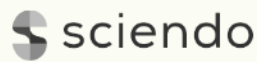




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Restructuring Traditional Courts as an Effort for Uniforming the Structure of Traditional Courts in Aceh

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Abstract

The structure of the customary justice found in the community is a form of diversity in each community of each region in Aceh. The practice of customary justice runs according to a mechanism that has been in place for years and the structure of customary justice follows a standard structure established by their ancestors. Customary institutions function and play a role as a vehicle for community participation in the administration of Aceh Government and district/city governments in the fields of security, peace, harmony and public order, therefore it is necessary to restructure the Customary Courts in Aceh

Keywords

Structure; Customary Courts; Village; Aceh;

Introduction

This study was conducted using a sociological juridical approach which aims to look more deeply at the possibility of uniformity in the standard structure of the gampong customary justice structure which is effective in the community. By conducting field research in Blangpidie, Takengon, Melaboh and Nagan Raya, Aceh Province.

This study concludes that the possibility of uniformity in the structure and mechanism of the gampong customary justice in Aceh can be done by establishing a communication and socialization forum for the ideal structure of a gampong customary court that is easy and effective to implement. This forum continuously provides information and understanding as well as knowledge to gampong officials regarding the importance of a uniform gampong customary justice structure so that they have a deep and mature understanding

This research is motivated by the reality of law enforcement in Indonesia, which still has various obstacles.¹ Based on an evaluation conducted by the Supreme Court of the Republic of Indonesia (MA) in 2008, it is known that the program's success and achievements have only reached 30%. The results of the Organizational Diagnostic Assessment (ODA) in 2009, the performance of the judiciary was in the spotlight of various parties, among others related to the high cost of litigation, the difficulty of accessing the poor and marginalized, information on closed judicial processes and the process of resolving cases which are felt to be still very long.²

In today's reality, cases are piled up in civil courts in Indonesia, both in district courts and in cassation at the Supreme Court (MA).³ This condition is due to the fact that the number of judges is not proportional to the number of cases that go to the Supreme Court. The existence of customary justice in Aceh is very important to be studied in various scientific aspects. In the context of dispute resolution in Aceh, for the indigenous people of Aceh, the principle of kinship is the main principle. The practice of dispute resolution⁴ as carried out by the Acehnese people is also in accordance with the principles of the Pancasila state law adopted by the Indonesian state, one of which is the principle of dispute resolution by deliberation and the judiciary is the last resort.⁵

The research idea of Restructuring the Structure of the Gampong Customary Court as an Effort to Uniform the Structure of the Customary Court in Aceh, is to find out, explore, study and analyze the reality of the existence and existence of the customary court that has grown and developed in the association of the

¹ Mahkamah Agung RI, *Cetak Biru Pembaruan Peradilan 2010 – 2035*, Jakarta.

² *Ibid*, 3

³ Yahaya Harahap, *Mencari Sistem Alternatif Penyelesaian Sengketa*. Mimbar Hukum, No. 21, 45

⁴ Jamaluddin dkk, *Adat dan Hukum Adat Nagan Raya*, (Lhokseumawe: Unimal Press, 2016), 165.

⁵ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), 50.

gampong indigenous people in Aceh since ancient times which has been passed down from generation to generation. From generation to generation whose structures are still diverse to be developed in accordance with current developments, to become an ideal customary court, so that they can be integrated into the national justice system. The existence and existence of gampong customary courts in the association of gampong indigenous peoples in Aceh, is able to anticipate the accumulation of cases in state judicial institutions and savings in the state budget. Many legal issues that occur in the gampong customary community association are resolved by the gampong customary court with the structure of the panel of judges still differing for each gampong in the province of Aceh whose position is attached to the gampong government institution. However, the decision of the gampong customary court does not yet have executive power, because it cannot be confirmed by the state court institution to obtain legal certainty, even though the decision has been agreed and accepted by the litigants. So that the decision does not have the power of execution and on the same issue that has been decided by the customary court it has been agreed and accepted by the parties, but it can still be disputed again in the future. Here the existence of gampong customary court decisions in the customary community alliance is still weak and cannot be a strong grip for the parties who have resolved legal issues that occurred through the relevant customary court decisions (Ofosuhene et al., 2021).

Basically, there is almost no limit to the legal issues that occur within the gampong indigenous community alliance in Aceh that can be resolved by the customary court. Both large-scale and small-scale cases that can be resolved by the gampong customary court are still pursued by the gampong customary court. The philosophy in resolving every legal problem that occurs in the gampong indigenous community association is made in the form of *hadih maja*, namely "The *Rayeuk Tapeu Ubit* Problem and the *Ubit* Problem are eliminated" meaning that big problems are minimized and small problems are eliminated. In social life, people who are already in legal conflict can return to harmony to foster a safe, peaceful and serene life in the association of the indigenous peoples concerned, because maintaining a peaceful life is very expensive which cannot be measured in money.

Structure of the tribunal of judges in the customary courts attached to the gampong government institutions in Aceh, which has grown and developed from generation to generation since ancient times until now, in the jurisdiction of the Aceh province is still diverse from one region to another, but although there are differences in the structure, the *keuchik* as the head of the gampong government and the head of the customary government in Aceh, he remains the chairman of the panel of judges for the gampong customary court concerned.

