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CHALLENGES IN DOCUMENTING AND FORMALIZING CUSTOMARY COURT SYSTEM IN ACEH, INDONESIA

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Abstract: In the customary justice system in Aceh, Indonesia, the study aims to resolve minor disputes within the community through consensus. Essentially, the resolution of customary disputes is informally conducted without formalization and documentation. However, as the legal landscape and society evolve, government regulations now require the formalization of dispute resolution through customary courts similar to state courts. This article discusses the challenges of formalization and documentation in the customary courts in Aceh, Indonesia. The article identifies three primary challenges to formalization and documentation in customary justice: first, the belief among some customary leaders that the case resolution process does not require formality and documentation due to infrequent complaints from the parties involved. Second, there is a lack of training among customary leaders in the formal legal process. Third, there is insufficient awareness and promotion of the formalization of customary justice. The article argues that formalizing customary justice is not merely a matter of regulatory compliance but requires socialization and training for customary leaders to implement formalization and documentation effectively.
Keywords: Formalization, Documentation, Customary Court, Aceh-Indonesia

Abstrak: Sistem peradilan adat di Aceh, Indonesia bertujuan menyelesaikan kasus-kasus perselisihan kecil yang terjadi dalam masyarakat dengan jalan musyawarah. Pada dasarnya, penyelesaian sengketa adat dijalankan secara informal tanpa memerlukan formalisasi dan pendokumentasian. Bagaimanapun, seiring dengan perkembangan hukum dan masyarakat, pemerintah melalui regulasi mensyaratkan adanya formalisasi penyelesaian kasus melalui peradilan adat seperti pengadilan negara. Artikel bertujuan mengulas tantangan formalisasi dan pendokumentasian pada peradilan adat di Provinsi Aceh, Indonesia. Artikel menemukan tiga tantangan utama formalisasi dan pendokumentasian peradilan adat yaitu, pertama, anggapan sebagian perangkat adat bahwa proses penyelesaian kasus tidak perlu formal dan pendokumentasian karena jarang mendapatkan komplain dari para pihak. Kedua, perangkat adat tidak terlatih dalam proses pelaksanaan hukum formal. Ketiga, kurangnya sosialisasi terhadap implementasi formalisasi peradilan adat. Artikel berpendapat, formalisasi peradilan adat tidak cukup sekedar tertulis dalam regulasi, namun diperlukan sosialisasi dan pelatihan kepada pemimpin adat dalam melaksanakan formalisasi pendokumentasian tersebut.
Kata Kunci: Formalisasi, Pendokumentasian, Peradilan Adat, Aceh-Indonesia

Introduction

Alternative dispute resolution (ADR) is becoming more popular worldwide as countries acknowledge its value.[1] The public is increasingly aware and interested in alternative dispute resolution systems.[2]. Although state courts cannot be overlooked as a necessity in modern society for resolving disputes, decisions from state courts often lead to adverse consequences for the involved parties and disrupt their reconciliation.

The resolution of disputes in state courts is also seen as inadequate in meeting the principles of simplicity, speed, and cost-effectiveness, which are promoted as the court's slogan. In some cases, seekers of justice are dissatisfied with the judges' decisions.[3][4]. Some disputes resolved at the first-level courts must be refiled at the appellate level and, in some cases, even submitted up to the Supreme Court. This situation further underscores the importance of resolving cases through alternative dispute resolution mechanisms. In several countries, alternative dispute resolution is undertaken through customary courts, such as Aceh, Indonesia. Traditional justice's standing and function as a different kind of resolving disputes have not been expressly governed by legislation. In Aceh, customary judicial practices are governed by the Law of 2006 on Acehnese

1 Jennifer Mills, 'Alternative Dispute Resolution in International Intellectual Property Disputes' (1996) 11 Ohio State Journal on Dispute Resolution. See also, Erwin Nur Rif'ah, 'Freedom or Restraint: Redefining the Concept of Human Security within the Indonesian Muslim Community' (2018) 1 Journal of Southeast Asian Human Rights 192; Joe Tomlinson, 'Justice in Automated Administration' (2020) 40 Oxford Journal of Legal Studies 708 <https://doi.org/10.1093/ojls/gqaa025>; Erdos D, 'Search Engines, Global Internet Publication And European Data Protection: A New Via Media' (2020) 79 The Cambridge Law Journal.

2 Joanne Goss, 'An Introduction to Alternative Dispute Resolution' (1995) 34 Alberta Law Review 1 <https://www.albertalawreview.com/index.php/ALR/article/view/1098>. See also, Bertrand Chopard and Marie Obidzinski, 'Public Law Enforcement under Ambiguity' (2021) 66 International Review of Law and Economics 105977 <https://linkinghub.elsevier.com/retrieve/pii/S0144818821000016>.

3 Ari Indra David and Maryanto Maryanto, 'Justice In Judges' Decisions On Criminal Cases According To The View Of Progressive Law' (2021) 3 Law Development Journal 205 <http://jurnal.unissula.ac.id/index.php/ldj/article/view/15986>.

