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STRUGGLING TO SURVIVE IN COMPLEX AND MODERN ERA: STUDY ON THE IMPLEMENTION OF ALTERNATIVE DISPUTE RESOLUTION IN ACEH CUSTOMARY COURTS

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Abstract

The holistic implementation of Islamic law in the life of Acehnese community has brought "big changes," one which is force the majority Acehnese involved in conflicts or disputes bringing their cases solved to Mahkamah Syari'ah as a formal legal instituon which mostly leads disputants to expensive costs, long consumed and waste time as well as exhausting, even unjust feeling. However, the implementation has revitalized the existence of customary court which almost gave up in New Order regimes. The paper argues that the Acehnese legal culture embodied in Peradilan Gampông as customary Law is living law that would resolve destructive conflict and reduce the intention and huge suggestion of some people to resolve their cases through formal legal solution in State Courts (Mahkamah Syariah). With a socio-legal approach the research is focused on case studies on resolving dispute in Aceh customary courts (Peradilan Adat Gampông) at several Gompông in Aceh. The study found that peace, equilibrium, societal hood and justice as dominant principles in the life of Acehnese people at gampôngs and cities have brought customary law revived and as socities' primary choices in resolving their legal cases.

Keywords: *Alternative Dispute Resolution; Islamic Law; Customary Courts*

Abstrak

Implementasi hukum Islam yang holistik dalam kehidupan masyarakat Aceh telah membawa "perubahan besar", salah satunya adalah memaksa mayoritas masyarakat Aceh yang terlibat dalam konflik-konflik atau pertikaian untuk menyelesaikan kasus mereka secara formal – penyelesaian melalui Mahkamah Syari'ah dimana penyelesaian tersebut kenyataannya melahirkan banyak masalah baru, diantaranya beban biaya yang mahal, lamanya proses dan waktu yang cukup melelahkan, bahkan perasaan tidak adil pada diri yang bersengketa. Di sisi lain, penerapan hukum Islam tersebut telah menghidupkan kembali keberadaan Peradilan Adat yang hampir hilang pada rezim Orde Baru. Makalah ini berpendapat bahwa budaya hukum Aceh telah diwujudkan dalam bentuk Peradilan Gampông sebagai hukum masyarakat yang hidup, yang akan menyelesaikan konflik destruktif, mengurangi intensitas dan keinginan masyarakat yang tinggi untuk menyelesaikan kasus-kasus mereka melalui lembaga formal di Peradilan Negeri. Dengan pendekatan sosio-legal, penelitian ini difokuskan terhadap studi kasus dalam penyelesaian sengketa di Peradilan Adat Aceh (Peradilan Adat Gampông) di beberapa Gampông di Aceh. Penelitian ini menemukan bahwa perdamaian, keseimbangan, rasa bermasyarakat dan keadilan sebagai prinsip-prinsip yang dominan dalam kehidupan masyarakat Aceh pada Gampông-gampông dan kota-kota di Aceh, yang telah menyebabkan Peradilan Adat hidup kembali dan menjadi pilihan prioritas masyarakat dalam menyelesaikan kasus-kasus hukum.

Kata Kunci*: Penyelesaian Sengketa Alternatif; Hukum Islam; Peradilan Adat*

الملخص

إن التطبيقالشامل للشريعة الإسلامية في حياة المجتمع الأتشيهي أدى إلى "تغييرات كبيرة"، منها ضرورةحل قضايا النزاعات أو الخلافاتللغالبية العظمى من مواطني الإقليم، مما يؤدي بهم إلى مرافعات قضاياهم إلى المحكمة الشرعية بصفتها مؤسسة قانونية رسمية. وفي الواقع، هذا الشأن يثير العديد من المشاكل بما في ذلك التكاليف العالية وطول الإجراءاتوالأتعابل وحتى الشعور بالظلم. ومع ذلك، فإن هذا التطبيق أدى إلى إحياء المحكمة العرفية التي كادت تزول في عهد النظام الجديد. ترى هذه الورقة أن القانونالأتشيهي قد تحقق في شكل المحكمة الشعبية (*Peradilan Adat Gampong*) كالقانون المعتبر في المجتمع والتي من شأنها أن تحل الصراع المدمر، وتخففمن شدة ورغبة المجتمع العالية لحل قضاياهم عبر المؤسسات القانونية الرسمية في محكمات الدولة. من

