

A Procedure of Dispute Resolution at Village Adat Institution in Seunudon Sub-District of North Aceh Regency

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Abstract

When a dispute occurred in the community, village leaders always intervened to solve it with or without being asked the parties by using a certain dispute resolution procedures. This current research was developed to determine the procedures of dispute resolution by the village adat institutions. By using the empirical juridical method, document analysis, field survey, and interviews with the people and leaders of adat institutions, for primary data; while the literature study includes the study of laws and regulations related to the secondary data; and then all data was analyzed by descriptive method. The results of research shown that the dispute resolution was conducted by keuchik of gampong or other adat institutional leaders as justice of the peace with a certain procedure; the dispute resolution procedures may differ between one village and another village. Nowadays, no one has a written guideline in adat dispute resolution that can be used by the leaders of adat institutions. Hence it requires a regulation (qanun) as the legal basis of the dispute resolution procedures by adat institutions.

Keywords: Procedure, Dispute Resolution, Adat Institution, Gampong, Aceh.

1. Introduction

The rule of law in society, it's not in spite of the legal aspects as a part of human culture. One element of the law is legal culture. Friedman (1969) introduced the concept of legal culture as a part of the legal system in the year 1969. The concept of real legal culture related to legal issues resolved by the community. According to Rahardjo (1980) that the function of the law can be divided into three, namely the law to obtain justice, the law to obtain certainty, the law to obtain the rights and obligations of citizens.

Ter Haar B. BZN (2011) defined that law were as decisions in authoritative legal community from people head to the all people. The decisions were to be the rule for the community both the written and unwritten rules. In view of the Ter Haar said the judge should take the finality in accordance with adat law because of a judge must be wise as a starting point the public in the law enforcements.

The adat law known no strict separation between criminal law and civil law (private) and even its related one to each other (Marsden, 2008). Therefore, there is no difference in principle of resolution procedure of adat law in violation cases (Salman, 2001). Likewise, adat law do not recognized the difference between crimes and violations.

In the applied of adat dispute resolution process is also known a few patterns, among other things contained in the teachings Koesnoe (1979) that is doctrine and teachings to resolve and to verdict. In the resolution teachings with assume that a case should be pursued in such a way that the parties after dispute resolution, they can continue living together again as before in future. And upon opinion of decide teaching, that a dispute can not always worked in a resolution, so there needs to be a move firmly and clearly. These Koesnoe's teachings are not put win or lose as a destination but restore the disturbed balance is the primary, so that each side can live together again in a peaceful and prosperous life (Koesnoe, 1979).

The existence of religious teachings and adat of the Aceh people was an important thing, because religion and adat used as the standard of everyday people's behavior. The teachings of Islam and adat norms were also used to resolve a conflicts/disputes within the village community, internal conflict (among families members) individually or group with adat and religion frames. These elements can resolve the dispute which led to a permanent peace.

Some patterns of non-litigation alternative dispute resolution (ADR) were arbitration, mediation, and facilitation. The sentence results in the three patterns above are based on the principle of consensus or a win-win solution. In solution are not focused on who is right and who is wrong, the most important realization of peace between the parties to the dispute.

Patterns used in resolving conflicts or disputes in village communities in Aceh, such as; criminal case solved with *di'iet* and *sayam* pattern; and private and others cases solved by *suloh* (peace) patterns (Syahrizal & Agustina Arida, 2006). Implementation of *di'iet*, *Sayam* and *Suloh* on the indigenous people of Aceh framed through *pesijuek* and *peumat jaroe*, was conducted by traditional leaders or justice of the peace (keuchik, Imeum and tuha peut). In giving the judgment on dispute resolution is conformity with the principle of (adat) law. The

principle of the law is a beacon for the judge to find the law and give a fair verdict. The main principle of adat judicial task is to give justice to resolve the case. Instead the state court decision is mainly directed towards the achievement of legal certainty (T. Djuned, 2007).

In order to maintain the balance of the social interaction, community requires law that gives assurance and sense of justice. This can be realized through the resolution of disputes amicably by traditional institutions, such as the traditional village institutions in Aceh, both formal institutions such as the traditional village institutions under the leadership of keuchik or other traditional institutions. In this regard, the function of law is to provide a mechanism for dispute resolution (Friedman, 1975). At the institutional level there are some dispute resolution institutions, in addition to formal resolution through state courts there are also a variety of informal dispute resolution mechanism (Ihromi, 1984).

The provisions of Article 10 paragraph (1) of Act 48 of 2009 on Judicial Power, provides opportunities for dispute resolution body out of court; The next paragraph (2), as referred to in paragraph (1) is not shutting peace resolution in civil cases. The law provisions implementation above, are realized through regional regulations. In the province of Aceh were a number of laws and qanun, such as Act No. 11 of 2006 on Aceh Government, and Aceh Qanun No. 5 of 2003 on Village Government, North Aceh Qanun No. 4 of 2009 on the Village Government, Aceh Qanun No. 9 of 2008 on the Development of Indigenous Life and Adat, and Aceh Qanun No. 10 of 2008 concerning Adat Institution.

