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State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism

Misran Ramli

Universitas Negeri Islam Ar-Raniry Banda Aceh
Syamsul Rijal

Universitas Negeri Islam Ar-Raniry Banda Aceh
Reni Surya

Universitas Negeri Islam Ar-Raniry Banda Aceh
Irhamni Malika

Student of Fakultas Tarbiyah dan Keguruan
Universitas Negeri Islam Ar-Raniry Banda Aceh

Email: misran.ramli@ar-raniry.ac.id

Abstract: This paper aims to examine the juridical basis for the application of Acehnese customary law, the mediation mechanism of Aceh Tamiang customary law in resolving minor disputes. The study of this paper used empirical research methods, using the theory of legal pluralism. Data were collected by means of in-depth interview and document study. Interviews were conducted with customary stakeholders, while the documents analysed were news of peace events in Aceh Tamiang. The findings reveal that the juridical basis for resolving minor disputes is based on the Law, the Qanun, and the Joint Decree between the Governor, the Aceh Regional Police Chief, and the Chair of the Aceh Customary Council (*Majelis Adat Aceh*). In Aceh Tamiang, the customary law mediation mechanism in *gampong* (village) and *mukim* (township) customary justice is generally carried out by reporting, requiring the presence of the parties to the dispute as well as the witnesses, and being open to the public. However, exception occurs for special disputes, in which according to custom and propriety must not be open to the public, and there is no charge whatsoever. Among the minor disputes that have been successfully resolved through *gampong* customary courts are domestic violence, inheritance disputes, land ownership, the construction of Telkomsel towers, and traffic accidents. The resolution of minor disputes in Aceh Tamiang from the perspective of legal pluralism has been carried out harmoniously and correlates between state law, customary law, and Islamic law. State law provides an opportunity for customary law to resolve minor disputes, and if it is not successful, then state law will take over. Further, dispute resolution in customary law is also in accordance with the values of Islamic law, which also prioritizes peace or al-sulh. This corresponds to the Acehnese proverb that states “*adat ngen hukom lage zat ngen sifeut*” which means the relationship between customary law and Islamic law is like a substance with its inseparable properties.

Keywords: State, custom, minor disputes, legal pluralism, Islamic law

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Abstrak: Artikel ini bertujuan untuk mengkaji dasar yuridis pemberlakuan hukum adat Aceh, mekanisme mediasi hukum adat Aceh Tamiang dalam menyelesaikan sengketa ringan. Kajian ini menggunakan metode penelitian empiris yang dianalisis dengan teori pluralisme hukum. Data dikumpulkan dengan cara: wawancara mendalam dan studi dokumen. Wawancara dilakukan kepada pihak pemangku adat, sedangkan dokumen yang dianalisis adalah berita acara perdamaian di Aceh Tamiang. Hasil penelitian menunjukkan bahwa dasar yuridis penyelesaian sengketa ringan berdasarkan Undang-Undang, Qanun, Keputusan Bersama antara Gubernur, Kepala Kepolisian Daerah Aceh, dan Ketua Majelis Adat Aceh. Mekanisme mediasi hukum adat dalam pelaksanaan peradilan adat gampong dan mukim di Aceh Tamiang dilakukan dengan cara, adanya laporan, wajib hadir para pihak yang bersengketa, para saksi, dan terbuka untuk umum, kecuali terhadap sengketa khusus yang menurut adat dan kepatutan tidak boleh terbuka untuk umum serta tidak dipungut biaya apapun. Di antara sengketa ringan yang berhasil diselesaikan melalui peradilan adat gampong adalah kekerasan dalam rumah tangga, sengketa waris, kepemilikan tanah, pembangunan tower telkomsel dan kecelakaan lalu lintas. Penyelesaian sengketa ringan di Aceh Tamiang dalam perspektif pluralisme hukum berjalan dengan harmonis dan memiliki korelasi antara hukum negara, hukum adat dan hukum Islam. Hukum negara memberi peluang kepada hukum adat untuk menyelesaikan sengketa ringan, namun apabila tidak berhasil baru kemudian ditangani dengan hukum negara. Kemudian dalam hukum Islam penyelesaian sengketa dalam hukum adat juga sesuai dengan nilai-nilai hukum Islam yang juga mengedepankan perdamaian atau al-sulh. Karena itu dalam pepatah Aceh menyatakan bahwa “adat ngen hukom lage zat ngen sifet” yang maknanya hubungan hukum adat dengan hukum Islam bagaikan zat dengan sifatnya yang tidak dapat terpisahkan.

Kata Kunci: Negara, adat, sengketa ringan, pluralism hukum, hukum Islam

Introduction

In Indonesia, there are three legal systems that regulate society: state law (or known as national law), customary law, and Islamic law. The customary law system is practiced and lived in society, which is often called living law. The use of the functions of these three forms of law is referred to as legal pluralism.¹ Legal

¹ Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh," *The Journal of Legal Pluralism and Unofficial Law* 42, No. 61 (2013). Mursyid Djawas, et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, No. 1 (2024).

pluralism emerges in a multicultural society where social interactions between one another exist within various races, ethnicities, and religions.

