



## Settlement of Minor Crimes Against Perpetrators Who Have a Family Relationship with One of the Sarak Opat Devices

Supiandi Cibro<sup>1</sup>, Achmad Surya<sup>2</sup>

<sup>1</sup> Sekolah Tinggi Ilmu Hukum Muhammadiyah Takengon

<sup>2</sup> Fakultas Ilmu Sosial dan Politik Universitas Gajah Putih

Email : achmadsurya.ugp@gmail.com

### ABSTRAK

Masyarakat di Kabupaten Aceh Tengah, dalam penyelesaian perkara dalam masyarakat, sebagian masih melalui lembaga hukum adat, dimana perselisihan yang terjadi diselesaikan oleh *sarak opat*. Namun dalam pelaksanaannya masyarakat masih tidak puas terhadap putusan *sarak opat* dalam penyelesaian perkara yang terjadi, karena penyelesaian perkara melalui *sarak opat* masih terjadi penyelesaian perkara yang memiliki hubungan keluarga atau terjadinya konflik kepentingan dengan salah satu perangkat *sarak opat*. Tujuan dilakukannya penelitian ini, untuk Untuk mengetahui proses penyelesaian tindak pidana ringan terhadap pihak berperkara yang memiliki hubungan keluarga dengan salah satu perangkat *sarak opat*. Jenis penelitian ini *yuridis empiris* yaitu penelitian hukum yang diteliti pada awalnya adalah data sekunder, kemudian dilanjutkan dengan penelitian terhadap data primer di lapangan. Sumber data yang digunakan dalam penelitian yaitu studi pustaka dan studi lapangan. Data dianalisis secara kualitatif dan disajikan secara deskriptif. Hasil penelitian menunjukkan proses penyelesaian tindak pidana ringan terhadap pihak berperkara yang memiliki hubungan keluarga dengan salah satu perangkat *sarak opat* dilakukan secara sederhana dengan lebih menekankan aspek musyawarah mufakat untuk mencapai suatu perdamaian dari pihak yang berselisih.

**Kata Kunci :** Penyelesaian; Tindak Pidana Ringan; Hubungan Keluarga; Sarak Opat.

### ABSTRACT

*The community in Central Aceh Regency, in resolving cases in the community, is still partly through customary law institutions, where disputes that occur are resolved by sarak opat. However, in its implementation, the community is still not satisfied with the decision of the sarak opat in the settlement of the case that occurred, because the settlement of the case through the sarak opat still has a settlement of cases that have a family relationship or the occurrence of a conflict of interest with one of the sarak opat devices. The purpose of this study is to find out the process of settling minor crimes against litigants who have a family relationship with one of the apparatus. This type of research is empirical juridical, namely legal research that is initially studied as secondary data, then continued with research on primary data in the field. The data sources used in the research are literature studies and field studies. The data were analyzed qualitatively and presented descriptively. The results of the study show that the process of settling minor crimes against litigants who have a family relationship with one of the sarak opat devices is carried out simply by emphasizing the aspect of consensus deliberation to achieve peace from the disputing parties.*

**Keywords:** Settlement; Misdemeanor Offenses; Family Relationships; Sarak Opat.



## I. Introduction

The 1945 Constitution in Article 18B states that the State recognizes and respects the units of customary law communities and their traditional rights. Furthermore, Article 50 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, states that "A court decision must not only contain the reasons and basis for the decision, but also contain certain articles of the relevant laws and regulations or unwritten legal sources that are used as the basis for adjudicating". In this article, there is a firm statement about the recognition of unwritten law (customary law) which is used as the legal basis in every decision of the Judge, and this is also a real recognition of the existence of customary law.

In the Indonesia legal system, customary law is called unwritten law (*unstatuta law*) which is different from written law (*statute law*). The difference is that written law is made with words that cannot be changed without making a change so that written law no longer reflects what is alive in society. While customary law is a product of culture that contains the substance of cultural values as the creation and taste of human beings, which means that customary law grows and develops following the mindset and lifestyle that lives in society. Customary law was born from the awareness of human needs and desires to live in a fair and civilized manner as the actualization of human civilization (Samosir, 2013).