4 S Noer, 'Recusal and the Constitutional Right of Justice Seeker' (2018) 4 Journal of Legal Studies and Research 212.

governance, Qanun of Aceh, and Governor Regulation No. 60 of 2013, which institutionalizes official legal institutes. As the laws and regulations under Qanun form the basis of the epistemology of traditional authority and legal authority reflected in legislation in Aceh products, the binding strength and the acceptance of decisions made by customary justice in Aceh are recognized and obeyed. In Aceh's legal pluralistic environment, charismatic authority is a defining feature of Indigenous judicial leadership.[5] Many internal and external element appear to support its resilience. The primary internal factor is that distant normative frameworks are the source from which indigenous institutions derive their authority and power. The indigenous institutions aim for more than just correcting the wrongs and making amends. They work to prevent social unrest and establish circumstances leading to future peace. An other internal aspect at play is the common knowledge and regard that the disputants have for the individuals stepping in to mediate disputes—clan leaders, elders, and local mediators. As a result, the parties in dispute are aware of the processes and they are involved in advance. [6]

Compared to alternative dispute resolution through customary courts and state courts, the state courts offer a high level of legal certainty and authority. State courts also adhere to strict formal procedures, beginning with the filing process at the police and prosecution offices, the examination of evidence in court, the pronouncement of judgments by judges, and formal documentation.

The customary justice system in Aceh is customary justice which is organized by Gampong and Mukim traditional institutions. The process of administering customary justice is usually done in Meunasah (langgar/musala) using a deliberation system based on the customary judicial practices governed by the Law of 11, 2006 on Acehnese governance, Qanun of Aceh, and Governor Regulation No. 60 of 2013. Rules to make the customary court process more structured exist, however, these courts have not fully implemented them. Additionally, there are instances where the involved parties disregard the decisions made by these courts. Issues arise when the parties are unable to present concrete proof to the state court that the case has already been settled within the customary court. Consequently, identical cases are readdressed multiple times in state courts, leading to legal ambiguity concerning the rulings of the customary courts.

In practice, the tension between the need for legal certainty often leads to new disputes among those seeking justice. They have concerns that dissatisfied parties may challenge customary court decisions in formal courts. Consequently, there is pressure for traditional courts to adopt formal procedures similar to those in state courts as an alternative. This transition has been implemented in the research area in Aceh, Indonesia, by issuing regional government policies. The Aceh government enacted Regional Regulation No. 9 of 2008 concerning the preservation of customs and traditional life, further elaborated in Aceh Governor Regulation No. 60 of 2013 regarding the resolution of customary disputes. The introduction of these policies is closely tied to the efforts to recognize customary justice through legal regulations. Another contributing factor is the influence of positive law on legal discourse in Indonesia, fostering a desire for formalization, even within customary courts.

5 SW Rahayu, 'Alternative Dispute Resolution through Customary Tribunal in the Context of Legal Pluralism in Aceh' (2018) 9 International Journal of Civil Engineering and Technology 472.

6 K Tafere Reda, 'Conflict and Alternative Dispute Resolution among the Afar Pastoralists of Ethiopia' (2011) 3 African Journal of History and Culture (AJHC) 38.

The influence of positive law in Indonesia

According to Austin, laws are regulations containing orders intended for intelligent creatures and are made by other intelligent creatures who have power over them. Therefore, the foundation of law lies in the authority of the ruler. Jeremy Bentham, credited as a pioneer of positivist legal doctrines, emphasized this aspect. However, it is essential to note that in Indonesia, the impact of positive law is significantly influenced by the pure theory of law proposed by Hans Kelsen. Austin put forward the idea that law represents the commands of the governing authority. In Austin's perspective, law is a system that compels individuals to obey directives from their superiors and obligates subordinates or those beneath them to execute them.[7], [8], [9]. Bentham is often acknowledged as a key figure in this academic tradition, although he is better recognized for articulating philosophical concepts tied to utilitarianism. In Banović's review[10]- The focal points of his attention are moral and political philosophy, along with reforms in institutions and the economy. The influence of legal positivism in Indonesia is also acknowledged by [11]. He believes that law in Indonesia is shaped by the teachings of positivism, which is understood as positive legal norms within the legislative framework. Referring to Samexto[12], in Indonesia, positive law is predominantly influenced by Hans Kelsen, who replaced Austin's legal positivism with legal conceptualism in his pure theory of law [13].

In the pure theory of law, Kelsen argues that law should be cleansed of non-legal, extraneous elements. The law prioritizes formal structure over content alone. The law may not necessarily be just, but it remains because authorities issue it.[14], [15], [16], [17], [18]. After Indonesia gained independence in 1945, the prevailing legal framework followed colonial-era laws. Indonesia declared the adoption of a civil law legal system. [19], [20]. Besides colonization, the inclination towards adopting a civil law system is also closely

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7 R Berkowitz, 'From Justice to Justification: An Alternative Genealogy of Positive Law' (2011) 1 UC Irvine L. Rev 611.