خلال النهج الاجتماعي والقانوني، ركزت هذه الدراسة على دراسة حالة في حل النزاعات في المحكمة العرفية (المحكمة العرفية الشعبية)في عدة القرى بأتشيه. ومن نتائج هذه الدراسة هي أن السلام والتوازن والإحساس بالانتماء للمجتمع والعدالة كالمبادئ السائدة في حياة الشعب الأتشيهيفي القرى و المدن، مما أدى إلى إعادة إحياءالمحكمة العرفية وتصبح أولويات الناس في حل القضايا القانونية.
الكلمات المفتاحية: البديل تسوية المنازعات; الشريعة الاسلامية; المحكمة الشعبية

A. Introduction

The introduction of sharia as a source of law in Aceh as codified in Indonesian Law Number 18 Year 2001 (an extension of Law Number 44 Year 1999 on the Special Status of Aceh Province) had caused a radical change in this region (Hadi, 2010), forcing its government and society to run their life according to the sharia (Syahrizal, 2006). Changes occur at least in four respects: *First*, the implementation of sharia in all aspects of religious life; *Second*, the inclusion of sharia in educational curriculum; *Third*, the recognition of ulama's role in local policy making; and *Fourth*, the inclusion of customary elements into village administrations (Santoso, 2003). The third and fourth points above, which can be found in Law Number 44 Year 1999, have made conflict resolution through the customary court (*pengadilan adat*) in Aceh traditional society (*masyarakat adat*) significant. Juridically, the position of the customary institution (*lembaga adat*), which has existed for a long time, was strengthened with Local Government Regulation (*Peraturan Daerah* - abbreviated as Perda and called Qanun in Aceh language), specifically: 1) Perda Number 3 Year 2000 on the Organization Establishment and Working Procedures of Council for the Deliberation of Ulama (*Majelis Permusyaratan Ulama* - MPU); (2) Perda Number 5 Year 2000 on Sharia Implementation in Aceh; (4) Perda Number 6 Year 2000 on Education Management; and (4) Perda Number 7 Year 2000 on Adat Management. The last Perda reestablished the privilege of *gampông* (village) as an authority to resolve legal cases through '*Gampông* Customary Court' (*Peradilan Adat Gampông*) (Fanani, 2008).

The term 'Customary Court' ('*Peradilan Adat*' or '*Pengadilan Adat*') is not commonly used by traditional or local societies. A more soft used terms are 'Customary Assembly'(*Sidang Adat*) or 'Customary Meeting' (*Rapat Adat*) in each society's language. A point of note is custom (*adat*) does not recognize the word justice (*adil*), which originates from Arabic. As such, Customary Court

proceedings usually do not intend to uphold justice, but to recover familial balance and harmony (Anonimos, 2003). Thus, '*Peradilan Adat*' can be considered as a unique method of conflict resolution in Aceh society's legal system due to its vision of realizing peace and harmony. Its uniqueness, however, does not preclude it from having many problems, just like other legal systems. The temporary abolition of the institution between 1979 and 2001 due to 'Aceh-Indonesia' conflict has caused the slow destruction of *adat* institutions, the loss of *adat* rights, and the shallowing of *adat* understanding. The change of the *gampông* system was also caused by the collapse of *adat* values and norms, except in rituals such as wedding and mourning ceremonies, as well as Prophetic celebration (*maulid*) (Cahyono, 2008). Recent Indonesian state policies may seem to have provided the *gampông* institution with a new lease of life, however reality has proved otherwise (Gayatri, 2008), as it stills maintain New Order (*Orde Baru*) like practices (Cahyono, 2008).

