

The Imposition of Customary Fines in the Dispute Settlement of Livestockviolating Customary Laws in North Aceh Regency, Indonesia

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ABSTRACT: The aim of this writing was to discover the implementation of customary fines for the offenders whom their livestockviolate customary laws in North Aceh Regency of Aceh Province, Indonesia and to find out the settlement procedure. This writing used a juridical-empirical method. Data were analyzed by using a qualitative-descriptive approach. The research results indicated the offenders whom their livestock violate customary laws in North Aceh Regency are imposed with the sanction that equal to the loss received by the victim. The verdict of customary court is taken after the discussion has been conducted between the livestock owner and the party that gets harmed. The settlement procedures on each village (*gampong*) are varied, some summon both parties in dispute and some summon them separately. It is recommended for custom village apparatuses to be able of socializing customary laws routinely to enhance the comprehension of the community regarding customary laws and customary justice while also determining the amount of fine imposition strictly, minimum and maximum rates of the imposition of customary fines as well. These efforts should be done to ease the offenders who are poor or having a weak economic condition. The government is suggested to create a special institution to supervise the Customary Justice and they should be able to receive complaints from the community if there is a customary justice that abuses their authority in making decisions.

Keywords: Customary Fines, Customary Justice, Violation, Livestock

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I. INTRODUCTION

In Indonesia, the process of settlement dispute can be pursued through formal justice court (litigation) and outside the court (non-litigation). Most of us recognize that the settlements of dispute within the community are commonly solved through the channel outside the court (non-litigation). One of the dispute settlements outside the court is through customary approach. The process of dispute settlement through this non-litigation channel is considered as faster than the process in court because it does not take a long time to solve a dispute. In addition, people do not need to spend a lot of money to hire a lawyer in various levels of court.

In the document of customary laws, the function of judiciary in the units of community of customary laws is generally performed by the customary leaders. As expressed by *Ter Haar* in his 1930's speech entitled "*De rechtspraak van de Landraden naar ongeschreven recht*", in the region of Dutch East Indies, there are two types of judiciary, namely the judiciaries ran by community leaders and the judiciaries ran by the appointed judges. Judiciaries ran by the community leaders are implemented by abiding the law and through the legal awareness of the local community [1]. This type of judiciary which is referred to as customary justice which defined as the judiciary/court system which born, grows, and practiced by the community of customary laws in Indonesia by referring to customary laws in which the judiciary is not the part of state court system. [2]

In Indonesia, one of the provinces which has practiced Customary Laws is Aceh Province that located at the edge of Sumatra Island. This province has been authorized to administer its own government, one of them is through the legislation of Qanun as the implementation of a law that applies in Aceh, including in formulating the qanun associated with the implementation of customary laws. The Law of Aceh's Government No.11/2006 concerning the Governance of Aceh mentions that the existence of Aceh's customary institutions is contributing as the mode of participation in the administration of the Government of Aceh and the municipal/regional governments. This law of Aceh's Government which becomes the reference for the issuance of Qanun No.9/2008 concerning the Development of Customary Life and Customas well as the legislation of Qanun

No.10/2008 concerning Customary Institutions. In the context of dispute settlement, Aceh gives the opportunity to customary justice to solve customary disputes.

North Aceh is one of the regions in Aceh Province which implements the customary law regulations in its area which regulate various issues related to customary disputes, one of them stipulates customary fines for livestock that violates customary laws. The customary fines imposed to the customary offender in each *gampong* (village) exists in North Aceh are varied based on the sanction of the amount of loss experienced by the victim. The regulations regarding the customary fine are implemented by considering numerous complaints from the community concerning the cattle that eat people crops, so dispute occurred within the community; between the livestock owner and crop owner. This condition which caused the custom apparatuses to create a *gampong* (village) qanun (regulation) that stipulates customary fines for the livestock offender, thus, the implementation of customary fines for the offender can run properly and no more conflict will occur. However, facts show that the implementation of customary fines toward the offender by imposing certain amount of money is still become a polemic because it is considered as too incriminating.

