International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 21-12-2023, Accepted: 05-01-2024, Published: 20-01-2024
Volume 10, Issue 1, 2024, Page No. 74-75

Legal status of *Gampong* customary court decisions in resolving minor crimes in West Aceh Regency

Riyan Auliyanda Safrizal[1], Mohd Din[2], Teuku Muttaqin Mansur[2]
[1] Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia
[2] Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract
As a developed country, Indonesia adheres to three systems, namely western law, Islamic law and customary law. These three legal systems live and develop in its society. Aceh is one of the provinces in Indonesia which is given privileges based on Law No. 44 of 1999 concerning Privileges. Aceh, one of Aceh's specialties is the implementation of life in the field of customs and customs. In practice, in Aceh, it is known that the method of resolving cases is customary and formal/state courts, but currently there is a lack of trust in resolving cases through customary courts, so this has an impact on the community obeys the decisions made by the Customary Court Council and the case ultimately leads back to formal justice, so it is interesting to study the position of customary court decisions in the Indonesian legal system.

Keywords: Adat court, decision, Aceh

Introduction

Aceh is a special region, Aceh's specialness has a constitutional basis which is regulated in Articles 18, 18 A, and 18 B of the 1945 Constitution. Aceh's specialties were first regulated in Law No. 44 of 1999 concerning Aceh's Specialties, and subsequently also regulated in Law No.11 of 2006 concerning UUPA. Regarding the recognition and position of the Acehnese customary court, Law No. 11 of 2006 concerning UUPA does not explicitly mention the position and recognition of the Acehnese customary court. However, Article 98 Paragraph (2) of the UUPA still somewhat shyly mentions the term dispute resolution through customary institutions [1]. The phrase in the article does not clearly mention customary courts but traditional institutions, because the phrase in the article is still vague so in practice it sometimes causes problems due to confusion in the mention of the term.

However, Aceh has made innovations in interpreting the sound of the article that the institution referred to in the UUPA is a customary court, even though in Aceh Qanun No. 9 of 2008 concerning the Development of Traditional Life and Customs, and Aceh Qanun No. 10 of 2008 concerning Traditional Institutions, the phrase customary court has not yet been found, but recently the phrase customary court has only appeared in Aceh Gubernatorial Regulation No. 60 of 2013 concerning the Implementation of Dispute Resolution / Customary Disputes, in Article 1 Paragraph 7 of Aceh Gubernatorial Regulation No. 60 of 2013 explains that "customary justice is justice carried out by traditional institutions at the gampong level or other names, in resolving cases that occur in the community".

Historically, customary justice in Aceh has existed since the time of the Iskandar Muda sultanate, at that time there were 4 forms of justice: civil court, criminal court, religious court and commercial court. At that time the civil court was held every morning except Fridays in a large hall near the main mosque (now the Baiturahman Grand Mosque), the chairman of the court was a rich and wealthy man. Criminal courts are held in other halls, namely towards the palace doors, while religious courts and commercial courts only examine special cases or in national law are now known as Ad-Hoc courts, religious courts are chaired by a Qadhi who examines and tries those who violate the norms religion [2].

In practice, customary court decisions are only stated verbally and there is no peace report so that parties who are not satisfied with the results of the customary court decision take legal action by reporting the case back to the police so that it ends up returning to formal justice. This legal phenomenon is known as the principle of Indonesian criminal law by the term *nebis in idem*, meaning that a case that has already had a final and binding decision on the same subject and matter cannot be examined a second time. If we refer to norms, the power of the peace decision is very strong, cases that have received a customary decision cannot be tried a second time either by custom itself or in the formal justice system.

Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data [5].

Based on the background above, the problem formulation in this research focuses on Legal Status of *Gampong* Customary Court Decisions in Resolving Minor Crimes in West Aceh Regency

Result and Discussion

This form of case resolution outside of court (non-litigation) is possible in Indonesia, this is because the 1945 Constitution and Law No. 4 of 2004 concerning Judicial Power allow dispute resolution outside of formal justice. Local community-based dispute resolution methods are currently in the process of in-depth review. In the end, this

will become an alternative resolution pattern to speed up the case resolution process [3].

