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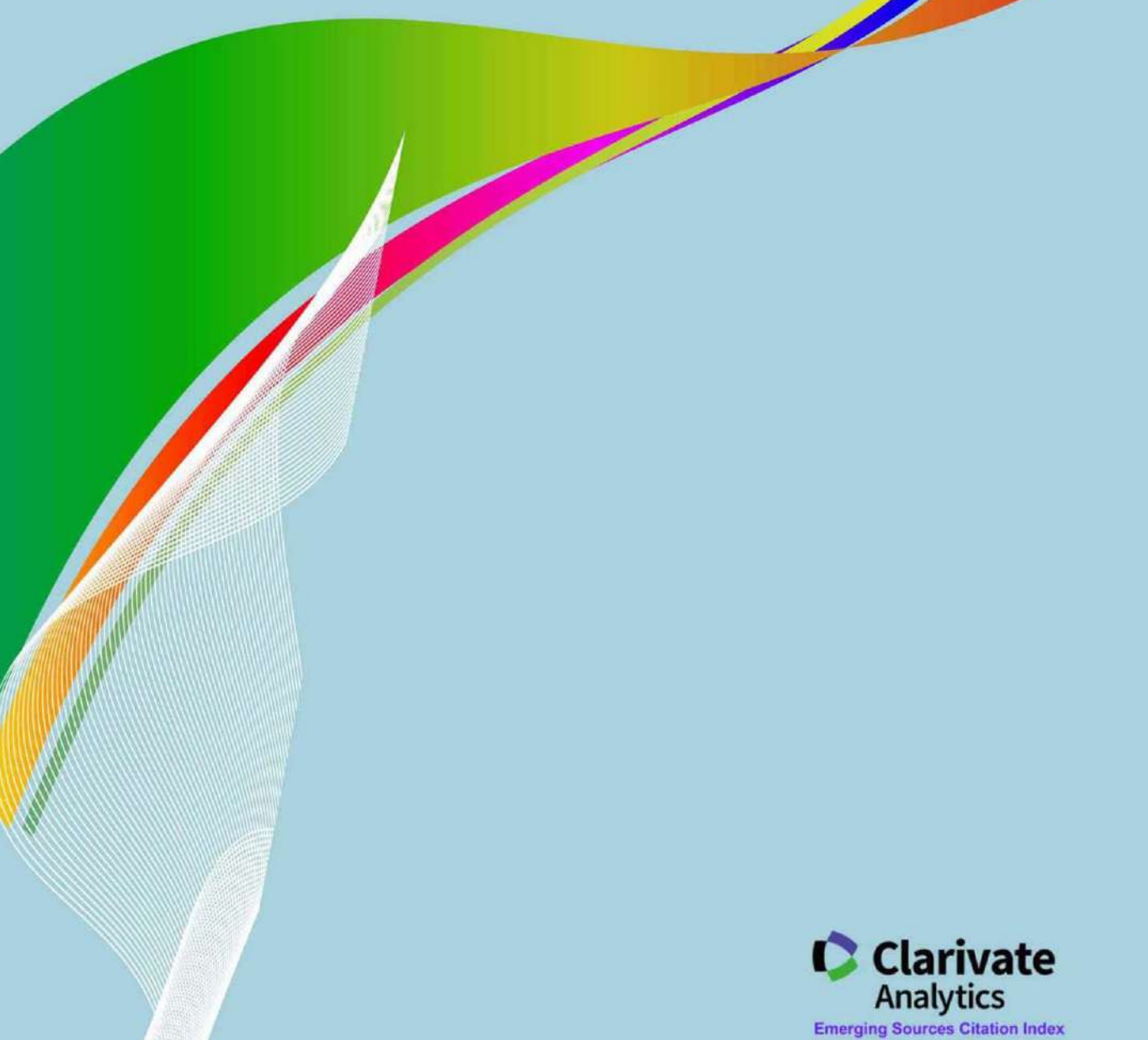
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**Adat Court in Aceh, Indonesia: a Review of Law**

**Teuku Muttaqin Mansur<sup>1</sup>; Sulaiman<sup>2</sup>; Hasbi Ali<sup>3</sup>**

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## ADAT COURT IN ACEH, INDONESIA: A REVIEW OF LAW

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### **Abstract**

*This article aims to find out the legal position, authority, and structure of adat (customary) court in Aceh. This study used juridical methods. Data were obtained through literacy studies by examining such as the rule of laws, books, and journals. Data were analyzed using a qualitative descriptive approach. The results of the study showed that adat court in Aceh has a significant position in the legislative system. The authority of adat court in Aceh is able to resolve small disputes that occur in society. The structure of adat court in Aceh is divided into land and sea areas. Adat court in the land territory consists of village and the mukim adat court, and the sea territory consists of lhok and district adat court.*

**Keywords:** *Legal; Authority; Adat Court; Law Review, Aceh*



## A. Introduction

*Adat* court is a process or way to maintain the material customary law in the customary court, the person who violates the provisions of customary law can be brought before a panel of customary judges to be tried (Mansur, 2017: 168). Meanwhile, according to Rato, (2015: 337), *adat* court functions to resolve conflicts that arise in the community, as well as take preventive actions, namely traditional education.

