

***Adat* Court Judge: Tradition and Practice of Dispute Resolution Between Societies in Aceh**

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Abstract

The dispute's settlement between communities by utilizing adat courts is believed to have opened access for the society to obtain legal certainty and justice, especially for villagers. The existence of customary judiciary is viewed closely with people who have limited access, both financially, distance and understanding to reach the state court. Adat court has become a major player in Aceh, other than because the existence of a formal recognition of its existence through Qanun Aceh Number 9 of 2008 on the Development of Indigenous Life and Customs, it also influenced by village judges who are perceived as having the capability to present solutions for disputing communities. This study performs literature review as well as field studies by conducting direct observation of the dispute resolution practices undertaken by village judges and interviewing actors who play a role in dispute settlement in the community. Field studies were conducted in the northern part of Aceh, including Lhokseumawe, North Aceh and Bireuen district. This article uses a socio-legal study's approach which aimed to discuss the involvement and role of village judges in resolving disputes in the community. This article also discusses the factors that affect the community's acceptance of adat court decisions. This study finds that there is a strong interaction between the village judges and the community. Their knowledge, experience and the charismatic factor of the judge contributed to the added value of becoming a reference point for the community. Although still in limited numbers, the existence of female judge has contributed to open the access of justice for women. This study will contribute to the development of law and community dispute resolution's model with the efficiency of law enforcement budgets in Indonesia.

Keywords: *Dispute Settlement's Prctice, Adat Court, Judge, Aceh.*

1. Introduction

To realize Indonesia as a state of law is through the fulfillment of access to justice. Justice is a basic human right consistent with the principle of equality before the law. Everyone has the right to recover for the violation of the rights they suffer, while the state has an obligation to ensure the fulfillment of those rights. In BAPPENAS' note¹, the focus on justice is progressing. However, it initially emphasized only on the efforts to provide legal aid for the poor, then developed into a pooling of interests from stakeholders who play a role in providing access to justice for the poor. These parties are comprised of various relevant state institutions, such as prosecutors, courts, ombudsman, ministries of public services and community institutions that play roles in community empowerment. The next development is on the steps that support ongoing reforms to achieve even greater goals, namely the revamping of the legal system to achieve the ideal state of law.

The idea of this study, comes from the reality of law enforcement in Indonesia which still face many challenges. The Blueprint for Judicial Update of 2010-2035 has identified several common issues related to a) the vision, mission and organization of the judiciary, b) the implementation of technical functions, c) the efforts to improve the leadership qualities of the judiciary and d) the efforts to improve the credibility and transparency of the judiciary (Supreme Court, 2010). Based on the evaluation conducted by the Supreme Court of the Republic of Indonesia (MA) in 2008, it is known that the success of the program and achievements obtained by the Supreme Court was only 30%. Organizational Diagnostic Assessment (ODA) in 2009 assessed the performance of the judiciary continues to be highlighted by various parties, including the court process information that is not transparent, high litigation costs, difficult access for the poor and marginalized groups, and the long process of settling cases. Discourses related to the protection of human rights and corrupt practices by the judiciary apparatus would be an additional assessment of the performance of the judiciary.

¹ Kelompok Kerja Akses terhadap Keadilan, *Strategi Nasional Akses Terhadap Keadilan* (Jakarta: Kementerian Negara Perencanaan Pembangunan Nasional/BAPPENAS, 2009)

Another research conducted by The World Bank on the Access to Justice Working Group¹ shows data that the largest perpetrator of dispute settlement in the poor is village government with a percentage of 42%, adat leaders (35%) and police (27%). This data indicates that the poor prefer to settle their case in the customary court rather than go through state law. Taking into account such data and its relevance to state policy, through literature search activities, it is apparent that the government have not specifically discussed the procedural procedures that encourage the efficiency of law enforcement budgets, amidst the budget savings and efficiency issues in Indonesia, including budget in handling cases in law enforcement agencies like in the police, prosecutors and courts. The emerging cost savings and efficiency issues are still limited to savings through employee moratorium and procurement of supporting infrastructure facilities, although the issues related to the increased number of cases that must be handled ranging from the police to the prosecutor's office and courts are also increasing from year to year. In the process of handling cases, it takes the budget allocated from the State Revenue Budget, from the investigation stage in the police, followed by the prosecution phase in the prosecutor's office, to the court proceedings, plus the possible allocation of fees for legal aid process as well as guidance in prisons.

Therefore, the existence of adat court has a positive potential, more problems in the form of minor violations, for example can be resolved by the community without having to go to law enforcement bodies and the state court. The existence of customary justice not only ease the duty of the court and reduce the accumulation of cases, it also helps people access and the protection of their rights. Thus, the existence of Indonesia as a law-state can be realized, the legal objective to fulfill the sense of justice can be fulfilled, citizens have access to the services of justice, and the concept of justice with restorative justice approach can be established. Using a socio-legal approach, this study focused on Lhokseumawe, North of Aceh and Bireuen regency - their communities' choices in making use of customary justice. The dispute settlement by customary court has demonstrated an effort to strengthen the existence of Aceh's specificity as well as the revitalization of customary law and customary law, it also presents the perspective of litigants who are pessimistic about decisions established in customary level and then decide to bring the case to the formal justice institution.

