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Land Dispute Resolution Through *Sarak Opat* in Central Aceh Regency

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Abstract

According to Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the state acknowledges and honours the unity of customary law communities and their traditional rights. *Sarak* is seen as a crucial institution in community leadership at the village level in Central Aceh. The function and existence of the *sarak opat* are governed by Aceh Tengah District Regulation Number 10 of 2002 about Gayo Customary Law, which designates the *sarak opat* as the entity empowered to mediate societal issues through a consensus-based settlement procedure. Nonetheless, in practice, this does not operate as intended. The empirical legal research approach

was employed in the preparation of this work. This study examines *sarak opat's* authority in adjudicating land disputes in Central Aceh Regency. The research findings indicate that the authority of *sarak opat* in adjudicating land disputes in Central Aceh Regency is delineated in legal statutes mandating that law enforcement officials must allow customary courts to address conflicts at the village level. However, this regulation is not enforced, as law enforcement officers fail to grant *sarak opat* the opportunity to resolve disputes, opting to act in accordance with prevailing laws immediately.

Keywords: Dispute Settlement, Land Dispute, *Sarak Opat*, Aceh Tengah

Introduction

The existence of customary law in society is considered a hereditary matter and a guide for living. Customary law is believed to be a main reference point that can determine what is and is not permissible in community life in a specific area ^[1]. The state also recognizes the existence of customary law, as stated in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that:

“The state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.”

The existence of customary law in society has also been regulated in Article 5 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as the Basic Agrarian Law). Aceh is one of the provinces that has the privilege of governing itself based on Islamic law, as stated in Law Number 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province (hereinafter referred to as the Aceh Special Status Law) and Law Number 11 of 2006 concerning the Governance of Aceh (hereinafter referred to as the Aceh Governance Law).

The special features related to the administration of Aceh and the existence of customary law are also regulated in Article 6 of the Aceh Special Autonomy Law, which states that the region can establish various policies in an effort to empower, preserve, and develop customs and customary institutions in its territory, which are inspired by and in accordance with Islamic Sharia. In accordance with Article 98 paragraph (1) of the Aceh Governance Law, which states that customary institutions function and play a role as a vehicle for community participation in the administration of the Aceh government and district/city governments in the fields of security, peace, harmony, and public order. In paragraph (2) of this article, it is stated that the resolution of social and community problems thru customary law is pursued thru customary institutions.

Dispute resolution in Aceh Province is first resolved through customary law in the Gampong. This is stipulated in Article 13

paragraph (3) of Qanun No. 9 of 2008 concerning the Development of Customary Life and Customs (hereinafter referred to as Qanun No. 9 of 2008), which states that "law enforcement agencies provide an opportunity for disputes to be resolved first through customary law in the Gampong or other names." However, disputes are currently resolved directly through the competent judicial institutions.

Dispute resolution according to custom is carried out by customary courts in the Gampong, which in Acehese customary society is commonly referred to as Tuha Peut. In contrast, in Gayo customary society, it is called *Sarak Opat*. *Sarak Opat*, as a customary institution in Central Aceh Regency, is also authorized to resolve, investigate, and impose customary sanctions based on customary law and customs against acts of *sumang*, *kemalun edet* (custom), or violating *edet* (custom) committed by an individual as referred to in Articles 9, 11, and 13 of Qanun Number 10 of 2002 concerning Gayo Customary Law.

Therefore, considering the content of Aceh Tengah District Regulation Number 4 of 2011 concerning Village Government in Chapter 1, General Provisions, Article 1, Point 17, which states that "*Sarak Opat* are four elements or community potentials integrately consisting of Reje, Imem, Petue, and the people who have reached consensus in a village to maintain and preserve the dignity and honor of their village."

The inclusion of customary law regulations in the UUPA strengthens the existence of *sarak opat* in terms of their authority to resolve land disputes that occur within the community in accordance with customary law. Permendagri Number 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Legal Communities also states that the state must respect and recognize customary law courts. In Gayo customary law in Central Aceh Regency, *sarak opat*, as a customary court, has the authority to resolve disputes without separation between public and private law, so land disputes should be resolved first through the customary institution of *sarak opat*. However, when land disputes occur, they are not resolved through the traditional institution of *sarak opat* first^[2].

The existence of *sarak opat* can make it easier for the community to remember, as non-litigation resolution inherently has the characteristic of resolving disputes completely, simply, quickly, non-bureaucratically, practically, and cheaply. This differs from litigation resolution, which requires a long, complex, and relatively more expensive process. However, in this case, *sarak opat* also has limitations in executing the decision due to the lack of national and written legal certainty, making it difficult to accomplish if one party disregards the mutual agreement reached in the settlement through the *sarak opat* institution.