The practice of *adat* court has not only been carried out for generations but also has been strengthened by the recognition of the Aceh legislation, namely Law Number 11, 2006 concerning the Government of Aceh (UUPA). It's further elaborated in its implementing regulations, namely through Aceh Regional Regulation (Aceh: Qanun) Number 9, 2008 concerning Indigenous and Customary Life Development, Qanun Aceh Number 10 of 2008 concerning Customary Institutions, and Aceh Governor Regulation Number 60 of 2013 concerning Custom Settlement.

According to Qanun Aceh Number 9, 2008, 18 types of customer disputes that can be resolved through *adat* court in Aceh such as disputes within the household, between families related to *faraid* (heritage), between residents, seclusion, about property rights; minor theft in the family, over property *sehareukat* (the property acquired during the marriage), minor theft, theft of domesticated animals; customary violations of livestock, agriculture, and forests, disputes at sea, disputes in the market, forest burning, slander, sedition and defamation, pollution of the surrounding environment, threatening to threaten, other disputes that violate the custom.

The granting of authority to settle 18 types of disputes to the *adat* court provides a great opportunity for *adat* court to contribute to reducing the number of cases that should be handled by conventional courts.

## B. Literature Review

The *adat* court nomenclature is not uniformly agreed in Indonesia, this is sometimes confusing in defining it. However, it can be ascertained that the intent and purpose are the same, namely trying to find a way of peace.

Before Indonesia gained independence, the King had full power over his kingdoms, including the power of judging and punishing. However, according to Tresna (1957: 14), at that time the King also appointed functionaries of customary law to enforce law through customary justice.

When Islam came to Indonesia, the legal system at that time also changed. Islamic influences in Mataram, for example, there was *Pradata* in the court (Hindu), it was changed to *Surambi* court with the authority to run Qisas, even though the implementation of the meaning of Qisas was not in accordance with the true meaning of Islamic law (Tresna, 1957: 14).

While in Aceh, the influence of Islamic teachings had come first compared to Mataram. According to Lombart (2007: 118), there are 4 forms of justice that were seen at that time, the period of Aceh's glory under the rule of Sultan Iskandar Muda (1607-1636), namely: civil court, criminal court, religious court, and commercial court.

A civil court is held every morning except on Friday at a large hall near the main mosque (now the Baiturrahman Grand Mosque). The Chief Justice is one of the wealthiest people at that time. While the criminal court is held at another hall, namely, towards the palace gate. Two other courts, the Religious Court and the Commercial Court only examine special cases. The person who was most involved in hearing the case at the Religious Court was *Kadi*. Denys Lombard described the authority of *Kadi* was like a bishop, presiding over a court which included those who violated religion".

The court power was strengthened by Iskandar Muda in order to adhere to the rules of good morals and religious behavior, which according to *Bustanus Salatin*, was enforced by him (prohibiting playing gambling and liquor). While the latter is the Commercial Court, this court is usually held in another building to resolve disputes between traders, both foreign and indigenous traders. Regarding this, Denys said that "finally near the port, there was a hall where all disputes were settled between traders, both foreign and indigenous". This court is chaired by a rich Admiral who may be considered the same as the mayor (Lombart, 2007: 121). According to the results of research conducted by Mansur (2018: 18), the last court or



Commercial Court was the starting point for the birth of the *Adat Laot* Court in Aceh with the authority to administer maritime commerce.

Meanwhile, according to Djuned, (2011: 106), in the era of Aceh kingdom, there was already a system of Customary Courts divided into two judicial environments, namely: General Courts and Special Courts. The general courts is formed in every government unit, starting from the *Gampong* (village) to the sultanate government, which consists of: the *Gampong* Court, the *Mukim* Court, the *Sagoe* Court, and the Sultanate Court. These courts were given the authority to try all types of violations, both civil and criminal

In a special court environment, according to Djuned (2011: 106), a *Suloh* or *Peujroh* Law was formed. The *Suloh* Court or the *Peujroh* Court specifically handles serious criminal cases and attracts the attention of the public. Another important note in the two courts above is that the scope of general justice is permanent, while the scope of special justice is temporary (limited) in a special form, if there are serious criminal violations and attracts the attention of the general public. Later it will be reshaped when there are serious criminal cases. Maybe, in the present time this special court is like an ad hoc court, or a special court that is in the general court environment, for example, the Corruption Court, Special Court of Children, and others.

In the development of the history of customary justice in Indonesia, the justice system is divided based on population classification. It aims to accommodate the pressure of the population groups in the archipelago (in the language of the invaders, it is classified as indigenous people or *bumi putera*) to implement a legal system that lives and develops which is still being implemented among them.

