

## Settlement of Land Disputes Through Aceh Land Service and Customary Institutions in Pidie District, Aceh Province

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**Abstract.** *This study aims to determine the role of the Aceh Land Service and the Aceh Customary Institution in resolving land disputes and to determine the process, obstacles, and solutions to land dispute resolution by the Aceh Land Service and the Aceh Customary Institution in Pidie Regency, Aceh Province. The research method used in this thesis is empirical juridical. This research is descriptive analytical. The types of data used in this study are primary data which include the results of interviews with informants and secondary data in the form of primary legal materials, including: the 1945 Constitution; Law 11/2006; Law 5/1960; Civil Code; and other laws and regulations; secondary legal materials in the form of books and tertiary legal materials as supporting materials. Data collection using interview techniques and document studies or library materials. The data analysis method used in analyzing data is qualitative analysis. The results of the study show that: The Aceh Land Office and Customary Institutions in Pidie Regency, Aceh Province use the mediation method with each of its own unique characteristics. Obstacles that result in the unpopularity of land dispute resolution through the Aceh Land Office: low attendance of the parties and limited competence of mediators. The solution to these obstacles is to massively socialize alternative land dispute resolution through the Aceh Land Office to village officials at the sub-district level to the village level and minimize technical obstacles related to the administration of inviting the disputing parties to attend the mediation process by optimizing electronic communication. Obstacles that arise in resolving land disputes through Customary Institutions: minimal attendance of the parties in the customary trial process and the competence and skills of members in customary institutions in managing emotions. The solution to these obstacles is to hold discussions to determine the day and time of the customary trial by involving the disputing parties and providing training in mediation competence and skills as well as emotional control to the organizers/customary court apparatus (customary institutions).*

**Keywords:** Aceh; dispute; Institution.

## 1. Introduction

In the Preamble to the 1945 Constitution, one of the objectives of the establishment of the Indonesian State is within the framework of protecting all Indonesian people and all of its homeland. In the context of non-human resources, the State should be able to protect both natural and non-natural resources, this is no exception in terms of protecting customs and the rights of traditional communities. In line with this, in the body of the constitution there are several provisions that provide direction as well as firm guarantees for the protection of traditional rights of customary law communities.<sup>1</sup>

The constitutional basis in the context of protecting the traditional rights of indigenous legal communities is as stated in Article 18B paragraph (2) of the Second Amendment to the 1945 Constitution which reads "The State recognizes and respects the units of indigenous legal communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law." and Article 28I paragraph (3) of the Second Amendment to the 1945 Constitution which reads as follows: "Cultural identity and the rights of traditional communities are respected in accordance with the development of the times and civilization". These provisions provide a basis for further strengthening the direction and constitutional guarantee of the importance of protecting the traditional rights of indigenous legal communities in Indonesia.

Indonesia is one of the agricultural countries where land has an important meaning for life. The increasing need for land among the community makes land a basic need that must be owned by every human being, because it has become an important need, land disputes often occur.<sup>2</sup>Talking about land, one of the laws in Indonesia that regulates this is Law Number 5 of 1960 concerning Basic Agrarian Principles, known as the Basic Agrarian Law (UUPA).

Article 3 of the UUPA states, "Considering the provisions in Articles 1 and 2, the implementation of customary rights and similar rights of customary law communities, as long as they actually still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with other higher laws and regulations." This clause guarantees that the state protects the implementation of customary rights and similar rights of customary law communities.<sup>3</sup>

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<sup>1</sup>Budi Agus Riswandi, 2021, "The Loss of Guarantees for the Protection of Traditional Culture".<https://law.uir.ac.id/blog/2021/08/23/jauhnya-jaminan-perlindungan-kultur-tradisional/>accessed on August 30, 2024 at 20:54 WIB

<sup>2</sup>Inosentius Samsu, 2014, "Strengthening Customary Institutions as Alternative Institutions for Dispute Resolution (Study of Customary Institutions in Banyu Asin Regency, South Sumatra and in Papua Province)", *Jurnal Negara Hukum*, Vol. 5, No. 2, Jakarta, pp. 2-3.<https://jurnal.dpr.go.id/index.php/Hukum/article/view/237>accessed November 9, 2023 at 11:03 WIB

<sup>3</sup>Bushar Muhammad, 1983, *Principles of Customary Law*, PT. Pradnya Paramita, Jakarta, p. 67.

