



The Tradition of Ndarohi: Diversity of Punishments, Settlement of Fights in the Kute Pasekh Pekhmate Community from the Perspective of Islamic Criminal Law

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Abstract: *This study analyzes the Ndarohi custom as a customary sanction imposed on the perpetrators of a fight. The Ndarohi custom is a tradition that has been passed down from generation to generation in the Kute Pasekh Pekhmate community, Lawe Alas District, Southeast Aceh Regency. The Kute Pasekh community believes that the Ndarohi custom is able to reunite the perpetrators of a fight as a family by imposing customary sanctions in the Ndarohi tradition. The focus of this study is how the traditional Kute Pasekh community maintains the Ndarohi custom in resolving fights amidst the strong current of modernization of criminal case resolution through litigation. The purpose of the study was to determine the practice of the Ndarohi custom in resolving fight cases, and to preserve the Ndarohi custom in the modern era. This study uses a qualitative descriptive method, data obtained through field interviews and literature. The results of the study show that sanctions for resolving disputes in fight cases are resolved according to the Ndrohi custom through a deliberation process. Then the party found guilty is charged with medical expenses for the victim and is given a sanction in the form of money and one goat, according to the decision from the results of the deliberation by Sakhak Bekhempat. Sanctions in the Ndarohi custom have various types according to the quality of the crime committed by the perpetrator. Fights that cause physical harm, not bleeding, are subject to the Nucupi custom sanction or the mbabe nakan sekhimah sope sekhanting sanction; all medical costs are borne by the perpetrator of the customary crime. While criminal acts of fighting that result in bleeding wounds are subject to the sanction of drawing error and a fine in accordance with the written customary provisions. The Kute Pasekh community still strongly adheres to the Ndarohi custom in resolving customary criminal disputes. In addition to being a hereditary tradition, it is also effective in uniting the relationship of the customary community to obtain eternal peace.*

Keywords: *Ndarohi Customs, Punishment, Fighting, Islamic Criminal Law*

Abstrak: Studi ini menganalisis adat *Ndarohi* sebagai sanksi adat yang dikenakan kepada pelaku perkelahian. Adat *Ndarohi* merupakan tradisi yang berlaku secara turun temurun dalam masyarakat *Kute Pasekh Pekhmate* Kecamatan Lawe Alas, Kabupaten Aceh Tenggara. Masyarakat *Kute Pasekh* meyakini adat *Ndarohi* mampu menyatukan kembali pelaku perkelahian secara kekeluargaan dengan pembebanan sanksi adat dalam tradisi *Ndarohi*. Fokus penelitian ini adalah bagaimana masyarakat tradisional *Kute Pasekh* mempertahankan adat *Ndarohi* dalam menyelesaikan perkelahian di tengah kuatnya arus modernisasi penyelesaian perkara pidana melalui litigasi. Tujuan penelitian adalah untuk mengetahui praktek adat *Ndarohi* dalam menyelesaikan kasus perkelahian dalam melestarikan adat *Ndarohi* di era modern. Penelitian ini menggunakan metode deskriptif kualitatif, data diperoleh melalui wawancara lapangan dan kepustakaan. Hasil penelitian menunjukkan sanksi penyelesaian sengketa terhadap kasus perkelahian di selesaikan secara adat *Ndrohi* melalui proses musyawarah. Kemudian pihak yang dinyatakan bersalah dibebankan biaya pengobatan terhadap korban dan diberi sanksi berupa uang dan satu ekor kambing sesuai keputusan dari hasil musyawarah oleh *Sakhak Bekhempat*. Sanksi adat *Ndarohi* memiliki beragam jenis disesuaikan dengan kualitas kejahatan yang dilakukan oleh pelaku kejahatan. Perkelahian yang menyebabkan kerukana fisik, tidak berdarah dikenakan sanksi adat *Nucupi* atau sanksi *mbabe nakan sekhimah sope sekhanting*, seluruh biaya pengobatan dibebankan kepada pelaku tindak pidana adat. Sedangkan tindak pidana perkelahian yang mengakibatkan luka berdarah dikenakan sanksi *ngateken kesalahan* dan denda uang sesuai dengan ketentuan adat yang ditulis. Masyarakat *Kute Pasekh* masih memegang kuat adat *Ndarohi* dalam menyelesaikan sengketa pidana adat, disamping sebagai tradisi turun temurun juga efektif menyatukan hubungan silaturahmi masyarakat adat untuk memperoleh kedamaian abadi.

Kata Kunci: Adat Ndarohi, Hukuman, Perkelahian, Hukum Pidana Islam

A. Introduction

Indonesia is a country that adheres to *legal pluralism*; there are three legal systems that exist in this country, namely customary law, Islamic law, and state law. All three are the legal systems that form national law in Indonesia.¹ The development of the national legal system requires harmonization between the three legal systems. One of the steps that can be taken is to fundamentally examine the basic values of the legal system. Efforts to harmonize between customary law and Islamic law both have an elastic nature and provide space for other legal systems to complement each other. The customary law system provides space for the Islamic legal system to complement each other, and vice versa. The harmonization between customary law and Islamic law is expected to be material for the development of national law in Indonesia.²

¹Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Squirt* 5, no. 1 (2021): 426–49; Ahmad Syafi'i Sulaiman Jamrozi and Ratno Lukito, "The Logic of State Authority on the Control of Agrarian Resource (Socio-Anthropological and Islamic Perspective)," *American Journal of Social Sciences and Humanities* 4, no. 4 (2019): 516–27; Andre J. Hoekama, "European Legal Encounters Between Minority and Majority Culture: Cases of Interlegality," *The Journal of Legal Pluralism and Unofficial Law* 37 (n.d.).

