

**Study of Sociological Law on Conflict Resolution Through *Adat*  
in Aceh Community According to Islamic Law**

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**Abstract**

This study discusses conflict resolution through *adat* in Acehnese society according to Islamic law. Conflict resolution like this is a solution in the midst of the piling up of cases in the judiciary in Indonesia. This study uses the sociology of law theory which sees that law is a tool to control communities who can resolve conflicts, namely *adat* and cultural values. The data collection techniques used are; interviews and literature review. The results of this study indicate that conflict resolution with *adat* mechanisms in the perspective of sociology of law sees law as a tool and means to control and develop society. Law is seen as a means of community development in a better direction. In fact, the judiciary formally advocates for peace by deliberation known as mediation, this is done in the midst of piling up cases that must be resolved by law enforcers. Therefore, *adat*-based conflict resolution has advantages, among others, maintaining brotherhood and eliminating grudges, fast, cheap, promoting a sense of justice and elasticity. This advantage is possible because of the involvement of *adat* institutions as social elites that have both social and juridical legitimacy. Conflict resolution through *adat* is in line with the values of Islamic law, especially in the concept of *al-urf*, namely *adat* that do not conflict with sharia. The strong relationship between *adat* and Islam in Aceh has resulted in this pattern of conflict resolution being viable and enduring to this day.

**Keywords:** *sociology of law, settlement, conflict, adat Aceh and Islamic law*

***Kajian Sosiologi Hukum terhadap Penyelesaian Konflik Melalui Adat dalam Masyarakat Aceh Menurut Hukum Islam***

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***Abstrak***

*Kajian ini membahas tentang penyelesaian konflik melalui adat dalam masyarakat Aceh menurut hukum Islam. Penyelesaian konflik seperti ini merupakan solusi di tengah menumpuknya perkara di lembaga peradilan di Indonesia. Penelitian ini menggunakan teori sosiologi hukum yang melihat bahwa hukum menjadi alat untuk mengontrol masyarakat yang dapat menyelesaikan konflik yaitu nilai-nilai adat dan budaya. Teknik pengumpulan data yang digunakan yaitu; wawancara dan kajian literatur. Hasil penelitian ini menunjukkan bahwa penyelesaian konflik dengan mekanisme adat dalam perspektif sosiologi hukum yang melihat hukum sebagai alat dan sarana untuk mengontrol dan membangun masyarakat. Hukum dipandang sebagai sarana pembangunan masyarakat ke arah yang lebih baik. Lembaga peradilan secara formal justru menganjurkan perdamaian secara musyawarah yang dikenal dengan mediasi, hal ini dilakukan ditengah menumpuknya kasus yang harus diselesaikan oleh penegak hukum. Karena itu, penyelesaian konflik berbasis adat memiliki keunggulan antara lain, menjaga persaudaraan dan menghilangkan dendam, cepat, murah, mengedepankan rasa keadilan dan elastis. Keunggulan ini dimungkinkan karena pelibatan lembaga adat sebagai elit sosial yang memiliki legitimasi sosial dan yuridis sekaligus. Penyelesaian konflik melalui adat sejalan dengan nilai-nilai hukum Islam khususnya dalam konsep al-urf yaitu adat kebiasaan yang tidak bertentangan dengan syariat. Kentalnya hubungan antara adat dan Islam di Aceh menyebabkan pola penyelesaian konflik ini dapat dilakukan dan bertahan sampai saat ini.*

**Kata Kunci:** *Sosiologi Hukum, Penyelesaian, Konflik, Adat Aceh dan Hukum Islam*

## **Introduction**

Studies on legal practice in Acehese society have been carried out by several scholars, both at home and abroad. John Bowen, Arskal Salim, and Fauzi emphasized that in Aceh three legal systems apply, namely, state law, Islamic law, and customary law, where negotiations and dynamics occur. Bowen and Fauzi studied the legal practice in Gayo while Salim did more research in Banda Aceh and Aceh Besar, but the approach used was the same, namely legal anthropology.

In contrast to that, Abbas writes about mediation or conflict resolution in sharia law, customary law, and national law. He made Aceh an example of the mediation pattern practiced by the Acehese people.<sup>1</sup> Kasim and Nurdin examined the existence and role of traditional institutions in conflict resolution and creating peace in Aceh.<sup>2</sup> Then Mursyid Djawas and Sri Astuti also studied the settlement of family conflicts with traditional mechanisms in Acehese society that were linked to Islamic law.<sup>3</sup> These three studies agree that *adat* as the most important part of the social life of the Acehese people has a major contribution to conflict resolution. However, all of them have not explicitly stated using the sociological approach of law in studying the relationship between law and

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<sup>1</sup>Syahrizal Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat dan Hukum Nasional*, Jakarta: Kencana, 2011, p. 235.

<sup>2</sup>Fajri M. Kasim dan Abidin Nurdin, Resolusi Konflik Berbasis Kearifan Lokal di Aceh: Studi tentang Eksistensi dan Peran Lembaga Adat dalam Membangun Perdamaian di Kota Lhokseumawe, *Jurnal Ilmu Ushuluddin UIN Syarif Hidayatullah Jakarta*, Volume 3 Nomor 1 Januari 2016. Abidin Nurdin dan Fajri M. Kasim, Resolusi Konflik Berbasis Adat: Studi tentang Azas dan Dampaknya dalam Membangun Perdamaian di Lhokseumawe, *Proceeding Arraniry International Proceeding Conference on Islamic Studies*, Banda Aceh 2016.

