

The Participation of Women in the Village Adat Justice: the Regulations and Its Implementations in North Aceh Regency

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ABSTRACT

Adat justice is one of the local wisdom possessed by the people of Aceh. The *adat* justice in Aceh was formed and carried out by *adat* law community to resolve issues between citizens. This research used normative juridical research method for reviewing the rules of regulations about the role of women and the empirical studies to understand the implementations, also to know the factors restricting the role of women in *adat* justice at *gampong*. It can be concluded the role of women in *adat* justice system at *gampong* in North Aceh Regency has not been done properly. In general leaders and community leaders are still reluctant to include women in *gampong* governance structure. Thus the lack of women representative directly related to the implementation of *adat* justice system at *gampong*. There are internal and external factor that inhibiting women participation.

Keywords: *gampong, Adat, Law*

INTRODUCTION

Adat justice system is one of the indigenous local wisdom which belonged to the people of Aceh. The presence of *adat* justice in Aceh are formed and carried out by *adat* law community. The *adat* justice system, here is the customary judicial in Aceh villages or *gampong*, has been existed before Independence of Indonesia and its existence is recognized in the Constitution and the rule of Act in Indonesia. In Article 1 (3) of the 1945 Constitution unequivocally mentioned that Indonesia is a State of law, means that every citizen has equality in front of law regardless of gender differences, men as well as women. Recognition and respect for *adat* law community described in Article 18B (2) of the 1945 Constitution, namely the State shall recognizes and respects *adat* communities along with their traditional rights as long as they remain in existence and are in accordance to societal development and the principle of unitary state Republic of Indonesia, and shall be regulated by Acts.

Gampong is a small unit of *adat* law community which has territorial boundaries and authority over the local community based on the origin and customs. *Gampong*, equivalent of *desa*, is an administrative village that uniquely to the province of Aceh in the system of governance of the unitary state of Republic

Indonesia¹. Each village may establish an *adat council* in accordance to the origin and customs and traditions¹. The *Adat council* may form *adat* justice system led by *keuchik*. *Adat* justice system is a means to resolve disputes in the community. The process of dispute resolution, such dispute between citizens, is done by customary practices of consensus decision-making (*musyawarah mufakat*) to reconcile the involved parties². Therefore, the harmony and balance of community life that disturbed can be restored.

The *adat* council has regulated in the regulations: the Act number 11 of 2006 on the Governing of Aceh, Aceh Qanun number 5 of 2003 on the Governance of *Gampong* in the Province of Aceh, as well as North Aceh Regency Qanun number 4 of 2009 on the Governance of *Gampong*. The process of dispute resolution through the *adat* council led by *keuchik*, and assisted by *Tuha peut* (the council of elders), *imuemmeunasah* (the leader of local Masjid), and sekretaris *gampong* (the village clerk) as the clerk of court.

The question in this research is how does the participation of the female characters in the dispute resolution process through *adat* justice at *gampong*, and what are the inhibiting factors on women's participation in the *adat* justice system at *gampong* in North Aceh

Regency.

METHOD

This study was conducted using qualitative research method with normative juridical and empirical jurisdiction approach. Data were analysed descriptively. The data collection includes the study of literature and regulations, namely Act number 11 of 2006 on Aceh Government, Aceh Qanun number 5 of 2003, North Aceh Regency Qanun Number 4 of 2009 on the Governance of Gampong, Qanun Number 9 of 2008 on the Management of *Adat* Life and *Adat Istiadat*, Qanun Number 10 of 2008 concerning *Adat* Council; as well as related Acts and regulations as the primary data³. Secondary data include the analysis of documentation and interviews with the leaders and members of the community and *adat* council who's involved in the implementation of *adat* justice. They are *keuchik*, *tuhapeut*, *imeummeunasah*, the clerk and the community prominent members.

RESULTS AND DISCUSSION

The participation of women in social setting

From the history of the people of Aceh, the involvement of women representatives in various social activities and their leadership have been recognized by both domestic and international. History records how a number of prominent representatives of Acehnese women would struggle in defences of their country which is recognized as national heroes.

Both theoretically and practically, the participation of women in various fields of social life is a reality. Since the ancient times till now Acehnese women had participated not only in domestic affairs but also in public affair. Although for some reason, this condition is rarely found documented or published properly⁴.

From the brief history above can be understood that the involvement of women in the various levels and area of public affairs also in government is not new for people of Aceh. In the present days women participation is especially high in the education field, and there are women who hold positions in government as well as non-government. However, this is still considerably rare cases and it's caused by various factors, such as interests and views of the policy makers. One public position that has no significant progress on the participation of women is the women involvement in the *adat* justice at *gampong*.