8 James Bernard Murphy, 'Positive Divine Law in Austin' (2013) <https://link.springer.com/10.1007/978-94-007-4830-9_9>.

9 Damir Banović, 'About John Austin's Analytical Jurisprudence: The Empirical-Rationalist Legal Positivism' (2021) 21 International and Comparative Law Review 242 <https://www.sciendo.com/article/10.2478/iclr-2021-0010>.

10 ibid.

11 F. Budi Hardiman, *Melampaui Positivisme Dan Modernitas: Diskursis Filosofis Tentang Petode Ilmiah Dan Problem Modernitas* (Kanisius 2003).

12 FX Adji Samekto, 'Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeautheorie Dalam Pendekatan Normatif-Filosofis' (2019) 7 Jurnal Hukum Progresif 1 <https://ejournal.undip.ac.id/index.php/hukum_progresif/article/view/23610>.

13 ibid.

14 Julius Cohen, 'The Political Element in Legal Theory: A Look at Kelsen's Pure Theory' (1978) 88 The Yale Law Journal 1 <https://www.jstor.org/stable/795677?origin=crossref>.

15 Hans Kelsen, *What Is the Pure Theory of Law?* (Taylor & Francis 2017).

16 Henry Cohen, 'Kelsen's Pure Theory of Law' (1981) 26 The Catholic LawyerThe Cat 147.

17 Andi Munafri D Mappatunru, 'The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum Indonesia' (2020) 2 Indonesian Journal of Criminal Law 132 <https://journal.ilininstitute.com/index.php/IJoCL/article/view/541>.

18 Peter Goodrich, 'The Pure Theory of Law Is a Hole in the Ozone Layer' (2021) 92 Colorado Law Review.

19 Aloysius R Entah, 'Plularisme Private Law / Civil Law in Indonesia' (2018) 6.

20 Mohammad Amir Hamzah, 'Reform Of Civil Procedural Law At The Appellate-Level Courts In Indonesia' (2016) 28 Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 348 <https://jurnal.ugm.ac.id/jmh/article/view/16723>.

linked to the impact of positivist principles found in Hans Kelsen's development of the pure theory of law. According to Kelsen[21], [22], new laws are acknowledged as legitimate laws when they are devoid of foreign elements. This demonstrates that a new law is acknowledged as legitimate when formulated in a written (positive) manner, ensuring legal certainty in its application. This influence subsequently extended to Aceh, guiding the establishment of formal legal policies. Indigenous justice, which draws its authority from customary law, recognizes Indonesia's rich local knowledge. Adat, or customary law and tradition, is a way of perpetuating culture. Customary law and traditional (adat) institutions have long existed in Aceh. During the ruling period of Sultan Iskandar Muda, the judiciary was divided into four categories. Civil courts, criminal courts, religious courts, and commercial courts were the four branches of the judiciary[23]. The impact of Kelsen's theory in shaping the legal framework in Indonesia is also acknowledged by [24]. Furthermore, Buana[25] reviews that the strong influence of civil law can impede the development of living law in Indonesia because civil law places greater emphasis on formal legal structures than the outcomes of resolving disputes through customary adjudication

Customary Court

According to Mansur[26], customary court is an alternative dispute resolution process that involves reaching resolutions through consensus. It also serves as a peaceful judicial institution among members of a specific customary legal community within their customary legal environment.

Customary adjudication has received recognition within the national legal framework. Consequently, it can coexist with the national judiciary, but in practice, customary adjudication is carried out in a traditional manner[27], [28], [29], [30]. The acknowledgment of the presence of traditional courts is indirectly implied in the Republic of Indonesia's 1945 Constitution (UUD). Article 18B, paragraph 2 of the constitution declares, 'The state acknowledges and respects community units governed by customary law as long as they continue to exist and develop in society.' This expression of respect for community units governed by customary law is consequently linked to an implied acknowledgment of customary justice. To this day, customary justice persists and is administered by the community. Even in the absence of formal regulations, customary

21 Hans Kelsen (n 15).

22 Hans Kelsen, *Pure Theory of Law* (University of California Press 1967) <https://www.degruyter.com/document/doi/10.1525/9780520312296/html>.

23 Denys Lombard, *Kerajaan Aceh Zaman Sultan Iskandar Muda (1607-1636)* (Kepustakaan populer Gramedia (KPG) 2007).

24 Mappatunru (n 17).

25 Mirza Satria Buana, 'Living Adat Law, Indigenous Peoples and the State Law: A Complex Map of Legal Pluralism in Indonesia'.

26 Teuku Muttaqin Mansur and others, 'The Effectiveness of the Implementation of Customary Fines in Settlement of Seclusion Cases in Banda Aceh' (2020) 4 Sriwijaya Law Review.

27 SI Ketut, *Recognition of Customary Courts in Legal Politics of Judicial Power* (Pusat Pelayanan Konsultasi Adat 2016).

28 Muhammad Siddiq et all Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 JILS 525; Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] Intellectual Discourse.

