

Customary Crime Settlement Based on the Adat Law of Minangkabau: A Criminological Study

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ABSTRACT

Adat crime according to Adat law of Minangkabau happens when an act violates the Act of 20 (Undang-Undang Nan 20). This act regulates of conduct, behaviors and acts of people in its community. According to Adat Nagari (KAN) which consists of Adat functionaries. The existence of KAN has been upheld by Perda Sumatera Barat No. 13 1983 and the Circulation letter 1985 of higher court of Sumatera Barat. Indonesian Supreme Court has also upheld the existence of Adat law. In its decision No. 1644 K/Pid/1998, May 15, 1991 Supreme Court turned down the charge of prosecutor with the argument that the accused has been tried and punished according to Adat Law. However, there should be some improvements in procedure, administration and skill of KAN so that it may follow the development in society, science and technology.

Keywords: Adat crime, supreme court, adat law

INTRODUCTION

Adat law of Minangkabau has developed as long as the history for centuries. In its development adat law of Minangkabau has given significant contributions to dynamics and continuity of Minangkabau's society life.

Adat law of Minangkabau develops in an adat village called Kenagarian. Nagari in Minangkabau according to its government is a federation. The concept of federation is based on philosophy of Adat Salingka Nagari meaning nagari independently administers itself.

The dynamics of society will always result in some forms of acts or behaviors which are not in accordance with the existing norms or rules, so that there are, in the life of society, acts violating adat law, especially in the form of adat crime. This requires settlements for developing justice to everyone in the society and, therefore, restoring order. For that reason, this essay discusses how the settlement of delik adat according to adat law of Minangkabau.

ADAT LAW AND DELIK ADAT

In the social interaction between individuals in a society, it frequently results in interest conflict. This doesn't always produce positive output, because different interests these individuals have will possibly develop conflicts.

In the viewpoint of Adat law these negative conflicts resulted from different interests can be stated that (someone) has done a violation or adat crime. Adat law is a genuine law in certain ethnic, unwritten, obeyed by those people where Adat law is upheld. Adat law (customary law) and adat (custom) cannot be separated.

Van Vollen Hoven writes that between customary law and custom can be differentiated only as custom which has or doesn't have legal consequences.

A theory states that “crime is a product of society itself”. This theory prevails universally, including in the customary law of Minangkabau (kenagarian). Eventhough rural society is usually described as peaceful society; this doesn’t mean that it doesn’t have the potency of conflict.

To anticipate that the aforementioned will not become a serious problem in the society, which can endanger stability and order in the life of society, so the society needs rules which limit rights and obligations of its people to prevent conflicts.

Customary conflicts in the customary law of Minangkabau arise because of frictions and violations against agreement stated in a rule or regulation symbolically called kato-kato, and other rules, so that the actors can be charged with delik aduan.

In the sentencing based on delik aduan, between actors, who have done same crimes, the punishments they have to suffer often differ. This is so because in the hukum adat (customary law) there is no term of violation crime as stated in the Kitab Undang-Undang Hukum Pidana (KUH Pidana). Customary law doesn’t categorize crimes and violations as KUHP does, which categorizes various kinds of acts, that is crimes (misdrijven) in book II from article 104 to 488 of KUH Pidana, and violation (overtredigen) in book III from article 489 to 569 of KUH Pidana.

Even so this doesn’t mean that customary law of Minangkabau doesn’t regulate the statement of criminal law. The statement is known by name Undang-Undang nan20, that is the act for the actors who do customary crimes.

This law administers accusation, crime/guilt and disdain. Undang-Undang Dua Puluh is divided into two main parts, i.e. Undang-Undang Dua Belas and Undang-Undang nan salapan administer the names of guilt, while Undang-Undang nan duo baleh is meant as a part that defines a guilt. If statements administered by undang-undang nan salapan comply with the statements regulated by undang-undang nan duo baleh, it can be said that delik adat has been developed (customary crime).

Undang-undang nan salapan is articles which concern crime type or called “cemo bakadaan”, the other 12 articles are nan duo baleh, i.e. statement concerning reasons (grounds) for arresting and punishing somebody, is also called “duo baleh tuduah nan bakatinggagan.” According to AA Navis in his book “Alam Takambang Jadi Guru”, this law consists of two parts, each consisting of six articles. The first part is called bagian tuduh that is articles that can be used to accuse somebody (the accused) for doing a crime. The other six articles are called “cemo”, presumptions against somebody as a man or woman who has done a crime, so that there are grounds for arresting and questioning him or her.