Such plurality is not something that must be set aside, avoided, or forced into just one state law, or legal centralism. In fact, the diversity of laws shall be harmonized in the life of a pluralistic society, to achieve a peaceful life. In the perspective of legal centralism, promoted by state law, legal systems compete with each other by using a positivistic paradigm, and thus, the assessment of human behavior is the object of law. On the other hand, the diversity of value systems can be managed well through viewing the diversity of values themselves without ignoring certain values as part of society's identity, which positions humans as legal subjects who interact with each other.²

According to Arskal Salim, legal pluralism is a condition characterized by the coexistence of two or more parties; laws that interact in the process of modernization programs in nation-states.³ In this context, Indonesia is a nation state. Such situations may raise differences in norms due to the diversity of legal traditions; however, they can still be properly managed and are seen as a dialectical legal process that continuously influences each other in forming a new legal order.⁴

Legal pluralism is oftentimes justified as a governance technique on pragmatic grounds. It is also generally understood as a special legal arrangement that defines different groups of people based on ethnicity, religion, or other categorizations.⁵ Legal pluralism continues to experience strong dynamics following Indonesia's independence from Dutch and Japanese colonialism. There is a dynamic discourse between Islamic law, customary law and national law. This looks at how the ideals of modernity in Indonesia are marked by the state's efforts to make legal institutions an inseparable part of national development.⁶

In line with that, legal pluralism is also applied in Acehese society,

² Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann., "Islamic Law in a Plural Context: The Struggle Over Inheritance Law in Colonial West Sumatra," *Journal of the Economic and Social History of the Orient* 55, 4/5 (2012). Dedy Sumardi, "Islam, Pluralisme Hukum Dan Refleksi Masyarakat Homogen," *Asy-Syirah Jurnal Ilmu Syaria'ah dan Hukum* 50, No. 2 (2016), p. 481–504.

³ Arskal Salim, *Contemporary Islamic Law in Indonesia : Sharia and Legal Pluralism* Unite Kingdom: Edingburg University Press, 2015. Ali Abubakar, et.al., "The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Lens of 'Urf Theory and Legal Pluralism," *El-Usrah: Jurnal Hukum Keluarga* 6, No. 2 (2023).

⁴ Dedy Sumardi, et al., "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 1 (2021), p. 426–449.

⁵ Arskal Salim, *Contemporary Islamic Law in Indonesia : Sharia and Legal Pluralism.*"

⁶Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable*, London: Imprint Routledge, 2012.

specifically in Aceh Tamiang. Aceh Tamiang, one of the districts in Aceh Province which is close to the North Sumatra border, whose society is dominated by Malay, Acehnese, Javanese and other ethnicities, as well as religious differences. However, the majority of the people in Aceh Tamiang adhere to the religion Islam. Still, it is inevitable that when people interact with each other, disputes may occur, whether criminal or civil disputes, as is the case in Aceh Tamiang, Aceh Province.

The emergence of legal pluralism in Acehnese society is strengthened by the existence of institutions for resolving legal cases, or judicial institutions, in Indonesia, including in Aceh Tamiang. These institutions include the *Datok Penghulu* (village head), and the *Majelis Duduk Setikar* (or *Tuha Peut* in Acehnese, which consists of traditional and religious figures). These judicial institutions coexist, but operate separately according to their respective functions, interdependent in one legal institutional system. These judicial institutions are the District Court, Sharia Court and, Aceh customary justice institutions.

Based on the aforementioned forms of laws and legal institutions, this present study aims to explore the juridical basis for the implementation of Acehnese customary law, the mediation mechanism of Aceh Tamiang customary law in resolving minor disputes, and the correlation of legal pluralism in resolving minor disputes in Aceh Tamiang, Aceh Province. The study used empirical research methods, using the theory of legal pluralism.⁷ Data were collected by means of in-depth interview and document study. Interviews were conducted with customary stakeholders, while the documents analyzed consisted of news of peace events in Aceh Tamiang.

Forms of Minor Crimes in State Law

According to state law or the Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*), minor disputes are called minor crimes. M. Yahya Harahap explains that minor criminal acts are a type of criminal act that can be classified as a minor criminal offense examination procedure.⁸ Based on this definition, there are types of minor crimes in the Criminal Code, in the Law No. 1 of 2023, as follows:⁹

1. Minor maltreatment (Article 471 paragraph 1): Apart from the abuse as

⁷ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi dan Tesis*, Jakarta: Rajawali Pers, 2014.

⁸ M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHP: Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2009), p. 99

⁹ Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code," in *Direktorat Utama Pembinaan Dan Pengembangan Hukum Pemeriksaan Keuangan Negara Badan Pemeriksa Keuangan*, 2023, p. 1–345.

