



Proceeding of 2nd Malikussaleh International
Conference on Law, Legal Studies and Social Science
(MICoLLS) 2022

**Settlement Of Case Through The Traditional Court After The
Entry Of A Collective Decision Between The Governor Of The
Head Of The Aceh Regional Police And The Aceh Traditional
Assembly**

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Settlement Of Case Through The Traditional Court After The Entry Of A Collective Decision Between The Governor Of The Head Of The Aceh Regional Police And The Aceh Traditional Assembly

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Abstract

This research tries to obtain the legal information experimentally by going straight to the target, namely understanding and knowing the settlement of cases carried out by the customary courts in Aceh after the enactment of the Joint Decree between the Governor, the Aceh Regional Police Chief, the Chairperson of MAA Number 189/677/ 2011, 1054/MAA/XII/2011 and No. B/121/1/2012 concerning the Implementation of Gampong and Mukim Customary Courts or other names in Aceh. This type of research is qualitative using an empirical juridical approach. In this study, a sociological juridical approach was used as an investigation technique. Law enforcement factors feel sympathy for the families of the victims who are underprivileged and minimize the expenses for the families of the victims, because if the victim makes a complaint to the police, it will cost a lot of money to get to court. Then the factor of the authority of the Customary Court, the Gampong apparatus is hesitant and even does not have the heart to refuse cases reported by the community, even though the case is not the authority of the customary court. And the legal culture factor, some of the people who are not aware of the law, in this case many people do not know that there is a Joint Decree between the Governor, the Aceh Police Chief and the MAA, so that people ignore that cases of traffic accidents that cause victims to lose their lives are not under their authority. customary court.

Keywords

Settlement Of Case, Traditional Court, Head Of The Aceh Regional Police, Traditional Assembly

DOI : 10.29103/micolls.v2i.112

1. Introduction

Juridically, there are known to be two kinds of settlement of cases in legal matters, the first is known as litigation settlement, and the second is known as non-litigation. The meaning of litigation is settlement in court, such as settlement of cases in General Courts, Religious Courts or Syar'iyah Courts, Military Courts, and State Administrative Courts. This form of justice is managed by the state, often referred to as the government judicial system. Then the purpose of non-litigation, namely the settlement of cases outside the court, is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution such as arbitration, mediation. Courts like this are known as native administration of justice (Customary Courts), village administration of justice (Customary Courts), indigenous system

of justice (Customary Courts), religious tribunals (Religious Courts) and village tribunals (Village Courts).

The practice of customary justice has been carried out since ancient times and has been carried out from generation to generation. During the Dutch East Indies era, provisions were enacted on the division of population groups consisting of Europeans, natives, and foreign easterners. The purpose of this division of groups is to determine the law that applies to each group as described in Article 131 paragraph (1) sub a Indische Staatsregeling (IS) stipulates the law that applies to each group, one of which is specifically for the indigenous group of sons of law who customary law applies, so that the existence of settlement of cases through customary courts in the context of Aceh is deeply rooted in the alliance of customary law communities.

In practice, 18 (eighteen) cases resolved at the gampong level as mandated in Qanun Number 9 of 2008 concerning Fostering Traditional and Customary Life have been implemented and carried out by the gampong customary justice institution in Aceh. Meanwhile, the customary mukim justice institution is passive in resolving customary cases under its authority. This is due to the difficulty of functioning the mukim apparatus because it is not supported by funding sources and office facilities. Thus, if the cases that have been resolved in the Gampong customary court are not accepted by the parties, then most of them are forwarded to law enforcement officials if the case is related to a criminal case.

On the other hand, based on the results of preliminary research conducted in 2 (two) districts in Aceh, namely North Aceh District and Central Aceh District, the 2 (two) districts found that the gampong customary courts in North Aceh District and Central Aceh District has resolved cases beyond the provisions of the Qanun, namely traffic accident cases that caused the victim to lose his life and adultery cases. Settlement of cases like this is outside the authority as stated in Article 13 of the Aceh Qanun Number 9 of 2008 and the Joint Decree between the Governor, the Aceh Regional Police Chief, the MAA.