In Aceh in general, the settlement of cases/disputes in people's lives is mostly resolved through the Customary Court or better known as the Customary Institution. This customary institution can be realized through the embodiment of social institutions as *pageu gampong* (village fence) (Syahrizal, 2004). The purpose of customary justice is to create peace and harmony in people's lives, not to decide whether to lose or win. This is where the philosophy of difference lies between customary justice and state or formal justice. For this reason, the implementation of customary justice must



be based on basic principles for the implementation of justice that can be accepted by the parties and can realize peace and harmony in the life of the community concerned.

Law Number 11 of 2006 concerning the Government of Aceh Article 98 paragraph (1) states that customary institutions function and act as a vehicle for community participation in the implementation of the Aceh Government and district/city governments in the fields of security, tranquility, harmony, and public order. In paragraph (2) it is stated that the solution of social problems in the community in a customary manner is pursued through customary institutions.

Article 13 paragraph (1) of Qanun Aceh Number 9 of 2008 concerning the Development of Customary Life and Customs states that customary disputes/disputes that can be resolved through customary courts include: disputes within the household, disputes between families related to *faraidh*, disputes between residents, khalwat meusum, disputes about property rights, theft in the family (petty theft), disputes over property, petty theft, theft of livestock, customary violations of livestock, agriculture, and forests, disputes at sea, disputes in markets, mistreatment, forest burning (on a small scale detrimental to indigenous communities), harassment, defamation, incitement, and defamation, environmental pollution (on a minor scale), threatening threats (depending on the type of threat), other disputes that violate customs and customs.

The Gayo people also have their own laws in arranging their lives and the laws that live in this society are referred to as customary law. For general government, in the Gayo community it is carried out by "*Sarak Opat*". The existence of *Sarak Opat* still exists and plays a role in the implementation of village affairs and the settlement of disputes between villagers. The *Sarak Opat* elements in the Gayo community consist of *Reje (Headman)*, *Imem*, *Petue and Rakyat (Sudere)*. According to Muhammad Daud Ali, each of these elements has its own role that is no less important From the role of other



elements, there is a firm division of labor with a clear nature of the task (Ali. 1991).

For the people in Central Aceh Regency, in resolving cases in the community, some of them are still through customary law institutions, where disputes that occur are resolved by *sarak opat*. Even though the community knows that there is an official judicial institution that can resolve the case, some people still choose to settle the case through the *Sarak Opat customary institution*. However, in its implementation, the community is still not satisfied with the decision of *the sarak opat* in the settlement of the case that occurred, because the settlement of the case through *the sarak opat* still has a settlement of cases that have a family relationship with one of the *sarak opat* devices. As happened in Simpang Empat Village, Bebesen District, Central Aceh Regency, where one of the *sarak opat* devices had a family relationship with one of the perpetrators, so the victim felt that *the sarak opat* verdict was unfair.

The above problem is contrary to Article 16 paragraph (9) of the Governor of Aceh Regulation Number 60 of 2013 concerning the Implementation of Dispute Resolution/Customary and Customs which expressly states that "In the event that the Leader or Member of the Customary Judicial Assembly has a conflict of interest in the case he handles, then the person concerned is not allowed to participate in the Assembly session.

Based on the description above, the problems that will be researched and discussed in this study can be formulated as follows. How to settle minor crimes against litigants who have a family relationship with one of the *apparatus of the opat sarak*?

## II. Methode

This type of research is *empirical juridical*, namely legal research that is initially studied as secondary data, then continued with research on primary data in the field. The types and sources of data used in the research are library *research* and field research. The data collection method was carried out by



direct interviews with resource persons and data collection in the form of document studies to obtain literature related to the problems in this study. The way to analyze data from both primary and secondary data will be analyzed qualitatively, so that the reality is found as a symptom of primary data that is linked to theories from secondary data. The data is presented in a descriptive manner, namely by explaining and collecting the problems related to this writing.

