

Dispute Resolution Through Gayo's Customary Court

¹Rahmina, ²Darmawan, ³Teuku Muttaqin Mansur

¹(Student of Master of Law Syiah Kuala University, Banda Aceh, Indonesia)

²(Lecturer of Master of Law Syiah Kuala University, Banda Aceh, Indonesia)

³(Lecturer of Master of Law Syiah Kuala University, Banda Aceh, Indonesia)

Corresponding Author: Rahmina

Abstract: This research is conducted to study the form and mechanism of dispute resolution through Gayo's customary court. The method implemented is empirical jurisprudence, by conducting an interview with the respondents and informants. The data is analyzed using the qualitative descriptive approach. The result indicates that the form and mechanism of dispute resolution through Gayo's customary court include: first, a minor dispute mechanism is solved by the village chief. Second, a major dispute mechanism is solved by the Sarak Opat and the head of the mukim.

Keywords: dispute resolution, Gayo's customary court.

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I. INTRODUCTION

Disputes in social life normally emerge along with the interaction between peoples in the social life, whether this occurs between one person and the other, between groups, or between an individual and a group.

Disputes or conflicts could happen because of various things. Scholars have been trying to define the theories about the causes of conflicts. At least, some of these theories regarding conflicts include the public relations theory, principle negotiation theory, identity theory, misunderstanding theory, the theory of transformation, and theory of human needs. There is no need to confront each of these theories since they complement each other and useful in explaining several phenomena of conflicts that occur in society.¹

Disputes emerge in Indonesian society could be resolved in a formal judiciary (litigation) and also resolved outside the informal judiciary (non-litigation). Most of the dispute cases resolved through an informal judiciary (non-litigation) are resolved through a customary court.

The customary court is closely related to the Indonesian legal system. The operation of customary law and its institution could not be separated from the progress of constitutional recognition, specifically in Article 1J8 B section (1) and (2) as well as in Article 28 I section (3) of The 1945 Constitution of The Republic of Indonesia (UUD 1945).

The post-reformation era in Indonesia generates governance that no longer centralized. Several regulations created post-reformation increase more opportunities for greater autonomy on a region, such as the Law No 44 of 1999 about the implementation of the Special Province of Aceh, the Law No 18 of 2001 regarding special autonomy, and the Law No 11 of 2006 about Aceh Governance.

After the birth of the Aceh governance law, the existence of customary law in Aceh is getting stronger. It is because there is recognition for a customary institution. The customary institution is given an authority to enforce customary laws, as regulated in the chapter XIII of Article 98 regarding customary institution in the Aceh governance law (UUPA).²

The article 98 section (1) of UUPA stated that "The customary institution functions and acts as a place for people to participate in the implementation of Aceh governance as well as the government of regencies/cities, in the security, peace, harmony and order sector". The article 98 section (2) of UUPA also mentioned that "Solving the social problem in a customary way is pursued by a customary institution".

The implementation of customary justice is conducted by the customary figures. The judge is selected from the customary figures or other figures in the customary law community. In this case, the disputes

¹Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat (Mediation of Dispute Settlement through Consensus Approach)*, Rajawali Pers, Jakarta, 2011, page. 8.

²Teuku Muttaqin Mansur, *Hukum Adat Perkembangan dan Pembaharuannya di Indonesia (Customary Law, the Development and Updates in Indonesia)*, Bandar Publishing, Banda Aceh, 2017, page. 30.

resolution process is executed based on three principles in facing custom cases, which are the principle of peaceful, proper, and harmonious.³ The equity from dispute resolution through a customary law can really be felt by the community. Not only the process is quick and not protracted, but it also does not cause any resentment between the warring parties as well as restore the balance in the community as a whole.⁴ In this research, the form and mechanism of disputes resolution through Gayo's customary court will be further studied.

II. RESEARCH METHOD

Method used in this research is the empirical jurisprudence, by conducting an interview with the respondents and informants. The data is analyzed using a qualitative descriptive approach.

