



ALTERNATIVE DISPUTE RESOLUTION THROUGH CUSTOMARY TRIBUNAL IN THE CONTEXT OF LEGAL PLURALISM IN ACEH

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ABSTRACT

The purpose of this paper is to descriptively analyse the role and position of traditional justice as alternative dispute resolution in the pluralism of indigenous peoples of Aceh and also to analyse the legal pluralism in Aceh. The originality of this paper is to map and perform inventoring the different ethnicities of the legal pluralism in Aceh, as well as the alternative dispute resolution in the diversity of indigenous people in Aceh. Moreover, the results show that The status and role of traditional justice as an alternative dispute resolution mechanism has not been specifically regulated in a specific law. Customary judicial practices in Aceh as a form of formal legal institutionalization are regulated by the Law of 2006 on Acehese government, Qanun of Aceh, and Governor Regulation No. 60 of 2013. The binding strength and the reception of decision of customary justice in Aceh is respected and obeyed, because the epistemology of traditional authority and legal authority embodied in legal products in Aceh is sourced from laws and regulations under Qanun. Indigenous justice leadership is characterized by charismatic authority as alternative dispute resolution in the context of legal pluralism in Aceh.

Key words: alternative dispute resolution, customary court, legal pluralism, Aceh.

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1. INTRODUCTION

Customary justice is not new in Indonesia. In the Dutch East Indies era, traditional justice is regulated through *Reglement Regeling (RR)* and *Indiesche Staatsregeling (IS)* as a Native Justice or customary justice (*Inheemsche rechtspraak*). The provision was then repealed in the era of independence, although customary justice as one expression of the existence of customary laws along with the rights of indigenous peoples have direct access in indigenous communities in Indonesia. Legal pluralism is a reality in the state law experienced by the people of Indonesia. Development of the Indonesian national law contains Western law, customary law and Islamic law, in which all interplay coloring development of national laws in various fields through the national legislative process.

It can be shown from the laws of Judicial Authority, namely Act No. 19 of 1964, Act No. 14 of 1970, Act No. 35 of 1999, subsequently amended by Act No. 4 of 2004 to the Act of Judicial Authority No. 48 of 2009 (Judicial Power Law of 2009). Customary justice was not regulated by Law No. 6 of 2014 concerning Villages (hereinafter the Village Law of 2014). The law, from the Article 96 to Article 111 only regulates Adat Village. In the context of Aceh, the Village Act of 2014 gives recognition to the villages in Aceh as indigenous and tribal peoples who have been there and lived in Indonesia. Recognition was also given to the other indigenous peoples such as *huta/nagori* in North Sumatra, *nagari* in Minangkabau, *marga* in southern Sumatra, *tiuh* or *pekon* in Lampung, *pakraman* or indigenous villages of Bali, *lembang* in Toraja, *banua* and *wanua* in Borneo, and *negeri* in Maluku. Applicability of the Village Act of 2014 should consider the Law PA in 2006. Dispute resolution out of court is governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (Arbitration Act).

Justice indigenous that is sourced from customary law comes to understand the local knowledge as a wealth of Indonesia. Customary law and traditions (*adat*) is a form of cultural reproduction. Issues such as identity, religion, and political science are also coloring customary justice. Indigenous justice in the global era, in addition to the charge value local knowledge society is also affected modern judicial concept as the need for documentation recording the customary judicial decision, equality before the law and the presumption of innocence. Indigenous justice in developing its institutional reform through epistemology of empirical experience of the reality of nature, social, humanity and the influence of cyber and digital technology advances (Budiharseno, 2017; Nugroho et al., 2017; Wahyuni & Ginting; 2017).

Although, the existence of customary justice has some advantages, there are also a number of challenges and obstacles. First, the customary courts are not set in the national judicial system so that its position is weak and vague as the arbitrary law system out of state judicial system. Second, customary society in some areas, especially in urban areas is reluctant to resolve the dispute in customary justice. There is also a doubt regarding the power of force of customary judicial decisions. The underlying weakness is that other customary justice has not been recognized and regulated in the legal system in Indonesia.