29 H Herinawati, 'Aceh's Traditional Judicial System in Indonesia's Legal System' [2019] Journal Of Law And Government Science.

30 RI Eka, 'The Existence of Traditional Jurisdiction in the Criminal Law System in Indonesia in the National Criminal Law Renewal Effort' [2021] Pakuan Justice Journal Of Law.

justice remains in the community, albeit in the current context, it necessitates recognition under state law. This is what we refer to as customary justice, which has also been influenced by the principles of positivism.

In addition to being recognized by the constitution, in the research area, customary courts are also acknowledged by the Republic of Indonesia Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law Number 44 of 1999 on the Implementation of Acehnese Special Autonomy, Law Number 11 of 2006 on the Governance of Aceh (UUPA), Aceh Regional Regulation (Qanun) Number 9 of 2008 on the Development of Customary Law and Traditions, Aceh Qanun Number 10 of 2008 on customary institutions, as well as Aceh Governor Regulation Number 60 of 2013 on the Implementation of Customary Dispute Resolution. This recognition impacts the existence of customary courts in Aceh, which is the subject of this article's study within the national legal framework. Consequently, practitioners of customary justice need not worry when conducting the resolution of small cases brought to them. According to Husin's research[31], the resolution of small cases in customary courts aims to prevent the accumulation of cases in formal state courts. The backlog of cases in formal courts is consistently linked to lengthy case resolution processes, from filing complaints and demands to reaching a verdict. Furthermore, corruption issues in the judiciary add to the perception of a selective process, determining which cases should be prioritized or delayed. Meanwhile, the case resolution process in customary courts is considered swift. In fact, some cases are resolved on the spot when disputes occur because the case resolution in customary courts consistently adheres to principles of being fast, accessible, straightforward, cost-effective, transparent, and responsible[32]. Most importantly, the case resolution process is conducted through consensus, leading to reconciliation[33].

Customary Justice Contribution

The research findings indicate that customary courts as alternative dispute resolution mechanisms significantly deter small cases from being processed in state courts. Customary courts also can reduce the incarceration of individuals involved in minor legal violations. The research also identified that one of the issues in law enforcement in Indonesia is the excessive imprisonment of individuals for minor offenses.

Referring to Article 13 of Aceh Qanun Number 9 of 2008 concerning the development of customs and traditions, Article 3 of Aceh Governor Regulation Number 60 of 2013 regarding customary dispute resolution, and these 18 minor disputes encompass domestic disputes, illicit relationships, petty theft, theft of livestock, disputes at sea, minor assault, small-scale forest fires, defamation, incitement, character assassination, minor environmental pollution, threats, disputes among family members related to inheritance, conflicts among residents, disputes over property rights, disputes over the joint property ('sehareukat'), customary violations related to livestock, agriculture, and forests, disputes in markets, and other disputes that violate customs and traditions. This

31 Taqwaddin Husin, 'Penyelesaian Sengketa/Perselisihan Secara Adat Gampong Di Aceh' (2015) 17 Kanun: Jurnal Ilmu Hukum.

32 Teuku Muttaqin Mansur Lailan Sururi, Dahlan Ali, 'Penyelesaian Sengketa Melalui Peradilan Gampong' (2019) 21 Kanun: Jurnal Ilmu Hukum.

33 Teuku Muttaqin Mansur, Sulaiman Sulaiman and Hasbi Ali, 'Adat Court in Aceh, Indonesia: A Review of Law' (2020) 8 Jurnal Ilmiah Peuradeun 423 <https://journal.scadindependent.org/index.php/jipeuradeun/article/view/443>.

is also what Nur Rochaeti and Dwi Sutanti conveyed[34]. In addition to its significant role in reforming the criminal justice system in Indonesia, customary justice also assists the government in resolving 18 types of minor and light disputes occurring within the Aceh community.

Quantitatively, the research findings reported 7,445 customary courts in Aceh, distributed across 23 regencies and cities in Aceh, covering the entire population of those regions. Out of this number, 7,253 handle community disputes on the mainland, consisting of 6,474 village-level customary courts (known as 'peradilan adat gampong'). Village-level customary courts have the authority to resolve minor disputes at the primary level, similar to district courts in the formal legal system. There are also 779 appellate-level customary courts at the 'mukim' level (known as 'peradilan adat mukim'). Mukim-level customary courts have two prominent roles: first, they handle minor disputes between villages or across 'mukim' within the same sub-district. Second, they serve as an appellate court to review cases brought by those seeking justice who are dissatisfied with the decisions of village-level customary courts. Mukim-level customary courts represent the final level within the customary justice system. If the parties involved do not accept the decision of the mukim-level customary court, their recourse is to file a formal legal case through the local police jurisdiction in their respective 'mukim' areas (see,[35]; [3637], [38]. Next, there is a type of customary court that deals with maritime customary disputes, known as 'peradilan adat laot.' The 'peradilan adat laot' specifically handles disputes among fishermen at sea. The maritime customary court does not have the authority to resolve cases involving residents on land, even if they are fishermen. [3940] This comprises 192 customary courts, with 174 'peradilan adat laot' at the 'lhok' level. The 'peradilan adat lhok' is responsible for resolving fishermen's disputes within their respective 'lhok' territories. 'Lhok' represents a territorial sea area and is essentially a bay. In terminology, 'lhok' is a region inhabited by a group of fishermen led by a chosen boat captain (nahkoda boat) within the 'lhok' area. This leader is also considered an elder responsible for governing the territory and is called the 'Panglima Laot Lhok.' 'Lhok' areas do not align with village administrative boundaries; they historically form as bays, estuaries, coastal areas, or inlets that protrude inland and often have docks for fishermen's boats to moor. (See, [41].[42])