Undang-Undang Nan Salapan

Undang-undang Nan Salapan is the law which states a serious crime or guilt called also as “Cemo Nan bakaadaan” meaning presumption from many people against somebody who commits a crime.

The articles in the statement of undang-undang nan selapan regulate the following matters:

Article 1, defines a stealing crime:

- Partama banama maliang curi
- Maliang budi barang curian
- Tulalah takaja tatanda tabeti

Article 2, defines a killing crime :

Manikam luko atau mati
Kalau mati hukumnya bunuah
Darah taserak bangkailah lali

Article 3, defines Delik Perzinahan (Adultery):

Katiga basana sumbang salah
Sumbang karojo indak sopan
Malangga adat karajo salah
Tacancang tarajeh tarabaik rampasan

Article 4, defines robbery by violence or by killing (murder):

Kaampepek banama saman saka
Manyamin urang jo kakarasan
Harato diambiak basabuang jiwa
Karobannya mati atau pingsan

Article 5 defines crimes relating to fire (conflagration), committed accidentally or not, the point is the act has caused other people to sustain a loss:

Kalima banama sibaka
Manyia tanaman sirah dek api
Sagala barang hanguih tabaka
Nyo karaja salah tabeti

Article 7 defines murder using poison:

Katujuh banama upeh racun
Upeh racun pada makan
Atau diusahakan supaya taminum
Sampai mayakik mamatikan korban

Article 8 defines crimes committed by a superior or subordinate, i.e. penghulu and alat nagari:

Kasalapan banama daga-dagi
Daganyalah bakaroh hati
Daginya bakoeh hati
Apa mufakat bairindak tahu

Undang-undang nan duo baleh

Procedure of undang-undang nan duo baleh is stated by words:

1. Tatu mbuak that is the actor is incapable of denying accusation leveled to him, so that he cannot defend himself. The accused has to admit that he is the man who commits the act.
2. Tatando, Tabukti. Tatando means personal belongings from the accused are found on the scene. Tabukti means it can be seen from the evidence which attaches to body or clothes; he is the man who commits a crime.

3. Talkek, takabek. Taikek means the person who is committing a crime is caught. Takabek means the person who commits a crime is caught on the spot where he or she cannot escape from the spot.
2. Tercencang, Tarageh. Tercencang is traces which are found as a result from the act of the accused on the scene. Tarageh, i.e. It has been found in the accused body the marks which have been caused by an existing object on the scene.
3. Tahambek, Tapukua. Tahambek is the accused cannot escape from people surrounding him. Tapukua is the accused is caught after he has been beaten by people who chased him.
4. Talalah, Takaja. Talala is the accused is found in a hiding place after tracking down. Takaja is the accused can be caught in the chase.
5. Basu ruik bak sipasan bajajak bak bakiak. Traces are found on the earth toward the accused.
6. Anggang lalu, atah jatuah. Somebody was found on the scene at the same time with the act was committed.
7. Kecondongan mato urang banyak. At the time of the incident, many eyes see it.
8. Bajura bamurah murah. Somebody is selling goods or stuffs at very low price, so this incident arouse suspicion that those stuffs don't belong to him or her.
9. Bajalan bagageh gageh. The accused is walking fast hurriedly; from his face shows he is frightened.
10. Dibaok pikek, dibaok langau. Pikek is a type of insect looking for food in the body of buffalo, its body size rather bigger than flies. The accused walks here and there; it is not known where to go.

The difference in sanction types and forms imposed on the actors of customary criminal law, even in the same crime, arise as a result from the concept of customary criminal law of Minangkabau. It emphasizes sentences which avoid physical punishment; it stresses aspects of hukum budi. The people of Minangkabau live in family relationship. It is disgraceful for somebody whenever he is ousted from the relationship. Dishonor is an unbearable punishment for the people of Minangkabau, like the words go: Nan sakik kato yang sakit kato. Nan tampak malu.

Based on the aforementioned explanation, it is clear that if a violation against undang-undang Nan 20 arises, the imposed sanctions differ between one kanagarian with other kanagarian, even though delik adat violated is the same. We can see these from 2 case examples, cases which arose in Kabupaten Padang Pariaman.

There are 2 interesting cases, i.e. cases of delik susila (cases of adulteries):

The first is case where a married woman committed adultery with a divorced man. She bore a child. This case occurred in Desa Tigo Sapilin Kenagarian Pauh Kembar, Kecamatan Nan Sabaris. This case was resolved by involving KAN, alim ulama (Islamic figures) and pemuka adat (customary figures). Decisions made by KAN were:

1. Their marriage is not allowed, since the woman is still in marriage with her previous husband.
2. Both parties (the actors) had sanctions based on the prevailing customary law in kanagarian Pauh Kembar, Kecamatan Nan Sabaris. Those sanctions are:

- a. Imposing “sanksi takambang.” Serve a meal and slit a goat.
- b. Especially for the man has to give 20 sacks of cement for mosque.
- c. If the woman is divorced by her husband, the man who committed adultery with her must marry her, if she marries to other man, then the man has to pay “uang hilang”(lost money) to the adulterous man conform to the agreement.