In line with the condition above, this research aimed to discover the implementation of customary fines for the offender whose their livestock violate customary laws in North Aceh Regency and to discover the settlement procedure. This research is necessary by considering that the customary dispute settlement in North Aceh has been stipulated through Qanun of Aceh No.9/2008 concerning the Development of Customary Life and Custom, especially concerning customary sanctions that are stipulated through Article 16 paragraph (1) letter (f) namely about customary fines and Article 13 paragraph (1) letter (j) namely the violation of custom regarding livestock.

II. METHOD

This research used a juridical-empirical study. This research is one of the legal research that analyzes and studies how laws work within the community. The implementation of laws in the community can be studied from the rate of legal effectiveness, the compliance toward laws, the role of legal institutions in law enforcement, the implementation of law regulations, the impact of legal regulations toward certain social issues or conversely.

Besides using the data of primary and secondary legal materials, interviews toward respondents and informants were also used. The data were analyzed through a qualitative-descriptive approach by using the methods of interview, report notes, documents, and others, or prioritizing the analytical description of an actual event or process in a natural environment to acquire deep meaning of the essence of the process.

The research conducted in three locations of *gampong* (village) in two districts in North Aceh Regency. These three villages implement customary fines on livestock that violates customary laws with variation or disparities of amount regarding the customary fines that have to be settled in differently.

THE IMPLEMENTATION OF CUSTOMARY FINES ON THE CASE OF LIVESTOCK VIOLATION IN NORTH ACEH REGENCY

North Aceh Regency has a Qanun that stipulates about its own governance, namely Qanun No.4/2009 concerning the Governance of *Gampong* (Village). This Qanun which becomes the reference for the enactment of the Qanun of *Adat Gampong* (Village Custom) as mentioned in Article 2 of Qanun No.4/2009, namely *gampong* has the authority to manage, organize, and be responsible over its own household affairs such as the governance, custom, and Islamic sharia. In customary affairs, the custom village apparatuses are authorized to maintain the piece, harmony, and order of the community, implementing the customary regulations and customary laws, solving social issues and settling the dispute occurs within the community.

There are some disputes that included in the custom criteria which can be solved by the customary institution based on Article 13 paragraph (1) of Qanun of Aceh No.9/2008 concerning the Development of Customary Life and Custom, such as disputes within the home; disputes within the family having to do with inheritance, disputes between residence, *khalwat mesum* (seclusion); conflicts over ownership; theft within the family (minor theft); disputes over earned (*hareukat*) property; theft of livestock; violation of customary regulations on livestock, farming, and forestry; conflicts at sea; conflicts at marketplace; light mistreatment; forest fires (on a small scale, causing losses to custom community); harassment, libel, incitement, and slander of one's good name; environmental pollution (small scale); threats and extortion (depending on the nature of the threat); and other disputes violating customary regulations.

The forms of customary sanctions imposed in the settlement of customary disputes as mentioned above based on Article 15 paragraph (1) of Aceh's Qanun No.9/2008 concerning the Development of Customary Life and Custom are advice; admonition; apology; *sayam*; compensation; fine; compensation for loss; isolation from *gampong* society; ejection from *gampong* society or any other-names-used; loss of customary title; and other forms of sanction according to the local custom.

About the livestock violation as one of the disputes that can be settled by Customary Justice (*Adat Justice*), custom village apparatuses available in North Aceh Regency stipulated a qanun to manage the issue. Each village owns varied rules in term of the amount of loss that has to be settled by the offender. The customary fine in discussion is giving some money as has been stipulated by the Village Customary Justice (*Gampong Adat Justice*). Customary fines are the correctional actions or reactions toward every conduct that causes adverse effects. The aim of this reactions or corrections is returning the balance within the community. [3]

In several villages of North Aceh Regency, some cases regarding the livestock violation have been discovered in which some variations or disparities related to the amount of loss that should be paid by the offender in each village of North Aceh Regency. In Meunasah Panton Labu Village, each villager or officer can capture the loose animals in the area of houses, yards, farms, or public places within the village. The cost of capturing the animal is 50% (fifty percent) of the fine which amounts to Rp. 50,000 (fifty thousand rupiahs) for each goat and sheep and Rp. 100,000 (a hundred thousand rupiah) for each ox and buffalo. The cost will increase if the livestock owners do not bring back their livestock immediately, the owners are obligated to pay the cost for the livestock that kept by the officer in the amount of Rp. 25,000 (twenty-five thousand rupiahs) for each goat and sheep per day, and about Rp. 50,000 (fifty thousand rupiahs) for each ox and buffalo per day.

