



## **Sayam: Implementing Customary Law in the Resolution of Persecution Criminal Cases in Aceh**

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**Abstract:** Customary law has been used to decide certain criminal matters in Aceh instead of positive law. This was the case in the persecution incidents that occurred in various villages in the Meureudu region, where the idea of Sayam was employed. This study aimed to determine the practice of compensation in the concept of Sayam, the effectiveness of its use in resolving persecution criminal conflicts, and whether there were any gaps between the concept of mediation in Indonesia and the concept of Sayam mediation in Aceh. This research used descriptive normative analysis and referred to legal pluralism, which considers the interplay of state, customary, and religious law using an empirical social approach. This study found two types of procedures for reporting cases of persecution in the concept of Sayam: First, the complaint was addressed to the village apparatus, and second, the complaint of the case was submitted to the police station. The technical compensation to the victim used four methods: deliberation, customary *reusam*, and losses, which were borne together based on the motto "saboh pisang koh dua" (one banana divided for two), and the last, based on the policy of traditional leaders. The gap between the concept of sayam in Aceh and the concept of mediation in Indonesia was that in the concept of sayam, as in general customary law, there was no recording. In the concept of *sayam*, decisions were sometimes based on the decision of traditional leaders.

**Keywords:** Sayam, Customary Law, Persecution, Restorative Justice

**Abstrak:** Beberapa kasus pidana yang terjadi di Aceh telah diselesaikan secara adat, bukan secara hukum positif, sebagaimana yang terjadi di beberapa desa pada Kecamatan Meureudu dalam kasus penganiayaan dengan menggunakan konsep Sayam. Penelitian ini bertujuan untuk mengetahui praktek ganti rugi dalam konsep Sayam, dan efektivitas penggunaannya dalam menyelesaikan konflik pidana penganiayaan serta adakah kesenjangan antara konsep mediasi di Indonesia dengan konsep mediasi sayam di Aceh. Penelitian ini menggunakan analisis deskriptif normative dan mengacu pada keberadaan pluralisme hukum, yang mempertimbangkan interaksi hukum negara, hukum adat, dan hukum agama dengan pendekatan sosial empiris. Hasil penelitian ini menemukan bahwa terdapat dua tipology prosedur pelaporan kasus penganiayaan dalam konsep Sayam; Pertama pengaduan kasus kepada aparatur gampong, dan kedua, pengaduan kasus disampaikan ke kantor polisi. Adapun teknis ganti rugi kepada korban menggunakan empat cara; musyawarah, reusam adat, kerugian ditanggung bersama berdasarkan semboyan "saboh pisang koh dua", dan yang terakhir, berdasarkan kebijakan tokoh adat. Adapun kesenjangan antara konsep sayam di Aceh dengan konsep mediasi di Indonesia adalah bahwa dalam konsep sayam sebagaimana umumnya hukum adat tidak ada pencatatan, dan dalam konsep sayam keputusan terkadang berdasarkan keputusan tokoh adat.

**Keywords:** Sayam, Hukum Adat, Penganiayaan, Restorative Justice

## A. Introduction

Criminal cases could not be resolved through non-judicial mechanisms. The settlement of criminal cases in the Indonesian legal framework had been generally carried out through criminal justice mechanisms based on Law No. 1 of 1946 concerning Criminal Law Regulations (KUHP) and Law No. 8 of 1981 concerning Criminal Procedure (KUHP). However, in implementing justice through the formal legal structure of the courts,<sup>1</sup> it still contained some weaknesses.<sup>2</sup> This situation then encouraged people to seek alternative solutions in case of settlement, namely through out-of-court processes or mediation, especially for the needs of victims.<sup>3</sup>

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<sup>1</sup>Lei Xie and Lu Xu, "Environmental Public Interest Litigation in China: A Critical Examination," *Transnational Environmental Law* 10, no. 3 (2021), <https://doi.org/10.1017/S2047102520000448>; A Borrego, "Alternative Dispute Resolution dalam Mediasi Sengketa Hukum Adat di Papua," *Jurnal Syntax Transformasi* 10, no. 9 (2021): 6; Emmanuel Ariananto Waluyo Adi, "Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code," *Lex Scientia Law Review* 5, no. 1 (2021): 139–64, <https://doi.org/10.15294/lesrev.v5i1.46704>; Fatima Osman, "The Consequences of the Statutory Regulation of Customary Law: An Examination of the South African Customary Law of Succession and Marriage," *Potchefstroom Electronic Law Journal* 22 (2019): 1–24.

