

## POSITION OF CUSTOMARY COURTS IN RESOLVING MILD ASSAULT CRIMES IN ACEH

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### Abstract

*Customary justice in Aceh has a significant role in resolving various types of cases, including minor crimes such as minor assault. This customary justice system is deeply rooted in local wisdom values and Islamic law, which are recognized by national law through the Aceh Government Law (UUPA) and Aceh Qanun Number 9 of 2008. The purpose of this study is to find out and analyze the position of Aceh's customary courts in resolving minor assault crimes in Aceh. To find out and analyze the effectiveness of Aceh's customary courts in resolving minor assault crimes in Aceh. To find out and analyze the community's response to the existence of Aceh's customary courts in resolving minor assault crimes in Aceh. The research method used a qualitative approach with case studies in several villages in Aceh. Data were collected through interviews with traditional leaders, legal actors, and communities who had been involved in the customary justice process. The results of the study indicate that customary justice in Aceh is recognized by the community and functions as an effective, fast, and adequate dispute resolution mechanism. In cases of minor assault, customary justice prioritizes peaceful and family resolution, which usually involves deliberation between the disputing parties and witnessed by customary elders. The decisions taken tend to be oriented towards restoring social relations and providing customary sanctions, such as compensation or an open apology. However, there are several challenges in the implementation of customary justice, especially in terms of alignment with the national justice system and protection of human rights. In conclusion, customary justice in Aceh plays an important role in resolving minor assault crimes with a restorative and peaceful approach, although better synergy is needed between customary justice and formal justice to improve justice and legal certainty.*

**Keywords:** Customary Justice; Minor Assault Crime; Aceh

### A. INTRODUCTION

The Central Government through Law Number 44 of 1999 concerning the Implementation of Aceh's Special Status has granted four areas of special status to Aceh Province, namely:

1. Specialties in the field of Islamic religion;
2. Specialties in the field of education;
3. Specialties in the field of Customs;
4. The Special Role of Ulama in Government Policy.

One of the privileges given to the Aceh Government is the authority in the field of customs. The institution that handles cases that occur in society is called the customary court, where through this customary court institution, small problems that occur can be resolved using a pattern of deliberation and consensus in order to produce the right solution to end conflicts between people in a community. The settlement of cases in Indonesia is currently beginning to be justified in resolving them humanely through a restorative justice approach. Acehese society in general tends to resolve small problems using customary law instruments. There is a famous proverb among the Acehese people in resolving problems or disputes that occur, namely: "yang rayeuk ta beu ubeut, yang ubeut ta peugadeuh". This proverb means that big disputes are minimized, small disputes are eliminated. This proverb is what brings the Acehese people to be able to realize peaceful dispute resolution. Dispute resolution, first they do it informally or privately, because formal resolution is considered to be embarrassing for the

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conflicting parties or their families. They prioritize a persuasive approach so as not to cause prolonged conflict.

Humans have a close relationship with the law and the provisions that limit human life. The law regulates human life so that their lives become more orderly and peaceful, including in handling cases that occur among the Acehese people which are regulated by law. The Acehese people, who are predominantly Muslim, feel comfortable and happy when their lives are in a safe and peaceful situation and free from conflict. The life of the Acehese people has been framed by customs that have implications for a peaceful life, both among ethnic groups and when dealing with other ethnic groups and that has become the custom of the Acehese people. If they have a dispute, they will resolve it as soon as possible, whether the settlement is carried out by themselves or through others. Every dispute they immediately resolve it.

During authoritarian rule, the state formulates laws in only one model, there is no pluralism. The settlement pattern must also go through official channels, the community is not allowed to resolve their own disputes. Peace efforts during authoritarian times can be considered to increase disputes, therefore peace is less carried out to resolve disputes. Thus, it can be understood that the dominance of the positivism paradigm of law with all its accompanying systems is so firmly gripped, such as in the development of legal science and the implementation of laws in Indonesia.

After the 1998 reform, bureaucratic reform and legal reform have restored the Acehese people's habit of reconciling to resolve their disputes through peaceful means. A number of laws and regulations in Aceh have been enacted. The formulation of peace has also been encouraged again, even the idea of the role of the community in resolving conflicts has been raised to national level, this is marked by the ratification of Qanun No. 5 of 2003 concerning Village Government. The community is given a role by the police institution to resolve simple disputes that occur in their villages. The community and the police are trained together to unite understanding in dealing with conflicts that occur in the community. Nationally known as Polmas, or community police. The community is given the task of enjoining good and forbidding evil. The police direct the community to make peace, by means of the local community deliberating independently.

Customary institutions in the village and in the settlement must play a role in resolving cases or disputes in society. Settlement through the courts requires high costs and a long time. Settlement through the courts comes from external parties, not from within the disputing parties. The parties or one of the parties is actually not satisfied, it's just that the opportunity to seek satisfaction has been closed. Settlement through customary institutions, it is not clear who wins, everyone feels like they win. Resolving disputes is a victory for all parties. The community wants every dispute that occurs in their area to be resolved quickly. Prolonged disputes can disrupt the balance in society. The role of customary institutions has decreased during the authoritarian government of the New Order. The New Order government wanted uniformity throughout Indonesia. Regional policies were not given a role. All legal issues must be resolved through official institutions, namely the police, prosecutors, and courts. Outside of these official institutions, it is not permissible to interfere in legal matters. The court only makes decisions, it does not solve problems. Parties may still harbor grudges and dissatisfaction with the decisions given by the court. That is what has caused many disputes to be resolved at the Supreme Court level.

