

Implementation of Restorative Justice Based on Aceh Qanun Number 9 of 2008 Regarding the Settlement of Criminal Acts of Assault in Aceh Besar

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Abstract

The implementation of restorative justice in handling criminal acts of abuse in Aceh Besar based on Aceh Qanun Number 9 of 2008 is an effort to integrate local values with a modern approach to law enforcement. This Qanun provides a legal framework for the Acehnese people to resolve criminal conflicts through customary mechanisms that emphasize reconciliation, restoring relationships between perpetrators and victims, and community involvement in the resolution process. This article explores how restorative justice is applied in cases of abuse in Aceh Besar, focusing on the role of customary institutions in mediation and conflict resolution. Through a qualitative analysis of several cases of abuse, it was found that this approach is not only effective in reducing recidivism rates, but also in strengthening social cohesion in the community. However, the implementation of restorative justice based on this Qanun faces challenges, including a lack of community understanding of customary law procedures and limited support from law enforcement officers. This study concludes that the integration of customary law and restorative justice in Aceh Qanun Number 9 of 2008 has great potential to improve the criminal justice system in Aceh, provided that there is increased socialization and coordination between customary institutions and formal legal institutions.

Keywords: Restorative Justice, Aceh Qanun, Abuse.

INTRODUCTION

In terms of law enforcement, there are also three main elements that need to be considered, namely legal certainty, benefit, and justice. The existence of criminal law also realizes justice in society through the resolution of criminal cases that occur in society and always provides a form of protection of human rights for anyone. In this case, of course, all components in the implementation of criminal law in community life must be able to run harmoniously. In general, in the process of enforcing criminal law, the form of the enforcement process often ends in a situation of criminalizing the perpetrator for his actions, but this process often does not fulfill the restoration of the rights of victims, both physical and psychological losses due to the criminal incident that occurred.¹

The police basically have strategic policies in realizing and presenting justice for the implementation of law enforcement in the application of criminal case resolution in society through restorative justice. In implementing law enforcement, the police apply the concept of restorative justice as in accordance with the Regulation of the Chief of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation (Perkapolri Number 6 of 2019) and Circular of the Chief of the National Police of the Republic of Indonesia Number SE / 8 / VII / 2018 of 2018 concerning the Implementation

¹Mahendra, AP "Penal Mediation at the Investigation Stage Based on Restorative Justice. Journal" Jurist-Diction. Vol 3. No.4. 2020, page 135

of Restorative Justice in the Settlement of Criminal Cases (SE Kapolri Number 8 of 2018). The existence of the application of the concept of restorative justice through the police is a form of development in the implementation of law enforcement in Indonesia as it aims to create a sense of justice for the community by restoring it to its original state or resembling the original condition for the victim. In other words, the interests and justice for the victims can be fulfilled.²

Acehnese customary institutions have the opportunity to resolve community issues in accordance with cases that fall under their authority. Even formal institutions are required to hand over to non-formal institutions if the case is categorized as a minor crime. The handover back to customary institutions is legitimized by the Joint Decree between the Aceh Government, the Aceh Police Chief, the Aceh Customary Council Number: 189/677/2011. The second point of the decision stipulates that the Police Apparatus provides an opportunity for every dispute/dispute as referred to in the First Dictum to be resolved first through the customary courts of the village and mukim or other names in Aceh. Other regulations that provide an opportunity for customary resolution are regulated in Article 13 paragraph (3) of Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life. In this provision it is stated that law enforcement officers provide an opportunity for disputes/disputes to be resolved first through customary law in the Village or other names. This shows that in terms of regulation, the relationship between formal and non-formal institutions has been comprehensively regulated in laws and regulations. The good relationship between the two institutions is not only at the regulatory level, the same thing is manifested in an applied form.³

In general, the implementation of Aceh Customary Courts is carried out by the Gampoeng and Mukim Institutions, the same applies to all of Aceh in resolving customary disputes. It's just that in certain areas, such as Aceh Tamieng and Central Aceh, they use other terms. However, its function remains the same, namely as an institution for resolving customary disputes or cases. The bodies or institutions that organize Aceh Customary Courts at the Gampoeng/Mukim level are as follows:⁴

- a) Keuchik/Geuchik is a community leader, who is elected democratically/directly by the people according to Law Number 5 of 1979, which according to Regional Regulation Number 6 of 1982, his term of office is seven years, or another name (as chairman of the meeting);
- b) Tuha Peuet is an institution in Aceh which functions as a Council of Four whose members, either individually or together, take responsibility for general government tasks as a council that accompanies the uleebalang in carrying out daily tasks, or another name (as members);

²Aulia Saiful Hadi. "Implementation of Restorative Justice in Resolving Criminal Cases Through the Implementation of Qanun in Aceh". *Ius Civile Journal* Volume 6, Number 1, Year 2022:120

