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The Role of the *Adat* Institution (*Lembaga Adat*) In Dispute Resolution

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LEMBAGA ADAT SEBAGAI LEMBAGA PENYELESAIAN SENGKETA

Adat istiadat (traditional customary practices) are sets of values and social beliefs that are embedded in the lives of the Acehnese. Dr. Muhammad Hakim Nyak Pha, a lecturer from the Faculty of Law of the Syiah Kuala University and the Chief Justice of the Indonesian Supreme Court, in his book entitled *Pedoman Umum Adat Aceh Edisi I* says that *adat istiadat* are sets of rules or norms which in turn become the principles that need to be known, recognised, respected and adhered to by the community. *Adat istiadat* also plays a very significant role in the sustainability of the life of the community.

According to the Law (*Undang-undang*) No. 44 year 1999 on the Special Status of the Aceh Province, *adat* (customary law) has contributed to the uniqueness of Aceh and has in turn been recognised by the Provincial Government of Aceh. The Decision of the Minister for Home Affairs (*Kepmendagri*) No.11 year 1984 on the Advancement and Development of *Adat Istiadat* at the Village Level gives a concrete legal framework for the implementation of *lembaga Adat* in Aceh. As such, the provincial government of Aceh can justify the implementation, development and preservation of *adat istiadat*.

The *adat istiadat* in Aceh plays a general role in trying to achieve harmony in society. According to the Vice Head of the Aceh Customary Council (*Majelis Adat Aceh /MAA*), A. Rahman Kaoy, *adat* (customary law) and the legal process are inseparable. Therefore, people living as members of a community, or what is known as *gampong* (village), should have their own *lembaga Adat* that is made up from elements of the government, religious leaders and advisors.

What does a *lembaga Adat* refer to? Article 1 paragraph (5) of the Regional Regulation (*Perda*) No 7 year 2000 on the Administration of the *Adat* Life provides that *lembaga Adat* is an *adat*

societal institution established by a particular *adat* law community, having a certain territory and wealth and the authority to govern and settle issues related to *adat* in Aceh.

The Historical Role of *Adat*

Throughout its history, *adat* in Aceh cannot be separated from the Islamic law. Another *hadith maja* (proverb) says that "*hukom ngon adat lagee zat ngon sifeut*", literally meaning that *adat* to *syariat* (Islamic law) or *adat* to Indonesian law are like *zat dengan sifat* (Something that cannot be separated but are different).

If we refer a little way back in history, we can see that all regulations based on *syara'* or *syariat* were written by a *Qadhi Malikul 'Adil* (Chief Justice). In the later development the Sultan enforced these regulations as *adat* in the lives of the Acehnese society. Therefore, in the past *adat* law can be classified into the following:

- a. *Adatullah*, the absolute *adat* law based on the law of Allah (Al-quran and Hadith)
- b. *Adat Muhakamah*, the *adat* law manifested into the principle of *musyawarah dan mufakat* (consultation and negotiation to reach collective consensus).
- c. *Adatunnah*, the *adat istiadat* as the manifestation for *qanun* (regional regulation) and *reusam* (law) governing the lives of Acehnese people.

It was during this time that all forms of *adat* and *adat* law were fully enforced in governing the lives of the people and the society. All actions and behaviours in the community were always framed by *adat*, in that everything was always reviewed against and aligned with the *adat* measures. Using *adat* and *adat* law as the benchmarks also meant using the principles of religion. This was obvious from the application of *adat* and *adat* law in all aspects of the household and also in governing livelihoods, management of religious ceremony and community events, as well as education and settlement of disputes.

***Adat* law in dispute resolution**

Adat law is the whole sets of regulations manifested in the influential and significant decisions made by legal authorities to be implemented, enforced and adhered to wholeheartedly.

A. Rahman Kaoy further says that *adat* law is created and sustained by the decisions made by members of the legal community, especially those influential decisions made by the leaders of the people that help in the enforcement of legal actions or in resolving disputes in the manner that is against the decision of judges as long as they are in line with the belief of the *adat* law.