2. Related Previous Study

The study on customary justice in various contexts have demonstrated the importance of community dispute resolution practices in a peaceful way. Some previous writings that can be traced, such as Abdurrahman,² Hedar Laudjeng,³ Yance Arizona,⁴ Working Group on Access to Justice⁵ (2009), Rikardo Simarmata,⁶ Ahmadi Hasan,⁷ Edy Sanjaya,⁸ Herlambang Perdana Wiratraman,⁹ Tody Sasmita Jiwa Utama & Sandra Dini Febry Aristya,¹⁰ and

¹ Kelompok Kerja Akses terhadap Keadilan., *Ibid.*, p. 27

² Abdurrahman, Penyelesaian Sengketa Melalui Pendekatan Adat, *Qanun Jurnal Ilmu Hukum No. 50* (April, 2010)

³ Hedar Laudjeng, *Mempertimbangkan Peradilan Adat*. Seri Pengembangan Wacana No. 4 – Penerbit Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), (Jakarta: The Ford Foundation & Interchurch Organization for Development Co-operation (ICCO), 2003).

⁴ Yance Arizona, Kedudukan Peradilan Adat dalam Sistem Hukum Nasional, Paper presented at *Diskusi tentang memperkuat Peradilan Adat di Kalimantan tengah untuk Penguatan Akses terhadap Keadilan*, Selasa 11 Juni 2013, Available from: <http://huma.or.id/> (Accessed 21st April 2016).

⁵ Kelompok Kerja Akses terhadap Keadilan, *Strategi Nasional Akses Terhadap Keadilan*. (Jakarta: Kementerian Negara Perencanaan Pembangunan Nasional/BAPPENAS, 2009).

⁶ Rikardo Simarmata, Merumuskan Peradilan Adat dalam Sistem Peradilan Nasional, Paper presented at Seminar “*Merumuskan Kedudukan Peradilan Adat dalam Sistem Peradilan Nasional*”, organized by Perkumpulan HuMA and Mahkamah Agung Republik Indonesia, Jakarta 10 Oktober 2013, Available from: <http://huma.or.id/> (Accessed 21st April 2016).

⁷ Ahmadi Hasan, Penyelesaian Sengketa Melalui Upaya Non Litigasi Menurut Peraturan Perundang-undangan, *Jurnal AL-BANJARI*, Vo. 5, No. 9, (Januari – Juni, 2007).

⁸ Edy Sanjaya, Hukum dan Putusan Adat dalam Praktek Peradilan Negara (Surabaya: Untag, 2010) Available from: <http://fakhukum.untagsmg.ac.id/> (Accessed 20th February 2017).

⁹ Herlambang Perdana Wiratraman, *Laporan Akhir Tim Pengkajian Hukum Tentang Peluang Peradilan Adat dalam Menyelesaikan Sengketa Antara Masyarakat Hukum Adat dengan Pihak Luar*. (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional – BPHN, Kementerian Hukum dan Ham, Jakarta, 2013).

¹⁰ Tody Sasmita Jiwa Utama and Sandra Dini Febry Aristya, Kajian tentang Relevansi Peradilan Adat terhadap Sistem Peradilan Perdata Indonesia, *Mimbar Hukum*, Volume 27, Nomor 1, (February 2015) 57 – 67.

Lilik Mulyadi,¹ have revealed the important positions of customary justice in present indigenous peoples, and its existence is considered an alternative to justice provider in addition to the formal judiciary. Furthermore, there is a review of customary court opportunities in resolving disputes between indigenous and tribal peoples.² The issue of customary justice has also received special attention in the study of custom law enforcement as well as the study of the fulfillment of access to justice for the community. This is a consequence of the view that customary justice systems are perceived as being more capable of providing justice and more accessible to local communities or communities, for various reasons both because of distance, language, process and cultural factors.³ The assessment carried out by Bappenas and UNDP in 2016 through the Strengthening Access to Justice in Indonesia project shows that in Aceh, Central Kalimantan and Central Sulawesi, the existence of informal or customary justice is still the main choice of the community, especially those living in rural areas, as a means of settling various legal issues.

The existence of customary court is also considered relevant to the judicial system in Indonesia in both the civil and criminal realms. The existence of formal justice for village communities is still difficult to reach, not only because of access to the judiciary is far from the distant village community, but also because of the high costs that must be incurred and the complexity of the administration of justice that must be fulfilled by the community. The customary justice as part of the traditional rights of community is in fact still alive and utilized by community. It is a sociological fact which unfortunately does not gain recognition in the legal politics of judicial power. Tedy Sudrajat⁴ (2010) specifically looks at the role of village peace judges as media to accommodate the interests of their community in the quest for progressive law, while Trisno Rahardjo⁵ (2010) presents case studies on the customs of Banjar, Central Kalimantan, Aceh, Ambon, Lombok Utara and Flores (Eastern Nusa Tenggara) which have explored various criminal mediation practices in the provisions of customary criminal law in each region. This study found a similarity in the model of the implementation of mediation of criminal cases by involving third parties. Legal settlement of these criminal cases can be the basis for a modern mediation process, including criminal mediation that can be set forth in the legislation.

3. Method and Material

This research is qualitative research where data was obtained through bibliographical and field research by employing socio-legal approaches. The bibliographical research had been done by consulting a number of books, articles, journals, research reports, law and regulations. The empirical research was done by attending custom dispute resolution and also interviewed village elderly, police and a number of litigants. After discussing the practice on resolving dispute by using adat court in Aceh, this study also explore the legal perspectives and the awareness of Acehnese people living in city of Lhokseumawe, North of Aceh and Bireuen towards the implementation of the customary court by presenting case studies to highlight factors affecting the implementation of customary justice in Aceh.

