

Application Of The Acehese Customary Legal System And National Legal System In Combating Theft By Child Offenders

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Abstract The research seeks to analyze the application of the Acehese Customary Legal System and the National Legal System in dealing with acts of theft involving child perpetrators. Aceh, as a region with unique cultural riches and customary laws, has the potential to combine local values with national laws in upholding justice. The research results show that the Acehese Customary Law System, which is recognized by Law Number 11 of 2006, has the potential to provide alternative solutions that are by local values in dealing with acts of theft involving child perpetrators. However, several obstacles in implementation need to be considered, such as coordination between customary and national legal institutions. In conclusion, this research suggests that integration between the Acehese Customary Legal System and the National Legal System can increase effectiveness in dealing with theft involving child perpetrators. Joint efforts are needed from the government, legal institutions, and society to ensure that children's rights are protected without ignoring the local values that apply in Acehese society.

Keywords: Acehese Customary Legal System, National Legal System, Prevention, Theft

Abstrak Penelitian berupaya menganalisis penerapan Sistem Hukum Adat Aceh dan Sistem Hukum Nasional dalam menangani tindak pencurian yang melibatkan pelaku anak. Aceh, sebagai daerah yang memiliki kekayaan budaya dan hukum adat yang khas, mempunyai potensi memadukan nilai-nilai lokal dengan hukum nasional dalam menegakkan keadilan. Hasil penelitian menunjukkan bahwa Sistem Hukum Adat Aceh yang diakui melalui Undang-Undang Nomor 11 Tahun 2006 berpotensi memberikan alternatif solusi yang sesuai dengan nilai-nilai lokal dalam menangani tindakan pencurian yang melibatkan pelaku anak. Namun ada beberapa kendala dalam implementasinya yang perlu diperhatikan, seperti koordinasi antara lembaga hukum adat dan nasional. Kesimpulannya, penelitian ini menunjukkan bahwa integrasi antara Sistem Hukum Adat Aceh dan Sistem Hukum Nasional dapat meningkatkan efektivitas dalam menangani pencurian yang melibatkan pelaku anak. Diperlukan upaya bersama dari pemerintah, lembaga hukum, dan masyarakat untuk memastikan hak-hak anak terlindungi tanpa mengabaikan nilai-nilai lokal yang berlaku dalam masyarakat Aceh.

Kata Kunci : Sistem Hukum Adat Aceh, Sistem Hukum Nasional, Pencegahan, Pencurian

INTRODUCTION

Children are the next generation of the nation and state who will one day realize the nation's ideals and receive good protection and care from the government or their parents. Children are vulnerable to crime and are vulnerable to committing crimes. Children need to be educated to care about humanity from an early age. One of the things that parents often miss in understanding the importance of early childhood education is the involvement of any party in forming the foundation of a child's character. (Soetodjo, 2016)

Crime is an action or behavior that conflicts with the law. Crimes that occur and eradicating them will be an issue that will never stop being debated. Crime is an action that is intentional or unintentional, something that has occurred or has just been attempted which can cause harm to other people in terms of physical, spiritual, property, or honor, and this action also carries the threat of imprisonment or imprisonment. (Yudhistira, 2015)

One of the crimes is theft. Theft is one of the criminal acts that is often found in society. Theft is not only carried out by adults, but it is not uncommon for acts of theft to be

carried out by minors. Actions by children who deviate from norms will violate the law and even constitute a crime.

In Aceh, there are many cases of theft crimes committed by child perpetrators. It happens because the child is influenced by economic factors, environmental influences, friends, and parental upbringing. The theft committed by children involves stealing livestock, money, and objects that have economic value. The impact of the actions of this child is troubling to the community. The main reason children steal is to fulfill their daily needs. Theft carried out by children must be dealt with firmly by law enforcers because theft causes great harm to society and it is best to be given strict sanctions so that there is a deterrent to the actions that have been accomplished. (Novia, 2019)

The juvenile justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving the sentence. Children in conflict with the law are children who conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Children who conflict with the law are called child perpetrators who are 12 years old but not yet 18 years old. The author is interested in researching where Acehnese society resolves cases of theft using customary law because it is considered ineffective punishment.

