



THE ROLE OF TRADITIONAL JUSTICE PROVIDERS IN IMPLEMENTING THE CUSTOMARY COURT OF ACEH

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Abstract

Any case arising from society could cause disharmony and inbalancing among the society. Taking the case to formal court, will take time, and spend money. The solution to overcome the number of cases in the formal court, it needs to set up informal court wellknown "Peradilan Adat". A lot of cases arising from society in Aceh rural area settled by Aceh Customary Institution Court which is called Peradilan adat Aceh. There are eighteen cases under competency of the court that conducted by justice providers, consist of head of village, Islamic sholars, and other trusted public figures. Dispute settlement run based on both parties consensus voluntarily. Therefore, the decision is "win win solution". The nature of decision (verdict) is final and binding. Provincial Police Institution of Aceh, which is called POLDA, and Aceh Customay Assembly have an MoU signing in order to recognize and respect the decision of Customary Court of Aceh.

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I. INTRODUCTION

Every dispute that arises in society can disrupt the balance of the social order. Therefore, it is necessary to strive for every dispute to be resolved so that the balance of social order can be restored. In every society, various traditions have developed regarding how disputes are handled. Disputes can be resolved in various ways, either through formal forums provided by the state or through other forums that are not officially provided by the state. (Suparman Eman, 2004).

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 existence of legal pluralism that applies in Indonesia, the law that applies is not only law that comes from the government or the state (state law), but also law that comes from the customs of society (customary law) and laws that come from religious teachings (Islamic Law). In the customary law community, disputes that have occurred have long been resolved by deliberation and consensus through customary institutions which are commonly called customary courts. Usually those who act as judges in these institutions are

traditional leaders (traditional head of village) and religious leaders. The authority of customary court judges is not solely limited to peace, but also the power to decide disputes in all areas of law which are not divided into criminal, civil and public terms. (Hadikusuma Hilman, 2003)

The existence of customary law communities in Indonesia has received clear and firm legal recognition and protection in the 1945 Constitution, article 18 B paragraph (2) 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 which are regulated in law."

II. RESEARCH METHODS

Based on the problems in this study, the type of research used is normative juridical, namely research conducted by examining library materials (secondary data) or library law research (Johny Ibrahim, 2007)

III. RESULT AND DISCUSSION

3.1. Legal Basis of Aceh's Customary Courts

The The Aceh Adat Court has been around 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, the dispute resolution forum (traditional justice forum) is in the village itself, and is able to realize a sense of justice that is rooted in culture. law (legal culture) of the local community and refers to the values of legal norms that live in society (living law). The existence of the Customary Courts makes a significant contribution in order to reduce the accumulation of cases in general courts and the existence of the Customary Courts is currently recognized by the state as stated in Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia, Law No. 44 of 1999 concerning the Privileges of the Province of the Special Region of Aceh, Article 98 of Law no. 11 of 2006 concerning Aceh Governance, Aceh Qanun or Provincial Regulation No. 9 of 2008 concerning Development of Customs and Customs, Qanun Aceh or Provincial Regulation No. 10 of 2008 concerning Customary Institutions, and Aceh Qanun or Provincial Regulation No. 8 of 2019 concerning the Aceh Traditional Council. Joint Decree of Governor of Aceh, Head of Aceh Regional Police and Aceh Traditional Council Number 189/667/2011, 1054/MAA/XII/2011/B/121/1/2012 concerning Implementation of Gampong and/Mukim Customary Courts or Other Names in Aceh. ("SKB Aceh") and Governor of Aceh Regulation No. 60 of 2013 concerning Implementation of Customary Disputes/Disputes Settlement.

3.2. Principles of Law in Customary Courts

Principles are the order of values that occupy the highest hierarchy of various legal systems (Jus Cogen) and may not be deviated by any legal system. In the Aceh customary law system, there are a number of principles that are generally accepted by various other legal systems. So far there are a number of principles that 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 the judiciary has been integrated into their lives from generation to generation. (2) Accountability, can be accounted for; This principle refers to the accountability of the *keuchik* and *tuha peuet* as well as other traditional justice administrators in deciding cases. This accountability 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 an unwritten form, but these guidelines are very clear and understandable to both parties litigants and traditional leaders. (4) Non-Discrimination; equal status before customary courts Traditional courts may not discriminate against gender and social status. Everyone has the same position before the customary court (equality before the law). (5) Accessible to the public; accessible to the public. Every *gampong* court 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 the parties to settle their cases through customary courts. (7) Peaceful Solution, peace. The purpose of customary justice is to create balance and peace in society. (8) Win-Win Solution, win-win and equally satisfied. (9) Consensus, deliberation. Decisions made in customary courts are based on the results of consensus deliberations between customary court administrators and the parties in order to achieve peace. (10) Transfarancy, nothing is hidden. All judicial processes, both those relating to receiving complaints, calling witnesses, trials and taking and pronouncing decisions, must be carried out in a transparent manner. (11) Competency. The authority to try customary courts applies to cases that occur in the *Gampong* and *Mukim* areas. (12) Territoriality, territory. This principle concerns areas or places 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, customary justice respects the diversity of legal norms originating from different legal systems that apply in a society. (15) Presumption of Innocence, presumption of innocence. Customary law does not justify taking the law into their own hands. (16) Proportional Justice, fair and just. Customary court decisions must be fair and justice is implemented based on the level of economic capacity of the parties. (MAA, 2007)

The general principle upheld by the customary courts in Aceh is 'not allowed to reveal "people's disgrace" and must maintain the authority of the person/family, a sense of shame towards something that is tainted in public view, namely *toep aieb* (covering disgrace). The rule emphasizes

that in the customary justice process, these two things should not appear, and efforts must be made to localize them. Thus, the disgrace of the parties who committed the violation can be covered, such as obscene matters.