2. Method

This type of research is qualitative using an empirical juridical approach. In this study, a sociological juridical approach was used as an investigation technique. The sociological juridical approach is to identify and understand law as a real and effective social institution in real life systems. The sociological juridical method emphasizes research that tries to obtain legal information experimentally by going straight to the target, namely understanding and knowing the settlement of cases carried out by the customary courts in Aceh after the enactment of the Joint Decree between the Governor, the Aceh Regional Police Chief, the Chairperson of MAA Number 189/677/ 2011, 1054/MAA/XII/2011 and No. B/121/1/2012 concerning the Implementation of Gampong and Mukim Customary Courts or other names in Aceh.

This research is prescriptive, namely a study that aims to get suggestions on what to do to overcome certain problems. The location of this research is Aceh by taking research

samples in Central Aceh District and North Aceh District. The reason the researcher conducted research in Aceh was due to the existence of legal pluralism in Aceh's indigenous people, where between one district and another district had a diversity of customary law applied, especially in resolving cases in the Customary Court.

3. Result and Discussion

a. Settlement of Disputes Through Customary Courts After the Joint Decree Comes into force

Settlement of cases in Aceh uses the principle of kinship as the main principle. When legal issues and incidents occur in society, efforts are always made to resolve them in a family manner and prioritizing the principle of sincerity among themselves. Settlement of disputes and cases with customary law is a good deed and has a very noble position both in living together in the world and with Allah SWT, because customary law and Islamic law are very closely related. The principles contained in Aceh's customary law are teachings in Islam, so it is clear that for the people of Aceh the customary settlement does not conflict with their Islamic religion which advocates peace.

As one of the cases that occurred in the adultery case that occurred in the village of Keude Krueng Geukueh, North Aceh District, has been successfully resolved peacefully through customary justice. On August 3, 2017 in Gampong Keude Krueng Geukueh, Dewantara District, North Aceh Regency, residents of Gampong Keude Krueng Geukueh and Lancang Barat, both of whom are in Dewantara District, North Aceh Regency, conducted an adultery case through a traditional Gampong meeting.

Based on the incident, he was arrested by residents of Cot Trieng Hamlet, Gampong Keude Krueng Geukueh, Dewantara District, North Aceh Regency, on Wednesday 2 August 2017 at 09:00 - 16:00 WIB in the waqf land house complex of the Bujang Salim Mosque, Cot Trieng Hamlet. The perpetrators with the initials Sy and Mrs. binti M. Yusuf were both unmarried and had committed acts that violated Gampong customary rules and Aceh Qanun Number 6 of 2014, and adultery.

Both of them have testified about the incident in front of their respective families, the Head of Cot Trieng Hamlet, Tuha Peut Gampong, Wilayatul Hisbah, and Geuchik Gampong Keude Krueng Geukueh, and witnesses. So that both parties agreed to resolve the case according to Gampong custom through a Gampong custom meeting with the composition of the assembly as follows:

- 1) Geuchik Gampong TKP as leader of the meeting as well as chief judge;
- 2) Gampong TKP apparatus as Minutes as well as clerks;
- 3) The male offender's family as a member
- 4) Families of female offenders as members
- 5) Tuha Peut Gampong TKP as a member
- 6) Babin Kamtibmas as a member
- 7) Gampong TKP community leaders as members

- 8) Gampong Lancang Barat apparatus as members
- 9) Families of female offenders as members
- 10) The Great Mosque of Bujang Salim as a member
- 11) Wilayatul Hisbah, North Aceh District, western region as a member

In this case, the geuchik as the leader of the meeting as well as the presiding judge has the authority to decide based on the results of the deliberations conducted by the members involved as mentioned above. The families of both parties are also included as members to deliberate on the sanctions that will be imposed on the perpetrators or offenders. The offenders (Sy and Mrs) also attended the customary meeting or deliberation to provide information about the events that happened to them.

Based on the Minutes of Settlement of the Violation Case Number: 470/26/BAP-PP/2017, the Gampong Keude Krueng Geukueh Traditional Court, Dewantara District, North Aceh Regency, as the scene of the case, and the parties involved in the trial through Gampong Customs with the composition The Assembly as mentioned above has resolved the case in the customary way. The Gampong where the incident occurred (TKP) who was harmed in this case asked the violators and their families to comply with the Gampong Customary rules that have been in effect so far in the TKP Gampong.

Another case that was resolved through customary justice was a traffic accident case that caused the victim to lose his life which occurred at 20.00 WIB on Thursday 10 October 2019 on the Medan-Banda Aceh public road Gampong Alue Awe, Muara Dua District, Lhokseumawe City, between one Toyota car Vios BK 1333 SZ with a Honda Vario BL 6799 KAI motorcycle.