²Ratno Lukito, "The Enigma of National Law in Indonesia: The Supreme Court's Decisions on

Customary Criminal Law, in addition to describing the law in terms of the birth of customary crimes, the enactment of Customary Crimes, the intersection of Customary Crimes with crimes in the Criminal Code of Indonesia (KUHP), and certain Customary Crimes, also discusses the customary justice system such as the procedures of customary law rules, about how to resolve a case according to Customary Law and how the procedures for implementing the settlement and determination of a decision on the case outside the court (*musyawarah*) system customary courts. The customary court is a customary court; the customary court does not serve the litigants, nor does it seek to find out who is guilty and what is right, but to try to reconcile those who disagree.³

Disputes that become criminal acts are a social disease of society. Direct and conscious opposition between individuals or groups to achieve a goal is due to the conflict of orientation towards the party, more important than the object to be achieved in reality, because of the development of a deeper sense of hatred.⁴

Customary Crimes are legal provisions that must be complied with by indigenous peoples in the land of Alas, or violations of customs of Alas are known as *dakhoh* for violators of customary crimes of fighting/minor persecution to force a person or group of people who set foot on the land of Alas to obey or comply with the provisions of the customary law of Alas. In Southeast Aceh, especially in Lawe Alas district, there are customary sanctions for the perpetrators of fights called *ngucupi* and *Ndarohi*.⁵

Fights between indigenous peoples can cause unwanted things, if the guilty party turns out to have bumps, injuries, and so on, customary fines can be imposed, ranging from Nucupi (fine for non-bloody acts) to *Ndarohi* (fine for bloody acts), and all medical costs are charged to the perpetrators of customary crimes.

After the completion of the Alas customary court, the aggrieved party (violating custom) must bring *nakan sekhimah sokhpe sekhanting* "to the feast of *nawakhi* (bringing rice one rantang until thanksgiving) in the traditional Alas before carrying out the customary court session known as the trial fee and customary fine. The cost of

Gender-Neutral Inheritance," *Journal of Legal Pluralism and Unofficial Law* 38, no. 52 (2006); Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Squirt* 5, no. 2 (2021). Dedy Sumardi, "Islam, Legal Pluralism and Reflection of a Homogeneous Society," *The Shari'ah and Law Journal* 50, no. 2 (2016); Franz von Benda Beckmann Beckmann and Keebet von Benda, "Who's Afraid of Legal Pluralism," *Journal of Legal Pluralism and Unofficial Law* 47 (2002): 37.

³Daniel S. Lev, "The Supreme Court and Adat Inheritance Law in Indonesia," *The American Journal of Comparative Law* 11, no. 2 (1962); Ratno Lukito, "Law and Politics in Post Independence Indonesia: A Case Study of Religious and Adat Courts," *Studia Islamika* 6, no. 2 (2014); Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 59, no. 3 (2018).

⁴Olga A. Plockaya, "Customary Law Experience of Crime Prevention in the Customary Law of the Permian Peoples," *Russian Journal of Criminology* 13, no. 2 (2019); Faissal Malik et al., "Legal Protection for People with Disabilities in the Perspective of Human Rights in Indonesia," *International Journal of Criminology and Sociology* 10 (2021); Daniel S. Nagin, Robert M. Solow, and Cynthia Lum, "Deterrence, Criminal Opportunities, and Police," *Criminology* 53, no. 1 (2015).

⁵Sri Kartini, *Customary Crimes in the Land of the Forest* (Kuta Cane: Alas, 2014).

the trial is the cost required to run the customary court, known as the trial money. The rights of the customary functional judge who carries *the khaje wan ampuk* and the rights of the mukim head as the supervisor of the customary judicial assembly of settlements in several *kute territories*, who attends the customary court hearing.

In the reality of society, there are a lot of findings of fight cases that are resolved customarily, one of which is the focus of research here, which occurred in *Kute Pasekh Pekhmate*, Lawe Alas district, Southeast Aceh Regency. The case of the fight in question occurred between AL (as the perpetrator) and HE (as the victim), according to Iskandar Zukarnaen, as the Head of Kute Pasekh Pekhmate village, both of whom still have family ties.⁶

According to Jamidun, the *Pasekh Pekhmate* village apparatus has been involved in resolving many fights, both among teenagers and housewives, but the determination of witnesses is usually included. However, from the case of AL and HE there are no witnesses but only from the testimony of the perpetrator and the victim and from the evidence of the actions he committed, then from the statement of the village head of *Kute Pasekh Pekhmate*, as a result of this incident the relationship between the families of the two has been strained even though it has been resolved customarily.⁷

It is inevitable that in social life, there will often be disputes between a person and another person or between groups and other groups. When a dispute occurs, it is not uncommon for people to resolve their disputes in their own way, which is often called vigilante justice. Resolving disputes in their own way usually doesn't solve the problem but instead creates new ones. The Qur'an provides solutions for resolving problems when there is a dispute between a person and another person. As stated in the Qur'an, Surah al-Shura, verse 40. "*And the recompense of an evil is a proper evil, but whoever forgives and does good (to the wrongdoer), his reward is from Allah. Truly, He does not like unrighteous men.*"

This verse provides an alternative solution if a crime is committed by someone against another person.

The first alternative, the victim of the crime can retaliate with a similar crime (balanced/equal to the crime he suffered) against the perpetrator. The second alternative is to forgive the perpetrator. Departing from the above description, the author is interested in researching the sanctions of the *Ndarohi customary criminal law* in the case of fights according to Islamic criminal law in *Kute Pasekh Pekhmate*. Because the application of sanctions given to the perpetrators is not in accordance with the content of the rules in the crime of Alas.⁸

⁶Interview with Zulkarnaen, Head of Kute Pasekh Pekhmate Village, Lawe Alas District, Southeast Aceh Regency, January 2 2021

⁷Interview with Jamidun, as Kute Pasekh Pekhmate Village Apparatus, January 2 2021, Abdul Halim, a resident of *Pasekh Pekhmate* village, Lawe Alas District, Southeast Aceh Regency on February 20 2021.

⁸Syahrudin, community of *Pasekh Pekhmate* village, Lawe Alas District, Southeast Aceh Regency on April 19, 2021.

This study examines how the criminal sanctions of the *Ndarohi* custom in the case of a fight in Kute Pasekh Perkhmate, Kec. The purpose obtained was to examine the process of imposing *Ndarohi* customary criminal sanctions in resolving the fight in Kute Pasekh Pekhmate. The research approach uses an empirical juridical approach, examining the legal practices that work in the indigenous people of Kute Pasekh. Data was collected through interviews and document studies. Interviews were conducted with village officials, chairmen of the Customary Assembly and religious leaders, and village heads (*keuchik*) in Kute Pasekh Pekhmate, Lawe Alas District, Southeast Aceh Regency.