This paper aims to describe the role and position of indigenous justice as arbitrary law system in the plurality of indigenous peoples and how the epistemological perspective of indigenous judicial decision is accepted, respected and binding on the parties to the legal pluralism in Aceh. To complete the analysis of the literature, this article involves sociological aspects as empirical science to describe indigenous justice as alternative dispute resolution in legal pluralism in Aceh.

2. INDIGENOUS JUSTICE AND ALTERNATIVE DISPUTE RESOLUTION

2.1. Indigenous Justice as an Alternative Dispute Resolution

The findings of World Bank's study, showed that the largest dispute resolution perpetrators of poor communities are the village government (42%), traditional leaders (35%) and the police (27%) (Arizona, 2013). It shows that the poor prefer to settle their case in the customary court rather than pursuing the state law. Yet, the alternative settlement in everyday life has been run for a long time through the customary way or community justice. Recognition of the existence of customary and community justice has not been widely explored for a settlement to the legal cases that occur in the community (Arizona, 2013: 2)

Data show the occurrence of amount of civil cases of trials were from local court to the Supreme Court. The amount of judges is not comparable with the number of cases that go to the Supreme Court. In 2008, more than 10,000 thousand cases went to the Supreme Court. The Foundation of Indonesian Law Institute (YLBHI) state that the amount of civil cases occurred up to 2013. Each year, about 13 thousand cases that go to M A, only handled by the 54 Supreme Court judges. The number of cases that were not proportional to the number of judges, lead 8 thousand cases were not given the verdict at the end of the year (Mahkamah Agung, 2013).

These data shows that formal justice that concretely has the task of enforcing the law and justice when receive, examine, and resolve any disputes that are filed is not optimal in resolving disputes, and has not been effective and efficient (Suparman, 2004). Low public trust in judicial institutions is an important factor for the establishment of the rule of law in a state (Rifai, 2003). This shows the alternative dispute resolution becomes customary justice as a critical need to be regulated in the Indonesian legal system as an alternative mechanism the search for justice for people living outside the state judicial system.

2.2. Dispute Settlement Process

Conflict is different from the meaning of the dispute in some considerations. First, the term of conflict implies wider than the dispute because the conflict may include latent and manifested disputes. Disputes are latent because others who are not involved are not aware of any disputes. Disputes are only felt by the conflicting parties. One action or the parties may occur in legal framework, for example, one party has filed a lawsuit, or rallied peacefully to oppose the position of the other. However, the actions of the parties may also occur outside the legal framework, such as fighting, destruction, killing or inter-state wars in an international context (Rachmadi, 2010).

Second, conflict refers to disputes, whereby the parties have not been identified or can be clearly identified. A person may experience conflict with people in his or her environment or social and economic conditions that are incompatible with personal principles, so he or she has a conflict with the social environment. Conversely, the meaning of the dispute is if the parties have been clearly identified, in which who is against whom is clearly identified. Third, the term conflict is more often found in the literature of the social sciences and political science literature than in legal literature. In the literature of anthropology, sociology, and political science, there is a term conflict resolution. Rather, the term disputes are more often found and used in the literature of jurisprudence, such as civil disputes, trade disputes, family disputes, disputes between producers and consumers, and disputes over state administration, thus the term settlement of disputes resolution is more commonly used in the fields of law.

The above description shows that the dispute arises because of the party being harmed by the other party, initiated by the feeling of subjective dissatisfaction. The situation can be experienced by both individuals and groups. In this matter, the party that feel disadvantaged convey his dissatisfaction to the second party and if the second party can respond and satisfy the first party, then finished the conflictual relationship. Conversely, if the reaction of the second show of dissent or have different values, then there is what is called the dispute. The process of dispute began because of the absence of an opinion point, between the two parties potentially causing the conflict to turn into a dispute.

Disputes occur due to prolonged disputes result failure to reach agreement, breaking healthy communication channels. Effective dispute resolution can occur when all parties have the same right to be heard and considered. This is called a common ground. William L. Ury

(1993) and Roger Fisher et.al (1991) states there are three main factors that affect the process of dispute resolution in terms of interests (reconcile their underlying interests), rights (determine who is right, and / or), power status (determine who is more powerful).

All parties want their interests to be achieved, the rights fulfilled and the wishes of power status are shown, exploited and maintained. In the dispute resolution process, the parties to the dispute typically insist on maintaining all three factors mentioned above.