<sup>2</sup>Olga A. Plockaya, "Customary Law Experience of Crime Prevention in the Customary Law of the Permian Peoples," *Russian Journal of Criminology* 13, no. 2 (2019), [https://doi.org/10.17150/2500-4255.2019.13\(2\).354-364](https://doi.org/10.17150/2500-4255.2019.13(2).354-364). Mulya Sarmono, Terhadap Eksistensi Masyarakat Hukum Adat," *JURNAL ADHIKARI* 2, no. April (2023): 468–78; Abdurrahman, *Peradilan Adat Di Aceh Sebagai Sarana Kerukunan Masyarakat* (Banda Aceh: Majelis Adat Aceh, 2009); Harmen van der Wilt, "State Practice as Element of Customary International Law: A White Knight in International Criminal Law?," *International Criminal Law Review* 20, no. 5 (2019): 784–804, <https://doi.org/10.1007/s40802-018-0104-y>.

<sup>3</sup>Josep Tamarit and Eulalia Luque, "Can Restorative Justice Satisfy Victims' Needs? Evaluation of the Catalan Victim-Offender Mediation Programme," *Restorative Justice* 4, no. 1 (2016): 68–85,

In some cases, resolving cases through mediation or non-litigation was more effective in producing an agreement that was a win-win solution than a Victim-offender mediation (victim-offender reconciliation) and could maintain good relations between the litigants. This out-of-court dispute resolution in Indonesia was also known as Alternative Dispute Resolution (ADR).<sup>4</sup> The term was found in Law No. 30/2009 on Arbitration and Alternative Dispute Resolution. One ADR recognized by the Indonesian people was the mediation process based on the restorative justice philosophy.

The use of mediation in the Indonesian legal system, apart from being based on the framework of state legislation, had also been practiced in dispute resolution in the scope of Indigenous peoples in a non-litigation manner because mediation was practiced in Indonesian society long before the term mediation was popularly used in the legal science environment.<sup>6</sup> Mediation had a positive impact on the trial process and could provide opportunities for perpetrators to realize and took responsibility and freed perpetrators from their feelings of guilt. Thus, mediation could spearhead legal reform in Indonesia because it aligns with Indonesian culture, prioritizing deliberation and consensus between the perpetrator and victim.<sup>7</sup>

In Aceh, the practice of mediation using customary law was used for civil and criminal cases, for example, through the concept of Sayam. Sayam was a form of dispute resolution practiced by the people of Aceh. The main purpose of the Sayam concept was as a means of mediation, a procession of reconciliation through forgiveness and compensation (goods, money) given to the victim.<sup>5</sup> Sayam's philosophy for the people of Aceh comes from a long-standing adage, namely: "luka ta sipat darah ta sukat" which means that "the magnitude of the wound and the amount of blood that flows because of the dispute must be measured".

Until now, the study of Sayam as a form of customary mediation has not been widely discussed. For example, the article by Mufid titled *Mediation in Customary Law* was written by Muhammad Natsir with the title *Legal Protection for Victims of Persecution through Diyat and Sayam in Aceh Customary Courts*.<sup>6</sup> The book entitled *Mediation: In*

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<https://doi.org/10.1080/20504721.2015.1110887>; Christian B.N. Gade, "Is Restorative Justice Punishment?," *Conflict Resolution Quarterly* 38, no. 3 (2021), <https://doi.org/10.1002/crq.21293>

<sup>4</sup>Pablo Cortés, "Embedding Alternative Dispute Resolution in the Civil Justice System: A Taxonomy for ADR Referrals and a Digital Pathway to Increase the Uptake of ADR," *Legal Studies* 43, no. 2 (2023), <https://doi.org/10.1017/lst.2022.42>; Anggita Anggraeni, "Penal Mediation as Alternative Dispute Resolution: A Criminal Law Reform in Indonesia," *Journal of Law and Legal Reform* (2020), 1, no. January (2020): 369–80.