<sup>3</sup>Mursyid Djawas dan Sri Astuti A. Samad, Conflict, Traditional, and Family Resistence: The Pattern of Dispute Resolution in Achenese Community According to Islamic Law, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Volume 4 Nomor 1 Januari-Juni 2020, p. 81. M. Kalam Daud dan Rahmatul Akbar, Harueta Peunulang: Protection of Women in Aceh According to Customary and Islamic Law, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, Volume 4 Nomor 1 Januari-Juni 2020.

society. Therefore, the sociological approach of law used in this study as a theory that examines legal practice is more appropriate because sociologically, the best law is living law in a non-written society (*law in the book*). The use of living law in law will not cause resistance from the community to its materials and practices, instead, laws that come from outside or do not grow from community practices are opposed by society.

The practice of law then becomes a social reality with its characteristics and uniqueness in each community, including in Aceh. The relationship between law and society will continue to be dynamic because; First, the law calls for stability in society. Second, the law as the rules governing human relations. Third, the law tends to emphasize order. Legal rules, both in the form of laws and unwritten laws, contain general rules that serve as guidelines for individuals to behave in social life, both in relationships with fellow individuals and in relationships with society.<sup>4</sup>

Sociologically, the law is control and engineering tool that is used as a means or agent to change the condition of society. This agent can be an individual or a group of people who gain the trust of the community as a leader or social institution. The law will guide society in changing the social system and in its implementation related to pressures to bring about change, or maybe even cause changes in social institutions. This social control is needed to maintain human civilization, starting from its main function of regulating human relations to internal human (natural) affairs which are their basic needs.<sup>5</sup>

The discourse of legal sociology will always compare the law that is reflected in behavior (law in action) and the law in the book. A rule of law that is considered to achieve its goals well is when people's behavior reflects the rules of law. Satjipto Raharjo emphasized that the legal basis of a nation is not in its legal system, but in the behavior of the nation's people, which means a good attitude to life and behavior. Law does not only come from statutory

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<sup>4</sup>Peter Marzuki, *Pengantar Ilmu Hukum*, Jakarta: Prenadamedia Group, 2008, p. 136-138.

<sup>5</sup>Ahmad Tholabi Kharlie, *Hukum Keluarga Indonesia*, Jakarta: Sinar Grafika, 2013, p. 59. Lalu Junaidi, Kajian Sosiologi Hukum terhadap Adat Kewarisan Desa Mangkung Kecamatan Praya Barat Kabupaten Lombok Tengah, *Al-Ihkam: Jurnal Ahwal al-Syakhsiyah*, Volume IX, Nomor 1 Juni 2017, p. 77.

regulations but also from people's behavior. This behavior cannot even be contained by the rule of law. Behavioral dynamics will always find their way to the surface. Therefore law becomes alive through human behavior because human behavior or actions can change a silent and rigid text.<sup>6</sup>

In line with that, Atho Mudzhar stated that the sociological approach in Islamic studies including Islamic law can be divided into at least five themes:<sup>7</sup> First, the study of the influence of religion on changes in society. This theme, in common with Emile Durkheim, introduced the concept of the social function of religion. In this form, the study of Islam tries to understand to what extent the cultural patterns of society are based on religious values, or to what extent the structure of society is based on certain religious teachings, or to what extent people's behavior is based on certain religious teachings.

Second, studies on the influence of structure and changes in society on the understanding of religious teachings or religious concepts, such as the study of how the level of Kufic urbanism has resulted in the birth of rational Islamic legal opinions such as Imam Hanafi or how geographical environmental factors in Basrah and Egypt have led to the birth of *qawl qadim* and *qawl jadid* by Imam al-Syafi'i.

Third, studies on the level of community religious practice. Islamic studies with a sociological approach can also evaluate the pattern of the spread of religion and the extent to which religious teachings are practiced by society. Fourth, the study of the social patterns of the Muslim community, such as the social patterns of urban Muslim communities and rural Muslim communities, patterns of interfaith relations in society, tolerant behavior between educated and less educated Muslim communities, religion as a factor of integration and disintegration and various other similarities. Fifth, studies on community movements that carry an understanding that can weaken or support religious life. The movements of Islamic groups that support capitalism, secularism, and communism are

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<sup>6</sup> Satjipto Rahardjo, *Hukum dan Perilaku: Hidup Baik adalah Dasar Hukum yang Baik*, Jakarta: Kompas, 2009, p. vii-x, 21.

<sup>7</sup> M. Atho' Mudzhar, "Pendekatan Sosiologi dalam Studi Hukum Islam", dalam *Mencari Islam: Studi Islam dengan Berbagai Pendekatan*, ed. M. Amin Abdullah, Yogyakarta: Tiara Wacana, 2000, p. 30.

some examples of movements that threaten religious life and therefore need to be studied carefully.

