

Customary Gayo Standing In The System Government Autonomy Of Privilege In The Province Of Aceh

Dr (cand). Darmawan, SH, M.H₁, Prof. Dr. Runtung Sitepu, SH, M.Hum²
Prof. Dr. Tan Kamelo, SH, MS³ Prof. Dr. Suhaidi, SH, MH⁴

¹(Legal science doctoral student, Faculty of Law, University of Sumatera Utara, Medan, Indonesia)

²(Promotor)

³(Co Promotor)

⁴(Co Promotor)

Abstract *Gayo community also has its own law in managing their lives and live in a society of law is referred to as customary law. For a general rule, in the Gayo people carried out by "Sarak Opat". "Sarak Opat" existence until today still exist and play a role in the administration of the affairs of the village and the settlement of disputes among villagers. The element "Sarak Opat" in society Gayo consists of "Reje (Penghulu)", "Imem", "Petue" and Peoples "(Sudere)".*

Keywords: *Gayo, Customary Law, Sarak Opat.*

I. Introduction

Based on the amendments to the constitution of Indonesia namely the 1945 Indonesian Constitution, Article 18B, among others, stated that the State recognizes and respects units of customary communities and their traditional rights. This provision reinforces the existence of Law No. 44 Year 1999 concerning Implementation Privileges the Province of Aceh, and Law No. 18 Year 2001 concerning Privileges Autonomy for the Province of Aceh as Nanggroe Aceh Darussalam, then set back by Law No. 11 Year 2006 concerning Aceh Government imposed for Nanggroe Aceh Darussalam, allowing revived traditional institutions to organize the life of society in accordance with his wishes.

Pursuant to Article 5 of Law No. 48 Year 2009 states judges and constitutional judges shall explore, and understand the values of law and justice in the society. In this article, there are bold statement about the recognition of an unwritten law (customary law) which serve as the legal basis for any decision of the judge, and it is also a real recognition of the existence of customary law. As the national legal system, the same thing is true in Aceh, so that people in touch with each other, but to be subjected to the legislation, are also subject to the provisions of customary law. In addition to these two provisions, the social life of people is also subject to customary conditions.

In Article 6 of Law No. 44 Year 1999 concerning Implementation Privileges the Province of Aceh, confirmed that the area can define different policy on empowerment, preservation and development of customary and traditional institutions in the region, which is imbued and in accordance with the Islamic Law.

Mentioned earlier, the successful amandement of Article 18B of the constitution of Indonesia namely the 1945 Indonesian Constitution, and then set back by Law No. 32 Year 2004, amending Law No. 22 Year 1999 concerning Regional Government, under Article 22 letter m stated that "In the conduct of autonomy , the area has the obligation to preserve the socio-cultural values ", as well as Law No. 18 Year 2001 concerning Privileges Autonomy for the Province of Aceh as Nanggroe Aceh Darussalam, where Article 10, paragraph 1, which states that: "*Wali Nanggroe and Tuha Nanggroe is an institution that is a symbol for the preservation of the organization of customary life, culture and unifying communities in the Province of Nanggroe Aceh Darussalam*". In this case, the explicit message to customary law, should be given wider powers set and firm.

The last time, Law No. 11 Year 2006 concerning the Government of Aceh, in Chapters XII and XIII is set on the institution of Wali Nanggroe and Custom Institutions. Article 98 of this Law mentions traditional institutions to function and act as a vehicle for public participation in the governance of Aceh and district / city governments in the field of security, tranquility, harmony and public order. In the next paragraph of this article, mentions about the settlement of social problems are customary, reached through traditional institutions.

Customary institutions as mentioned above, include: "Majelis Adat Aceh", "Imuem Mukim" or any other name, "Imuem Chika" or any another name, "Keuchik" or any other name, "Tuha Peut" or any other name, "Tuha Lapan" or any other name, "Imuem meunasah" or any other name, "Keujruen Blang" or any other name, "Panglima Laot" or any other name, "Pawang Glee" or any other name, "Peutua Seuneubok" or any other name, "Haria Peukan" or any other name, "Syahbanda" or any other name. Further provisions governing the duties,

powers, rights and duties of customs agency, empowerment and customs as described above, is regulated by a separate Qanun.

in Article 99 of the Law No. 11 Year 2006 concerning the Government of Aceh, it is Mentioned that the coaching and development carried out in accordance customs privileges and specificity of Aceh, the which is based on the values of the Islamic Law and implemented by the Wali Nanggroe. Also it was stated that the development of customary norms Generally Accepted in the Aceh performed by traditional institutions with consideration of Wali Nanggroe.