³Budi Bahreisy, Ferdy Saputra, Hidayat. "Implementation of Restorative Justice Through Customary Institutions Against Children in Conflict with the Law in Lhokseumawe City". *Jurnal Eksekusi: Journal Of Law* Vol. 4 No. 1 June 2022:Page 93

⁴Wahyu Ramadhani. "The Existence of Qanun Number 9 of 2008 in Resolving Minor Assault Crimes in Langsa City. *Legalite*". *Journal of Islamic Criminal Law and Legislation* Vol. 5 Issue 1 2020, page 32

- c) Imeum Meunasah or other name (as a member);
- d) Ulama are waraasatul ambiya, so it is appropriate that the fatwa and role of ulama need to be reactualized and re-functioned in their position as protectors and guides for the people, in this case guides for the Acehnese community. This attitude is important to maintain and build a dignified Aceh, Intellectuals, Traditional Figures or other names (as members);
- e) Gampoeng Secretary (as clerk);
- f) Ulee Jurong (as recipient of the initial report)

The existence of Customary Courts is an institution of Customary Deliberation/Customary Meusapat which functions to carry out tasks and authority to adjudicate/resolve disputes/cases that occur in society peacefully to build balance (equilibrium), so that society becomes harmonious, peaceful, and prosperous. In resolving problems in society, the geuchik as the highest leader, in addition to having to coordinate with all Village/Gampong Apparatus, the geuchik must also coordinate with the local Indonesian National Police in order to create a good state order.

Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs in Article 13 paragraphs (1), (2) and (3) regulates the types of customary disputes/disputes that occur in villages and the method of resolving them, namely that law enforcement officers provide an opportunity for disputes/disputes to be resolved first according to customary law in the village or other name.

Through Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs, the meunasah began to function again as a place for deliberation and a place to resolve disputes/cases, namely as stated in Article 14 paragraph (4) which reads "Dispute/conflict resolution deliberation sessions are held in the Meunasah or other name at the Gampong level or other name and in the Mosque at the Mukim level or other places designated by the Keuchik/Geuchik or other name and the Imeum Mukim or other name."

The main function of Meunasah is as a place for deliberation of various needs, discussing and finding solutions to problems that arise. In addition, Meunasah also functions to carry out judicial duties and find laws to be used at the Village/Gampoeng level, which are sourced from Gampoeng apparatus functionaries, namely Keuchik, Teungku Sagoe, Tuha Peut, Tuha Lapan, Customary Figures and various other intellectuals who are authoritative/charismatic, have positions, are knowledgeable, and even have wealth as a prerequisite for appreciation from their community. Meunasah also functions to carry out legal decisions/execution of peace decisions that have been determined by the organizers of the Customary Court.⁵

Based on the background above, the author chose the title of this research, namely "Implementation of Restorative Justice Based on Aceh Qanun Number: 9 of 2008 Regarding the Settlement of Criminal Acts of Abuse in Aceh Besar".

The main problems in this research are:

⁵Aceh Customary Assembly, Function of Meunasah as a Customary (Legal) Institution and its Actualization in Aceh, Banda Aceh, Aceh Customary Assembly, Aceh Province, 2009. page 37

1. What is the legal basis? Restorative Justice Criminal Acts of Assault According to Indonesian Positive Law?
2. How to Implement Restorative Justice in the Settlement of Criminal Acts of Assault Based on Aceh Qanun Number: 9 of 2008 in Aceh Besar?

The objectives of this research are:

1. To know and study the Legal Basis Restorative Justice Criminal Acts of Assault According to Indonesian Positive Law
2. To Know and Review the Implementation Restorative Justice in the Settlement of Criminal Acts of Assault Based on Aceh Qanun Number: 9 of 2008 in Aceh Besar

LITERATURE REVIEW

Restorative Justice

Restorative justice is a model for resolving criminal cases that prioritizes the recovery of victims, perpetrators and the community. The main principle of restorative justice is the participation of victims and perpetrators, participation of citizens as volunteer mediators or facilitators in resolving cases (Herlina, 2014). Restorative justice is the resolution of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a just resolution by emphasizing restoration to the original state, and not retaliation.

In accordance with the spread of this process throughout the world, several innovations have emerged that are indeed open to restorative justice. It is easier for restorative justice to view that:⁶

- 1) Crime is a violation against people and relations between citizens.
- 2) Violation creates liability.
- 3) Justice includes victims, offenders, and citizens in an effort to put things right.
- 4) The central focus: victims need to repair the losses they have suffered (both physical, psychological and material) and the perpetrator is responsible for repairing them (usually by way of an admission of guilt from the perpetrator, an apology and a sense of remorse from the perpetrator and the provision of compensation or restitution.

Marlina said that the concept of restorative justice is a process of resolving legal violations that occur by bringing the victim and the perpetrator (suspect) together to sit in a meeting to be able to talk. Through restorative justice is basically a joint resolution carried out between the perpetrator and the victim in a forum⁷

Liebmann simply defines restorative justice as a legal system that "aims to restore the welfare of victims, perpetrators and the community damaged by crime, and to prevent further violations or criminal acts. Liebmann also provides the following basic principles of restorative justice:⁸

- a. Prioritize victim support and healing.