- referred to in Article 467 and Article 470, abuse which does not cause disease or impediment to carry out a professional position or livelihood, shall be sentenced for minor maltreatment, with a maximum imprisonment of 6 (six) months or a maximum fine of category II. Category II fines amount to IDR. 10,000,000.00 (ten million rupiah);
2. Minor insult (Article 436): Insults which are not in the nature of defamation or written insults committed against another person either in public orally, or in writing, or in the face of the person being insulted verbally, or by actions, or in writing sent or received to him, shall be sentenced for minor insult with a maximum imprisonment of 6 (six) months or a maximum fine of category II.
 3. Minor theft (Article 478): If the criminal act as intended in Article 476 and Article 477 paragraph (1) letters f and g is committed not in a house or closed yard where the house is located, and the price of the goods stolen is not more than from Rp 500,000.00 (five hundred thousand rupiah), shall be convicted of minor theft, with a maximum fine of category II.
 4. Minor embezzlement (Article 487): If what is embezzled is not Livestock or Goods that are not a source of livelihood or livelihood whose value is not more than IDR. 1,000,000.00 (one million rupiah), every person as intended in article 486 is punished for minor embezzlement, with a maximum fine of category II.
 5. Minor fraud (Article 494): Being punished for minor fraud with a maximum fine of category II, if:
 - a) The goods handed over as intended in Article 492 are not livestock, are not a source of livelihood, debts or receivables whose value is not more than IDR. 1,000,000.00 (one million rupiah); or
 - b) The value of the profits obtained is not more than IDR. 1,000,000.00 (one million rupiah) for the perpetrator as intended in Article 493. Every person who commits an act fraudulently which results in another person suffering economic loss, through false confessions, or by not disclosing the true situation, shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of category II.
 6. Causing public danger (Article 315): Sentenced to a maximum imprisonment of 6 (six) months or a maximum fine of category II, any person:
 - a) lighting a fire or without reason releasing a firearm on a public road or on the edge of a public road, or in a place adjacent to a building or property that could create a fire hazard; or

- b) releasing a hot air balloon suspended from burning material.
7. Minor fencing (Article 593): If the crime as intended in Article 591 involves the value of the goods not exceeding Rp 500,000.00 (five hundred thousand rupiah), shall be punished with minor fencing, with a maximum fine of category II.

Some of the crimes above are minor crimes, the punishment for which is decided by the district court judge, in accordance with the objectives of the sentence. If the alternative punishment decided by the judge is deemed to have met the objectives of punishment, the judge can decide on a maximum prison sentence of 6 (six) months in prison, meaning that the judge can decide on a sentence ranging from 1 (one) month to 6 (six) months in prison. Likewise, with criminal fines, the judge can decide on fines starting from category I of IDR. 1,000,000.00 (one million rupiah) up to category II of IDR. 10,000,000.00 (ten million rupiah).

Apart from the minor criminal cases, there are also civil cases, which are regulated in the civil law system in Indonesia. Civil law is a set of legal norms that regulate legal relationships between person and person, whose factors include law (rule of law), legal relation, and person. Civil law regulates everything related to humans as bearers of individual legal rights and obligations (individual law), the family as the smallest social unit (family law), property (property law), and inheritance law.¹⁰

Based on the description above, minor disputes in the Indonesian legal system can take the form of criminal law, which is oriented towards harming individuals, and also civil law, which regulates not only losses relating to individuals but also regulates laws regarding family and laws regarding property. A district court judge decides criminal acts or minor disputes if the disputes cannot be resolved through customary justice or through restorative justice.

Forms of Minor Disputes in Aceh Customary Law

Aceh Qanun Number 9 of 2008 concerning the Development of Traditional Life Article 13 paragraph (1) regulates eighteen cases that can be resolved by customary law, namely: domestic disputes, disputes between families relating to inheritance, disputes between residents, *khalwat* (a non-*mahram* man and woman being together alone in a certain place), property rights disputes, theft in the family, joint property disputes, petty theft, theft of livestock, violations of customs, disputes at sea, disputes in the market, light abuse, small-scale forest burning, harassment, slander, incitement, defamation, light-scale environmental pollution, threats, and other disputes that violate customs and

¹⁰ Shenti Agustini and Sri Hesti Mulya Dasopang, "Korelasi Hukum Perdata Dalam Kaidah Hukum Pidana," *Jurnal Ilmu Hukum Prima* 6, No. 1 (2023), p. 158–174.

traditions.¹¹

Some of the disputes mentioned above are minor disputes, which are recommended to be resolved first through customary law or the customary court of the respective *gampong* (village) where the disputes occur. In the province of Aceh, the resolution of minor disputes has obtained a strong legal juridical basis in its implementation. Dispute resolution in customary law in Aceh has a legitimate juridical basis in the legal framework in Indonesia, as stipulated that the state recognizes customary law in society in paragraph (2) of the 1945 Constitution of the Republic of Indonesia. It is described that the State recognizes and respects customary law community units and their traditional rights as long as they are still observed and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law (Article 18 B). Law No. 44 of 1999 concerning the Implementation of Aceh Privileges also confirms this, and Law No. 11 of 2006 concerning Aceh Governance then strengthens it. At the *mukim* (township) level, the *imum mukim* (township head) has the authority to resolve disputes as stated in Qanun No. 4 of 2003 concerning the *Mukim* Governance of Aceh Province, as follows: 1) Deciding and/or enacting laws; 2) Maintaining and developing custom; 3) Implementing customary peace; 4) Resolving and providing customary decisions regarding customary disputes and violations; 5) Giving legal force to some issue and other evidence according to the custom; and 6) Resolving cases related to the custom.

