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The Role of Traditional Leaders in the Enforcement of Acehnese Customary Justice

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Abstract

The degeneration of any society can lead to disharmony and imbalance within the society. Taking a case to a formal court takes time and money. In order to reduce the number of cases heard by the formal courts, an informal court called "Peradilan Adat" needed to be established. Many cases occurring in Aceh's rural society are resolved by the Aceh Customary Institutional Court (Peradilan Adat Aceh). The court has jurisdiction over eighteen cases and is heard by a

judicial staff composed of village chiefs, Islamic scholars and other trusted public figures. The resolution of disputes is based on the voluntary consensus of both parties. Therefore, this decision is a "win-win solution". The decision (judgment) is final and binding in nature. Aceh provincial police agency POLDA and the Aceh Customs Assembly signed a memorandum of understanding recognizing and respecting the decision of the Aceh Customs Court.

Keywords: Customary Law, Dispute Justice Providers

1. Introduction

Any disputes in society will destroy the balance of social order. Therefore, all disputes must be resolved before social order can be restored to balance. Every society has different traditions for dealing with disputes. Disputes can be resolved in a variety of ways, both through formal forums provided by the State and through other informal forums provided by the State.¹ In Indonesia, apart from the state court as a formal dispute resolution institution whose existence is regulated in Law No.48 of 2009 concerning Judicial Power, also known as other dispute resolution institutions that refer to customary law. This is motivated by the legal pluralism that applies in Indonesia, the law that applies is not only law originating from the government or state (state law), but also law originating from community customs (customary law) and law originating from religious teachings (law religion). In the world of customary law, disputes have long been resolved by negotiation and consensus through customary institutions, often called customary courts. Traditional figures (traditional leaders) and religious leaders often serve as judges in this body. The power of traditional judges is not limited to mediation, but also has the power to adjudicate disputes in all fields of law, regardless of criminal, civil and public litigation.² The existence of customary law communities in Indonesia receives clear and firm legal recognition and protection in Article 18B of the 1945 Constitution which stipulates that "the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society." and the principles of the Unitary State of the Republic of Indonesia as regulated in law." The Article 18B of the UUD 1945 provides a place for and gives respect to people who implement customary law which has persisted for generations.³ Therefore, customary law still has a relationship with national law, the relationship of which is functional. In the sense that customary law is the main source in the development of national law, where materials in customary law are taken that are appropriate and harmonious, which are then used as the basis for the formation of national law.

¹ Eman Suparman, "Pilihan Forum Arbitrase dalam Sengketa Komersal untuk Penegakan Keadilan", Tata Nusa, Jakarta, 2004.

² Hilman Hadikusuma, Pengantar Ilmu Adat Indonesia. Mandar Maju, Bandung, 2003.

³ Supriadi Supriadi, Syahrizal Abbas, Iman Jauhari, Suhaimi, "The practice of land pawn in Aceh Besar Customary Law", Opción. 2019; 35(Especial 22): 791-806. <https://produccioncientificaluz.org/index.php/opcion/article/view/29509>.

2. Research Methods

Based on the problems in this research, the type of research used is normative juridical, namely research carried out with the aim of examining legal elements in detail. The data required in this research was obtained by examining library materials (secondary data) or library legal research.⁴ Next, study secondary and tertiary legal materials. Secondary legal materials include textbooks, journals, research results, etc. Meanwhile, tertiary legal materials such as the dictionary, articles in the mass media, both print and electronic mass media, and materials obtained through internet access.

The research approach used is a statutory approach, namely by examining statutory regulations relating to the enforcement of Acehese customary justice. The data obtained from primary data, secondary data and tertiary data, and than legal materials was analyzed qualitatively.

3. Result and Discussion

3.1 Legal Basis for Acehese Customary Courts

The Acehese Customary Court has existed for hundreds of years and continues to exist because it is able to administer justice that is cheap, fast, has simple procedures, is easy to reach and the dispute resolution forum (customary justice forum) is in the village itself. In addition, customary justice is able to realize a sense of justice that is rooted in the legal culture of the local community and refers to the legal norms that live in society (living law). The existence of customary law courts has contributed significantly to reducing the backlog of cases in ordinary courts, and the existence of customary law courts is currently recognized by the state, as stated in Article 18B (2) of UUD 1945, Law No.44 of 1999 Aceh District Implementation of Special Provinces, Article 98 of Aceh Government Law No. 11 of 2006 (Government of Aceh Law), Aceh Qanun No. 9 of 2008 on Customs and Customs Development Article 98 of Aceh Qanun of 2008 on Traditional Institutions Resolution No. 10 and Aceh Traditional Council Resolution No. 8 of 2019 Aceh Qanun. Joint Decree No. 189/667/2011, 1054/MAA/XII/2011/B/121/1/2012 Mukim or Other names include Aceh Traditional Court and Aceh Governor's Decree No. 60 of 2013 on the Implementation of Customary Disputes/Dispute Settlement.