34 Noer (n 4). See also, Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Maintaining the Constitutional Rights to Create a Better Society' (2023) 8 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 69; Muhammad Siddiq Armia and Muhammad Syauqi Bin-Armia, 'Introduction: Form Over Substance, Achieving Objectives While Preserving Values' (2023) 8 Petita : Jurnal Kajian Ilmu Hukum dan Syariah i.

35 Teuku Muttaqin Mansur, 'Challenges of the Laot Customary Court in Aceh' [2012] Kanun: Jurnal Ilmu Hukum.

36 Mansur, Sulaiman and Ali (n 33).

37 Teuku Muttaqin Mansur (n 35).

38 Mansur, Sulaiman and Ali (n 33).

39 Kamaruzzaman Bustamam-Ahmad, 'A Study of Panglima La'ōt: An 'Adat Institution in Aceh' (2017) 55 Al-Jami'ah: Journal of Islamic Studies 155 <http://aljamiah.or.id/index.php/AJIS/article/view/55107>.

40 ibid.

41 MA Abdullah, A Arifin and S Tripa, 'Panglima Laot: His Legacy and Role in Conserving Marine Resources in Aceh, Indonesia' [2018] SHS Web of Conferences.

42 ibid.

Additionally, there are 18 'peradilan adat laot' at the District/city level. These 'peradilan adat laot' at the District/city level have the authority to settle disputes among 'lhok' areas or disputes that cannot be resolved by the 'panglima laot' at the 'lhok' level. Despite the existence of 'panglima laot' institutions up to the provincial level, parties dissatisfied with the resolutions at the District/city level 'peradilan adat laot' cannot escalate their cases to the provincial level. This is because, within the customary court structure, the provincial level is not considered a judicial level; it serves other roles, such as advocating for fishermen stranded abroad during their fishing expeditions. There are no further customary court avenues. Thus, fishermen unsatisfied with the District/city-level 'panglima laot' decisions can appeal their cases to the state court system through the police, similar to dissatisfied parties in customary dispute resolutions at the 'mukim' level.

Imagine if minor disputes, such as altercations resulting in minor injuries, were brought before the state courts. If just one case occurred per month, how many people would end up in prison for minor violations in a year? What if there were 18 cases and now under the jurisdiction of customary courts in Aceh they were all brought to the state courts? It would potentially result in 216 cases per year, where individuals could face imprisonment.

This situation starkly contrasts the availability of prison space in Indonesia. Today, prison capacity in Indonesia is not just at the level of overcapacity; it has reached overcrowding. According to Dodot Adi Kuswanto (2021), as of February 15, 2021, the capacity of correctional institutions reached 252,384 people, the available room capacity was only 135,704 people. This overcrowding also triggered the prison riots in Tangerang, Banten, on September 8, 2021 (Mahfud MD, 2021). While in Aceh have the same issues, Correctional Institutions (Lapas) in Aceh experienced overcapacity of up to 300 percent, causing prisoners to be crowded into cells. The Aceh Ministry of Law and Human Rights plans to add blocks to create a new prison.[43]

Therefore, the delegation of authority for the resolution of minor cases to customary courts is a necessity. The state must also provide legal certainty to customary courts, ensuring their decisions are legally binding. This means that once a decision is made by a customary court, it should have the same status as a decision in the state court system, i.e., it should be considered final and binding. State courts must reject cases brought back to them by the parties involved if a customary court has already decided the minor dispute.

Methods

This research focused deeply and holistically on fieldwork to uncover important facts, circumstances, phenomena, and variables related to the objects in question. The study employed phenomenological, social, and humanistic approaches to gather and analyze data. The findings are presented through detailed descriptions, incorporating written and oral accounts from various information outlets.

Observation and documentation served as the primary data collection techniques in this study. Observation involves directly observing the object of research to identify what happens, and it provides researchers with the ability to understand complex situations. The direct observation technique is particularly useful for obtaining first-hand

43 'Https://Www.Detik.Com/Sumut/Berita/d-7023812/4-Penjara-Di-Aceh-over-Kapasitas-300-Persen-Napi-Tidur-Berdempetan'.

information about the object being studied. Meanwhile, documentation involves reviewing written data in the form of documents related to the focus of the study. This approach enables researchers to collect a large amount of data in a relatively short amount of time and provides an opportunity to analyze past events and trends. Researchers can compile a comprehensive dataset for analysis by employing both observation and documentation techniques, leading to well-founded conclusions.