B. Concept of Customary Law

The word adat means rules in the form of deeds or words that are commonly followed and carried out since ancient times. Customs means a system of behavior that is eternal and hereditary from generation to generation, so that it becomes a strong legacy with community behavior patterns. In practice, the term custom has a fairly broad meaning, encompassing all things that a society or a person becomes accustomed to doing.⁹ Similar to other fields of law, customary law is also one of the fields of law that lives and develops in society. Customary law is a role model and implementation of attitudes/dispositions of daily practices in the order of community life that is more ethnic/community group in a country. Their nature and form are traditional and are basically unwritten and sourced from their own cultural customs.¹⁰

The meaning of customary law is more often identified with the customs or culture of the local people in an area. Not many people know that customary law has become part of Indonesia's national legal system, so the definition of customary law has also long been studied by legal experts. The meaning of customary law today is very easy to find in various books and articles written by legal experts in the country.¹¹

C. Position of Customary Law

Customary law in the legal system is a school in legal science, that is, showing a careful compromise between written law as a need for the legal community for the creation of legal certainty, *positivism*, law and *living law* as a form of appreciation for

⁹Rusjdi Ali Muhammad, "Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law," *Legitimacy: Journal of Criminal Law and Legal Politics* 10, no. 2 (November 19, 2021): 171; Rusjdi Ali Muhammad and Dedy Sumardi, *Local Traditional Wisdom: The Absorption of Islamic Sharia in Acehese Customary Law* (Banda Aceh: Aceh Islamic Sharia Office, 2011); T. Djuned, "The Influence of Islamic Law on the Formation of Acehese Customary Law," in *Historical Dynamics and Globalization*, ed. Darni M.Daud (Banda Aceh: Syiah Kuala University Press, 2005).

¹⁰Badruzzaman Ismail, *Principles of Customary Law* (Banda Aceh City: Aceh Traditional Council, 2009); Badruzzaman Ismail, *Encyclopedia of Acehese Traditional Culture* (Banda Aceh: Aceh Traditional Council, 2018); Djuned, "The Influence of Islamic Law on the Formation of Acehese Customary Law."; Christiaan Snouck Hurgronje, *Aceh: Its Customs* (Jakarta Indonesia: Indonesian Netherlands for Islamic Studies, 1996).

¹¹Soerjono Soekanto, *The Problem of the Position and Role of Customary Law* (Jakarta: Academica, 1979); Ratno Lukito, "Islamic Law and Adat Encounter: The Experience of Indonesia," *ProQuest Dissertations and Theses* (1997).

the importance of the role of society in the formation of law and the legal orientation that Eugen Ehrlich called *living law*.

A good and effective positive law is a law that is in accordance with the *living law* of society that reflects the values that live in it. Ehrlich's message to lawmakers in lawmaking should be to pay attention to what lives in society. It is a fact and it cannot be denied that customary law in Indonesia, in general, and the province of Aceh, in particular, is a law that is in accordance with the values that live in the community.

Therefore, in order for the law to be effective in the community, in the formation of laws and Qanun in Aceh, the people's representatives who sit in the legislature must be able to explore and are obliged to cultivate the legal awareness that lives in society that has been formalized both in the law and Qanun will be able to be used as a basis for maintaining order and harmony in people's lives.¹²

Recognition of unwritten law (customary law) is used as a legal basis in every judge's decision, and this is also a real recognition of the existence of customary law. as a national legal system, the same applies in Aceh, so that in interacting with each other, in addition to being subject to laws and regulations, it is also subject to the provisions of customary law. In addition to these two provisions, in community life, people are also subject to customary provisions.¹³

However, the position of customary law in the Alas tribe in Southeast Aceh district they still closely use and comply with the customary laws that apply to this day where young people under the 1970s in their activities are always limited by time, place and culture, for example girls are not allowed to go out at night except on the basis of family needs and do not contradict the applicable customary rules. Even though the progress of the times has accelerated, there are still young people who hold customs and respect their parents or guardians in the land of the past. This is still closely related to the bond of Islamic customs and teachings that are followed. Sanctions and customary laws are still applied in various villages of the Alas people, and this is proof that the life of the indigenous people is still alive among the indigenous people of Alas.

This traditional kinship relationship is inseparable from the nature of the Alas people generally still in *the gemeinschaft pattern*, with the characteristic of still using customary rules, with the color of association, both community and individual associations, still maintained based on descent and birth, household and family as well as relatives who have a very close relationship among their fellow members in the broadest sense. Their relationship is pure and natural in the sense of a shared vision and mutually beneficial life needs to determine the will of the indigenous people according to *the khesam* (customary) living in the customs of the Alas people.

In addition, the indigenous people of Alas still hold the cultural heritage of their

¹²May you be a good person, *Concepts of Law in Development* (Alumni, 2002).

¹³Jalil Husni, "Implementation of Special Autonomy in Aceh Province Based on Law Number 11 of 2006," *Canon: Journal of Law*, 2010; Khamami Zada, "The Politics of the Enforcement of Islamic Sharia in Aceh and Kelantan (1993-2014)," *AL-IHKAM: Journal of Law & Social Institutions* 10, no. 1 (2015).

ancestors, so that the bond of brotherhood is very strong where "*anak du anak ku, anak ku anak ndu, pot more or less, agree seenam tetap ni gelem, lepas ni hambat, tading ni ulihi*" in the sense of solving problems in the village problem "*mbelin ni pecu ut, si cut ni eliminkan*" (big problem in smaller, small problems are eliminated).

D. Customary Law Judicial System

The term customary court basically means talking about law and justice carried out with a trial system (deliberation) to resolve cases outside the court or in front of the court. If the conversation is based on customary law, it is called a customary law court or court only. Customary justice can be carried out by community members individually, by family or neighbors, heads of tabat or heads of customary houses (customary judges), village heads (village judges), by organizational administrators in the peaceful settlement of customary crimes to restore the balance of disturbed residents.¹⁴

The customary court system in Aceh is the customary court organized by the customary institutions of Gampong and Mukim. The process of implementing customary courts is usually carried out in Meunasah (langgar/mushala) with a deliberation system. With regard to the customary courts of Aceh in the Indonesian legal system, juridically the settlement of disputes through customary courts is regulated in Law Number 11 of 2006 concerning the Government of Aceh and in Qanun Number 10 of 2008 concerning Customary Institutions, which affirms that the settlement of social problems in the community is resolved by customary institutions, through customary courts, and several other regulations.