The era that alternates with time that continues to revolve, historically after Indonesia's independence began with the old order era, then continued with the new order era and is currently in the reform era. As one of the political demands in the struggle for reform is political restructuring in the field of law, including amendments to the constitution of the Republic of Indonesia as the basic law in the

legal system of the republic of Indonesia. The birth of Article 18B in the amendment to the 1945 Constitution which reads that the state recognizes and respects special or special regional government units that are regulated by law (Paragraph 1). Furthermore, the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the unitary state of the Republic of Indonesia as regulated by law. On the basis of the protracted Aceh conflict and ended with a peace agreement that gave birth to the Helsinki Memorandum of Understanding (MoU), for its implementation, it was revealed in Law No. 11 of 2006 (UU No. 11 of 2006) concerning the Government of Aceh which provides wider special autonomy. To Aceh as a special area, one of the specialties and privileges is the privilege in the field of custom which has been ingrained in fostering harmony and resolving various legal issues that have occurred in the association of the gampong indigenous peoples in Aceh that have been going on for generations. Article 1 point 20 of Law no. The year 2006 explains that Gampong or another name is a legal community unit that is under the mukim and is led by a keuchik or other name who has the right to carry out their own household affairs. Article 98 Paragraph (1) states that customary institutions function and play a role as a vehicle for community participation in the administration of the Aceh government and district/city governments in the fields of security, peace and public order. Paragraph (2) settlement of social problems is pursued through customary institutions. Paragraph (3) Traditional institutions include Keuchik or other names, Tuha Peut or other names, Imeum Meunasah or other names. Article 6 of Qanun Number 1 of 2019 concerning Gampong Government explains that (n) Keuchik has the authority to, among other things, settle community disputes in a customary manner and carry out other authorities in accordance with the provisions of laws and regulations. Furthermore, Article 8 point (k) states that the duties of the keuchik include resolving community disputes in the gampong. Article 27 explains that Imeum Gampong has duties, among others, with the keuchik, Tuha Peut Gampong and Gampong customary leaders to resolve disputes or disputes in the community. Article 39 explains that Tuha Peut Gampong has functions, including settlement of community disputes in a customary manner with the keuchik and other traditional apparatus (Ogali, 2022).

The Draft Law of the Republic of Indonesia concerning the Civil Procedure Code which has entered the priority scale of the 2021 National Legislation Program of the People's Representative Council of the Republic of Indonesia in Article 69 paragraph (1) explains that the parties who with or without the assistance of a certified mediator have succeeded in resolving disputes out of court by a peace agreement can submit a peace agreement to the competent court by filing a lawsuit to obtain a peace deed. The filing of a lawsuit must be accompanied by a peace agreement and documents as evidence showing the legal relationship of the parties to the object of the dispute (Paragraph 2). The judge examining the case before the parties only strengthens the peace agreement into a peace deed, if a) it does not conflict with public order, morality, and/or law, b)

does not harm third parties and c) can be implemented (Paragraph 3). The deed of reconciliation on the lawsuit to strengthen the peace agreement must be pronounced by the judge examining the case in a trial which is open to the public no later than 14 (fourteen) days from the date the lawsuit is registered (Paragraph 4). A copy of the peace decision must be submitted to the parties on the day the peace deed is pronounced (Paragraph 5).

Based on the various provisions of the laws and regulations mentioned above, the position of the customary court in the gampong indigenous community in Aceh is very much present in resolving various legal issues that occur in the midst of the indigenous community association. With the structure of the panel of judges still diverse for each region in the jurisdiction of Aceh Province, then to rationalize its structure and strengthen its existence and adapt to current developments, it is necessary to restructure so that the customary courts attached to the Gampong government institutions in Aceh have uniformity and become customary judiciary which is ideal to be integrated into the national justice system in resolving various legal issues that occur in the midst of the association of the village indigenous peoples so that the decisions of the customary courts get legal certainty.

Based on the description above, the problem is how the structure of the customary justice in Aceh is in accordance with the development of society and the law so that it is integrated into the national justice system in resolving legal issues in the alliance of indigenous peoples in Aceh.

Method

This research was conducted using a sociological juridical approach which aims to look more deeply at the possibility of uniformity in the standard structure of the gampong adat justice structure which is effective in the community. Literature research is carried out by consulting several books, articles, journals, research reports, and laws and regulations. Empirical research was conducted by attending customary dispute resolution and also interviewing law enforcement and a number of litigants by conducting field research in Blangpidie, Takengon, Melaboh and Nagan Raya Aceh Province.

1. STRUCTURE THAT HAS BEEN GROWING AND DEVELOPING SINCE THE PREVIOUS TIME TO RESOLVE THE VARIOUS LEGAL PROBLEMS OCCURRING IN INDIGENOUS COMMUNITIES IN ACEH

In the reality of interacting and fostering social life in every indigenous community association in the gampong within the jurisdiction of the Aceh Province, it is not uncommon for legal problems to occur which lead to complications among fellow community members. This happens because each individual in the life of indigenous peoples in the gampong cannot live and meet the needs of life independently, but needs other people, through social life which gave birth to the alliance of indigenous gampongs and gave birth to the apparatus of gampong customary government in aceh and norms. village customs. Therefore, every

human being in the gampong indigenous community is interdependent and needs each other, especially to reproduce and meet the needs of life in various aspects and to maintain life in this universe.