⁶Achmad Ali, *Uncovering Legal Theory and Judicial Prudence*, Jakarta, Kencana Prenada Media Group, 2009, p. 249.

⁷Marlina, *Juvenile Criminal Justice in Indonesia, Development of the Concept of Diversion and Restorative Justice*, First Edition, Bandung, Refika Aditama, 2009. p. 180

⁸Yusi Amdani. "The Concept of Restorative Justice in the Settlement of Criminal Cases of Theft by Children Based on Islamic Law and Aceh Customs". *Al-Adalah Journal* Vol. XIII, No. 1, June 2016, page 64

- b. Violators are responsible for what they do.
- c. Dialogue between the victim and the perpetrator to reach an understanding.
- d. There are efforts to properly assess the losses incurred.
- e. Offenders must be aware of how to avoid crimes in the future.
- f. The community also helps in integrating the two parties, both the victim and the perpetrator.

The main goal of restorative justice is to create a fair trial. In addition, it is expected that the parties, both the perpetrator, the victim, and the community play a major role in it. The victim is expected to receive appropriate compensation and agreed upon together with the perpetrator to replace the losses and reduce the suffering experienced. In restorative justice, the perpetrator must take full responsibility so that it is hoped that the perpetrator can realize his mistake.

Toni Marshal revealed 5 key principles of restorative justice, namely:⁹

- a. Restorative Justice involves full participation and consensus.
- b. Restorative Justice seeks to heal the damage or loss that occurs as a result of a crime.
- c. Restorative Justice provides direct accountability from the perpetrator in full.
- d. Restorative Justice seeks to reunite members of a society that has been divided or separated by criminal acts.
- e. Restorative Justice provides resilience to communities to prevent further criminal acts.

Definition of Persecution

Abuse is an intentional act that causes discomfort, pain, or injury. 1 In general, criminal acts against the body in the Criminal Code are called "abuse", regarding the meaning and significance of the word abuse, there are many differences among legal experts in understanding it. 2 Abuse is actually not limited to physical abuse such as slapping, biting, hitting, kicking, throwing, there are also other forms of abuse that are psychological or emotional. This abuse can be in the form of instilling fear through intimidation, threats, insults, curses, to limiting his movement¹⁰

According to H. Tirtaamidjaja torturing is intentionally causing pain or injury to another person. However, an act that causes pain or injury to another person cannot be considered as abuse if the act is done to protect bodily safety¹¹

According to court jurisprudence, what is meant by persecution is:¹²

1. Intentionally causing unpleasant feelings (suffering).
2. Causes pain.
3. Causes injuries

This abuse is clearly carrying out an act with the aim of causing pain or injury to another person. The element of intention here must include the aim of causing pain or injury to another person. In other words, the perpetrator intended the consequences of an act to

⁹*Ibid*, p. 65

¹⁰Anwita Fauziah, M, Ridho Mubarak, Wessy Trisna "Implementation of Minor Criminal Acts in Assault Cases (Study of Decision Number: 178/Pid.B/ 2017/PN. Mdn)" Juncto: Jurnal Ilmiah Hukum, Vol.1 No.1. 2019, p. 32

¹¹Leden Marpaung, Crimes against life and body (eradication and prevention), Jakarta. Sinar Grafika, 2012, p. 5.

¹²R.Soesilo. Criminal Code and its Complete Commentaries Article by Article. Bogor. Politeia 2015, p.245

occur. The will or purpose here must be inferred from the nature of the action that causes pain or injury to another person. In this case, there must be a touch on another person's body which automatically results in pain or injury to another person. For example hitting, kicking, stabbing, scratching, and so on. Thus, to say that someone has committed abuse against another person, that person must have the opportunity or intention to:¹³

- a. Inflicting pain on others
- b. Causing injury to another person's body
- c. Harming the health of others. In other words, the person must have an intention aimed at causing pain to others or causing injury to the body of others or harming the health of others.

The intention of someone to commit abuse is not only focused on the form of beatings or cuts, but can also be equated with abuse if someone commits violence that damages the health of another person. Attempted abuse is not punishable, but attempts to commit abuse that are thought out in advance (met voor bedachten rade) can be punished.¹⁴

Persecution contained in CHAPTER XX II, Articles 351 to Article 355 is as follows:

1. Ordinary assault Article 351 of the Criminal Code.
2. Light maltreatment Article 352 of the Criminal Code.
3. Premeditated assault Article 353 of the Criminal Code.
4. Serious assault Article 354 of the Criminal Code.
5. Serious assault Article 355 of the Criminal Code.