<sup>5</sup>Badruzzaman Ismail, *Ensiklopedia Budaya Adat Aceh* (Banda Aceh: Majelis Adat Aceh, 2018); Fajri M Kasim and Abidin Nurdin, "Study of Sociological Law on Conflict Resolution Through Adat in Aceh Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020), <https://doi.org/10.22373/sjhk.v4i2.8231>.

<sup>6</sup>Muhammad Natsir, "Perlindungan Hukum Terhadap Korban Penganiayaan Melalui Diyat Dan Sayam Pada Peradilan Adat Aceh," *Arena Hukum* 12, no. 1 (2019): 91–112, <https://doi.org/10.21776/ub.arenahukum.2019.012015>; Yusi Amdani, "Proses Pelaksanaan Penyelesaian Perselisihan Di Lembaga Peradilan Adat Aceh Tingkat Gampong (Desa)," *Asy-Syiráh: Jurnal Ilmu Syari'ah Dan Hukum* 48, no. 1 (2014).

*Sharia Law, Customary Law, and National Law* by Syahrizal Abbas,<sup>7</sup> and an article entitled *Criminal Mediation in the Provisions of Customary Law* by Trisno Raharjo.<sup>8</sup> These four articles and books did not specifically discuss Sayam, but only mentioned *sayyam* in sub-discussions and did not examine its practice in an area in Aceh. This article it was oriented toward two typologies of procedures for reporting cases of maltreatment in the concept of Sayam; technical compensation and explaining the gap between the concept of sayam in Aceh and the concept of mediation in Indonesia based on cases of maltreatment that occurred in the villages of Dayah Timu, Mesjid Tuha, and Rhieng Blang.

The study results found that reporting cases of persecution by the community was done in two ways: some reported to the gampong authorities, and others went to the police station. There were three technical practices of compensation using the concept of Sayam in Aceh; namely, by deliberation, customary reusam, losses were borne together based on the motto "one banana divided by two", and finally, based on the policies of traditional leaders. The gap between the concept of *sayam* in Aceh and the concept of mediation in Indonesia was that in the concept of *sayam*, like in general customary law, there was no recording. In the concept of *sayam*, decisions were mostly based on the decisions of traditional leaders in verbal deliberations.

## B. The Concept of Mediation in Indonesia

Conflict resolution through mediation is principally a living value and cultural practice shared by the community, later becoming customary law.<sup>9</sup> The subsequent development of customary law in tribes in Indonesia, especially regarding conflict resolution through deliberation, holds many similarities.<sup>10</sup> This means that conflict is

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<sup>7</sup>Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism Within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426-49, <https://doi.org/DOI: http://dx.doi.org/10.22373/sjhk.v5i1.9303>; Ulang Mangun Sosiawan, "Perspektif Restorative Justice sebagai Wujud Perlindungan Anak yang Berhadapan dengan Hukum (Perspective of Restorative Justice as a Children Protection Against The Law)," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2017), <https://doi.org/10.30641/dejure.2016.v16.425-438>; Nelvitia Purba et al., *Mediasi Penal: Upaya Penyelesaian Perkara Di Luar Pengadilan* (Banten: AA RIZKY, 2022).

<sup>8</sup>Trisno Raharjo, "Mediasi Pidana Dalam Ketentuan Hukum Pidana Adat," *Jurnal Hukum Ius Quia Iustum* 17, no. 3 (2010): 492-519, <https://doi.org/10.20885/iustum.vol17.iss3.art8>; Isabel Ximena González Ramírez and Johana Vargas Ugalde, "Criminal Mediation: A Restorative Proposal to Mitigate Gender and Intimate Partner Violence in Chile," *Onati Socio-Legal Series* 13, no. S1 (2023), <https://doi.org/10.35295/osls.iisl.1542>; Lorig Charkoudian et al., "Mediation in Criminal Misdemeanor Cases," *Criminology, Criminal Justice, Law and Society* 22, no. 3 (2021), <https://doi.org/10.54555/CCJLS.3769.30144>; Elena Mitskaya, "Theoretical Thoughts on Legal Regulation of Mediation in Criminal Process in Kazakhstan," *International Journal of Criminal Justice Sciences* 15, no. 1 (2020), <https://doi.org/10.5281/zenodo.3822110>.