4. Adat Court in Aceh

Eugen Ehrlich's once ever said, "the center of the gravity of legal development, not in legislation, nor in juristic science, nor in judicial decision, but in society itself". Ehrlich expressed this view in the context of the existence of law not merely as the normative product of the legislators. The law is believed to be born and grows from the public's awareness of its own needs. Therefore, in the context of this study, the tradition of dispute resolution that continues to be practiced by the people of Aceh is a form of public awareness of their needs in resolving disputes that occur among the community.

¹ Lilik Mulyadi, Hukum dan Putusan Adat dalam Peradilan Negara, Paper presented National Dialogue in collaboration between Perkumpulan HuMa and Mahkamah Agung, Royal Kuningan, (10 Oktober 2013), Available from: <http://huma.or.id/> (Accessed 21st April 2016).

² Tim Pengkajian Hukum, *Peluang Peradilan Adat dalam Menyelesaikan Sengketa antara Masyarakat Hukum Adat dengan Pihak Luar*. (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional – BPHN).

³ Rikardo Simarmata, Op.cit

⁴ Tedy Sudrajat, Aspirasi Reformasi Hukum dan Penegakan Hukum Progresif Melalui Media Hakim Perdamaian Desa, *Jurnal Dinamika Hukum*, Vol. 10, (3 September 2010).

⁵ Trisno Raharjo, *Mediasi Pidana dalam Sistem Peradilan Pidana: Suatu Kajian Perbandingan dan Penerapannya di Indonesia*. (Bogor: Buku Litera, 2011)

In particular, several accessible studies have demonstrated the importance of revitalizing the existence of customary justice in Aceh. This can be demonstrated from the following studies, including series articles from the first ICAIOS research project¹ who want to approach the *adat* term from a new perspective and analyze how the position of *adat* institutions and customary traditions play a role in political development in the Aceh region during the transformation period. The big question in this study is whether or not Aceh has experienced strong customary revitalization as elsewhere in Indonesia since the new order and the decentralization process. In particular, this ICAIOS research project examines the revitalization of customary justice in Aceh Besar written by Laila² and studies on the revitalization of *adat* institutions in Nagan Raya, written by Zulkarnaini³ Discourses and roles of indigenous people in the revitalization of Gayo customs.⁴ Ismail⁵ specifies the existence of customary court in Aceh as an alternative judiciary in the judicial system in Indonesia.

In the perspective of conflict resolution, Nurdin⁶ states the importance of revitalizing local wisdom in Aceh in the form of strengthening the role of culture in resolving community conflict in Aceh. Customs and cultural approaches such as *di'et*, *Sayam*, *suloh*, *peusujuk* and *peumat jaroe* are dispute resolution models with strong Islamic values and practices persist in society. The *adat* judiciary in Aceh is sociologically recognized by the community, although judicially it is considered not to have a place as one of the state courts.⁷ Nevertheless, the Aceh Government itself is seen as progressive by codifying its enforcement by default in the form of regional rules or in Aceh known as *qanun*. The existence of customary court is a manifestation of contribution to the national legal system which positively brings good impacts to society.

It is believed that the granting of authority to the unit of indigenous and tribal peoples like *gampong* and *Mukim* in Aceh is not only mandated by the provisions of Article 18 B (2) of the Act of 1945 alone, but in the context of Aceh, the existence of customary law and dispute resolution through the traditional justice has a cultural significance – which in case is considered to run well, as the implementation of Islamic law. In addition, it also has a formal meaning, as evidenced by the existence of state intervention and responsibility by presenting various legal rules to realize the implementation of customary law. For example, the existence of *gampong* formal juridical has gained explicitly setting, starting from the provisions of Article 3 (1) and (2) and Article 6 of Law No. 44 of 1999. The existence of traditional institutions was reaffirmed in Article 98 of Act Number 11 Year 2006 concerning Aceh Government. In 2003, the Provincial Government of Nanggroe Aceh Darussalam issued *Qanun* Number 4 of 2003 on *Mukim* Governance in the Province of Nanggroe Aceh Darussalam which authorizes *Mukim* to decide and or establish law, maintain and develop customs, organize customary peace, resolve and make customary justice decisions against customary disputes and violations, giving legal force to certain things and other customary proofs and settling matters relating to customs and customs.

In line with this, the existence of *Qanun* Number 5 of 2003 on *Gampong* Government in the Province of Nanggroe Aceh Darussalam affirms that the duties and obligations of the Gampong Government are: to resolve traditional disputes, to preserve and maintain the preservation of customs and customs, to maintain peace and order and to prevent the emergence of acts of sin. In society, and together with *Tuha Peut* (the elderly) and *Imuem Meunasah* (Islamic Scholar) being the judges of peace. In 2008, the Aceh Provincial Government issued *Qanun* Aceh Number 9 of 2008 on the Development of Indigenous Life and Customs and *Qanun* Aceh Number 10 of 2008 on Customary Institutions. The Governor of Aceh also followed up by issuing the Regulation of

¹ Lena Avonius and Sehat Ihsan Shadiqin (ed), *Adat dalam Dinamika Politik Aceh* (Banda Aceh, ARTI & ICAIOS, 2010).

² N. Laila, "Revitalisasi Peradilan Adat di Aceh Besar" in *Adat dalam Dinamika Politik Aceh*. (Banda Aceh, ARTI & ICAIOS, 2010). 25 - 68

³ Zulkarnaini. "Revitalisasi Lembaga Adat di Nagan Raya" in *Adat dalam Dinamika Politik Aceh*. (Banda Aceh, ARTI & ICAIOS, 2010). 69 – 110.