On the other hand, in various interactions to meet various needs and reproduce and maintain their lives, conflicts and violations of rights among members of the community in the association of the gampong indigenous people are also not uncommon. Many of the legal problems that have occurred within the village community since time immemorial in Aceh have been resolved by customary leaders in the concerned indigenous community through deliberation and consensus attached to the village government institution to re-establish peace between the parties in the indigenous community alliance. alone.

As Eugen Ehrlich put it that "...a good law is a law that is in accordance with the laws that live in society."⁶ Ehrlich also stated that positive law will only be effective if it is in harmony with the law that lives in society, in anthropological terms known as cultural patterns.⁷

Laws arise not because of orders from rulers or because of habits, but because of the feeling of justice that lies in the soul of the nation (instinkt). The soul of the nation (volksgeist) is the source of the law (against an expression of the common consciousness or spirit of people). Laws are not made, but grow and develop with society (das rechts wird nicht gemacht, es ist und wird mit dem volke).⁸

In this regard, Puchta argues that the law of a nation is bound to the soul of the nation (volksgeist) concerned. According to him, law can take the form (1) directly in the form of customs, (2) through laws, (3) through legal science in the form of the work of legal experts.⁹ Furthermore, Puchta distinguishes the meaning of "nation" in 2 (two) types (1) nation in the sense of ethnicity (natural nation), (2) nation in the national sense as an organic unit that forms a country.¹⁰ The influence of Puchta's thought was felt in Indonesia through Dutch legal experts, thus giving birth to a new branch of law known as customary law, which was pioneered by Van Vollenhoven and Ter Haar, as well as other customary law figures.¹¹

Therefore, in the perspective of the sociology of law, it is not surprising that today, the Customary Courts need to also expand their authority considering that "...there must be a symmetrical continuity between the development of society and the regulation of law, so that there is no gap between the problem and the method and place of settlement."¹² In a sense, the development of society which

⁶ Eugen Ehrlich dalam Soerjono Soekanto, *Perspektif Teoritis Studi Hukum dalam Masyarakat* (Jakarta: Rajawali, 1985), 19

⁷ Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum* (Jakarta: Rajawali, 1991), 7

⁸ Darji Darmodiharjo dan Shidarta, *Pokok-pokok Filsafat Hukum*, (Jakarta: Gramedia Pustaka, 1995), 107.

⁹ Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, (Yogyakarta: Kanisius, 1998), 120.

¹⁰ Darji Darmodiharjo dan Shidarta, *Op.Cit.*, 108.

¹¹ Lili Rasyidi, *Filsafat Hukum Apakah Hukum Itu?* (Bandung: Remadja Karya, 1988), 53.

¹² David N. Schiff, "Hukum Sebagai Suatu Fenomena Sosial", da'am Adam Podgorecki dan Christopher J. Wheian "Sociological Approaches to Law", terj. Rnc.

necessitates the emergence of problems can be resolved through legal channels, not by taking the law into their own hands.

The expansion of the authority of the Customary Court is also in accordance with Friedman's theory of the three elements law system, especially regarding legal substance. Friedman states; legal substance is the rules, norms, and patterns of real human behavior that are in a system.¹³ Substance also means the resulting product, including the decisions issued, the new rules that are drawn up. Substance also includes living law, and not just the rules contained in the law book or law in books.¹⁴

Based on the theoretical study above, the expansion of some of the powers of the Customary Courts is a necessity, considering that everything that is within the authority of the Customary Courts, whether concerning marriage, inheritance, and minor crimes, are all inherent in Muslim society. This means that Islamic law which is part of the authority of the Customary Courts has become a living law and is practiced by the Muslim community in Aceh. In fact, the authority of the Customary Court is not only limited to these issues, but also concerns other Islamic law issues that have been practiced by the community in everyday life.

In a gampong within the scope of aceh, in the Indonesian context it is called a village. The village has a gampong government organizational structure consisting of Keuchik as the head of government as well as the customary head, the head of the police and the chief judge in the gampong customary court, Tuha Peut Gampong as an element of the gampong government which functions as a deliberative body. village. The gampong secretary is the village apparatus who leads the gampong government. Imeum gampong who leads community activities related to the field of Islam. The hamlet head is the implementing element of the gampong government in the gampong area concerned. If there is a conflict of interest or a legal conflict between members of the community in an association of gampong indigenous peoples, more specifically those in a hamlet in the village concerned, the hamlet head shall first attempt to resolve it at the domicile of the community in conflict. If the hamlet head is unable to complete it, the hamlet head will bring a report to the gampong Keuchik to get the solution. After receiving a report from the head of the hamlet about legal problems that occur among fellow community members, the gampong keuchik then approaches the conflicting parties and tries to persuade the parties to make peace in order to create harmony again in social life. If the gampong keuchik has tried to reconcile the conflicting parties through various approaches, but it still does not work, then the next step is to bring the problem into the gampong customary court trial with the structure of the gampong customary court panel of judges which still varies from one region to

Widyaningsih dan Kartasapoetra, *Pendekatan Sosiologis Terhadap Hukum* (Jakarta: Bina Aksara, 1987), 287.