Another principle that must also be practiced by parties administering customary justice is 'the weak are guided, the lame are supported, the less added, the odd is completed, the wrong is corrected, the forgotten is reminded, the crying is silenced, the fighting is appeased, and the wrongly reminded. (Badruzzaman Ismail, 2007).

3.3. Jurisdiction and Authority of the Acehnese Customary Court

Settlement of disputes through customary courts is regulated in Aceh Qanun or Provincial Regulation No. 9 of 2008 concerning Fostering Traditional Life and Customs. The types of disputes that can be resolved through the Customary Courts are regulated in CHAPTER VI Dispute/Dispute Settlement, which includes: (1) household disputes; (2) disputes between families related to faraidh; (3) disputes between residents; (4) khalwat meusum; (5) disputes about property rights; (6) family theft (petty theft); (7) disputes over common property; (8) petty theft; (9) livestock theft; (10) customary violations regarding livestock, agriculture, and forests. (11) disputes at sea; (12) disputes in the market; (13) light maltreatment; (14) forest burning (on a small scale which harms indigenous communities); (15) harassment, slander, incitement, and defamation; (16) environmental pollution (mild scale); (17) threatening threats (depending on the type of threat); and (18) other disputes that violate customs and traditions. (Article 18 paragraph (1) Qanun No. 9 of 2008).

Cases as mentioned above are the jurisdiction and authority of customary courts. To guarantee and ensure that the above disputes are not taken over and resolved by the police, for this purpose a Memorandum of Understanding (MoU) was signed between the Aceh Customary Council (MAA) and the Aceh Regional Police.

3.4. Jurisdiction and Authority of the Acehnese Customary Court

In Aceh, many cases in people's lives are resolved through the customary courts. The legal basis for establishing and empowering the Adat Courts in Aceh is supported by a number of laws and regulations as a legal umbrella. These regulations and laws are not stated explicitly with the sentence 'Customary Court', but only use the sentence 'Customary Institution'. This traditional institution can be realized through the embodiment of social institutions as 'pageu gampong' (village fence). Therefore, the implementation of the Customary Court is attached ex officio to customary institutions.

In relation to the duties and functions of traditional leaders or informal justice providers and customary functionaries, the City Government of Banda Aceh has established Banda Aceh City Qanun or District Regulation No 1 of 2019 concerning Vilalage or Gampong Governance. As for what is meant by: Gampong government is the Keuchik (head of village), village or Gampong

secretary and other village or gampong officials who have duties in administering the village or gampong government. The keuchik is the leader of a gampong who has the authority to organize village or gampong household affairs. Meanwhile, traditional public figures or Tuha Peut village or Gampong is an element of the village or gampong government that functions as the village or gampong deliberative body.

The head of village or Keuchik as a customary functionary or customary justice provider (traditional law enforcement apparatus) is given authority by this Regulation or Qanun to administer customary justice in villages or gampongs. This is as stipulated in Article 6 that "resolving community disputes according to custom". In addition to the powers listed in Article 6 above, the head of village or Keuchik also has the obligation as regulated in Article 8, that "resolving community disputes in the village or gampong;

As one of the media for dispute resolution, the existence of the Aceh Traditional Courts, one of which is the Village Gampong Traditional Courts, 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 crimes that have occurred, which is also a characteristic of Aceh's customary law. Decisions given by the Aceh Traditional Court are "Win Win Solution" cases that have been decided by the Adat Court may not be resubmitted to the general court.

Philosophically, the decision of the Aceh customary or Adat Court is able to bring about justice, certainty and benefits for the parties. This is in accordance with the purpose of the law conveyed by Aristotle that the purpose of law is to achieve justice, meaning to give everyone what they are entitled to. The same thing was also stated by Jeremy Bentham that the purpose of law is to achieve benefits. This means that the law will and can guarantee the greatest happiness for the greatest number of people, this theory is also known as the Utility theory. (Joel Feinberg and Hyman Gross, 1980).

Likewise the opinion of Indonesian legal experts, Prof. Dr. Mochtar Kusumaatmadja who emphasized that law must be able to create an order so that it becomes the basis for creating an orderly social structure and must be able to create justice. (Mochtar Kusumaatmadja, 1990).

The Aceh Customary or Adat Court is able to render decisions in accordance with the legal objectives conveyed by the experts above. Because of this, Aceh's customary justice grew and developed and won a place in the hearts of justice seekers. Basically, good law always contains three important things, namely legal structure, legal substance, and legal culture. (Lawrence Friedmen, 1992).

IV. CONCLUSION

The Aceh Customary Court has become the main choice for rural communities to resolve various disputes that arise in the midst of society. This is because the customary justice process is simple, fast, low cost, where settlement forums are easily accessible, the decisions given are in accordance with the sense of justice and their legal culture that develops in society. The essence of the customary court decision is that both parties agree on the contents of the decision. Thus, the result of the decision is a "win win solution". Head of villagr or Keuchik and traditional leaders have a very decisive role in the administration of customary justice. Their role is neutral (not intervening), and only encourages the parties to be able to produce a decision that can be voluntarily accepted by both parties.yet included the substance of the Islamic criminal law into the legal system that will be enforced.

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