Results and Discussion

Customary Court Formalization Policy

The legal positivism doctrine in Indonesia has influenced the perspective of lawmakers in regulating every aspect of societal behavior through formal legislative regulations. Numerous calls have been for customary law to be incorporated into legislation. Even at the grassroots level, society has been influenced by legal positivism, as expressed by Bentara Linge[44], a prominent figure in the Gayo customary community. They have started to become concerned about resolving cases within the community through customary courts. Some cases they have resolved, such as inter-tribal or inter-clan marriages with the penalty of both parties being expelled from the village, are viewed as law violations. Consequently, customary leaders have been questioned by law enforcement authorities (the police) and asked about the legal basis for the expulsions. The police believe that all cases must adhere to the principle of legality, meaning a legal norm must be established before it can be applied to society.

In Aceh, procedural policies for case resolution through customary courts are governed by several legislative regulations, including Qanun Number 9 of 2008 and Aceh Governor Regulation Number 60 of 2013. This policy of The kingdom of Aceh Darussalam's Constitution was first published in Qanun Al-Asyi by Sultan Alaiddin Riayat Syah II Abdul Qahhar (1539–1571), and was later refined by Sultan Iskandar Muda (1617–1636) and Ratu Tajul Alam Safiatuddin (1641–1675). This document was also known as Qanun Meukuta Alam, Adat Meukuta Alam, Adat Mahkota Alam, or Qanun Meukuta Alam Al-Asyi, or Adat Aceh [45]. in fact, contradicts the historical development of customary law itself, as it is unwritten and not codified. Although it is acknowledged that dispute resolution through customary courts has contributed to the state, the presence of formal procedural policies and documentation requirements imposed on customary courts has introduced new challenges to implementing dispute resolution within customary courts.

Formalization is unnecessary

The research findings from 2019 to 2021 in Aceh indicate that many customary courts still lack an understanding of and do not procedurally implement the formalization process of customary courts. According to Subhan Fajri[46], the current customary dispute resolution process is conducted traditionally, where disputing parties manually report their disputes to customary court authorities. In practice, the reporting process and the proceedings leading to a customary court decision are rarely well-documented, and in some cases, disputes are resolved without any documentation. Asnawi

44 'Bentara Linge, Tokoh Adat Gayo, Kabupaten Aceh Tengah' (2021).

45 Mohammad Said, *Aceh Sepanjang Abad* (Jilid Kedu, PT Harian Waspada 1985); Raden Hoesein Djajadiningrat, *Kesultanan Aceh Suatu Pembahasan Tentang Sejarah Kesultanan Aceh Yang Terdapat Dalam Karya Melayu* (Departemen Pendidikan dan kebudayaan Proyek Pengembangan Permuseuman Daerah Istimewa Aceh 1984).

46 'Subhan Fajri, Sekretaris Imeum Mukim Siem, Kabupaten Aceh Besar' (2020).

acknowledges the same thing[47]. *He mentioned that 'the formalization process of dispute resolution is still not being implemented effectively. Despite the policies issued by the Governor of Aceh and the recommendations from the Aceh Customary Council to document every step of the dispute resolution process, the reality is that it has not been fully optimized. Customary court officials are still accustomed to using the old, unwritten procedures', he said.* Customary authorities and the community believe that customary dispute resolution does not need to be formalized because it has been traditionally practiced for generations. So far, the informal process has not received complaints from the community. Moreover, the agreed-upon decisions are adhered to by all parties involved.

Form of Formalization

If the formal legal process is followed, the customary court procedure must follow the following stages: First, the complainant/reporter submits a complaint to the customary authorities; Second,traditional figures provide protection to the complaining parties; Third, the traditional justice apparatus coordinates and categorizes cases; Fourth, the traditional authorities summon the reporter, victim, and perpetrator to investigate the dispute's background; Fifth, the traditional justice apparatus examines the involved parties, witnesses, evidence, and the dispute's location; Sixth, the customary court judge decides whether the dispute is suitable for further resolution within the customary court or if it can be settled outside of it. If it is not deemed appropriate for customary court resolution, the case is returned to the parties for amicable settlement.

However, if it proceeds to the customary court, it enters the seventh stage, where the customary court judge requests a mediator to facilitate negotiations between the disputing parties. Typically, this mediation is effectively conducted by a mediator chosen by a traditional judge, often a 'tuha peut' with authority and conflict resolution expertise. Like mediators in general, the mediator aims primarily at achieving peace and reducing the dispute.

Once the mediation process is complete and an agreed-upon decision is reached, the mediator reports the results to the chairperson of the panel of judges at the customary court. Subsequently, a customary hearing is held, and a decision is made. Before announcing the decision, the chairperson of the traditional panel often consults privately with other panel members to reach a consensus. On the designated day, attended by the involved parties, their families, witnesses, and the community, the chairperson of the traditional council publicly announces the decision to resolve the complaint. The chairperson then asks both parties whether they accept the announced decision. In practice, both parties usually accept the decision, primarily due to the mediation process conducted before the trial.