III. DISCUSSION

Aceh is part of the Unitary State of the Republic of Indonesia which given a privilege by the central government as stated in the Law No 44 of 1999 about the implementation of the Special Province of Aceh, the Law No 18 of 2001 regarding special autonomy which replaced by the Law No 11 of 2006 about Aceh Governance. One of the privileges given to Aceh is in the implementation of its specialty in the customary sector. Rules regarding the customary institution, types of customary sanctions and further mechanism are regulated in the Qanuns and the regulations of Aceh Governor.

According to Article 16 of the Governor Regulation No 60, 2013 regarding The Implementation of Disputes Resolution/ Customary Conflicts, the dispute resolution through a customary court is executed by the customary institution. It is stated in the Article 16 section (1) that the resolution through customs as mentioned in the Article 3 includes the settlement by a customary institution in the village level or in other names the Mukim or Lembaga Adat Laot (Laot Customary Institution).

Referring to the Article 16 section (2) of the Governor Regulation, the execution of a customary institution is performed by the customary figures, such as Keuchik (the head of a village) or in other names, imeum meunasah, or tuha peut, or the village secretary or other name of concerning parties as needed.

The Mukim court according to Article 16 section (3) mentioned that dispute resolution is performed by the prominent figures mentioned above: Imeum mukim, or in other names Imeum chik, or Tuha Peut, or Mukim Secretary, or Ulama, scholar and other customary figures in a Mukim or other concerning parties as needed.

In the Laot customary justice according to the Article 16 section (4) of the Governor Regulation, the resolution of Laot's (Ocean) disputes are implemented by the customary figures such as Panglima Laot (Sea Commander), or in other names the secretary of Panglima Laot, or other names.

The procedures of dispute resolution through a customary court are regulated in the Article 17 section (1) and (2) of the Governor Regulation as follows.

- (1). The procedures and requirements of disputes/conflicts resolution are implemented in accordance with local customary provisions.
- (2). The general processes of dispute resolution are:
 - a. Receipt of reports/complaints
 - b. Protection of the involving parties
 - c. Coordination and preliminary hearing (discussion of a case) in the village officials or other names level
 - d. Calling the reporting party, victim, and perpetrator and observing the facts of a case
 - e. Checking all parties involved, witnesses, and shreds of evidence as well as the crime scene
 - f. Determination of case resolution decisions
 - g. Mediation and lobbying of the parties
 - h. Customary court and decision making meeting
 - i. Submission or announcement of the decision
 - j. The signing of the official report on the settlement of customary court (by the parties, witnesses, and the member of customary judicial assembly)
 - k. Implementation of decisions and restitution, and
 - l. Submission to the Mukim level or to the police

Passion for reviving the customary institution like a local institutional structure is also followed by several regencies/cities in Aceh, one of them is mentioned in the Qanun of Aceh Tengah Regency No 9 of 2002

³Moh Koesnoe, *Catatan terhadap Hukum Adat Dewasa Ini (Notes of Today's Customary Law)*, Erlangga University, Surabaya, 1974, page. 44-45

⁴Airil Safrijal, "Penerapan Sanksi Adat dalam Penyelesaian Perkara Pidana (Implementation of Customary Sanctions in the Settlement of Criminal Cases)", *Kanun Jurnal Ilmu Hukum (Kanun Journal of Legal Studies)*, 2013, No. 59, Th. XV. (145-162), page. 151.

regarding Gayo's customary law. In article 8 of the Qanun in Aceh Tengah No 09 of 2002, it was stipulated that the Sarak Opat as a customary institution operate as follows:

- a. *Sarak Opat* play an active role in preventing a *sumang* (discordant),
- b. *Sarak Opat* for judging an act of *sumang* (discordant),
- c. *Sarak Opat* implements the customary law, customs, habits, and customary sanctions.
- d. *Sarak Opat* resolving *kemalun edet* or four cases, *madu opat*.
- e. *Sarak Opat* resolving the one that violates the custom of four cases.

The institution who is in charge of implementing and executing the customary law in Gayo is "*Sarak Opat*". The function of a customary institution is as a tool of security, peace, harmony, and public order, which includes;

- a. Resolving social problems
- b. As an intermediary / reconciling disputes that arise in the community

Actions that are ordered to be maintained and carried out as values mentioned above needs to be accompanied by avoiding customary prohibitions, by performing *Dawa Opat* (four things that prohibited by the customs), *Maduni Edet* (incompatible with the customs), and *Sumang* (morals that are not proper according to the custom).