All disputes, even personal disputes of very small value, must be resolved through the courts. Settlement through the courts takes a long time, and there is even the possibility that the parties will not have time to enjoy the results because they have died first. Disputes that occur in society are often allowed to occur, no party interferes, because they hesitate to interfere in legal matters, because legal matters are state matters. The community does not have the power to interfere in cases that apply to them. Strangely enough, as mentioned, even small disputes are resolved through the courts. It was once mentioned that a dispute over two or three meters of land was resolved all the way to the Supreme Court. Looking at the cost, going to the

Supreme Court is not worth the value of the dispute. Therefore, an understanding of peace needs to be socialized in the community, so that comfort in society can be realized.

Customary justice in Aceh society has played a major role in resolving cases that occur, such as muamalah disputes and criminal disputes. The peaceful settlement model has been carried out since ancient times. This kind of settlement has been able to calm the feelings of the community, even the parties involved in this case feel comfortable. Even now a joint decree has been issued between the Governor, the Chief of Police and the Chairman of the Aceh Customary Council Number 189/677/2011, 1054/MAA/XII/2011 and Number B/121/1/2012 concerning the Agreement on the Settlement of Minor Criminal Cases Through the Village Customary Court.

This joint decision contains an obligation to resolve a dispute at the village level. This means that if there is a dispute, whether it is a criminal complaint or a criminal offense, it will be resolved at the village level. The police handling a dispute need to explain how the dispute is processed or offered a settlement at the village level. When a dispute and minor crime have not been handled at the village level, the police must return and ask for it to be resolved at the village level first. On the other hand, serious and dangerous disputes cannot be completely reconciled. Because there is still a very strict understanding in the legal system left by the colonizers. Whereas in the customary law system, there is no difference between serious disputes or minor disputes, all can be resolved according to custom. Customary resolution is a resolution that is immediate and fast and must not leave a trace, namely not leaving a grudge between the two parties.

## **B. FORMULATION OF THE PROBLEM**

1. What is the position of Aceh's customary courts in resolving minor assault crimes in Aceh?
2. How effective is Aceh's customary court in resolving minor assault crimes in Aceh?
3. What obstacles do customary court officials face in resolving minor assault crimes in Aceh?

## **C. RESEARCH METHODS**

The type of research used in this study is the empirical legal research method. According to Asri Wijayanti, empirical legal research is a positive legal research on the behavior of community members in social life relationships. The use of this research method is because the researcher wants to study in totality related to the application of customary law that has been regulated in Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life in practical reality by the community. The legal materials used in this study consist of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are legal materials that have an authoritative or binding nature. The primary legal materials used are the Aceh Government Law, Aceh Qanun Number 9 of 2008. The secondary legal materials used are legal materials that are relevant to this study. For tertiary materials, the researcher uses a legal dictionary.

### **1. Method of collecting data**

The first process of this study begins with an effort to collect as much data as possible related to the topic being discussed. To use this method, there are three methods of data collection used by the author, namely:

- a. Literature Research This research is a legal research, when conducting a legal study, the collection of legal materials consists of (1) Primary legal materials; (2) Secondary legal materials; (3) Tertiary legal materials. Primary legal materials consist of: the Qur'an and Hadith and Legislation, in this case the primary legal materials are Law Number 11 of 2006 concerning the Government of Aceh, Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and the Joint Decree between the Aceh Government, the Regional Police Chief and the Aceh Traditional Council. Secondary legal materials consist of the history of interpretation books and hadith books that describe interpretations and descriptions of reference books related to the

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topic discussed. Tertiary legal materials are, (1) dictionaries; (2) Mu'jam al-Qur'an and hadith; (3) Encyclopedia; (4) Glossary.

- b. Interview The author uses the interview method to find out direct opinions from the Aceh Customary Council (MAA) and the customary administrators. The author will also conduct interviews with the conflicting parties whose resolution was carried out through customary institutions. In addition, interviews were conducted with the village heads, consisting of Gampong: 2 village heads, 2 village heads and 2 village heads.
- c. Observation This method is used to directly review customary institutions in resolving disputes at the village level located in Banda Aceh and Aceh Besar. Matters that require review will be re-interviewed with customary administrators, as a follow-up to the observation.

## 2. Data analysis

The data analysis process requires one of the important processes in a study because a good study result depends on a good and precise data process and also requires precision. This process begins with assessing the data and conducting an analysis on it, then an interpretation will be made of the data that has been assessed and analyzed. For the purpose of analyzing the data obtained, the author will use three methods, namely deductive, inductive and comparative analysis.

- a. Deductive method The deductive method will be used when the author seeks a conclusion of a problem based on general data and then formulated into a more specific conclusion. The formulation with this deductive method is more on the data obtained in the field first and then the conclusion is formulated based on the data found in the field and connecting it with the data obtained in the library literature.
- b. Inductive method This method will be used to analyze the collected data that is specific to general. This is expected to be a theoretical framework for subsequent researchers.
- c. Comparative method This study will also use a comparative method, which is a way of making conclusions by comparing various literatures that have been obtained during this study. The author will make a comparison of which is more satisfying for justice seekers through official courts or customary courts. Which court is more resolving disputes/hostility in society.

## D. DISCUSSION

### 1. Position of Aceh Customary Court in Resolving Minor Assault Crimes in Aceh

Customary justice has its own position among the Acehnese people. Until now, customary justice still exists and is maintained by the community in resolving problems that occur in the community. Especially minor problems that cause disputes among fellow community members. According to MZ, customary justice in Aceh has a very important role in Aceh. This is because through customary justice, the community can resolve existing problems using a deliberation and consensus approach. Similar things were also conveyed by other customary leaders by stating that customary justice aims to find the right solution in resolving community problems.