In addition to the above problems, attempts of legal cases resolution through '*Peradilan Adat*' have encountered other problems. Many members of Aceh society have not understood how to resolve conflicts through *adat* (UNDP, 2012). The nature of adat, loose, oral-based, and unstructured (*uncodified*) is somewhat out of sync with legal development in Aceh, such as the introduction of formal legal institutions, the State and Islamic Court (*Pengadilan Negeri* and *Mahkamah Syariah*). Various interpretations caused by the aforementioned *adat's* nature, in addition of the death of authoritative *adat* leaders due to either conflict or tsunami, have marginalized *adat*. The latter reason has limited conflict resolution through *adat* institutions and resulted in unfair treatment of marginalized groups such as conflict widows, the disabled, the elderly, the orphans, and children. In addition, the two *qanun*s (laws) which function as operational foundation for sharia implementation in Aceh, *Qanun* Number 10 Year 2002 on Islamic Court and *Qanun* Number 11 Year 2002 on Sharia Implementation in Creed (*Aqidah*), Worship (*Ibadah*), and Propagation (*Syiar*), have triggered the issue of how to locate or position civil law (*hukum perdata*) and criminal law (*hukum pidana*) in Aceh with Indonesian national legal framework which was based on *Pancasila* (Five Principles) and the 1945 Indonesian Foundational Law (*Undang-undang Dasar* 1945). The implementation of Islamic law is assumed to be uneffective under the Indonesian national legal system (Basri, 2010).

In addition to administrative issues, sharia implementation in Aceh also affects social life in Aceh, including legal cases resolution. For example,

between 1999 to 2000 – with the stipulation of Law Number 44 Year 1999 on Aceh Province Special Status – many cases were resolved outside of State Court, such as: (1) The parading of unmarried couple found in close proximity by North Kluet residents in South Aceh; (2) The raid of unmarried couple in a house and their trial in a community religious centre (*meunasah*), in which they were forced to shower, in Ujong Batee village, Aceh Besar (Muhammad, 2003). The resolution of these legal cases can be considered as a form of reaction by groups who tends to prioritize sharia – in other words the sharia-minded groups – even though in actually the punishments they inflict were in opposition to sharia especially *fiqh jinayah* ('Audah, 1993). As these mass trials (*peradilan rakyat*') occurred before the implementation of sharia, juridically they can be considered illegal or categorized as 'trials without court'. Sociologically, they occurred because of societal impatience and dissatisfaction with existing legal condition (Basri, 2003). They were also overzealous response and reaction towards the implementation of sharia in Indonesia, an effort to effect sharia outside the fold of national law (Muhyar, 2008).

As mentioned briefly previously, in addition to complications that arose due to the sharia and national legal systems, the tsunami which struck many parts of Aceh in 2004 also disrupted the recovery of the *adat* institution. Not only were infrastructures such as roads, bridges, houses, factories, offices, were destroyed and had to be rebuilt, *adat* institutions including its buildings and leaders also crumbled and died. External intervention, such as by the Indonesian or foreign government, also intensified the internal desire to formalize the sharia in Aceh, which can be seen as a means to perform social engineering to Aceh society (Feener, 2013). With this consideration in mind, as well as points mentioned in the previous paragraphs, this paper, a product of an extensive field study, analyzed the mechanisms of Alternative Dispute Resolution (ADR) among parties involved in legal cases outside of court in Aceh, focusing on case types and characteristics, as well as ADR implementation purposes. Related laws and stipulations were also discussed to find out whether a satisfactory ADR can be achieved, one that provides justice to a case perpetrator, victim, their families, and society.

B. Research Methodology

The study is based on field research in Banda Aceh, Biruen and Jantho, Aceh Besar, the three districs of Aceh province which could be justified and classified among rural and urban areas. Using qualitative approach, the data was

collected through observation and in-depth interview with the parties involved in private and public cases, local community experts living in the villages and cities, NGO's practitioners, legal and religious experts, as well as the local government. Consideration of the use of qualitative research approach is more complete data detained, more in-depth, credible and meaningful so that the goal of this research can be achieved. The strength of a qualitative research lies in its ability to provide a textual description of the complex, in particular information that is the human side, such as behaviors, beliefs, opinions, emotions, and interaction between individuals. Qualitative methods are also effective in identifying intangible factors, such as social norms, socioeconomic status, gender rules, ethnicity, religion and the whole issues that are not legible appearance (Bernard, 1995; Taylor, 1975).