These are regulated as described in Chapter V of Article 11 and Chapter VI of Article 12, 13, and 14 in the Qanun No 9 of 2002 regarding Gayo's Customary Law.

According to Chapter V of Article 11, *Sumang* in Gayo's Customary Law are:

- (1). *Sumang Kenunulen*, which means an adult man and women who are not married to each other together in a hidden/ enclose space.
- (2). *Sumang Perceraken*, which means adult men and women who are not married talk to each other in an inappropriate place.
- (3). *Sumang Pelangkahan*, which means an adult man and woman who are not married walk together.
- (4). *Sumang Bergaulen*, which means an adult man and woman who are not married look at each other constantly in an open space in front of the public.

Furthermore, it was explained in Chapter VI regarding *Kemalun Edet* and *Menyalahi Edet* stated in Article 12 that the actions of *pantang ni edet* which called *Kemalun ni Edet empat Perkara Madu Opat* are;

1. *Nahma Teraku* (Humiliation, insult)
2. *Belang Terpanjang/ Deniye Terlangis* (seizing property, stealing)
3. *Malu Tertawan* (depriving others of their liberty without rights)
4. *Bela Mutan* (retain rights and honor)

Moreover, Article 13 mentioned that someone who violated the *edet* is the one who performed the following actions;

1. *Terjah* (egoist)
2. *Empah* (using harsh, arrogant and bad words)
3. *Keliling* (provoking)
4. *Juge* (cursing)

The Forms and Mechanisms of Disputes Resolution

The mechanism of disputes resolution is using a normal customary justice of Gayo customs.⁵ Every disputes/conflict arise in the society first will be reported to the headman or in other names the village chief (head of *Dusun*), but it could also be reported to the *Reje* of the village. If the problem is not too complicated, then the settlement is just up to the level of the headman, his role is considered enough to solve the problem without involving the *Reje*. However, if the disputed is considered as a major/ more major dispute, the resolution by a head of *Dusun* is not enough and the *Sarak Opat* has to be involved. In this case, the head of *Dusun* first send the report to the *Reje* or other members of *Sarak Opat* provided the disputes have been reported to him. Then, the *Reje* will provide a mediator to the disputing parties.

The provision of a mediator to mediate the disputing parties is implemented if necessary or as called in Gayonese "*selangke*". *Gere mihak, bijak*, which in this case act as the mediator, has to be wise and impartial to every party. The mediators here are the head of *Dusun* (village), *petue*, and other village government officials. *Selangke* would analyze the chronological occurrence first and will meet the disputants, provided they want to meet each other. If one party or both refuse to meet, the *selangke* would act as a messenger for both parties, for example, to ask the victim about the fine, if needed.

⁵ Result of interview with Ir. M Jusin Saleh, MBA (the head of Gayo's customary assembly), on June 2, 2019.

The *Reje* then calls/invites every member of *Sarak Opat*, the head of *Dusun* and other village government officials to negotiate. The purpose of this negotiation is to take a policy on each existing disputes. The negotiation could be implemented once or more than once, depends on the disputes themselves.

In the process of deciding a resolution for disputes, *Sarak Opat* would deliberate/ ask the customary figures / religious scholar if necessary. After negotiating, a trial would be conducted at the mosque or *meunasah (mersah)* of the village, attended by the *Sarak Opat* officials and other officials as well as disputants. In resolving the disputes, a customary justice never sentences the party who considered wrong which means an apology is enough to clear the dispute. Therefore, it is recommended in this case to forgive each other. “*nge silep boh bersimaafen*”.

For the trial process itself, the *Sarak Opat* officials starting from *Reje*, *Imem*, *Petue*, to *RGM* will give advice. Next, the verdict decided will be read out, and the following step is to execute this verdict. If there are fines such as by slaughtering goats or cows, or in a form of money, these fines need to be submitted. However, there is no set time for the execution, it can be as soon as possible or the opposite depends on the ability of the parties subject to the sanction.

