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Strengthening Aceh's Customary Courts For Enforcement Of Civil Procedure Law In Indonesia

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Abstract

The people of Aceh believe that order and peace in society can be maintained by maintaining customs. In realizing the enforcement of customary law in dealing with various cases and disputes in the community at the Gampong and Mukim levels, the government through Article 6 of Law Number 44 of 1999 and Article 98 of Law Number 11 of 2006, has provided reinforcement for the existence of customary institutions. in Aceh. However, in the practice of customary justice held by customary elders, there are often several obstacles, this time the researcher wants to examine these obstacles and how to solve them so that the customary justice process runs smoothly.
The research method used is a normative juridical approach with descriptive analytical research specifications. The data analysis method used is qualitative juridical analysis.
Based on the research results, there are obstacles to customary courts in Aceh, namely in their implementation experience several obstacles, namely parties who are dissatisfied with the customary court's decision to re-submit their cases to the district court, some customary judges have bad faith, distrust of customary decisions. Therefore, it is necessary to revise the Law on Judicial Power, regenerate customary judges, provide legal education to customary judges

Keywords: Aceh, Customary, Law

Introduction

The colonial government in the past realized that its power could not effectively reach the villages, therefore, to ensure that order continued, local institutions were recognized. The Dutch East Indies government legislation left five types of courts, namely the Governor's Court, the Indigenous Court (Customary Court), the Swapraja Court, the Religious Court and the Village Court.[1] During the Dutch colonial period, the Indonesian people were not allowed to have their own judiciary, so a trial was carried out in

the name of the king. This statement means that apart from state courts, the original courts are recognized and allowed to apply. The original courts were of two kinds, namely the customary courts in some areas which were directly under the Dutch East Indies government, and the autonomous courts, actually long before the customary courts were regulated in the Dutch colonial regulations.

The recognition of the courts for indigenous people, namely the customary courts and village courts as described above because the Dutch realized that they could not solve all the problems faced by the Dutch East Indies (Indonesian) themselves by using European courts. The division of population classification by the Dutch was seen as a solution to this problem, which emphasized that the population group in the Dutch East Indies was divided into three, namely: the European population group, the Foreign Eastern population group and the Indigenous population group. Each of these population groups applies legal rules that are in accordance with their respective groups in the event of a case, except for submitting to the laws used by the Dutch government. At that time, Inheemsche Rechtspraak was a trial carried out by European judges as well as Indonesian judges, not on behalf of the king or queen of the Netherlands and not based on the European legal system, but based on the customary law system established by the resident with the approval of the Director of Justice in Batavia.[2]

According to Ter Haar, who is known through decision theory/beslissing leer, customary law is the entire set of regulations that are embodied in the decisions of authoritative, influential legal functionaries that apply spontaneously and are obeyed wholeheartedly.[3] The unique character of customary law that lives in society is a system that seeks a common agreement regarding the rules on how customary law applies and binds indigenous peoples, so that they can be obeyed and implemented.[4]

The people of Aceh believe that order and peace in society can be maintained by maintaining customs. This can be shown through Narit Maja Aceh or the adage that has been passed down and believed by the Acehnese people. They stated 'Ta pageu lampoeh ngon wire, ta pageu nanggroe ngon adat'. This proverb is interpreted as 'we secure the garden with wires, we secure the country with custom. For this reason, in realizing the enforcement of customary law in handling various cases and disputes in the community at the Gampong and Mukim levels, the government through Article 6 of Law No. 44 of 1999 and Article 98 of Law No. 11 of 2006, has strengthened the the existence of customary institutions in Aceh. The two legal instruments state that customary institutions function and play a role as a vehicle for community participation in the administration of Aceh government and district/city governments in the fields of security, peace, harmony and public order.[5]

In general, the implementation of customary peacekeeping is carried out by the village and religious adherents. The same applies to all of Aceh, except that in certain areas, such as Aceh Tengah and Aceh Tamiang, they use different terms. Even so, the function remains the same. This is a dispute resolution agency or customary case.The privileged status of Aceh which was marked by the issuance of Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh as the Province of Nanggroe Aceh Darussalam led to the birth of three new institutions in Aceh, namely the Aceh Customary Council which was in charge of handling customary issues, the Ulema Consultative Council tasked with handling the issue of the Islamic religion and the Aceh Educational Council which handles education issues in Aceh.[6]