METHODOLOGY

This research chooses normative legal research methods as its main approach. This research method aims to analyze and evaluate the applicable legal norms, both in the Acehnese customary legal system and the national legal system, related to dealing with acts of theft committed by child perpetrators. Legislative, conceptual, and case approaches are used to investigate and interpret various legal provisions related to theft cases involving child perpetrators. Thus, this research will combine aspects of normative law with the application of legal concepts in a practical context.

To support the analysis in this research, secondary data was taken from various sources such as books, journals, and previous research that are relevant to the research topic. The secondary data will provide a theoretical basis and empirical information that supports the arguments in the research. The selection of these sources also aims to provide a comprehensive perspective on the comparison between the Acehnese customary legal system and the national legal system in responding to acts of theft involving child perpetrators.

Descriptive analysis is used as the primary analysis method in this research. With this approach, the research will explain in detail the application of the Acehnese Customary Legal

System and the National Legal System in dealing with child theft. Descriptive analysis will help describe the existing legal situation and highlight the differences and similarities between the two legal systems in responding to the problem of theft involving children as perpetrators. Thus, it is hoped that this research will provide an in-depth understanding of the effectiveness of the legal system in responding to crimes involving child perpetrators in Aceh.

RESULTS AND DISCUSSION

Authority of the Acehnese Customary Court in the Crime of Theft

Traditional justice in Aceh has a significant role in handling criminal acts of theft. Aceh, as a province with a unique legal system based on Islamic law and customs, gives special authority to traditional justice institutions to handle criminal cases, including theft. This authority is reflected in the application of customary law which is recognized and respected by the people of Aceh. In the context of theft, Acehnese customary justice has a mediation and conflict resolution function that is different from the national legal system. Customary justice institutions, such as the Council of Traditional Judges, are entrusted with resolving disputes fairly and by local customary norms. (Abidin, 2015) This approach often involves a process of deliberation and mediation at the local level, where the parties involved can reach a settlement agreement that is acceptable to the local community.

The authority of customary courts in Aceh is by no means exclusive and often operates in parallel with the national criminal justice system. Decisions taken by customary courts can involve traditional sanctions or restorative efforts, while parties involved in theft can also be processed through formal legal channels. (Sarasvati, 2021) In certain situations, national law enforcement can collaborate with customary courts to reach fair and effective solutions. Although customary courts have a crucial role in dealing with criminal acts such as theft in Aceh, harmonization between customary law and national law remains a challenge, and increasing cooperation between judicial institutions is the key to achieving comprehensive justice in handling criminal acts in this region. (Mulyadi, 2018)

Acehnese traditional life and Islam cannot be separated. The harmonization between custom and Islam is developing in various aspects of community life. The government system in Aceh reflects the two elements between Geuchik and Teungku as leaders of the *gampong* community which is a reflection of this harmonization. Legal problems in society are resolved using a deliberation system and have grown into a custom in resolving conflicts in Gampong. The term customary justice is heard among the Aceh Traditional Council and several non-governmental organizations that have programs for community empowerment. Meanwhile,

among the community itself, those who practice dispute resolution mechanisms through traditional justice institutions do not say that they resolve cases through customary courts. People have their terms such as *pedame ureung* (reconciling people), *peumat jaroe* (shaking hands), and *meudame* (making peace). (Ulya, 2014)

However, in practice, according to Tgk. M. Irwandi, traditional justice institutions still operate according to the customs and traditions of the local community. Even though many traditional leaders have attended training on the mechanisms of customary court procedures which are carried out like formal justice, in practice they still run as usual. Settlement of cases through customary institutions is a peaceful resolution of cases, to reconcile the parties involved and provide local customary sanctions. (Juwita, 2016) According to Misnan, customary justice has significant importance in people's lives. It helps to maintain community harmony and tranquility. That's why customary justice is also known as peace justice, which aims to resolve various disputes in society, such as *gampong* and *mukim*. This assembly comprises leaders from mukim and *Gampong*. (Amdani, 2014)