For indigenous people, the court recognized is in accordance with Article 11 AB (Algemene Bepalingen, statutory provisions applicable in Indonesia) which stated:

"Except in the case of (authentic) Indonesians or those who are equal to the Indonesian people voluntarily obey the rules of European civil and legal law, or in cases for which such legislation or other regulations apply, then the law applicable and carried out by

*inlandserechter* judges, for them it is the law of their religion, institutions and customs of the people, as long as the principles of justice are generally recognized".

The Article was reaffirmed in 1854 through Article 75 RR (*Regerings-Reglement*), whose translation read as follow:

"Except in the case that the Governor-General has explained that this applies to the Dutch East Indies rules of European law or in matters of indigenous people voluntarily obeying civil and commercial laws that apply to European groups, the indigenous judges carry out for them the Law of their religion, as long as it does not conflict with the generally recognized principles of justice".

In 1925, the RR was renamed *IndiesheStaatregeling* (IS), a codification of the constitutional principal law, in which Article 75 RR became Article 131 IS. However, Article 131 IS has only been effective starting January 1, 1926 with the following editors:

In conducting ordinances that contain civil law and trade the ordinance maker will notice that:

"(b) For indigenous (native) groups, foreign eastern groups and their parts, legal regulations are based on the names of their religions and customs; but to those rules can be excluded if the public interest or social needs they require, it can be established for them European law, if necessary with changes or laws that apply to them and the European people together."

Therefore, for the indigenous population (indigenous people) there is a separate court (customary court, religious court) in resolving disputes that occur. In its implementation, the judges must refer to religious laws provided that they do not conflict with the generally recognized principles of justice (Mansur & Jalil, 2013: 70).

However, in terms of the authority of customary courts in the colonial period they still had extensive authority, such as being able to settle big cases with severe penalties, whereas the current customary court, such as in Aceh, only resolved cases/small/light disputes. Major matters become the authority of the formal court.



According to Hadikusuma, (1981: 142) as a result of the enactment of the Emergency Law (UDRT) in 1951, indigenous justice that had implemented criminal provisions was incorporated into the Criminal Code (KUHP). That way, the *adat* court that is still being carried out now in Indonesia is actually village justice as intended in Article 3 a RO (regimen op de *rechterlijkeorganisatie*, regulation of the judicial system and arrangement of justices):

(1). All cases according to customary law including the power of judges from small-scale legal communities (village judges) remain tried by the judges. (2) The provision in advance does not reduce even the right of litigants to submit their case to the judges referred to Article 1.2 and 3 (higher judge) at any time. (3). The judges referred to paragraph 1 judge cases according to customary law; they may not sentence. Village judges, if any sentence is imposed, then it must be imposed simply, such as: reprimand, warning, giving mercy or forgiveness, obligation to hold a charity ceremony, salvation to clean relatives or clean the village or more is a sentence of exile, removed or expelled from hometown. (Hadikusuma, 1981: 144).

Mansur and Jalil (2013: 70) concluded that, it began to show a weakening of the power possessed by customary justice. If previously it was able to impose harsh sanctions in criminal cases but due to the enactment of Law Number 1 of 1951 the authority was weakened. Customary judges are only classified as judges of peace with only small cases of violations. *Adat* court in the past with the indigenous court separated material and formal law, but after the Emergency Law, the provisions of material (customary law) and formal (judicial) for unified became one.

### **1. Relationship between *Adat* (Customary) Courts and State Courts**

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the existence of customary law is still recognized and respected insofar as the customary law is still alive and developing in Indonesia. This means, if there are customary laws that have been lost before the birth of the 1945 Constitution, then the customary law cannot be carried out anymore. This article does not clearly state where the position of *adat*



court in Indonesia appears. (Outside state organization). ([www.jimly.com](http://www.jimly.com)). In fact, Law Number 48 of 2009 concerning Judicial Power overrides the position of *adat* court as a state court.

Article 18 of Law Number 48 of 2009 only recognizes State Courts as the applicable judiciary in Indonesia, namely the judiciary in the scope of General Courts, Religious Courts, Military Courts, State Administrative Courts, and the Constitutional Court. This fact proves that the law has not been in favor of strengthening customary justice. (Abdurrahman, 2013: 2). In the case of Aceh, this situation could cause confusion for justice seekers because they did not get legal certainty.

Other assumptions suggest that, Article 18B Paragraph (2) of the Constitution also contains the intent of the Customary Court, (DJuned, 2003: 1-2) if viewed from the nature of *zelf best urendelandschappen* (areas with self-government, such as *Gampong* in Aceh) and *volksgemeenschappen* (customary law communities), such as the Acehnese attached to the Article but still not as State Courts.

Although the Basic Law does not explicitly regulate the existence of Customary Courts, in practice, such as *Adat* court in Aceh, it becomes a legal phenomenon that must be addressed wisely. In Indonesian society consisting of a multicultural society (Nurjaya, 2012, 21) where the law cannot be seen from the aspect of the constitution and the law alone, there needs to be a legal breakthrough, so that the absence of clear rules will not prevent the community from running Customary Justice.