2.3. General Principles of Alternative Dispute Resolution (ADR)

In general, there are some principles applicable in ADR. First, the principle of good conduct, the desire of the parties determine the settlement of disputes either to be or that they are facing. Second, the principle of the preferred alternative dispute settlement forum (contractual liberty), an agreement set forth in written form on how to resolve disputes. Third, the principle of binding, the parties are required to adhere to what was agreed (*pacta sunt servanda*). The principle of freedom of contract, the parties are free to determine what is going to deliver on the agreement does not contradict the law, public order and decency. The principle regarding the place and type of dispute resolution to be selected. The principle of secrecy, the settlement of a dispute can not be witnessed by others because only the disputing parties can attend the proceedings of a dispute.

In Indonesia, the ADR settlement process is not limited by region and ideology, although some adjustments are certainly needed to be useful because Indonesia is diverse. Effective procedures are created according to need with a variety of modifications so as to better suit the conditions of Indonesian society and Indonesian relationships with the international associations.

3. ALTERNATIVE DISPUTE RESOLUTION MECHANISM THROUGH INDIGENOUS JUSTICE IN LEGAL PLURALISM IN ACEH

3.1. The Position and Role of Customary Courts as an Alternative Dispute Mechanism in Indonesia

The customary justice has no place in the legal system of Indonesia. However, its role in resolving disputes reflect the relationship of the state with its people. Indonesian customary law community has room to solve legal problems outside the state court through customary court as an alternative to dispute resolution. Settlement of disputes within communities of customary law based on a view of life embraced relies on human existence that comes from values, mindset, and norms of society that has given rise to characterize the customary law (Koesnoe, 1976).

3.2. Customary Tribunal as ADR Mechanism in Aceh Community

In Aceh, the customs and teachings of Islam is portrayed as *Hukôm ngon Adat lagee Zat ngon Sifeut* (law with custom is inseparable like substance with nature). Law (*hukom*) as a substance therefore difficult to change. Law as a substance is derived from Islamic law, while custom function as nature (patterns of behavior) can essentially unchanged (Rahayu, 2014). Associated with the issue of customary and Islamic law, the customary law as the source of indigenous justice in Aceh is a collection of local moral values derived from the words of wisdom (*hadih maja*) and the value of the teachings of Islam.

Aceh has long had customary justice and traditional (*adat*) institutions. In the period of Sultan Iskandar Muda, there were four types of the judiciary. All four of the judiciary was

civil court, criminal court, religious court and commercial court (Lombard, 2007). Customary justice is survived and thrived until now.

The province of Aceh is characterized by ethnic culture, language and legal system diversity in the community. Each tribe has its own culture, and language, considered as a challenge for the binding strength and the receipt of a decision generated by the indigenous civil justice. The majority of the Aceh tribes is located in all districts / municipalities within Aceh Province, especially in the districts of Aceh Besar, Banda Aceh and Pidie districts. The language used is Acehnese. The tribe of *aneuk jamee* is located in Aceh Barat Daya and Aceh Selatan with the used language is *aneuk jamee*. Furthermore, the tribe *Alas* is the majority tribe in Southeast Aceh district with the language is *Alas Language*; Gayo tribe is located in Central Aceh District, Bener Meriah Regency, partly in Southeast Aceh Regency, using Gayo Language; The Tamiang tribe is located in Aceh Tamiang and East Aceh districts, using Tamiang Language; The Kluet tribe is located in Kluet area of South Aceh Regency, by using Kluet as their language; Singkil people is located in Aceh Singkil, with the language spoken by Julu, Haloban, Pak-pak, Sialut or Nias language. The Semeulu tribe is located in Semeulu Regency, using Lekon, Sigulai, Devayan language (Rahayu, 2014).

In the province of Aceh, along with state legal system that enactment as unification in Indonesia, there is a system of Islamic law and customary law. The legal system prevailing in Aceh is understood as a national legal system in the sense of legal diversity, comprising the legal system of the state, the Islamic legal system (shariah), customary law / legal system, and ratified international legal systems.