The development of customary deliberation through the customary justice system applies to the people in Indonesia whose existence has been recognized, both in laws and regulations and in the provisions of the Supreme Court. The development of customary law does not depend on the ruler of the state but is built with the aim of maintaining certain values, principles, and norms that are considered to be still worthy of being defended by a legal society. Customary rulers or customary law functionaries have an important role in maintaining customary law through their decisions.

The purpose of deliberation is to resolve disputes between the parties by involving neutral and impartial third parties. Deliberation can lead them to the realization of a permanent and sustainable peace agreement, considering that dispute resolution through deliberation puts both parties in the same position, no side is won, and no side is defeated. Settlement through deliberation can be beneficial because the parties have reached an agreement that ends their disputes fairly and mutually beneficially.¹⁵

¹⁴Hoko Horii, "Pluralistic Legal System, Pluralistic Human Rights?: Teenage Pregnancy, Child Marriage and Legal Institutions in Bali," *Journal of Legal Pluralism and Unofficial Law*, 2019; Agus Moh Najib, "Reestablishing Indonesian Madhhab 'Urf and the Contribution of Intellectualism1," *Al-Jami'ah* 58, no. 1 (2020).

¹⁵Barda Nawawi Arief, *Law Enforcement Issues and Criminal Law Policy in Crime Prevention* (Jakarta: Kencana Prenada Media Group, 2018).Sitti Mawar, "The Development of the Aceh Customary

E. Purpose of Imposing Customary Law Sanctions

Customary law is still alive and is still obeyed by indigenous peoples. The customary law issues handled in the legal assembly are not enough because indigenous peoples still want the perpetrators to also restore the balance that has been disrupted by customary violations. Indeed, so far, the legal assembly has tried to accommodate customary law, but the judge has not understood the nature of the customary law community's mindset.¹⁶

Since the issuance of Law Number 1 of 1951, which is the Emergency Law on Temporary Measures to Organize the Unity of Structure, Power, and Proceedings of the Civil Courts, customary law has begun to be applied to the decisions of the legal assembly that have relevance to criminal sanctions in the Criminal Code. Judges in resolving customary issues only impose light penalties on the actors. The enforcement of customary law in its existence as a source of law faces difficulties because, in order to master the meaning of "living law" in citizens with legal pluralism in Indonesia, law enforcers still face doubts about legal certainty.

Criminal law enforcement is intended in the concept of the benefits of customary law empowerment which is used as a guideline and legal source in accordance with legal objectives and prioritizes justice, utility, and legal certainty so that the role of customary criminal law in law enforcement only appears if the existence of customary criminal law has been used as a source of law and guided in resolving customary problems by law enforcement.

The purpose of the formation of the law is to bring order to citizens, and the purpose of providing criminal sanctions to the perpetrators of crimes is to deter them from committing criminal acts. In the Criminal Code, it is emphasized that anyone who has deliberately carried out a criminal act and whose actions are against the law or against their rights may be threatened with imprisonment. Imprisonment is a retribution for the crimes he has committed, and the purpose of giving a penalty is to deter people from committing the crime again.

Likewise, the history of the people of Aceh who have made Islam and customary law as a guideline in life, through the appreciation and practice of Islamic teachings in a fairly long historical span (since the seventh century), has given birth to the atmosphere of the citizens and the Islamic culture of Aceh, the culture and customs and customary laws that were born from the reflections of the scholars. After that, it is practiced, raised, and preserved.

Related to customary institutions in the indigenous peoples of Aceh has also been strengthened by the issuance of Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs and Qanun Aceh Number 10 of 2008 concerning Customary Institutions, the stronger the position of customary law in Aceh and provides opportunities for customary law to be preserved again and with the

Court Legal System," *Legitimacy: Journal of Criminal Law and Legal Politics* 10, no. 1 (2021).

¹⁶Anis Widyawati, "Criminal Policy of Adultery in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (2020).

existence of this law, customary stakeholders can carry out their functions and roles as customary leaders. as intended in Article 2 paragraph (1) and paragraph (2) of Qanun Aceh Number 10 of 2008 concerning Customary Institutions and also mentioned in Article 1 number 28 of Qanun Number 10 of 2008 concerning Customary Institutions and Article 1 number 28 is mentioned.¹⁷

Customary Law is a set of unwritten provisions that live and develop in Acehnese society, which have sanctions if violated. The purpose of imposing customary law on perpetrators is as a deterrent effect with the principles of justice and peace, and a form of resolving criminal disputes in the community by providing customary sanctions in a good way, because this is a symbol of justice in the indigenous peoples of Aceh.

F. Ndarohi Customary Law Sanctions in Kute Pasekh Pekhmate

In indigenous peoples, it is known that the term customary violation or customary delinquency is an act that should not be attempted by all acts or events that are contrary to propriety, harmony, discipline, security, a sense of justice, and understanding of the law of the people concerned, whether it is the act of a person or the act of the customary ruler himself. In addition, it is also because, materially and officially, customary law comes from the residents themselves, or is the will of the group. Therefore, legal compliance should always exist as long as the will of the group is recognized and upheld together, because the will of this group is what causes the moral obligations of the community to emerge and be maintained.

In the indigenous peoples around the urban areas in the land of Alas, the reality faced by the community is that some families do not follow the custom of "*mangan tandok sepapan*", which is sitting and eating with the whole family, so that the tradition of solving problems collectively and comprehensively on this occasion by the head of the family is almost eroded from the indigenous people of Alas, as a result there are not many more indigenous people in the urban community giving advice to Customary and religious youth in daily life In connection with the shift in values that lead to the violation of customary norms that infiltrate some aspects of life related to socio-cultural and economic in the people of Alas, the Alas Customary Deliberation determines sanctions and fines for customary violations for the sake of achieving the benefits of the people in the land of Alas. The goal is none other than to revive and arrange a better life for the indigenous people of Alas.