### III. Discussion and Analysis

#### **Settlement of Misdemeanor Crimes Against Litigants Who Have Family Relations with One of *the Sarak Opat Devices***

Judicial power is the power of an independent state to hold the judiciary to uphold law and justice. The court points to the meaning of the organ, while the judiciary is its function. According to Soedikno Mertokusumo, basically, the judiciary is always related to the court, and the court itself is not solely a body, but also related to the abstract sense, which is to provide justice (Mertokusumo, 1971). Rochmat Soemitro argued that the court and the judiciary are also different from the court body. The emphasis of the judiciary is on the process, the court emphasizes the method, while the court is focused on the body, council, judge, or government agency (Basah, 1997). *Ubi Societas Ibi Ius* (Where there is a community, there is a law). It was revealed by Cicero, a very famous philosopher, who lived more than 2000 years ago. If the philosopher's way of thinking is continued, then it can be said that where there is a society, there is a judiciary, or at least where there is a community, there is a dispute resolution mechanism (Leuddjeng., 2013). So it is not surprising when Hilman Hadikusuma stated, that customary courts in Indonesia have existed since ancient times, long before the heyday of the Hindu-Buddhist kingdom in Indonesia.

The legislation of the Government of the Netherlands East Indies inherited five types of courts, namely *the Governor's Court*, the Indigenous



Court (Customary Court), the Swapraja Court, the Religious Court and the Village Court (Hadikusuma, 1986). Therefore, every legal system requires a judicial institution, regardless of its form, to resolve violations of the law. Likewise, indigenous peoples need an institution called customary justice, which aims to enforce customary law related to the relationship between people and the relationship between people and nature in their lives (Junef, 2015).

Article 3 of the Aceh Governor's Regulation Number 60 of 2013 concerning the Implementation of Customary and Ceremonial Dispute Settlement, clearly explains the cases/disputes that can be resolved by customary institutions, namely: disputes in households; disputes between families related to *fara'idl*; disputes between residents; perverted *khalwat*; disputes over property rights; theft within the family (petty theft); disputes over proper property; petty theft; theft of domestic livestock; customary violations of livestock, agriculture, and forests; disputes at sea; disputes in markets; misdemeanors; burning of forests (on a small scale detrimental to indigenous communities); harassment, defamation, incitement, and defamation; environmental pollution (minor scale); threatening threats (depending on the type) threats; and other disputes that violate customs and customs.

Gayo customary law does not distinguish between criminal offenses that must be examined by a criminal judge and civil offenses that must be examined by a civil judge as well. Likewise, it does not distinguish whether it is a violation of customs, religion of morality or consecration. All of them will be examined and tried by *Sarak Opat* as a single case and consideration whose decision is comprehensive based on all factors that affect it.

Especially in Central Aceh district, there is no provision for the stages of dispute settlement through *sarak opat*, this fact can be seen in the Qanun of Central Aceh Regency Number 10 of 2002 concerning Gayo Customary



Law. In the provisions of this Qanun, it is only emphasized about the position of the *sarak opat* institution, the duties of the *sarak opat* institution, the authority of the *sarak opat* institution and the customary sanctions given by *the sarak opat institution*. However, in Aceh, the process of resolving cases or disputes is guided by Qanun Aceh Number 9 of 2008 concerning Customary Institutions.

Yusin Shaleh, stated that *sarak opat* has a role in resolving cases of community disputes that occur at the village level. This is a practice that has been rooted for a long time, as based on the historical background of the *sarak opat* institution is an institution that plays a role in taking care of all social aspects of society at the village level that has existed for a long time. The same thing stated by Bazaruddin, *sarak opat* has many functions, such as a place to ask for justice, a place to negotiate to achieve peace, a place for mediation, arbitration and a place for the termination of cases through customary trials.

The role of *Sarak Opat* in the Gayo community as an implementer of customary justice, as an institution to control security, peace, harmony and public order, and as a decision-making institution for social problems in the village. The implementation of *Sarak Opat's role*, supporting the regional autonomy government program is not only effective in the field of cultural customs, but also in the field of economic development and also for the handling of customary disputes (civil and criminal) in accordance with the customs of the Gayo community in order to achieve a just and prosperous society in accordance with the national ideals of the Indonesia nation.