⁴ Sehat Ihsan Shadiqin, "Wacana dan Peran Orang Adat dalam Revitalisasi Adat Gayo" in *Adat dalam Dinamika Politik*. (Banda Aceh, ARTI & ICAIOS, 2010). 111 – 154.

⁵ Baddruzzaman Ismail, *Peradilan Adat sebagai Peradilan Alternatif dalam Sistem Peradilan di Indonesia (Peradilan Adat di Aceh)*. Edisi ke-2. (Banda Aceh: Majelis Adat Aceh, 2015)

⁶ Abidin Nurdin, "Revitalisasi Kearifan Lokal di Aceh: Peran Budaya dalam Menyelesaikan Konflik Masyarakat", *Journal Analisis*, volume XIII. Nomor 1 (Juni, 2013): 135 – 154.

⁷ Mahdi, "Eksistensi Peradilan Adat di Aceh", *Hunafa: Jurnal Studia Islamika*, Vol. 8 No. 2 (Desember, 2011) 189 – 215.

Governor of Aceh Number 60 Year 2013 on the Implementation of the Settlement of adat disputes. At the end of 2011, The Governor of Aceh, together with the Aceh Regional Police Chief and Chairman of the Aceh Adat Council (MAA) signed a Joint Decree on the Implementation of *Adat Courts* in *gampong* and *mukim* or other names in Aceh.

A kinship settlement is a key principle used by both community and customary institutions in resolving existing disputes. When legal issues and events occur in the community, efforts are always pursued in a kinship manner and prioritizing the principle of sincerity among disputants and the wider community. Aceh Adat Council¹ had compiled the principles used by the community in dispute settlement: trust or trustworthiness, accountability or responsibility, non-discrimination principle also known as the principle of equality before the law, quick, easy and cheap, sincere and voluntary, harmony or peaceful settlement, consensus for consensus, openness to the public, honesty and competence, respect for diversity, and the principle of presumption of innocence and justice.

The settlement of disputes with customary justice is regarded as a good and very noble deed, because customary law is very closely related with Islamic law. The principles contained in Aceh's customary law are the teachings of Islam, thus for the Acehnese people the *adat* settlement is not contrary to the Islamic religion they advocate that promote peace. The practice of dispute settlement as conducted by the people of Aceh is also in accordance with the principles of the *Pancasila*-based state, one of which the principle of dispute resolution by deliberation, and judiciary is the last means.² Customary law does not recognize the distinction or division of laws into civil or criminal law as distinguished in the context of formal law. Indigenous dispute resolution is conducted for all forms of violation of customary law, both civil and criminal. Indigenous dispute resolution is based on the doctrine of "solving" rather than "disconnect" doctrine. The settlement is done in a peaceful manner, so that the disputing parties may in the future be able to continue living together again in peace. In other words, the process is able to restore the state between them. The customary settlement is not looking for who is right and who is wrong but strives to bring peace between the two parties and the restoration of disturbed balance. Determination of right or wrong is not a primary goal, even if it is considered in the provision of certain obligations as a sanction.³

Article 13 of the *Qanun* Aceh No. 9 of 2008 on the Development of Indigenous mentions that there are 18 (eighteen) disputes that can be settled through customary justice. They are (1) The dispute in the household, (2) Disputes between families associated with inheritance (3) disputes between citizens, (4) Seclusion/bawdy, (5) Disputes about property rights, (6) theft in the family (mild theft), (7) Dispute of marital mutual property, (8) light theft, (9) theft of livestock, (10) Customary violations of livestock, agriculture and forests (11) Disputes in the sea, (12) Disputes in the market (13) Mild persecution, (14) Burning forest (on a small scale adversely affecting indigenous communities) (15) Harassment, libel, defamation, (16) Environmental pollution (light scale), (17) Threatening (depending on the type of threat), and (18) Other disputes that violate customs.

Article 13 paragraph 2 of the *Qanun* further confirms that the settlement of disputes and customs as mentioned above is completed in phases. It is, as far as possible, the violations mentioned above should first resolved at the level of *gampong*. In fact, Article 13 paragraph 3 of the *Qanun* reaffirms that law enforcement agencies provide an opportunity for disputes to be resolved first by custom in the *gampong*. Settlement of disputes in the indigenous level is not included in serious criminal offenses.

5. Adat Court Judges: Keeping the Tradition, Strengthening the Peace

The Acehnese believe that the order and peace within the community can be safeguarded by keeping the custom. This can be demonstrated through the *Narit Maja* (wise words) which is inherited by the Acehnese that declared: "*Ta pageu lampoeh ngon kawat, ta pageu nanggroe ngon adat*", meaning we secure the garden with wire, we secure the land with custom. Therefore, in realizing the adat law enforcement in facing various cases and

¹ Majelis Adat Aceh, *Pedoman Peradilan Adat di Aceh: Untuk Peradilan Adat yang Adil dan Akuntabel*, (Banda Aceh, MAA, 2013).

² P.M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987) 90.

³ Abdurrahman, *Penyelesaian Sengketa Melalui Pendekatan Adat*, *Qanun Jurnal Ilmu Hukum No. 50* (April 2010) 130.

disputes that exist in the community at the level of *gampong* and *mukim*, the government through Article 6 of Law Number 44 Year 1999 and Article 98 of Law Number 11 Year 2006 has provided reinforcement on the existence of customary institutions in Aceh. Article 98 of Law Number 11 Year 2006 states that adat institutions function and act as a vehicle for community participation in governance of Aceh and district / municipality governments in the areas of security, peace, harmony, and public order.