C. General Review of Alternative Dispute Resolution (ADR)

The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanism that are short of, or alternative to, full-scale court process. The term can refer to everything from facilitated settlement negotiation in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration system and minitrials that look and feel very much like courtroom process (Brown, 2012). So, the form ADR can cover a broad spectrum of process, from formal proceedings involving a judge and closely resembling judicial proceedings taking place in a court, to purely private proceedings facilitated by a neutral third party and taking place, for instance, of the village public offices and company's headquarters.

Historically Alternative Dispute Resolution referred to an alternative to the courts. This original view of ADR as an "alternative" dispute resolution mechanism to litigation in the court system is no longer appropriate. Current practice of mediation internationally demonstrates that ADR and litigation "are not homogenous, separate and opposed entities (White, et. all., 2008). Similiarly, Black Law Dictionary stated that the term of Alternative Dispute Resolution refers to procedures setting dispute by means other than litigation; e.g.by arbitration, mediation, minitrial. Such procedures; which are usually less costly and more expeditious, are increasingly being used in commercial and labor dispute, divorce action, in resolving motor, vehicle and medical malpractice, tort claims, and in other disputes that would likely otherwise involve court litigation (Black, 1990). Beymen argued that the word

"alternative" on the concept emphasizes the meaning "looking outside the courtroom setting to resolve disputes" (Bymen, et. all., 2010), while Abdurrasyid considered it as a indicative sign for cooperative or non-confrontation procedures setting disputes (Abdurrasyid, 2002), obviously are different from litigious ones. Therefore, most lawyers demand that ADR implementation consists of a set of rules that govern the parties' dealings (or proceedings) in resolving their dispute (The World Bank Group, 2011), and are fundamental to any modern civil justice system in providing greater access to individualized justice for all citizens. ADR should not been seen as a separate entity from the court-based arrangements for civil justice but rather should be seen as an integral part of the entire system (White, et. all., 2008).

ADR initially emerged in the United States as a respond to the "litigation explosion", or crowded courts and litigious citizens. It is declared by American legal experts and lawyers, who warned that adversarial processes were tearing the country apart and should yield to mediation and arbitration by lawyers (McManus and Silverstein, 2011; Grace, 2010). In the following years, various ADR procedures in the country gained attention because they allowed courts to clear their dockets while engaging in less adversarial proceedings (Grace, 2010). In Indonesia, ADR has developed earlier in a traditional public form known by "Musyawarah", (consultation) which is derived from *Pancasila* (Five Principles) as Indonesian's philosophical foundation of life and the 1945 Constitution (*Undang-undang Dasar* 1945) (Koesnoe, 1979). Formally, the government issued Law Number 5 Year 1968, the Presidential Rule Number 34 Year 1981, Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution, and Law Number 4 Year 2004 on Yudicial Otorities, which legalizes dispute settlement outside formal court / state court (Emirzon, 2001).

In its rapid growth, ADR aims (1) to settle disputes outside court room for parties' advantages; (2) to reduce direct costs of litigation such as court fees and legal fees for employing legal representatives as direct legal costs, and the time involved, loss of income, even bribes as an indirect costs; (3) to prevent the disputants proposing their disputes to the courts or litigation procedures (Bostwick, 1995; The World Bank Group, 2011).

In the context fulfilling justice for criminal context especially for victims and actors, ADR, however, has sparked a series of subsequent critiques by judges and lawyers concerned with the privatization and informalization of dispute resolution. Some opponents such as Owen Fiss, as quoted by Grace, argued that ADR advocates naively painted settlement as a "perfect substitute