The provisions of this deliberation are based on the consideration of the determination of sanctions and fines not for customary customs that have been applied by the indigenous peoples of the past but adjustments were made by commission III which was refined again in the plenary session of the customary and cultural institutions of the customs and culture of the alas on May 18, 2001 at the building of the Aceh Customary and Cultural Institute (LAKA) and the results of the socialization of the 2014 Qanun draft of the Aceh customary assembly of southeast Aceh regency.

¹⁷Nyoman Serikat Putra Jaya, "Customary Criminal Law (Sanctions) in the Reform of National Criminal Law," *Legal Issues* 45, no. 2 (2016): 123.

Based on the results of an interview with Mr. Satuman as the traditional chief in Kute Pasekh Pekhmate. Customary law does not recognize the existence of detention houses or prisons, so for those who are found guilty, customary law has moral and material sanctions as a deterrent effect. The provisions of customary law that are so powerful become knowledge and give spirit to the survival of a dignified community. In the Pasekh Pekhmate village, Lawe Alas district, Southeast Aceh Regency, customary law plays a very important role in resolving a violation of the law, because in the customary law, it is regulated, and sanctions are given to perpetrators who violate customs. With these sanctions, people will be afraid to commit an act that violates the law.¹⁸

The general provisions for the distribution of customary fines are 2/3 of the total fines for the aggrieved party in the case of customary crimes, 1/3 part for the purposes of the process and the parties regarding the settlement of customary crimes, namely by *senif*:

- a. 1/5 (one-fifth) share for all parties of MAA Kute who prosecute customary crimes
- b. 1/5 (one-fifth) of the share to deceive the local indigenous stakeholder organizations (Iman / Head of Mukim)
- c. 1/5 (one-fifth) of the share goes to witnesses who are completely covered up in secrecy. The rest is for Kute, part of the APPKD, and for the consumption of MAA members who solve customary crimes.

The provision for the amount of customary fines is the conversion of the price of pure gold during the occurrence of a violation of customary crimes. During this deliberation, the price of pure gold on the ground was \$24,64 USD Rp. 400,000 (four hundred thousand) per person. The customary sanctions and fines that are carried out in accordance with the customary law of the Alas for the punishment are:¹⁹

- a. If the violation is minor to moderate according to the local MAA's estimate, a fine of 16 *cuut* or small \$9,87 USD (Rp. 160,000) is imposed for the poor, middle \$9,87 USD (Rp. 160,000) for the middle class, *mbelin* or large \$98,74 USD (Rp. 1,600,000) for the rich/king.
- b. If the violation is moderate according to the estimate of the local MAA, a fine of 32 *cuut* \$1,97 USD (Rp. 32,000) is imposed for the poor, the middle \$19,72 USD (Rp. 320,000) for the middle class, and \$197,15 USD (Rp. 3,200,000) for the rich king.
- c. If the violation is serious according to the local MAA's estimate, a fine of 64 *cuut* \$3,94 USD (Rp. 64,000) is imposed for the poor, the middle \$39,43 USD (Rp. 640,000) for the middle class, and *mbelin* \$394,30 USD (Rp. 64,200,000) for the rich/king or according to the consideration of the local MAA.

¹⁸Interview with Satuman, traditional figure in Kute Pasekh Pekhmate, Lawe Alas District, Southeast Aceh Regency on May 20, 2021.

¹⁹Nawawi, *Penalties and Penalties for Criminal Offences* (Kiuta Cane: Majeis Adat Aceh Kabupaten Aceh Tenggara, 2014).

Every immigrant who enters Kute and stays overnight must get permission from the authorities in Kute concerned; this violation is sanctioned according to the customary provisions of the area, according to the local MAA estimate. For non-Alas Gayo, Aceh, Minang Karo, Singkil, and other mixed tribes who reside in the land of Alas, adjust and comply with the customary rules of Alas in accordance with the rules.²⁰

In the customary arrangement of the Alas people, there are several criminal acts that are sanctioned such as fights between indigenous peoples can cause unwanted things, if the guilty party turns out to have bumps, injuries and so on, customary fines can be imposed from *nucupi* to *Ndarohi*, and all medical expenses are charged to the perpetrators of customary crimes. The types of sanctions for fights in customary crimes in Southeast Aceh include:

- a. *Nucupi* is a fine for customary criminal acts against a person or a group of people who cause other people to bump, bruise, and line (not bleeding), subject to the customary sanction of *mbabe nakan sekhimah sope seranting* (bringing rice to the cucupi) as a sign of demand that is settled by the MMA of the village party in the *cucupi*.
- b. *Ndarohi takal* (head), which is a criminal act that causes the part of a person's head to bleed, is subject to customary sanctions *for signing mistakes* and a fine of thirty-two *intermediaries to mbelin* \$19,72 USD-\$197,15 USD (320,000-3,200,000) for the perpetrator.
- c. *Ndarohi tekhuhen takal up to the crew* (head to waist) if a person commits a criminal act that causes a person to be injured until they bleed from the head to the waist, the customary *sanction of ngateken kesahen* and a *fine of intermediate punishment to mbelin* \$9,87 USD-\$98,74 USD (Rp. 160,000-1,600,000) for the perpetrator.
- d. *Ndarohi crew soh bekiding* (pingang to toes) if someone commits a criminal act to cause injury and bleeding from the waist to the toes, the perpetrator is subject to customary *sanctions of ngateken kesahen* and a fine of eight *intermediate to mbelin* \$4,93 USD-\$49,29 USD (Rp. 80,000-800,000) for the perpetrator.²¹

In addition to the above sanctions, there are other sanctions in the customs rules, namely:

1. Sanctions and Fines for the Gambler's Customs
 - a. For the gambler, he was found to have been subjected to customary sanctions *for signing the* fault of the local village for the occurrence of this customary violation and was fined thirty-two *intermediaries to mbelin* \$19,72 USD-\$197,15 USD (Rp. 320,000-Rp. 3,200,000) for the perpetrator.

²⁰Jamidun, village secretary of the Kute Pasekh Pekhmate Village Apparatus, January 2, 2021; Nawawi.

²¹Interview with Satuman, traditional figure in Kute Pasekh Pekhmate, Lawe Alas District, Southeast Aceh Regency on May 20 2021; Qorik, Religious Figure in Kute Pasekh Pekhmate, Interview on May 22, 2021; Nawawi.