The subsequent step involves signing a customary court dispute resolution report by the parties involved, the chairperson of the panel, members of the customary court session, and witnesses. Before concluding the session, the parties are requested to shake hands (known as 'peumat jaroe') as a symbol of their acceptance of the decision and reconciliation. Some decisions may involve customary obligations, such as fines or "peusijuek" (peace offerings), a formal resolution procession through customary (public) procedures in public. In Aceh, "peusijuek", or peace offerings, are made when

47 'Asnawi, Ketua Majelis Adat, Kabupaten Aceh Besar' (2021).

someone is happy or fortunate or when they are able to escape a misfortune or issue that has befallen them. Individuals are trusted to carry out each other's peusijuk (peace offerings) during the procession, these will be addressed on another pre-determined day. The execution of customary fines or 'peusijuek' is attended by village residents. This activity holds values of building camaraderie and fraternity, as well as the reintegration of the disputing parties into the community.

Traditional justice's standing and function as a different kind of resolving disputes have not been expressly governed by legislation. Acehnese customary judicial procedures, which are an institutionalization of the official legal system, are governed by the Governor Regulation No. 60 of 2013, the Acehnese Law of 2006, and Qanun of Aceh.[48] Because the laws and regulations under Qanun form the basis of the epistemology of traditional authority and legal authority reflected in legislation in Aceh products, the binding strength and the acceptance of decisions made by customary justice in Aceh are recognized and obeyed. In Aceh's legal pluralistic environment, charismatic power is a defining characteristic of indigenous judicial leadership.

As previously explained, dispute resolution stages sometimes create discomfort among customary authorities as not all cases can be resolved through such formal stages. This, in turn, raises concern for the customary court officials. If they do not follow such formal procedures, will the dispute resolution they carry out be in vain, and will it be legally void?

The concerns, as recounted by the chairperson of the customary court panel, Reje Kampung Toweren Toa[49] , "*The imposition of customary sanctions, such as expulsion and exclusion, raises concerns about potential human rights violations. Meanwhile, fines are feared to be accused of extortion"*. It turns out that society has started to believe that what is regulated by the law is the only law. However, in a broader context, the law encompasses not only legislation but also unwritten laws practiced by the community. This is also recognized by Article 67 of Law Number 39 of 1999 concerning Human Rights, stating, *'In the enforcement of human rights, differences and needs within customary law communities must be considered and protected by the law, society, and the government, as well as the cultural identity of customary law communities, including the right to protected customary land, in line with the times'*. This indicates that law enforcement agencies should educate and provide protection guarantees to the community in resolving small cases at the customary court level, especially since they have been proven to contribute to helping the government maintain public peace and order.

Inadequate dissemination of the formalization of customary court

In 2018, after the election of the chairman of the Aceh Customary Council (Majelis Adat Aceh or MAA), which was initially won by Badruzzaman, was annulled by the Governor, the MAA seemed to lose its enthusiasm for conducting formalization of customary justice socialization. The MAA was initially formed through Qanun Number 3 of 2004. The basis of this Qanun also led to Badruzzaman not being inaugurated. The Aceh

48 Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice' (2022) 17 AL-IHKAM: Jurnal Hukum & Pranata Sosial 113; Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] Qudus International Journal of Islamic Studies.

49 'Reje Toweren Toa, Kepala Desa Toweren Toa, Kabupaten Aceh Tengah' (2021).

government chose to appoint an Acting Chairman of the MAA to continue leading the institution. Subsequently, Badruzzaman and his associates filed a lawsuit against the Governor of Aceh at the State Administrative Court (Pengadilan Tata Usaha Negara or PTUN) on April 15, 2019 (case registration number 16/G/2019/PTUN.BNA). While the process was ongoing at the PTUN, the Aceh government actually enacted a new Aceh Qanun regarding the MAA, namely Aceh Qanun Number 8 of 2019. One of the considerations was that Aceh Qanun Number 3 of 2004 was deemed insufficient to address factual issues.

On September 24, 2019, the PTUN issued a verdict accepting Badruzzaman's lawsuit and requested the Governor to continue the process of appointing MAA officials resulting from the 2018 deliberations. However, the Governor filed an appeal with the the State Administrative High Court (Pengadilan Tinggi Tata Usaha Negara or PTTUN). After losing at the PTTUN, the Governor re-appealed to the Supreme Court. Following the Supreme Court's decision No 263 K/TUN/2020 at the cassation level, the MAA rejected the Governor of Aceh's appeal and ordered him to pay the court costs. However, the Governor of Aceh did not inaugurate Badruzzaman, citing that the PTUN's decision was not mandatory to be implemented.