Law Number 11 of 2006 concerning the Government of Aceh (hereinafter referred to as the Law on the Government of Aceh) is the central government's acknowledgment of regional specificity. Aceh is a special area that is regulated by a separate law in carrying out its government. These specifics include, among others, the existence of nanggroe guardians, customary institutions, management of regional assets, the division between central and regional

finance, the application of Islamic law, and the implementation of customary life.

Customary courts in Aceh's indigenous people are a necessity because they are inexpensive and satisfactory dispute resolution institutions, this is because the customary courts seek to reconcile, not find out who is wrong and who is right.[7] The settlement of customary disputes in Aceh does not mention customary justice but directly mentions the names of government institutions such as gampong and mukim, so that customary justice is carried out in a customary manner in Gampong and customary settlements in Mukim. In general, the implementation of customary peace courts is carried out by institutions called gampongs and mukims. In certain areas, such as Aceh Tengah and Aceh Tamiang, customary courts use other terms, but their function remains the same, namely as an institution for resolving disputes or customary cases.[8]

The implementation of customary justice at the gampong and mukim levels is highly dependent on the community level, both at the gampong and mukim levels. The process of implementing customary procedures that take place in the community actually does not have a clear and standard judicial apparatus or judicial judge, this is because the customary dispute resolution institutions that are practiced do not have standard provisions. However, in the practice of customary justice held by customary elders, there are often several obstacles, this time the researcher wants to examine these obstacles and how to solve them so that the customary justice process runs smoothly in order to enforce civil procedural law.

Methodology

The research method used is a normative juridical approach with descriptive analytical research specifications. Data collection techniques used interview techniques with related agencies to obtain primary data and literature study to obtain secondary data such as legislation, jurisprudence, opinions of the judges of the Sharia Court, customary leaders, legal experts. The data analysis method used is qualitative juridical analysis by reviewing data based on legal aspects to obtain a strategy for strengthening Aceh's customary courts.

Discussion

The customary dispute resolution process in the gampong will be carried out by the customary apparatus consisting of the following customary leaders: Keuchik, imeum meunasah, tuha peut, gampong secretary; and scholars, intellectuals and other customary leaders. In the implementation of customary disputes, there are two mechanisms that are usually passed, namely[9]: first, the procession of resolving normative values (customary law), through the Meusapat customary forum (gathering for deliberation), deliberations of customary leaders / related institutions and the parties concerned in the relationship. Settlement of human rights disputes/violations, using the principle of "tastasipat, blood tasukat" (Aceh proverb which means that wounds and blood are measured to be compensated according to the losses suffered) by providing compensation for losses. Buet nyan get peureulee beu bagah, defender jeuet hard watee iblih teuka. (Aceh proverb which means good work must be hastened, so as not to be deceived by the devil). Second, the formal settlement procession through customary (public) ceremonies in public, with the core of the event: peusijuk (forgiveness), sayam (delivery of compensation), advice and prayers. The prayers that are said are of course related to Islamic law because in Aceh, there is a reception stating that customary law and Islamic law for Aceh's indigenous people are like two sides of a coin that cannot be separated. The people of Aceh liken it to the expression hukoem ngon adat lage zat ngon sifeut (law and custom such as the relationship between substances and their nature). The meaning is that a substance with properties is something different, it can be identified but cannot be separated.