Atho Mudzhar further details research on Islamic law in three segments:<sup>8</sup> First, research on Islamic law as a basic doctrine. In this research, the main target is the conceptual basics of Islamic law such as the problem of legal sources, the concept of *maqasid al-syari'ah*, *qawa'id al-fiqhiyah*, *thariq al-istinbath*, *manhaj ijtihad* and others. Second, normative Islamic law research. In this research, the main target is Islamic law as a norm or rule, either in the form of a text or that has become a product of human thought. The rules in the nasal form include the *ahkam* verses and hadith. Third, research on Islamic law as a social phenomenon. So it can be emphasized that the use of sociological theory in the study of Islamic law is quite urgent. The first two forms of Islamic legal studies can be combined and identified as doctrinal Islamic legal studies, while the third form of legal studies is referred to as sociological Islamic legal studies. The first two forms of study see Islam as a cultural phenomenon and the third form of Islamic studies sees Islam as a social phenomenon. Atho Mudzhar explained that the study of Islamic law in relation to the sociological approach can be done separately and can also be done together to see the relationship with each other regarding the issue of Islamic law.<sup>9</sup>

Therefore, the study of the sociology of law is quite important in the midst of cases and cases handled by law enforcers in Indonesia. Starting from judges, prosecutors, police, to judicial institutions such as; District Courts, Religious Courts, State Administrative Courts. Therefore, when there are alternative ways and solutions that can resolve conflicts by the community through customary values without the involvement of the State, then this is a good and effective way.

### **Conflict Resolution from the Sociology of Law Perspective**

The relationship between law and society cannot be separated, especially when examining how the law is formed and applied. Sociological studies that study and see this law are then

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<sup>8</sup> Atho' Mudzhar, *Pendekatan Sosiologi*, p. 34-35.

<sup>9</sup>M. Rasyid Ridla, *Sosiologi Hukum Islam (Analisis terhadap Pemikiran M. Atho' Mudzhar)*, *Jurnal al-Ihkam*, Vol. 7, No. 2, 2012, p. 298.

called the sociology of law. A society consisting of a social system, social structure, norms and values, and culture will greatly influence the law. In the study of legal sociology in Indonesia, there are several names that are quite prominent, for example, Soerjono Soekanto, Satjipto Rahardjo, Mochtar Kusumaatmadja, recently Ahmad Ali appeared. Meanwhile, in Islamic law, one that can be mentioned is Atho Mudhzar.

Soerjono Soekanto said that sociology of law is a branch of science that is analytical and empirical in analyzing or studying the reciprocal relationship between law and social phenomena.<sup>10</sup> Satjipto Rahardjo understands that sociology of law is legal knowledge of community behavior patterns in a social context.<sup>11</sup> In essence, the sociology of law discusses the mutual influence between legal changes and society. Changes in the law can affect changes in society, and conversely, changes in society can lead to changes in the law.<sup>12</sup>

Sociology of law or *ius operatum* in English terms, the law as what it is in society is one of three approaches in the study of law. *Ius constituendum* or the law as what ought to be which is known as legal philosophy, *ius consitutum*, or the law as what it is in the book which is called positive law. When philosophers see the law as something that should exist, and sociologists see the law as what works in society, then of course positivists will not accept both. Because positivists see the law as in the law.<sup>13</sup>

Kusumaatmadja and Rahardjo believe that law can be a tool and means to control and develop society. According to him, the law is viewed as a means of development and renewal of society in a better direction based on the assumption that the existence of order or order in the development and renewal efforts is something that is

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<sup>10</sup>Soerjono Soekanto, *Mengenal Sosiologi Hukum*, Bandung: Citra Aditya Bakti, 1989, p. 11. Zainuddin Ali, *Sosiologi Hukum*, Jakarta: Sinar Grafika, 2015, p. 1.

<sup>11</sup>Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Alumni, 1982, p. 310.

<sup>12</sup>Soerjono Soekanto, *Pengantar Sosiologi Hukum*, Jakarta: Bhrata Karya Aksara, 1977, p. 17.

<sup>13</sup>Ahmad Ali dan Wiwie Haryani, *Sosiologi Hukum: Kajian Empiris Terhadap Pengadilan*, Jakarta: Kencana, 2012, p. 9.

wanted or considered (*absolutely*) necessary.<sup>14</sup>

In line with that, Ahmad Ali said that one of the mistakes of modern society is when it only relies on the judiciary or litigation as the only institution to resolve conflicts. Out of court conflict resolution is known as non-litigation, which can be in the form of; mediation, abrasion, and conciliation. American society is known as a nation that dominates dispute resolution utilizing litigation, while Korea and Japan are known as nations that prefer non-litigation methods. When there is a dispute, the Americans will say "see you in court" (*we will meet in court*), so that they are known as a litigative society, there are 15 million lawsuits in court every year even on trivial matters.<sup>15</sup>

The above opinion is in line with Atho Mudzhar's view that in the study of Islamic law with a sociological approach, namely analyzing religion as a social phenomenon and a cultural phenomenon. Community conflict resolution using customary mechanisms is a social and cultural symptom practiced by people in Indonesia, including Aceh, Minangkabau, Palembang, and several other areas from ancient times until now.