- b. If this customary violator repeats or does not pay the customary fine by the gambler within the period determined in the hearing, then the MAA of the village where the incident occurred makes a letter of announcement of the gambling case to several neighboring villages, and the payment of fines is charged to all residents of the gambler's village at the insistence of the village MAA throughout the land of the past. If repeatedly, a ban on betel nut (being ostracized or expelled from the village or local area of the municipality for a certain period of time or forever) will be imposed.
2. In addition, there are also customary sanctions against the liquor seller.
 - a. For the seller or producer of liquor, including tuak and the like, on the land of Alas is sanctioned for *signing* the fault to the village where or the neighboring village where this customary violation occurred and is subject to a fine of thirty-two *intermediaries to mbelin* \$19,72 USD-\$197,15 USD (Rp. 320,000-Rp. 3,200,000) for the perpetrator.
 - b. For villages that do not punish the seller or those who produce liquor according to the above provisions, it can be categorized as conspiracy, then the village (the entire community) where the customary violation occurred must be sanctioned with a customary fine twice the fine to the seller or producer and given one-third to the sanctioned party who complains about the customary violation and the rest belongs to the local mukim.
 - c. If the customary fine mentioned above is not paid by the seller or the producer of the liquor or the village that conspires in the trial, then the district MAA and the village MAA that finds the violation of the custom to all villages in the land of Alas.²²

G. The Process of Imposing Sanctions and Customary Criminal Law Judicial Practices in Resolving Criminal Cases

In Law Number 11 of 2006 above, Qanun Number 9 of 2018 concerning the development of customary life and customs, there are 18 cases of general criminal acts, one of which is minor persecution of *Ndarohi takal, body, and Ndarohi khiding*, general criminal acts that often become disputes between indigenous peoples. settlement according to law is the authority of the *customary court of Kute* and mukim under the supervision of the MAA judge of Southeast Aceh Regency.

According to information from Iskandar Zulkarnaen as the village head in Kute Pasekh Pekhmate, there were several cases of fights that occurred. The case of Juliansyah putra, aged 24 years, self-employed worker, address in Pasekh Pekhmate village as the first party and M. Ali Imran aged 26 years, self-employed work, address in Paye Kubur village, Lawe Alas district, Southeast Aceh regency, as the second party, in connection with the occurrence of a misunderstanding between the first party and

²²Interview with Satuman, traditional figure in Kute Pasekh Pekhmate, Lawe Alas District, Southeast Aceh Regency on May 20 2021; Nawawi.

the second party on December 22, 2018 at around 15:00 WIB in Pasekh Pekhmate Village, Lawe Alas District, Southeast Aceh Regency which was visited by the occurrence of The fight at the coffee shop started from a verbal altercation to a physical fight that resulted in the first party being cut in the head so that he bled, and had to be taken to the hospital. For this incident, both parties have agreed to resolve the problem as a family and with the applicable customary provisions, with the agreement of the second party willing to help with the first party's medical expenses. Both parties have realized that the incident was a misunderstanding and have resolved it in a familial way. The second party is willing to pay the customary fine "*mbabe nakan sekhimah sope sekhanting*" (bring one grain of rice) with a fine of *ndakhohi takal* \$197,15 USD (Rp. 3,200,000).

Furthermore, Sawal, age 19 years old, self-employed work, address of Pasekh Pekhmate village, as the first party, and M.Fikram, age 22 years, self-employed work, address of Natam village, Ketambe district, as the second party. In connection with the misunderstanding between the first and second parties on January 4, 2018 at approximately 22 o'clock; 30 WIB in Mamas village, Ketambe district, Southeast Aceh Regency which led to a fight. Initially, the problem was that the second party and the first party were at one of the party places in the village. The first and second parties were drunk because of drinking alcohol, and then he had a quarrel at the location of the party that led to violence, which resulted in the first party being injured on the left hand, so that he bled and bruised on the head until he had to be taken to the hospital. For this incident, both parties have agreed to resolve the problem familiarly and with the applicable customary provisions with the following agreement: The second party is willing to help with the medical expenses of the first party, both parties have realized that the incident is a misunderstanding and both parties have resolved it in a familial way, the second party is willing to pay the customary fine, "*mbabe nakan sekhimah sope sekhanting*" with a fine of *ndakhohi tekun takal soh be crew* \$98,74 USD (Rp. 1,600,000).

Furthermore, Hanafi, 17 years old, student work, address of Pasekh Pekhmate village as a party, and his wife, age 17, student work, address of Pasir Nunggul village, Lawe Alas sub-district as a second party. In connection with the misunderstanding between the first party and the second party on May 20, 2020 at around 16:00 WIB in Pasekh Pekhmate village, Lawe Alas district, Southeast Aceh regency which was attended by a fight that resulted in the first party being injured in the head so that he bled and bruises/lines on the hands and back until he had to be taken to the hospital. For this incident, both parties have agreed to resolve the problem familiarly and with the applicable customary provisions with the following agreement: the second party is willing to help with the first party's medical expenses. Both parties have realized the incident was a misunderstanding, and both parties have resolved it in a familial way. The second party is willing to pay the customary fine "*mbabe nakan sekhimah sope sekhanting*" with a fine of *ndakhohi takal* \$197,152 USD

(Rp.3.200,000).²³

Customary law does not distinguish between civil and criminal cases but to facilitate the explanation of the procedures that need to be applied if a criminal case is being handled and resolved, in general the procedures and stages in the settlement of a case are the reporting carried out by the victim or both parties to the head of the hamlet (*kadus*) or the head of the alley where the legal event occurred, However, it is possible that the report can also be directly addressed to *the leader*. For example, if the case is very serious and complicated and involves the public interest, then the hamlet head immediately reports to the administrator.