Adat law ensures easier dispute resolution, says A Rahman Kaoy. With *adat* law, cases can be resolved without any adverse side effects or the burden which the police would otherwise face when dealing with cases using positive legal instruments. In many cases, resolution of disputes using positive law may lead to adverse effects - for instance the feeling of revenge by convicts who are charged and sentenced with imprisonment.

Article 10 of *Perda* No. 7 year 2000 provides that the law enforcement authority should give the opportunity to the *geuchik* (village leader) and *imum mukim* (head of *mukim*) to settle disputes at the *gampong/mukim* levels before commencing investigations.

The Secretary of *Panglima Laot Aceh* (Acehnese Sea Commander), Adli Abdullah, says that the *adat* justice system is very much in line with Acehnese aspirations. Since the era of Iskandar Muda, *adat* legal institutions have been used in resolving all civil and criminal disputes, including violence and murder cases. Today, *adat* is also used in resolving cases such as traffic accidents through the *geuchik* or the *gampong* elderly at the *meunasah*. Such case resolution is fast, simple and inexpensive and maintains harmony and solidarity.

However, if within a certain period of time a case cannot be settled or one of the disputing parties are not satisfied with the settlement, resolution of the dispute can be referred to the legal enforcement authorities. This is in line with Article 15 paragraph (1) of the same *Perda*, which provides that if within one month *Imum Mukim* cannot resolve the case or the disputing parties are not satisfied with the *adat* decision at the *mukim* level, the case can be referred to be resolved using formal legal mechanisms. Further, Article 15 paragraph (2) requires that the *adat* decisions issued to the parties in dispute can be used as the considerations by legal enforcement authorities in resolving cases.

Sanctions are enforced in the resolution of disputes. Article 19 of the *Perda* No. 7 Year 2000 mentions the following dispute settlement and sanctions that can be used:

- a. Advise
- b. Warning
- c. Public apology, made in public at the *meunasah* or mosque, followed by a *peusijuk* (forgiveness) ceremony
- d. Fine
- e. Compensation
- f. Isolation by members of *gampong* (village) community



- g. Evicted from *gampong* community
- h. Revokation of *adat* titles
- i. And other forms of sanctions in line with the local customs

However, in recent times the role of *adat* institutions in Aceh has been marginalised by certain developments and conditions in Aceh. A Rahman Kaoy mentions that prolonged conflict in Aceh has made the implementation of *adat* in the region ignored. Seventy three years of fighting against the Dutch colonisation and armed conflict have made the Acehnese unable to devote their mind to neither implement *adat* and *adat* law nor even further to hand it down to the younger generations. The rules of *adat* in the lives of Acehnese are only evident among the older generation. Modernisation has alienated *adat* from the daily lives of the Acehnese, especially the younger generation. It is not surprising that concerns have arisen regarding the sustainability of *adat* within the Acehnese community.

Adli Abdullah says that in the same token, there is a general lack of awareness of *adat* among today's Acehnese. In addition, the tsunami has also affected *adat* in two ways. Firstly, local wisdoms have been eroded by the flux of modern culture and people from many parts of the world through post-tsunami assistance. Adli gives an example of the solidarity in building *gampong*. In the past, *gampong* people would be willing to volunteer to build their *gampong*; now such willingness is rare. The second concerns the positive impact of tsunami to *adat*, where everything about *adat* and *adat* law starts to become topics of discussion in all forums, including the academic one. Such positive development and the strong support of the Law on Governing Aceh No. 11/2006 are expected to bring back the implementation of *adat* like the way it was in its golden years.

Currently, efforts are ongoing in Aceh to re-establish *adat* institutions in all *gampong* in the Nanggroe Aceh Darussalam province, says A Rahman Kaoy. These have been done by training all *gampong* administration staff to be able to enforce *adat* like the way it used to be. However it has a long way to go. The "Socialisation of *Adat* Institution at *Gampong*" training activity that the Acehnese *Adat* Council has been doing since 2007 has only covered 5% of the *gampong* administration staff in Aceh. Apart from training on implementation of *adat*, the *gampong* administration staff have also been trained to become members of the management of the *gampong* justice system to enable resolution of disputes by the *adat* law and *gampong* justice system.