If traced genealogically the sociology of law approach, is related to the sociological theory of structural functionalism initiated by Talcott Parsons (d. 1979). Parsons emphasized that in society there is an order that can be maintained in the social system. Order in the social system can be achieved and survive as long as the system has four functions which are commonly abbreviated as AGIL, namely;<sup>16</sup> Adaptation of a system must cope with serious external situations, the system must adapt to the environment and adapt the environment to its needs. Goal attainment (*achievement of goals*), a system must define and achieve its main goals. The integration of a system must regulate the interrelationships of the parts that are its components. Latency (pattern maintenance), a system must maintain and improve, both individual motivation and cultural patterns that create and sustain motivation.

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<sup>14</sup>Muhammad Rakhmat, *Pengantar Filsafat Hukum*, Bandung: Warta Bagja, 2015, p. 43.

<sup>15</sup>Ahmad Ali dan Wiwie Haryani, *Sosiologi Hukum....*, p. 19-20.

<sup>16</sup>Goerge Ritzer dan Douglas J. Goodman, *Teori Sosiologi Modern*, Jakarta: Kencana, 2004, p. 121.



Furthermore, according to Parsons, the main elements in structural functionalism theory are social order and order. This is because in the social system each has a function in running well, mutually reinforcing (*integration*) to achieve the goal, namely order. Adapt each other, integrate or strengthen each other, and look for common ground between community groups not looking for differences or conflicts. This interaction will generate what is called an agreement or consensus. At this point, the social system and social order will find consensus and stability in a system to achieve peace.<sup>17</sup>

In this context, conflict resolution that occurs in society will be easier and faster because the mechanisms and patterns already exist in the community itself. That is what is called living law or law that lives and is manifested in terms of legal sociology. Laws that grow from the community and the implementing society. So that it will give birth to order and order due to obedience to the rules that become the consensus of the community, or in other terms social control.

According to Soerjono Soekanto, social control is an orderly and peaceful society that can be played by not only the government through the legal apparatus but also by groups and even individuals. Groups or communities such as community leaders or social elites such as village heads, religious leaders, even parents who teach their children to look at the values of goodness or a lecturer who teaches or guides students are all included in social control. Thus social control aims at harmony between stability and changes in society.<sup>18</sup>

### **Adat and Conflict Resolution Solutions**

Indonesia is a country that has a variety of ethnicities, cultures, languages, and cultures. Each of them has its uniqueness and advantages that can be used as social capital as a tool and a medium for creating peace and conflict resolution. The resolution of legal conflicts in society through customary patterns in sociological

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<sup>17</sup>Nanang Martono, *Sosiologi Perubahan Sosial*, Jakarta: Rajawali Press, 2016, p. 60.

<sup>18</sup>Soerjono Soekanto, *Sosiologi: Suatu Pengantar*, Jakarta: Rajawali Press, 2005, p. 205-206.

legal theory according to Roscoe Pound will give birth to several advantages;

1. More directing his vision towards the operation of law rather than to its abstract content;
2. To view the law as a social institution which can be developed through the human endeavor and regard it as their duty to find the best ways to promote and direct such endeavors;
3. More emphasis on social goals served by law rather than sanctions;

Emphasizing that the rule of law should be viewed more as a guideline for achieving results considered fair by society and not as a rigid framework.<sup>19</sup> Rahardjo admits that the diversity of cultures and traditions in Indonesia has resulted in the study of law and society requiring in-depth study from a sociological and anthropological perspective. Because the law will be greatly influenced by the social structure as the basis for the formation of law in society. The laws that are formed in society are woven into the network of social interactions. In that context, the problem is not that legal norms and institutions relate logically and consistently with each other, but rather that law is a means of organizing society that works well (viable), and whether society does not seek other regulatory means outside the necessary for him, as well as what factors influence the development of these laws in society.<sup>20</sup>

Society has norms and values that are binding in social systems and structures. These norms as high norms are called basic norms. The norms are the most prominent (*prevail*) that work most strongly on society. Except in circumstances that are modified by things that cause social change, such as population, technology, or interactions with other communities or the environment, then that norm is the most institutionalized. This institutionalization does not depend on whether the normalized actions are often performed or not. As the norm, value is interpreted as a statement about what someone wants. The norms and values refer to the same thing but from different points of view. The norm represents a social

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<sup>19</sup>Satjipto Raharjo, *Hukum dan Masyarakat*, Bandung: Angkasa, 1980, p. 23.

<sup>20</sup>Satjipto Raharjo, *Hukum*, p. 31.

perspective, while the values see it from an individual point of view. Even so, Finley Scoot said that norms can be called values because both of them are quite strong socially influential in society.<sup>21</sup>

Therefore, Roscoe Pound believes that law is a means to improve society towards a better direction which he calls law as a tool and social engineering. Therefore, there are two most prominent functions of the law, namely, as a means for carrying out "*social control*" and a means for "*social engineering*". As a means of social control, the law is tasked with keeping society in the behavior patterns accepted by it (*society*).<sup>22</sup>

The pound is building sociological jurisprudence or law is a social reality that comes to protect and direct society. On the other hand, the law is not enforced under the text and articles in written law (*law in the book*). Social reality in Indonesia, which continues to experience dynamics, affects the legal system that develops in society. The Indonesian people have long had their legal system, namely customary law that grew traditionally<sup>23</sup> in addition to Islamic law and Western (Dutch) law. Therefore, in legal development in Indonesia these three legal systems also become the raw material, namely; Islamic law, western law and *adat* law.