Based on this incident, the parents of the perpetrator (Saiful Amri driving a Toyota Vios BK 1333 SZ) took the initiative to settle the case peacefully through customary justice so that they reported the incident to the Geuchik Gampong Pante, North Aceh District. Geuchik Pante then approached the victim's family (Zainal Abidin who is the father of the victim, a Honda Vario BL 6799 KAI motorcycle rider) by visiting his residence with the perpetrator. However, during this visit the perpetrator was disrespectful to the victim's family and did not radiate guilt from the perpetrator so that the victim's family was reluctant to make peace. Because the victim's family refused to make peace, the Pante village geuchik approached village officials from Tanjong Mulieng, North Aceh District, as the village where the victim's family lived. Then, the gampong officials from the two gampongs approached the victim's family together, saying that the perpetrator's mother was sick because she always cried thinking about the fate of her child if the victim's family refused to make peace.

Taking into account the condition of the perpetrator's mother, compassion arose from the victim's family so that the victim's family decided to make peace. So, Pante and Tanjong Mulieng village officials held a traditional meeting to resolve the matter amicably. This case has been resolved through customary justice by producing a peace agreement as follows:

- 1) The first party helps pay compensation for the second party in the amount of Rp. 15,000,000.- (fifteen million rupiah);
- 2) The second party legally gives the damaged vehicle to the first party;

- 3) The first party and the second party are mutually friendly and brotherly;
- 4) The first party and the second party as well as any party there are no words of incitement and slander at a later date.

The first party in this case is Saiful Amri as the perpetrator (driver of the Toyota Vios BK 1333 SZ) and the second party is Zainal Abidin who is the father of the victim (motorcycle rider of Honda Vario BL 6799 KAI). This peace agreement was signed by both parties, two witnesses, and Geuchik Gampong Pante and Geuchik Gampong Tanjong Mulieng, North Aceh Regency.

The same thing also happened in Aceh Tengah District, traffic accidents that resulted in the loss of life have been resolved through customary courts. In the case of a traffic accident between M. Yunus (Perpetrator) and Muspika (Victim), this incident occurred at 08.30 WIB, Saturday, February 6, 2021 in Melala Village, Celala District, Central Aceh Regency. The victim's family, Muspika's father, named M. Esa, reported the case to the village apparatus with the aim of demanding compensation from the perpetrator, so that the Melala Village apparatus accepted the report and held a customary court to resolve the case.

From the results of the customary trial, an agreement was reached between the two parties between M. Yunus and M. Esa as the victim's father, namely that M. Yunus would pay for all expenses for seven days. Both parties agreed to settle amicably because they felt that the agreement that had been reached was satisfactory and did not cause harm to both parties. In addition, for the indigenous peoples of the Central Aceh (Gayo) region who uphold customary values and customary law, there are other sanctions that are also imposed and implemented outside of the points that are agreed upon in peace.

Customs and Customs and Joint Decree (SKB) Between Governor, Kapolda Aceh, MAA Number 189/677/2011, 1054/MAA/XII/2011 And No B/121/1/2012 concerning Implementation of Gampong and Mukim Customary Courts Or Other Names in Aceh, especially related to criminal cases.

On the other hand, the gampong and mukim customary courts still receive and process cases that occur in indigenous peoples in Aceh that are beyond their competence as regulated in Aceh Qanun Number 9 of 2008 and the SKB. The process of resolving cases through the gampong and mukim customary courts which is carried out for generations does not limit the cases that occur in the Aceh indigenous community alliance.

Settlement of cases in the form of criminal acts through customary justice is more desired by the perpetrators and village customary stakeholders, so that conflicts or cases that occur between members of the community that cause imbalances in social life can be restored through village customary justice which focuses more on achieving peace, tranquility, tranquility and brotherhood in social life. The aim of resolving cases according to custom through customary justice is essentially to restore imbalances to balance, so that peace can be restored in social life. Meanwhile, legal events that occur, both in civil and criminal contexts, are returned to the nature of destiny from the Almighty. It is on the basis of this goal that it is the victim who ultimately agrees to settle the case through customary justice in the form of deliberation/consensus.