¹³ Lawrence M. Friedman, *American Law an Introduction Second Edition* (Hukum Amerika Sebuah Pengantar), terjemahan Wishnu Basuki (Jakarta: PT. Tatanusa, 2001), 14.

¹⁴ *Ibid*

another. within the scope of aceh although the traditional institutions that exist in every gampong in aceh are the same. Almost all cases that occur within the customary community association can be resolved through the gampong customary court.

In one of Aceh's regulations, namely Article 13 of Aceh Qanun Number 8 of 2008 concerning the Guidance of Customary Life and Customs, it is stated that there are 18 (eighteen) cases/disputes that can be resolved through the gampong customary court. Disputes/disputes between customs and customs include: a) Disputes within the household, b) Disputes between families related to faraidh, c) Disputes between residents, d) Seclusion meusum, e) Disputes over property rights, f) Theft in the family (minor theft), g) Disputes over one's property, h) Minor theft, i) theft of domesticated livestock, j) Violations of customs regarding livestock, agriculture, and forests, k) Disputes at sea, l) Disputes in the market, m) Minor abuse , n) Forest burning (on a small scale that harms indigenous communities), o) Harassment, slander, sedition, and defamation, p) Environmental pollution (mild scale), q) Threatening threats (depending on the type of threat), and r) Other disputes that violate customs and customs. This was reaffirmed in the Joint Decree of the Governor of Aceh, the Head of the Aceh Regional Police and the Head of the Aceh Customary Council Number: 189/677/20211, 1054/MAA/X11/2011, B/121/I/2021 concerning the Implementation of Gampong and Mukim Customary Courts or Another name in Aceh, that minor disputes/disputes that occur at the Gampong and Mukim levels as referred to in Article 13, Article 14 and Article 15 of Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customary Tradition must be resolved first through the Gampong Customary Court and Mukim or Other Names.

From the results of the research in four districts of the mastermind within the province of aceh, the districts selected as samples in this study were Southwest Aceh District, Nagan Raya District, West Aceh District and Aceh Tengah District, Aceh Province. From the four sample districts, it is known that in the implementation of customary justice there are almost the same, there is also a different structure of the panel of judges and in the process of handling cases. Based on the information presented by the management of the Aceh Barat Daya District Customary Council through a FGD on October 18, 2021, which explained that many people choose to resolve cases through customary courts rather than through state courts, if they are resolved through state courts, the process is not only long but also costly. Cases that are resolved through customary courts are not only the 18 (eighteen) kinds mentioned in Aceh Qanun Number 8 of 2009, but also cases that are not settled according to custom. For example, theft on a large scale is still resolved with the intention of not getting to the state apparatus, those who take other people's goods must return them by raising the price slightly higher than the stolen goods as a fine. When juxtaposed with Aceh Barat Regency, information was obtained from the management of the Aceh Customary Council of West Aceh Regency based on the results of an interview on October 19, 2021

which explained that cases resolved by the Gampong Customary Court in the West Aceh Legal Territory on a priority scale for cases of a simple nature within the scope of 18 (eighteen) cases which were given authority to the gampong customary court, while major cases were still delegated to the state court. Cases that often occur are cases of disputes between residents and families as well as cases of small household complications, if the major ones are delegated to the state court. Meanwhile, the gampong customary court in the legal area of Nagan Raya Regency based on the results of the FGD with the Chairman and Members of the Nagan Raya Regency Customary Council on October 20, 2021, explained that it does not sort out legal issues that occur in the customary community alliance which are resolved by the customary court, but all legal issues that arise in the community. In the case of indigenous peoples alliances, efforts are still being made to resolve them through the gampong customary courts, except for drug crimes that have recently emerged, the process of which is handed over to state officials.

Thus, the Gampong customary court in the jurisdiction of Southwest Aceh Regency in resolving legal problems that occur in the association of the gampong indigenous community, not only regarding small-scale cases as stipulated in Article 13 of Aceh Qanun Number 8 of 2009, but also large-scale cases. Major matters that do not include the authority granted to the gampong customary court are also resolved by the gampong customary court. This condition shows that the gampong customary court in the jurisdiction of Aceh Barat Daya Regency still inherits the traditional gampong courts of the past which do not limit cases to be resolved through the gampong customary courts, but whatever cases occur within the customary community alliance, efforts are still being made for traditional settlement through customary courts. whose aim is to return to peace for the parties to the conflict. Another case is what is practiced in the gampong customary court in the jurisdiction of West Aceh Regency, only prioritizing the settlement of small-scale cases that occur in the association of the gampong customary community. However, it is possible for large-scale cases to be resolved through the gampong customary court. This is in accordance with the competence of the gampong customary court as stipulated in Article 13 of Aceh Qanun Number 8 of 2009 and the Joint Decree of the Governor of Aceh, the Aceh Police Chief and the Aceh Customary Council which only gives 18 (eighteen) authority cases that can be resolved by the customary court. village in aceh. Meanwhile, for customary courts in the gampong indigenous community association in the jurisdiction of Nagan Raya Regency, although its authority has been limited in resolving cases that occur in the gampong indigenous community association by the Aceh Qanun and the Joint Decree of the Aceh Governor, the Aceh Regional Police Head and the Aceh Customary Council, however still adhering to traditions that have been passed down from generation to generation, namely by continuing to strive for all cases that occur in the gampong indigenous community to be resolved through the gampong customary court, because the settlement of cases through consensus