The related to that, in the social structure of Acehese society, customary norms and values are based on religion which is quite strong. Religion and customs are the way of life of the Acehese people. Syahrizal Abbas emphasized that in the customary law system, there is no known division of public and private law, consequently, there is no categorization of criminal and civil law as in Continental European law. The term "dispute" or conflict for customary law communities is not only intended for civil cases, which focus on individual interests, but disputes are also used for criminal acts of crime or violations. The meaning of conflict for indigenous peoples is aimed at social imbalances. This means that if there are conflicts in civil law or crimes and violations in criminal law, the customary law community feels an imbalance that occurs in people's lives. Therefore, the community will resolve the conflict

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<sup>21</sup>Satjipto Raharjo, *Hukum*, p. 77.

<sup>22</sup>Satjipto Raharjo, *Hukum*, p. 117.

<sup>23</sup>Juhaya S. Praja, *Teori Hukum dan Aplikasinya*, Bandung: Pustaka Setia, 2011, p. 55.

through customary law mechanisms.<sup>24</sup> In this context, it can be emphasized that custom as a social order can be a force to resolve conflicts that occur in society. The customary values that have become the social order are continuously socialized by prominent community figures such as those carried out by the *keuchik* (head of villages), *teungku imum* (imam for Islamic religion in villages), *tuha peut* (communities leader in villages) and even elements of the village youth so that they remain alive and survive in the community until now.

### **Adat Advantages in Conflict Resolution**

The according to Satjipto Rahardjo that as a living law in society, *adat* and habits gradually become law have several advantages compared to conventional law; first, has strong together characteristics; second, has a religious-magical style related to the way of life of the Indonesian nation; third, a legal system that is flexible and considers many things, including conflicting feelings of justice; fourth, they have a visual character, meaning that legal relations are considered to occur only because they are determined by a visible bond.<sup>25</sup>

In Aceh there is an institution called the Aceh *Adat* Council (Majelis *Adat* Aceh/MAA) which runs from the province to the district. According to Ismail, this institution conducts guidance and development of the community in terms of understanding so that there is an increase in the capacity and competence of the village apparatus. MAA also encouraged the birth of *qanun* (local regulation) No. 9 of 2008 concerning *Adat* Law Development. This *qanun* is a guideline and basis for resolving *adat* court disputes in society. Based on this *qanun*, there are 18 kinds of disputes in society that can be resolved through formalized *gampong* customary courts or positive customary law. In this case, MAA collaborates with the police. The police only support that they cannot interfere in these 18 cases. The mechanism for resolving disputes by way of deliberation strengthens friendship and brotherhood, is fast, cheap, and does not

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<sup>24</sup>Syahrizal Abbas, *Mediasi dalam Hukum Syariah, Hukum Adat dan Hukum Nasional*, Jakarta: Kencana, 2011, p. 249.

<sup>25</sup>Satjipto Rahardjo, *Hukum dan masyarakat...*, p. 154.

cause resentment. It is different if the case is resolved by way of a court, it will cause the opposite.<sup>26</sup>

In line with that, Abdurrahman, a member of the MAA emphasized that conflict resolution using traditional mechanisms prioritizes a sense of justice and this is one of the advantages compared to formal justice. When it is finished being reconciled and shaking hands with each other, the conflicted parties will be able to sit at one table while drinking coffee, greeting each other, revenge will disappear. If the settlement is formal, the problem is resolved but between the parties, there is still resentment and a sense of dissatisfaction. The advantage of customary courts is that the decisions of customary institutions have binding power. If they violate then social sanctions will be very heavy for the perpetrator to accept. For example, being excluded from social interactions, a fine amount of money, and so on.<sup>27</sup>

The peace that arises after the conflict resolution process is contained in the *hadih maja* (Acehnese proverb which has a philosophical meaning); *tameuhukom ngon adat, harta tetap, syedara na* (law with *adat*, property will remain, sibling relations are maintained). The *hadih maja* above gives a message to the community to prioritize customary law in resolving conflicts. The positive value contained in the settlement process is that it can save costs and build brotherly relationships and eliminate grudges.<sup>28</sup>

The resolution of conflicts over customary values is actually very elastic legally. In passing the law, it really considers preaching, for example, whether he is a poor person or a respectable person, if the respectable person will be heavy and vice versa. Then the incident occurred in a case, for example in a mosque and in ordinary places, it will be taken into consideration. Therefore *adat* law cannot be written with certainty but the law is certain, it is accepted well.<sup>29</sup>

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<sup>26</sup>Interview with Badruzzaman Ismail, Chairman of Majelis Adat Aceh, Provinsi Aceh, July 17, 2016.

<sup>27</sup>Interview with Abdurrahman, Member of Majelis Adat Aceh, Provinsi Aceh, November 22, 2015.

<sup>28</sup>Muslim Zainuddin, Peran dan Fungsi Kelembagaan Mukim dalam Penyelesaian Perselisihan: Analisis Praktek Hukum Adat di Aceh, *Jurnal Media Syariah*, Vol. 19, No. 2, 2017, p. 339.