<sup>9</sup>Edhei Sulisty, Pujiyono, and Nur Rochaeti, "Restorative Justice as a Resolution for the Crime of Rape with Child Perpetrators," *International Journal of Criminology and Sociology* 10 (2021), <https://doi.org/10.6000/1929-4409.2021.10.69>; Rikardo Simarmata, "The Enforceability of Formalised Customary Land Rights in Indonesia," *Australian Journal of Asian Law* 19, no. 2 (2019).

<sup>10</sup>Christa Rautenbach, "Case Law as an Authoritative Source of Customary Law: Piecemeal Recording of (Living) Customary Law?," *Potchefstroom Electronic Law Journal* 22 (2019): 1-20, <https://doi.org/10.17159/1727-3781/2019/v22i0a7591>.

directed towards promoting harmony in society and not intensifying the situation by maintaining peace as much as possible.<sup>11</sup>

These values are then engraved in the country's philosophy, in the fourth principle of Pancasila, namely, "Democracy led by wisdom in the deliberation of representatives." In line with that, customary law has also been recognized in the amended 1945 Constitution, as stated in Article 18B paragraph (2), that the State recognizes and respects the unity of indigenous peoples and traditional rights as long as it is in line with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law.

The spirit of peace in resolving criminal law cases also prevails in Indonesia. *Restorative Justice* is currently being developed in the Indonesian criminal law system, and the concept of punishment has been shifted from *Retributive Justice* to Restorative Justice.<sup>12</sup> Initially, peace was only introduced in civil law or non-pen cases.<sup>13</sup> with various terms such as retributive justice, mediation, arbitration, and Alternative Dispute Resolution (ADR) as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR) in a non-litigious manner called Arbitration. In addition, there is the Supreme Court Regulation (PERMA) Number 2 of 2003 concerning Mediation Procedures in Courts, which has been revised twice, namely PERMA Number 1 of 2008 and Perma No. 1 of 2016.

Therefore, the spirit of Retributive Justice, which initially only applied to civil matters, expanded to criminal cases.<sup>14</sup> This is demonstrated by issuing several regulations to facilitate peace in criminal cases. In 2012, a regulation was passed that specifically regulates penal mediation, which is still limited to certain cases. As regulated in Law No. 11/2012 on the Juvenile Criminal Justice System (UUSPPA), which is referred to as diversion, namely the transfer of the settlement of children's cases from the criminal justice process to a non-criminal justice system as outlined in Article 1 point 7 of Law No. 11/2012 on the Juvenile Criminal Justice System. Policy rules related to penal mediation have been found in the National Police Chief Letter No. Pol: B/3022/XII/2009/SDEOPS dated 14/12/2009 on Case Handling through Alternative Dispute Resolution (ADR),

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<sup>11</sup>Raharjo, "Mediasi Pidana Dalam Ketentuan Hukum Pidana Adat.;" Adi, "Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code.;" Ignacio Cano and Emiliano Rojido, "Homicide Prevention Programmes in Latin America and the Caribbean," *International Journal of Comparative and Applied Criminal Justice* 46, no. 4 (2022).

<sup>12</sup>Emmanuel Ariananto Waluyo Adi, "Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code," *Lex Scientia Law Review* 5, no. 1 (2021): 139-64, <https://doi.org/10.15294/lesrev.v5i1.46704>; Ali Sodiqin, "Restorative Justice Dalam Tindak Pidana Pembunuhan: Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 49, no. 1 (2015): 1-10.

<sup>13</sup>Sheetal Ranjan, "Domestic Violence Legislation in Greece: Analysis of Penal Mediation," *Women and Criminal Justice* 30, no. 1 (2020), <https://doi.org/10.1080/08974454.2019.1646192>; Yousra Hasona, "Child Soldiers and Restorative Justice in the Arab World Countries," *Internet Journal of Restorative Justice* 9 (2021).

<sup>14</sup>Adi, "Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code."

which strives for the handling of criminal cases with small material losses, the settlement can be directed through the concept of Alternative Dispute Resolution (ADR).