Based on this information, it shows that the customary court in Aceh is an institution that aims to facilitate the community to jointly find solutions so that the problems of life in society can be resolved. Customary courts are seen as institutions that have the authority to handle disputes that occur in every level of society. Therefore, its position as an institution that has the authority to end conflicts in society, its position is considered a very important institution by the community. For this reason, its existence is still maintained to this day by every village in Aceh. There is even a hadith maja in Acehnese society that says that "Ta pageu lampoeh ngon Kawat, ta pageu nanggroe ngon adat". Which means more or less we maintain the garden with a wire fence and we guard the area with customs.

The position of customary courts in Aceh is not only in the village, but its position can be found at the mukim level. Customary courts at the village level only resolve cases that are classified as small at the village level. Small cases that are the authority of the village customary court have been regulated in Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life. This is different from customary courts at the mukim level whose position is at the mukim level. Customary courts at the mukim level only try and resolve problems submitted to them by the Community who do not accept the decision that has been determined by the village customary court. This mukim customary court can be considered as an appeal court because the decision at the first level was not accepted by the disputing parties.

The position of customary courts as one of the alternatives for resolving community cases is still accepted as a reality by the Acehnese community. There has not been a single community that has rejected the institution for resolving cases. The recognition of customary courts as an institution for resolving cases is none other than because of the authority given to them where customary courts are able to show a positive impact and provide a number of benefits for the community. This was expressed by MZ where according to him, with the resolution of cases in the midst of the community, it can end prolonged conflicts and reconnect community relations to be more harmonious.

The statement given by MZ was supported by FY who according to him, with the existence of a customary case resolution pattern, harmony can be created in the midst of society. This means that this harmony is a solution that is always offered by customary court functionaries so that the cases they resolve can have a positive impact and the benefits are clearly felt by the community. A condition that cannot be imagined occurs when the position of customary courts is underutilized. In fact, the customary case resolution pattern is the capital of the Acehnese community's strength in resolving cases in the midst of the Acehnese community. This means that this customary resolution is a force that can unite and harmonize the lives of the community. With the existence of a customary settlement pattern, conflict can be avoided and the community's life can be reunited for the better.

Acehnese society has a strong tradition of resolving conflicts through customary justice. Most Acehnese people view customary justice as an effective and acceptable way to resolve various types of problems and conflicts in society. There are a number of motivations for Acehnese people to choose the alternative of resolving cases through customary justice, namely:

**a. Customary Dispute Resolution Has Become a Tradition in Society**

Customary justice is rooted in the local culture of Aceh, and many people feel that this approach is more in line with traditional values and social norms in society. This was expressed by MZ, who is a village figure who handles cases at the village level. According to him, customary justice in Aceh is indeed rooted in local culture and traditions that have developed in Acehnese society since generations ago and its existence is maintained because it is felt to bring goodness to it. This tradition that is still maintained cannot be separated from the community's assessment of the existence of customary justice.

Acehnese people have respect for the values of customs and traditions that have been passed down from generation to generation. Customary justice is considered a vehicle for preserving and maintaining cultural heritage. As a process left behind by the ancestors, this custom also contains a very great meaning in it. The meaning contained in the settlement of cases according to custom is the realization of harmony in the social order.

**b. Belief in Traditional Figures**

Traditional figures or community leaders such as tuha peut, tuha lapan, imeum meunasah and keuchik have an important role in customary justice. Acehnese people generally have high trust in the wisdom and justice of traditional figures. Community



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figures or traditional figures are often respected and considered to have high credibility in the community. The community sees them as wise and fair leaders in providing solutions offered to the community. Another thing that also encourages the community to resolve cases non-litigation is because community figures usually have a deep understanding of local culture and customs. This knowledge allows them to understand the social and cultural context of the conflict that occurs and offer solutions that are wise and needed by the local community.

**c. Mediation Experience and Skills**

Many community leaders have experience and skills in mediation and conflict resolution. Customary leaders can act as effective intermediaries to bring disputing parties to an agreement. These skills make customary leaders figures that communities rely on to resolve local problems. Communities trust that customary leaders can provide solutions that are in line with local values and traditions, and decisions made by customary leaders are often considered authoritative and binding in the context of that community.

**d. Fast and Low Cost Settlement Process**

The process of resolving cases according to Acehese customs has been proven to be able to be completed in the shortest possible time, but produces quality decisions. This means that the settlement does not take a long time, while the results are more optimal because the result is a win-win solution, namely that no one wins or loses. Both parties are in an advantageous position. On the other hand, there is a difference with formal settlement which often takes more time and costs more. This was expressed by MZ who in principle said that by using a customary case resolution pattern, it can shorten the time needed.

State law in resolving disputes often goes through rigid and formal procedures, while customary law resolves through deliberation procedures, the provisions of which are obeyed by the community. Customary prohibitions on jinayat and the protection of shame are laws that live in society. The settlement pattern and its technicalities are determined by the community itself. When a violation occurs, they immediately seek a way for peace to be realized.

Settlement through peace, there is a possibility by apologizing, giving alms as a sign of self-accusation, sayam or other forms such as leaving the village. These decisions are carried out by the parties themselves, without the intervention of village elders. The guilty person takes the initiative to punish himself. If someone leaves the village it does not mean that they have been expelled, but he himself left his village.

Case resolution in customary law is a closing of the problem and can end the problems of society. This means that if the case has been resolved there are no more problems that need to be resolved. Everything has been resolved. Thus there will be no records of any cases that occur in society. Case resolution means resolving the scars and wounds caused by problems in society. Every time a crime occurs, social unrest also occurs. This social unrest is what is very disturbing to society.