According to *Geuchiek Gampong Alue Ie Itam*, a case will be processed according to customary law at the *gampong* level with the customary court if a case has been reported to the customary apparatus if a case has been reported to the *gampong* apparatus either to the *keuchik*, *tuha peut*, *teungku imum* or *gampong* secretary by which are involved. Usually, without reports from the community, *gampong* officials do not take action except in very urgent or crucial matters such as murder, abuse, and other public order issues. However, family problems such as heirs, marriage, and other problems, although known to the *gampong* officials, are rarely processed immediately, but first, wait for a report. If a case can no longer be resolved according to custom, the *gampong* will provide general authority through formal law. But it turns out that not all people who have problems (disputes) are waiting for a decision from the *gampong*. (Shadiqin, 2020)

According to Qanun Number 9 of 2008 concerning the Development of Customs and Traditions, Article 13 states that disputes/disputes over customs and traditions cover various problems that occur in society on a small scale or problems between residents. One of the problems that is often resolved in customary justice is the crime of theft. In this case, the theft that was resolved through customary justice was theft on a light scale involving assets under 5 million. However, it does not rule out the possibility of solving cases of theft of more than 5 million, it all depends on the victim and the suspected perpetrator. As happened in Gampong Perkebunan Julok Reyeuk Utara, Indra Makmu District, East Aceh Regency in the theft of Hamzah's rooster by Pipin. In the chronology of the case, Hamzah lost his rooster which he

kept behind his house. His rooster was stolen when the house was quiet, but several days later Hamzah found his rooster being sold by a chicken agent. However, the agent admitted to buying the chicken from someone who turned out to be a young man from his village named Pipin. To resolve this problem, Geuchik Gampong Perkebunan Julok Rayeuk Utara held a customary court hearing.

Obstacles in Implementing Positive Laws to Overcome Theft in Aceh

The implementation of positive laws or legislation in Aceh, like in other regions, can face several obstacles in dealing with acts of theft. Some of the obstacles that may be encountered involve social, economic, political, and security factors. The following are some obstacles that may occur: (Sapitri, 2023)

1. Social and Economic Factors

- a. **Poverty:** High levels of poverty can encourage people to engage in criminal activity, including theft, as a way to meet basic needs
- b. **Economic Inequality:** Inequality in the distribution of wealth and economic opportunity can create social tensions that increase the risk of crime.

2. Cultural and Customary Factors

Customary Law System: Some communities in Aceh may still follow the customary law system, which may differ from positive law. It can create conflicts in law enforcement.

3. Security and Conflict:

- a. **Security Instability:** Conflict or security instability can disrupt the implementation of law and enforcement in Aceh.
- b. **Fighting Between Armed Groups:** If there is conflict between armed groups, it can hamper law enforcement efforts and make it difficult to enforce regulations.

4. Lack of Resources

Lack of Police Personnel and Legal Instruments: A lack of police personnel and legal apparatus can make it difficult to carry out law enforcement operations effectively.

5. Corruption

Corrupt Practices: Corruption within the law enforcement system can undermine efforts to eradicate crime, including theft.

6. Community Indifference

Public Indifference to the Law: Lack of public awareness of the implications of obeying the law and reporting crimes can hinder law enforcement efforts.

7. Infrastructure Development

Lack of Security Infrastructure: Lack of security infrastructure such as surveillance cameras, good street lighting, or security systems can make it easier for theft to occur.

Application of Restorative Justice in Resolving Cases of Theft by Children Through Customary Justice in Aceh

Aceh is one of the provinces within the framework of the Unitary State of the Republic of Indonesia which has special autonomy status. In terms of regulations, special autonomy for Aceh is determined in Law Number 11 of 2006 concerning the Government of Aceh, where previously Law Number 44 of 1999 concerning the Implementation of Privileges for the Special Region of Aceh Province was also promulgated. One of the features that Aceh has is the implementation of customs. The advantages of Aceh according to Law Number 11 of 2006 concerning the Aceh Government (UU PA), namely strengthening traditional institutions through the Wali Nanggroe Institution, authority in managing natural resources, establishing Islamic law, determining regional songs and regional symbols, the existence of judicial customary institutions, Human Rights Court, Aceh Truth and Reconciliation Commission (KKR) and district/city Syar'iyah Court and Provincial Syar'iyah Court, can carry out foreign cooperation in the field of regional politics with the presence of local political parties and independent candidates in post-conflict regional elections. (Badruzzaman, 2017)