The people of Aceh are being treated to formalize some of the products of local wisdom in the form of Qanun. This pattern of uniformity is already included in the meta-theory of social science. This pattern of uniformity that led to collective compliance did not work at the grassroots. That is, people still want to do what according to their world view is true, not because of the view of the unifying pattern of understanding of their lives. For example, if there is a moral violation committed by the community in the village, the pattern of settlement is pursued through the village court involving community or religious figures. Here the reason for solving moral problems, more to cover shame or embarrassment (Bustamam-Ahmad, 2003: 7).

Contemporarily, the Aceh Adat institutions (*Lembaga Adat Aceh/LAA*) has an important role. The arrangement is placed in Law Number 11 of 2006 regarding Aceh Government, further detailly elaborated through Aceh Qanun and Aceh Province Governor Regulation. Juridically, the important functions of LAA in Aceh in addition to fostering cultural values, customary norms and rules for the realization of security, order, peace, harmony and prosperity for its people in accordance with Islamic values, is to have the authority to hear. This is the specificity, making the LAA in Aceh as traditional justice for the people it leads, as an alternative judicial dispute resolution outside the context of the State judicial recognition in the legal system in Indonesia (Rahayu, 2014).

The Aceh Government regulated LAA which has the authority to hear in a rule of law. Rules implementing Article 98 of Law Number 11 of 2006 regarding Aceh Government was derived into the product of Qanun No. 9 of 2008 concerning customs life coaching, Qanun No. 10 of 2008 concerning indigenous institute. These regulations specifically set the resolution of customary social problems that can be reached through traditional institutions. This is a progressive step.

The Qanun Number 10 of 2008 on Customary Institutions is followed through Governor Regulation No. 60 of 2013 on the Implementation of the Settlement / Dispute Customs and Customs (Governor Regulation No. 60 of 2013). In the gubernatorial regulation of 2013, Aceh justice institutions is customary in traditional institutions that are authorized to settle cases of misdemeanor that occur in the community.

Therefore, customary justice is different and has its own character with the national judicial court that does not distinguish indigenous customary scope of offenses which may be criminal offense and a civil / private. It can even be a mixture of a criminal offense and a civil settlement of disputes in the customary justice. The atmosphere built in customary court can take place very informally, through mediation mechanisms, or mixing of mediation and arbitration.

Another arrangement is the scope of authority to resolve disputes over customary disputes and customs, customary court mechanisms. The *adat* court in Aceh is an informal ADR institution outside the state court acknowledged to exist, within the legal system, regulated in the Acehese context legislation.

3.3. The Role and Position of Customary Tribunal in Resolving Disputes

In Aceh, there are two received recognition models and compliance with a judicial decision customary: arranged institutionalization and non-institutionalization. The first can be done through the process of recognition or legalization, in the form of provincial and municipal Qanun. The form of institutionalization recognition process is made by chairman of the court decision or agreement between customs agencies with law enforcement officials. The formalization of this traditional institutions will affect the changes in values and customs procedures in carrying out justice because that has begun to adopt the values and procedures of formal justice. Such steps are done to ensure the customary judicial to follow the standards commonly used by formal law, eg with regard to the presumption of innocence or equality before the law, generally known in formal justice.

Another formalization way is done by not to legalize the institutional structure of traditional justice, but legalize verdict - the decision issued by the customary court. The essence of this second formal approach is more oriented to the result made from indigenous justice, then recorded by a roving judge.

Measure to be recognized of indigenous justice agencies in non-institutionalized is a way that does not depend on the presence or absence of recognition of the state of the existence of customary justice. The non-institutional approach prioritizes public awareness, and more selects customary justice than state courts. To create continuity of customary justice will very much depend on the decisions that result. The more fair, acceptable and easier of customary justice, it will be stronger (Arizona, 2012).

The article No. 98 of Aceh Government of 2016, Qanun Law No. 9 of 2008, Qanun No. 10 of 2008 and Qanun No. 4 of 2003 on the so-called Mukim Government regulation No. 60 of 2013 are the legal basis for customary justice as an alternative mechanism or non litigation mechanism for the settlement of disputes in the community. The forms that can be resolved through the Adat Tribunal are mentioned in Qanun Number 9 of 2008 concerning the development of customary life and customs followed up by the gubernatorial regulation No. 60 of 2013.