for judgment" by trivializing the remedial role of lawsuits and privatizing disputes at the cost of public justice. Favoring the courts' role in affirming public values through adjudication, Fiss criticized ADR as highly individualistic and inadequate to public purposes because it removed the "passive umpire" judge from the resolution process and reduced or eliminated the role of important public norms and individual rights in favor of purely private dispute resolution. The "Imbalance of Power," "Absence of Authoritative Consent," lack of "Continuing Judicial Involvement," and resulting "Justice Rather than Peace" were downfalls of the ADR process that Fiss thought were better handled by adjudication. At the heart of his criticism, Fiss claimed that ADR eliminated the social function of lawsuits because, while peace between the parties might be achieved, society was left without a remedy. Adjudication, he posited, positively exploited its very foundations—using public resources, public officials (chosen by the public), public power, and a public forum—to legitimize, expand, and reinforce core public values captured by the Constitution and democratically produced in statutes. Settlement, by removing disputes from public forums, deprived courts, as reactive institutions, of the chance to create justice and educate society, as well as to fulfill the government's social duty" (Fiss, 1984). Furthermore, critical opponents affirmed that the establishment of dispute resolution processes weakens the position of less powerful members of society. For example, when private companies (Sternlight, 2007).

In contrarily, Grace opposed apparently the arguments above. She argued that ADR through a restorative justice in criminal cases reveals how it can address realities of social foundations of crime while respecting deeply-held commitments to personal responsibility and public norms. ADR focused on restitution and reconciliation through face-to-face meetings between victims and offenders before trained mediators. The goal was to provide a fair process in which discussion would facilitate an understanding of the crime and allow for negotiation of restitution (Grace, 2010).

Both contrast opinions might be retained and accepted based on the cases. Many criminal cases involved children or woman as an actor or victim as vulnerable or less powerful members of society. Since ADR offers private space for the women and child victims, who mostly intend to close their cases from public intervention. Hence, crimes indentified as small cases (*kasus-kasus tipiring*) can be resolved by ADR types such as mediation, while for a big crime sacrificed human life and property in large amount, litigation or court trial is an appropriate solution. In spite of recognizing that ADR cannot be a substitute for

a formal judicial system, I agree that ADR can decrease the cost and length of dispute resolution, and increase access to justice for disempowered groups as well as raise disputants' satisfaction with outcomes.

Alternative dispute resolution encompasses a variety of methods for the resolution of disputes between the parties. The availability or deployment of any particular method of ADR depends on the agreement between the disputants or parties, the support provided by the regulation and societies. The common and popular alternative methods of dispute resolution legalized by Indonesian regulations are:

1. Arbitration;
2. Mediation;
3. Conciliation:
4. Reconciliation;
5. Expert assessment;
6. Dispute review board such as BANI (Badan Arbitrase Nasional Indonesia) and BASYARNAS (Badan Arbitrase Syari'ah Nasional); and
7. Customary court such as *Peradilan Gampông* in Aceh*, harungguan* in Batak Toba community (Vergouwen, 1964), *runggun* in Karo society (Slaats and Portier, 1992), *begundem* at Sasak community in Lombok (Koesnoe, 1979), and *Mufakat* amongs *ninik mamak* in Minang, West Sumatra (Benda-Beckmann, 1984).

Various other forms of criminal ADR have developed, including victim-offender panels, victim assistance programs, community crime prevention programs, sentencing circles, ex-offender assistance, community service, school programs, and specialist courts (Grace, 2010).

D. Conflict Resolution Practice through *Adat*

Members of Aceh society are accustomed to resolve issues and conflicts, be they small such as children's fight or large such as inheritance division, through consultation at the level of *gampông*. After the 2004 tsunami, the main issues to be resolved included guardian appointment, and land conflict. At *gampông*'s level, *adat* implementation was usually the responsibility of *keuchik* (*gampông* head), *imuem meunasah* (*gampông* religious leader), local ulama and *tuha peut* (*gampông* elders). These *gampông* leaders will resolve any conflict occurring in society through consultation and consensus. They help the parties involved in the conflict to reach mutually agreed settlement, in which all sides

are mediated until peace and harmony is achieved. In Aceh, settlement of issues through the state court is usually perceived as a lose-lose situation. Instead, *adat* mediation is usually preferred, due to its voluntary nature, precise procedure, non-judicial decision, confidential environment, flexible approach, timeliness, and affordable cost. *Adat* procedures also usually preserve the relationship of all parties, increase the chance of settlement, make outcome determination easier, and ensure lasting decision. Furthermore, execution of *adat* punishment is clear and certain when it concerns the public interest, as well as modified based on regions, to prevent the disruption of existing social system.