At the most implementable level of the *gampong* authority, based on Qanun No. 5 of 2003 concerning the *Gampong* Governance in Aceh Province, the duties and obligations of the *gampong* governance are: 1) Resolving customary disputes; 2) Protecting and maintaining the preservation of traditions and customs; 3) Maintaining peace and order and preventing the emergence of immoral acts in society; and 4) Being justice of the peace together with *Tuha Peuet* and *Imum Meunasah*.

In this implementation, there is synergistic cooperation and partnership between the customary institutions, i.e., the Aceh Customary Council (*Majelis Adat Aceh*), and law enforcement, i.e., the Aceh Regional Police, and government executive, i.e., the Governor of Aceh. This collaboration is outlined in the Joint Decree of the Governor, Aceh Regional Police Chief, and Chair of the Aceh Customary Council, Number 189/677/2001, 1054/MAA/XII/2011, B/121/I/2012.¹² Important matters related to customary courts in the Joint Decree

¹¹ Gubernur Nanggroe Aceh Darussalam, *Qanun Aceh Nomor 9 Tahun 2008 Tentang Pembinaan Kehidupan Adat Dan Adat Istiadat* (Banda Aceh, 2008). p. 7.

¹²Decree of the Governor, Aceh Regional Police Chief, and Chair of the Aceh Customary Council, Number 189/677/2001, 1054/MAA/XII/2011, B/121/I/2012.

are mentioned in the following:

1. Recognizing that the Customary Justice institution is a Justice of Peace institution;
2. Providing the customary court with the opportunity to resolve social problems first, and if it fails, then submit them to the general court;
3. Disputes that are not under the authority of the *Gampong/Mukim* must therefore be resolved by state judicial institutions;
4. Requiring orderly administration of customary justice.

Minor Dispute Resolution in Islamic Law

The concept of Islamic law in dispute resolution is called *al-Shulhu*, namely the contract that decides the dispute between two disputing parties.¹³ Another definition states that *ash-sulh* is a type of agreement to end resistance between two opposing people.¹⁴ Based on these definitions, *al-shulhu* can be understood as a contract, which aims to end a disagreement or dispute between two parties or several disputing parties. To resolve such disputes, Islamic law recommends peaceful resolution, as stated in the Qur'an Surah al-Hujurat verse 9, "And if two groups of believers fight each other, then make peace between them. But if one of them transgresses against the other, then fight against the transgressing group until they (are willing to) submit to the rule of Allah. If they do so, then make peace between both (groups) in all fairness and act justly. Surely Allah loves those who uphold justice."

Rasulullah PBUH also advocated for the implementation of peace. In one of the hadiths narrated by Ibn Hibban and Tirmidhi and Umar bin Auf al Muzanni, Rasulullah PBUH. said, "Peace is permissible among Muslims, apart from peace that forbids what is halal or makes lawful what is haram. And the Muslims (who make peace) depend on their conditions (which have been agreed upon), other than conditions that prohibit what is halal or make lawful what is haram."¹⁵

Based on the provisions of the Qur'an and al-Hadith above, it shows that Islamic law strongly advocates peace using the methods and mechanisms that have been implemented by the *ulama* (Muslim scholars). Peace is a way of resolving disputes in a fair and wise manner, as the future impact will not cause any new problem, will not create prolonged hostility, and will even create fellowship. In Islamic criminal law, not only minor disputes or cases can be resolved by peace, but also serious *jarimah* (criminal) cases of *qishash* or *diyat*,

¹³ Taqiy al-Din Abi Bakr ibn Muhammad Al-Husaini, *Kifayah Al-Akhyar* (Indonesia: Toha Putra, n.d.). p. 214.

¹⁴ Sayyid Sabiq, *Fiqh Al-Sunnah* (Beirut: Dar al-Fikr, 1987). p. 112.

¹⁵ Abu Abdillah Muhammad bin Isma'il al-Bukhari, *Shahih Al-Bukhari*, (Semarang: Toha Putra, n.d.), p. 170.

such as deliberate murder that is forgiven by the victim's heirs, either completely forgiven or sentenced with a substitute punishment of *diyat*. There are also *jarimah* for which there is no forgiveness at all, i.e., the *hudud* (fixed punishment) *jarimah* such as *zina* (adultery), *qadzaf* (false accusation of adultery), *khamar* (intoxicating drink), *sariqah* (theft), *hirabah* (robbery), *bughat* (rebel) and *riddah* (apostasy).¹⁶

In the *ta'zir* (discretionary punishment) *jarimah*, there is a high chance that the case will be resolved peacefully, because this *jarimah* falls in the category of minor crimes among the *jarimah* mentioned above. The punishment for minor criminal cases contained in the *ta'zir jarimah* is not specified in the Qur'an and the Hadith of the Prophet Muhammad PBUH. However, the punishment is handed over to the leader if the case cannot be resolved through peace.¹⁷