Coordination between customary leaders and law enforcement officers in Aceh is carried out properly so that the process of customary dispute resolution institutions does not conflict with the law enforcement process in general. Point 2 and Point 3 Joint Decree of the Governor (hereinafter

referred to as SKB), the Head of the Aceh Regional Police, and the Chair of the Aceh Customary Council, Number 189/677/2001, 1054/MAA/XII/2011, B/121/I/2012 dated 20 December 2011 stated that the police provide an opportunity so that any disputes or disputes that fall into the realm of adat are resolved first through the gampong adat institutions, the mukim and all parties are obliged to respect the implementation of adat dispute resolution in the adat institutions in the gampong and mukim.[10]
Gampong and Mukim customary institutions in Aceh, although they already have a Guidlines for the Implementation of Customary Courts, have several weaknesses, namely the following:

1. Customary decisions produced through mediation at customary dispute resolution institutions at the gampong and mukim levels have final and binding legal force, this is in accordance with Article 12 paragraph (3) of Qanun 5 of 2003 and is also stated in the Joint Decree (SKB) between The Governor of Aceh with the Aceh Regional Police and the Aceh Customary Council (MAA) through the SKB Number as follows: 189/677/2011, 1054/MAA/XII/2011, B/121/I/2012 concerning the Implementation of Gampong and Mukim Customary Courts or other names in Aceh. The binding nature of these customary decisions is also reaffirmed in Article 18 paragraph (1) of the Aceh Governor Regulation 60/2013. In fact, many have been reconciled in customary institutions, but the people concerned are sometimes dissatisfied with the decisions of the customary judges. The parties re-apply to the District Court or to the Sharia Court, firstly because the decision was issued by a gampong institution which is a non-litigation institution. The two judges are guided by Article 10 of the Law on Judicial Powers; they may not refuse a case submitted to them, so the case is accepted and tried by state judges.
2. Judges in several customary institutions are now not from respected figures but from community members who want to nominate as judges in customary institutions. There are some prospective judges who have the goal of enriching themselves and have the ambition to have a great influence in the customary institution. Of course, it is different from the original purpose of customary institutions as stated in Qanun Number 10 of 2008 which is to reconcile the disputing parties, but because there are customary institutions that have two functions of customary institutions that function as government (district level) and customary institutions to resolve customary disputes such as keucik.
3. The existence of this gampong customary dispute settlement institution has its own privileges in Aceh Province, but due to the times and modernization, some Acehnese do not trust the decisions of customary judges, therefore they choose to settle their disputes in state courts.

Of course, in addition to the weaknesses described above, there are several advantages of customary dispute resolution institutions, including the following:

1. Easy to access, fast and cheap, for example, while conducting research, one time there was a dispute between residents in Central Aceh, regarding the right to violate their yard to build a fence to block the road to their house, resulting in a dispute and causing injuries. Keucik, as the head of the custom, called his residents to come to the village hall at night to resolve the problem by deliberation. The deliberation was attended by the disputing parties, the customary secretary and customary leaders, the problem was resolved on the same day and both parties forgave each other
2. Flexible, that is, the structure and norms that apply there are loose to adapt to social changes. The flexible characteristic of customary dispute

resolution institutions is the imposition of sanctions, for example

3. The main objective of customary courts is actually to prioritize harmony, especially the creation of acceptance that is more accommodating to the needs of the parties'.[11]

The researcher in this case recommends several alternatives for strengthening Aceh's customary courts for the enforcement of the Civil Procedure Code, which are as follows

1. Recognition of customary dispute resolution institutions in the Law on Judicial Power (Revised Law No. 48 of 2009 concerning Judicial Power).

   The legal hierarchy theory according to the Judicial Power Act adheres to legal politics that does not recognize the existence of customary dispute resolution institutions, which is a form of political ignorance of the rights of community units which are normatively contrary to Article 18B paragraph (1) and (2) the 1945 Constitution, which recognizes and respects special regional government units and customary law community units. This provision is constitutional respect in customary law community units, so that it becomes constitutional respect and recognition[12] or legal politics at the macro level is apparently not followed by the politics of legislation or legal politics at the macro level is not followed by legal politics at the macro level. legislation (politics of legislation) or legal politics at the level of messo .[13] According to the legal hierarchy theory, the legal politics contained in the basic legal norms (vesfassungnorm) must be further elaborated in laws and regulations (gesetzgebungnorm) where the legal norms are general and binding on all citizens.[14]