Many parties expressed disappointment with the Governor of Aceh's decision not to inaugurate Badruzzaman. According to Taufiq Rahim (2019), the appointment of the Acting Chairman of the MAA had political nuances. Zainal Abidin (2019) argued that the Governor's action was procedurally flawed. This situation is believed to weaken the MAA institution's role of guiding customary justice at the district, municipal, and village levels.

According to Ramli Yusuf (interview, 2019), leadership issues within the MAA at the provincial level have significant consequences for regions, such as in the case of Sabang City. So, we seemed to have lost direction because, to date, the programs implemented by Badruzzaman had a clear roadmap. Syeh Marhaban echoed this sentiment during our interview at the Nagan Raya District MAA office. At least, between 2019 and 2021, the formalization policy of customary justice was not effectively disseminated to customary apparatus.

Referring to a survey by Taqwaddin et al. (2013), traditional leaders claimed to have carried out the formal customary justice stages and documented them effectively, accounting for 59.9% of the total 50 individuals surveyed across 10 districts and cities in Aceh. This percentage increased from the reported figure five years earlier (54%), and the improvement was influenced by MAA's training and customary justice socialization efforts over the past two years.

In 2011, efforts to formalize customary justice were initiated. This was marked by the Joint Decree (SKB) signed between the Aceh Regional Police Chief, MAA, and the Governor of Aceh during Irwandi Yusuf's tenure as Governor. The MOU included agreements such as 'the police authorities would provide an opportunity for any disputes falling under the jurisdiction of customary justice to be resolved first through customary justice.' This collaborative document was extensively disseminated at the time, reaching even the level of Police Sector offices. As a result, law enforcement officers referred cases for resolution by customary justice.

According to Sarwoko [50], "'there was a case of the theft of three pairs of shoes at a dormitory in Aceh Besar District. The thief was apprehended by the community and subsequently handed over to the police.' In Indonesia, theft cases can be categorized as criminal offenses and subject to national laws, specifically Article 362 of the Criminal Code (KUHP), with a penalty of up to five years in prison. However, the police who received the complaint explained that, in Aceh, there were local regulations and the the Joint Decree (SKB) regarding theft cases categorized as minor, to be resolved by customary justice.

However, due to a leadership dispute within MAA, two factions emerged. The first faction supported Badruzzaman as the MAA chairman elected during the 2018 deliberations. The second faction supported the MAA chairman appointed by the Governor in 2020, based on Regional Regulation No. 8 of 2019. This situation led to discontinuing customary justice socialization programs, which had been ongoing since 2011. For instance, [51] discovered that the police were handling minor cases reported to them, citing the police's inability to reject every complaint submitted by citizens as the reason.

Thus, it is not surprising that in the past two years, the police and some members of the community have begun to question the legality of small case resolutions by customary courts. Despite clear regulations, the formalization of customary courts as an alternative dispute resolution has not progressed optimally as anticipated.

Conclusion

This doctrine has led to a shift in legal thinking and society towards formality. Customary justice, on the one hand, is a traditional form of justice without the need for formalities. However, due to government policy demands, it must adapt to legal and societal preferences. The efforts to formalize customary justice face dynamic challenges. Firstly, internal challenges arise from the belief among customary officials and some community members that formalization is unnecessary, as customary justice practices have been passed down through generations without significant issues. Secondly, external challenges are closely related to the Governor's interference in customary institutions, which has hindered the formalization of customary justice in various regions. The Governor appears to have political interests, or at least personal tendencies, particularly concerning the leadership of the MAA resulting from the 2018 deliberations. This is evident in the Governor's refusal to comply with the Supreme Court's decision rejecting the cassation filed by him. Nevertheless, customary justice significantly contributes to assisting the government in resolving minor cases, and it even helps more people avoid imprisonment for minor offenses.

50 Sarwoko, 'The Role of Police in Banda Aceh in the Supervising Customary Court Decisions' (2017) 1 Syiah Kuala Law Journal 301. See also, Sulaiman, 'Mereposisi Cara Pandang Hukum Negara Terhadap Hukum Adat Di Indonesia' (2017) Volume 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Ratno Lukito, 'Shariah And The Politics Of Pluralism In Indonesia: Understanding State's Rational Approach To Adat And Islamic Law' (2019) Volume 4 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Asri Wijayanti and others, 'The Mbojo Local Wisdom As An Alternative For The Settlement Of Industrial Relations Disputes' (2022) 7 PETITA: Jurnal Kajian Ilmu Hukum dan Syari'ah 91 <https://petita.ar-raniry.ac.id/index.php/petita/article/view/151>.

51 Lailan Sururi, Dahlan Ali (n 32). See also, Yasar Aulia, 'Fundamental Principles of The Legislation Process: Comparative Study Between Indonesia and The United Kingdom' (2021) 6 Petita : Jurnal Kajian Ilmu Hukum dan Syariah 40; Anang Dony Irawan, 'Nationalism In A State Based On Pancasila' (2020) 5 Petita : Jurnal Kajian Ilmu Hukum dan Syariah <http://petita.ar-raniry.ac.id/index.php/petita/article/view/85>.

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