In Cinta Makmur Village of North Aceh Regency, customary fine for the animal capture is 50% (fifty percent) of the fine which amounts to Rp. 50,000 (fifty thousand rupiahs) for each goat and sheep, and Rp. 100,000 (a hundred thousand rupiahs) for ox and buffalo. The cost will increase if the livestock owners do not bring back their livestock immediately, the owners are obligated to pay the cost for the livestock that kept by the officer in the amount of Rp. 10,000 (ten thousand rupiahs) for each goat and sheep per day, and about Rp. 50,000 (fifty thousand rupiahs) for each ox and buffalo per day.

In Alue Bili Geulumpang Village of North Aceh Regency, customary fine for the animal capture is 50% (fifty percent) of the fine which amounts to Rp. 50,000 (fifty thousand rupiahs) for each goat and sheep, and Rp. 100,000 (a hundred thousand rupiahs) for ox and buffalo. The cost will increase if the livestock owners do not bring back their livestock immediately, the owners are obligated to pay the cost for the livestock that kept by the officer in the amount of Rp. 25,000 (twenty-five thousand rupiahs) for each goat and sheep per day, and about Rp. 50,000 (fifty thousand rupiahs) for each ox and buffalo per day.

The imposition of customary fines mentioned above is not only regarding the capture of livestock and the daily keeping cost; the cost will increase if the livestock eats people crops which causes the offender to pay some amount of money at the same price of the crops. The amount of the customary fine in the form of money that must be paid is calculated based on the number of livestock, more livestock violating the customary laws will cost more money spent by the offender.

If all customary fines that have been decided are not being paid in maximum three days after the day of capture (for the livestock owner from the village) and maximum seven days after the day of capture (for the livestock owner from outside the village); the livestock will be auctioned by the Village Government. For Meunasah Panton Labu and Alue Bili Geulumpang Villages, the auction result of livestock will be returned to the livestock owner after the offender pays the entire costs of customary fines. This condition is different with the Cinta Makmur Village, 50% of the auction result of the livestock will be stored for village budget and the rest will be returned to the livestock owner.

The regulations mentioned above are considered as unfair because they are incriminating to one side of the parties in dispute, sometimes for the offender with low economic level, the amount of sanction that has to be paid is highly incriminating due to the large number of customary fines which have to be settled by the offender.

THE DISPUTE SETTLEMENT PROCEDURE FOR LIVESTOCK VIOLATING CUSTOMARY LAWS THROUGH ACEH'S CUSTOMARY JUSTICE

According to Teuku Muttaqin Mansur, customary justice is a process or means to maintain material customary laws in customary court. Parties violating the customary laws (material customary laws) can be brought before the customary judges to be put in trial. Although in general, the nomenclature of customary justice in Indonesia is varied, however, the aim and purpose of customary settlement are similar namely attempting to seek for a peaceful resolution. [4]

In the settlement of disputes, customary justice becomes the alternative for the community to solve various customary disputes occur amidst the community. Generally, customary justice gives a ruling in the effort of rebalancing the community as it used to [5]. The aim of customary dispute settlement is to reach the case resolution, ending disputes without putting a high concern over who is right or wrong, win or lose. The expected final outcome is achieving community peace. After the dispute is solved, the community will stay in peace and harmony, the parties in dispute will be back to how they used to, end up the conflict and return to accepting each other. The determination of who is wrong or right is not the main purpose, although it is considered in the imposition of certain duties as a sanction. [6]

The procedure of dispute settlement through Village Customary Justice in Aceh has been stipulated in Aceh's Governor Regulation No.60/2013 concerning the Settlement of Customary Disputes/Conflicts. According to Article 16 paragraph (2), customary settlement in village is performed by custom figures who consist of *Keuchik* (Head of Village) or other-names-used; *Imeum Meunasah* or other-names-used; *Gampong* (Village) Secretary or other-names-used; clerics, relevant scholars and other custom leaders or other-names-used based on the requirement.