Communities living in *gampongs* in Aceh still often use traditional institutions to resolve disputes. If there is a problem and it turns out that it cannot be resolved between the two parties, people in the *gampong* most often ask the *keuchik* for help to resolve it. Gampong dispute resolution procedures are more like reconciliation than formal legal processes. However, it must also be acknowledged that many people in villages, especially women and children, still strongly believe in the use of traditional institutions to handle dispute cases. They feel more comfortable if the case is under the non-formal court system. Poor people in *gampong* do not have this choice, because in general, they cannot afford the formal legal process which is quite expensive. (Nivada, 2022)

To resolve cases according to custom in Aceh, a joint regulation has been agreed upon, namely a joint decree between the Governor, Regional Police Chief, Chair of the Aceh Traditional Council Number 189/677/2011, 1054/MAA/XII/2011 and No.B/121/1/2012 Concerning Agreement for Settlement of Minor Crime Cases Through Gampong Customary Courts where in resolving problems that exist within the Gampong community, the Keuchik is the highest leader, apart from having to coordinate with all Gampong officials, the Keuchik must also coordinate with the Non-Commissioned Officer for Community Security and Order (Babinkamtibmas) or the community police (Polmas). Coordination between the Gampong

Judicial Institution (Keuchik) and the Police is very much in line with the Community Police Partnership Forum (FKPM) program.

The application of Restorative Justice in resolving cases of theft by children through customary justice in Aceh is an approach that emphasizes restoring relationships between the perpetrator, victim, and community. This approach aims to create an environment that supports repentance, reconciliation, and social reintegration of children involved in criminal acts. In the context of Aceh, which is known for its customary law system, Restorative Justice can be an alternative that is more in line with local values. The customary justice process may involve meetings between the perpetrator, victim, and community representatives to discuss the root of the problem, the consequences of the theft, and steps that can be taken to repair the harm caused. (Abdurrahaman, 2019)

These restorative steps may include an apology, payment of restitution, or involvement of the perpetrator in social activities that benefit society. By involving the entire community, traditional justice in Aceh has the potential to create a more holistic sense of justice, strengthen social relations, and prevent the stigmatization of perpetrators. In addition, the Restorative Justice approach also considers the needs and rights of victims more carefully. Victims can have an active role in the recovery process, including in determining the type of restitution desired or expressing their feelings towards the perpetrator. It can help victims feel more involved in the legal process and receive justice that meets their needs. (Melayu, 2021)

Although the application of Restorative Justice in resolving cases of child theft through customary justice in Aceh offers the potential to build a more harmonious society, this approach also needs to pay attention to several challenges, such as limitations in formal procedures and official recognition from the state's legal system. Therefore, integration with formal law and the formulation of a clear framework is crucial to ensure the effectiveness and sustainability of this approach.

CONCLUSION

In Aceh, traditional justice is a crucial component of dealing with theft-related crimes. It operates under Islamic law and customs, with specialized institutions possessing the authority to handle criminal cases, including theft. The process of mediation and conflict resolution in customary courts differs from that of the national legal system, with deliberation and mediation taking place at the local level. While the authority of customary courts is not exclusive, they often collaborate with the national criminal justice system. However, the harmonization between customary law and national law is a challenge, and greater cooperation between

judicial institutions is necessary to achieve comprehensive justice in the handling of crimes. Acehnese traditional life is closely linked with Islam, reflecting the harmonization of culture and religion in society. Customary justice is known as a justice of the peace that maintains harmony and tranquility in society, although practices still often follow local traditions and customs. Increasing training for traditional leaders and cooperation between traditional and formal courts are key to bridging differences and achieving comprehensive justice. The application of Restorative Justice in resolving cases of theft by children through customary justice in Aceh offers an approach that focuses on restoring relationships between the perpetrator, victim, and community. However, challenges such as limitations in formal procedures and integration with formal law must be addressed to ensure the sustainability and effectiveness of this approach.

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