The dispute settlement process is not clearly contained in the Qanun of Central Aceh Regency Number 10 of 2002 concerning Gayo Customary Law, so in general based on practice in the field, some of the dispute resolution processes are as follows:

1. Completion Process





Regarding the dispute settlement process in *the customary institution of sarak opat*, the settlement path is not the same as the settlement path in the court institution. In customary institutions, the settlement process is only carried out simply by emphasizing the aspect of consensus deliberation to achieve peace from the disputing parties. The trial process carried out by the sarak opat institution is not the same as the practice in courts that have judges and clerks. Starting with a complaint, whether it is from the victim, parents, relatives and others who are still related to the victim to the *Sarak opat* apparatus, then the *Sarak opat* apparatus will dig up the root of the problem, so that then after the root of the problem is found, *Sarak opat* will call the litigant to be resolved customarily or more to the family in the deliberation system. Customary settlement in the institution of *sarak opat* is more of a mediator to achieve peace with the apparatus of *the Reje* (village head), which is assisted by several apparatus, namely: *Imem* (who leads shari'a law), *Petue* (who investigates and researches a problem), and *Rayat* (who is obliged to deliberate and reach consensus in community life).

## 2. Time and Place

The length of the peace process in the *sarak opat* institution does not take a very long time, but its completion is sought in a short time. This is as stipulated in the provisions of the Qanun of the Central Aceh Regency Government Number 10 of 2002 concerning Gayo Customary Law, in Article 9 paragraph 2 point (b) it is emphasized that: The *sarak opat* institution has the task: to resolve disputes based on customary law, customs and customs within a maximum period of three months. Looking at the provisions of Qanun Article 9 paragraph 2 point (b) above, the dispute resolution period does not take a long time, but at most only 3 months. The place of dispute settlement is based on the results of the author's interview with one of the *raphat figures*, namely disputes are





resolved at the village hall, and in every village in Central Aceh Regency there is a village hall, but there are also resolved at the family house where the dispute is located.

### 3. Process of completing and investigating

Article 10 of the Qanun of Central Aceh Regency Number 10 of 2002 concerning Gayo Customary Law, emphasizes that the *sarak opat* institution has the authority to resolve, investigate and impose customary sanctions based on customary law. This is mandated in Article 10 of the Qanun of Central Aceh Regency Number 10 of 2002 as follows: "Sarak opat is authorized to resolve, investigate and impose customary sanctions based on customary laws and customs against acts of immorality, kemalun edet (custom) in violation of edet (custom) committed by a person as referred to in Articles 9, 11, and 13 of this Qanun.

### 4. Dispute resolution tiers

This Qanun provision is also not affirmed about the level of settlement in the event of a dispute in the community. This means whether a dispute will be handled directly by the *institution of the opat*. In relation to this problem, the author's interview with one of the members of *the opat committee* in Simpang Empat Village, Bebesen District, Central Aceh Regency in resolving a dispute before the settlement is handled by *the opat institution*, there are several peace efforts that must be taken by the disputing parties. The efforts in question are as stated by Abdurrahman as the Imem of Simpang Empat village, in resolving a dispute among the community and in the scope of the household, there are stages of the process taken by the parties to the dispute before being handled by *the sarak opat*.

Settlement of minor crimes against litigants who have a family relationship with one of the *apparatus of the opat sarak* apparatus, in the area of Kampung Simpang Four, Central Aceh Regency where one of the family



members committed a minor crime. *Reje* Kampung presents both parties at the same time. Deliberations are usually held in closed places, such as *reje* houses; parties, village imem houses or other places that can maintain confidentiality. *Reje* as the head of the *sarak opat* institution officially opens the meeting and chairs the meeting until it is completed or hands over the chairman of the meeting to an element of the customary institution if it is considered to understand more about the case.

The trial procedure is to ask each party to convey the problems faced in turn, interspersed with in-depth exploration of the problem separately, such as in a special room. Furthermore, elements of customary institutions give consideration and solutions to be implemented, which is followed by providing advice to the parties. The advice is usually given by elements of imem figures as religious figures who *need sunet* (imams educate and lead the people to carry out what is required or obligatory by sharia). After the hearing, each party responded to the verdict that had been given. After the hearing, the parties who received the verdict ended with a ceremony of shaking hands and giving mutual forgiveness. Meanwhile, for those who disagree with the decision, they are encouraged to take the State judicial route because some family members of victims of the crime of persecution are not satisfied with the results of the decision of the *Sarak Opat institution* that has a family relationship with the perpetrator.

