



Using Mediation Method in Customary Justice of Aceh-Indonesia

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ABSTRACT

Mediation is an Alternative Dispute Resolution regulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Mediation is divided into two types: mediation in and outside court. Private mediators, both individuals and institutions, handle out-of-court mediation. Meanwhile, mediation in court is regulated by Supreme Court Regulation No. 1 of 2016, which requires mediation before examining the main case, which is handled by judges or non-judge mediators recognized by the state. In Aceh Province, kampong (village) or mukim (collection of several villages) institutions carry out out-of-court mediation through a forum called the Aceh Customary Court. The Acehnese Customary Court has been around for hundreds of years. It continues to exist because it can administer justice cheaply and quickly, with simple procedures, easily accessible resolution forums (customary justice forums) found in the village itself, and able to realize a sense of justice that has been abolished in culture. The local community's law (legal culture) refers to the legal norms that live in society (living law). The Village Head acts as a mediator to encourage the parties to reach a mutual agreement that is a win-win solution to their situation. The legal basis for administering the Acehnese Customary Court is regulated in Aceh Qanun No. 9 of 2008 concerning the Development of Customs and Customs, Aceh Qanun No. 10 of 2008 concerning Traditional Institutions, and Aceh Qanun No. 8 of 2019 Council on Acehnese Customs. The research results show that implementing Acehnese customary justice uses a mediation method, where the peace agreement is made by the parties themselves, facilitated by mediators, in this case, traditional leaders (customary justice providers).

INTRODUCTION

The Aceh Traditional Council, wellknown as *Majelis Adat Aceh* (MAA), is an assembly that fosters traditional life based on the Islamic religion, which is the authority of the Aceh Government as regulated in *Qanun* (Provincial Regulation) No. 8 of 2019 concerning the Aceh Traditional Council (MAA). The MAA's main task is to carry out other mandatory matters, which are the authority of the Aceh Government, such as implementing Aceh's specialities in fostering traditional life based on the Islamic religion. Meanwhile, the MAA's functions, as regulated in Article 18, are as follows:

- a. Increasing the maintenance and development of Customs, Customs and Customary Laws in society as an inseparable part of Customs in Indonesia;
- b. increasing the capacity of Traditional Institutions and/or Traditional Leaders in the implementation of Traditional life both in the fields of government and society as well as in the field of community economic empowerment;
- c. increasing the capacity to administer Gampong Customary Courts or other names and Mukim Customary Courts as an inseparable part of the legal system in Indonesia;
- d. increasing cooperation with third parties both at home and abroad in the Customs sector following Islamic Sharia and statutory regulations;
- e. carrying out studies, documenting, writing and publishing about customs/customs that live and develop in society;
- f. compiling minutes. and/or recommendations for carrying out studies, documenting, writing and publishing on the traditions/customs that live and develop in society to serve as guidelines for the preservation of Islamic Acehnesse customs;
- g. formulate policies in the field of customs and customs in the development of Aceh;
- h. carry out coordination of development and supervision of the life of Traditional Institutions, Customary Laws and Customs;
- i. increasing the application of Indigenous values following Islamic Sharia in an integrated manner in society through religious practices and creative performances and mass media; And
- j. realizing the life of the Acehnesse people following the philosophy of "customs like pou teumeureuhom, hukom like syiah kuala, qanun

like putro phang, resam like laksamana" (Qanun Aceh No. 8 of 2019).

Various traditions have developed regarding how disputes are handled in every society. Disputes can be resolved in various ways, both through formal forums provided by the state and other informal forums provided by the State (Suparman Eman, 2004). In other words, the dispute resolution forum can be litigation or non-litigation. Dispute resolution through customary courts includes resolution through non-litigation forums organized by *Gampong* (Village) or *Mukim* Institutions.

The people of Aceh, especially those who live in remote rural areas far from urban areas, believe that the Acehnesse Customary Court plays a very important role in resolving various problems that arise in society. This is because the existence of formal justice for rural communities is still considered difficult to reach, not only because access to justice locations is located far from rural communities but also because of the high costs that must be incurred and the complexity of justice administration that they must fulfil. Therefore, customary justice is the main choice in resolving various problems and seeking justice while creating balance and harmonising social life in rural areas.

As a medium for dispute resolution, the Acehnesse 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 the root of restorative justice, where the main element of restorative justice is the willingness and participation of victims, perpetrators and the community in improving criminal acts that have occurred, which is also a characteristic of Acehnesse Customary Law.

Apart from criminal law, the Aceh Customary Court also handles other areas of law, such as land, civil law, and marriage. The decision given by the Aceh Customary Court is a "Win-Win Solution"; cases that the Customary Court has decided cannot be referred back to the general court.