In Aceh Province, there are ten *jinayah* (criminal) cases regulated in Aceh Qanun No. 6 of 2014 concerning Jinayah Law. The Qanun mentions that there are ten *jinayah* cases originated from Islamic criminal law. The ten types of *jarimah* in this Qanun include the *hudud* category, such as *khamar*, *zina*, and *qadzaf* and the *ta'zir* category, such as *maisir* (gambling), *khalwat*, *ikhtilath*, sexual harassment, rape, *liwath* (homosexuality), and *musahaqah* (lesbianism). These *jinayah* cases are a small part of the other forms of *jinayah* regulated in the concept of Islamic criminal law. Furthermore, among these ten *jinayah* cases, *khalwat* cases can still be resolved with two alternative punishment options, resolved by customary law or by the Aceh Qanun Jinayah, in accordance with the provisions of Article 24 above regarding *khalwat*.¹⁸

Resolving Minor Disputes using Aceh Tamiang Customary Law

Customary law is a regulation that is binding and serves as a guide in society to resolve problems that arise. In Arabic, custom is called '*urf*', which means repeatedly returning. Another term for '*urf*' is '*adah*', which is a term for an action repeated over a relatively long period of time.¹⁹ The Regional Regulation of the Special Province of Aceh No. 7 of 2000 states that customs are socio-cultural values that live and develop in society in the Special Region of Aceh, and therefore they need continuous development. It is further stated in the regulation that in order to observe Aceh privileged features, it is necessary to

¹⁶ Abdul Qadir Audah, *Ensiklopedi Hukum Pidana Islam*, Jilid IV. (PT Kharisma Ilmu, n.d.).

¹⁷ Abdul 'Aziz 'Amir, *Al-Ta'zir Fi Al-Syari'ah Al-Isamiyah* (Cairo: Dar al-Fikr al-'Arabi, 1976).

¹⁸ Qanun of Aceh Number 6 of 2014 concerning Jinayah Law.

¹⁹ Mustafa Ahmad al-Zarqa, *Al-Madkhal Al-Fiqh Al-'Amiy*, II. (Beirut: Dar al-Fikr, 1967), p. 123.

foster, develop, and preserve the implementation of traditional life so that it can be used as a guide and reference in the implementation of Customary Law and customary life in Aceh Province.²⁰ From the above description, the meaning of customary law contains a process of resolving disputes that is light in nature using mechanisms that have been used repeatedly or continuously for generations to be applied in the lives of the people of Aceh.

Settlement of minor cases as regulated in Article 13 (1) above is through Aceh customary institutions as regulated in Aceh Qanun Number 10 of 2008 concerning Aceh Customary Institutions.²¹ Procedures for customary dispute resolution can be prepared in each *gampong* Qanun guided by Aceh Qanun Number 9 of 2008, Aceh Governor Regulation Number 60 of 2013 concerning Implementation of Customary Dispute Resolution,²² as well as the Joint Decree of the Governor of Aceh, the Head of the Aceh Regional Police, and the Chair of the Aceh Traditional Council.²³ The general dispute resolution process is regulated in Articles 17 to 19 of Aceh Governor Regulation Number 60 of 2013. The implementation of *Gampong* and *Mukim* customary justice is attended by the parties, witnesses, and is open to the public, except for certain cases which are according to custom and propriety must not be open to the public and are free of charge.²⁴

The customary court at the mukim level is the same as the settlement at the *Gampong* level which is carried out involving *Keuchik*, *Teungku Imuem* and *Tuha Peut*. The Mukim Court is the final and final level of customary justice in Aceh with different procedural procedures. The settlement mechanism is the same as in village deliberation and mediation between the parties. The philosophical meaning of resolving cases using the mukim mechanism is that the case ends in peace (win-win solution), creates harmony for the parties involved in the case, saves time, saves costs, becomes a moment of friendship between the parties and is in accordance with the concepts of Islamic law.²⁵

²⁰ Mulyadi Kurdi, *Menelusuri Karakteristik Masyarakat Desa: Pendekatan Sosiologi Budaya Dalam Masyarakat Atjeh* (Banda Aceh: Yayasan Pena, 2005), p. 35.

²¹ "Qanun of Aceh Number 10 Tahun 2008.

²² Aceh Qanun Number 9 of 2008, Aceh Governor Regulation Number 60 of 2013 concerning Implementation of Customary Dispute Resolution.

²³ Kurniawan, "Eksistensi Masyarakat Adat Dan Lembaga Adat Di Aceh Dalam Penyelenggaraan Keistimewaan Otonomi Khusus Di Aceh," *Yustisia* 1, no. 3 (2012), p. 48–66.

²⁴ Lailan Sururi, et.al., "Penyelesaian Sengketa Melalui Peradilan Gampong," *Kanun Jurnal Ilmu Hukum* 21, no. 1 (2019), p. 61–76.