The legal spirit of the Acehese people still resides in the customary law landscape. Customary Law considers errors regarding the content of the law as not only a matter for law enforcers but also a matter for indigenous communities. Indigenous peoples know the most about the material laws of customary law. If the jinayat law is included in the affairs of indigenous peoples, then the indigenous people themselves become the owners of jinayat law. Traditional leaders will resolve cases that occur. Traditional leaders can act freely to resolve cases that occur in their community. Traditional leaders resolve things not by giving punishment but by resolving the cases they face. The settlement model in the customary law system cannot be standardized, because it really depends on the case that occurred: this

conclusion is actually temporary. Customary law requires serious research for the future.

The village customary court is not a formal court like the courts provided by the state. Customary law continues to develop in accordance with the development of society. It is impossible for customary law to be standardized. Customary law continues to move forward in accordance with the development of society. Society continues to develop, the law continues to develop. In line with the development of society. Therefore, customary law does not need to be formulated into standard articles.

They made a note about the inability of state law enforcement to take over the settlement, when there is a party who is dissatisfied with the village customary decision. The decision of the village deliberation is final and binding. In fact, they argue, if there is an opportunity to reject the village deliberation, then the settlement through the state court will be increasingly difficult, and will have a long-lasting grudge. Every decision of the village deliberation will be pleasant, because the ones who make the decision are those who are in conflict. The role of the customary leader is very small, in resolving the case at hand. The task of the customary leader is only to remind the parties with advice that can accelerate the emergence of awareness of the dispute.

The government must also be serious in re-establishing village courts. Such a method can reduce the cost of justice seekers in society. Society has taken too much time in resolving cases that occur in society. Chaos in society in resolving cases can reduce government productivity, as well as reduce state income. Currently, the disputing parties do not aim to resolve cases, but seek satisfaction from the conflicts they experience. With this nature, customary law experts should be able to rediscover the identity of the original customary law that has been lost so far.

This peace process reflects an effort to end the conflict and restore relations between the disputing parties. The resolution of this dispute usually takes place through deliberation and consensus, without involving the formal court process as is commonly the case. Conflicts, disputes, and various types of cases within the village can be resolved peacefully, which is often referred to as out-of-court dispute resolution or ADR (Alternative Dispute Resolution). ADR is one way to increase access to justice or "access to justice" in a more economical, fast, close, and less intimidating way than formal courts.

According to Keuchik, local communities have their own mechanisms to resolve internal issues without having to involve formal courts, which are often considered more expensive, slow, and formal. This is a way to provide easier and more efficient access for residents to resolve conflicts and achieve justice within their own communities. The peace or reconciliation process between the disputing parties aims to end hostility between the parties. This process aims to reach an agreement or common ground that can end the conflict.

Another important thing that is done by the Acehnese people in resolving cases is shaking hands between the disputing parties after the peace process is completed, signifying the end of the conflict and the beginning of efforts to rebuild harmonious relations. Shaking hands as a symbol of eliminating the prolonged conflict from the warring communities. After the handshake procession is carried out, it can be considered as the end of tension and conflict between communities. This process reflects the importance of peace and reconciliation in Acehnese culture. Although rooted in customary traditions, it should be remembered that in a modern context, this process can also involve legal arrangements and conflict resolution in accordance with Indonesian national law. Efforts to understand and respect local cultural values and traditions are important steps in maintaining harmony and peace in Acehnese society.

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Customary justice in Aceh has a recognized position, there are still challenges and debates around how customary justice operates in a modern context, especially related to human rights and gender equality issues. Therefore, there are efforts to integrate human rights and gender justice values into the customary justice process in Aceh. In addition, the existence of customary justice in Aceh is also a joint agreement between the Governor of Aceh, the Head of the Aceh Regional Police and the Chairperson of the Aceh Customary Council Number: 189/677/2011, 1054/MAA/XII/2011, B/121/I/2012 concerning the Implementation of Gampong and Mukim Customary Justice or other names in Aceh, in the First section it is expressly stated that disputes/disputes that occur at the Gampong and Mukim levels that are minor in nature must be resolved first through the Customary Justice or customary institutions.

Aceh's customary courts have long existed and carried out their duties in the field of resolving community cases. The recognition of customary courts is not only recognized sociologically, but also legally recognizes the existence of customary courts. This is proven through several regulations in Aceh that have regulated Aceh's customary courts, including Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs and a number of other regulations. Aceh, based on Law Number 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province, and has been strengthened again by the birth of Law Number 11 of 2006 concerning the Government of Aceh, then through both laws the Government has given a strong position to the existence of customary law as a living law in realizing just and peaceful law in accordance with the spirit of the Acehnese people. This can be clearly seen with the issuance of Aceh Qanun Number 9 of 2008 concerning the Development of Customs and Traditions, and Aceh Qanun Number 10 of 2008 concerning Customary Institutions. The implementation of this customary law is of course based on the spirit of Islamic fiqh. It is also possible that the implementation of Islamic law is based on the spirit of customs.

Based on the above framework of thought, then in accordance with the title of the investigation in writing this thesis, regarding "The Position of Customary Institutions in the Settlement of Customary Law Violations in Acehnese Society" related to the enactment of Law Number 11 of 2006 concerning the Government of Aceh with the principle of the broadest possible autonomy, has provided an opportunity for the Aceh Government with the principle of the broadest possible autonomy to continue to seek and implement a social order in accordance with the high values of the life of the Acehnese people based on the customs and culture of their people in the daily lives of their people together with the presence of written State laws. Iman Sudiyat concluded that customary law is the law that primarily regulates the behavior of Indonesian people in their relationships with each other, both in the form of the whole, customs, habits and politeness that truly live in the customary society because they are shared and maintained by the members of that society, as well as the whole of the regulations that recognize sanctions for violations and which are stipulated in the decisions of the customary rulers.