On the other hand, Barda Nawawi Arif explained that penal mediation in criminal cases in Indonesia has been applied in the juvenile justice system by diversion that allows the settlement of cases outside the trial with an agreement between the victim and the perpetrator to end the dispute. This issue is regulated in "Law No. 11/2012 on the Juvenile Justice System", which stipulates the obligation to resolve through diversion deliberations. The provision is described as "a form of penal mediation, although the terms differ. The deliberation in diversion has developed from the concept of deliberation and consensus rooted in conflict resolution through customary law, local wisdom, and religious law considerations. The concept of deliberation and consensus is a legacy from Indonesia's ancestors in customary law, which is no different from mediation."<sup>15</sup>

In the context of Aceh, customary law has a robust legal umbrella.<sup>16</sup> Aceh's specialty and specificity laws are in three aspects: religion, education, and customary, namely Law No. 44 of 1999, Law No. 18 of 2001, and Law No. 11 of 2006. In line with that, the implementation of customary law was also approved by some regional regulations, such as Regional Regulation No. 7 of 2000 on the Implementation of Customary Life, Qanun No. 4 of 2003 on Mukim Administration in the Province of Nanggroe Aceh Darussalam, Qanun No. 5 of 2003 on Gampong Administration, Qanun No. 9 of 2008 on the development of customary life, *reusam* custom,<sup>17</sup> On customary institutions, Qanun No. 3/2004 on the Organization and Working Procedures of the Aceh Customary Council (MAA), Aceh Qanun No. 10/2008.

What is more, some joint agreements have also been made between the head of the Aceh Regional Police and the Governor of Aceh, the Chairman of the Aceh House of Representatives, the Chairman of the Aceh Ulema Consultative Assembly, the Chairman of the Aceh Customary Council, the rector of IAIN Ar Raniry, the Presidium of the Aceh Ureung Inong Syura Hall, the chairman of the Aceh Indonesian Journalists Association and the Chairman of the Aceh Indonesian National Youth Committee regarding the Entrustment of the Role of the Police and Community Partnership Forum (FKPM) into the Tuha Peuet Gampong/Sarak Opat / Assembly of officials around the Gampong or other names, in 2010 and 2011 on the Development of Customary Life and Customs must first be resolved through the Gampong and Mukim Customary Courts or other names in Aceh.

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<sup>15</sup>A. Hasyim Nawawie, "Implementasi Perdamaian (Ash-Shulhu) Melalui PERMA Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan Agama Kediri Terhadap Perkara Perceraian" A. Hasyim Nawawie Dalam Pasal 1 Butir ( 1 ) Undang-Undang Nomor 7 Tahun 1989," *Journal Diversi*, 3, no. September (2017): 177-200.

<sup>16</sup>Laras Medina Pranitia, Tyur Reggina Dewanti, and Nina Fitria Sukma, "Pengkakuan Hukum Adat Aceh Yang Berbasis Islam Di Indonesia" 1, no. 23 (2023): 559-63.

<sup>17</sup>Rusjdi Ali Muhammad, "Reconciliation for the Settlement of Criminal Cases: Reactualization of Local Wisdom in Indonesian Criminal Law [Upaya Perdamaian Untuk Penyelesaian Perkara Pidana: Reaktualisasi Kearifan Lokal Dalam Hukum Pidana Indonesia]," *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 10, no. 2 (November 19, 2021): 171. Gamal Akhyar dan Alida Musdalfah," *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* Vol. 8, no. No. 2, Juli - Desember 2019 (2019): 264-85.

Based on the reality of some regulations related to the privileges of customary law in Aceh, it can be concluded that implementing criminal settlements using the concept of sayam in Aceh has legal legality and broad space.

Therefore, based on the reasoning above, it is safe to say that the use of the concept of Sayam in the settlement of persecution cases in Aceh is legally recognized. This means that the application of customary law in the settlement of criminal cases through the concept of sayam in Aceh is legally valid according to the principle of juridical law, especially for Aceh, which has been given special rights in the field of custom based on the legal principle of *lex specialis derogate lex generalis*.