Based on the description above, it can be understood that the Aceh Government Law is a recognition by the central government of regional specificities. Aceh is a special region which is regulated by its own law in carrying out its government. These specificities include, among other things, the existence of Wali Nanggroe, management of regional assets, division of finances between the center and regions, implementation of Islamic law, and implementation of traditional life. Specifically, regarding the customs sector, in the Aceh Government Law there are also customary institutions which function and act as vehicles for community participation in the administration of the Aceh government and district/city governments in the areas of security, peace, harmony and public order.⁵

⁴ Johnny Ibrahim, "Teori dan Metodologi Penelitian Hukum Normatif", Bayu media Publishing, Malang, 2007.

⁵ Sarwoko, "Peran Kepolisian Resort Kota Banda Aceh dalam Mengawas Putusan Peradilan Adat Gampung", Syiah Kuala Law Journal, Vol.1 (1), April 2017, pp.301-319.

3.2 Legal Principles in Customary Courts

Principles are an order of values that occupy the highest hierarchy of various legal systems (Jus Cogen) and must not be deviated from by any legal system. In the Acehese customary law system, there are a number of principles known which generally can be accepted by various other legal systems. So far, a number of principles have been identified and it is estimated that there are still several other principles that have not been discovered.

1. Acceptable, customary justice can be accepted by the local community because this justice has been integrated into their lives for generations.
2. Accountability, can be held accountable; this principle refers to the responsibility of keuchik and tuha peuet as well as other traditional justice administrators in deciding cases. This responsibility is not only addressed to the parties, the general public and the state but also to Allah SWT.
3. Clarity of procedure, clarity of procedural guidelines; The gampong judicial process always refers to procedural law or guidelines in unwritten form, but these guidelines are very clear and can be understood by both parties involved in the case and traditional leaders.
4. Non-Discrimination; equal status before customary courts. Customary courts must not discriminate between gender and social status. Everyone has the same position before customary courts (equality before the law).
5. Accessible to the public; accessible to the public. Every gampong judicial decision must be accessible to the community both in terms of costs, time and procedures.
6. Voluntarily, customary justice is voluntary. Customary courts may not force parties to resolve their cases through customary courts.
7. Peaceful Solution, peace. The aim of customary justice is to create balance and peace in society.
8. Win-Win Solution, both win and both are satisfied.
9. Concensus, deliberation. Decisions made in customary courts are based on the results of consensus deliberation between the executors of customary courts and the parties in order to achieve peace.
10. Transparency, nothing is hidden. All judicial processes, whether related to receiving complaints, summoning witnesses, hearings and making and reading decisions, must-be carried out in a transparant manner.
11. Competency, authority. The authority to adjudicate customary courts applies to cases that occur in the Gampong and Mukim areas.
12. Territoriality, area. This principle concerns the territory or place where customary violations or customary criminal offenses occur (jurisdiction).
13. Domicile, residence. The parties who commit customary violations or customary criminal offenses must clearly know their place of residence.
14. Pluralism, traditional justice respects the diversity of legal norms originating from various different legal systems that apply in a society.
15. Presumption of Innocence, presumption of innocence. Customary law does not condone vigilantism.
16. Proportional Justice, fairness and justice. Customary court decisions must be fair and justice is applied based on the level of economic capacity of the parties.

The general principle adhered to by customary justice in Aceh is that 'you must not expose someone's "disgrace" and

you must maintain the dignity of the person/family, feeling ashamed of something that is dirty in public view, namely *toep aieb* (covering disgrace). These rules emphasize that in the customary justice process, these two things should not arise, and efforts should be made to localize them. In this way, the parties who commit the violation can have their disgrace covered, such as an obscene matter.

Another principle that must also be put into practice by parties administering Customary Courts is that 'the weak are guided, the crippled are supported, the less is added, the odd is filled, the wrong is corrected, the forgotten is reminded, the crying is silenced, the quarreling is calmed, and the mistakenly reminded.

3.3 Jurisdiction and Authority of the Aceh Customary Court

Qanun Aceh Decree No. 9 of 2008 on the Development of Traditional Life and Customs provides for the resolution of disputes through customary courts. Chapter 6 Disputes/Dispute Resolution sets out the types of disputes that may be resolved through common law courts, including:

1. Family disputes;
2. Family disputes related to Farad;
3. Disputes between residents;
4. Khalwat Museum;
5. Property rights disputes;
6. Household theft (petty theft);
7. Shared property disputes;
8. Petty theft;
9. Stealing livestock;
10. Acts that violate livestock, agricultural and forest customs.
11. Maritime disputes;
12. Market disputes;
13. Mild abuse;
14. Forest fires (small-scale, damaging to indigenous communities);
15. harassment, defamation, hate speech, and libel;
16. Environmental pollution (mild);
17. Threat (depending on the nature of the threat);
18. Other disputes that violate customs and habits (Article 18 (1) Qanun No.9 of 2008).

The cases as mentioned above fall under the jurisdiction and authority of customary courts. To guarantee and ensure that the above dispute is not taken over and resolved by the police, for this purpose a Memorandum of Understanding (MoU) has been signed between Majauh Adat Aceh (MAA) and the Aceh POLDA.