The forms of dispute that can be resolved through traditional justice in the formare disputes between family-related *faraidh* (heritance), disputes between citizens,

seclusion/nasty, disputes about property, theft within the family, theft of livestock, customary violation of livestock, agriculture and forests, disputes at sea, dispute in the market, persecution, fire the forest (on a small scale that harm indigenous communities), harassment, defamation, and customary threatening (depending on the type of threats), other disputes that break the tradition and customs. Thus, not all disputes can be handled at the level of indigenous justice of village and *mukim*. Outside of the 18 disputes that have been regulated by Qanun Number 9 of 2008 and gubernatorial regulation 60 of 2013, the settlement of disputes can be resolved to the judicial authority and the state. Qanun No. 4 of 2003 governs the authority of *mukim* as an institution that decides and or assign the verdict when dispute of indigenous and customary law occurs (Article 4 letter e). The *mukim* Customary Council functions as a body maintains and develops customs, organizes custom peace, resolves and provides custom decisions on disputes and customs violations, to give legal force to something and other argumentation according to custom (Article 12 paragraph (2) Qanun No. 4 of 2003). The forms of adat sanctions have been regulated by Qanun Number 9 of 2008 gubernatorial regulation 60 of 2013, namely, advice, apology, *sayam*, *diyot*, fines, change of losses, and ostracized from society, and other forms of sanction that are in accordance with local customs.

The customary judicial, in principle, never solves the case, but resolves the case, which ultimately the agreement and peace reached from both sides. Completion case is dependent on the agreement of the parties, not on indigenous justice judge's decision. The case resolution by indigenous justice judge, always requires litigants maintaining the honor of the village, because moral violation of hometown honor may cause deterioration of the good name of the disputing parties.

3.4. Binding Strength and Acceptance of Customary Tribunal

The principle of *pacta sunt servanda* as contained in Article 1338 (1) Civil Code, "all agreements made legally is valid as a law for the maker. " This means that is a consensus from the parties. The agreement of the parties raises the power of binding the treaty as legitimately. Therefore the agreement of the parties to resolve disputes through traditional justice and comply with a judicial decision which is poured through the unwritten or written agreements are highly valued. The consensus can not be withdrawn unilaterally, and should be carried out in good faith.

In terms of decisions issued by the functionaries of customary judicial institutions on the basis of agreement of the parties, the agreement of the parties is a law for those who agree. In connection with the theory of legal compliance, Soerjono Soekanto states that legal compliance can be measured by a particular behavior that appears in society. In other words, the validity of law is the law manifested as a behavior (Taneko, 1993). The society's behavior in law, put forward by Satjipto Rahardjo is the legal basis of a nation that is not within its legal system, but in the behavior of the nation itself, that is the way of human life by behaving well. Law not only arises from the law, but also arises from people's behavior. This behavior can not be dampened by law. The dynamics of behavior will always seek its own way to surface (Rahardjo, 2009). Legal behavior according to Lawrence M. Friedman, is any behavior that is influenced by rules, orders, decisions, or laws issued by authorized officials. Furthermore, Achmad Ali argues that Friedman's concept of legal behavior is not only law-abiding behavior, but all behaviors that are reactions to circumstances that occur in the legal system (Ali, 2012). According to Taneko (1993), the legal behavior by Lawrence Friedman mentions the choice of issues related to the motives and ideas of people who can be divided into four categories, namely:

- Self-interest. Lawrence M. Friedman does not specify what is meant by self-interest. However, if it is associated with the adherence of the *adat* judgment, the adherence to the decision of the customary court has his own interest in the community, such as maintaining his or her good name, fear of being ridiculed by society, and so forth.
- Sensitive to sanctions. According to Friedman, sanctions are one of the reasons that can manifest legal behavior. In other words, one obeys the law for avoiding punishment or sanction. Therefore, it can be said that the parties adhere to the decision of the customary court will have a negative impact if one party does not comply with the agreement they have agreed upon. For example, sanctions ostracized by the public do not get service at *keuchik* office that do various affairs and interests.
- Social influence response. Usually, the behavior of someone is often influenced or caused by the family, friends or members of the group. Therefore, a person obedient to the decision of the *adat* courts is influenced by such matters, so that this legal behavior is due to a strong desire to maintain good relations with the environment, or maintain good relationships with customary devices belonging to families or respected groups in society.
- Compliance. Obeying the law by someone because he or she regards a violation as an immoral and illegal act. He or she think that the rule of law rules is the truth that it must be implemented. Thus, a person is obedient to the decision of the customary tribunal because the verdict is correct, so it must be accepted and executed. The peace process is done through the settlement of the *adat* court as ADR, whereby its decision is obtained based on the agreement of the parties. The verdict will be obeyed by the parties willingly and voluntarily, so that the decision of the customary court shall be binding on the litigants. Some of the factors behind the compliance of the litigants' agreement or the acceptance of the decision of the customary court, among others:
 - The verdict obtained on the basis of mutual agreement of the parties, without any coercion from any party;
 - The decision was obtained not because of the willingness or judgment of an *adat* justice judge;
 - Verdict obtained through morally peace must be obeyed. If it is not complied, it will deteriorate the good name of the party in the public considerations. In this case, the public will give social sanction (Kurniawan, 2017);
 - Since the verdict was obtained on the basis of mutual agreement, the ruling reflects more justice for the litigants. Thus, there is no winning side or the losing side.
 - Obeying the decision of the customary tribunal can help the harmony of the village.
 - The establishment of friendship between the litigants

Compliance with the conflicting parties to accept the decision of indigenous justice, according to the context of sociological law is closely related to the theory of the authority, as stated by Max Weber. There are three types of authority in society, namely:

- Legal authority (legal-rational authority) is authority sourced from legality, law or regulations. Based on the theory of legal authority, compliance of parties to the customary court verdict happens because the authority functionaries custom device have already legally legalized both written and unwritten.
- Traditional authority, whose authority rests on the validity of customs. Traditional authority is an authority that has a legitimacy based on the sanctity / holiness of a particular tradition that lives in the community. Someone will be obedient and submissive to a regulatory authority or to a structure due to their belief in something that continues. According to this theory, the parties adhere to the indigenous justice ruling for the creation of a relationship between indigenous leaders or device that has the authority to members of the community which is

likely to lead to personal relationships as a form of extension of kinship. There is full awareness among customary devices to carry out their obligations and society as a form of loyalty to customary devices. According to Max Weber, in the traditional order, individuals are the loyalty of the past and they represent the past. This loyalty is often rooted in a sanctity of trust. Another thing is certain historical events, because there is authority over the customs that are sacred.

- Charismatic authority is an authority whose legitimacy comes from charisma or a special quality possessed by a person who is recognized by others. It is only possessed by certain people only, regardless of economic status. Charismatic authority is more likely in those choices in a community, for example, because of the personal ability, properties owned and possessed personality (Weber, 2009). Community compliance by the leadership of indigenous happens because its validity is recognized by the quality, features and advantages, absolute personal obedience and personal faith in revelation, heroism, or it could be another special quality of individual leadership

Compliance and acceptance of customary judicial decision if examined with the approach of the theory of authority expressed by Max Weber is with legal-rational authority, traditional authority, charismatic authority can be seen from the two aspects both positive and negative. In a positive theory of authority, it is correlated with compliance and acceptance of customary courts decision to reach win-win solution. Any peace agreement that has been obtained through the customary courts has always adhered to by the parties. The factors that encourage adherence of the parties to implement the agreement that has been obtained are due to familial factors in addition to effective and efficient determinants. Settling disputes through the indigenous court could be caused by the custom proceeding held not to burden the court fee or a variety of other types of fees.

If it is associated with a factor of charismatic authority of traditional leaders, which led to the public or the disputing parties abide by the ruling indigenous justice, it can be understood that such compliance is due to the charismatic authority of traditional leaders in the the Aceh Adat institutions (LAA) both written or not. In this context, people will ignore the customary judicial decision . The possibility of disputes or conflicts will be occur repeatedly so that the parties fading confidence in the strength and acceptance of customary judicial decision. This is called the presence of thickened and thinned awareness in society as to receive and adhere to the decision of customary justice.