### **C. Mediation Mechanisms with the Sayam Concept in Aceh**

The customary mediation mechanism with the concept of sayam can be seen in the three cases studied. The cases studied in this research are cases of persecution in three villages, namely Gampong Dayah Timu, Mesjid Tuha, Pulo U, and Rhieng Blang in Meureudu District. First is the persecution case in Dayah Timu Village. This crime of persecution involved a resident of Gampong Dayah Timu and a resident of Gampong Geuleudah on June 2, 2021. Based on an interview with Rosmini, the victim's mother, on June 2, 2022, her son was the victim of maltreatment committed by a young man from Gampong Geuleudah. The maltreatment was carried out by beating intentionally, which resulted in his son's face being injured and falling to the asphalt. Then, one of the residents broke up the persecution.<sup>18</sup> Because she did not accept that her child had been abused, the victim's mother reported the incident to the police. However, the police suggested that the case be resolved amicably through the village officials.

The police advised the victim's family to go to Keuchik Gampong (Village Head) Dayah Timu to report the incident to him. Then Keuchik Gampong Dayah Timu coordinated with Keuchik Gampong Geuleudah, the village leader of the perpetrator. The two village heads agreed to set a meeting date (Duk Pakat) to resolve the case of the fight between two young men from the two villages. The meeting was held at Meunasah<sup>19</sup> Gampong Dayah Timu where the assault occurred. The meeting was attended by village officials from both gampong, namely Keuchik, Tuha Peut, Tuha Lapan, Imum Mesjid, and the Youth Chief. Attended by the perpetrator, victim, families of both parties, and witnesses.<sup>20</sup>

In this traditional meeting, the gampong traditional leaders reconciled the litigants. They determined that the perpetrator of the persecution should pay compensation in the form of Sayam money for the victim in the amount of Rp.1,000,000. However, the victim's mother rejected the Sayam money, considered too small, and asked for IDR 2,000,000, while the perpetrator could only pay IDR 1,000,000. Then, based on

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<sup>18</sup>Interview with Rosmini, the victim's mother, on June 2, 2021.

<sup>19</sup>*Meunasah* is a Muslim house of worship in a village. It is usually smaller than a mosque.

<sup>20</sup>Ramadhan, Staf of DP3A Banda Aceh, June 20, 2021, Supamy, Staff of DP3A, on June 20, 2021

the results of the Duk Pakat (deliberation) of the village apparatus, the village apparatus decided that the sayam money given was Rp1,000,000. Finally, the persecution case was resolved amicably.<sup>21</sup>

The second case was persecution in Gampong Mesjid Tuha by five youths from Gampong Mesjid Tuha who beat up a youth from Gampong Meunasah Balek who walked across Mesjid Tuha village in October 2021. The beating was triggered by the victory of the Meunasah Balek village football team over the Mesjid Tuha village football team in a tournament organized by the Regent of Pidie Jaya. The chronology of the incident is that the victim was invited by the perpetrators to a secluded place in one of the residents' gardens of Gampong Mesjid Tuha. Then, the five youths beat the youth of Gampong Meunasah Balek until he was bruised, there were wounds on several parts of his body, and his mouth was bleeding.

The resolution of this case involved the perpetrators, the victim, and the families of both parties being summoned to the meunasah gampong for deliberation, which was also attended by officials from the two villages whose youth were in conflict. After deliberation, officials from both gampong suggested that the case should not be reported to the police but be resolved through customary means, and it was decided that the five youths who committed the assault should pay Sayam Rp2,000,000 for the victim's medical expenses. Sayam money given as compensation is by the reusam that applies in Mesjid Tuha village.<sup>22</sup>

The third case involved the crime of maltreatment in Rhieng Blang village, which began when the children were playing soccer on the village soccer field. While they were playing, there was an argument that led to beatings between Sayuti's son and Marzuki's son. Initially, the beating was not known by both parents of the children who were fighting. However, a week later, the fight went viral because someone uploaded a video of the children fighting on Facebook. Then, the victim's parents went to the police station to report the case. However, the police suggested that the problem be reported to Keuchik Gampong Rhieng Blang by using the customary law in the village through peace. After conducting Duk Pakat (deliberation) to resolve the problem, the victim's parents demanded Rp8,000,000. However, the village traditional leaders took the initiative to set the Sayam money at Rp3,000,000, - and the agreement results were written in a letter so there would be no more disputes between the two parties in the future.