The human need for order spawned the adagium "*Ibi Ius Ibi Societas*", meaning that there are communities where there is no law. This adagium also shows that every society has its own laws that may differ from other communities, in accordance with the philosophy espoused by a particular community. Gayo community also has its own law in managing their lives and live in a society of law is referred to as customary law. For a general rule, in the Gayo people carried out by "Sarak Opat". "Sarak Opat" existence until today still exist and play a role in the administration of the affairs of the village and the settlement of disputes among villagers.

The element "Sarak Opat" in society Gayo consists of "Reje (Penghulu)", "Imem", "Petue" and Peoples "(Sudere)". According to Muhammad Daud Ali, each of these elements has its own role is no less important than the role of the other elements. Between these elements there are strict division of labor with the nature of the task is clear¹. Furthermore, under this described the role of each of the elements of the "Sarak Opat".

"Reje (penghulu)" who became head of the customary law community, has a very important role in managing public life. In performing its role, he always had to "musuket sipet" which means they must strive always uphold justice, truth, compassion among must strive always uphold justice, truth, compassion among members beside him. He also has to be fair and wise. He must weigh less severe and can imagine the consequences of his decision. Besides "musuket sipet", as stated above, the "reje" also must perform its role properly according to the customary norms that are stored in a variety of traditional proverbs Gayo.

"Imem" has a particular role, according to custom Gayo-called "muperlu sunet". This custom expression clearly shows what should be done by imem in public life dimpled. He is obliged to uphold the norms of the religion (Islam). The trick is to teach members of the dimpled Islamic laws are denoted by the word "perlu and sunet" which comes from the words "fardhu and sunnah" in five categories of Islamic law called "Al-Ahkam al-khamsah". In addition to spreading the teachings of Islam, "Imem" also obliged to keep the norms of Islam was not infringed in any acts committed by any members of dimpled and decisions made by "reje (penghulu)".

"Petue" in performing their role must always be "musidik sasat", the customary meaning of the phrase is a "petue" should always to observe, investigate and even knowing all the circumstances and developments in the dimpled. He should immediately respond and resolve disputes between members beside him, and immediately convey what he knows and problems that can not be resolved to "reje". "Reje" as stated above, is obliged to resolve any issues, however difficult, wise, fair and true.

The role of "the people" are "genap mupakat". This role is to carry out a variety of tasks laid down by customary law community to shoulder every member of the "belah", of which assess the state administration and social life. This role is carried out through the institution of "musyawarah". In addition, people also have a role to oversee the three elements "Sarak Opat" above, whether they carry out their respective roles in harmony and in accordance with the norms of customary Gayo.

In addition, there are also institutions that are official, namely the implementation of elements of similar services that carry out technical tasks of everyday life, is "Kejuron Blang", "Penghulu uten", "Pengulu Uwer", "Pawang Lut", "Pawang Deret", "Biden (Bidan)" and "Harie". In addition, there are several other positions that carry out the day-to-day tasks, namely "Bedel" (Deputy/Assistant Reje), "Lebe" (Deputy/Assistant Imem), "Banta" (Secretary/Maid Reje), and "Sekolat" (Deputy/Assistant Petue)².

These descriptions above, the statement directions of development in the field of law and amendments to the Law of 1945 as well as some provisions of the legislation, has looking the clue and gesture firm to re-apply the role of traditional institutions as the implementation of government in day-to-day governance. This message is in line with the state of implementation of government in society Gayo, therefore "Sarak Opat" institution as customary government institutions, still plays a role in conducting the affairs of the community members in the villages, though no longer the same as that the fact. It in is because due to the influence and intervention legislation past governments that have likuidation role and functions of institutions such "Sarak Opat".

¹ Muhammad Daud Ali, 1991, *Hukum Adat Gayo*, Jakarta, p. 31.

² Aman Pinan AR Hakim, 2001, *Syariat Islam dan Adat Istiadat*, Yayasan Mahkamah Mahmuda, Takengon, p. 137.

II. Review Of Literature

According to Ter Haar in his theory called Decision Theory (*Beslissingen leer*), states that the differences found with Customary Law. The difference lies in the category has been used or not by a functional customary law to settle a problem, both within and beyond dispute. Only customary (“*istiadat*”) which has been used by the functionaries of customary law in sending a case called Customary Law. According to the theory of customary law is identical with the judge's ruling. Therefore, according to this theory the decision of customary law can be found in the judgment, while the custom can be found in the behavior of people in society³.