Customary institutions in Aceh began to receive attention after the signing of the peace agreement (MoU Helsinki) in 2005, then the memorandum of understanding of the MoU Helsinki was described in the Aceh Government Law (UU-PA) Number 11 of 2006. In this UU-PA it is stated that customary institutions in Aceh society must function and play a role as a vehicle for community participation in the implementation of the Aceh Government. In addition, one of the requirements of modern law is that the law must be integrated with the life of the community. The law must become a 'uruf in the practice of community life. Therefore, this opportunity must be utilized as well as possible to reorganize the social system of society.



For the implementation of the articles contained in the UUPA, especially those related to Custom, the Aceh Government has issued several regulations at the provincial level, namely, Qanun Number 9 of 2008 concerning the development of Customary Life and Customs and Qanun Number 10 of 2008 concerning Customary Institutions. These two Qanuns indicate the seriousness of the Aceh Government to revive the customs and their apparatus that once applied in Acehnese society and these Customary institutions are an inseparable part of the Aceh Kingdom.

Aceh Qanun Number 9 of 2008 regulates various aspects of customary life and customs in Aceh Province. This Qanun has an important role in preserving and maintaining the culture and traditions of the Acehnese people. This Qanun also regulates procedures for resolving disputes related to customary and customary issues. This is an important part of maintaining order and harmony among communities that have different opinions on customary matters. This Qanun also includes efforts to foster customary life and customs in Aceh. This is included in the framework of preserving and developing local culture and traditions.

Aceh Qanun Number 9 of 2008 is one of the important legal instruments to maintain and preserve Acehnese culture and traditions. The existence of this qanun reflects the provincial government's recognition of the importance of culture and customs in the identity of Aceh and its people. If traced from the central level, what has provided the opportunity for the implementation of customary law is as follows;

- a. 1945 Constitution, Article 18 B paragraph (2);
- b. Law No. 11 of 2006 concerning the Government of Aceh;
- c. Qanun No. 9 of 2008 concerning the Development of Traditional Life and Customs;
- d. Qanun No. 10 of 2008 concerning Customary Institutions;
- e. Governor's Regulation No. 60 Qanun 2013 concerning the Implementation of Dispute Resolution/Disputes over customs and customs;
- f. SKB, Governor of Aceh; Aceh Police Chief; and MAA Chairman regarding the implementation of Customary Courts in Aceh.

Reviving customary institutions including court institutions must of course be done with caution. It is possible that the long-abandoned institutions have undergone changes. The understanding of society is no longer the same as in the past. Customary law experts today cannot use customary laws left behind during the colonial era to be disseminated in the present. If this is done, there will be clashes in society. The occurrence of clashes in the application of law is a sign that customary law is not working. Customary law cannot clash with members of society, because the law was born and emerged from the members and society itself. Customary law is an embodiment of morality in a society. It should be noted that what is being built is the Customary Justice system, while the material law can come from Islamic law or other national laws. The customary court system has its elements as mentioned above.

If the justice system is built, it will be easy to understand and implement. All that remains is to inventory the elements of customary courts and their criteria. The pattern of settlement of disputed material will not conflict with applicable law, because the material is taken from the current applicable legal material. Thus, the customary court or deliberative court is the court institution, not the material law. The customary court system is a court system that prioritizes the community. The decision is a win-win solution, no one wins and no one loses. The customary court system is to produce a settlement, not a decision.

Law Number 44 of 1999 concerning the Implementation of the Special Status of the Aceh Province. This law does not directly state the Customary Court in Aceh, but regulates the special rights held by the Aceh Province, such as regarding the special status of religion in the field of education; the field of customs and traditions; and the role of ulama in every policy of the Regional Government. From the affirmation of this law, it can be understood that Aceh can establish various policies to empower the preservation and

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development of customs and customary courts that are inspired by Islamic sharia values and recognize existing customary courts according to their respective positions. Qanun of the Province of Nanggroe Aceh Darussalam Number 4 of 2003 concerning Mukim Government in the Province of Nanggroe Aceh Darussalam. In relation to the Customary Court, this Qanun regulates the function of mukim in resolving social problems that occur in society. Mukim are given the power to resolve and provide customary decisions regarding disputes and violations of customs.

*Law*Province of Nanggroe Aceh Darussalam Number 5 of 2003 concerning Village Government in the Province of Nanggroe Aceh Darussalam. Although it does not explicitly regulate Customary Courts, in substance, there are a number of articles that link the role and existence of customary courts in resolving community disputes, and the institution of Keuchik (village head) itself is also one of the customary courts that has the authority as a "judge" in resolving disputes and is assisted by Tuha Peut and Imeum Meunasah (meunasah priest).

Law Number 11 of 2006 concerning the Government of Aceh. This law regulates separately about customary institutions and their powers, including resolving social issues contained in Chapter XIII concerning Customary Courts. This chapter can be linked as an existential basis and power to participate in the implementation of the Aceh Government in realizing and maintaining security, harmony and public order. Furthermore, the customary court can be used as a "pageu gampong" (village protection) and to realize this, the Customary Court can be implemented at the gampong (village) and mukim levels. Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs. As with Law Number 11 of 2006, this Qanun also places the existence of customary courts and their control in a special chapter, namely Chapter VI concerning the resolution of disputes/disputes, and Chapter VII concerning Forms of customary sanctions. The articles relevant to customary courts are Articles 13, 14, 15 and 16. The essence of these articles emphasizes that law enforcement officers provide an opportunity for disputes to be resolved first according to village customs.