In Indonesia, the customary law system also known as the people's legal system (folk law) continues to grow and develop in people's lives. In fact, the concept also became the norm and law. Functioning as an instrument for controlling the social order and order of society. Thus, the law does not only function as the state law stated in the legislation, but also manifests itself in religious law and also customary law (custom law).

Nurjaya (2005: 101 and 106; 2011: 236 and 242; 2013: 64 and 68;) explained that the paradigm of developing national law in Indonesia needs to be changed, from the legal centralism to the ideology of legal pluralism (legal



pluralism) Although legal pluralism is seen to clash with the national law system, (Bustanul Arifin, 1977: 5), the existence of customary law and Islamic law in national law can actually strengthen national law, especially in realizing the goal of law itself, namely maintaining order, order and harmony of society.

Thus, the concept of legal pluralism can be used as a way out to mediate differences in interpretations of legislation concerning Customary Courts. Although the Constitution and Law Number 48, 2009 do not explicitly mention the Customary Court, the practice of *Adat* court that still remains in Acehnese society needs to be respected and respected. Basically, the existence of *Adat* court can actually help the State Court to resolve community disputes in a small scale. The support of the State Judicial Judge is needed, in addition to refusing to adjudicate cases that have been broken up by the Customary Court; it can also make the Customary Court ruling as a reference if there are parties to submit their case to the State Court in the future. In contrast, the Customary Court does not try large-scale cases that are the authority of the State Court. This mutual respect and respect relationship will certainly benefit the people who are seeking justice in the two courts. At the same time legal objectives were also achieved.

## 2. Concept of *Adat* Court

In concept, Abdullah (2010) argues that, *adat* court is included in a mediation study because it talks about matters that are inseparable from efforts to reconcile/dissolve disputing parties or dispute in society peacefully and outside the general justice process. While According to Spiller, (1999: 57) says that, mediation or mediation is taken from the Latin word 'medius' which means 'middle' or "middle". The word refers to a process that involves middle people as intermediaries. And usually the process is often associated with a dispute resolution process between two parties or more by being assisted by a third party, namely an intermediary / mediator.

In Indonesia, the concept of mediation itself is well known and has a very good place in the eyes of the law (Abdullah, 2015: 41). This view is also reflected in Law Number 48 of 2009 concerning Judicial Power which

recognizes the existence of Alternative Dispute Resolution and Arbitration as stipulated in Chapter XII Article 58 to Article 61 and several other laws and regulations as previously described.

Peaceful dispute resolution cannot be separated from the source of cultural roots of the Indonesian people. In the conception of customary law, peaceful settlement is one way of solving problems in order to bridge the diversity of Indonesia's population consisting of various tribes, peoples, languages, regions, and also religions. Customary law as a system has its own pattern in resolving disputes. Settlement through *adat* court has its own character compared to the completion of other legal system models. This is because, the system that is built comes from customary law that is born and grows from the community itself, so that its existence is compounded and cannot be separated from the community.

The basis of the settlement in the customary court referring to Abbas (2009: 235) is also derived from customary law which is indeed composed and built on agreed values, norms, and believed by indigenous people. Customary law has a strong relevance to the character, values, and dynamics that develop in indigenous peoples. Thus, customary law is a manifestation of the phenomenological juries of the customary law community.

Indonesian customary law is also an embodiment of the culture of Indonesian society. Customary law rests on the mind of the nation which is not the same as the mind that controls the western legal system or other legal systems. Soedarsono said that the Indonesian customary law is different from other legal systems in Indonesia such as Roman law that was brought by Dutch colonialism to Indonesia (West), Hindu Indian law, Islamic law, and various other legal systems (Soedarsono, 1998: 5-6; Abbas, 2009: 236). The differences in the rules of Indonesian customary law with other legal arrangements are reasonable, because the people of Indonesia as supporters of culture have their own views and philosophies of life. Soepomo (1996: 5-6) states that customary law is a manifestation and real legal feeling for the people. Customary law is built from both real and idiomatic cultural material from the Indonesian people, especially and the Malays in general. (Abbas, 2009: 236).



Therefore, the embodiment of the concept of customary law is associated with the two views above being very principled in its enforcement through customary justice. Again, even though customary law is regulated in such a way, and even though in some regions it stipulates certain sanctions for certain violations, in practice it is always based on the principles and efforts of peaceful settlement or mediation.

### **C. Method**

This research was conducted using qualitative methods with the type of research used is legal (juridical) research, namely legal research by examining library legal materials in the form of laws, books, journals, and other literature in accordance with research. The data obtained will be analyzed using a qualitative descriptive approach.

This qualitative study focuses deeply and holistically on fieldwork. The purpose is to uncover important facts, circumstances, phenomena, and variables about the objects in question using phenomenological, social, and humanistic approaches. The findings are presented in the form of a lengthy description detailing the written and oral words obtained from various sources of information (Tabrani ZA, 2014: 123).