Conflict resolution through *adat* institution in Aceh is adapted from Islamic law (Abbas, 2009). The four essential terms, *suloh* (peaceful conflict resolution of private matters), *di'iet* (compensation due to loss of life), *sayam* (compensation in the form of animal, money, and cloth) dan *peumat jaroe* (handshake), have their roots in Islamic teaching (Hurgronje, 1906), with the first three (*diat (di'iet, diyat), sayam,* and *suloh*) having similar function, meaning, and purpose. These terms are often mentioned in the process of peace keeping after any bloody conflict that may occur in *gampông*s. The term *diet* is interchangeable with *qishash*, as the guilty party needs to be forgiven by the victim's family, and there is a need to provide compensation. *Sayam* and *suloh* functions more to reestablish equilibirium between the families or parties involved, as the harmony between them is disrupted by the bloody conflict. When peace has been ascertained, the parties involved can no longer exercise revenge, instead they may have even become very close to each other. Compensation is given to the victim's family in the form of animals (usually goat) according to the perpetrator's family ability and the decision of the *gampong* elders and the adat leaders. In a forgiveness ceremony, *peusijuek* (flour sprinkling) is performed, and all the parties have a common meal, after which they listen to an ulama's advice. The ceremony ends with them forgiving each other and prayers being recited to close the event.

E. Cases Resolved through ADR

A variety of civil and criminal cases have been resolved through ADR in Aceh. Historical records show that *adat* court had started since the times of Aceh sultanates and had grown since then. In present days, Qanun Aceh Number 9 Year 2008 on the Development of *Adat* Life and *Adat Istiadat* stipulated in Chapter VI: Resolution of Conflict/Argument, article 13 elaborates that (1) Conflict/Argument involving *adat* and *adat istiadat* covers: a) Marital

dispute; b) Inheritance division; c) Community dispute; d) Illicit encounter (*khalwat meusum*); e) Ownership dispute; f) Family theft (light theft); g) Inheritance (*sehareukat*) conflict; h) Simple theft; i) Livestock theft; j) Customary violation on livestock, farming, and forest; k) Marine conflict; l) Market conflict; m) Light abuse; n) Forest burning (in a small scale which harm the *adat* community); o) Harassment, slander, provocation, defamation; p) Environmental pollution (small scale); q) Intimidation (depends on type); and r) Other *adat* related conflicts. Further in articles 2 and 3, it is mentioned that conflicts or arguments need to be resolved in stages, and opportunities are provided by law enforcers for the disputes to be resolved by *adat* at the level of *gampông*.

In terms of location, there are not many differences between cases resolved by *adat* institution or court in villages or cities. It is common knowledge that civil cases resolution falls under the purview of *adat* institutions. Criminal cases under the same purview generally cover theft or violence which does not cause great physical or psychological damage. Also, *gampong* adat court's responsibility is limited for cases occurring between *gampôngs* under *mukim* jurisdiction, or appealed cases which have been dealt with at *gampông* level, in which one of the parties involved is not satisfied with the case outcome.

In resolving *adat* related cases through consultation, the *gampông* or *kemukiman* leaders apply the principle "*but rayeuk, beu ubit; But ubit, beu ek tapeu gadoh"*, which means, "large-scale conflict should be reduced to small-scale conflict, and small-scale conflict should be reduced to no conflict". Any punishment should follow the principle "*uleu beu matee ranteeng beek patah Ta tarek panyang, ta lingka paneuk*", which means, the snake must die, but the branches must not, when pulled things should lengthen, when rounded things should shorten). There must also be coordination between *petua seneuboek* and *panglima uteun* or *pawang glee* with *imeum mukim* whenever there are attempts to cut down forest trees for plantation or related stuff.

In general, village or city dwellers in Aceh have an active adat institution to maintain peace and harmony in society. This study found that the adat institution – with its court and apparatus – play a large role in resolving cases that can potentially wreck havoc in society. These cases are resolved with the involvement of *Keuchik*, *Tuha Peuet*, and other adat leaders. Examples of cases include family dispute especially related to inheritance, paddy field or plantation border conflict, domestic violence, traffic violation or hit-and-run, youth brawl, neighbourly feud, and children's quarrel.