After *the head receives* a report from the head of the head or the victim, the head of the head makes an internal meeting with the secretary of the village, the head of the hamlet, and the priest of the village to determine the schedule of the hearing, the place where the report should not be carried out in any place in the market and stalls, but must be at *the head* of the house. As mentioned above, before the start of the talks on the customary court, all the warring parties are trying to find a brotherly flow through their fellow speech that can be linked to clan ties, marriage, blood flow/descent, and the origin of the female guardian.²⁴

With this traditional speech, it is hoped that it will soon accompany the approach to brotherhood that is familiar to facilitate peaceful settlement. With the aim that in the future there will be no sense of awkwardness due to the customary court decisions that are determined and binding.²⁵ In the customs of Alas, before the trial was held, the *council of the ruler* and *the sakhak bekhempat* approached both parties to the dispute. This approach aims to mediate the actual sittings of the case and, at the same time, ask about their willingness to settle in a customary manner for Alas to reconcile using various mediation and negotiation methods, so that the case can be resolved immediately. The trick is to ask for information from the plaintiff/complainant about the desired customary peace conditions that are reasonable and appropriate according to the customs of Alas, then the peace conditions are also submitted separately to the defendant/complainant wisely. After both parties agree and agree in accordance with the Alas customary corridor, the Alas customary peace letter is made on paper with sufficient stamps, and with an agenda number based on the order in the ADM master book of the Alas customary pretrial.²⁶

Usually, those who fight are rarely met in the forum of the trial, except for the family, which must be attended by the respective *pedebekhuen*. Those who are in

²³Zulkarnaen, Head of Kute Pasekh Pekhmate Village, Lawe Alas District, Southeast Aceh Regency, January 2, 2021; Interview with Rasmidin, a resident of Pasekh Pekhmate village, Lawe Alas District, Southeast Aceh Regency on May 18, 2021.

²⁴Interview with Qorik, Religious Figure in Kute Pasekh Pekhmate, Interview on May 22, 2021.

²⁵Interview with Satuman, a traditional figure in Kute Pasekh Pekhmate, Lawe Alas District, Southeast Aceh Regency, on May 20, 2021.

²⁶Interview with Abdul Halim, a resident of Pasekh Pekhmate village, Lawe Alas District, Southeast Aceh Regency, on February 20, 2021; Nawawi, *Penalties and Penalties for Criminal Offences*.

conflict are present at the forum after there is an agreement and the completion of the peaceful administration made by the clerk and the judicial assembly of Kute. Then, in the formalities of the customary justice of customary peace, it is only discussed about the customary kinship relationship of the two parties who are in conflict with artistic words according to the customs of the Alas, then read the peace letter.

If a settlement agreement has been agreed upon by both parties, and admission is accepted, the governing secretary will formally invite both parties to attend the hearing. On a predetermined day and date, at the time of the in-person trial, the parties may be represented by their other guardians as representatives and conveners. The trial is formal and open and is usually held at the courthouse or other places that are considered neutral. *Pengulu* as the customary judicial assembly in the session usually appoints one of the *todat, toga, tomas, todai* as the head of the session, and the secretary of the *pengulu* as the clerk of the Kute court. The leader of the customary pretrial hearing must be the one who is really able to bring a peaceful trial, and preferably those who have previously been tested successfully in the Kute judicial trial in question. In the course of the event, the leader as the chairman of the customary judicial assembly in his village should not be embarrassed. If no one is able to do so, the leader must appoint a Functional Judge from MAA as the head of the customary court session.²⁷

If in the decision that has been agreed, namely a written decision registered in Kute, one of the parties denies it without reason according to the customs of Alas, then it can be sanctioned *by the Pinang Branch* or customarily the local indigenous people are not allowed to participate in the traditional event "*Si empat pekhkakhe*" and the leader must not serve any administration in the future, because the party who denies the decision of this customary court has included the order customary decisions and unilaterally undermine peace, and are considered to have planted a time bomb against the peace of life of the indigenous people of the village under the leadership of the Ruler.

Although these things are concepts with foreign names, they are actually similar to deliberation as applied in customary courts. The difference is that mediation and negotiation provide a more structured approach with specific steps. However, indigenous leaders should consider the following explanation of mediation and negotiation, as they are closely related to deliberation. The use of technical/deliberative procedures (mediation and negotiation) in the implementation of customary courts has a very important role and determines whether or not the trial can be held, no matter how complex the case may be resolved if the customary court implementers apply appropriate mediation and negotiation techniques in order to help the parties to the dispute to be able to resolve the problem with a satisfactory result for both parties.

²⁷Interview with Zulkarnaen, Head of Kute Pasekh Pekhmate Village, Lawe Alas District, Southeast Aceh Regency, January 2, 2021; Nawawi.

H. Community Views and Islamic Law on the Sanction of Customary Criminal Disputes in Kute Pasekh Pekhmate

Customary law and Islamic law for the people of Aceh are likened to two sides of a coin. The people of Aceh likened it to the expression *hukom ngoen adat lagee zat ngoen sifeuet* (law with custom like the relationship of substance to its nature). That is, substances with properties are something different that can be identified but cannot be separated.²⁸

In addition, Ali Abubakar continued, concretely, customary settlements are carried out on the basis of peace. On the basis of this principle, one of the efforts to resolve criminal cases in Acehese customs is forgiveness. According to Djuned, the apology brought consequences for the dignity of the victim who had previously been humiliated, acknowledged, and reappointed. With forgiveness, the perpetrator admits his mistake and the victim feels an appreciation for his dignity and dignity.

The settlement of customary criminal cases in the community is always sought through customary law, this is because customary law for the people of Aceh has been integrated with the people of Aceh, and does not contradict the rules of Islamic law. The use of customary law as a way to resolve cases that occur in the community is always practiced in the lives of the indigenous people of Aceh. Therefore, Sudriman described that the settlement of customary criminal cases through customary courts can be felt by the community. This is considered because it is quick and simple, and does not cause resentment between the warring parties, and can restore balance in society as a whole.²⁹

Likewise, what was conveyed by the traditional head of Kute Pasekh Pekhmate village, Satuman, explained that in Pasekh Pekhmate village, the settlement of customary criminal cases through customary courts must be prioritized with a sense of kinship and the principle of peace. This indicates that the settlement of customary law can be felt by the community peacefully, and the creation of an element of kinship without having to have a grudge between the two parties. Based on the principles of harmony, peace, and the principle of sincerity, the community finds a good peace of life in society. In the customary law system, what is to be achieved is the harmony of the warring parties, the harmony of the community as a whole, and the harmony of the community with the nature of the environment.³⁰

According to religious leaders, the Qorik community in the Pasekh Pekhmate village area, Lawe Alas District, chose to settle customary cases, both criminal and civil cases, because it was considered to be able to resolve cases that occurred in the community and did not go against the will of the community. This is considered something sacred and special, and the increase in brothers. Not only that, Qorik also said that the settlement of cases according to customary law can glorify a person's

²⁸A. Hasjmy, *Acehnese Customs in History* (Jakarta: Beuna, 1982).