Philosophically, the Aceh Traditional Court's decision can bring the parties justice, certainty, and benefits. This follows the aim of law conveyed by Aristotle: law aims to achieve justice, meaning giving everyone what is their right. Jeremy Bentham also stated that the purpose of the 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 (Joel et al., 1980). This is also the

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

The Acehese Customary Court can make decisions based on 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. Good law always contains three important things: legal structure, legal substance, and legal culture (Lawrence Friedman, 1992).

In resolving disputes through customary courts, the Village Head (*Keuchik*) acts as a mediator whose role is to encourage the parties to formulate points of agreement regarding the dispute they are discussing. The position of the Village Head as a mediator must be neutral and impartial in resolving disputes. He must be able to safeguard the interests of the parties to the dispute fairly and equally to foster trust among the parties to the dispute. (Syahrizal Abbas, 2009). The position of the mediator or mediator in mediation is only as an assistant to the parties in reaching an agreement because, in principle, the parties determine the decision, not the mediator. (Sanusi Bintang and Dahlan, 2000) Based on the description above, the problems in this research are as follows:

1. What disputes can be resolved through the Aceh Customary Court?
2. What are the principles and institutions for administering the Acehese Customary Court?
3. What dispute resolution procedures and mediation methods implement Acehese customary justice?

METHOD

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).

RESULTS AND DISCUSSION

A. Disputes Resolved Through Aceh Customary Courts

Dispute resolution through customary courts is regulated in Aceh Qanun (Provincial Regulation) No. 9 of 2008 concerning the Development of Traditional Life and Customs. The types of disputes that can be resolved through Customary Courts are

regulated in Chapter VI Dispute/Dispute Resolution, which includes:

- a. domestic disputes;
- b. disputes between families related to faraidh;
- c. disputes between citizens;
- d. gross seclusion;
- e. disputes about property rights;
- f. theft in the family (minor theft);
- g. shared property disputes;
- h. petty theft;
- i. theft of domestic livestock;
- j. violations of customs regarding livestock, agriculture and forests;
- k. disputes at sea;
- l. disputes in the market;
- m. minor abuse;
- n. forest burning (on a small scale that harms indigenous communities);
- o. harassment, slander, incitement and defamation;
- p. environmental pollution (light scale);
- q. threatening threats (depending on the type of threat); and
- r. other disputes that violate customs and customs. (Aceh Qanun No. 9 of 2008).

The cases 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, a Memorandum of Understanding (MoU) has been signed between The Aceh Traditional Council, or *Majelis Adat Aceh* (MAA) and the Aceh Regional Police.

B. Principles and Institutions for Implementing Acehese Traditional Justice

If studied in more detail, we will find several principles contained in customary justice, namely:

- a. Principles in Customary Justice

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 several principles which are generally accepted by various other legal systems, namely: Acceptable, Accountability, Clarity of procedure, Non-Discrimination, Accessible to the public, Voluntary, Peaceful Solution, Win-Win Solution, Consensus, Transparency, Competency, Territoriality, Domicile, Pluralism, Presumption of Innocence, Proportional Justice. (UNDP Report 2008).

Another principle that must also be put into practice by parties administering Customary Courts is that 'the weak are guided, the disabled are supported, the less is added, the odd is filled, the wrong is corrected, the forgotten is reminded, the crying is silenced, the quarrelling is calmed, and the mistakenly reminded. (Badruzzaman Ismail, 2007)

b. Customary Justice Organizing Body/Institution

Customary justice is carried out by two institutions, namely, Gampong/Village Institution Judicial Administration and Mukim Institution. The administration of customary justice at the Gampong level is carried out by *Keuchik* (head of village) as chairman; Gampong Secretary as clerk, *Peutua Jurong* (sub village) , recipient of the initial report; *Imeum Meunasah*, (head of Village office) as member; *Tuha Peut* (Four village public Figures), as member; *Ulama* (Islamic Scholar), scholars and other traditional figures in the Gampong (Village) concerned, apart from *Tuha Peut Gampong*, according to needs.

Meanwhile, the administration of customary justice at the Mukim level is carried out by Imeum Mukim as chairman; Mukim Secretary as Registrar; Tuha Peut Mukim as member; Ulama, other traditional figures/scholars, apart from Tuha Peut Mukim as needed.

The traditional justice bodies at the mukim level and their working mechanisms are almost the same as at the gampong level. Cases that are resolved at the Mukim court level are: (1) cases that occur between kampongs, which are within the jurisdiction of the Mukim and (2) appeal cases, namely cases that have already been handled at the kampong level but one of the parties is dissatisfied with the decision.