Persecution has the following elements:¹⁵

- a. There is intent
The element of intent is a subjective element (error). In the crime of assault, the element of intent must be interpreted narrowly, namely intent as an intention (opzet alsoogmerk). However, it should be noted that even though intent in the crime of assault can be interpreted as intent with awareness of the possibility, this interpretation is also limited to the existence of intent as a possibility of consequences. This means that the act must be an act that is truly intended by the perpetrator as an act that is desired or intended.
- b. There is an act
The element of the act is an objective element. What is meant is an act that contains physical violence in the form of hitting, kicking, pinching, slicing, slashing, and so on.
- c. There are consequences for the intended action
 1. Makes you feel uncomfortable.
 2. Pain in the body, suffering that does not show changes in the body.
 3. Wounds on the body, showing changes in the body due to abuse.
 4. Damaging people's health

¹³Projodikoro. Principles of Criminal Law in Indonesia, Bandung, Reflika Abitama, 2010, p.87

¹⁴Andi Hamzah, Certain Offenses in the Criminal Code, Jakarta. Sinar Grafika, 2009. p. 71

¹⁵Adami Chawazi. Crimes Against Body and Life. Jakarta, Rajawali Press. Year 2010. page 10

Understanding Customary Settlement

Custom comes from Arabic meaning habit. From the perspective of etymology, custom can be given the meaning of an action that is done repeatedly and then becomes a habit that is fixed and respected by people, therefore the habit becomes a custom. In the Big Indonesian Dictionary, custom is a rule (action) that is customary or has been continuously carried out for a long time, or a way (behavior) that has become a habit; a form of cultural idea consisting of cultural values, norms, laws and rules that are related to each other to form a system.¹⁶

Customary law means law that regulates human behavior and relationships with each other, customs or morals that are truly alive in the life of society that are maintained which have sanctions and have legal consequences. In addition, the decisions of customary rulers and are closely related to religious values are therefore relatively difficult to unite nationally, so their development and formulation in positive law are carried out through jurisprudence.¹⁷

Every dispute that arises in society can disrupt the balance of the social order. Therefore, it is necessary to try to resolve every dispute so that the balance of the social order can be restored. Basically, the existence of a way to resolve disputes is as old as the existence of humans themselves. In every society, various traditions have developed regarding how disputes are handled. Disputes can be resolved in various ways, both through formal forums provided by the state and through other forums that are not officially provided by the state.¹⁸

In Indonesia, in addition to the state court as a formal institution for dispute resolution whose existence is regulated in Law No. 48 of 2009 concerning Judicial Power, there are also other dispute resolution institutions that refer to customary law. This is due to the existence of legal pluralism in force in Indonesia, the applicable law is not only the law originating from the government or state (state law), but also the law originating from the customs of society (customary law) and the law originating from religious teachings (religious law).

In the customary law community, disputes that occur have long been resolved through deliberation and consensus through customary institutions commonly called customary courts. Usually those who act as judges in these institutions are customary figures (customary heads) and religious leaders. The authority of the customary court judge is not merely limited to peace, but also the power to decide disputes in all areas of law that are not divided into criminal, civil and public.¹⁹

METHOD

Types of research

This type of research is normative legal research, namely by using a statutory regulatory approach. The focus of normative legal research, in accordance with the unique

¹⁶Jamaluddin, Faisal, Ramziati, Yusrizal, Manfarisyah, Mukhlis. Dispute Resolution Through Customary Courts: An Instrument to Achieve Peace and Justice for the Community. Lhokseumawe, Unimal Press. Year 2019. page 6

¹⁷Sukanto, Reviewing Indonesian Customary Law, An Introduction to Studying Customary Law, Jakarta, Raja Grafindo Persada. Year 2016. page 127

¹⁸Eman Suparman. Choice of Arbitration Forum in Commercial Disputes for Upholding Justice. Jakarta, Tata Nusa, 2004. page 35

¹⁹Hilman Hadikusuma. Introduction to Indonesian Customary Science. Bandung Mandar Maju., 2013. page 15

character of legal science, lies in the legal review or legal study of positive law, which includes three layers of legal science, consisting of legal dogmatics review, namely the review carried out on identification in positive law, especially statutes. While at the level of legal theory, a review is carried out on theories that can be used. The type of research in this study is normative legal research that critically and comprehensively examines the legal enforcement of traffic violations.

Problem Approach

The problem approach used in this study is the statutory regulatory approach. The statutory regulatory approach is used because what will be studied is the legal regulations related to this study. This approach is carried out by examining all laws and regulations related to police discretion through penal mediation. This approach requires understanding the hierarchy and principles of laws and regulations.

Source of Legal Material

Primary legal materials consist of laws and government regulations, court decisions that have permanent legal force, other related regulations such as the Criminal Code, Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs. Secondary legal materials are materials that provide explanations regarding primary legal materials such as research, proceedings related to research. Tertiary legal materials are materials that provide instructions or explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.