Disputes resolution through village traditional institutions, which became review this paper, has long been known by the indigenous people of Aceh and even applied for generations. Nowadays, dispute resolution was conducted by villiage traditional institutions which was still very sporadic and confusing. This condition was made worsely by the fact that "about 80% keuchik and his village staffs still blind the adat, *shari'a* (islamic law), and national laws" (Interview with H.Yusuf Hariyadi, Kasat Binmas Polres Aceh Utara on August 6. 2014).

On the other hand the duties and authority of traditional institutions increasingly severe with the promulgation of UU-PA (Act of Aceh Government) and Aceh Qanun No. 5 of 2003 on village governance, and directly related to the customs institution is Aceh Qanun No. 10 of 2008 concerning Adat Institute, Aceh Qanun No. 9 of 2008 on Indigenous life and Adat Development, and then Joint Decision between Aceh Governor and Majelis Adat Aceh (Aceh Adat Assembly) on the Indigenous Justice Implementation of the Village and *Mukim*.

This study was conducted to determine the procedures of dispute resolution procedures by the village adat institution and is there a written village rule that is a reference guide for implementing adat justice. The results of this study are expected to be input for the government to establish a legal basis which is urgently needed by the people of Aceh in general and the North Aceh Regency society in particular, to maintain the existence of traditional institutions as a dispute resolution institution.

2. Research Methodology

This research was conducted in the Sub district of Seunuddon, Regency of North Aceh. This study uses empirical juridical approached. Collecting data includes documentation analysis, surveys and interviews with community and traditional village institutions leaders, such as keuchik, tuha peut, imeum meunasah, village's secretary and public figures for primary data; while the literature study includes the study on laws and regulations related legislation for secondary data. Then, all collected data were analyzed by using descriptive method.

3. Research Results and Discussion

The dispute resolution procedures that are often taken by the leader of traditional institutions. If there is a dispute to be resolved first by the local hamlet head, when a peace agreement can be achieved then the problem has been solved, and then hamlet head reporting the peace results to keuchik. If not finished at the hamlet level is not at peace because one of the parties or the parties and there is no agreement to resolve their problems, then head of the hamlet immediately report to keuchik, to be resolved at village adat justice.

The procedure for dispute is a disgrace, immoral and domestic violence, usually immediately filed on keuchik, keuchik together his staffs consider whether the dispute can be resolved internally, i.e. it can be solved at one home of the parties, keuchik home, or village official home without having taken into trial in meunasah (village hall). For cases like this are usually not known by the general public. Special cases of family disputes such as quarrels or disputes between husband and his wife are resolved by teungku imeum and keuchik and Tuha Peuet. The other party is not invited communities because it is considered a family secret, or disgrace if known to the general public (Interview with Rusli, Keuchik Gampong Blang Pha, Senudon Sub-district, on November, 30. 2012).

The most common case in this region was the boundary region cases, such as the land, garden, paddy field boundaries between one party and other. There were also the disputes of village boundaries, *kemukiman* boundaries, and leasing garden/field land. Based on the data of dispute occur in Gampong Blang Pha, since 2008 through 2013, most disputes can be resolved in the village and Mukim (Interview with Abdul Razak Irsyadi,

Secretary of Gampong Blang Pha, Seunudon Sub-district, on Desember 18. 2014). There are some cases that cannot be resolved in peace at the village level and at the level of mukim include the sale and purchase of land disputes between buyers and sellers. Even the case was not successfully solved at the police station and sub-district level, because one of the parties does not accept the decision of the peace, and finally the case of the sale is submitted to the local regency court level.

Judicial dispute resolution process customarily on the people of Aceh in Sub-district of Seunudon, carried out in accordance with local customs. After receiving the report, keuchik held consultation with its members (tuha peut and imeum meunasah) in order to determine whether or not to assign a person and who will be assigned to trace the origin of any dispute. After understanding the real problems, then keuchik decide the dispute will be resolved internally or must hold a peace session in meunasah. If the dispute should be resolved through a trial in meunasah then determined the trial schedule.

The trial carried out by calling the parties, witnesses and their families if necessary. Keuchik was assisted by his members leading the justice of the peace. After keuchik open hearings, and provide advice and explain the order of the trial, then keuchik invited parties to tell the problems that occur (usually given the first opportunity to first party as reporter, and followed by second party as reported) with the same rights. After completion of the exposure of both parties, Keuchik as chairperson asked truth exposure given to the first and second parties. If there is no objection, chairperson of consultation with his members, also ask for opinions and input of the witnesses (if any) and community leaders who attending, before taking a decision.

The attitude of the judge who is fair, neutral, nurturing, and even the judge also advised the parties to immediately reconcile, for reasons such as Abdul Razak disclosed that "because of hostility did not bring any good at all for the two sides will even unresolved other citizens"(Interview with Abdul Razak Irsyadi, Secretary of Gampong Blang Pha, Seunudon Sub-District, on Dec. 24. 2014). The judge tried to convince the parties to abide by the decision of the set because of the decision to refining the broken relationship between them. The judge also asked if any self-sacrifice their rights are disturbed in realizing peace.