In all three areas of the study, we noticed that the community already knew and understood that any disputes could be resolved at the village level. This was shown in particular by the informants we encountered, who were teenagers, adults, and the elderly. They understood that any disputes occurring among the citizens, especially on the 18 (eighteen) cases that have been regulated in the *Qanun*, may be settled through customary institutions. Some informants could even explain well the types of disputes that can be resolved through customary court especially at the village level and how dispute resolution practices are conducted as well as the actors involved. This understanding is influenced by several things such as, socialization conducted by the government which for many people is considered quite comprehensive and reaches almost all levels of society and delivered in various forms or media socialization. In Lhokseumawe, for example, the Municipal Government in cooperation with Lhokseumawe Resort Police has been displaying socialization through large media billboards installed at several central and strategic points so that they can be accessed directly by the community and become educational media. This socialization is conducted continuously and followed by various strengthening activities for *gampong* and *mukim* officials in implementing customary court.

Although assessed as ineffective, the strengthening efforts have also been carried out in the form of trainings coordinated by the Aceh Adat Council at the district / municipal level on the administration of justice at the village and *mukim* levels. This training activity refers to the Adat Justice Guidelines in Aceh published by the Aceh Adat Council. Another thing that is not less significant is the confidence of the Acehnese - especially the community at the village level, that the dispute resolution mechanism through customary court is more affordable not only in terms of mileage but also in terms of costs to be prepared by the disputing parties, best possible settlement. How do they believe? Each of the informants revealed in different expressions. For most of the informants we interviewed, in particular community members of the adult and elderly groups, most of them expressed in the form of statements and reflections on the importance of maintaining brotherhood and relationship. The reference they use is the provisions in Islam that call for peace. In addition, Aceh's *narit maja* were also presented to illustrate their belief in customary court mechanisms. Through interviews and FGD activities, we listened to informants telling some of the following narratives: "*adat ban adat, hukum ban hukum. adat ngon hukom si judo dua tatkala meusapat adat ngon hukum Nanggroe senang hana goda*" which means "custom according to custom, law according to law, custom with the law are side by side; When adat agrees with the law, (the) country is glad of no disturbance. Other narratives that are also frequently heard are related to how to deal with disputes in the community and how the punishment should be imposed are as follows: "*uleue beu mate, ranteng bek patah*", which can be interpreted as "the snake must die, but the wooden branches for the batter cannot be broken". Its meaning that to every dispute and also for the occurrence of the offense, then regardless of the condition, the law must be enforced, in which case necessary then sanctions should be given. However, it should be considered and taken into consideration, that the punishment of the community or the disputing parties in particular should not create the disharmony of society.

In resolving the disputes submitted to the *gampong* apparatus, each apparatus observes the principles of dispute resolution. MAA itself has compiled the principles that have been implemented by the *gampong* community in resolving the disputes. The principles involved are principle of trust, the principle of accountability or responsibility, the principle of non-discrimination, also known as the principle of equality before the law, the principle of fast, easy and cheap, the principle of sincere and voluntary, the principle of harmony or peaceful settlement, the principle of deliberation for agreed consensus, the principle of openness to the public, the principle of honest and competence, the principle of respect for diversity, the principle of presumption of innocence and justice principle.

Compared to other regions, Aceh with the support of regulatory institutions at the regional level and all its privileges has a greater chance to continue to maintain the conservation effort on customary law and customary court¹. However, it cannot be denied that eventhough some people believe in this mechanism of this dispute

¹ Badruzzaman Ismail., et.all, *Eksistensi Peradilan Adat: Pengalaman Aceh, Kalimantan Tengah dan Sulawesi Tengah*, (Jakarta:

settlement, modernization with its negative effects also brings impacts that undermine such efforts. We found out the new reality in society, that some people refuse to use customary court in the *gampong* as an initial attempt to resolve their disputes. This refusal has occurred since the beginning of the dispute, or in the middle of the process of settlement by the *gampong*, and partly in the final stages when they do not agree with the the decision of customary court. This rejection mostly occurs among communities in urban areas, and partly in communities in the *gampong*. The reality of this refusal was shown not to undermine customary justice practices but is intended to show the facts that arise in the view of society related to customary judicial practice.¹.

The court has an important position and role in legal reform. There is applicable adagium which mention often, that the judge is considered to know about his law (*ius curia novit*) from the case submitted to him. It has been regulated in Indonesian legal system, as regulate in the Law of Judicial Power. but withdraws some informants who are customary judges also have a similar understanding, that he as a judge in the trials in the village also has an obligation to be able to find a solution for the parties's disputes and then can decide the case as fairly as possible. For them, this process is interpreted as a learning process that should not stop. They themselves consider each of the settlement cases to be handled in their learning process and become valuable lessons and experiences to solve similar cases. This condition arises and is reinforced by the expectations posed by the justice seeker community who trusts customary judges to settle and decide the case according to law and justice.