deliberation conducted in the gampong customary court is more beneficial than settlement through state courts. Likewise, the village customary court in the legal area of the Aceh Teungah Regency based on the results of the FGD with the Aceh Gayo Customary Council management explained that the 18 (eighteen) cases resolved by the customary courts which had been delegated to the village or gampong customary courts in the legal territory of the Aceh province became priority scale, but not only that which is resolved by the village customary court, but cases beyond that are also sought to be resolved through the village customary court. It aims to create a comfortable and peaceful stability in the midst of the alliance of the indigenous peoples concerned. Thus, it is necessary to interpret in a broad sense the meaning contained in Article 13 of the Aceh Qanun Number 8 of 2009 relating to 18 (eighteen) cases under the authority of the Aceh Customary Court. This means that the priority scale must be resolved first by the gampong customary court and other legal institutions must not precede the gampong customary court. Anything beyond that can also be resolved by the gampong customary court as long as it brings benefit and does not conflict with peace and public interest.

As for the structure of the panel of judges for the gampong customary courts in the jurisdiction of Southwest Aceh Regency in resolving cases that occur within the gampong indigenous community alliance, based on the results of the FGD with the Aceh Customary Council, Southwest Aceh Regency, it was explained that Keuchik gampong as the chief judge, Imeum Gampong, Tuha Peut Gampong, traditional leaders and religious leaders in their respective villages serve as a panel of judges, while the gampong secretary acts as a clerk in the trial of the village customary court. All the board of tuha peut become members of the panel of judges. When juxtaposed with the structure of the panel of judges for the gampong customary court in Aceh Barat Regency based on the results of the FGD with 5 (five) Keunchik and their apparatus in the jurisdiction of Aceh Regency, West Aceh Regency, there are differences in the structure of the panel of judges which can clearly be described: Keuchik as the leader of the adat court, Tuha Peut gampong, Head of Gampong Youth, Head of Gampong Hamlet, Tengku Imeum Gampong respectively as member judges and Gampong Secretary as Registrar. The number of personnel in the management of Tuha Peut gampong is 9 (nine) people, but only 4 (four) people are involved in the panel of judges for the Customary Courts. Meanwhile, the personnel structure of the Gampong Indigenous Court of Justice in Nagan Raya Regency based on the results of the FGD with the Aceh Traditional Council Management of Nagan Raya Regency, dated October 21, 2021, is described as follows: Keuchik Gampong as presiding judge, Tuha Peut Gampong, Teungku Imeum Gampong, traditional leaders and Ulama figures respectively serve as member judges while the gampong secretary serves as clerk of the customary court trial. According to Keuchik Menasah Tengah who explained that from the number of personnel in Tuha Peut Gampong, 9 (nine) people were involved in the Panel of Judges of the Gampong Customary Court, 4 (four) plus 1 (one) totaling 5 (five)

people. The structure of the panel of judges at the village customary court in the jurisdiction of Central Aceh Regency based on a meeting through the FGD on October 22, 2021 can be described, namely Reje in the context of Central Aceh (Keuchik) as the chief judge, Rakyat Genap Mufakat, (RGM), Imeum and Petuwe each as a panel of judges members who are members of the "Sarak Opat" institution, plus one traditional leader. So the panel of judges for the village customary court in the jurisdiction of Central Aceh Regency is only 5 (five) people in hearing every case that occurs in the village customary community association which is brought to the village customary court.

From the explanation of the results of the research as mentioned above, it is clear that there is a diversity of personnel structures of the gampong customary court judges which are practiced by each gampong in each district in the jurisdiction of the province of aceh. For example, as can be seen, the structure of the panel of judges for the gampong customary courts in the jurisdiction of Southwest Aceh Regency has almost no limit on the number of personnel. Although there is a person Keuchik gampong in all regions, he remains as Chairman of the panel of judges, Teungku Imeum Gampong as member judge, gampong secretary as clerk, but the tuha peut component which includes all members of the tuha peut becomes a member of the panel of judges, plus a cleric and a traditional figure. as well as a member of the panel of judges. There are also areas such as West Aceh Regency, from the total number of personnel of tuha Peut gampong who are members of the panel of judges for the gampong customary court, only 4 (four) people are appointed as members of the panel of judges for the gampong customary court, while Keuchik remains as Chairman of the Panel of Judges, plus Imeum Gampong and traditional leaders. as a member of the panel of judges, the position of the Gampong Secretary as Registrar. Then the structure of the Gampong Customary Court Panel of Judges for the gampong customary court in the Nagan Raya Regency area from the number of Tuha Peut members taken 50% + 1 (fifty) percent plus (one) person who is a member of the panel of judges for the gampong customary court, while Keuchik remains as Chairman The Panel of Judges, plus Teungku Imeum of the village and traditional leaders as member judges, while the Gampong Secretary as Registrar. It is different with the structure of the panel of judges for the gampong customary court or in the context of gayo called the Village of Aceh Teungah Regency which consists of Reje (Keuchik) as the Chief Judge, Imem, Peutuwe, People of Genap Mufakat (RGM) who are members of the traditional institution "Sarak Opat" and added Traditional figures who are outside the traditional "sarak opat" institution each as member judges, the total number of members of the panel of judges is 5 (five) people. Thus, the structure of the Gampong Traditional Court of Justice in the jurisdiction of Aceh Province is still very diverse in number of personnel, it is necessary to rationalize it to determine the ideal number of judges in all Gampong customary courts in the Aceh province jurisdiction so that they can be easily integrated into the national justice system.