There are advantages and disadvantages in resolving cases through village and mukim customary courts. The advantages are that the process of resolving cases through customary courts is short, low cost, and the victim or his family gets compensation from the perpetrator, returns to the brotherly relationship between the perpetrator and the victim, and there are savings in the state budget. The disadvantage of resolving cases through customary courts is that corporal punishment does not apply to perpetrators, so that it does not have a deterrent effect on perpetrators.

When viewed from the living law theory used to analyze the problems in this thesis research, the practice of settling cases through customary courts still respects and upholds the existence of adat, customary law, and the customary institutions of gampong and mukim in Aceh in resolving cases that occur within the alliance of indigenous peoples. However, the presence of Aceh Qanun Number 9 of 2008 and the SKB have limited the competence of customary courts to only 18 (eighteen) cases. Thus, in addition to the cases stated in the Qanun, it becomes the competence or authority of the state's formal law enforcement officials. This limitation contradicts the living law theory developed in analyzing the problem. Settlement of cases through gampong and mukim customary courts which do not recognize the limitations, so that the customary courts are still practicing customary settlement of cases through customary courts outside of the competence of customary justice stipulated in Aceh Qanun Number 9 of 2008 and the SKB.

There are differences in the process of resolving cases through customary courts in Aceh between one region and another in the Aceh Province. This shows the pluralism of customary law and customary courts in Aceh. Regarding the same case as described above, there are differences in the procedure for the settlement to the decision. Legal pluralism like this is highly upheld in people's lives in resolving a case in a customary manner through customary courts. This is due to the values of justice as well as customary culture and customary law that grow and develop in each different environment of indigenous peoples.

From some of the cases described above, it can be seen that there are differences in resolving the same case between North Aceh and Central Aceh districts. In fact, the customary sanctions that apply and are applied are also different. This makes the existence of legal pluralism where there is more than one legal order in a social arena in accordance with what is expressed by Griffith.

Referring to what was done by the previous customary stakeholders, the customary court became a medium that could reconcile various cases that occurred in the midst of the customary law community. So, even today's traditional stakeholders see this as a good thing so it needs to be continued. This makes customary law continue to grow and develop in the lives of indigenous Acehnese people in accordance with the concept of living law theory expressed by Soepomo, namely customary law is the living law because it embodies the real feeling of life from the people. In accordance with its nature, customary law continues to grow and develop like the community itself.

b. Obstacles Occur in Resolving Disputes After the Enforcement of the Joint Decree

Article 13 of Aceh Qanun Number 9 of 2008 does not give authority to customary courts to resolve cases of adultery and traffic accidents that caused victims to lose their lives, but traditional stakeholders still receive reports from the community and resolve them through customary courts. This is done because in essence customary justice is able to resolve any case and produce peace between the two parties.

Customary courts in resolving disputes there are several obstacles related to the theory of the legal system. Some of the obstacles in resolving disputes through customary courts after the entry into force of the Joint Decree between the Governor, the Aceh Police Chief and the MAA are as follows.

c. Legal Structur Factor

The obstacle faced by customary courts and traditional stakeholders is that with the birth of Qanun Aceh Number 9 of 2008 which contains 18 (eighteen) cases which become the authority of customary courts to resolve cases, customary stakeholders have narrowed their movements in terms of reconciling the community if there are reports on cases outside of the provisions of the Qanun. Then the Joint Decree (SKB) of the Governor of Aceh, the Head of the Aceh Regional Police and the Head of the Aceh Traditional Assembly Number 189/677/2011, 1054/MAA/XII/2011, B/121/I/2012 concerning the Implementation of Gampong and Mukim Traditional Courts or Another Name in Aceh, this further emphasizes the authority of the customary court to only resolve the 18 (eighteen) cases mentioned. In fact, from generation to generation there are many things that make customary stakeholders unable to refuse to resolve cases that are reported outside of Qanun and SKB provisions, including:

- 1) It has been a tradition that has been passed down for generations that whenever there are problems, conflicts and any cases that occur within the customary community alliance, the victim will report the perpetrators and the case to the village customary stakeholders to get a resolution. Gampong customary stakeholders have also become a tradition to resolve in a customary way through customary justice against various case reports from the community through deliberation/consensus by producing decisions that are in accordance with the community's sense of justice.
- 2) The emergence of pity or sympathy, especially for the families of victims who come from underprivileged families. Thus, the Customary Court accepts and resolves cases of traffic accidents that cause victims to lose their lives and adultery, even though these cases are not included in the authority of customary courts;
- 3) To minimize expenses for the victim's family, because if the victim makes a complaint to the police it will cost a lot of money to reach court;
- 4) Referring to what was done by the previous adat stakeholders, customary justice was able to resolve various cases that occurred in the community.