²⁵ Muslim Zainuddin, "Peran dan Fungsi Kelembagaan Mukim dalam Penyelesaian Perselisihan: Analisis Praktek Hukum Adat di Aceh," *Media Syariah: Wahana Kajian Hukum dan Pranata Sosial* 19, No. 2 (2017).

The decisions of the *gampong* and *mukim* customary courts are final and binding, and cannot be submitted again to the general court or any other court. Furthermore, the *gampong* and *mukim* customary justice is prohibited from giving decisions that impose bodily sanctions, such as imprisonment, bathing with sewage water, shaving the hair, cutting the clothes of the suspected perpetrator, and other forms of sanctions that are contrary to Islamic values. Every *gampong* and *mukim* customary court decision is made in writing (i.e., minute of customary court decision), and signed by the chair and members of the assembly as well as both parties to the dispute, and then a copy of this is submitted to the head of the sector police (*Kapolsek*), the sub-district head, and the sub-district Aceh Customary Council (MAA). The resolution of minor disputes in Gampong Pahlawan, Karang Baru Sub-district, Aceh Tamiang has obtained complete minutes in accordance with these provisions.

Nevertheless, the practice of resolving minor disputes in reality in Aceh Tamiang has its own dynamics. Aceh Tamiang is one of the districts in Aceh Province, which is located in the eastern region of Aceh, close to the North Sumatra border. Prior to direct investigation to the research site, the authors first conducted an interview with Abdul Muin, chair of the Aceh Tamiang Customary Council, to gain information regarding the villages that resolved minor disputes complete with well-documented customary court minutes. He directed the authors to investigate Gampong Pahlawan in Karang Baru Sub-district.²⁶

The results of the study showed that several minor disputes could be resolved through Acehnese customary courts. The descriptions are as follows:

1. Domestic Violence Disputes

In 2019 and early 2020, there were three cases of domestic violence. However, the details of the cases were not disclosed by the *datok* (Head of Gampong Pahlawan) for confidentiality purposes. The *datok* only described a general overview. Of the three domestic violence cases, only one married couple was successfully reconciled, while the other two cases were resolved at the Sharia Court level.²⁷

2. Inheritance Land Disputes

Almost all cases of inheritance disputes can be resolved by the village customary court. Among the cases is an inheritance dispute that occurred in 2008. In this case, the *Datok Penghulu* (village head) did not keep the identity of the litigants a secret, so he provided a photo of the document. The document

²⁶ Abdul Muin, Interview with Chair of MAA, 2020, Monday, February 24, 2020.

²⁷ Interview with M. Saleh, *Datok Penghulu* (Village Head) of Gampong Pahlawan, Minyek Payit, Aceh Tamiang, February 24, 2020.

contains the litigants and kampung officials (the term village in Aceh Tamiang is “kampung”) as members of the customary court, who succeeded in reconciling the disputing parties in the inheritance dispute.²⁸

3. Land Ownership Disputes

A land dispute occurred between a man with the initial Am and a man with the initial La. Customary court and deliberation mechanisms were carried out in the local village mosque. The customary court decided that Mr. Amiruddin had to hand over the land he controlled because he did not have strong evidence as the owner.²⁹

4. Telkomsel Tower Construction Dispute

There was a dispute over the construction of the Telkomsel tower with the community of Gampong Pahlawan. This dispute was resolved with the local customary court and an agreement was reached between the local residents and PT. Telekomunikasi Seluler Indonesia. This dispute was resolved by customary leaders and an agreement was reached that the tower could be built with the terms agreed upon between them.³⁰

5. Traffic Accident Disputes

This accident occurred between Darmiati as the victim and M. Taher as the perpetrator who hit the victim, resulting in minor injuries to the victim and damage to the victim’s motorbike. Both parties agreed to resolve this traffic accident case amicably or peacefully. The parties and customary leaders deliberated and it was decided that M. Taher as the perpetrator of the collision had to take responsibility and pay a certain amount of money to Darmiati as compensation for the damaged motorbike amounting to IDR. 2,500,000.00 (two million five hundred rupiah).³¹

In light of the descriptions above, the majority of minor disputes in Gampong Pahlawan, Karang Baru, Aceh Tamiang have been successfully resolved through customary justice. This suggests that not all disputes must be resolved using the legal channels that apply in Indonesia. The positive impact of resolving minor disputes through Acehnese customary justice is creating peace

²⁸ Interview with M. Saleh, Datok Penghulu (Village Head) of Gampong Pahlawan, Minyek Payit, Aceh Tamiang, February 24, 2020.

²⁹ Interview with M. Saleh, Datok Penghulu (Village Head) of Gampong Pahlawan, Minyek Payit, Aceh Tamiang, February 24, 2020.

³⁰ Interview with M. Rizal, Customary Figure of Gampong Pahlawan, Karang Baru, Aceh Tamiang, February 24, 2020.

³¹ Interview with M. Rizal, Customary Figure of Gampong Pahlawan, Karang Baru, Aceh Tamiang, February 24, 2020.

between the disputing parties.