F. *Adat* Consultation in Conflict Resolution

Consultation (*musyawarah*) at the *gampông* level is the main and most effective way for *gampông* leaders to mediate between parties involved in conflict. In terms of ADR, conflict resolution in Aceh takes several terms. One term is '*Gampông Adat* Meeting' (*Rapat Adat Gampông*' – at *gampông*'s level) and '*Mukim Adat* Meeting' (*Rapat Adat* Mukim - at *mukim*'s level) (Abubakar & Halim, 2006), and another is '*Gampong Adat* Court' (*Peradilan Adat Gampông' – gampông* level) and '*Mukim Adat* Court' (*Peradilan Adat Mukim – mukim* level) (Abbas, interview, 2012). However, the word '*peradilan*', which implies litigation, may not fulfill the definition of *alternative dispute resolution* (ADR), which implies litigation non-litigation (Lubis, interview, 2014). In this study, the terms "*Peradilan Adat Gampông*" and "*Musyawarah Adat Gampông*" is used as field reports and legal documents show that they are used to describe ADR implementation by *gampông* adat institution in Aceh villages and cities.

Several formal and non-formal ADR models for conflict resolution have been found to be implemented in Aceh:

1. Personal resolution, in which conflict is resolved personally by respected public figure (*tokoh masyarakat*) based on trust without other involvement. This is akin to asking a fatwa to a figure whom the parties trust to be able to resolve their conflict. It can also be in the form of personal mediation.
2. Family resolution, involving parents from conflicting parties, usually done among relatives. Generally, this model is used when family-related conflict is involved, such as inheritance or marital disputes. It is akin to *taḥkim* in Islamic law.
3. Consultation among the public figures and adat leaders as well as legal practitioners in Legal Aid Institute Lembaga Bantuan Hukum (LBH) to resolve cases based on conflicting parties' reports. This model is also akin to *taḥkim* in Islamic law.
4. Conflict resolution through *keujreun blang* for agricultural cases or *panglima laot* for marine cases. Cases can be resolved with or without reports from conflicting parties.
5. Conflict resolution through law enforcers or the police at the level of local or regional police (*Polsek - Kepolisian Sektor* or *Polda - Kepolisian Daerah*), especially for road accidents or police reports. The police will first call *keuchik* from each conflicting parties' villages for consultation.

6. Conflict resolution through *Peradilan Gampông*, an adat court with *gampông* officers, in which cases are resolved at *meunasah* or *masjid* (mosque).
7. Conflict resolution through *Peradilan Mukim*, an adat court with *mukim* officers to resolve cases in which the parties involved are not satisfied with *gampông* level decision.

G. Sanction and Compliance of ADR Decision

Adat court decision as a form of ADR in Aceh is viewed as a result of consultation to achieve peace among conflicting parties. The court makes decisions after considering opinions from all sides with the aim or returning harmony to *gampong* life. As can be seen in Article 14 clause 2 of *Perda* (*Qanun*) No. 7 Year 2000 on *Adat* Life Organization: "*Anyone who do not comply with adat court decision at the level of Keuchik or Imum Mukim will be punished in greater degree and accused of breaking agreement and disrupting societal harmony*." Article 16 of Qanun Aceh No. 9 Year 2008 on the Development of Adat Life and *Adat Istiadat* emphasize that adat sanctions can take the following forms: a) Advice; b) Warning; c) Apology; d) *Sayam*; e) *Dhiet*; f) Fine; g) Compensation; h) Exile from *gampông*; i) Expelled from *gampông*; j) Annulment of adat title; and k) Other forms of sanction according to local *adat*.

Adat sanctions will be quickly implemented after the *adat* decision has been conveyed by the *keuchik*, especially those that take the form of advice, warning, and apology. For the sanction of compensation, the implementation can take a longer time frame, depending on the economic ability of the perpetrators. Similarly, for the sanction of exile, the implementation is not immediate, the perpetrator is given time to prepare for exile. The adat court committee has recommended that their decision should be conveyed in writing to increase its effect, even though much of *adat* law sources are in essence unwritten (Koesno, 1993). Social sanction can befell those who do not obey adat court decision.