*Law*Aceh Number 10 of 2008 concerning Customary Institutions. This Qanun also contains several principles that can be used as a legal basis for the implementation of Customary Courts, because they can function as a vehicle for community participation in the implementation of government, development, community development and the resolution of other social problems. The above laws and regulations very clearly provide the authority to implement Customary Courts in Aceh, although not in the form of carrying out judicial functions (functions as guardian and monitoring institutions) in national life. However, as a form of social institution and as a customary institution, Customary Courts have the potential to resolve various social disputes, and their existence is formally recognized and they have the rights and powers to be implemented. With the functioning of customary institutions like this, the burden on formal court institutions can be reduced, especially the General Courts (District Courts) and also the Religious Courts/Sharia Courts.

## **2. Effect of Customary Court Activities in Resolving Minor Assault Crimes in Aceh**

Many Acehnese people still file minor problems that occur in their environment using customary justice instruments. Settlement of cases or disputes is often attempted through customary law mechanisms rather than through the formal legal system or litigation in court. Customary justice reflects the values, norms, and cultural traditions of the local community. Thus, the resulting decisions are more acceptable to the community because they are in accordance with the local context and take into account local wisdom. Dispute resolution in society can be divided into two main categories, namely court settlement (litigation) and non-court settlement (non-litigation). Court settlement (litigation) or formal processes involve formal institutions provided by the state in the justice system. The disputing parties submit their cases to the court so that they can be resolved in accordance with existing mechanisms. Based on the case submitted, the panel

of judges then decides according to the facts in the trial. In contrast, the non-litigation settlement process involves methods that do not depend on formal court processes, but are examined by customary functionaries and this method is alternative and more flexible in offering solutions.

Penal mediation or mediation in the context of criminal law is one of the alternative forms of dispute resolution that is increasingly accepted and adopted by various countries as part of criminal law reform. Penal mediation focuses on a restorative approach to criminal acts, where the main focus is not only on punishment, but also on recovery and reconciliation between the perpetrator of the crime, the victim, and the community. The positive impact of customary case resolution is in the context of obtaining justice, speed, and peace in society. Customary case resolution is more effective and efficient compared to case resolution through formal courts. Decisions made through customary courts are often considered more likely to benefit both parties and can avoid problems that arise in the positive legal system, especially in the context of criminal sanctions. This proves that the process of resolving cases is becoming increasingly popular with the Acehnese people in ending conflicts that occur between communities. The models of customary law implementation in Aceh have now begun to be adopted nationally by the government through the concept of restorative justice. Restorative justice is a pattern of case resolution carried out by involving the perpetrator and victim as well as the families of the perpetrator and victim by prioritizing restorative justice. The Police through the Circular of the Chief of Police Number: SE/8/VII/2018 Concerning the Implementation of Restorative Justice in resolving minor crimes. The existence of the SE increasingly provides an indication of how important it is to resolve cases non-litigation for now to be applied in the real life of society.

Settlement of minor criminal cases through non-litigation channels as an alternative channel is the right step to realize justice as desired or expected by each party. Justice can be found in many spaces, and can also be found without going through bureaucracy. This means that by resolving cases in a customary manner without going through strict procedures but producing decisions that satisfy the parties. So, there is no strict bureaucracy that must be passed. Indicators that can be assessed as the success of the customary case resolution process are by looking at the community's acceptance of the decisions taken by the customary judges. According to FY, the community has until now accepted with open hearts every policy decided by the customary court judge. This acceptance is due to the model applied, namely deliberation and consensus in making decisions, so that decisions that are not taken can accommodate the interests of both parties. Deliberation means providing an opportunity for all parties involved to be used as a basis for making decisions.

Acceptance of input and views from the parties involved in this dispute is a plus point of the customary justice process in Aceh. The parties are asked for their views so that the problems faced can be resolved optimally. This model is one of the things that causes the pattern of resolving minor criminal cases in Aceh to be effective. Another aspect that is a factor in the effectiveness of the implementation of Aceh's customary justice is because it does not take a long time like resolving cases using formal justice instruments. This non-litigation settlement process, because it prioritizes deliberation, can be resolved in one or two deliberations. Each party is asked for their response so that it can be used as a basis by the customary justice judge in making decisions that are oriented towards the interests of the disputing parties, namely by prioritizing a win-win solution.

### **3. Obstacles Faced by Customary Court Functionaries in Resolving Minor Assault Crimes in Aceh**

The process of resolving cases carried out in a customary manner by customary court judges does not run optimally. Based on data or information obtained in the field, it shows that there are obstacles that cause the customary settlement pattern to experience its

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own obstacles. Among the obstacles that often arise from the existing case resolution pattern are as follows:

**a. The Parties did not attend the Meunasah**

The parties to the case have a very important position in the customary justice process in Aceh. A case may not be resolved due to the absence of one of the parties at the appointed time. The involvement of all parties in the customary justice process is an integral part of efforts to achieve a fair and effective resolution. If one of the parties is absent, the process cannot achieve the maximum level of justice because the views and arguments of the absent party cannot be expressed.

Customary justice often seeks to reach a peaceful resolution of a dispute. When one party is not present, the mediation or negotiation process can be hampered, and an amicable agreement may be difficult to reach. Difficulty Reaching Agreement is because without the presence of all parties involved in the dispute, customary mediation tends to have difficulty reaching a fair and acceptable agreement. The success of mediation often depends on the active and open participation of all parties involved. The absence of one or more parties means that their perspectives, needs, and interests will not be fully represented in the mediation process. This can result in an imbalance in the resulting settlement. The participation of the parties involved is key to conveying relevant information and gaining a deeper understanding of the conflict or dispute. Without their presence, the mediator and other parties may not have a complete or accurate picture of the case.