RESULTS AND DISCUSSION

Restorative justice is a new concept in resolving criminal cases, which is often referred to as a form of the concept of restoring the original state. The resolution of criminal cases through the concept of restorative justice is very different from the usual resolution of criminal cases which prioritize the purpose of punishment in the form of retribution or providing a deterrent effect on perpetrators of criminal acts. In terms of resolving criminal cases through the concept of restorative justice, its implementation greatly emphasizes the direct participation of the parties involved and elements of society to resolve the criminal acts that have occurred.²⁰

The restorative justice process brings the perpetrator and victim together to find the best way, attended by the perpetrator, victim, family, community, and mediator. The meeting is expected to restore the suffering and losses experienced by the victim, by the perpetrator providing compensation, or doing social work, making improvements or certain activities in accordance with the joint decision that has been agreed upon.²¹

²⁰Sahti, A. "Implementation of the Restorative Justice Concept in Settlement of Traffic Accident Cases". *Jurnal Aktualita*. Vol.2 No. 2. 2019, page 395

²¹Marliani, *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice*, Refika Aditama, Bandung, 2009, p. 23.

Customary legal settlement is one of the alternative forms of restorative justice in resolving minor criminal cases in Indonesia, so the application of Qanun in Aceh as an alternative law in resolving conflicts that occur in society. The concept of fostering customary life and customs in line with Islamic law in Aceh is based on the collective principle of the Acehnese people who do not separate law (Islam) and customs in life. Both are identities and self-identities that need to be continuously maintained, developed, and protected. Customs and customs also become the glue and unifier of the various sub-ethnicities that live in society in Aceh. Therefore, the values of customs and customs need to be fostered and developed in the midst of community life.

Legal Foundation Restorative Justice Criminal Acts of Assault According to Indonesian Positive Law

The legal basis for Restorative Justice is contained in Article 24 paragraph (1) of the Covenant on Civil and Political Rights, which stipulates that every child has the right to receive protection measures, because their status as minors should be used as a legal basis for judges to stop cases involving children. Such decisions are valid because judges are given the freedom in Article 28 paragraph (1) of Law Number 4 of 2004 to explore, follow and understand the legal values and sense of justice that exist in society.²²

The legal basis for implementing restorative justice in resolving criminal acts of assault is as follows:

- a. Article 310 of the Criminal Code (KUHP)
- b. Article 205 of the Criminal Procedure Code (KUHP)
- c. Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limits of Minor Criminal Offenses and the Amount of Fines in the Criminal Code
- d. Joint Memorandum of Understanding of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Attorney General, Chief of the Indonesian National Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP-06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of the Application of Adjustments to the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Application of Restorative Justice
- e. Letter of the Director General of the General Courts Number 301 of 2015 concerning the Settlement of Minor Criminal Offenses Letter of the Chief of Police Number: Pol.B/3022/XII/ 2009/Sde Ops, dated 4 December 2009 concerning Handling of Cases through Alternative Dispute Resolution/ADR.
- f. Telegram Letter from the Head of the Indonesian National Police Criminal Investigation Unit to the Director of Criminal Investigation Unit, Director of Criminal Investigation Unit and Director of Narcotics Investigation Unit of all Regional Police Units Number: ST/110/V/2011, dated 18 May 2011 regarding Alternative Settlement of Cases Outside the Court

²²Lilik Purwastuti Yudaningsih. "Handling of Children's Cases Through Restorative Justice". Journal of Legal Studies 2014, page 69

- g. Secret Telegram Letter from the Head of the Indonesian National Police Criminal Investigation Unit to the Director of Criminal Investigation Unit, Director of Criminal Investigation Unit and Director of Narcotics Investigation Unit of all Regional Police Units Number: STR/583/VIII/2012, dated 18 August 2012 concerning the Implementation of Restorative Justice.
- h. Circular of the Chief of the Republic of Indonesia National Police Number: SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases
- i. Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation
- j. Regulation of the Republic of Indonesia National Police Number 8 of 2021 Concerning Handling of Criminal Acts Based on Restorative Justice

The conditions for criminal cases that can be terminated or resolved through restorative justice are explained in Article 5 Paragraph 1 of the Prosecutor's Regulation Number 15 of 2020, namely as follows:

- a. The suspect committed a crime for the first time.
- b. Criminal acts are only punishable by a fine or imprisonment of no more than 5 (five) years.
- c. The crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000,- (two million five hundred thousand rupiah).

In Article 12 of the Chief of Police Regulation Number 6 of 2019, a criminal act that is resolved through the principle of restorative justice must meet several material requirements, including:²³

1. Criminal acts that occur in society do not cause prolonged conflict.
2. There is a statement from the parties involved to waive the right to sue before the law.
3. The crime committed by the perpetrator is not a serious crime or is a minor crime.
4. Criminal acts that can be resolved through the principle of restorative justice are criminal acts that are still under investigation (a series of actions to search for and discover events that are suspected to be criminal acts to determine whether or not an investigation can be carried out at the next stage).
5. Criminal acts that will be resolved through the principle of restorative justice are criminal acts for which a Notice of Commencement of Investigation (SPDP) has not been sent to the Public Prosecutor during the process.