<sup>29</sup>Interview with Badruzzaman Ismail, Chairman of Majelis Adat Aceh, Provinsi Aceh, July 17, 2016.

One of the advantages of custom-based conflict resolution is that it can solve all problems in society, for example, minor crimes and even serious civil ones. The resolution of family conflicts, for example in Acehese society, is mostly carried out through traditional or non-litigation mechanisms, namely without going through formal justice. There are several patterns carried out by the community, for example involving social elites and *Gampong* (villages) elites, namely the villages head (*keuchik*), *Tuha Peut* (communities leader in villages), *Teungku Imum* (Imam for islamic religions), *Imum Mukim* (head of subdistrict), a dispute resolution place in the *meunasah* (mosque for islamic in gampong) sometimes at the *Keuchik* office (office of head villages).<sup>30</sup>

The teaching of law teaches the principle of decision, meaning that what is decided in law. This means that in applying customary law the parties involved in the judiciary must be thoroughly mature in knowing the sociology and psychology of the community and having a broad perspective. Because something was decided there was no previous article that regulates it. If it is accepted by deliberation, it is registered, signed by all parties, including the litigants. It's just that it is still a problem until now because it has not been fully supported by the government administration because it is not in sync, although I often tell the government, including the regent, even though there are regions that support it such as Lhokseumawe City and Central Aceh. Lhokseumawe City for settlement of a dispute case will be paid by the government Rp. 200,000, -, while in Aceh Tengah Rp. 1,000,000, - because the MAA collaborated with the Islamic Sharia Service. The budget post comes from the Islamic Sharia Service. I continue to fight for this to be included in the government budget.<sup>31</sup>

Ismail explained that for example, 4 months ago there was a case in Bener Meriah, a coffee thief who was resolved by customary MAA in collaboration with the Bener Meriah Police Chief. The thief did not actually work as a thief, he was forced to steal because his son was sick then stole 2 kg of coffee and then sold it. Finally this

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<sup>30</sup> Mursyid Djawas dan Sri Astuti A. Samad, *Conflict, Traditional, and Family Resistence...*, p. 81.

<sup>31</sup> Interview with Badruzzaman Ismail, Chairman of Majelis Adat Aceh, Provinsi Aceh, July 17, 2016.

case can be resolved amicably without a judicial process. Because of the success of the conflict resolution model using the Aceh traditional mechanism, I gave a lecture in January 2012 to 350 young officers, the Police Academy at the Jakarta Police Headquarters. They are quite appreciative and have learned a lot from the conflict resolution model in Aceh that can be applied and accepted by deliberation without being brought to justice. Therefore in Aceh there will be no Sandal case (a case of underage children stealing sandals from a policeman in Palu, Central Sulawesi, the case was reported to the court and then processed) and the cocoa pod theft case was also processed in court. Aceh is a national reference for this matter.<sup>32</sup>

Conflict cases that are resolved by customary law are not limited to criminal law, and civil, or private and public because in customary settlement these differences are not known.<sup>33</sup> Therefore, conflict cases that can be resolved range from minor or minor criminal acts such as disputes, to cases of murder (serious crimes), inheritance, domestic disputes, murder, theft, fights, disputes over land boundaries, land boundaries and so on and other. Although these serious crimes are rare nowadays, there are still conflicts that can be resolved.

Even according to Qanun (local regulations) No. 9 of 2008 concerning *Adat* and *Adat* Law Development article (13), it is explained that cases that can be resolved through customary law played by the *gampong* (villages) elite are;

1. Disputes in the household
2. Disputes between families related to *faraidh* (inheritance)
3. Disputes between residents
4. *Khalwat meusum* (related to women without marriage);
5. Disputes about ownership rights;
6. Theft in the family (light robbery);
7. Disputes over total assets;
8. Light theft;
9. Theft of domesticated livestock;

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<sup>32</sup>Interview with Badruzzaman Ismail, Chairman of Majelis Adat Aceh, Provinsi Aceh, July 17, 2016.

<sup>33</sup>Syahrizal Abbas, *Mediasi Hukum Syariah...*, p. 128. Mursyid Djawas dan Sri Astuti A. Samad, Conflict, *Traditional and Family Resistance...*, p. 78.

10. Customary violations concerning livestock, agriculture, and forests;

11. Disputes at sea;

12. Disputes in the market;

13. Minor maltreatment;

14. Forest burning (on a small scale to the detriment of indigenous communities);

15. Harassment, slander, incitement, and defamation;

16. Environmental pollution (light scale);

17. Threats (depending on the threat);

18. Other disputes that violate other violations of *adat*.

All of these words can be resolved at the village level (*gampong*) which can be referred to as the *gampong* (villages) judiciary with the village head as the chief judge, *Imum meunasah* and *tuha peut* (communities head in villages) consisting of ulama and community leaders as members. This is possible because the police may not interfere with the 18 cases mentioned above which are regulated in the Joint Decree of the Governor of Aceh, the Aceh Regional Police and the Chairperson of the Aceh *Adat* Council, 2011 concerning the Implementation of the Gampong and Mukim *Adat* Courts or other names.