One form of resolving cases outside of court is as has been practiced by gampong communities in Aceh. Gampong was historically formed during the time of Sultan Iskandar Muda (1607-1636), namely the smallest territorial form of government structure in Aceh. At that time, Gampong consisted of groups of houses located close to each other, and at that time the Gampong was under the auspices of the Mukim. The village leader is called keuchik, who is assisted by someone who is skilled in religious matters called teungku *meunasah* [4].

As with the gampong, the existence of traditional justice historically in Aceh also began to exist during the Iskandar Muda sultanate, Aceh already had its own form of justice, at that time there were 5 (five) levels of justice during the sultanate, the order was; (1) Kadhi Malikul Adil; (2) Kadhi Rabbul Jalil; (3) Nanggroe Court Hall; (4) Mukim Court Hall; (5) Gampong Court Hall [5].

In relation to the legal basis of Acehnese traditional court decisions, it has been regulated in several statutory regulations such as in Article 103 letters d and e of Law No. 6 of 2014 concerning Villages which explains that one of the authorities of traditional villages is the resolution of customary disputes based on customary law. applies to local traditional villages. Furthermore, decisions from the customary dispute resolution process are recognized as a source of law for judges as explained in Article 5 Paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states that judges and constitutional justices are obliged to explore, follow and understand legal values. and a sense of justice that lives in society. This provision is intended so that the decisions of judges and constitutional justices are in accordance with the law and society's sense of justice [6].

Implementation in the field of Customs and Customs in Aceh has been specifically regulated both in the Aceh Qanun and other regulations such as in Article 18 Paragraph (1) of Aceh Gubernatorial Regulation No. 60 of 2013 concerning Settlement of Disputes/Customary Disputes which explains that Customary Court Decisions are Final and Binding, apart from the Aceh Gubernatorial Regulation, another basis which explains the position of Aceh Customary court decisions specifically is the 2011 SKB of the Governor, Regional Police Chief and MAA of Aceh, in The sixth dictum of the 2011 SKB reaffirms that the decisions of the Gampong and Mukim Traditional Courts in other names in Aceh are Final and Binding and cannot be submitted again to the general court or other courts [7].

Based on the basic legal description above, it can be analyzed that since the beginning customary law has functioned as a source of law and is not bound by structural relationships, basically there is no obligation for a judge to comply with Aceh Customary judicial decisions. Referring to several other studies it also explains that there is a non-binding functional relationship. between the state court and customary court decisions, in which case the state court recognizes the authority of the customary/village court in making peace decisions even though the decision is not binding on the judge. One piece of jurisprudence that explains this is the Supreme Court Decision Number 436K/Sip/1970. This jurisprudence gave birth to the rule that peace decisions through customary mechanisms are not binding on judges, district courts can deviate from these customary peace decisions.

In the criminal realm, there are judges who also recognize customary crime as a source of law, for example, in the Makasar High Court Decision Number 427/Pid/2008, in this case the judge sentenced someone for having sexual intercourse outside of marriage, considering that this behavior is basically not prohibited. In the Criminal Code, the judge then links his decision to local customary law.

Conclusion

Based on the description above, it is clear that the position of customary court decisions is as a source of formal law for judges, although customary court decisions are a recognized institution, institutionally, customary justice is a non-formal justice institution whose decisions are not binding on formal court judges, however, judges in examining and adjudicating a case must explore the values that exist in society as mandated by the Judicial Power Law

Reference

1. Teuku Muttaqin Mansur, *Hukum Adat Perkembangan dan Pembaruannya*, Banda Aceh, Syiah Kuala University Perss, 2018, hlm.223.
2. C.Van Vollenhoven, *Orientasi dalam (Hukum Adat) Indonesia*, Jakarta, Djambatan, 1985, hlm.
3. Sulaiman Tripa, *Peradilan Gampong*, Banda Aceh, Banda Publishing, 2019, hlm.113
4. Sulaiman Tripa, *Peradilan Gampong*, Banda Aceh, Banda Publishing, 2019, hlm.113
5. Badruzzaman Ismail, F*ungsi Meunasah Sebagai Lembaga (Hukum) Adat dan Aktualitasnya di Aceh*, Banda Aceh, MAA, 2009, hlm.191.
6. Yance Arizona, "Kedudukan Peradilan Adat Dalam Sistem Hukum Nasional", Jurnal *Peneliti Epistema Institute*
7. Pergub Aceh No.60 Tahun 2011 dan SKB Guberur, Kapolda, dan MAA Aceh Tahun 2011