Another thing that is not less significant is the confidence of the Acehnese - especially the community at the village level, that the dispute resolution mechanism through customary court is more affordable not only in terms of mileage but also in terms of costs to be prepared by the disputing parties, best possible settlement. How do they believe? Each of the informants revealed in different expressions. For most of the informants we interviewed, in particular community members of the adult and elderly groups, most of them expressed in the form of statements and reflections on the importance of maintaining brotherhood and relationship. The reference they use is the provisions in Islam that call for peace. In addition, Aceh's *narit maja* were also presented to illustrate their belief in customary court mechanisms. Through interviews and FGD activities, we listened to informants telling some of the following narratives: "*adat ban adat, hukum ban hukum. adat ngon hukum si judo dua tatkala meusapat adat ngon hukum Nanggroe senang hana goda*" which means" custom according to custom, law according to law, custom with the law are side by side; When adat agrees with the law, (the) country is glad of no disturbance. Other narratives that are also frequently heard are related to how to deal with disputes in the community and how the punishment should be imposed are as follows: "*uleue beu mate, ranteng bek patah*", which can be interpreted as "the snake must die, but the wooden branches for the batter cannot be broken". Its meaning that to every dispute and also for the occurrence of the offense, then regardless of the condition, the law must be enforced, in which case necessary then sanctions should be given. However, it should be considered and taken into consideration, that the punishment of the community or the disputing parties in particular should not create the disharmony of society.

Based on focused interviews as well as observations on some of the disputes, we encountered different realities. We encountered parties who consciously believe that customary settlement mechanisms are the best mechanism, since the principles contained in the settlement are very close to the community. The acceptance of *adat* judicial decisions is based on people's beliefs, especially the litigants on the profile of *Geuchik, Tuha Peut* or *Imam Gampong* who are considered to be charismatic and able to be actively involved and able to provide the best solution for the litigants. Most of those who accept *adat* judicial decisions are mostly communities in the settlement area where the kinship system is still very strongly held. The village elders as well as customary judges are regarded as their own parents, so it is rare to see any rejection of traditional customary justice decisions. Other factors that also affect this acceptance are related to the type of case. If the disputes are still in the family level, such as fights among family members, inheritance and the like, the parties tend to choose to bring the settlement to the customary court.

The study also found that there is a rejection of customary justice or the existence of customary judiciary with various assumptions and stages. The community rejects the existence of customary court because it is deemed

Kementerian PPN/Bappenas, Norwegian Embassy and UNDP, 2016)

¹ Nanda Amalia., et., all. Trust, Legal Awareness & Indigenous: A Study of Customary Justice System in Aceh, *International Conference on Law, Economic and Social 2017 Proceeding*, (Surabaya: 2017)

not to provide legal certainty over its decision. This condition is indicated by a variety of cases that have been resolved customarily, but if either party feels unfavorable for the decision being made, the party will still file it to the state court. Customary justice is considered by some non-judicial people, but only limited to the settlement of disputes by applying customary law as a living and growing law in society. The legitimacy of the State Decision in the form of a piece of paper with a judicial stamp is considered by the community to be much stronger than the traditional village court decision.

Rejection by the parties can take place from the outset by choosing to file the case with the state judiciary, others rejecting the stage of the dispute resolution process, and rejection also occurs in the final stages of the customary court decision. To provide an overview of the implementation of customary justice, this study explored the acceptance and rejection of the community in relation to the following cases: 1) Disputes in childcare rights, 2) property ownership claims, and 3) joint property lawsuits. In the first case, a parenting dispute between the biological father (Petitioner) and Grandma & Grandpa of the Child from the Parent Party (the Respondent), after the death of the biological mother. This case occurred in Blang Naleung Mameh village in Lhokseumawe. We obtained information related to this dispute from Safwani, the defendant's lawyer (interview, December 23, 2016). The applicant had previously registered a parenting application to the Syar'iyah Court but the big family with the reinforcement of the lawyer requested to the disputing parties to revoke the case and resolve it first in the family or at the village level. At the time of the dispute settlement process in the village, the customary judges' panel led by the *geuchik* summoning both parties and giving the two parties a chance to convey the problems that occurred. Whereas the petitioners had objected to the restrictions imposed by the parents of his late wife to take care of the child himself.

In the case investigation, the villagers and the elderly also involved the *Imam gampong* (village islamic leader) and the Petitioners' lawyers to hear their views related to legal aspects. *Imam Gampong* gave his views based on the provisions of Islamic law and shari'a that are valid and believed by both parties as Muslims. There was no refutation or rejection from both sides of the *Imam Gampong's* views, nor is it when *Geuchik* asked for legal considerations from the attorney based on the legal perspective of the state. *Geuchik* asked whether the case filed in the Syar'iyah Court can be revoked and will not affect the decision to be taken by the *gampong*.

After the inspection and consultation process in the village, the parties agreed to make peace and the related parties agreed to return the child to the care of his biological father with the agreement that the grandmother still gets a great opportunity to visit and take care of the child. The Petitioners also agreed to withdraw their petition and to stop any legal proceedings taking place. These parties' agreements set forth in the peace letter signed by the parties and customary judges of the *gampong*, and witnesses.

This case is one example of a dispute in a simple dispute category, that is not too complicated and the acceptance of the parties to the decision of the village is based on a sense of brotherhood among them and based on the nature of Islamic law that is trusted by the community. The existence of imam *gampong* and lawyers in the settlement of this dispute - how the references presented both in terms of religion and state law contribute to the settlement of cases by the parties. This study specifically considers that the involvement of lawyers in customary dispute resolution is interesting and has demonstrated strengthening of customary justice implementation by legal actors.