Customary sanction had been executed by the woman, and the man had not done it yet, to him is still imposed the sanction of sepanjang adat for his family and to him was imposed a sanction of buang sirih.

The second case occurred in desa Gugu kenagarian Kayu Tanam. The case is delik susila, which arose in 1996. The actors were common people and the settlement was made by KAN, ninik mamak, customary sanction was hukuman sepanjang adat and both who got involved in this case could not afford to pay the obligation, and then to them were imposed hukuman sepanjang adat.

The Resolution of Delik Adat Based on Customary Law of Minangkabau

The history shows that those who are in charge to resolve cases of delik adat are customary institutions (tradition) of Minangkabau. At first there were two customary institution in Minangkabau which their existence were admitted by the people of Minangkabau, they were

1. Permusyawaratan Adat Nagari (PAN)

The institution is entitled to and in charge to make “Undang-undang nagari” based on cupak asli, conforms to the rules of customary law which cannot be changed. The membership of PAN consists of:

- a. Penghulu, that is petinggi adat or the leader of a community who has to be responsible to the community and his children-nephew, so penghulu suku acts as
 - a.1 Member of Community
 - a.2 A father in the family
 - a.3 Mamak in his community
 - a.4 Urang Sumando to his wife’s community
 - a.5 Ninik Mamak in the nagari
- b. Intellectuals consist of:
 - b.1 Para peringkat penghulu
 - b.2 luaro adat
 - b.3 Mamak Pusako
 - b.4 Mamak Tunganai
- c. Alim ulama called also by “Sukiah bendang dalam nagari”
- d. Parit pagar, “law enforcers” consisting of:
 - i. Manti (prosecutor)
 - ii. Hulu baling or panglimo pendek (customary police)

Trial by PAN is carried out in an extraordinary and urgent situation, for instance in case of changes on “undang-undang nagari”.

2. Kerapatan Adat Nagari (KAN)

KAN is responsible for applying “undang-undang Nan 20”, that is crimes which are categorized into delik adat.

There are 2 duties of Kerapatan Adat Nagari (KAN):

- a. Customary Administration Department
- b. Justice Department

The second duty of KAN (justice department) is to resolve disputes or violations of customary law which cannot be resolved by justice (court) under it. There are KAN with different names in each Nagari:

- a. Peradilan paying
- b. Peradilan sekampung
- c. Peradilan setungganai

By issuance of Perda Sumatera Barat Nomor 13 tahun 1983, the role of KAN is defined clearer and its position is juridically stronger. This can be seen clearly in the Chapter IV about the duties of Kerapatan Anak Nagari (KAN), they are:

Article 7 point (1): Kerapatan Anak Nagari has duties:

- a. To administer and manage those relating to sako dan pusako.
- b. To resolve the case of social custom
- c. To seek peace and grant legal certainty (fact) to the members of community who are in dispute and to something in the other testimony based on sepanjang adat.
- d. To develop culture of the nagari’s people in order to preserve regional culture.
- e. To register, protect, maintain and manage, utilize the nagari riches in order to increase social prosperity.
- f. To coordinate the customary-law society begin from the community according to sepanjang adat prevailing to each nagari.
- g. To represent nagari and act on behalf of nagari or the society outside and inside the justice for things relating to rights and properties belong to nagari.

Article 8: Kerapatan Anak Nagari (KAN) determines the procedure and rules of the prevailing law.

Article 9: Secretariat of PAN has duties; to regulate and hold nagari administraton which cover matters of:

- a. Customary peace
- b. Social custom development
- c. Nagari properties
- d. Nagari prosperity
- e. Nagari finance

In addition to the aforementioned regional regulation, position of KAN is stressed as well in the Surat Edaran Pengadilan Tinggi Sumatera Barat tahun 1985 stating as follows:

Based on the decision then who is in charge to resolve delik adat based on customary law of Minangkabau is KAN. It is necessary to understand about adat minangkabau. Adat means all rules of social life in Minangkabau. This adat (custom) can also be called unwritten law which has to be obeyed by the people. Whereas adat Minangkabau is a way of life based on “akal budi”, i.e. adat is made based on morals conduct. Adat minangkabau consists of 4 varieties:

- I. Adat nan sabana adat
- II. Adat nan teradat
- III. Adat nan diadatkan
- IV. Adat istiadat

B. Resolution of Adat crime

Reviewed from criminological perspective, resolution of criminal conflict in Kanagarian through mechanism of KAN is in accordance with the teaching of abolitionist which criticizes criminal law enforcers in coping with crimes. Similarly, reformists see that the resolutions through penal facility do not cope with the criminality. They say that repressive system still can be used, but it needs significant improvement for diminishing the existing weakness. Abolitionist wants a non-repressive system. His stance is not “how to reform” but “how to replace”.