#### **D. The Practice of Settlement of Crime of Maltreatment with the Concept of Sayam**

The settlement mechanism for maltreatment in the three villages studied had two patterns of case complaints: firstly, the victim's family made a complaint to the gampong apparatus, and secondly, the victim's family made a complaint to the police station.

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<sup>21</sup>Interview with Rosmini, the victim's mother, on June 2, 2021.

<sup>22</sup>Interview with M. Diah Muddin, Chairman of Tuha Peut Village Mesjid Tuha, on January 13, 2022.

However, in this case, the police recommended that the persecution case be resolved through customary law by the gampong apparatus.

Customary courts are usually held in the village mosque or Meunasah where the victim resides. Meunasah is chosen as a place to reconcile because it is a gathering place for village communities to deliberate and reach a consensus, including implementing gampong customary justice. In principle, customary justice does not serve the purpose of finding the right or wrong party but aims to reconcile both sides to maintain harmony in the community.<sup>23</sup>

The composition of the officials responsible for the customary courts of the studied villages based on the author's interviews with four village leaders (Keuchik) in the studied villages is the same, consisting of several elements of the customary courts, namely: Ketua rapat, yakni orang yang memimpin suatu musyawarah proses peradilan adat kewenangan ini diberikan kepada Keuchik Gampong, didampingi sekretaris gampong. The chairperson of the meeting, i.e. the person who leads a deliberation of the adat judicial process, is given the authority to Keuchik Gampong, accompanied by the secretary of the gampong.

1. The mediator, i.e. the person who reconciles a case, is given this authority to Imum Meunasah as the *faqih fil hukm*.
2. Members, people who give opinions or witnesses in customary deliberations on matters decided, consist of Tuha Peut, Tuha Lapan, and the Youth Chief.

Figure 1: Reporting Flow Model

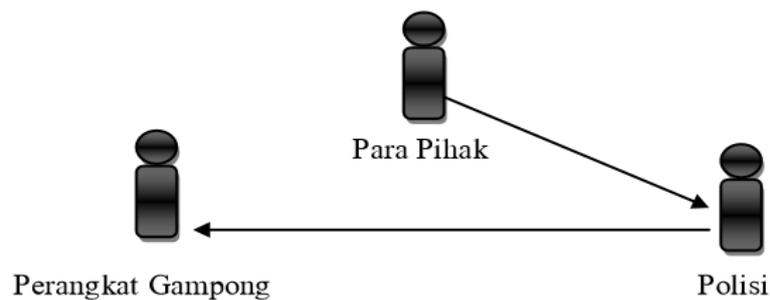


Figure 1: The first reporting model; the parties report to the police, then the police hand over to the gampong officials

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<sup>23</sup>Interview with M. Diah Muddin, Chairman of Tuha Peut Village Mesjid Tuha, on January 13, 2022.

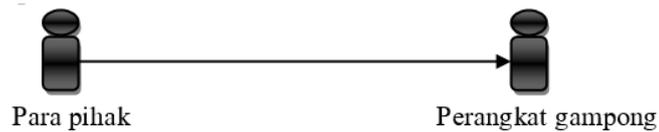


Figure 2: Model Two: The parties report to the village officials in their village

The stages in resolving cases of persecution go through the following three stages;<sup>24</sup>

1. Reporting is carried out by the victim's family or village community, who saw or knew about the maltreatment in the village. The reporting is submitted through Keuchik, Tuha Peut, Tuha Lapan, Imum Mesjid, Youth Chiefs, or people assumed to have authority in the village.
2. The security stage is the next process carried out after reporting, namely by securing the perpetrator of the persecution to avoid escaping and summoning the perpetrator's parents.
3. The meeting stage is the deliberation or customary justice session in which all village officials, residents, witnesses, perpetrators, victims, and perpetrators' parents are invited to attend a customary justice session in the studied villages. The technique is also relatively the same in that the deliberation is opened by Keuchik by delivering some advice, interrogating the perpetrator, and providing a compensation fine in the form of Sayam money to the perpetrator with an agreement from the village traditional leaders and the victim's approval of the Sayam payment to be made by the perpetrator.
4. The final step in the *sayyam* process is the reconciliation stage, carried out by the Imum Meunasah. In the case of Gampong Rhieng Blang, the agreement was documented in a letter. The stages of the case resolution process are as shown below:



Figure 3: The stages of the meeting to resolve cases of maltreatment in four gampong through sayam customary law

Although the trial stages are the same, in practice, the technical implementation sometimes differs slightly from village to village. For example, in the Dayah Timu and Mesjid Tuha villages, the adat council reconciled the conflicting parties orally. Meanwhile, in Gampong Rhieng Blang, Keuchiks, as the customary leader, requested that the results of the peaceful decision be written in a peace letter and signed by the parties concerned

<sup>24</sup>Interview with Safrizal, Headman of Village Rhieng Blang, on January 15, 2022.

to strengthen the agreement. In addition to reporting and case resolution techniques, differences also appear in the technical determination of the amount of Sayam money in Gampong Dayah Timu,<sup>25</sup> and Gampong Pulo U.<sup>26</sup> Determining the amount of Sayam payment uses the Acehnese term "*saboh pisang koh dua*". (one banana divided by two) The philosophical value of this custom is intended to foster mutual feelings and to maintain friendship between fellow village residents.

The technical determination of the amount of Sayam fines in Gampong Mesjid Tuha is determined based on Reusam Gampong, or local village rules, which cannot be changed because the nominal has been determined by custom from generation to generation. Meanwhile, in Gampong Rhieng Blang, the village apparatus determined the amount of Sayam money during the deliberation.

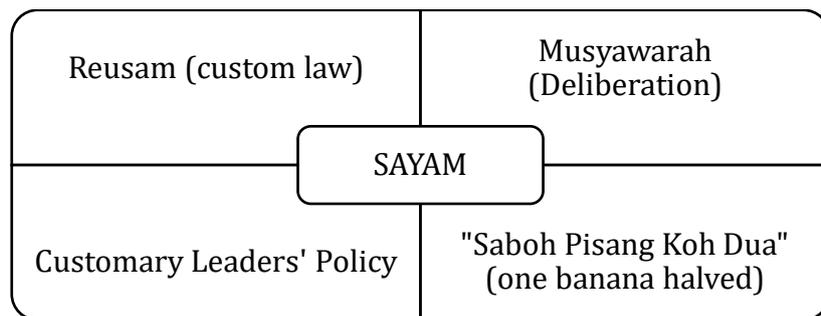


Figure 4: Technicalities for Determining the Amount of Sayam to Victims

## E. Conclusion

This research concludes that the resolution of criminal conflicts over maltreatment resolved by the concept of Sayam in several villages in Aceh is considered more effective by the community because it saves time and funds. The peaceful effect is perceived to be stronger between the parties to the dispute because legal decisions are resolved by mutual consent based on the principle of brotherhood, which is bound by religious principles and is legal in positive law. The research found that the practice of reporting cases of persecution by the community was carried out in two customary ways: first, reporting to the village government, and second, reporting to the police station. There are three types of technical compensation related to the concept of Sayam. First, the compensation fine is determined by deliberation between the victim, perpetrator, and traditional leaders; second, through customary reusam; and third, the number of fines requested by the victim; if too much, then the amount is borne together based on the motto "*saboh banana koh dua*". This means that the perpetrator's family pays half of what the victim's family demands.

<sup>25</sup>Interview with Said Sulaiman, Headman of Village Dayah Timu, on June 2, 2021

<sup>26</sup>Interview with Abdus Sa'ad, Headman of Village Pulo U, on June 9, 2022

The gap between the concept of sayam in Aceh and the concept of mediation in Indonesia is that in the concept of sayam, as in most customary laws, there is no recording of results, and decisions are dominated by the determination of traditional leaders in oral deliberations. On the other hand, mediation in national law is usually recorded and administratively orderly and conducted by state institutions such as the prosecutor's office, the police, or the courts. The research also recommends innovations in the field of law as a way out of legal and judicial problems, including reforming criminal law to include additional elements. Specifically for Aceh, if seen from some regulations related to adat that have been passed, it seems appropriate for Aceh to have an ad-hock adat court to resolve adat disputes, both civil and criminal.

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