With restrictions on the settlement of cases, especially in the form of criminal acts, according to adat through the customary courts of gampong and mukim, normatively it becomes an obstacle for customary stakeholders to resolve cases according to custom for cases that occur in the environment of indigenous peoples associations outside of the provisions of the Qanun Aceh Number 9 of 2008 and SKB. However, in practice, customary stakeholders continue to process cases that occur within their customary communities, even though they are outside the competence stipulated in the Aceh Qanun Number 9 of 2008 and the SKB. If it is related to the cases described in the previous sub-chapter, then this is contrary to the theory of living law and legal pluralism which has been passed down from generation to generation in the customary settlement process through customary courts, because it is no longer free for gampong adat holders to settle cases. customarily in restoring balance in social life.

Another thing that becomes an obstacle in resolving disputes through the Adat Court is that parties in litigation having relations with the police choose to report back the case they are experiencing to the police, even though the case has been successfully resolved amicably through the gampong adat court.

i. Legal Substance Factor

Weak legal structures that are positive by state institutions because they are not rooted in the legal joints that live and develop in society, so that it has an impact on the legal substance or authority of customary courts in resolving cases. So that the Gampong apparatus hesitates and does not even have the heart to refuse cases reported by the community, even though the case is not the authority of the customary court as mandated in Article 13 of Aceh Qanun Number 9 of 2008, where in the article it states that there are 18 disputes under the authority of the customary court. to solve it, it is not mentioned in it related to cases of traffic accidents that cause victims to lose their lives and adultery.

ii. Legal Culture Factor

Another obstacle that affects the resolution of disputes through customary courts after the enactment of the Joint Decree Between the Governor, the Aceh Police Chief and the MAA is the presence of some people who are not aware of the law, in this case many people do not know that there is a Joint Decree between the Governor, the Aceh Police Chief and MAA, so that people ignore that cases of traffic accidents that cause victims to lose their lives and adultery are not the authority of the customary court. The community has assumed that since ancient times customary courts have been a medium for resolving various cases that occur in social life, so nowadays customary courts are the main effort taken by the community in resolving the cases they face.

4. Conclusion

After the enactment of the Joint Decree of the Governor of Aceh, the Head of the Aceh Regional Police and the Chair of the Aceh Customary Council Number 189/677/2011, 1054/MAA/XII/2011, B/121/I/2012 concerning the Implementation of Gampong and Mukim

Customary Courts or Other Names in Aceh, there are still areas in Aceh that are still resolving cases outside the authority of the Customary Court itself. As in North Aceh and Central Aceh districts, these areas have succeeded in resolving traffic accident cases that caused victims to lose their lives. The case ended peacefully at the Gampong Customary Court by reaching an agreement that the perpetrator would provide compensation to the victim's family.

Obstacles in resolving cases through the Customary Court after the entry into force of the Joint Decree of the Governor of Aceh, the Head of the Aceh Regional Police and the Chair of the Aceh Customary Council Number 189/677/2011, 1054/MAA/XII/2011, B/121/I/2012 concerning the Implementation of Customary Courts Gampong and Mukim or other names in Aceh, namely with the birth of the Aceh Qanun Number 9 of 2008 and the SKB, limiting the customary courts in resolving cases, but the community still chooses to report the cases they face to the customary courts to be resolved peacefully even though the case is outside the court. from determination. Furthermore, law enforcement factors feel sympathy for the families of the victims who are underprivileged and minimize the expenses for the families of the victims, because if the victim makes a complaint to the police, it will cost a lot of money to get to court. Then the factor of the authority of the Customary Court, the Gampong apparatus is hesitant and even does not have the heart to refuse cases reported by the community, even though the case is not the authority of the customary court. And the legal culture factor, some of the people who are not aware of the law, in this case many people do not know that there is a Joint Decree between the Governor, the Aceh Police Chief and the MAA, so that people ignore that cases of traffic accidents that cause victims to lose their lives are not under their authority. customary court.

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