C. Principles and Institutions for Implementing Acehese Traditional Justice

Customary courts can resolve both civil and criminal disputes. Suppose the community feels that other members of the community have disadvantaged it. In that case, the party who feels disadvantaged can report it to the Head and immediately have a trial date scheduled. In resolving the case, the judges at the customary court will use various methods, namely mediation and negotiation, to resolve the case quickly. Keuchik and his tools carry out this approach, which people need help to do. For sensitive cases where the

victims are women, the approach is usually taken by the keuchik's wife or otherwise female figure.

Suppose both parties have agreed to an amicable settlement agreement. In that case, the Head of Village (*Keuchik*) Secretary will officially invite both parties to attend the hearing on the day and date that has been determined. Trials take place openly and are usually held in *Meunasah* (head of village office) or other places that are considered neutral;

The Head of village (*Keuchik*) and all court members deliberated on what peace decision would be given. If they have agreed on the type of peace decision that will be handed down, then the Village head (*Keuchik*) asks the parties again whether they are ready to accept the peace decision. If their answer is to accept the decision, the clerk writes a dictum of the decision, often called a peace agreement letter. If one party or both parties do not agree with the settlement decision, the parties can submit an appeal to the *Mukim* (a group villages association) trial forum. The parties' disagreement with the decision of the gampong customary court must also be stated in the decision letter, and based on the decision letter, the case can be appealed;

The *Keuchik* (head of Village) read the peace decision along with the types of sanctions and asked the parties to sign the peace deed and seriously implement the contents of the decision. The decision and a copy given to the parties are kept as an archive at the Keuchik's office and the settlement. After the parties agree and accept the decision, the decision will be executed through a peace ceremony at the next meeting. One or both parties will be subject to sanctions, depending on the type of violation they committed.

D. Use of Mediation Methods in the Implementation of Acehese Customary Justice

From the description of dispute resolution above, it can be concluded that dispute resolution through Customary Courts is carried out through mediation methods and processes as regulated in Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court.

What is meant by mediation is a flexible process in which an independent and impartial person actively helps the parties to reach a negotiated agreement to resolve their dispute, and the parties are in full control of the settlement decision and the terms of the settlement. (Sabela Gayo, 2024).

According to Rachmadi Usman, mediation is a way of resolving disputes outside of court through negotiations involving a neutral third party (mediator) who does not take sides with the disputing parties and whose presence is accepted by the disputing parties. (Rahmadi Usman, 2003) The mediator acts as a facilitator. This shows that the mediator's job is only to assist the disputing parties in resolving problems and does not have the authority to make decisions. The mediator's position is to help the parties reach an agreement that can only be decided by the parties to the dispute. The mediator does not have the authority to force but is obliged to bring together the disputing parties. The mediator must be able to create conducive conditions that can guarantee the creation of a compromise between the disputing parties to obtain mutually beneficial results.

Dispute resolution through mediation occurs between community members and is resolved at the village level. When a dispute occurs, the Village Head will try to resolve the problem through deliberation. This process will take several stages:

- a. The Village Head will help the parties reach a mutual agreement where both parties agree on a solution, seeking a mutual agreement through mediation.
- b. After successful mediation, both parties must comply with what both parties may or must do and vice versa.
- c. To convey to the community that a dispute has been resolved, a small celebration of safety and eating together is held. In this Village-level mediation forum, the agreed-upon results regarding a resolved dispute are conveyed so that they are known to the public.

Dispute resolution through the Customary Courts has community support because it is cheap, takes place in a family atmosphere, is simple, is in accordance with the legal culture of the local community, and is not bureaucratic. The parties wholeheartedly accepted the customary court decision. 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 or living law. (Nurdin, Suhaimi and Mustaqim, 2024).

Customary court decisions are the result of deliberation to achieve peace between the two parties. Therefore, the decision is in the form of very light sanctions, such as exhortation to expulsion from the village. When reaching an important decision, it is emphasized that both

parties must agree freely and independently on the sanctions or punishment that will be given.

In the initial stage, alternative dispute resolution is carried out through mediation at the village level, where both parties agree to resolve the dispute through stages at the village level, namely mediation. The result of mediation is an agreement. Alternative dispute resolution through the Customary Court can also be continued with stages at the Mukim level, where at this stage, the result is no longer an agreement between the parties to the dispute but a decision from the Customary Court Organizer at the Mukim level, consisting of Imeum Mukim, Mukim Secretary, Tuha Peut Mukim, Ulama, traditional figure/scholar.

CONCLUSION

From the results of the research described above, several conclusions can be drawn, namely: The Acehnese Customary Court, in resolving various criminal and civil cases, uses the mediation method, where the mediator only encourages the parties to agree on a mutual agreement; The Acehnese Customary Court has become the main choice for rural communities to resolve various disputes that arise in the community using various principles; The Acehnese customary justice process is simple, fast, and low-cost. The settlement forum is easy to reach, and the decisions are win-win solutions following the sense of justice and legal culture that develops in society.

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