Data collection techniques in this study were observation and documentation. Direct observation identifies what happens to the object of research (Burhan Bungin: 2005: 133). Observations were made because this observation technique is based on direct observation, this observation allows researchers to be able to understand complex situations (Tabrani ZA, 2014: 125). While the documentation is done through a review of written data in the form of documents relating to the focus of the study (Tabrani ZA, 2014: 126).

The study targeted two types of data: primary and secondary data. Primary data is the data that the researchers collected directly from the respondents or informants during the observations and secondary data is the data that was obtained indirectly including printed or electronic documents that could provide information. (Walidin, et.al.: 2015). Data were analyzed using techniques proposed by Milles and Huberman.



## **D. Finding and Discussion**

### **1. Finding**

The findings of study indicate that traditional justice in Aceh has a formally strong position because it has been recognized in the legal system. However, legal experts sometimes are still debated because formal rules that recognize customary justice often use different terms. Some experts state that in the legislation does not use the term customary justice, but the process and method of resolving disputes use customary justice in solving problems to find a way to peace. Another finding of study is that *adat* courts in Aceh are divided into two areas of coverage. First, the customary court on land which consists of *adat gampong* court as the first court of justice, and the *adat mukim* court as the court of appeal. The second is *adat laot* court, which consists of *adat laot lhok* court and *laot* district *adat* court. Uniquely, it does not recognize the level of appeal. The authority of the *laot* customary court is divided based on the territory of authority, the *laot lhok* customary court is tasked with resolving fishing disputes that occur within the *lhok* area, while the *laot* customary court of the city regency will resolve the fishermen dispute that occurs between two *lhok* and or two city or districts.

### **2. Discussion**

#### *a. Position of Adat Court in Aceh*

The birth of Law No. 11, 2006 concerning the Government of Aceh (UUPA) has become a new reference in the system of governance in Aceh Province. The UUPA has given specificity to Aceh and is different from other provinces in Indonesia. Such as the existence of the Mahkamah Syari'ah institution, the *Ulama* Consultative Assembly (MPU), the Aceh Regional Education Council (MPD), the Aceh *Adat* Assembly (MAA), the Wali Nangroe, and the *Adat* Institution.

The existence of the UUPA has also placed Customary Courts (Customary Institutions) in a stronger position. This is as stated in Article 98 and Article 99 of the UUPA. Article 98 paragraph (2) of the UUPA states



that customary institutions (customary justice) have the authority to resolve social problems. Article 99 paragraph (2) states that the development of traditional life and customs is carried out in accordance with the development of Aceh's specialties and values based on syari'ah Islam.

Furthermore, on the orders of Article 98 paragraph (4) of the UUPA which states, further provisions regarding the duties, authority, rights and obligations of customary institutions, customary empowerment, and customs are regulated by *Qanun Aceh*. So, in 2008 the *Qanun Aceh* Number 9, 2008 was born regarding the Development of Indigenous and Customary Life and *Qanun Aceh* Number 10, 2008 concerning Customary Institutions.

Article 14 paragraph (1) *Qanun Aceh* No. 9 2008 states that, community dispute resolution is carried out by 3 institutions, namely traditional *Gampong* (village) institutions, *Mukim* customary institutions and customary marine institutions. The authority granted by the laws and regulations concerns dispute resolution and the existence of a customary functionary structure in dispute resolution, the *adat* institution is interpreted as an *adat* court (Djuned, 2003). Mahdi (2011: 197) states, that in fact the *Qanun* governing the custom institution provides hidden meanings about customary justice. Meanwhile, Taqwaddin (2009: 4) states that, *Qanun Aceh* Number 9, 2008 and *Qanun Aceh* Number 10, 2008 have increased the position of *adat* court as a formal court. This opinion received support from Tripa (2011: 1000).

The rules of the UUPA, *Qanun* and the views of the experts above have actually ensured that the position of *adat* court in Aceh has a strong position, only the UUPA and *Qanun* should directly use customary court nomenclature. This is to avoid different interpretations.

#### *b. Authority of Customary Courts in Aceh*

The authority of *adat* court (customary institutions) in Aceh is regulated in Chapter XIII Article 98 paragraph (1) and paragraph (2) concerning the Customary Institution of the Law on the Governing of Aceh (UUPA). In paragraph (1) it reads: "Customary institutions function and play a role as a vehicle for community participation in the

administration of the Aceh Government and district/city government in the fields of security, peace, harmony and order." While paragraph (2) stated that completion of customary social problems is carried out through customary institutions.