Due to the strength of adat decision, repeat cases seldom occur. Usually, those who have gone through the *gampông* court process and followed the *peusijuek* process, with God as witness, along with prayers to the Prophet, seen by the public and adat, religious, and community leaders, will comply fully with the decision. Any violation of the decision implies violation of the community's right as a whole, which responsibility should be bore not only by the conflicting

parties, but also their families. They will be isolated from society and treated like outcast, a terrible sanction for people in Aceh. The community as a whole may even refuse to attend any celebration the adat violators hold, causing the food to rot. Daughters of the violators may suffer most, as their marriage proposals may be postponed or even withdrawn (Kurdi, 2012). However, it must be noted that adat resolution may not provide justice for all parties involved. An example is inheritance dispute which involve female heir, who does not possess any negotiating power. Based on consultation and agreement, most of them usually accept adat court decision. Hence, women may experience injustice in legal cases involving adat institution. Adat leaders still consider women not capable and not worthy of resolving their own cases (Dewi, 2008).

H. Challenges and Opportunities Conflict Resolution through ADR

Conflict resolution in modern Aceh prioritises cultural values, emphasizing familial relationship with the characteristics of tolerance, solidarity, and conflict avoidance. Process is deemed more important than outcome. In this context, the emphasis is not on upholding of certain rules, but elimination of conflict which may disrupt social stability and harmony. This practice can also be found in Indonesian regions, in which cultural values permeate all social activities (Rahardjo, 1998). What makes Aceh distinct is the self-awareness of its people of equating being Acehnese as also being Muslim. Adat law for them must be compatible with Islamic law, with corresponding similarity in recommendation and sanction (Hadikusuma, 2006). However, reality is a little bit more complicated. Aceh society is composed of 'natives', people who have lived for many generations in Aceh, and 'immigrants', people who come to Aceh as recently as a few generations ago. Thus, in the villages, when conflict involve native and immigrant Acehnese, who usually come from different ethnic background, local government officials such as the police is usually involved in the conflict resolution. In the cities, when such conflict occurs, the conflicting parties will involve their local leader instead. Hence, the city dwellers adopt a more territorial-based conflict resolution approach instead of the adat-based one, in which local leader is assisted by religious or other informal leader living in the same area as mediator (Ihromi, 1988).

ADR implementation may not be sufficiently supported by culture only. It must also be supported by development of related laws through the formation of related institutions such as adat organization and professional association (Margono, 2004). In Aceh, this has happened through local government support

of Adat Court and Adat Institution in a number of local rules (perda). There is a saying among the Acehnese: *Seubakai-bakai ureueng Aceh, wate geuthèe nan Allah dan nan Nabi iem atawa seungap*, which means no matter how stupid is an Acehnese, he or she will be quiet when the name of Allah and His Prophet are mentioned. This saying is visible in Aceh *gampông* society in villages or cities, manifesting itself in societal interaction that is peaceful, calm, and harmonious. Some evidence can be found in the number of cases resolved by the Sharia Court from 2011 to 2012, in which the number of cases dropped to 5643 from 6143 cases (BPS of Aceh Province, 2013).

I. Conclusion

Adat institution in Aceh is strengthened by the implementation of Law No. 11 Year 2006 on Aceh Government and a number of other local rules such as *Qanun* Number 9 Year 2008 on Development of Adat Life and *Adat Istiadat*. Conflicts are resolved through ADR among *gampông* society by consultation among the conflicting parties and adat, religious and local government leaders. Most Acehnese choose ADR as it has long been their culture (bottom-up), as well as because of *Perda* Number 7 Year 2000 on Adat Implementation, as well as Joint Decision Letter between Aceh Governor, Aceh Regional Police Head, and Aceh Adat Council Head on the Implementaqtion of *Gampông* and *Mukim* Adat Court (top-down). This study found that adat and Islamic law were sources and guides to conflict resolution through ADR in Aceh. Hence, ADR implementation certainly supports the application of the sharia outside of formal legal institution and confirms the principle of *al-'Adah al-Muḥakkamah* (Adat can function as law).

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