the settlement process is sufficient at this level only, or often known as the tribal level; and
  - 4) Not reaching a consensus on the matter at hand, the settlement process continues to the nagari customary density (KAN).
- c) Kerapatan Adat Nagari (KAN)
  - a. The KAN will form a team to solve the problem, which consists of KAN members who are trusted to solve the case; and
  - b. The KAN conducts a plenary session by weighing sala

One of the cases of customary criminal offences that has been resolved by the principle of *bajanjang naik batanggo turun* in the Sikabau Nagari area is theft committed by a Malay tribal perpetrator who stole at the home of a Mandailing tribal victim. The perpetrator was caught by the Mandailing tribe and tried by custom using the principle of tiering from below because in Minangkabau, the one responsible for existing cases is the respective tribe starting from a mamak. The process was held in the house where the case occurred, attended by parties from both tribes. Unfortunately, the settlement of the case was unsuccessful, so it was resolved at the next stage, which was the *Ninik Mamak* process. In the *Ninik Mamak* process, deliberations were also held between the *Ninik Mamak* of both tribes and finally agreed upon by consensus where the perpetrator returned the stolen goods.<sup>23</sup> In an effort to restore the honour of the perpetrator so that he can be accepted back by the community, a *kenduri* or joint meal is held involving the two tribes, namely the Malay tribe and the Mandailing tribe and traditional leaders and requires the perpetrator to participate in social activities carried out in the area.

## V. Conclusion

The implementation of the *Bajanjang Naik Batanggo Turun* customary approach in resolving customary criminal offences in Minangkabau society prioritizes the principles of deliberation and consensus to restore relations between the perpetrator, victim and community. The resolution process begins at the family level, where the perpetrator and victim are invited to dialogue and find solutions together. Agreements that are not reached at the family level can then proceed to the higher levels of the indigenous community, where traditional leaders play a role in ensuring justice is achieved without damaging social relations within the community. This approach emphasizes social restoration and harmony, rather than punishment or retribution, which is particularly suited to resolving minor crimes. The *Bajanjang Naik Batanggo Turun* approach not only resolves offences fairly but also strengthens social bonds and preserves cultural values in Minangkabau society.

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<sup>22</sup> Hasanuddin, *Kearifan Lokal Sumatera Barat Dalam Kerangka ABS SBK (Edisi 1: Musyawarah dan Kepemimpinan)*, (Padang: Swid Digital Printing, 2019), 4.

<sup>23</sup> Interview with Jamhur Datuak Jati Ketua Kerapatan Adat Nagari Sikabau, Dec 18, 2024.

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