One type of traditional land of indigenous legal communities in Indonesia whose rights are protected by the Government is customary land. Based on Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Customary Land is land located in the area controlled by indigenous legal communities which in reality still exists and is not attached to any Land Rights.<sup>4</sup>In fact, according to Article 4 of the policy, customary land is one type of land that can be granted Management Rights.

Land Disputes are issues that always arise and are always relevant from time to time, along with population growth, development, and the increasing access of various parties to obtain land as basic capital in various interests. According to Maria SW Soemardjono, "cases involving land disputes never recede, even tend to increase in the complexity of the problems and their quantity along with the dynamics in the economic, social, and political fields".<sup>5</sup>

To overcome this, efforts are needed to handle and resolve land issues. Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases regulates all land dispute matters.<sup>6</sup>Legally, there are two types of dispute resolution in legal matters, the first is known as litigation dispute resolution and the second is known as non-litigation.

For the Acehese people, non-litigation or customary dispute resolution has its own appeal because of its harmony with the social and cultural systems in the lives of the people. Article 98 paragraph (1) and paragraph (2) of Law Number 11 of 2006 concerning the Government of Aceh states that:

1. Customary institutions function and play a role as a vehicle for community participation in the implementation of Aceh Government and district/city government in the areas of security, peace, harmony and public order.
2. The resolution of social problems in society according to customary law is carried out through customary institutions.

The provisions governing the implementation of regional government are generally regulated through Law Number 23 of 2014 concerning Regional

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<sup>4</sup>Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Article 1 Number 13. State Gazette of the Republic of Indonesia 2021 Number 28.

<sup>5</sup>Maria SW Sumardjono et al., Land Dispute Mediation, Jakarta: Kompas, 2008, p.1

<sup>6</sup>Based on Article 1 number 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases, what is meant by a land dispute is a land dispute between individuals, legal entities, or institutions that do not have a wide impact. Land disputes are different from land conflicts and land cases. The definition of a land conflict refers to Article 1 number 3 of the Regulation, namely a land dispute between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a wide impact, while land cases according to Article 1 number 4 of the Regulation are land disputes that are handled and resolved through judicial institutions.

Government. In Chapter III concerning Governmental Power, Article 5 Paragraph 4, that "The Implementation of Government Affairs as referred to in paragraph (2) in the Region is carried out based on the principles of Decentralization, Deconcentration, and Assistance Tasks.". This clause was then negated in Article 7 of Law Number 11 of 2006 concerning the Government of Aceh that "The Government of Aceh and districts/cities have the authority to regulate and manage government affairs in all public sectors except government affairs that are the authority of the Government." Law Number 11 of 2006 concerning the Government of Aceh is a form of manifestation of the existence of autonomy with special characteristics given to the Province of Aceh. The establishment of the Aceh Land Service is one form of implementation of the Aceh Government's specialization in the land sector, the provisions of which are stipulated in Aceh Governor Regulation Number 133 of 2016 concerning the Position, Organizational Structure, Duties, Functions and Work Procedures of the Aceh Land Service. In Article 5 of the Governor Regulation, "The Aceh Land Service has the task of carrying out government affairs and development in the land sector."

Therefore, the role of the Aceh Land Service and Customary Institutions is very important in the process of resolving disputes, especially at the village level, without having to involve government judicial institutions. This study focuses on the comparison and legal basis of the Aceh Land Service and Customary Institutions in Pidie Regency in an effort to resolve land disputes by raising them into a discussion entitled: "RESOLVING LAND DISPUTES THROUGH THE ACEH LAND SERVICE AND CUSTOMARY INSTITUTIONS IN PIDIE DISTRICT, ACEH PROVINCE"

## **2. Research Methods**

The research method used in this thesis is empirical juridical. This research is descriptive analytical. The type of data used in this study is primary data which includes the results of interviews with informants and secondary data in the form of primary legal materials, including: the 1945 Constitution; Law 11/2006; Law 5/1960; Civil Code; and other laws and regulations; secondary legal materials in the form of books and tertiary legal materials as supporting materials. Collection of research data using interview techniques and document studies or library materials. The data analysis method used in analyzing data is qualitative analysis.