Further provisions regarding the duties, authority, rights and obligations of customary institutions, customary empowerment, and customs are further regulated by the *Qanun Aceh*. Thus, based on the mandate of the UUPA, a derivative of regional regulations (*Qanun*) was established to strengthen the existence of customary institutions (customary justice), the structure of customary institutions, and customary law. The purpose of the *Qanun* is as follows:

- 1) *Qanun Aceh* Number 9, 2008 concerning the Development of Customary and Customary Life, which was ratified on 30 December 2008.
- 2) *Qanun Aceh* Number 10, 2008 concerning Customary Institutions, which was ratified on 30 December 2008.
- 3) *Qanun Aceh* Number 3, 2009 concerning Procedures for the Election and Dismissal of *Imum Mukim*, which was ratified on 28 May 2009.
- 4) *Qanun Aceh* Number 4, 2009 concerning Procedures for Election and Dismissal of *Geuchik* (Head of Village), which was ratified on 28 May 2009.

The authority of customary institutions is regulated through article 4 of *Qanun Aceh* Number 10, 2008:

- 1) maintaining security, peace, harmony and public order;
- 2) assisting the Government in implementing development;
- 3) develop and encourage community participation;
- 4) maintain the existence of customary values and customs that are not in conflict with Islamic shari'ah;
- 5) applying customary provisions;
- 6) solving social problems;



- 7) reconcile disputes that arise in the community; and
- 8) enforce customary law.

In resolving disputes, *adat* court in Aceh was given the authority to settle 18 small / light disputes. Article 13 of the *Qanun* Aceh Number 9, 2008 concerning the Development of Indigenous and Custom, stated that the customary court has the authority to settle the following 18 customary disputes:

- 1) Domestic disputes;
- 2) Family disputes relating to *faraidh* (heritage);
- 3) Disputes between citizens;
- 4) Seclusion / pervert;
- 5) Disputes about property rights;
- 6) Family theft (minor theft);
- 7) Property disputes *schareukat* (joint assets, livelihoods);
- 8) Light theft;
- 9) Theft of domesticated animals;
- 10) Customary violations concerning livestock, agriculture and forests;
- 11) Disputes at sea;
- 12) Disputes on the market;
- 13) Mild persecution;
- 14) Forest burning (on a small scale that harms indigenous communities);
- 15) Harassment, slander, incitement and defamation;
- 16) Environmental pollution (light scale);
- 17) Threatening (depending on the type of threat); and
- 18) Other disputes that violate customs and customs.

Out of the 18 disputes, only disputes in the sea that brought to the Customary Court of *Laot Lhok* (marine justice) or the *Laot* Customary Court of the City District, the rest was settled by the *Gampong* Customary Court.

Mansur (2013, 2014) in his research explained that, among the 18 types mentioned above, many *khalwat*/ sordid cases give rise to a discourse





of resolution in the midst of society. This is because, in addition to the increasing *khalwat*/ perverts violations, there is also confusion, what kind of *khalwat*/ obscene violations are truly the authority of the customary court. Because, in addition to customary justice, in Aceh there are *Qanun* Aceh Number 6, 2014 concerning *Jinayat* Law which also gives authority to the *Syar'iyah* Court to settle *khalwat* cases.

Although in Article 24 the *Jinayat* Law *Qanun* has provided an opportunity for the *adat* court to resolve it, in practice sometimes what is resolved in the *adat* court is precisely not the *khalwat* as defined by *khalwat*.<sup>1</sup> In fact, cases resolved at the Customary Court level when viewed from the *Qanun Jinayat* have actually taken *ikhthilath* actions,<sup>2</sup> and not infrequently also resolved is a case that has been admitted by the perpetrator as adultery.<sup>3</sup>

To overcome this discourse, perhaps what can be done is to give a clear and explicit definition related to the limits of *khalwat* which level can be resolved by customary justice, and what should be resolved at the *Syar'iyah* court. If there is a *khalwat* violation in the category that does not enter the boundary, it can be resolved at the *adat* court level, so that the violation is immediately delegated to the *Wilayatul Hisbah/Syari'ah* Police (WH) to be processed in the *Syar'iyah* Court.

In addition, with the existence of the laws and *Qanun* above, it can be concluded that the existence of customary law both in the material and formal sense (customary justice) can be said to have been placed in a positive (formal) legal system. This shows that the existence of customary law and customary institutions (customary justice) will eventually lead to

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<sup>1</sup> See article 1 (23) the *Qanun* Jinayah of Aceh Province (*Qanun* No 6 of 2014): an act being in a closed place or hidden between two people of different types sex which is non mahram and without marital ties with the willingness of both parties tha leads to fornication.

<sup>2</sup> See article 1 (24) the *Qanun* Jinayah of Aceh Province (*Qanun* No 6 of 2014): An act of touching, hugging and kissing between a man and a woman who is not a husband and wife with a willingness of both sides, either in a closed or open place.