2. STRUCTURE OF TRADITIONAL JURISDICTION COMPATIBLE WITH

COMMUNITY DEVELOPMENT AND THE LAW FOR INTEGRATION IN THE NATIONAL JUDICIAL SYSTEM IN SOLVING LEGAL PROBLEMS IN INDIGENOUS COMMUNITIES IN ACEH.

Article 34 of the ILO Convention Number 169 of 1989 concerning the Rights of Indigenous Peoples that indigenous peoples have the right to promote, build and maintain distinctive institutional structures and customs, spirituality, traditions, procedures and practices in which they exist, justice systems or practices in accordance with internationally recognized human rights standards.

The provisions of the ILO Convention are in line with Law Number 11 of 2006 concerning the Government of Aceh by giving roles to customary institutions. This is regulated in Article 98 paragraph (2) which states that the settlement of social problems is carried out in a customary manner.

Aryos Nivada, who focused his study on the contribution of the Customary Court model to the national legal system, in his study found that the presence of the Customary Court in the national legal system was able to have a positive impact. The form of the implementation of the Customary Courts is more likely to be used by the Acehnese people than the national legal courts. The existence of the Customary Court is recognized by the community in resolving disputes that occur in the Acehnese community, even further, the Aceh Government has standardly codified it in the form of Qanun (regional regulations).¹⁵

Settlement of cases through customary courts in Aceh has always been the main basis for the principles of justice and harmony. This is manifested in the hadih maja, "the rayek ta peu ubeuet and the ubeuet ta peugadoeh" (the big ones are minimized and the small ones removed), a meaningful expression, dispute resolution in customary law does not leave a mark, meaning that every case that occurs in the community must be able to removed without leaving a stain. Obviously, here it is different from the criminal law adopted in the Criminal Code, where the legal process is complete and there is legal certainty but not necessarily the feeling of revenge for the perpetrators of the crime or the heirs of the two even though the case has been resolved through legal channels in accordance with the applicable laws and regulations. still leaves a grudge in his heart, but it is different from the settlement with customary law, where the settlement process is always prioritized on the principles of harmony, peace, kinship, and reconnecting good relationships.

Nanda A, et al.¹⁶ The existence of the gampong customary court is seen by the community as an alternative and positive potential in resolving minor violations that can be overcome by the community. In addition, the existence of this customary court can reduce the accumulation of cases in court and can help residents access the protection of their rights. Settlement of disputes in the gampong, namely a simple dispute resolution model with the involvement of the

¹⁵ Aryos Nivada, *Tawaran Model Sistem peradilan Adat Aceh Bersinergis Peradilan Hukum Nasional*, <http://acehinstitut.org>.

¹⁶ Nanda Amalia, Mukhlis, dan Yusrizal, *Model Penyelesaian Sengketa dan Peradilan Adat di Aceh*, *Jurnal Hukum IUS QUIA IUSTUM* No. 1 Vol. 25 Januari 2018: 159 – 179.

geuchik and the involvement of Tuha Peut Gampong elements as a whole. Dispute resolution that resembles a formal trial and refers to customary court guidelines issued by the Aceh Customary Council.

Mahdi¹⁷ with his research argument that although juridically, the Aceh government does not include the customary court as one of the official state courts, (but) sociologically the Customary Court is recognized by the community in resolving disputes that occur in the Acehnese community, even further, the Aceh Government has codify it by default in the form of a qanun (regional regulation).

This study believes that the granting of authority to customary law community units such as Gampong and Mukim in Aceh is not only the mandate of Article 18 B paragraph (2) of the 1945 Constitution, but in the context of Aceh, the existence of customary law and dispute resolution through customary courts. has a cultural meaning – in which case it is considered to be going well, as is the implementation of Islamic law. In addition, it also has a formal meaning, as evidenced by the intervention and responsibility of the state by presenting various legal rules to realize the implementation of customary law and customary justice. For example, the existence of a formal juridical gampong has received strict regulation, starting from the provisions of Article 3 paragraphs (1) and (2)¹⁸ and Article 6¹⁹ of Law Number 44 of 1999. The existence of customary institutions is reaffirmed in the provisions of Article 98 of the Law. Number 11 of 2006 concerning the Government of Aceh.²⁰ In 2003, the Provincial Government of Nanggroe Aceh Darussalam issued Qanun Number 4 of 2003 concerning the Governance of Mukims in the Province of Nanggroe Aceh Darussalam which authorizes mukims to decide and/or establish laws, maintain and develop adat, organize customary peace, resolve and issue decisions. customary law for disputes and violations of customs, giving legal force to something and other evidence according to custom and resolving cases related to customs and customs.