²⁹Interview with Satuman, a traditional figure in Kute Pasekh Pekhmate, Lawe Alas District, Southeast Aceh Regency, on May 20, 2021.

³⁰Interview with Qorik, Religious Figure in Kute Pasekh Pekhmate, Interview on May 22, 2021.

position in Islam. This is in accordance with the recommendations of Islam, which is to advocate peace.

In customary criminal cases in the village of Pasekh Pehmate, the settlement process must refer to a settlement system that is based on Islamic teachings. Law as a substance is sourced from Islamic teachings, while customs function as traits (patterns of behavior) that can basically change. Therefore, customary law in Aceh, which is loaded with Islamic values, is derived through its local legal products through Qanun. In this case, Aceh already has Qanun Number 9 of 2008 concerning the Development of Customary Life, Qanun Number 10 of 2008 concerning Customary Institutions. The Qanuns further regulate the settlement of social problems in the customary manner through Customary Institutions, which are the elaboration and implementation of regulations of Article 98 of the PA Law of 2006.

Customary institutions function and play a role in addition to being a vehicle for community participation in the implementation of the Aceh Government and regency/city governments in the fields of security, peace, harmony, and public order, as well as Customary Courts for the resolution of social and community problems. Other arrangements are the scope of customary and customary dispute resolution authority and customary justice mechanisms. Thus, the Customary Court in Aceh is recognized as an alternative institution for dispute resolution outside the State judiciary, which is regulated through positive law and has a judicial function with the scope of authority in the form of Petty Crimes (Tipiring). Therefore, the settlement of customary criminal cases is highly desired by the community in resolving their cases and is considered very efficient in resolving various criminal and civil disputes. This indicates that the public's interest in resolving community disputes has been very large, even reaching 80 percent.³⁴

According to Satuman, the process of resolving customary criminal cases in the village of Pasekh Pehmate refers to the provisions of Islamic law³⁵. Satuman even explained it based on the Qur'an an-Nisa a114. "*There is no goodness in most of their whispers, except the whispers of those who tell (people) to give alms, or to do ma'ruf, or to make peace among people. And whoever does this for the sake of Allah's pleasure, We will give him a great reward.*"

Criminal dispute resolution through the customary justice system will find a good settlement without causing resentment between the two parties, such as through mediation. It is also known in Islam as *Ishlah*. The existence of *this islah* has also been explained in the Qur'an. The view of Islamic law on the sanction of the crime of persecution or fighting is basically *qisas*; if it is not possible to be carried out or forgiven by the victim's family, then the substitute punishment is *diyat*. If the sanction of *qisas* or *diyat* is forgiven, then the substitute punishment is *ta'zir*. For the main perpetrator in a fight, a group of people/associations according to the four madzab are threatened with the punishment of *qisas*.³¹ However, they differ if the members of the group help,

³¹Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *Ahkam: Journal of Sharia Science* 22, no. 1 (June 30, 2022).

hold, rule, and are forced to persecute. The main perpetrator can be interpreted as when a person commits an act that is seen as the beginning of the implementation of *Jarimah*, which is sufficiently identified as *ma'siat*, which is intended to carry out the *Jarimah*.³² In the current term, if he has done an experiment, whether the *jarimah* he does is appropriate or not, because the completion or not of a *jarimah* does not affect his position as a person who participates in doing directly. The effect is only limited to the amount of punishment, that is, if the *jarimah* he has done is completed, while the *jarimah* changes to *jarimah had*, then the maker is sentenced to *had*, and if it is not completed, then he is only sentenced to *ta'zir*.

I. Conclusion

Nucupi and *Ndarohi* customary law sanctions for fight cases are in the form of *Nucupi* money fines, namely fines for customary crimes against a person or group of people who cause other people to bump, bruise, and *line* (not bleeding) are subject to the customary sanction of *mbabe nakan sekhimah sope seranting* (bringing rice to the *nucupi*) as a sign of apology that is settled by the MMA of the village party in *Nucupi*. *Ndarohi takal* (head), which is a criminal act that causes the part of a person's head to bleed, is subject to customary sanctions of thirty-two fines of thirty-two mediators to *mbelin* \$19,72 USD-\$197,15 USD (320,000-3,200,000) for the perpetrator. If a person commits a criminal act that causes a person to be injured until they bleed from the head to the waist, they are subject to customary sanctions, an *intermediate retaliation fine* to *mbelin* \$9,87 USD-\$98,74 USD (Rp. 160,000-1,600,000) for the perpetrator. If someone commits a criminal act to cause injury and bleeding from the waist to the toes, the customary sanction of *ngateken kesahen* and a fine of eight *intermediate* to *mbelin* \$4,93 USD-\$49,29 USD (Rp. 80,000 – 800,000) for the perpetrator.

To determine the sanctions against the perpetrator, *the Sakhak Bekhempat* and other members of the judiciary conducted deliberations, and looked at how much of the perpetrator's actions were to the victim. Then *the sakhak bekhempat* deliberated to determine sanctions in the form of money in accordance with the guidelines of the customs of Alas. The community in the *Pasekh Pekhmate* village area, *Lawe Alas* District, chose to settle customary cases, both criminal and civil cases, because they were considered to be able to resolve cases that occurred in the community and did not go against the will of the community. This is considered something sacred and special, and the increase of brothers. The settlement of cases by customary law can glorify one's position in Islam. This is in accordance with the recommendations of Islam, which is to advocate peace. Sanction for the crime of fighting in *Kute Pasekh Pekhmate*, *Lawe Alas* District, *Southeast Aceh Regency*. It does not contradict Islamic law because the sanctions are in accordance with the customs that have been agreed upon by the community. Something that has been agreed upon and is not contrary to the *Quran* and *Hadith*, then it can be accepted in society.

³² Qadeer Alam, "The Qisas and Diyat Law in Pakistan: Prosecution of Offence of Murder," *Islamic Studies* 58, no. 4 (2019).

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