## **3. Results And Discussion**

### **The Role of the Aceh Land Service in Efforts to Resolve Land Disputes**

The presence of the Aceh Land Service makes Aceh Province different from other provinces in Indonesia. The Aceh Land Service has the following objectives and functions: Land Arrangement, Land Acquisition, and Land Dispute Resolution. As a mediator, the Aceh Land Service has a role in helping the parties understand each other's views and helping to find things that are considered important to them. The mediator facilitates the exchange of information, encourages discussion of differences in interests, perceptions, interpretations of situations and issues, and regulates the expression of emotions. This is in accordance with

the role of the mediator, namely helping the parties prioritize issues and emphasizing discussions on common goals and interests. The mediator will often meet with the parties in person. As a forum for information between the parties, the mediator will have more information about the dispute and issues than the parties and will be able to determine whether there is a basis for an agreement.<sup>7</sup>

### **The Role of Customary Institutions in Efforts to Resolve Land Disputes**

Customary institutions not only play a role as organizers of government activities but are also responsible for resolving conflicts that occur in their areas of authority. For gampong, customary institutions that have authority in this area are keuchik, tuha peut, and imeum meunasah. These elements of customary institutions are authorized to carry out all functions and roles listed in the Qanun on Customary Institutions. All issues related to conflict in society will be resolved first at the gampong level. If the conflict cannot be resolved at the gampong level, the case will be brought to the mukim level. At the mukim level, cases that are resolved are not only cases overflowing from the gampong but also cases related to conflicts between gampongs and conflicts that occur in the gampong government apparatus that are not possible for them to resolve themselves.

### **Land Dispute Resolution Process by Aceh Land Office, Pidie Regency**

The dispute resolution process at the Aceh Land Service, Pidie Regency, as explained from the results of an interview with Mrs. Nurhayati, SH, as Head of the Dispute Control and Handling Section, Aceh Land Service, Pidie Regency, Aceh Province, explained that based on Complaints. Complaints made to the Aceh Land Service, Pidie Regency can be in the form of written complaints, through the complaint reception counter directly and complaints through online media organized by the Ministry. The complaint must be accompanied by a photocopy of the complainant's identity, a photocopy of the power of attorney and power of attorney if authorized, as well as supporting data or evidence related to the complaint. This complaint at least contains the complainant's identity and a brief description of the case. Where this complaint letter will be processed and submitted to the head of the office to obtain approval from the head of the Aceh Land Service, Pidie Regency because everything related to this complaint must be known and approved by the head of the Aceh Land Service, Pidie Regency.

The next stage of the files that have been approved by the Head of the Aceh Land Service, Pidie Regency, the dispute section will continue to conduct a review of the cases that occur where this section is to conduct a case analysis in the form of: the main problem that describes the subject of the dispute, case history, documents and case classification. Furthermore, conducting an initial title is aimed at determining the agency or institution or parties that have the authority or interests related to the case being handled and formulating a

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<sup>7</sup>Interview with Mrs. Nurhayati, SH, as Head of the Dispute Control and Handling Section, Aceh Land Service, Pidie Regency, Aceh Province, (Pidie, April 7, 2024)

handling plan. Then conducting research aims to collect physical, legal, and field data.

After conducting the research, the next step is to expose the research results, this aims to evaluate and solve problems faced in handling and resolving cases, find out the progress of the case and determine further action plans. Then enter the coordination meeting, this aims to make decisions or mediation steps are needed to resolve the case, then a review can be carried out, as well as provide recommendations or instructions that are still needed such as data or additional information to reach a conclusion on resolving the case. If the coordination is deemed sufficient, the next stage will be to summon the complainant first, either by telephone or letter. This summons is intended to dig up detailed information from the complainant regarding the land dispute. Information received from the complainant will be summarized and recorded by the dispute section. The complainant will also be notified if a mediation process will be carried out to resolve the case at hand.