It should also be emphasized here that the conflict resolution mechanism applies the *diyut* (compensation), *peusijek* (spiritual ceremony) and *peumat jaroe* (greetings) patterns. *Diyut* is a fine imposed on the perpetrator, usually an amount of money, covering the education of orphans for parents who died, the cost of eating together. *Peusijek* is a traditional ritual that unites two people or groups with another group to be reconciled. *Peumat Jaroe* is a procession of shaking hands and mutual forgiveness between parties to make peace and get rid of grudges.

When the *peusijek* and *peumat jaroe* processes have been carried out, each party to the conflict will accept it gracefully and happily, what will arise is brotherhood and the loss of revenge. If there are people who are not satisfied with this decision, then they may appeal and take the case to a higher level, namely mukim. If at the mukim level the conflict has been decided, then people who refuse and do not obey the peace decision, then they will be given social sanctions, for example being expelled from the *gampong* or social isolation and this is very rare.



### **Adat Institutions as Social Elites**

One of the advantages of the social system and structure in Aceh is that social elites such as the *keuchik*, *imum meunasah*, *tuha peut* are also socially and juridically recognized customary institutions. Socially because they are old and charismatic and are elected by the community, then legally because it is strengthened by qanun or Aceh law Number 10 of 2008 concerning customary institutions which is then strengthened by Law of the Republic of Indonesia Number 11 against Aceh Government in 2006. Therefore *Adat* institutions or social elites in Aceh have two legitimacy at once, namely social and juridical legitimacy. It seems that this is the uniqueness and superiority of the social elite in Aceh which is different from other regions in Indonesia.

It can be further emphasized that the role of customary institutions to date has been quite prominent in resolving conflicts and disputes in the Acehnese community. The 13 customary institutions as mentioned in the laws and regulations above, include *keuchik*, *tuha peut*, *imeum meunasah*, *imum mukim* which have the authority to resolve conflicts and disputes in 18 cases as mentioned above. This customary institution or social elite can have authority because it is supported by Qanun No. 9 of 2008 and a joint decree with the Governor of Aceh, the Aceh police and the Aceh *Adat* Council in 2011. The functions of the social elite as well as traditional institutions are as mediators, facilitators, negotiators and arbitrators in resolving conflicts.<sup>34</sup>

For example, in Aceh Besar, the social elites played quite a role in the process of dispute resolution mechanisms that accommodate the involvement of all elements of society in a smaller scope. This means that the representation produced from the decision of the existing case is a form of representation of the voices of the entire village community. In the role of social elites in the *gampong* in dispute resolution, in Acehnese society there are also several customary institutions that are directly involved in the conflict resolution process in accordance with their respective duties and functions. Customary institutions at the *gampong* level have the authority to resolve conflicts at the *gampong* level. While at the

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<sup>34</sup>Fajri M. Kasim dan Abidin Nurdin, *Resolusi Konflik...*, p. 117.

residential level the institution consists of; *Imum Mukim, Imum Chik, tuha peut Mukim/Tuha Lapan*. This institution functions to resolve disputes that arise in the community if they are not resolved at the village level.<sup>35</sup>

The *gampong* apparatus as the social elite in Bireuen also actively contributes in providing guidance, prevention, including reconciling the two husband and wife if a dispute occurs. The forms of guidance that are carried out, for example, men who are going to marry must carry out guidance with a *teungku imum* for 1 to 4 times, depending on how the man's understanding of religion and religious behavior is, if the prospective husband is known to frequent the mosque, is active in recitation, good morals, so usually only once a tutor can get a letter of introduction from the *Keuchik* and *Teungku Imum* to the Office of Religious Affairs. But if the opposite is true, then the guidance may be up to 3-4 times. Because in the process of guidance, they are taught about the rights and obligations of husbands and wives, procedures for worshipping, reciting the Koran properly, how to take baths and so on.<sup>36</sup>

Then for couples who are already in conflict or conflict, the *gampong* apparatus will summon the two couples and their extended family to be reconciled. After the first reconciliation, you will be given 21 days to think individually about the pros and cons of divorce, the risks to children, and the household. According to experience so far, up to 60% of cases of arguments that lead to divorce have been successfully reconciled and not divorced. Meanwhile, 40% were unsuccessful and arrived at the Syar'iyah Court to be processed at the trial and this case is already heavy and difficult to reconcile. If the problems and problems are still small, then this is easy to reconcile and is included in the 60%.<sup>37</sup>

From the above explanation, it can be emphasized that social elites such as *keuchik, imum meunasah, tuha peut*, community leaders, and youth elements are the main actors in conflict resolution in Acehese society, this can be seen in Aceh Besar, Bireuen, Aceh Besar and Banda Aceh and other regions. Another region. The social

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<sup>35</sup>M. Ridha dkk, *Peumat Jaroe: Proses Mediasi Menuju Harmoni dalam Masyarakat Aceh*, Banda Aceh: Lhee Sagoe Press dan Pusat Kajian Pendidikan dan Masyarakat, 2017, p. 122-123.

<sup>36</sup> Interview with RD, key informan in Bireuen, November 4, 2015.

<sup>37</sup> Interview with RD, key informan in Bireuen, November 4, 2015.

elite at the same time becomes a customary institution that is recognized not only sociologically and historically but also juridically which is strengthened by statutory regulations.