The formal requirements for resolving criminal acts through the application of the principle of restorative justice are also explained in Article 12 of the Chief of Police Regulation Number 6 of 2019, namely:²⁴

- a. There is a Letter of Request for Peace from both parties, namely the reporter and the reported party.
- b. The existence of a Peace Letter and Settlement of Disputes between the disputing parties.

²³Aulia Saiful Hadi. Op.Cit, page 126

²⁴Ibid, p. 126

- c. The existence of Additional Examination Minutes of the parties involved in the case after the criminal case has been resolved through the principle of restorative justice.
- d. There is a recommendation from a special case title that approves the resolution of criminal cases through restorative justice.
- e. The perpetrator of the crime truly carries out all forms of responsibility for the crime that has been committed willingly.
- f. Criminal acts that can be resolved through restorative justice

Implementation Restorative Justice in the Settlement of Criminal Acts of Abuse Based on Aceh Qanun Number: 9 of 2008 in Gampong Lam Rukam, Peukan Bada District, Aceh Besar Regency?

In Aceh Qanun Number 4 of 2003 concerning Village Government, which is explained in Aceh Governor Regulation Number 25 of 2011 concerning Guidelines for the Implementation of Village Government, it has been determined that one of the duties and functions of the keuchik is as a village judge who attempts to resolve legal problems related to disputes/disputes that occur within the village. The term dispute refers to civil cases, while the term dispute refers to criminal cases. This is understandable because in the perspective of Customary Law there is no distinction between criminal law and civil law as is known in Statutory Law.²⁵

The keuchik's duty to carry out customary justice to resolve disputes/conflicts is also regulated in Aceh Qanun Number 10 of 2008 concerning Customary Institutions. Article 15 paragraph (1) letter j and letter k of this qanun states that the kechik is tasked with leading and resolving social problems in the community and acting as a mediator in disputes between residents in the village. With the provisions above, it is clear that the village head in Aceh (kechik) has legal and official authority which is expressly regulated in legislative products (qanun) and outlined in the governor's regulations. The principles in the customary justice process to resolve disputes/conflicts are:²⁶

- a. Trustworthy or Reliable (Acceptability) Customary justice can be trusted by the community.
- b. Responsibility/Accountability This principle emphasizes the accountability of customary justice implementers in resolving cases not only to the parties, society and the state but also to Allah SWT.
- c. Equality before the law/Non-discrimination Customary justice should not discriminate on the basis of gender, social status or age. Everyone has the same status and rights before custom.
- d. Fast, Easy and Cheap (Accessibility to all Citizens) Every village court decision must be accessible to the community, both in terms of cost, time and procedure.
- e. Sincere and Voluntary (Voluntary nature) Customary justice must not force the parties to resolve their cases through customary courts.

²⁵Revelation Ramadhani. Op.Cit, p.38

²⁶Aceh Customary Council and UNDP, Guidelines for Customary Courts in Aceh, Aceh Customary Council, Aceh Province, Banda Aceh, 2008, page 65

- f. Peaceful Resolution In the Acehnese language, this principle is known by the phrase “Uleue bak mate ranteng ek patah”, the aim of customary justice is to create balance and peace in society.
- g. Deliberation/Consensus (Consensus) Decisions made in customary courts are based on the results of deliberations and consensus based on the law of the customary court implementers.
- h. Transparency All judicial processes (except for certain cases) whether related to receiving complaints, calling witnesses, trials or making and reading out decisions must be carried out openly.
- i. Honesty and Competence (Competence/Authority) A traditional leader may not take any advantage in any form, either material or non-material, from handling a case.
- j. Diversity (Pluralism) Customary justice respects the diversity of legal regulations which consist of various customary legal systems and apply in a particular customary society.
- k. Presumption of Innocence Customary law does not allow for the existence of vigilante action.
- l. Proportional Justice: Customary court decisions must be fair and applied based on the severity of the case and the economic circumstances of the parties.

Procedures for resolving disputes/disputes according to customary law in Gampong Lam Rukam, Peukan Bada District, Aceh Besar Regency, in accordance with the Joint Decree (SKB) between the Governor, the Chief of Police, and the Aceh Customary Council dated December 20, 2011, which is described in the Aceh Governor Regulation Number 60 of 2013 concerning the Implementation of the Settlement of Customary and Customary Disputes/Disputes. The SKB stipulates several decisions:

1. Disputes/conflicts that occur at the village and mukim level that are minor in nature as referred to in Article 13, Article 14, and Article 15 of Aceh Qanun Number 9 of 2008 must first be resolved through the Village and Mukim Customary Court or other name in Aceh.
2. The Police provide an opportunity for every dispute/conflict as referred to in the first dictum to be resolved first through the Gampong and Mukim Customary Court or other names in Aceh.
3. All parties are required to respect the implementation of the Gampong and Mukim Customary Courts or other names in Aceh.
4. The Gampong and Mukim Customary Courts or other names in Aceh resolve and make decisions based on the customary law norms and customs that apply in the local area.
5. The Gampong and Mukim Customary Court hearings or other names in Aceh are attended by the parties, witnesses and are open to the public, except for certain cases which according to custom and propriety may not be open to the public and are not subject to any fees.
6. The decision of the Gampong and Mukim Customary Court or other names in Aceh is final and binding and cannot be appealed again to the general court or other courts.
7. Every decision of the Gampong and Mukim Customary Court or other names in Aceh is made in writing, signed by the Chairperson and Members of the Council and both parties

- to the dispute, and a copy is sent to the Chief of Police Sector (Kapolsek), Sub-district Head and the Aceh Sub-district Customary Council.
8. The implementation of the Gampong and Mukim Customary Courts or other names in Aceh in making decisions is prohibited from imposing corporal sanctions, such as imprisonment, bathing with dirty water, shaving hair, cutting clothes and other forms that are contrary to Islamic values.
 9. Matters resolved at the Mukim level are matters that are not resolved at the village level.
 10. The Aceh Government and the Regency/City Governments foster and supervise the implementation of the Village and Mukim Customary Courts or other names in Aceh.
 11. The Head of the Aceh Regional Police and the Chairman of the Aceh Traditional Council and all of their staff (province, district/city) are obliged to provide guidance, coaching, development and supervision of materials on Customary Law and Customary Court Administration in accordance with the rules and principles of Customary Law/Traditional Customs that apply in the local community environment.
 12. The Aceh Government and the Regency/City Governments can assist in financing the administration of the Gampong and Mukim Customary Courts or other names in Aceh according to regional capabilities.
 13. The Village and Mukim Customary Court Assembly or other names in Aceh in resolving disputes/conflicts are guided by Aceh Qanun Number 9 of 2008 and Aceh Governor Regulation Number 25 of 2011 concerning General Guidelines for the Implementation of Village Government.

Customary court hearings are held in the meunasah openly, and may not be held in other places, as regulated in Article 14 paragraph (4) of Aceh Qanun No. 9 of 2008. This is important because it concerns the legality of the results of the dispute resolution deliberations. However, according to Article 16 paragraph (8) of Aceh Governor Regulation No. 60 of 2013, dispute resolution deliberations involving women and children, whether as perpetrators or as victims, are held privately at the home of one of the customary leaders, such as the keuchik's house, imuem meunasah or the house of a tuha peut member.

The resolution of the criminal act of assault in Gampong Lam Rukam, Peukan Bada District, Aceh Besar Regency was carried out with the following process:²⁷

- a. Reporting made by the victim or both parties to the head of Jurong where the legal incident occurred
- b. Sometimes the village head himself resolves it, if the case is not serious. However, if the case is serious and complicated and involves public interest, then the village head reports it to the keuchik.
- c. As soon as the Keuchik receives a report from the head of Jurong or from the victim, the Keuchik holds an internal meeting with the secretary to determine the trial schedule.
- d. Before the trial is held, the Keuchik and his staff (Keuchik secretary or Gampong secretary, imuem meunasah, and the heads of the jurong) approach both parties, the approach aims to find out the real facts of the case and at the same time ask about their

²⁷Isnatul Rahmi, Rizanizarli. "Implementation of Restorative Justice in Resolving Criminal Acts of Theft by Children in the Perspective of Aceh Customs (A Study in the City of Sabang)". *Syiah Kuala Law Journal*: Vol.4(1) April 2020, page 15

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.

- e. The approach is not only done by the keuchik and his staff, but can also be done by anyone who is considered close and respected by the parties. For cases where the victims are women or young people, the approach is usually done by the keuchik's wife or other female members of Tuha Peut who are considered close to the victim or both parties.
- f. If the peaceful settlement agreement has been approved by both parties, the keuchika secretary will officially invite both parties to attend the trial on the day and date that has been determined.
- g. During the trial, the parties may be represented by their guardian or other relative as a spokesperson.
- h. The trial is formal and open and is usually held in a meunasah or other place that is considered neutral for both parties.

This is in accordance with Article 17 to Article 19 of the Aceh Governor Regulation Number 60 of 2013 concerning the Implementation of the Settlement of Customary and Customary Disputes/Disputes that generally the process of resolving criminal acts in Customary Courts is as follows:

1. Receipt of reports or complaints.
2. There is protection for the parties involved.
3. There is a case title or discussion of the case at the village apparatus level or other names in Aceh.
4. Summoning of related parties and investigating the facts of the case.
5. Examination of the parties, witnesses and evidence as well as the scene of the incident.
6. Determination of case resolution decisions, through customary hearings and decision-making meetings.
7. Delivery of the decision on the settlement of the case, signing of the minutes of the settlement of customary court proceedings by the parties, the customary court panel, and witnesses.
8. Execution of decisions and recovery.
9. Settlement of the case must be completed no later than 9 (nine) days after it is handled

In resolving criminal acts of abuse, the Customary Court Assembly of Gampoeng Lam Rukam, Peukan Bada District, Aceh Besar Regency does not recognize a standard format/arrangement of customary court hearings like the order of hearings in the District Court. It's just that usually the Keuchik/Geuchik sits in the middle, flanked by the Teungku/Imeum Meunasah on the right and the Gampoeng Secretary on the left, and Tuha Peut on their left. In front of them sit the parties and the community sits behind the parties.