Supomo, as a researcher and author of customary law, not paying attention to their customary terms and customary law. He only gives the sense of customary law as a legal non statutair, which largely is the common law and a small part of Islamic law. According says customary law is the law is made not in the form of legislation. All existing laws in a society that says as is customary habit of Indonesian society, including the type of law called customary law. The force of customary law, appears in the decision / determination officer of the law, such as the decision of the village collection, each within its competence⁴.

While Van Vollenhoven, in distinguishing customary customary law by using the criteria of sanctions and modification. According to customary law is the overall rules that apply for the original Indonesia, which on one hand has codified sanctions (hence: the law), on the other hand is in a state do not codified (hence: “*adat*”). In the view of Van Vollenhovem in the formula above, because it meets both criteria, then the customary Indonesian law called customary law. Further according to Van Vollenhoven in Indonesia there are 19 (nineteen) legal customary environment (*Rechtskringen*). The customary law of the traditional legal environment different from the customary law in other common law environment. In provincial areas, based on the theory that there are environmental laws and customs, is environment customary law and customary legal environment Gayo, Alas and Batak. Acehnese customary legal environment territory stretching from Singkil district in the eastern part. Gayo customary legal environment. Alas and Batak covers an area Aceh Tengah and Aceh Tenggara⁵.

According to Moh. Koesnoe, understanding of the Customary Law after Indonesia's independence developed two types of knowledge; First, the western version of customary law that emphasizes the description in the social sciences and an area as an ethnographic study by basing on the materials locally empirical field. Both science customary law that national vision of its theoretical - philosophical. The latter approach gave birth to the science of customary law national approach is different from the customary law of modern science that targets the investigation has changed:

1. The goal changed and its position as a social science (empirical) to normative legal doctrine.
2. The method has been used the inductive method is empirical materials brought to the conclusions in the form of theories.

While the national laws of science using deductive nomological, that and a principle leads to the elaboration of concrete. At this time the surviving twin concept of customary law that within the framework of local customary law and customary law within the national framework. The national law is primarily a matter of positive law. Embodiments of the formulation is the task of the law enforcement / jurists.

To give a clearer picture of what actually Customary Law, it can be added to some formulations are a little bit full, namely:

1. Surojo Wignjodipuro, Customary Law is a complex of norms rooted in the feeling of justice for the people who are always evolving and covering human regulation behavior in daily activity in society, largely unwritten, always obeyed and respected by the people, because it has legal consequences (sanctions) ,
2. Bushar Muhammad, Customary Law was especially laws that govern human behavior Indonesia in relation to each other, neither of which is the overall prevalence, habits and kesesuliaan who actually live in customary peoples as adopted and maintained by members of the community, and that is an overall regulations that the sanctions for violations and set forth in the decisions of the customs authorities (those who have authority and power to give a decision within the customary people) are in the decision “*lurah*”, “*penghulu*”, “*pembantu lurah*”, “*wali tanah*”, “*kepala adat*”, and “*hakim*”.
3. R.M. Soeripto, Customary law is all the rules / regulations customary behavior of a legal nature in every aspect of Indonesian life, which generally are not written by people considered inappropriate and binding on the members of the community; which is illegal because there is a general awareness and a sense of justice, that rules / regulations that must be maintained by law officers and public officials with coercive attempts or threat law (sanctions).
4. R. Supomo, Customary law is a synonym and an unwritten law in the legislation (unstatutory law), the law of life as a convention in the Legal Entities State (Parliament, Provincial Councils and so on), the law of life as a rule habit maintained in social life , both in cities and in villages (Customary law).

³ Ter Haar. B Bzn. 1960, *Asas-asas Hukum Adat*, Pradnya Paramita, Jakarta, p. 235.

⁴ Tim Peneliti Fakultas Hukum, *Op. Cit*, p. 4-5.

⁵ *Ibid*.

5. Hardjito Notopuro, Customary law is an unwritten law, the common law with a distinctive characteristic which is a guideline of life of the people in holding the justice system and social welfare and family-oriented.

Based on the above formula, can be seen there is a unity of views on what exactly the Customary Law, Customary Law is the law of life in society (the living law). The conception of "the living law" for the first time presented by Eugen Ehrlich in his book *Grundlegung der soziologie des Recht in 1913* (English translation of "Fundamental Principles of the sociology of law", 1962) as a reaction rather than the views in the science of law that is who are obsessed with their legality contained in laws and regulations are ignoring the growing symptoms of law in society. The use of the term the living law is typically used to indicate a wide range of legal grow and develop themselves in society.