### **Adat Law and Islamic Law**

The Acehnese people have their pattern of resolving disputes, both vertically and horizontally. The dispute settlement pattern in Acehnese society is called Syarizal Abbas with the "village customary settlement pattern". This pattern comes from Islamic law which comes from the Koran and the Sunnah. These two sources of Islamic law teach various models and methods of dispute resolution both within households, between individuals outside the household, between communities, even between countries.<sup>38</sup>

*Adat* Aceh is very thick with Islamic colors, this can be seen from almost all aspects of life. Values such as togetherness, brotherhood, eliminating resentment, peace, mutual forgiveness mentioned above are derived from Islamic teachings. Asnawi Zainun, explained that in this study religion is stronger than *adat*, there is *hadih maja: meukoh rebong, hukom meukoh purih* (*Adat* is like cutting bamboo shoots, which are easy because they are not strong). Religion cuts the stump of bamboo which is hard and strong. The other *hadih maja* mentioned; *Adat jeut barang kaho ta kong, Hukom hanjeut barang kaho ta kih* (*Adat* may be abandoned/dodged, religion cannot be arbitrarily practiced or abandoned by taking something else). For example, in marriage, dowry should not be abandoned because it is obligatory in religion. However, *trun dara baro, intat linto* and several traditional processions may be abandoned if conditions are not possible. So dowry is the same as *hukom*, while *intat linto* is customary.<sup>39</sup>

This means that religion has the function of answering principal matters while *adat* takes care of matters that are not too substantive, but both are still in line because the custom is based on religion. In another view of the conflict resolution process, peace, mutual forgiveness, and brotherhood are religious teachings, while

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<sup>38</sup>Syarizal Abbas, *Mediasi Hukum Syariah...*, p. 251.

<sup>39</sup>Interview with Asnawi Zainun, Secretary of Forum Mukim in Aceh Besar and Member of MAA Provinsi Aceh, November 7, 2015.

*peusijuk* and *peumat jaroe* are patterns and traditional mechanisms practiced by the Acehnese people.

The arguments and *hadih maja* mentioned above show that the traditional practices and Islamic law in society are never contradictory. He is in line with and mutually reinforcing each other. As mentioned in the *hadih maja: hokum ngon adat lagee zat ngon sifeut* (religion and customs such as substances and properties) complement each other.

In this contexts Muhammad emphasized that in the application of Islamic law in Aceh the relationship with customary and sociological values can be carried out by "the method of interpreting local values". This method uses a sociological framework in understanding and interpreting Islamic law that cannot be separated from the social context of society, including in making qanuns these local values can be adopted.<sup>40</sup>

For example, the adoption of local value interpretation methods in the application of Islamic law in Aceh is the inclusion of customary institutions such as *gampong*, *keuchik*, *imum meunasah*, *tuha peut*, *mukim* and other customary institutions that have the authority to resolve conflicts. This accommodation has been proven by the existence of qanuns and laws and regulations in Aceh.

Moreover, in the study of ushul fiqih, one of the sources of law is *al-urf*. *Al-urf* is a custom and culture practiced in a society that is not against Islamic law. Then in the law of fiqih it is mentioned *al-adat al-muhakkamah*, (*adat* can be used as law). *Adat* supports religion in translating values in society while religion can be implemented with the help of *adat* and culture.<sup>41</sup>

Religious orders are for peace and without conflict, the mechanisms and patterns of peace can be carried out in various ways, one of which is by using traditional mechanisms and patterns based on Islamic values. Islamic values about peace as described above are prioritizing brotherhood, eliminating grudges, forgiving, respecting

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<sup>40</sup>Rusjdi Ali Muhammad, *Revitalisasi Syariat Islam di Aceh: Problem, Solusi dan Implementasi Menuju Pelaksanaan Hukum Islam di Nanggroe Aceh Darussalam*, Jakarta: Logos, 2003, p. 202.

<sup>41</sup>Sri Astuti A. Samad dan Munawwarah, Adat Pernikahan dan Nilai-Nilai Islami dalam Masyarakat Aceh Menurut Hukum Islam, *El-USrah: Jurnal Hukum Keluara*, Vol. 3, No. 2 Juli-Desember 2020, p. 289.

agreements, the existence of mediators in this case social elites or community leaders.

## Conclusion

The conflict resolution with *adat* mechanisms from a sociological perspective is interesting to study because it can provide order and consensus in society. Sociology of law makes law a tool and means of controlling and building society in a better direction, it is even considered a mistake of modern society when it only relies on the judiciary or litigation as the only institution to resolve conflicts.

Amid the pile of cases that must be resolved by law enforcers in Indonesia, community conflict resolution using customary norms and values that are binding in social systems and structures is a good and effective solution. The resolution of these conflicts has advantages, among others, maintaining brotherhood and eliminating grudges, being fast, cheap, promoting a sense of justice and elasticity. This advantage is possible because of the involvement of *adat* institutions or social elites such as the *keuchik*, *imum meunasah*, *tuha peut*, *imum mukim*, which have both social and juridical legitimacy. Conflict resolution through *adat* is in line with the values of Islamic law, especially in the concept of *al-urf*, namely customary practices that do not conflict with sharia.

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