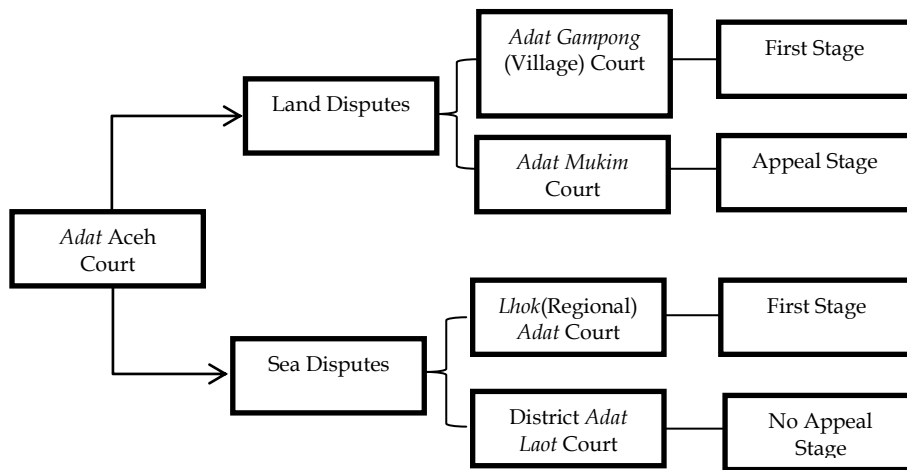
<sup>3</sup> See article 1 (26) the *Qanun* Jinayah of Aceh Province (*Qanun* No 6 of 2014): intercourse between a man or more with awoman or more without marriage bonds with the willingness of both parties.



formal legislation. The consequence is that customary law and *adat* court can be rigid as is the practice of other formal institutions. If the legislation does not regulate it, then the practice of customary society as unwritten law (unwritten law) that has been practiced for generations will be deemed to have no formal meaning.

c. Structure of *Adat* Courts in Aceh

Structurally, *adat* court is divided into the *Adat Gampong* Court, the *Adat Mukim* Court, the *Adat Laot* Court and the district/city Marine Court. The *Adat Gampong* Court and the *adat* court court of *Mukim* resolve disputes that occur on land, while the *Adat laot lhok*/Marine court and regency/city *adat laot*/*Adat Laot* court resolve fisheries disputes that occur at sea. For more details, see the following scheme:



Scheme 1: *Adat* Court in Aceh

The scheme illustrates that the customary land court has the first level and appeal level, while in the sea area, the two types of the judiciary remain called the first and last levels. The second difference between the customary court of the sea area lies in the jurisdiction or authority of the region to try. *Adat Lhok* court only has the authority to adjudicate fishermen's disputes in their area, while the District *Adat* (Marine) Courts adjudicates cases between fishermen in two regions of *Lhok* or more, and also adjudicates the *Lhok*



dispute if the *Panglima Laot* (chief of maritime in an area) cannot solve the disputes among the fisherman. (Ahmad, 2010: 45; Mansur, 2010: 27).

*Adat* court in Aceh, especially land areas, is not only authorized to resolve customer disputes but at the same time as an extension of the government at a low level. Meanwhile, the Marine customary Court does not have the authority as land *adat* court is not an extension of the government's hand. The marine customary court only runs customary dispute resolution and regulates the procedures for fishing in the sea. Nevertheless, in the *Qanun* Aceh Number 9, 2008 concerning the Development of Indigenous and Customary Life and *Qanun* Aceh Number 7, 2010 concerning Fisheries, the marine Customary Court in this case the head of the court (*Panglima Laot*) was made a government partner to build, foster and welfare of fishermen and coastal areas.

#### **D. Conclusion**

The position of *adat* court in Aceh is getting stronger along with recognition through Law Number 11 of 2006 concerning Aceh Government, *Qanun* Aceh Number 9, 2008 with the Development of Indigenous and Customary Life, and *Qanun* Aceh Number 10 of 2008 concerning Customary Institutions. With the existence of legislation, the authority of *adat* court is also increasingly clear, namely resolving small disputes/which occur during society. However, the nomenclature of the judiciary stipulated in legislation can still be debated. Based on the laws and regulations in Aceh, the structure of *adat* court in Aceh consists of *Adat Gampong* Courts, *Adat Mukim* Courts, *adat* court in the sea area consists of *Lhok* (regional) and District *Adat* Court. However, from a regulatory standpoint, the legislation is still rather weak.

#### **Bibliography**

- Abbas, S., Tabrani ZA, & Murziqin, R. (2016). Responses of the Criminal Justice System. In *International Statistics on Crime and Justice* (pp. 87-109). Helsinki: HEUNI Publication.
- Abdullah, M. Adli. (2015). "Mukim dan Spirit Perdamaian", in *Mukim di Aceh, Sulaiman (ed.)*, Diandra Pustaka Indonesia.