Minor Dispute Resolution from the Perspective of Legal Pluralism

State law, Aceh customary law, and Islamic sharia in Aceh have their own provisions for resolving minor disputes. In state law, resolving minor disputes through peace is referred to as restorative justice. Restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to seek a fair solution jointly by emphasizing restoration to the original condition, and not retaliation.³²

In Aceh customary law, the resolution of minor disputes is called *suloh* (*peudame*). Dispute resolution through customary court mediation in Aceh province only covers minor disputes, as stated in Article 13 paragraph 1 of Aceh Qanun Number 9 of 2008 concerning the Development of Traditional Life and Customs. This indicates that dispute resolution through mediation is limited to minor disputes. In contrast, the concept of mediation in Islamic law does not only cover minor cases or disputes, but also includes some serious disputes related to human rights, such as forgiveness from the victim's family to the perpetrator of deliberate murder.

Resolving minor disputes through state law is the last alternative, after resolution through the customary court is not successful. Therefore, investigating parties, e.g., the police, may not accept complaints from the public regarding their reports; yet, the police will first investigate whether the case has been resolved through customary justice or not. If the dispute has been resolved through the customary court, yet, no final resolution is made, and then the police will receive the report for further processing. This procedure is in accordance with the provisions regulated in the Joint Decree of the Governor, Aceh Regional Police Chief, and Chair of the Aceh Customary Council, Number 189/677/2001, 1054/MAA/XII/2011, B/121/I/2012, one of the contents of which states that it is necessary to first allow the customary court an opportunity to resolve social problems, and if it fails, then the problems will be submitted to the general court.

As an example, of the three cases of family domestic violence disputes in Aceh Tamiang, one was successfully resolved through the customary court, while the other two ended in the local Sharia Court. However, the majority of minor disputes were successfully resolved through the local customary court as described above, including inheritance disputes, land ownership disputes, Telkomsel tower construction disputes, and traffic accident disputes. Thus, the disputes resolved at the village level no longer need to be handled by state law or positive law.

³² Budi Bahreisy, "Peran Lembaga Adat Di Aceh Dalam Penyelesaian Perkara Anak Yang Berkonflik Dengan Hukum," *Jurnal Penelitian Hukum De Jure* 20, No. 1 (2020), p. 26.

To this end, the provisions of Acehnese customary law and those of Islamic law in resolving minor disputes are closely related. This can be seen from the principles of Acehnese customary law, as follows: legal certainty, trustworthiness, responsibility/accountability, equality before the law/non-discrimination, fastness, ease and affordable, sincerity and voluntary, peaceful settlement/harmony, deliberation/consensus, openness to the public, honesty and competence, diversity (pluralism), presumption of innocence, and justice.³³

Article 3 of Aceh Qanun No. 9 of 2008 states the principles regarding the development of traditional life and customs as follows: Islam, justice, truth, humanity, harmony, order and security, tranquility, kinship, usefulness, mutual cooperation, peace, deliberation, and public benefit.³⁴

Juridically, the principles formulated are a reflection of the values of Islamic law that must be applied in social life, to create peace and prosperity. Furthermore, the close correlation between custom and Islamic law can be seen in the Acehnese proverb, *adat ngen hukom lagè alat ngon sifeut*. This sentence in the Acehnese language is of *hadih maja* (Acehnese proverb), a heritage of Acehnese people.

The word “*adat*” (custom) in the *hadih maja* above contains several meanings, including: (1) habits, customs, rules, regulations; (2) contributions, taxes, excise, gifts, fixed wages; (3) procedures for respect, politeness, manners; and (4) a type of shrub that has yellow flowers and whose leaves are used as *rukok siawan*. However, in this paper, custom here refers to the first meaning of “*adat*”, which describes habits, customs, rules, and regulations.³⁵

These customary values are an abstraction of human nature as a society, which crystallizes into values and norms, and then are realized in rules, instructions, expectations, sanctions, and solutions to problems actualized in the daily life of the Acehnese people. The customs implemented in the lives of the people of Aceh are bound by the integration of customs with the Islamic law.

Abdul Muin, Chair of the Aceh Customary Council in Aceh Tamiang, points out important terms in Acehnese customary criminal law sanctions, which are manifestations of the teachings of Islamic law. These terms are *damē*, *suloh*, *sayem/sayam*, and *diēt*. The terms *dame* and *suloh* relatively have the same meaning, namely the process of resolving disputes in a peaceful manner. The term

³³ Wahyu Ramadhani and Ida Safitri, “Implikasi Pemberdayaan Lembaga Adat Sebagai Alternatif Dalam Penyelesaian Sengketa Pertanahan Di Aceh,” *Jurnal Hukum Samudra Keadilan* 14, No. 2 (2019), p. 213–234.

³⁴ Qanun of Aceh Number 9 of 2008 concerning the Development of Traditional Life and Customs.