In the second case - rights ownership dispute submitted to Lhokseumawe District Court by the first wife as plaintiff and second wife as defendant. This case is interesting to be explored further for several reasons; Firstly, the existing dispute is actually a dispute over the right of inheritance between the parties to the husband's estate. Secondly, this dispute had been mediated at the village level but has not gotten the settlement and peace did not take place between the two parties. Third, after the legal consultation provided by the plaintiff's lawyers, the case is then submitted to the District Court with a Claim of Loss rather than filed with the *Syar'iyah* Court with an inheritance lawsuit. This case was chosen intentionally because the authors considered the involvement of lawyers in the handling of this case, on the one hand quite intense and able to direct the client but on the other hand after the dispute was settled through mediation to the Court, the client became dissatisfied and left disappointment even after 7 (Seven) years the dispute was reconciled. Consideration of using the service of a

lawyer in solving the case is because the family believed that the lawyer has access to the court and understands the legal process. Besides, the experience of settlement of the dispute over this case through customary court in the village was considered to be convoluted and takes a long time but the decision is not in accordance with the plaintiff's expectations. The filing of a case to the state court became an option by the plaintiff because the plaintiff felt dissatisfied and there was no fulfillment to the sense of justice in the *gampong* court decision.

The third case is a dispute over the joint property lawsuit filed against the customary court and has been agreed upon by both parties, but by the former husband, the case was filed to the Lhokseumawe Syar'iyah Court. The *gampong*, based on deliberation and agreement of the parties, had issued a peace decision. It was known from the peace letter that 1) the parties agreed on the distribution of joint property with the amount of each get a share of IDR 75,000,000.- 2) the ex-wife was required to transfer the intended fund to the husband, because the wife got the right to control over the joint property in the form of 1 (one) unit of the store house. 3) The term of payment to the ex-husband was agreed for 3 (three) times. The dispute began to arise upon entering the third payment term, in which the ex-wife did not transfer the fund due to the fund was used to finance the child's life and school. This was done by the ex-wife deliberately considering the non-fulfillment of the provision of child care both from marriage and post-divorce. The Court of Syar'iyah Lhoseumawe decided this case through the verdict. 193/ Pdt.G /2013/ MS-Lsm, but in the consideration, the authors did not find any judge's consideration of the dispute settlement that has been done by the *gampong* through customary court.

These rejections were confirmed by some resource persons, community and geuchik and village elders that we interviewed. We also obtained information from the police and prosecutors and judges at the District Court and the Syar'iyah Court. This condition poses a challenge for Aceh which optimistically and comprehensively has legal institutions to apply customary justice as an alternative judicial system within the existing judicial system. In the study of legal philosophy, the balance between the side of certainty, justice and expediency must reflect the workings of law and law enforcement. Some aspects that affect the work of law and law enforcement as mentioned above presumably become a separate record in viewing the implementation of customary court in Aceh.

Chairman of Aceh Adat Council of Aceh Utara District (interview, May 14, 2015) views several reasons why customary justice has not been able to run as desired. He confirms that it happens due to the lack of legal guidance by the government. Legal guidance should be initiated from raising awareness in the community, followed by efforts to provide an understanding of the urgency of dispute resolution through customary justice. It is also possible to become a moral preaching by the government in the midst of increasing social problems resulting from the effects of globalization. In the end, as awareness and ideology increase, people will become convinced that the various problems that occur can be resolved through *adat* justice. The next challenge is that the implementation of the customary court and the decisions issued by customary judges, as much as possible bring justice and legal certainty to the litigants. As stated in the previous section, some Acehnese recognize the existence of customary court, but some still refuse to utilize it optimally. Issues related to the lack of legal certainty over traditional adat rulings in *gampong*, sometimes used by the litigants (usually victims) to benefit more from the perpetrators.

In all the research sites, the study found that on some disputes, mostly in mild cases of abuse, the victim states that he/she would be willing to settle the case between the two only if the offender is willing to provide compensation costs that usually in a large amount that sometimes does not make sense. In the event that the offender is unable to fulfill this payment, there is no doubt that the victim will immediately report the case to the police. The police, although they will not reject reports and complaints, they will not necessarily accept this complaint. In this case, the police will ask for clarification from the *gampong* and verify that the *gampong* party has tried to reconcile and did not get a peace decision between the two, then the process of settlement will be continued by the police. The police and even the prosecutors we interviewed deplore that kind of action. This condition shows that much effort is needed to strengthen the implementation of customary justice in various aspects.

6. Conclusion

The existence of customary law and the enforcement of customary justice is one of the forms of legal pluralism which in its interaction often shows the weak conditions of legal pluralism. Although given recognition of its enforcement but its position is unequal and often not accommodated by the state judicial system. That efforts to revitalize customary justice should not only be at the merits of the symbol of Aceh's privileges, but must also be a holistic part of raising awareness in the community, as well as enhancing the capacity of the apparatus of customary judges.

Customary law is a traditional, non-state, non-formal law even though it is recognized as a living law in a society especially those who live in the rural area. Customary justice has a positive potential in the midst of a growing number of problems in the form of minor violations that can be resolved by the people without having to go to law enforcement bodies and the courts. The existence of customary justice not only eases the burden of court duties and reduces the accumulation of cases, but also helps citizens access protection for their rights. Customary law that has been unified with Islamic Shari'a law in Aceh is considered still weak because its codification is still not uniform. In addition, some gampong officials do not have adequate capacity to run the traditional legal system well and many people do not trust custom/adat, as the effect of the swift flow of globalization.