According to MZ, the presence of the parties is very important to ensure that the mediation process follows the principles of fairness and balance of the parties. Without their presence, the mediation process can be considered unfair and less transparent and affect the decision later. The presence and participation of the parties are the main requirements for mediation to reach an agreement that is acceptable to all. Absence can increase the risk that mediation will not succeed in reaching a settlement, and the dispute can continue.

**b. Peace Deal Too High**

High costs can limit the ability of less fortunate or resourced parties to participate in the peace process. This can create inequality in participation and access to dispute resolution mechanisms. For example, the injury caused by a minor crime is very small, but the victim asks for a larger amount of compensation. In fact, if treated, it would not cost that much. This is what sometimes becomes a constraint for customary court judges. The constraints are certainly related to negotiations to cover the losses suffered by the victim. The victim demands this large amount so that all medical expenses can be recovered by the perpetrator. The peace agreement in resolving minor crimes is determined by the parties to the case and also the influence of negotiations built by policy makers.

**c. Lack of Training for Customary Functionaries**

The training provided to customary leaders is still very low, which also affects the process of resolving community cases. This can also hinder their ability to understand and manage disputes well. The low ability of *tuha peut* in handling disputes can result in less effective and fair resolution. Increasing their skills and knowledge needs to be considered to ensure that their role in customary justice can run optimally. Limited resources, both in terms of finance and adequate facilities and infrastructure, can hamper efforts to strengthen the capacity of *tuha peut*. As a result, training, education, and inadequate infrastructure support cannot be implemented. Insufficient training, education, and infrastructure support can limit their ability to carry out customary justice functions. In order to overcome these obstacles, collaborative efforts are needed between the government, local communities, and other related parties. Continuous training and education, strengthening infrastructure, and active community

participation can help improve the effectiveness and justice of customary justice at the village level in Aceh.

Acehnese people admit that maintaining peace and order in society can be created by maintaining the customs that exist in society. This is reflected in an Acehnese *hadih madja* which states that "Ta pageu lampoeu ngon Kawat, ta pageu nanggroë ngon adat", this proverb is interpreted as follows "we secure the garden with wire, we secure the country with customs". This means that to provide protection to plants in a garden, they must be protected with strong wire so that wild animals cannot enter the plantation area so that the plants in it are increasingly protected. Likewise, utilizing the customary law system can provide maximum protection to the community.

#### **d. Complicated Matters**

Another obstacle that hinders the process of resolving cases through customary courts is that the case being handled is a complicated problem. Customary leaders or traditional figures do not have adequate experience in handling complicated cases. Cases involving certain legal or technical issues may require special understanding and skills. An example of a complicated case, for example, in Aceh some time ago there was an earthquake and tsunami, then there were people who disappeared because they were affected by the waves. The consequences of this missing person affected the distribution of inheritance so that it could not be decided directly by customary leaders, because one day it turned out that in the future this missing person would return and become a separate problem for the heirs. To overcome such matters, customary leaders are required to be more careful in resolving community issues so as not to cause legal problems in the future. The issue of inheritance because it is related to this very sensitive matter must of course be resolved to the root of the problem.

#### **e. Entry of Other Parties in the Case**

The entry of other parties into minor criminal cases is a factor that can hinder the process of resolving minor criminal cases in the community. This is because third parties here often provide input that can influence the conflicting parties to resolve their problems in the village.

### **E. CLOSING**

Based on the discussion as described above, it can be concluded that:

1. The position of customary courts in Aceh is very strategic in resolving minor criminal cases in Aceh, because in addition to being supported by the socio-cultural community, it is also supported by adequate regulations related to its existence. Even law enforcement officers such as the police must reject reports from the community if they have not been resolved by customary court judges. Customary courts are given the authority to resolve problems that occur in the community by prioritizing customary values and local wisdom. The problems that are the authority of customary courts consist of relatively minor customary disputes totaling 18 cases.
2. Aceh customary courts have carried out their duties and responsibilities well. This is proven by the existence of minor criminal cases carried out in the village that can reach a peaceful agreement. Generally, minor criminal cases brought to the village customary court reach a peaceful agreement. The disputing parties follow the decision that has been decided by the customary court judge and follow it properly.
3. The obstacles faced in the context of resolving customary cases are because many young *Keuchik Gampong* (Village Heads) are an obstacle in themselves in the context of resolving minor criminal cases in Aceh. In addition to this obstacle, it is also a challenge in the current era along with the opportunity given to young people to become Village Heads. Other obstacles faced are the existence of people who demand too high a peace agreement so that they do not reach a peace agreement, complicated cases that are difficult to resolve and sometimes the parties do not attend the customary case resolution process at the *meunasah*.