The dispute resolution through *Gayo's* customary court could be open for public, which in this case the entire community could attend and hear the verdict, or closed for public as the private domestic cases which attended only by the village government officials and the families of disputants. If there are parties who do not accept the decision made by the *Sarak Opat*, the dispute cases then will be brought to the justice in the *Mukim* (village) level. The types of disputes arise in a village could be categorized as follows:

a. Minor Disputes

The dispute resolution mechanism of a minor dispute is sufficiently resolved by the head of *Dusun*. One of the disputants (the victimized / disadvantaged party) would report the dispute to the head of *Dusun*, and he will immediately resolve the dispute. The head of *Dusun* will give some bits of advice to both parties involved in this dispute so they will not repeat the same mistake, and explains the negative sides of what they have done. The resolution process is conducted at *Puntung Bele*, a place where the dispute happened.

One of the disputes that once occurred in *Toweren* village is the dispute concerning rice field boundaries (*peruloken*). The disputants regarded as the A and the B has adjacent rice fields, these rice fields have already been separated by the *peruloken* boundary, but the B breaks the boundary by hoeing it so the boundary is no longer visible. The B has even hoed it until it reached A's territorial. A could not accept this action, which leads to A reports this to the head of *Dusun* who immediately examines the case according to what has been reported by A. Without delaying any longer, the case was processed and the head of *Dusun* invited all disputed parties to the scene (rice fields) to tell B that what he/she has done was wrong since he violated the boundary.

What happened next was the head of *Dusun* telling B that he was wrong, ask him/her to apologize to A and fix the land boundary as its original state, and advised him/her. Consequently, B fixed the land boundary as previously arranged.

b. Major Disputes

The disputes resolution mechanism of a major dispute is resolved by *Sarak Opat* and other customary figures outside the *Sarak Opat* structure. The dispute cases were resolved by the *Sarak Opat* since the disputes are categorized as a complicated dispute and the head of *Dusun* could not resolve it, so he reported it to the *Sarak Opat* and asked for help. The resolution process is conducted in *Gelung Sele*, specifically located at the mosque or *meunasah (mersah)*.

The disputes considered as a major dispute is, for instance, such a big fight but no parties have been victimized yet or no one is harmed. One of the example cases that once raised in *Nosar* village where disputants are still under the same family tree. This dispute is arisen because of the division of inheritance, where one party did not accept the inheritance distribution system that leads to an ongoing dispute. This conflict was merely limited to both parties blurting out harsh words that caused the relations between these two parties in the village were not good. This dispute made the neighbors feel disturbed so they reported this case to the head of *Dusun*. In the beginning, the head of *Dusun* directly met both parties and asked about the details of the conflict. However, there was still no solution to the problem since the disputants refused to make peace.⁶

The resolution of this dispute then continued to the *Sarak Opat*, who received the report from the head of *Dusun*. The *Reje* of the village provide a *selangke* (mediator) for disputing parties, and the one sent is the *Petue* of the village. The *Petue* met both parties, and in this meeting, he advised and asked the disputants to make peace since they were related to each other in one big family.

⁶ Interview with *Sastra Wandu* (the *Reje* of *Nosar* village), on Juni 01, 2019.

One day after the meeting, the party who could not agree with the distribution of inheritance visited *Reje's* house and apologized for making the neighbor felt uncomfortable with the situation they have made. The disputants then met each other and reconciled in a meeting attended by *Sarak Opat* and other community figures outside the *Sarak Opat* structure. This resolution is implemented using the type of verdict called *Salah Bersemah Ilit Berisi*, and the party who did not agree with the distribution pleaded guilty and asked for forgiveness. Moreover, the guilty party had to give something to the victimized party. This gift was in the form of goods, which in this case they offered sarongs to the victimized party.

IV. CONCLUSION

The result of this study indicates that the forms of dispute resolution through Gayo's customary court are: first, the minor disputes which mechanism were resolved by the head of *Dusun* (village), and second, the major disputes which mechanism were resolved by the *Sarak Opat* and the head of *Mukim*.

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