In resolving disputes or disputes as referred to above, the Police (in this case the Aceh POLDA) participate in the problem. In this case, it is in line with the MoU between the Aceh Customary Association (MAA) and the Aceh POLDA which was previously agreed upon, where the police first provide an opportunity for the Gampong or Mukim parties and others to resolve any disputes as regulated in the provisions of Article 13 Qanun No.9 of 2008.

3.4 Banda Aceh Municipal Customary Justice Organizing Institution

In Aceh, many cases in community life are also resolved through the Customary Courts. The legal basis for the establishment and empowerment of the Customary Court in Aceh is supported by a number of statutory regulations as a legal umbrella. These regulations and legislation are not

stated expressly with the phrase 'Customary Court', but only use the phrase 'Traditional Institutions'. This traditional institution can be realized through the embodiment of social institutions as 'pageu gampong' (village fence). Therefore, the implementation of Customary Justice is attached *ex officio* to customary institutions.

In relation to the duties and functions of traditional leaders and traditional functionaries, the Banda Aceh City Government has established Banda Aceh City Qanun No. 1 of 2019 concerning Gampong Government. What is meant by: Gampong government is the Keuchik, Gampong secretary and other gampong officials who have duties in administering the gampong government. Keuchik is the head of a gampong who has the authority to organize gampong household affairs. Meanwhile, Tuha Peuet Gampong is an element of gampong government which functions as a gampong deliberative body.

The Keuchik as a customary functionary or customary justice provider (customary law enforcement officer) is given the authority by this Qanun to administer customary justice in the gampong. This is as regulated in Article 6, namely "resolving community disputes in a customary manner". Widespread community disputes include land issues which occur in many communities with various variations and intensities.⁶ In addition to the authority as stated in Article 6 above, Keuchik also has obligations as regulated in Article 8, namely "resolving community disputes in the gampong;

As a media for dispute resolution, the existence of the Acehese Traditional Courts, one of which is the Gampong Traditional Court, is a positive step in realizing justice for the community. The concept of customary law and customary justice is actually the root of restorative justice. Where the main element of restorative justice is the willingness and participation of victims, perpetrators and the community in making improvements to criminal acts that have occurred, which is also a characteristic of Acehese Customary Law. The decision given by the Aceh Customary Court is a "Win Win Solution"; cases that have been decided by the Customary Court cannot be referred back to the general court.

Philosophically, the Aceh Traditional Court's decision is capable of realizing justice, certainty and benefits for the parties. This is in accordance with the aim of law conveyed by Aristoteles, namely that the aim of law is to achieve justice, meaning giving everyone what is their right. Jeremy Bentham also stated the same thing that the purpose of law is to achieve benefit. This means that the law will and can guarantee the happiness of the greatest number of people. This theory is also known as the Utility theory. This is also the opinion of Indonesian legal expert, Prof. Dr. Mochtar Kusumaatmadja emphasized that law must be able to create order so that it is the basis for creating an orderly social structure and must be able to create justice.

The Acehese Customary Court is able to provide decisions in accordance with the legal objectives stated by the experts above. For this reason, Acehese traditional justice grows and develops and has a place in the hearts of justice seekers.

⁶ Kamalia, Darmawan, Suhaimi, "The Implementation of Land Case Handling Policy at the Land Office of Aceh Besar Regency", International Journal of Multicultural and Multireligious Understanding, Vol.9 (12), 2022, pp.115-125.

Basically, good law always contains three important things, namely legal structure, legal substance and legal culture.

4. Conclusion

The Acehese Customary Court has become the main choice for rural communities to resolve various disputes that arise in the community. This is because the customary justice process is very simple, fast, low cost, the settlement forum is easy to reach, the decisions given are in accordance with the sense of justice and legal culture that develops in society. Customary Courts still exist and apply in people's lives, if there are disputes or disputes, because Traditional Court decisions can provide a sense of justice in society, so that between one party and another there is no feeling of resentment and hostility will arise in the future.

5. Suggestion

Considering that any disputes that arise in society will destroy the balance of an already well-functioning social order, it is necessary to work hard to ensure that any disputes that arise are well resolved so that the balance of social order can be restored. Kampung Customary Court is one of the dispute resolution media in Aceh Province. The "Gampong" Customary Court is a positive step towards achieving justice for the community. The concepts of common law and customary justice are actually the roots of restorative justice. The main element of restorative justice is the willingness and participation of victims, offenders and communities to ameliorate the crimes committed, which is also a feature of Acehese customary law. The Aceh Customary Court's decision is a "win-win solution"; cases decided by ordinary courts cannot be sent back to ordinary courts for retrial. Philosophically, the Aceh Traditional Court's decision is capable of realizing justice, certainty and benefits for the parties. This is in accordance with the aim of law conveyed by Aristoteles, namely that the aim of law is to achieve justice, meaning giving everyone what is their right.

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