Participation of Women in *Adat* Justice

The participation of women in the *Adat* Justice is an important issue. It's a means for equality of rights between men and women which guaranteed by the 1945's Constitution of the Republic of Indonesia and other rules of laws, also as a means to strengthen the existence of *adat* justice. The presence of women rep in *adat* justice will facilitate the process of dispute resolution, particularly in the dispute which one or both parties are women and children.

Beside as members of the panel of *adat* justice, the women representative is a facilitator, mediator or an advisor, so that the handling on the cases experienced by women and children will be safer and easier, and the women would not feel discriminated against⁸.

Some residents of Gampong Paya Punteut who have been in disputes and resolved through *adat* justice said that they were not satisfied and also uncomfortable in expressing their experience to men. They also stated that in the past dispute resolution process there were only male, because there are no female rep in the *adat* justice system at their community. The same stated by a resident of Gampong Cunda who also hope to have women rep in the *adat* justice system at their community, so that the women involved in dispute are more comfortable in communicating with her problems.

Currently women's participation in *adat* justice in Aceh, especially in the area of this research held, is very alarming. It is hardly found a representative of women who is involved structurally as a member of *tuhapeut* in the village. Stated by Mr. Muntasir, as *keuchik* well as a native of Meunasah Keh in Nibong Sub-district, there are no women included as *tuhapeut gampong* yet. Various administrative villages in North Aceh Regency said to be in similar situation. Stated by Mr. Muzakir A. Talib that some *villages* around him, namely *Gampong Rawalteek*, *Gampong Matang Drien*, and *Gampong Biram*, the existence of women as an element *tuhapeut gampong* also unheard. Similarly, in neighbor city Lhokseumawe it's rarely found to have women involved in *adat* justice. The opportunity for participation of women as judges in *adat* justice will be open, if she is elected and sit as member of *tuhapeut*.

The statements above show the recognition of the rights of women in political also in *adat* institutions that exist in society. The participation of women in various

fields already has a strong legal basis in Aceh and Indonesia.

Factors Inhibiting Participation of Women

Importance of women's participation in the process of settling disputes through *adat* justice system at *gampong*, should be fully supported by all parties. However, its implementation is not easy because it is due to various inhibiting factors which impede the inclusion of women as board members of *adat* justice. Those factors can be divided into two categories:

Internal Factors

Among internal barriers experienced by women in Aceh are the false perception and old mindset that women are incompetent and unfit to be involved in public matters. The presumption became a shackle for women at *gampong* in order to exist not only in the public space but also in *adat* justice system.

Women are not prepared to participate in the dispute resolution process of *adat* justice. Several prominent women stated that they have never been involved whenever legal proceedings of *adat* justice held at their villages, so it never occurred to prepare their self or the next generations to be involved in the assembly of *adat* justice. In general, they do not know that Acts require the representation of women in *tuhapeut* and are a means to participate in the implementation of *adat* justice.

There are no women involved in *tuhapeut* in their community, yet. So most women are not motivated to learn about social studies and dispute resolution that became one of the tasks of *tuhapeut* with *keuchik* and *imeum*.

Various rules of law as mentioned above have been set on the representation of women in political parties, government, as well as in *adat* justice in the provinces. In reality the implementation will require understanding and a genuine desire of all parties, namely the leaders of *gampong*, religious leaders, and the communities in realizing the mandate of the Act. The most important party in this case is the women, they have to prepared in order to truly representation in various fields can help people, especially women. Thus, all parties will recognize the presence of women in the village government and the participation on *adat* justice in the dispute resolution process.

External Factors

In addition to internal factors, there are a number of external factors that are causal interplay with internal factors, as an example, among others:

Mindset of some religious leaders and community leaders who think women logical capability is lower than men, is a quitter and giving up easily. Some assume men have superior ability to think than women, has a firmness and commitment, better physical strength and courage. Another reason said to be women must to obtain permission from the husband to able to join *tuhapeut* and the husband is not necessarily permit. These are hardly have strong basis as women are actively involved in various other social activities in their communities, whether in day or night.