Procedures and process as well as mentioned above was not always the same between one dispute and others. It's depending on the severity or dispute type, such as land boundary disputes, were not brought to the trial but resolved on an object location of disputes, which was also attended by the parties and community leaders. Similarly to the particular case which did not allow the presence of both parties, the chairperson hold a hearing by presenting only one party, and then other party presented at the next session.

In case of a complicated dispute concerning the safety of a person or group of people then the solution was handled specially by keuchik or gampong staff member receiving complaints (in general who makes complaints were the injured party or the mistreated). The village leaders were looking for a safe place to entrust while parties threatened, such as at famous leader, scholars or a relative's party homes concerned were considered safely. Even though, keuchik can also ask the local sub-district police for the security. Furthermore, the gampong staff members will investigate the case, all data collected, they will be determined the session time schedules. The trial session usually held at night after Isha prayer and its place in meunasah, according to the specified schedules.

Findings on survey that trial judge to decide an adat dispute to apply sanctions in accordance to a *reusam* or local adat regulation codes. The sanction forms usually applied in resolving disputes is like: advice, warning, apology, compensation, fines; and other adat fine. The meanings of other adat fine are *sayam*, *di'iet*, *peusiejuk*, etc. according to local customary. The Sanctions applied fairly and firmly where dispute resolution pattern with sayam sanctions. The Sayam still applied, but di'iet sanctions have very rarely done in village, because the case which led to the death of someone has to be submitted to the court resolution.

Peace assemblies discussed above were sometimes not finished in a single session, so that the trial should be made two or three times until there are a peace agreement or decision. If there are no peace agreements at the village level, it can be resumed session mukim level. Those are in accordance to the mandate in the law-PA and the provisions of Aceh Qanun on the Village Government (Aceh Qanun No. 5 of 2003). The parties who did not agree to the decision of peace as described in paragraph (2), they can go them on to imeum mukim to be resolved at the level of mukim and mukim imeum decision shall be binding and final.

Dispute resolution procedures are not always the same between local Seunudon with other regions in Aceh. It depends on the habitual and knowledge capabilities of the local leadership. In the process of dispute resolution, justice of the peace does not have written guidelines, but they followed the custom made by previous leaders or who are considered good and proper. Therefore, the quality of the resolution and the decision is not the same from one case to another. A fair and proper decision was also heavily influenced by the ability of the justice of the peace in understanding a problem that roots causes the event of any dispute. Without a clear guideline, not only result in a decision that is considered unfair, but the ruling was rejected or returned dispute arise at a later date.

A decision should be based on principles of justice, harmony and propriety. Not easy for a judge to make a good decision, without having the knowledge, experience and technical appropriate in response to any

dispute. To be able to carry out these tasks, judge require an adat court guidelines or guidance on the procedures and dispute resolution processes that have a strong legal basis.

Thinking about the needs of a dispute resolution guidelines by adat institutions of this village, it was referring to Aceh Qanun No. 9 of 2008 which one of the goals of the coaching and development of customs life was the availability of guidance in managing people's lives. And it is supported by several facts found in the village, especially about the procedures and processes of dispute resolution as diverse quality, the schedule of an uncertain time, so there are a dispute is not finished and protracted. This is very detrimental to all parties; including the disrupting the harmonization lives of local communities. Therefore, the principles of judicial system are fast, cheap, and simple we're not been obtained.

Acehnese communities, especially communities in the Sub-District of Seunudon had always respected the adat judicial decision. Almost all decisions are determined by adat court judge that can be adhered and implemented effectively. For the people of Aceh, keuchik and village leaders were not only be adhered to and be respected as their leader, but they also were as the role model and respected persons. It such was the village leadership profile was first charismatic for its citizens, but people have been hard to find it nowadays, due to various factors and conditions. Thus, the principle of adat legal proceedings have characterized by fairness, inexpensive, and simple process to be difficult to realize in communities.

4. Conclusion

Based on the results of this study concluded that the disputes resolution through adat justice was implemented by keuchik together imuem meunasah and tuha peut as judge head and judge members respectively in justice of the peace. The justice procedure was prioritizing the implementation of the principle of consensus. Decisions made based on the principles that have been used as a basis in the life of society, namely justice, harmony and merit principles. So, the final decision goals were the relationship of the parties can be restored to normal life.

Procedures and processes of dispute resolution were sometimes different from one village to another. In general, custom fit. Ability and experience justice of the peace also determine a verdict, which can be accepted and executed by the parties. It is not available a dispute resolution guidelines yet, that can be used as a manual or reference by the leaders of adat institutions. It is necessary for regulation (qanun) as a legal formal basis in making guidelines for judicial dispute resolution of indigenous village. Adat justice is an indigenous community living in Aceh, which needs to be supported, nurtured and maintained its existence in order to manifest a peaceful society life, and harmonics.

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