The next process is the summons of the defendant to explain the complaint from the plaintiff regarding the dispute reported by the plaintiff. Then, if the information has been collected, the defendant will be offered to undergo a mediation process by the Aceh Land Service, Pidie Regency to resolve the dispute. Furthermore, if the plaintiff and defendant agree to the mediation process, the dispute section of the Aceh Land Service, Pidie Regency will summon both parties simultaneously. Then, mediation is carried out by the Mediator. This mediator comes from the Aceh Land Service, Pidie Regency to resolve the problems faced. If the defendant does not agree or does not want to mediate, the office will try to summon 3 (times). If it is still unsuccessful, it will be submitted to the court.

In the case where the parties have been invited 3 (three) times properly but do not attend, the mediation is declared a failure. If the parties are absent due to illness or other reasons deemed legitimate, they can be replaced. However, if the parties cannot attend due to health reasons or other legitimate reasons, the mediation can be represented by a power of attorney who is authorized to decide with the consent of the disputing parties.<sup>8</sup>

Furthermore, the final title aims to make a decision on the settlement where the making of the minutes of the peace is in accordance with the provisions. The minutes issued will later be reported to the head of the Aceh Land Service of Pidie Regency, where these minutes can be used as evidence that the dispute settlement has been completed and these minutes can be registered with the court to obtain stronger legal force.

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<sup>8</sup> Interview with Mrs. Nurhayati, SH, as Head of the Dispute Control and Handling Section, Aceh Land Service, Pidie Regency, Aceh Province, (Pidie, April 7, 2024)

### **Land Dispute Resolution Process by Customary Institutions**

Zawahir said that there are customary institutions at the village and mukim levels. Whenever a dispute occurs in community life, this community always resolves the problem according to the customs that apply in their community. All of these institutions play a role in their respective positions so that the management of natural resources in the village is maintained. This was also confirmed by Rizki, the village secretary who is often a place for residents or parties who report various problems and community conditions that occur in their area.<sup>9</sup>As the village secretary, he is also often involved in efforts to resolve disputes in the community. In this case, he is often involved in drafting an agreement between the parties after going through peaceful efforts through deliberation between the disputing parties.<sup>10</sup>

According to several residents who were met, it is known that efforts to resolve disputes through the Keuchik and village officials are preferred by residents considering that results can be obtained immediately through deliberation and do not require large costs and a long period of time, in contrast to if the settlement is carried out through a judicial institution. So in other words, dispute resolution carried out through the Keuchik and village officials can save time and costs and is also carried out peacefully and mutually beneficially. In general, the procedure for resolving disputes through customary peace courts is carried out with the following procedures and stages:<sup>11</sup>

- a. Reporting made by the victim or both parties to the Head of the Alley or Peutuwa Jurong where the legal incident occurred. However, it is possible that the report can also be addressed directly to the Keuchik. Sometimes the Head of the Alley or Peutuwa Jurong himself resolves it, if the case is not serious. However, if the case is very serious and complicated and involves public interest, then the hamlet head immediately reports to the Keuchik;
- b. Immediately after the Keuchik receives a report from Peutuwa Jurong or from the victim, the Keuchik will hold an internal meeting with the Keuchik Secretary, Hamlet Head, and Imeum Meunasah to determine the trial schedule; The report may not be made in just any place such as a market or coffee shop, but must be made at home or in the Meunasah;
- c. Before the trial is held, the Keuchik and his staff (Keuchik Secretary or Gampong Secretary, Imeum Meunasah and Peutuwa Jurong) approach both parties. The approach aims to find out the real facts of the case and at the same time ask about their willingness to resolve it peacefully. During the approach, the implementers of customary justice will use various mediation and negotiation methods, so that the case can be resolved immediately;

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<sup>9</sup>Interview with Mr. Rizki, Village Secretary in Delima District, Pidie Regency, Aceh Province, (Aceh, April 4, 2024).