In dealing with adat conflicts by KAN as an institution which frequently is followed with mediation act in the conflict resolution is similar with mediation in assensus model introduced by abolitionist who wants a more flexible communication so that conflict between the actor and the victim is easily resolved. More importantly, resolution by way of institution oriented to society.

This evaluation is becoming stronger after Mahkamah Agung RI (supreme court) via its decision Nomor: 164K/Pld/1988 date may 15,1991 stated that it cannot admit the charge from public prosecutor against the accused who applies delik since he or she has previously been imposed sanksi adat, and the sanction has been executed by the accused.

Then regional government of Sumatera Barat also admitted the existence of customary law of Minangkabau to resolve delik adat. This can be shown by the issuance of Perda Nomor 13 tahun 1983, and then of Surat Edaran by higher Court Of Sumatera Barat in May 1985, among other things stated:

1. Every charge on dispute of tanah pusaka tinggi, the court is asked to advise the disputed parties in order to resolve it first by KAN or by LKAAM.
2. If the dispute has got a decision by KAN or by LKAAM, and this decision is not satisfying to the disputed parties, they bring the charge to the court.

Admission to customary institution by Supreme Court is an acknowledgment to the existence of customary law. Therefore, it is logically acceptable if the Supreme Court makes this decision can prevent duplication of cases, the same case which is tried by different institution, because basically what is underlined in undang-undang Nan 20 is penal incident which can be asked for penal responsibility.

CONCLUSION

Delik adat is all acts or incidents which are opposite to decision, familiarity, order, security and justice, law knowledge of society in question, social response arise to restore social balance.

Resolution against the aforementioned has been carry out based on customary law of Minangkabau through KAN works with community figures and alim ulama, intellectuals. Their decision which have been made to members of the society who violate the law are acceptable and there are no cases brought to the the courts. By application customary sanction against delik adat, it becomes a warning for the people that are important to obey and uphold the customary law of Minangkabau.

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REFERENCES

- [1] Bushar, M. (1983). *Pokok-Pokok Hukum Adat*. Jakarta: Pradaparamitha.
- [2] Hazairin, (1970). *Demokrasi Pancasila*. Jakarta: BIna Aksara.
- [3] Hilman, H. (2003). *Pengantar Ilmu Hukum Adat Indonesia*. Bandung: Mandar Maju.
- [4] Nurjaya, I. N. (2007). *Reorientasi paradigma pembangunan Hukum Negara Dalam Masyarakat Multikultural Perspektif Antropologi Hukum*, Pidato Pengukuhan Guru Besar Dalam Bidang Ilmu Hukum Pada Fakultas Hukum Universitas Brawijaya Malang.
- [5] Ali, M. (2004). *Sosiologi Hukum, Kajian Empiris Terhadap Pengadilan*. Jakarta: STIH-IBLAM.
- [6] Hasbi et al. (1990). *Nagari, Desa Dan Pembangunan Pedesaan Di Sumatera Barat*. Yayasan Genta Budaya, Sumatera Barat.
- [7] Philipus, M. H. (1987). *Perlindungan Hukum Bagi Rakyat di Indonesia*. Surabaya: PT Bina Ilmu.
- [8] Djik, R. V. (1979). *Pengantar Hukum Adat Indonesia (cetIII)*. Bandung: Sumur.
- [9] Rahmat, S. (2011). *Rekonstruksi Politik Hukum Ketahanan Pangan Berbasis Pada Sistem Kearifan Lokal (Studi Kasus Dinamika Perlindungan Hukum Hak Masyarakat Adat Tengger Dalam Menuju Kedaulatan Pangan)*, Disertasi, Semarang.
- [10] Rusdi, Z. (1992). *Eksistensi Masyarakat Hukum Adat Minangkabau*. Haluan, 22 April 1992.
- [11] Sapirin, (1997). *Tata Pemerinthan dan Administrasi Pemerintahan Desa*. Jakarta: Gahlia Indonesia.