In the case of dispute settlement through *Sarak Opat* is a form of case settlement ending with a peace decision because this is a teaching of Islamic shari'a law and Gayo customary law. The existence of vengeance, mutual insults and feeling aggrieved is certainly no longer felt by the parties to the dispute if there is already a peaceful decision because the parties to the dispute through the peace process in accordance with sharia law can resolve it through deliberation with the intermediary of *Reje* and other village officials as *the Sarak Opat* institution.



Khalid added, in the case of the settlement of minor crimes where one of the litigants has a family relationship with the *sarak opat* device, the decision is returned to all *the sarak opat apparatus* in determining the authority of *the reje* if one of the families is involved in a problem in the village whether to use limited authority or comprehensive authority during the *reje* can solve the problem fairly and impartially, in accordance with the mandate of Article 27 paragraph (1) letter a of Qanun of Central Aceh Regency Number 4 of 2011 concerning Village Government, which states that *Reje* is prohibited from making decisions that specifically benefit himself, family members, cronies, and/or certain groups.

Based on this, the authority of *the reje* in resolving the case in Kampung Simpang Empat is included in the authority of the *reje* as a whole, because *the reje* intervenes directly in resolving the problem that occurs where one of his family members is involved in a dispute, in this case it has been approved by the members of *the rarak opat* other. If referring to Article 16 paragraph (9) of the Governor of Aceh Regulation Number 60 of 2013 concerning the Implementation of Customary and Custom Dispute Resolution, it states that "In the event that the leader or member of the Customary Judicial Assembly has a conflict of interest in the case he handles, then the person concerned is not allowed to participate in the assembly session". If *the sarak opat* device understands the meaning of the article, the settlement process against the party who has a family relationship with one of the *sarak opat* devices is not justified by laws and regulations.

#### IV. Conclusion

The process of settling minor crimes against litigants who have a family relationship with one of the *apparatus* is not the same as the settlement path in the court institution. In the *sarak opat* customary institution, the settlement process is only carried out simply by emphasizing the aspect of consensus deliberation to achieve peace from the disputing parties.



## REFERENCE

### A. Book

- Djamanat Samosir, 2013, *Hukum Adat Indonesia Eksistensi Dalam Dinamika Perkembangan Hukum di Indonesia*, Nuansa Aulia, Bandung  
Nuansa Aulia, Bandung.
- Hader Leuddjeng., 2013, *Mempertimbangkan Peradilan Adat, Seri Pengembangan Wacana* Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), Jakarta.
- Hilman Hadikusuma, 1989, *Peradilan Adat di Indonesia*, CV Miswar, Jakarta.
- Muhammad Daud Ali, 1991, *Hukum Adat Gayo : Penelitian Awal Mengenai Hubungan Hukum Adat dengan Hukum Islam Masyarakat Indonesia*, Indonesia, Jakarta.
- Sjachran Basah, 1997, *Eksistensi Dan Tolok Ukur Badan Peradilan Administrasi Di Indonesia*, Alumni, Bandung.
- Sudikno Mertokusumo, 1971, *Sejarah Peradilan Dan Perundang-Undangannya Di Indonesiasejak 1942 Dan Apakah Kemanfaatan Bagi Kita Bangsa Indonesia*, Kilat Maju Bandung, Kilat Maju Bandung.
- Syahrizal, 2004, *Hukum Adat dan hukum Islam di Indonesia*, Nadiya Foundation Nanggroe Aceh, Banda Aceh.

### B. Article Journal

- Muhar Junef, "Penerapan Sanksi Adat Kepada Perusahaan Dan Pihak Lain Dalam Peradilan Adat", e-Journal Widya Yustisia, Volume 1 Nomor 2 Februari 2015.

### C. Regulation

- Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh  
Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh



Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman  
Qanun Aceh Nomor 9 Tahun 2008 Tentang Pembinaan Kehidupan Adat dan  
Adat Istiadat  
Qanun Kabupaten Aceh Tengah Nomor 10 Tahun 2002 tentang Hukum  
Adat Gayo  
Peraturan Gubernur Aceh Nomor 60 Tahun 2013 tentang Pelaksanaan  
Penyelesaian Sengketa Adat dan Istiadat.