Research Method

This research uses an empirical legal research method. Legal research that is juridical-empirical combines primary and secondary data. Primary data is field interviews, and secondary data is reading material such as books, journals, articles, undergraduate theses, master's theses, laws and regulations, and other reading materials related to the research topic^[3]. The approaches used in this research are the sociological approach to law and the anthropological approach to law^[4]. In this study, the location is in the Aceh Province, specifically the Central Aceh Regency. This research location was chosen because no one has yet

conducted research related to resolving land disputes through *sarak opat*, particularly in the Central Aceh Regency.

Results and Discussions

Sarak is an institution appointed and authorized to handle everything related to the interests of the indigenous community itself. The term "wewenang" or "kewenangan" is equated with "authority" in English. *Authority* dalam *Black's Law Dictionary* diartikan sebagai *Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in scope of their public duties*^[5]. (Authority is legal power, the right to rule or act; the right or power of a public official to comply with legal rules within the scope of performing public duties).

The people of Central Aceh Regency resolve disputes/conflicts that occur in the Gampong thru *Sarak Opat*. *Sarak Opat* is given the authority to resolve disputes according to customs with a system of deliberation. The position of the four-member council in dispute resolution can be divided into two: the position of the four-member council as a mediation institution and the position of the four-member council as a judicial institution.

One of the Gayo proverbs stating "The people are united in consensus, behu berdedele, sebegi seperange" (The highest judge is in the hands of the people, as has been outlined in a joint conclusion), therefore it can be said that *sarak opat* acts as a mediator in resolving disputes. Resolving disputes thru *sarak opat* essentially prioritizes the principle of kinship to reach an agreement, ensuring peace and good relations between the community are maintained.

The position of the *sarak opat* as a mediation institution when a dispute arises is pursued thru deliberation. One of the disputing parties will report to the *Sarak* institution, then the parties will be summoned and a deliberation will be held to reach a solution (win-win solution). However, if an agreement is not reached, the *sarak opat* can function as a judicial body with the Reje serving as the Chief Judge, and the Petue, Imuem, and Rakyat Genap Mupakat (RGM) serving as Associate Judges. If a solution is still not found, the dispute can be brought to court with a recommendation or statement that the religious institution has pursued a peaceful resolution thru customary institutions but there was no common ground to resolve the issue.

The existence of *sarak opat* as a customary court has authority in resolving disputes regarding the types of disputes as regulated in Article 13 Paragraph (1) of Qanun No. 9 of 2008, which include: domestic disputes; disputes between family members related to inheritance; disputes between residents; *khalwat meusum*; disputes over property rights; theft within the family (minor theft); disputes over shared property; minor theft; theft of livestock; customary violations regarding livestock, agriculture, and forests; disputes at sea; disputes in the market; minor assault; forest burning (on a small scale that harms the customary community); harassment, slander, incitement, and defamation; environmental pollution (minor scale); threats (depending on the type of threat); and other disputes that violate customs and traditions.

Law enforcement agencies must give customary courts the opportunity to resolve matters according to custom first. This is as stated in Article 13 paragraph (2) and paragraph (3) of Qanun No. 9 of 2008, which reads as follows:

(2) The settlement of customary disputes/conflicts as referred to in paragraph (1) shall be resolved in stages.

(3) Law enforcement agencies provide an opportunity for disputes/conflicts to be resolved first thru customary law in the Gampong or other name.

These rules serve as guidelines for resolving disputes. In this case, customary law institutions, namely sarak opat, and law enforcement agencies must synergize and collaborate in resolving disputes so that the state's objectives can be achieved, as mandated by Article 18 B paragraph (2) of the 1945 Constitution, which states that the state recognizes and respects regional government units that are special or have special characteristics regulated by law. In this case, the general courts must provide an opportunity for customary courts to resolve the issue. If a community reports to the customary courts, the general courts must direct the community to resolve the issue thru the customary courts first.

The research results show that in reality, despite the existence of laws and regulations governing the authority of sarak opat and the formation of a Joint Decree by the Governor of Aceh, the Chief of the Aceh Regional Police, and the Chairman of the Aceh Customary Council regarding the Implementation of Customary Adjudication, when law enforcement officers are required to give customary adjudication an opportunity to resolve disputes, what actually happens is that when the community experiences a problem and reports it to law enforcement officers, the law enforcement officers immediately take action according to legal channels without giving sarak opat the opportunity to resolve the dispute/conflict first. This is certainly not in line with what has already been regulated and planned by the applicable rules^[6].