Religious factor is also often used to justify that the woman must not sitting together in a conference room with a man who is not *mahram* which is not good in view of the Islamic religion. But in fact, the chief of village often requires the assistance of women, usually wife of *keuchik* or *Imeum* the women rep from PendidikanKesejahteraanKeluarga (PKK) or other female members. If necessary the women will be called in a meeting or proceedings of *adat* justice, yet they were never formally included in the governance structure of *gampong* or named as one of the *tuhapeut* member as stipulated in *QanunGampong*. The same thing is also found in the Sub-district Nibong that no women were included in the elements of *tuhapeut* and *adat* justice structurally. When women rep is needed to approach to the women or children involved in the dispute, the wife of *keuchik* and the wife of *imeum* or other female will be summoned.

The similar findings also came from western area of North Aceh Regency. TeungkuSyafie, the *Imuem* of West Reuleut, that women are not included in *adat* justice, including in the settlement of disputes about women's issues that involve women / children or male, are all completed by the men. Different statement are delivered by Adnan Hasan some *gampong* has written names of women member of *tuhapeut*, such as *GampongReuletTimu*.

Keuchik Bluka Teba said that the head of village know on the existence of regulations requiring the participation of women in the structure of *tuhapeut*. There are several reasons to have not been involved women in the structure

of *tuhapeut*, such as it is difficult to have women members because their meeting often held at night and women are not proficient in giving opinions, especially in terms of dispute resolution. Beside *tuhapeut*, “women are not often excluded in other important meetings such decision-making meetings related to the development of the village.” AinulMardhiah said.

Based on the above can be explained briefly that the participation of women in *adat* justice has not been done as it should be due to various factors mentioned above. The mindset of religious leaders and community leaders such as the above cannot be justified and does not have a strong foundation, or it can be said is a fallacy. For example, the Prophet Muhammad’s wife Aisha is a teacher and teaches men. Whether in past and present, many female Islamic scholars have women and men disciples. Thus there is no reason for leaders, *adat* leaders and religious leaders for not including women in structure of *tuhapeut* and in the implementation of *adat* justice.

To change those mindset it ought to correct their understanding on the limitations that should and should not be violated by men and women according to Act. Particularly in *adat* justice, the necessary adherence and compliance of *adat* and community leaders is needed to improve the engagement of women rep in the peace building process in present and the upcoming future.

The concluding remarks of Preamble to CEDAW emphasized on the need of changes in traditional roles and participations of men and women in society and in the family to achieve equality⁵. The traditional roles based on the inferiority or superiority of one gender is a man-made, construct of society. Thus, it can be changed also by people who are committed to achieving an equitable and prosperous society. This change of view can only be realized if the stakeholders (legislative, judicial, executive and the entire community) feel obliged to take steps to delete the old mindset and tradition detrimental to participation and position of women in the family and society, towards the fair and prosperous society⁵.

For the balance and benefit for all, there are several matters that must be considered before women actively participate in public spaces. Woman working at home and outside the home as an effort to carry out *the good and prohibiting unjust injunction* that had been ordered in Islam. Therefore, the perspective is used to accept

the participation of women in politics is solely for message *amruma’rufwabilnahyu ‘anilmunkar*. In a public activity, both women and men should go by the principle of *fastabighulkhairat* (or competing in goodness). This means Islam encourages Muslims to reach the level of knowledge and high skills, so women can contribute better to the people. Every Muslim man should provide the opportunity for his wife to take part *sindakwah* as a Muslim. It said that Prophet Muhammad (PBH) ask men to not prohibit wives who ask for permission to go to the mosque to worship. The participation of women in the public sphere must in balance with household duties as wives, mothers, and educators for their children, so that harmony in the family is maintained. Muslims also should keep *adab* (Islamic manner code) and maintaining *iffah* (pride) as a Muslim to remain noble⁴.

Thus, it is inappropriate when women should be inhibited in doing good for the nation and the country, because women are also part of the citizens who have rights and obligations to the state and nation. As creatures of Allah, the women are also assigned as a *khalifah* on earth. There is no discrimination, because in the end that distinguishes a person with another is their *taqwa* to the Creator of Universe.

CONCLUSION

Based on description above can be concluded that the participation of women in *adat* justice *the village* in the city of Lhokseumawe and North Aceh Regency has not been done properly as mandated by *Qanuns* and Act of Aceh Government. In general, leaders and community leaders are still reluctant to include female characters in the governance structure of *gampong*, so the women rep directly involved in the implementation of *adat* justice system at *gampongis* very little or none. The inhibiting factors are: **internal factors** the level preparedness of women as member of *tuhapeutor* as facilitator in *adat* justice system is little to none; **external factors** that mindset of community leaders, *adat* and religious leaders who brought up the religion as a reason for not including women in *tuhapeut* structure and on the *adat* justice system at *gampong*.

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