In line with this, the existence of Qanun Number 5 of 2003 concerning Gampong Government in the Province of Nanggroe Aceh Darussalam emphasizes that the duties and obligations of the Gampong Government are: resolving customary disputes, maintaining and preserving customs and traditions, maintaining peace and order and preventing the emergence of immoral acts. in society, and together with Tuha Peut and

¹⁷ Mahdi, *Eksistensi Peradilan Adat di Aceh*, Hunafa: Jurnal Studia Islamika, Vol. 8 Nomor 2: Desember, 189 – 215.

¹⁸ The full content of the article reads: Article 3 paragraph (1) Privileges are an acknowledgment of the Indonesian people given to the regions because of the struggle and the essential values of society which have been preserved from generation to generation as a spiritual, moral and humanitarian foundation. (2) The implementation of privileges includes: a. Implementation of religious life, 2. Implementation of customary life, 3. Implementation of education, and 4. Role of ulama in determining regional policies.

¹⁹ This article states "Regions can determine various policies in the effort to empower, preserve and develop adat and adat institutions in their territory that are inspired and in accordance with Islamic Shari'a".

²⁰ This article states that customary institutions function and play a role as a vehicle for community participation in the administration of Aceh government and district/city governments in the fields of security, peace, harmony and public order.

Imuem Meunasah became judges of peace.²¹

In 2008, the Provincial Government of Aceh issued Aceh Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs and Aceh Qanun Number 10 of 2008 concerning Traditional Institutions. The Governor of Aceh also followed up by issuing Aceh Governor Regulation Number 60 of 2013 concerning Implementation of Customary Dispute Resolution/Disputes. Operationally at the end of 2011 - the Governor of Aceh, together with the Head of the Aceh Regional Police and the Chair of the Aceh Customary Council (MAA) signed a Joint Decree (SKB) on the Implementation of Customary Courts in gampongs and Mukims or other names in Aceh.

Family settlement is the main principle used by the community and customary institutions in resolving existing disputes. When legal problems and events occur in society, efforts are always made to resolve them in a familial way and prioritize the principle of sincerity between the disputing parties and the wider community. The Aceh Customary Council (2012) has compiled the principles used by the community in dispute resolution, namely: the principle of trustworthiness or trustworthiness, the principle of accountability or responsibility, the principle of non-discrimination which is also known as the principle of equality before the law, the principle of fast, easy and cheap, the principle of sincerity and voluntary, the principle of harmony or peaceful settlement, the principle of deliberation for consensus, the principle of openness to the public, the principle of honesty and competence, the principle of respect for diversity, the principle of presumption of innocence and the principle of justice.

Talking about the ideal structure of customary justice, first we need to talk about the presence of customary courts in the midst of the association of the gampong indigenous people in Aceh. The gampong customary court is a place to resolve various legal issues that occur within the gampong indigenous community alliance in accordance with the values of community justice and the basic principles and culture of the gampong community that have grown and developed from time to time. the birth of the gampong customary court, because there is an alliance of indigenous peoples and customary leadership who have customs and customary law, there are also many violations of customs, customs and customary law committed by members of the indigenous community association concerned, causing complications among fellow community members who concerned. To restore relations between conflicting community members, not a few cases that have occurred are resolved through deliberation and consensus attached to the gampong government institution which is termed the gampong adat court, because the case process is in the gampong adat court whose ultimate goal is to make peace and re-knit relations. whether there have been fractures between the conflicting parties, in addition there is also a judicial process to impose sanctions in accordance

²¹ Both Qanun Number 4 of 2003 and Qanun Number 5 of 2003 have been revoked with the issuance of Regency/Municipal Qanun which provides the same arrangements in each Regency/City in accordance with the instructions of Article 114 paragraph (4) and Article 117 paragraph (2) of the Law. Law Number 11 of 2006.

with applicable customs and customary law as a condition for reconciling the conflicting parties. Thus the case process at the Gampong customary court in Aceh is only the first cases that can be reconciled directly without customary sanctions and the second is cases that can be given customary sanctions as a bridge or requirement towards peace so that peace, tranquility and harmony in people's lives village customs can be restored.

As in the previous description, the gampong customary justice in Aceh has been practiced for generations, while time is constantly changing and the times are changing, the values in the life of the gampong indigenous people have also changed a lot. This is as a result of the development of science and technology as well as the flow of cultural globalization in the lives of the gampong indigenous people in Aceh which can no longer be dammed which causes a trend of changes in values and behavior in the lives of the gampong indigenous people. In the past, the Keuchik as the leader of the village who also served as traditional leader, as well as the chairman and members of Tuha Peut Gampong did not need an educated person, in fact illiterate people dominated the village leadership who was also the traditional village leader in Aceh. In the past, the only people who relied on the leadership in the village were experience in social life, in the field of customs, in the field of religion, and had charisma, so that in the past the keuchik also Tuha Peut gampong were people who were very senior aka old age and had a culture in the field of traditional culture, religion that very strong among the members of the gampong indigenous community in question. One of the important tasks attached to the gampong government institution is the task of receiving, processing, adjudicating and giving a decision on any legal issues that occur within the customary community alliance in accordance with the prevailing customary values and norms in order to re-establish peace and harmony within the indigenous community association. . This task is called the implementation of the Gampong Customary Court to adjudicate cases that occur within the adat community, with the structure of the panel of judges for the Gampong Customary Court which varies in each region of the Aceh Province. The results of the decision from the case process at the gampong customary court did not exist in the form of a written document, but were not documented at all. The decisions of the customary courts only exist in the memory or memories of the people who become the panel of judges in adjudicating the case in question and the parties to the litigation as well as the people who take part in the trial of the customary court. Because every case that is tried in a customary court is immediately reconciled, some are decided by giving customary sanctions as a condition to be reconciled. This really depends on the size of the case that happened. If the parties accept the decision of the gampong customary court, then it ends with a peusijuk (salt flour) event and implements customary sanctions according to the decision and is manifested in the form of shaking hands between the litigants to forgive each other, also giving tausiah and

reading prayers by Tengku Imeum Gampong so that thing is done.