The authority of the sarak opat in resolving problems, as stated in Article 13 Paragraph (1) of Aceh Qanun Number 9 of 2008, must be supported by other elements such as collaboration between law enforcement officials and community compliance with customary law itself. This principle of deliberation is also regulated in Article 15 in conjunction with Article 3 of Aceh Governor Regulation Number 60 of 2013 concerning the Implementation of Settlement of Customary Disputes/Conflicts (hereinafter referred to as Governor Regulation No. 60 of 2013), which states that the scope of disputes/conflicts as referred to in Article 3 letters l to r is guided by laws and regulations, where Article 3 letter n states that the type of disputes/conflicts that can be resolved thru customary institutions is disputes over ownership rights. As stated in Article 17 Paragraph (1) of Pergub No. 60 of 2013, the procedures and requirements for resolving disputes/conflicts are carried out in accordance with local customary law.

Sarak opat acts as a mediation institution where, upon receiving a report from the community, it will, as a first step, request information from the reporting party or identify the problem within a maximum of 3 (three) days from receiving the report. Subsequently, in the second stage, sarak opat will request information from the reported party regarding the situation from the perspective of the reported party. In the third stage, sarak opat will bring both parties together, either at the Village Office, a multipurpose building, or the gampong's meunasah, to conduct mediation or deliberation to reach a mutual agreement. However, if the parties do not appear after being called three times, the sarak opat will provide a recommendation/statement to the local

sub-district head/police station because the resolution of the problem thru the sarak opat cannot be carried out properly.

The creation of two judicial institutions in a society naturally leads to legal dualism. The implementation of customary law courts in resolving problems certainly does not exclude resolving problems thru general courts, but it can help reduce/alleviate cases that must be resolved by general courts. Considering that cases resolved in district courts are currently backlogged due to lengthy processes, convoluted bureaucracy, and relatively high costs^[7]. This is a diversity of laws. Legal pluralism is defined as a situation where two or more legal systems coexist in the same sphere of social life, or to explain the existence of two or more systems of social control in one sphere of social life, or to describe a situation where two or more legal systems interact within one social life, or a condition where more than one legal system or institution operates side by side in the activities and relationships within a community group^[8]. The results of this study found that although legal pluralism exists, the authority between customary courts and general courts differs in the level of problem-solving. The authority of customary courts is already stipulated in Article 13 Paragraph (1) of Aceh Qanun Number 9 of 2008, but this authority does not eliminate the authority of general courts. These two courts must synergize and collaborate as stated in Article 13 Paragraph (3) of Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs and the Joint Decree on the Implementation of Customary Courts. In the initial resolution, law enforcement officers in general courts must first give the opportunity to sarak opat as law enforcement officers in customary courts to resolve cases that are already regulated in legislation. Then, if sarak opat is unable to resolve the dispute, the dispute will be resolved in general courts based on a recommendation/statement from sarak opat that a peaceful resolution cannot be pursued as it should. Collaboration and synergy between these two institutions not only benefit the community but also the legal system itself.

The authority of the sarak opat in the Gayo community for resolving land disputes is adapted to the needs of the community itself. As the saying goes in Gayo society, "*Edet Urum Hukum lagu Zet Urum Sipet*" (law and custom are like a substance and its inseparable property). Sarak opat is authorized as a customary judicial institution that resolves land disputes within the community. Land, as something fundamental in life, certainly plays a very important role and its existence must be preserved to ensure legal certainty for its owners. This legal certainty is provided based on the issuance of a certificate for a piece of land by the National Land Agency or BPN thru the Land Deed Official or PPAT. The research findings revealed a problem, as stated by Amir Syam, Head of the Takengon College of Law and an adat observer, who said that currently, land deed officials are performing actions on land without first checking the field, leading to disputes later on regarding land boundaries that do not match reality. This then led to disputes and unrest within the community^[9]. This problem occurred because the Land Deed Official (PPAT) and the village head did not coordinate regarding actions taken on a piece of land.

A country that recognizes legal diversity (legal pluralism) must still prioritize the highest-ranking legal provisions. The existence of customary law is still recognized as long as it does not conflict with national law. This is like the existence of customary courts that can adjudicate disputes/conflicts in

the Gampong according to the customs that have grown and developed within the community. However, the implementation of this customary law must not contradict the applicable laws and regulations.

Conclusion

The authority of the *sarak opat* in society is to mediate/reconcile disputes that arise within the community. *Sarak opat* is a customary court that can resolve disputes thru mediation, but it is limited to disputes that occur as stipulated in Article 13 Paragraph (1) of Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs, one of which is disputes regarding ownership rights. Regarding land disputes, the specific types of disputes that can be resolved through *sarak opat* are not explicitly mentioned, and their resolution is based on a system of consensus through deliberation with *sarak opat* as the mediator.

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