Customary Law as "the living law" is a pattern of social life where the legal process, and at the same time is the result of the social process which is the source and basis than the law. The emergence of this law is a direct and fundamental base, namely; legal awareness in this case are the people of Indonesia. Customary law is a law that says Supomo life because he embodies the feeling of real law and the people. Customary law continues to grow from a real necessities of life, way of life and way of life, which are all cultural communities where customary law was valid. Customary Law Indonesia not only dwells in the conscience of Indonesia who became citizens of the Republic of Indonesia in all corners of the archipelago, but widespread to the archipelago the Philippines and Taiwan in the north, island Malagasy (Madagascar) and bounded on the east to the islands Paska, embraced and defended by the people of Indonesia who belonged to Indonesia in terms of ethnicity.

Customary Law as "Indonesian law" has a distinctive style that is different from the legal systems in Western countries. Even though customary law is very traditional which means it is tied to the traditions of nature passed down by ancestors, but we should not draw hasty conclusions that the Customary Law abstinence changed. It looks a bit is a bit of irony, as "tradition" and "change" is the customary two "*onwikkelt zich gestading*" or progressing continuously. Customary law by the consideration consists of three parts, namely the "*Het afster vende*" (part of which is now in force) and "*het wardende niew*" or part of the new form.

Role in Society Sarak Opat Gayo

In 2002, the regional governments of Aceh Tengah, has issued the Qanun No. 10 Year 2002 concerning Customary and Tribal Gayo. The rationale publish this Qanun, therefore Customary Law is the values, socio-cultural norms that live and thrive in the community Gayo Aceh District, for it to be developed in the social fabric of community life. Another consideration is in the framework of implementing the Aceh specialty need to collect customary law, customs and habits, so it can be used as a handle and guidance of people's lives.

In Article 4 Qanun, it is mentioned that the empowerment of Customary Law, Customs, habits and Custom Agency is to increase the role of traditional values to support the activities of the regional administration in the sustainable development of society, and participate encourage public order. Further that described, that with the entry into force of customary law, customs, habits and Custom Agency is to organize the life of society while maintaining the values of a society that grows and develops.

In the past the government system in Gayo centered on sides. On the sides there are elements of implementing any government that consists of Sarak Opat, namely "reje (Penghulu)", "imem", "petue" and people ("sudere"). Each of these elements has its own role is no less important than any other element. Between them there is a clear division of labor with the nature of the task is clear.

1. "Reje (penghulu)" who became head of the customary law community, holding a peak power in organizing community life. In conducting his rule he always had to "musuket sifet" in the sense of trying to always uphold justice, truth, compassion among members beside him. It also must be borne in sacred ("cuci") or net of negative traits, in order to purify the lives of the people they lead. In tareje a decision, one "reje" must always be fair and prudent use of the measure in solving the same problem, she should weigh equally heavy and can imagine the consequences of his decision. Thus, "reje" must be wise, prudent and have extensive knowledge and reach forward. In addition to "musuket sifet" as mentioned above reje also must perform its role properly stored according to traditional norms of customary Gayo expressions.
2. "Imem". Has a certain role in the so-called customary Gayo "muperlu sunet". This custom expression clearly shows what should be done by "imem" in public life dimpled. He is obliged to uphold the norms of the religion (Islam), the way is to teach the members of dimpled. Islamic laws are denoted words "perlu and sunet" derived from the words "Fardhu and sunnah" in cases in five categories of Islamic law called "Al-Ahkam khamsah". In addition to spreading the teachings of Islam, "imem" also obliged to keep the norms of Islam, "imem" also obliged to keep the norms of Islam was not infringed in any acts committed by members of dimpled and decisions made by reje and pengulu.
3. "Petue". In performing "petue" should "musidik sasat". What is meant by the expression of this custom is that someone "petue" must always observe, investigate, and (even) know all the developments tareje place in the dimpled. He should immediately respond and resolve disputes arising members beside him, and

immediately convey what he knows and problems that can not be solved to "reje". "Reje" as mentioned above is obliged to resolve any issue base on difficult, wise, fair and true.

4. The role of the people is "genap mupakat". This role is carried out in a variety of tasks set by customary law community to the top of every member of sides, including assessing the state administration and social life. This role is carried out through the institution of social life. This role is carried out through deliberation institutions, in addition people also have a role to oversee all three elements "Sarak Opat" over whether they carry out their respective roles in harmony and in accordance with customary norms Gayo.