Juniarti in Mohammad Jami expressed that the settlement of disputes through customary justice can be done through various means, some are solved by the offender themselves without involving other elements; there are cases that involve both families from parties in dispute without involving other people or other elements like *Keuchik* (Head of Village), and there are some who solve the dispute through the involvement of village apparatuses, if an issue has been reported to the village apparatuses, thus, the party of village apparatuses will summon the parties in dispute for trial and settled by imposing sanction(s). This last channel which mostly practiced by the people of Aceh in general. [7]

The mechanism of dispute settlement of livestock violating customary laws in North Aceh Regency in Meunasah Panton Village, Cinta Makmur Village, or Alue Bili Geulumpang Village applies several stages. From the stage of receiving report to the stages of discussion, and decision making are taken very simply and rapidly. First, the *Geuchik* (Village Head) or the custom apparatus receives a report from the community concerning the occurrence of customary dispute done by local villagers. Next, the custom apparatuses conduct a coordination and preliminary hearing at the level of village apparatuses. Second, the custom apparatuses summon the complainant, victim, and offender, including the intricacies, some summon both parties in dispute at once or summon them separately. Third, investigating the parties, witnesses, and evidences as well as the location. Fourth, determining the ruling for settling the case. Fifth, custom apparatuses perform a mediation toward the parties in dispute. Sixth, custom apparatuses deliver the consensus. Each party must accept the consensus result.

According to Aceh's Governor Regulation No.60/2013 concerning the Implementation of the Settlement of Customary Disputes or Conflicts, Article 17 paragraphs (3) and (4) mention that *Gampong* or other-names-used must solve the case at least 3 days after the incident or after receiving the report. If the dispute or conflict is not handled by *Gampong* or other-names-used during the time limit as referred to in paragraph (3), the parties have the obligation to bring the conflict to *Mukim* or other-names-used. However, in the cases of livestock violation occurred in North Aceh Regency, the researchers found that the whole cases of livestock violations can be settled at *gampong* (village level) without being brought to the *Mukim* (Sub-District) level.

The consensus discussion of the dispute settlement was performed in Meunasah or other-names-used at village level or other places appointed by *Keuchik* (Head Village) or other-names-used. In addition, if the problem has been settled but the imposed fine is ignored by the offender, thus, the party who violate the consensus will be imposed with more severe customary sanctions due to breaking the deal and disrupting the balance that lives within the community.

III. CONCLUSION

This research concludes that the implementation of customary fines in the form of money toward the offender of livestock violation is incriminating to one party in which the offender has to pay some compensation based on the loss experienced by the victim, either the fine of capturing cost, the fine of keeping cost, even the fine to pay some amount of money with the same price of the crops that were damaged and eaten by the livestock. In addition, the livestock will be auctioned by the Village Government if the fines are not paid until the time limit namely maximum three days after the day of capture (for the livestock owner from the village) and maximum seven days after the day of capture (for the livestock owner from outside the village). Although the ruling of custom apparatuses has been accepted by each party, those kinds of fine that are considered detrimental by the offender who has a low economic rate or underprivileged.

The settlement procedures on each village (*gampong*) are varied, some summon both parties in dispute and some summon them separately to prevent new conflicts during the dispute settlement. It is recommended for village custom apparatuses to be able of socializing customary laws routinely to enhance the community comprehension concerning customary laws and customary justice as well as clarifying the maximum and minimum amount of the customary fine imposition. This effort is aimed to help relieving the sanction for offenders with low economic rate or underprivileged. The government is suggested to make a special institution to watch Customary Justice and to be able of receiving complaints from the community if there are any customary justices that abuse their power in making decision.

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