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8. Reference

- Abdurrahman, Penyelesaian Sengketa Melalui Pendekatan Adat, *Qanun Jurnal Ilmu Hukum No. 50* (April, 2010)
- Abidin Nurdin, "Revitalisasi Kearifan Lokal di Aceh: Peran Budaya dalam Menyelesaikan Konflik Masyarakat", *Journal Analisis*, volume XIII. Nomor 1 (Juni, 2013): PP. 135 – 154.
- Ahmadi Hasan, Penyelesaian Sengketa Melalui Upaya Non Litigasi Menurut Peraturan Perundang-undangan, *Jurnal AL-BANJARI*, Vo. 5, No. 9, (Januari – Juni, 2007).
- Baddruzzaman Ismail, *Peradilan Adat sebagai Peradilan Alternatif dalam Sistem Peradilan di Indonesia (Peradilan Adat di Aceh)*. Edisi ke-2. (Banda Aceh: Majelis Adat Aceh, 2015)
- Badruzzaman Ismail., et.all, *Eksistensi Peradilan Adat: Pengalaman Aceh, Kalimantan Tengah dan Sulawesi Tengah*, (Jakarta: Kementerian PPN/Bappenas, Norwegian Embassy and UNDP, 2016)
- Edy Sanjaya, Hukum dan Putusan Adat dalam Praktek Peradilan Negara (Surabaya: Untag, 2010) Available from: <http://fakhukum.untagsmg.ac.id/> (Accessed 20th February 2017).
- Hedar Laudjeng, *Mempertimbangkan Peradilan Adat*. Seri Pengembangan Wacana No. 4 – Penerbit Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), (Jakarta: The Ford Foundation & Interchurch Organization for Development Co-operation (ICCO), 2003).
- Herlambang Perdana Wiratraman, *Laporan Akhir Tim Pengkajian Hukum Tentang Peluang Peradilan Adat dalam Menyelesaikan Sengketa Antara Masyarakat Hukum Adat dengan Pihak Luar*, (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional – BPHN, Kementerian Hukum dan Ham, Jakarta, 2013).
- Kelompok Kerja Akses terhadap Keadilan, *Strategi Nasional Akses Terhadap Keadilan* (Jakarta: Kementerian Negara Perencanaan Pembangunan Nasional/BAPPENAS, 2009)
- Lena Avonius and Sehat Ihsan Shadiqin (ed), *Adat dalam Dinamika Politik Aceh* (Banda Aceh, ARTI & ICAIOS, 2010).
- Lilik Mulyadi, Hukum dan Putusan Adat dalam Peradilan Negara, Paper presented National Dialogue in collaboration between Perkumpulan HuMa and Mahkamah Agung, Royal Kuningan, (10 Oktober 2013), Available from: <http://huma.or.id/> (Accessed 21st April 2016).
- Mahdi, "Eksistensi Peradilan Adat di Aceh", *Hunafa: Jurnal Studia Islamika*, Vol. 8 No. 2 (Desember, 2011) PP. 189 – 215.
- Majelis Adat Aceh, *Pedoman Peradilan Adat di Aceh: Untuk Peradilan Adat yang Adil dan Akuntabel*, (Banda Aceh, MAA, 2013).
- N. Laila, "Revitalisasi Peradilan Adat di Aceh Besar" in *Adat dalam Dinamika Politik Aceh*. (Banda Aceh, ARTI & ICAIOS, 2010). PP. 25 – 68

- Nanda Amalia., et., all. Trust, Legal Awareness & Indigenous: A Study of Customary Justice System in Aceh, *International Conference on Law, Economic and Social 2017 Proceeding*, (Surabaya: 2017)
- P.M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987) 90.
- Rikardo Simarmata, Merumuskan Peradilan Adat dalam Sistem Peradilan Nasional, Paper presented at Seminar “Merumuskan Kedudukan Peradilan Adat dalam Sistem Peradilan Nasional”, organized by Perkumpulan HuMA and Mahkamah Agung Republik Indonesia, Jakarta 10 Oktober 2013, Available from: <http://huma.or.id/> (Accessed 21st April 2016).
- Sehat Ihsan Shadiqin, “Wacana dan Peran Orang Adat dalam Revitalisasi Adat Gayo” in *Adat dalam Dinamika Politik*. (Banda Aceh, ARTI & ICAIOS, 2010). PP. 111 – 154.
- Tedy Sudrajat, Aspirasi Reformasi Hukum dan Penegakan Hukum Progresif Melalui Media Hakim Perdamaian Desa, *Jurnal Dinamika Hukum*, Vol. 10, (3 September 2010).
- Tim Pengkajian Hukum, *Peluang Peradilan Adat dalam Menyelesaikan Sengketa antara Masyarakat Hukum Adat dengan Pihak Luar*. (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional – BPHN).
- Tody Sasmita Jiwa Utama and Sandra Dini Febry Aristya, Kajian tentang Relevansi Peradilan Adat terhadap Sistem Peradilan Perdata Indonesia, *Mimbar Hukum*, Volume 27, Nomor 1, (February 2015) 57 – 67.
- Trisno Raharjo, *Mediasi Pidana dalam Sistem Peradilan Pidana: Suatu Kajian Perbandingan dan Penerapannya di Indonesia*. (Bogor: Buku Litera, 2011)
- Yance Arizona, Kedudukan Peradilan Adat dalam Sistem Hukum Nasional, Paper presented at *Diskusi tentang memperkuat Peradilan Adat di Kalimantan tengah untuk Penguatan Akses terhadap Keadilan*, Selasa 11 Juni 2013, Available from: <http://huma.or.id/> (Accessed 21st April 2016).
- Zulkarnaini. “Revitalisasi Lembaga Adat di Nagan Raya” in *Adat dalam Dinamika Politik Aceh*. (Banda Aceh, ARTI & ICAIOS, 2010). PP. 69 – 110.