The forms of sanctions applied in customary justice in Gampong Lam Rukam, Peukan Bada District, Aceh Besar Regency include:²⁸

²⁸Teuku Muttaqin Mansur, "Implementation of Customary Justice of Mukim in Aceh" in Taqwaddin, Teuku Muttaqin Mansur, and Sulaiman Tripa et al., Mukim in Aceh; Learning from the Past to Build the Future, Banda Aceh. Dandra Pustaka Indonesia, 2015, page 175

a. Apology statement

An apology statement is a word of apology delivered by the perpetrator/offender or an innocent party. In practice, the guilty party is usually the one who apologizes to the innocent party first. If the innocent party forgives, then their dispute/dispute is over. The intention of the parties in the statement was not due to coercion from the traditional justice apparatus or pressure from other parties, but the statement of apology emerged from the sincerity of the parties' hearts.

b. I m

Sayam is to reconcile. Peace categorized as 'Sayam' is peace because of committing a customary crime. The criminal penalty imposed by sayam is usually a dispute/dispute that does not involve blood, such as a fight. The sanction for the perpetrator who makes the mistake is to pay diat.

c. He t

According to the term sharak, diaat is property that must be paid because of a crime committed against life or body parts that does not result in loss of life. Diat is a fine for killing or injuring someone

d. Fine

Customary fines are usually imposed on perpetrators of khalwat. The fine imposed is slaughtering a goat. Apart from fines for goats, sometimes khalwat perpetrators/violators will also be subject to multiple sanctions, that is, apart from fines, they can also be subject to exile or even having their identity card revoked as a member of society.

e. Compensation

Compensation sanctions are usually imposed on perpetrators/violators who commit minor theft, such as: stealing fruit, or damaging other people's plants. In determining the amount of compensation, in addition to considering the circumstances of the perpetrator/violator and the parties, the customary court panel will also review the location where the perpetrator/violator committed the theft or the place where the plants were damaged. An estimate of the loss will be made and based on this estimate, the customary court will impose a fine on the perpetrator/violator.

f. Punishment of being ostracized

The sanction of excommunication is imposed on people who usually do not participate in activities in the village, such as mutual cooperation. Mutual cooperation is a community activity to clean the village, usually carried out before certain big holidays, but there are parties who do not participate in mutual cooperation for no justifiable reason. Those who do not participate will usually be ostracized by the community in ways, such as not going along if a party or kanduri is being held at the house of the person violating the custom, or if a member of their family experiences misfortune, the community will not come to visit them.

g. Punishment of exile/revoked of rights as a village resident

The punishment of exile is a punishment imposed on perpetrators/violators who are considered to have polluted the village. Usually imposed on perpetrators of khalwat or adultery. Perpetrators/violators, both male and female, who are proven to have committed

such acts will be exiled from their home village. After the perpetrators/violators have served the sanction for a certain period, they may return to their home village.

h. Revocation of customary title

Traditional titles are gifts given specifically to individuals or institutions in Aceh, owned by Acehnese or individuals outside Aceh and institutions owned by non-Acehnese. The title was given by Wali Nanggroe as a traditional authority in Aceh. However, other traditional figures such as panglima laot may also give traditional titles to anyone they consider to have concern and development for fishermen in Aceh. If someone violates customary law, the title given can be cancelled.

Every Decision of the Gampong and Mukim Customary Court or other names in Aceh is made in writing, signed by the Chairperson and Members of the Council and both parties to the dispute, and a copy is submitted to the Chief of Police Sector (Kapolsek), Sub-district Head and the Aceh Customary Council of the District. This decision is final and binding and cannot be appealed again to the general court or other courts. This is firmly stated in the Sixth Dictum of the Joint Decree of the Governor, the Chief of Police, and the Aceh Customary Council.

CONCLUSION

The implementation of Aceh Qanun Number: 9 of 2008 concerning the Development of Customary Life and Customs in Gampong Lam Rukam, Peukan Bada District, Aceh Besar Regency, towards the settlement of minor assault cases is one form of restorative justice legal settlement. With the implementation of Qanun, it will reduce the cases piling up in the Judicial Institution, with the implementation of restorative justice in minor criminal cases by referring to Aceh Qanun, it will resolve conflicts and cases quickly, cheaply, and provide justice to victims, perpetrators and the Community.

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