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**REFERENCES**

**A. BUKU**

- Abdullah Sani Usman, *Nilai Sastra Ketatanegaraan dan Undang-Undang dalam Kanun Syarak Kerajaan Aceh dan Bustanus Salatin*, (Kuala Lumpur; Universiti Kebangsaan Malaya: Bangi, 2005).
- Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang*, Jakarta: Kencana Prenada Media, 2012.
- Agussalim, *Penyelesaian Tindak Pidana Penganiayaan Ringan melalui Hukum Adat Aceh (Suatu Penelitian pada Wilayah Hukum Kabupaten Bireun)*, Banda Aceh: Unmuha, 2015).
- Asri Wijayanti, Lilik Sofyan Achmad, *Strategi Penulisan Hukum*, Bandung: Lubuk Agung, 2011.
- Badruzzaman Ismail, *Pedoman Peradilan Adat di Aceh Untuk Peradilan Adat yang Adil dan Akuntabel*, (Banda Aceh: MAA-BAPPENAS, 2012).
- Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung: Citra Aditya Bakti, 1998.
- Damanik, et, al, *Modul Pelatihan Mediasi Berspektif HAM*, cet. 1, Jakarta: Komnasi HAM, 2005.
- H.P. Pangabean, *Praktik Peradilan Mengenai Kasus Aset Yayasan*, (termasuk aset keagamaan) dan *Upaya Penanganan Sengketa melalui Alternatif Penyelesaian Sengketa* (Jala Permata: Jakarta, 2012).
- Hazairin, *Tujuh Serangkai tentang Hukum*, cet. 4, Jakarta: Bina Aksara, 1985.
- Julianda Buang Manalu, *Eksistensi Keucik sebagai Hakim Perdamaian*, Magister Ilmu Hukum Unsyiah, 2012).
- Lilik Mulyadi, *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia*, (Bandung: Alumni, 2015).
- Muhammad Mustafa Syalabi, *Usul al-Fiqh al-Islam* (Beirut: Dar an-Nahdah al-‘Arabiyyah, 1406/1986).
- Ratno Lukito, *Pergumulan Antara Hukum Islam dan Adat Di Indonesia*. Jakarta INIS, 1998.
- Rusydi Ali Muhammad, Dedy Sumardi, *Kearifan Tradisional Lokal: Penyerapan Syariat Islam dalam Hukum Adat Aceh*, (Banda Aceh: Dinas Syariat Islam Aceh, 2012).
- Rusydi Ali Muhammad, Khairizzaman, *Konstelasi Syari’at Islam di Era Global*, Banda Aceh: Dinas Syari’at Islam, 2012.
- Soerjono Soekanto, *Pengantar Kajian Hukum* (Jakarta; UI press, 1990).
- Soerjono Soekanto, *Pengantar Kajian Hukum* (Jakarta; UI press, 1990).
- Soetandyo Wignjo Soebroto, ” *Permasalahan paradigma dalam Ilmu Hukum*” dalam Jurnal wacana vol. 6 (2000).
- Sri Mamudji dan Lita Arijati, *Picture of community Mediation in South Sulawesi, Papua, Bali, West Sumatra and East Java*, (Makalah di disampaikan pada 5 tahun Asian Law Institute Conference, Singapore, 22-23 May 2008).
- Subhi Mahmasani, *Falsafat at-Tasyri’ fi al-islam* (Beirut: Dar al-Kasysyaf lin-Nasyr wa at-Tiba’ah wa at-Tauzi’, 1371/1952).
- Supomo dan R.Diokosutono, *Sejarah Politik Hukum Adat*, Jilid I, (Jakarta: Diambatan, 1950).
- Syahrizal Abbas, *Mediasi dalam Perspektif Hukum Syari’ah, Hukum Adat dan Hukum Nasional*, (Kencana: Jakarta, 2009).
- Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, (Kanisius: Yogyakarta, 1982), 12-126.
- Fx. Adji Samekto, *Studi Hukum Kritis; Kritik terhadap hukum modern*. (Aditya Bakti: Bandung 2005).
- Wali Allah ad-Dihlawi, *Hujjat Allah al-Baligah*, vol. 1 (Kairo: Dar at-Turas, 1185 H).
- Widodo Dwi Putro, *Kritik Terhadap Paradigma Pasitivisme Hukum*, (Genta Publishing: Yogyakarta, 2011).

## B. Perundang-undangan

Qanun Aceh Nomor 9 Tahun 2008 tentang Pembinaan Kehidupan Adat Istiadat.  
 Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh.  
 Qanun Nomor 4 Tahun 2003 tentang Pemerintahan Mukim.  
 Qanun Nomor 5 Tahun 2003 tentang Pemerintahan Gampong  
 Qanun Nomor 10 Tahun 2008 tentang Lembaga Adat.  
 Undang-Undang Nomor 44 Tahun 1999 tentang Penyelenggaraan Keistimewaan Aceh

## C. Karya Ilmiah/Jurnal

Ismaidar, Rahmayanti Rahmayanti, and Nuke Panenggaran. "Kajian Hukum Terhadap Anak Yang Menjadi Korban Tindak Pidana Penganiayaan." *Jurnal Darma Agung* 32, no. 1 (2024).  
 Muhammad Iqbal, Syaiful Asmi Hasibuan, and Sumarno Sumarno. "Perlindungan Hukum Terhadap Anak Korban Kekerasan Fisik Oleh Orang Tua Kandung." *Jurnal Hukum dan Sosial Politik*, Vol. 1, No. 4 (2023).  
 Mansari, *Restoratif Justice Pergeseran Orientasi Keadilan dalam Penanganan Kasus Anak*, Yogyakarta: Zahir Publishing, 2019.  
 Muslim Zainuddin, *Kedudukan Dan Fungsi Kelembagaan Mukim dalam Penyelesaian Perselisihan: Analisis Praktik Hukum Adat Di Aceh*, Disertasi, UIN Ar-Raniry Banda Aceh: 2018).  
 Syaiful Asmi Hasibuan, Yasmirah Mandasari Saragih, Andoko Andoko. "Model Penerapan Restorative Justice Pada Tindak Pidana Anak Di Tingkat Penyidikan." In *Scenario (Seminar of Social Sciences Engineering and Humaniora)*.  
 Yenni Sri Wahyuni, *Kewenangan Pemerintahan Gampong dalam Menyelesaikan Sengketa Secara Adat Menurut UUD 1945*, thesis, Magister Ilmu Hukum Unsyiah, 2011.