- Abdurrahman. (2013). Laporan Akhir Kompendium Hukum Tentang Penyelesaian Perkara Pidana Dalam Hukum *Adat*. Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia R.I.
- Arifin, Bustanul. (1977). Bagaimana Hubungan Hukum Islam dan Hukum *Adat*, *Risalah Islamiyah*, No 3-IX. Jakarta: Bumi Restu.
- Arifin, M., & Manan, A. (2018). Cultural Traditions of Khanduri Blang in Reubee Village Aceh, Indonesia. *Jurnal Ilmiah Peuradeun*, 6(3), 427-446. doi:10.26811/peuradeun.v6i3.243
- Asshiddiqie, Jimly, (tt). *Lembaga-Lembaga Negara Organ Konstitusional Menurut UUD 1945*, Available at: [www.jimly.com](http://www.jimly.com).
- Bustamam-Ahmad, K. (2010). 'Panglima Laot di Aceh Masa Kini: Sebuah Tinjauan Sosial-Antropologi', in *Kearifan Lokal di Laut Aceh*, M. Adli Abdullah, et.al (Ed.), Banda Aceh: Syiah Kuala University Press.
- Djuned, Teuku. (2003). *Hukum Adat dan Adat*, Fakultas Hukum Unsyiah: Banda Aceh.
- Djuned, Teuku. (2003). *Hukum Adat dan Politik Hukum di Indonesia*, Universiti Syiah Kuala: Banda Aceh.
- Djuned, Teuku. (2011). *Adat adalah Kearifan, Pemaknaan dan Penerapan Hukum Adat di Aceh*, Pustaka Rumpun Bambu: Banda Aceh.
- Hadikusuma, Hilman. (1981). *Hukum Ketatanegaraan Adat*, Bandung: Alumni.
- Lombard, Denys. (2007), *Kerajaan Aceh Zaman Sultan Iskandar Muda (1607-1636)*, Trans. Winarsih Arifin KPG, Jakarta: Gramedia.
- Lvina, E. (2015). The Role of Cross-Cultural Communication Competence: Effective Transformational Leadership Across Cultures. *Jurnal Ilmiah Peuradeun*, 3(1), 1-18.
- Mahdi. (2011). Eksistensi Peradilan *Adat* di Aceh, *Jurnal Studia Islamika*, 8 (2), 189-215.
- Manan, A. (2017). The Ritual Calendar of South Aceh, Indonesia. *Jurnal Ilmiah Peuradeun*, 5(1), 59-76. doi:10.26811/peuradeun.v5i1.120
- Mansur, T.M. & Jalil, F. (2013). Aspek Hukum Peradilan *Adat* di Indonesia Periode 1602 – 2009, *Jurnal Kanun Ilmu Hukum*, 59 (XV).

- Mansur, T.M. (2008). *Kedudukan Peradilan Adat Laot dalam Sistem Hukum Nasional. (Tesis)*, Banda Aceh: Magister Ilmu Hukum Univeritas Syiah Kuala
- Mansur, T.M. (2010). *Kedudukan Putusan Peradilan Adat Laot di Aceh*, in *Kearifan Lokal di Laut Aceh*, M. Adli Abdullah, dkk (Ed.). Banda Aceh: Syiah Kuala University Press.
- Mansur, T.M. (2017). *Perkembangan dan Pembaruan Hukum Adat di Indonesia*, Bandar Publishing, Banda Aceh.
- Nurjaya, I.N. (2005). Reorientasi Tujuan dan Peranan Undang-Undang dalam Masyarakat Multi Budaya: Perspektif, Antropologi Undang-undang, *Jurnal Undang-Undang dan Masyarakat* 95 (9).
- Nurjaya, I.N. (2011). 'Memahami Kedudukan dan Kapasitas Hukum Adat dalam Politik Pembangunan Hukum Nasional, *Jurnal Perspektif*, 26(4) September Edition.
- Nurjaya, I.N. (2012). State Law In A Multicultural Country Of Indonesia: Toward A Just And Equitable State Law In Legal Anthropology Point Of View, *US-China Law Review*, 20 (9).
- Nurjaya, I.N. (2013). 'Memahami Posisi Dan Kapasitas Hukum Adat Dalam Politik Pembangunan Hukum Di Indonesia: Perspektif Antropologi Hukum', *Majalah Hukum Nasional*, No. 2, Year 2013.
- Spiller P. (Ed.) (1999), *Dispute Resolution in New Zealand*. New Zealand: Oxford University Press.
- Tabrani ZA. (2014a). *Dasar-Dasar Metodologi Penelitian Kualitatif*. Yogyakarta: Darussalam Publishing.
- Taqwaddin. (2009). Gampong sebagai Basis Perdamaian Di Aceh, Lokakarya Perumusan Metoda Penerapan Nilai-nilai Kearifan Lokal untuk Mewujudkan Perdamaian Berkelanjutan di Aceh, Banda Aceh: JAPPP dan BRA.
- Tripa, Sulaiman. (2011). Penyelesaian Sengketa dalam Masyarakat Gampong di Aceh Setelah Lahirnya undang-undang No. 11 tahun 2006 tentang Pemerintahan Aceh, *Jurnal Ilmu Hukum Litigasi* 10 (12), 992.
- Walidin, W., Idris, S., & Tabrani ZA. (2015). *Metodologi Penelitian Kualitatif & Grounded Theory*. Banda Aceh: FTK Ar-Raniry Press.