Public compliance with *adat* court rulings if examined epistemologically is due to the influence of authority, social position or religious status of customary judicial judges. The more experienced a person who occupies the head of LAA or the judge of customary justice, the more the his influences. The wider the experience of one's inner and outer being, the more it has the charisma and authority gained in the implications of the ruling issued by the customary court.

On the basis of the facts described above, the decline in compliance with the outcome of the peace agreement that has been obtained through the adat tribunal is based on several reasons, namely (1) the parties do not accept the decision, (2) the parties neglect the mutual agreement which has been determined by customary court, (3) the decision of customary court is considered to have weaknesses and not optimal sanctions to cause a deterrent effect compared to state court sanctions, (4) the law in practice is found to be double-faced, protecting a strong party because it has power and authority, (5) legal sanction has no binding power for the parties and does not cause legal certainty. This is why the decision of customary court is not fully accepted in society. This is in contrast to the settlement made through formal channels of the state such as the police.

3.5. Setting the degree of autonomy of indigenous justice in Indonesian Law System

The degree of customary justice arrangement is actually possible to refer the 1945 Article 24 paragraph (3) Chapter IX, on the judicial power. Settings customary justice function to have the judicial power is possible to be regulated by law. The degree of customary justice settings can also refer to the Chapter VI to the Regional Government of Article 18B paragraph (2) of the 1945 Constitution, and Chapter XA on Human Rights. Another basic rule is Article 28 paragraph (3) of the 1945 Constitutions that recognize along with respect indigenous and tribal peoples and their traditional rights of indigenous justice that has not reached the recognition is also part of the rights of indigenous peoples.

The justice system in Indonesia provides the opportunity and possibility to accommodate customary justice as an alternative mechanism of dispute resolution, as contained in Article 24 paragraph (3) of the 1945 Constitution, mentioned that other bodies whose functions related to the judicial authority are stipulated in the law. Political law as the official policy line of the laws applied is heavily influenced by the political configuration of the ruler in power in a country (Mahfud MD, 2009). Options to recognize or not to grant recognition of customary law customary justice as ADR is heavily influenced by the country's legal system and legal political issue. Legal politics in particular the judicial authorities for justice is a function of the judicial power.

The legal system in Indonesia is based on the principle of legality in accordance with Article 1 paragraph 2 in conjunction with Article 2 of Law No. 12 of 2011 concerning the Establishment of Legislation. The essence of the norm is that there is no other laws than those written in the law, for the sake of certainty that the rule of law. However, the law on the Establishment of Legislation of 2011, should observe the provisions of Article 5 (1) and Article 50 paragraph (1) of the Law No. 48 of 2009 on the Judicial Power. The second chapter in the Law of Judicial Power states that in deciding the case, the judge is obliged to consider and explore the values of justice that continue to grow and flourish in a society in accordance with the law and a sense of justice.

The unwritten law can be used as one legal source as the basis for sentencing. Thus, in the context of the presence of customary justice as ADR in the Indonesian legal system as well as customary law, the traditional and local wisdom has strategic and important role in the development of national law in Indonesia, mainly to the formation of the draft of traditional courts and the draft law of indigenous people rights, as well as to an enrichment for the development of Act No. 30 of 2009 on Arbitration and Alternative Dispute settlement.

4. CONCLUSIONS

The status and role of traditional justice as an alternative dispute resolution mechanism has not been specifically regulated in a specific law. Customary judicial practices in Aceh as an institutionalization of formal legal institute are regulated by the Law of 2006 on Acehese government, Qanun of Aceh, and Governor Regulation No. 60 of 2013. The binding strength and the reception of decision of customary justice in Aceh is respected and obeyed, because the epistemology of traditional authority and legal authority embodied in law in Aceh products is sourced from laws and regulations under Qanun. Indigenous justice leadership is characterized by charismatic authority as ADR in the context of legal pluralism in Aceh.

From this conclusion, it is expected that the political will of the government to revive the traditional judicial independence as an ADR because Article 24 paragraph (3) of the 1945 Constitution provides an opportunity for the establishment of indigenous judicial autonomy in

Indonesia. Moreover, it is expected that the people of Aceh will continue to look for the values that live and grow through studies, academic research for strengthening institutional customary justice that can be used as a reference input for the preparation of a draft law of customary justice, and the revised Law on Arbitration and Alternative Dispute resolution.

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