This oversight role can be seen in the following descriptions: as stated above, each element in a split government should carry out its role based on the customary norms that have been determined. In fact, there may be between "Sarak Opat" elements that do not carry out the role as it should, so that deviations from the norms prevailing custom. If a "reje" for example not "musuket sifet", perform the role that deviate from the pattern established by customary norms, people the sides concerned are convinced that there has been a deviation from the rules used to measure behavior "reje" it held a consultation to impose sanctions the "reje" customary to hold deliberations to impose sanctions against "reje" customary concerned. "Reje" deviant called "Taksir", the meaning not carry out should be properly implemented. In Article 39 of the Basic Regulation Customary Law Gayo, mentioned that a prince "reje" or be removed from office if he:

1. Taking the property of others is contrary to customary law, or
2. Considering the heavy door, measure does not fit or
3. Justify wrong, blame the right, or
4. Acting arbitrarily. Not following "resam" regulations.

In the meeting people suggests evidence corroborating the allegations and, if the evidence is clear and convincing, the mass is determined that the relevant "reje" give up his position. If "reje" has been called the "taksir", this means among other things that he had acted unfairly against its people or have committed certain crimes should not be committed by a "reje".

Any accusations addressed to the "reje", as well as charges on any person suspected of committing a crime or acts considered to have violated customary norms, must be completely real, proven as stated above. If errors "reje" it can be proved with real, he or she must give up his position as "reje" or forced to abandon that right. The latter are, in the language of the law in Gayo called serlut means being forced to undress wore.

Which is likened to the clothes in this connection, is his position as "reje". The road is to make it into a "fakir reje" circumstances, the person who does not have anything else, because it is the event in Gayo language called "pepakiren". In implementing "pepakiren" against "reje", the mass is held in the respective sides ancestry ("berpegenapen"). Each one is obliged to give money or rice which will be used for the preparation of a meal together in a ceremony to lower and replace "reje" question. Typically, replacement or have taken within the "kuru" (derivative) "reje" it too. "Pepakiren" before the event was held, "reje" concerned has the full right to defend themselves and nor denied the accusations against becomes void. With the holding of the "pepakiren" ceremony, one of the reje descended from standing as "reje". By doing so, circumstances have changed from those who have power again. Thus, it is seen as a "fakir", his position back into a commoner.

Similarly, the sanctions imposed on "imem" or "petue" who do not do their religion required of him and members beside him and did not forbid what is forbidden by religion, done by him and members of dimpled. Even he does something which is forbidden by the religion. "Imem" Such a condition is called "imem" which has become a page. According to Article 40 of the Basic Regulation Customary Law Gayo, a imem shall be removed from office if he :

1. Proscribe kosher;
2. Justify the unlawful, or
3. Do not cling to the word of God and the traditions of the Prophet Muhammad.

"Imem" replacement process is similar to "reje" reduction process as described above. According to research by Muhammad Daud Ali, some informants testified that imem a serious transgression do anything that is prohibited by religion, is punishable by a toast with dried banana leaves wrapped through her before the fire was set. The penalty of such fuels in Gayo language called "ikerusungi"⁶.

"Petue" are not "musidik sasat" is "petue" which no longer concerns the life and prosperity of member dimpled. He negligently perform its role, allowing the violations occurred in the dimpled.

III. Conclusion

Government "Sarak Opat" is a system of government which is composed of several elements, namely "reje" should "musuket sifet", became head of the customary law community, has a very important role in managing public life. "Imem" called "muperlu sunet", is obliged to uphold the norms of the religion (Islam). "Petue" in performing their role must always be "musidik sasat", where they should be borne observe,

⁶ Muhammad Daud Ali, *Loc. Cit.*, p. 35.

investigate and even knowing all the circumstances and developments in the dimpled. Last one is the role of "the people" are "genap mupakat".

This role is to carry out a variety of tasks laid down by customary law community to shoulder every member of the "belah", of which assess the state administration and social life. Each of these elements has a role in the government in accordance with its function. In addition, there are also institutions that are official, the executive element similar technical department which carries out the day-to-day, that "Kejurun Blang", "Pengulu uten", "Pengulu Uwer", "Pawang Lut", "Pawang Deret", "Biden (Biden)" and "Harie". In addition, there are several other positions that carry out the daily administration tasks that "Bedel" (Deputy/Assistant "Reje"), "Lebe" (Deputy/ Assistant "Imem"), "Banta" (Secretary/Maid "Reje"), and "Sekolat" (Deputy/Assistant "Petue").

Institutions "Sarak Opat" as government institutions of traditional customs, still plays a role in conducting the affairs of the community members in the villages, though unnoticed by the other villagers, therefore happen haziness of their knowledge, community members and even officials in the district, of the system of government institutions "Sarak Opat", so constrained by the desire to re-empower the institution "Sarak Opat".

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