   Article 24 paragraph (2) of the 1945 Constitution also explicitly states that the perpetrators of judicial power are the Supreme Court and the judicial bodies below it, namely the general court, religious court, military court, state administrative court and the Constitutional Court. Customary dispute resolution institutions are laid down in the Law on Judicial Power. Article 24 paragraph (3) of the 1945 Constitution states that other bodies whose functions are related to judicial power are regulated in law, in fact they can be an alternative to the inclusion of customary dispute resolution institutions in the Judicial Power Act.[15]

2. To make functionaries/customary stakeholders in customary dispute resolution institutions to regenerate downwards.

   The position of customary functionaries has been widely held by the elderly who are considered to be wise. This customary functionary should make his position as a position that must be chosen by the community so that regeneration occurs from the old to the younger generation so that it is not dominated by only the old people whose thinking patterns are still customary. The regeneration of the leadership of customary functionaries is in line with the nature of customary law, which is flexible according to the times (provided that the younger generation does not have an element of interest).

3. Providing legal education to customary functionaries

   It aims to make indigenous peoples living in remote areas aware of the law. The strategy for developing the quality of human resources (in this case indigenous peoples) in accordance with the relationship between local customs and traditions is one of the main sources in an effort to maintain local wisdom so that customs and culture maintain their customary dispute resolution institutions, so as to create harmony between communities, officials customs and customary holders in the local area.

   According to the researcher, legal education for customary functionaries can be carried out by young judges who have just been appointed by the state court to devote themselves to society. The aim is to socialize legal regulations to customary officials. These young judges must come to the village when there is a customary trial held in the villages, record what happens

in the field, as well as provide legal counseling and oversee the proceedings.

4. Strengthening the decisions of customary dispute resolution institutions so that they can be executed

   Decisions/stipulations issued by customary dispute resolution institutions so far only have binding legal force to the disputing parties, but if one of the parties breaks a promise (wanprestasi), the customary court decision/stipulation does not have binding legal force for execution. This is because customary law communities do not have the authority to carry out executions. Decisions/stipulations for customary law communities are a form of out-of-court settlement but are not mediating institutions as regulated in Perma No.1 of 2016 concerning Mediation.[16]

   According to the researcher, if later the customary dispute resolution institution or whatever the term is recognized by the government as a judicial body outside the state court, then the decision of this customary dispute resolution institution in order to be executed needs to be given an irah-irah: "For Justice Based on God Almighty", so the decision has executive power as a court decision which has permanent legal force.

   So far, based on research by researchers, decisions of customary dispute resolution institutions in several regions cannot be executed because there is no such executorial title. The researcher also recommends that the decision/stipulation can be like an arbitration award which is final and binding so that there is no ordinary legal remedy of appeal and cassation.

5. Supervision from the government/legal apparatus on the implementation of customary dispute resolution institutions

   In cases where the criminal aspect is more dominant, state representatives should be involved, if in civil cases the village/district government and the police are involved. Customary cases both in criminal and civil aspects are sometimes equally severe, so at this stage both the village/sub-district government and the police are involved. The state party is involved not to intervene, but to witness and if one day the case is transferred to the state court, then the state court is aware of the problem.[17] The role of the government in supervising this, of course, must be with the approval of the customary stakeholders, if the customary stakeholders do not object to the involvement of the state government then this will not be an obstacle or obstacle. In cases that need special attention, such as a decency trial, especially for women and children, customary stakeholders are required to provide protection and assistance from non-governmental organizations (hereinafter referred to as NGOs), customary women activists or from female religious leaders. Customary cases that are dealt with by multinational companies or foreigners in customary courts are usually accompanied by NGOs that observe Indigenous Peoples, NGOs that observe the Environment/Biodiversity, NGOs that observe Human Rights or Komnas HAM.[18]

Conclusion

Gampong and Mukim customary institutions in Aceh, although they already have Implementation Guidelines, in their implementation experience several obstacles, namely parties who are dissatisfied with the customary court's decision to re-submit their cases to the district court, some customary judges have bad faith, distrust of customary decisions. Therefore, it is necessary to revise the Law on Judicial Power, regenerate customary judges, provide legal education to customary judges

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