³⁵ Mulyadi Nurdin, “Penyelesaian Sengketa Melalui Peradilan Adat Aceh,” *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam* 3, no. II (2018), p. 183–193.

suloh itself comes from the Arabic word *shulh*, which means peace.³⁶

The implementation of *dame* in the traditions of the Acehnese people in several forms such as *di'iet*, *sayam*, *suloh*, *peusujuk* and *peumet jaroe* is a long-rooted custom-based conflict resolution process. This tradition is a very democratic conflict resolution process without bloodshed and revenge between the two parties to the conflict, both vertically and horizontally. This includes resolving conflicts that occur in society as well as using local wisdom mechanisms. For example, the conflict resolution process that develops in society is resolved within a customary framework which is related to Islamic law. Conflict resolution using the *di'iet* pattern is aimed at eliminating long-standing grudges and animosity between the conflicting parties which have resulted in violence and even murder. The violence and murder that occurred among the people of Aceh could have started from the struggle for agricultural land, control of *gampong* economic resources or other things that might occur in the community's social interactions. The pattern of conflict resolution can be determined by the level of forgiveness given by the victim or the victim's heirs. If forgiveness has been given, then the traditional leaders or village elders compromise or discuss with the perpetrator or his heirs about the amount of *di'iet* that must be paid by the criminal.³⁷

In line with the above opinion, Badruzzaman Ismail explains that: "The people of Aceh are known to be very religious, and have a traditional culture that is identical to Islam. Acehnese traditional cultural life and Islam cannot be separated. This harmonization between custom and Islam is developing in various aspects of the community life." The people of Aceh adapt religious practices to the prevailing traditions or customs, as seen in Acehnese social and cultural life. As a result, Islam and Acehnese culture are fused, making it difficult to separate. Here, the rules of Islamic law are part of custom or have been adopted. On the other hand, custom is part of Islam, or that which has been Islamized.³⁸

The relationship between Acehnese customs and Islamic law is significantly close, and even the customary legal practices, especially regarding the resolution of minor disputes, have relatively similar goals and objectives, i.e., the realization of peace and eliminating hostility and revenge as well as generating a sense of fellowship.

In this context, it can be emphasized that the resolution of minor disputes carried out by the people of Aceh Tamiang is an application of legal pluralism.

³⁶ Interview with Abdul Muin, Chair of Majelis Adat Aceh Tamiang, February 24, 2020.

³⁷ Abidin Nurdin, "Revitalisasi Kearifan Lokal di Aceh: Peran Budaya dalam Penyelesaian Konflik Masyarakat," *Analisis: Jurnal Studi Keislaman* 13, No. 1 (2013).

³⁸ Badruzzaman Ismail, *Masjid dan Meunasah Sebagai Energi Budaya Aceh*, Banda Aceh: Majelis adat Aceh, 2007.

The law used is customary law, which contains Islamic legal values and is supported by national law. Customary law has an emancipatory position and is recognized as a legal system within the legal framework in Indonesia. The concept of legal pluralism no longer emphasizes a dichotomy between the state legal system on the one hand and the folk law system and religious law on the other.³⁹ On the other hand, the legal system is no single and society is consciously able to maintain the values of brotherhood and solidarity as the main characteristics of customary law.

Conclusion

In Aceh Province, especially in Aceh Tamiang District, there are three legal provisions for resolving minor disputes: state law, customary law, and Islamic law. Institutionally, the three legal systems are separate and have their respective authorities. The resolution of minor disputes using Acehnese customary law in Aceh Tamiang has obtained a strong legal basis. In Aceh Tamiang, several minor disputes can be resolved through local village customary courts, although there are also cases that have not been successfully resolved. Among these minor disputes are family disputes between husband and wife in cases of domestic violence. There were three domestic violence cases and only one case was successfully resolved through customary mediation, along with an inheritance dispute, a land ownership dispute, a Telkomsel tower construction dispute, and a traffic accident case. All minor disputes were successfully resolved peacefully through the customary court. State law and customary law have a correlation in resolving minor disputes. State law allows customary law the opportunity to resolve minor disputes first. If minor disputes cannot be resolved through customary law, only then can they be resolved through state law. However, state law and Islamic law (Islamic sharia in Aceh) have no correlation in resolving minor disputes, as these two laws have different material laws and authorities. Yet, Acehnese customary law and Islamic law (Islamic sharia) are closely related. The strong correlation between these two laws can be seen in the Acehnese proverb or *hadih maja*, “*adat ngen hukom lage zat ngen sifeut*” which means the relationship between customary law and Islamic law is like substances with inseparable properties. From a normative juridical perspective, this suggests that the principles of Acehnese customary law reflect the values of Islamic law applied in the lives of the Acehnese people, in order to restore balance to life from past disputes and conflicts to peace. Acehnese

³⁹ Suci Flambonita, “The Concept of Legal Pluralism in Indonesia in The New Social Movement,” *Jurnal Analisa Sosiologi* 10, (2021). Kukuh Dwi Kurniawan, et.al., “The Synergy of Customary Criminal Law and National Criminal Law: Orientation Towards Criminal Law Pluralism,” *Pena Justisia: Media Komunikasi dan Kajian Hukum* 22, No. 1 (2023).

traditional cultural life and Islam are inseparable, and this harmonization between *adat* and Islam has been developing in various aspects of Acehnese people's lives who adapt religious practices to applicable traditions.

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