Nowadays a Keuchik can no longer be held by an illiterate person, but a keuchik must be a person who has at least a minimum education of a Junior High School (SMP) diploma or its equivalent. It is time to restructure the gampong customary court structure which is attached to the gampong government institutions according to current conditions to form an ideal gampong customary court to suit the development of indigenous peoples and make it easier to integrate into the national justice system, so that the decisions of the gampong customary courts have legal certainty. can be a strong grip for the litigants. It is time to create an ideal structure for the panel of judges for the traditional gampong judiciary and is the hope of the various components of the gampong leadership.

Based on the results of research conducted in 4 (four) regencies within the province of aceh through FGDs with the Aceh District Customary Council Management and interviews with Syariah Court Judges, District Court Judges and Keuchik Gampong who were sampled in this study, it was concluded that there are various types of assembly personnel structures. gampong customary court judges in various regencies in the aceh region, although there is already a format made by the Aceh Adat Council (MAA) of the Aceh province which has also been forwarded to villages in every district/city in the Aceh province. For the Chair of the Panel of Judges who are held by Keuchik and Imeum Gampong as members of the Panel of Judges and the Gampong Secretary as Registrar, it is uniform for all Gampong Customary Courts within the jurisdiction of the Aceh province. However, for Tuha Peut and traditional leaders and religious leaders there are also those involving youth leaders as members of the gampong Customary Court Judges which still vary from one region to another. For example, for the Gampong Customary Court in the Southwest Aceh District, all the Tuha Peut Gampong administrators are members of the Council of Judges for the Customary Court plus one traditional and religious leader each. It is different with the Gampong customary court in the West Aceh district, of the 9 (nine) Tuha Peut administrators, only 4 (four) people are members of the panel of judges for the customary court plus a traditional figure and a youth figure as a member of the panel of judges. village customs. Meanwhile, in Nagan Raya Regency, from the number of Tuha Peut administrators as many as 9 (nine) people, it is determined to be half plus one person, which means that there are 5 (five) people who are members of the panel of judges for the gampong customary court. Meanwhile, for the gayo village customary court in the context of Central Aceh District, the panel of judges for the village customary court consisted of Reje (keuchik) as chairman of the panel of judges, the gampong secretary as the Registrar, while Imem, petuwe, Rakyat Genap Mufakat (RGM) and a traditional figure respectively served as judges are members of the Village customary court.

To build a gampong traditional court in aceh, as a symbol of a sense of unity and integrity in the customary justice system in aceh which is one of the traditional justice models leading to a modern gampong customary court in accordance with the

development of the life of the gampong indigenous community association at this time, then it is necessary to restructure the gampong customary courts to be uniform, especially with regard to the composition of the panel of judges totaling 7 (seven) or 9 (nine) people in order to form an ideal gampong customary court in accordance with current developments to be integrated into the national justice system. The structure of the composition of the panel of judges needs to be outlined and a strong legal basis made in the form of the Aceh Qanun as one of Aceh's privileges in organizing customary life, especially in the field of gampong customary justice.

Based on the results of discussions through FGDs with the management of the Aceh Traditional Council of Southwest Aceh Regency on October 18, 2021, the Aceh Traditional Council of West Aceh Regency on November 19, 2021, the Aceh Customary Council of Nagan Raya Regency on November 20, 2021 and the Aceh Traditional Council of Central Aceh Regency on November 20, 2021. 21 November 2021 ideally, it is necessary to restructure the gampong traditional courts throughout Aceh so that there is uniformity in the personnel structure of the gampong tribunal of judges, because every village has the same customary institutions, except for Aceh Tengah Regency where there are slight differences. However, the structure of the number of judges can be uniform.

Conclusion

The presence of the gampong customary court in the midst of the indigenous community association has been very urgent and exists in dealing with various cases that occur in the gampong indigenous community association, so it needs to be preserved and adapted to the development of the community. Considering that there is uniformity in gampong traditional institutions throughout Aceh that has been passed down from generation to generation, while the structure of the number of panel of judges personnel differs, it is necessary to restructure the personnel of the panel of judges so that there is uniformity in all gampong traditional courts throughout the Aceh region. So that there are no differences in views among members of the community regarding the justice of a gampong customary court decision which can be the seed of a new complication to the decision of the gampong customary court. In addition, it can strengthen the existence of the gampong customary court itself and facilitate integration into the state justice system, so that the decision of the gampong customary court has definite legal force, it is necessary to have an ideal gampong customary court, with a uniform structure of the number of judges for all customary courts. gampongs in all regencies/cities in the province of Aceh.

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