<sup>10</sup>Ibid.,

<sup>11</sup>Ibid.

- d. The approach is not only done by the Keuchik and his staff, but can also be done by other wise people. For sensitive cases where the victims are women or young people, the approach is usually done by the Keuchik's wife or other wise female figures;
- e. If the peaceful settlement agreement has been approved by both parties, the Keuchik Secretary will officially invite both parties to attend the trial on the day and date that has been determined;
- f. During the trial, the parties may be represented by their guardian or another relative as a spokesperson;
- g. The trial is official and open and is usually held in the Meunasah or other places considered neutral;

#### **Obstacles to Land Dispute Resolution by the Aceh Land Office**

- a. There are no sanctions for the parties if one party does not follow the mediation process.
- b. Rthe low level of participation (attendance) of the disputing parties.
- c. Lack of competence to be a Mediator for State Civil Apparatus in the Dispute Control and Handling Section so that the quality of mediation implementation is determined only from experience, not based on expertise certification that is legalized by the Supreme Court or other authorized bodies.
- d. The parties put forward their respective egos.

#### **Obstacles to Land Dispute Resolution by Customary Institutions in Pidie District, Aceh Province**

- a. Absence of Parties Involved.
- b. Each Party Maintain His Own Opinion.
- c. The Keuchik's lack of emotional control, the Keuchik is often provoked by emotions due to the behavior of the disputing parties, so that mediation is delayed.
- d. Each party asks for certain conditions and the other party does not want to accept them.
- e. Lack of quality of human resources (HR) from Keuchik due to low educational background

#### **Land Dispute Resolution Solution by Aceh Land Office**

- a. Conducting massive socialization of alternative land dispute resolution through the Aceh Land Service to village officials at the sub-district level to the village level.
- b. Minimizing technical obstacles related to the administration of inviting the disputing parties to attend the mediation process.



- c. Propose to the Ministry of ATR/Head of BPN (Center) to formulate a policy that allows for the imposition of administrative sanctions or certain administrative fees when registering the mediation process.
- d. Improving the competence of mediators in all vertical agencies under the Ministry of ATR/BPN by standardizing competence through mediator certification.

#### **Land Dispute Resolution Solutions by Aceh Customary Institutions in Pidie Regency, Aceh Province**

- a. Providing training in the form of seminars or workshops on an ongoing basis to customary justice organizers/apparatus (Keuchik, Imum Meunasah, Tuha Peut, Gampong Secretary and Community Leaders) related to customary justice processes, deliberation for consensus, and mediation.
- b. Increase the probability of the parties attending by holding discussions to determine the day and time for the customary hearing involving the disputing parties.
- c. Providing massive socialization to all levels of village society regarding alternative land dispute resolution through customary institutions, including the process and mechanism so that a mindset can be formed that land dispute resolution through customary institutions is a win-win solution that can maintain harmonious village community relations. This mindset will indirectly reduce the egos of the disputing parties during the customary justice process.
- d. Providing emotional and spiritual control training to customary justice administrators/apparatus (customary institutions) in order to improve self-control.

#### **4. Conclusion**

The Aceh Land Office and Customary Institutions in Pidie Regency, Aceh Province have their respective roles in resolving land disputes that occur in the community with the same method, namely peace or mediation with each of their own characteristics. Obstacles that result in the unpopularity of land dispute resolution through the Aceh Land Office: low attendance of the parties and limited competence of mediators. The solution to these obstacles is the massive socialization of alternative land dispute resolution through the Aceh Land Office to village officials at the sub-district level to the village level and minimizing technical obstacles related to the administration of inviting the disputing parties to attend the mediation process by optimizing electronic communication. Obstacles that arise in resolving land disputes through Customary Institutions: minimal attendance of the parties in the customary trial process and the competence and skills of members in customary institutions in emotional management. The solution to these obstacles is to hold discussions to determine the day and time of the customary trial by involving the disputing parties and

providing training in mediation competence and skills as well as emotional control to the organizers/customary court apparatus (customary institutions)

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