THE ROLE OF ADAT JUSTICE AND ITS ADAT INSTITUTIONS IN PREVENTING TRANSNATIONAL CRIMES IN ACEH PROVINCE, INDONESIA 1

PERADILAN ADAT DAN LEMBAGA ADAT DALAM PENCEGAHAN KEJAHATAN TRANSNASIONAL DI PROVINSI ACEH, INDONESIA

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ABSTRACT

More than one decade after Law Number 11/2006 on the Government of Aceh entered into force, the adaptive ability of adat justice and acehnese adat institutions survived because of their strong legal basis in indonesian laws and regulations. On the other hand, the implementation of the Asean Economy Community (AEC) since December 31, 2015, imposes threats like the emergence of various forms of transnational crime that crosses national boundaries, committed by perpetrators from two or more countries with modern modus operandi. The enactment of the AEC in Aceh poses a challenge to exploit the opportunities adat justice and adat institute to anticipate such crimes. Based on data from the Asean Plan of Action to Combat Transnational Crime (ASEAN-PACTC), there are eight (8) types of transnational organized crime, illicit drug trafficking, human trafficking, sea piracy, arms smuggling, money laundering, terrorism, international economic crime and cyber crime. This paper describes the adaptive ability of adat justice, and acehnese adat institute and intervention model of adat justice in aceh, the era of AEC in facing transnational crime. The power of adat justice and acehnese adat institutions should be expanded facing - the challenges - of transnational crime as a result of the implementation of the AEC in Indonesia

Keywords: Adat Justice, Adat Institution, Transnational Crime Prevention, Aceh.

ABSTRAK

Lebih dari satu dekade setelah berlakunya Undang-Undang No. 11 Tahun 2006 tentang Pemerintahan Aceh, kemampuan adaptif peradilan adat dan lembaga adat Aceh terus bertahan karena memiliki dasar legalitas penormaan yang kuat diatur dalam undang-undang dan peraturan di Indonesia. Di sisi lain jika dikaji, konsekuensi pelaksanaan Masyarakat Ekonomi Asean (MEA) efektif berlaku 31 Desember 2015 di Indonesia berpotensi menimbulkan ancaman seperti munculnya bagai bentuk kejahatan transnasional yang melintasi perbatasan suatu negara, dilakukan oleh pelaku dari dua atau lebih negara dengan modus operandi modern. Berlakunya MEA bagi Aceh merupakan tantangan memanfaatkan peluang peradilan adat dan lembaga adat mengan蒂si kejahatan tersebut. Berdasarkan data dari ASEAN Rencana Aksi untuk memerangi kejahatan transnasional terdapat delapan bentuk kejahatan yaitu,

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1 This article has been presented to the National Seminar and written as a chapter book “The 10 Years of the Law on Governing Aceh”, Monday, August 1, 2016, Faculty of Law of Syiah Kuala Darussalam University - Banda Aceh.
perdagangan gelap narkoba, perdagangan manusia, laut-pembajakan, penyelundupan senjata, pencucian uang, terorisme, kejahatan ekonomi internasional dan cyber crimes. Tulisan ini bertujuan menjelaskan kemampuan adaptif perdilan adat, lembaga adat Aceh, dan model intervensi perdilan adat di Aceh menghadapi kejahatan transnasional era MEA.

Kata Kunci: Peradilan Adat, Lembaga Adat, Pencegahan Kejahatan Transnational, Aceh

INTRODUCTION

ASEAN Economy Community (AEC) entered into force on December 31, 2015. There are certain consequences of AEC implementation if examined from two perspectives; the threats and challenges. The challenges faced by the by the participating members of AEC Indonesia include: competing in free trade and free market, improving the economy of participating countries, opening up access to competitive investments, increasing the volume of trade, and creating economic growth and national development among AEC countries. On the other hand, AEC also emits the risk in the emergence of various forms of transnational crime, which are criminal acts or crimes that cross national borders.²

Indonesia should be able to make preemptive efforts against transnational crime in the era of AEC, particularly in the province of Aceh. Geographically, Aceh is situated in a strategic position and is prone to transnational crime both as a location and target of transnational crime. In the context of Aceh, the anticipated crimes include illegal fishing, illegal mining, illegal logging, drug trafficking, human trafficking, weapons smuggling, terrorism and prostitution.³

Adat institutions and adat justice has a strong and strategic basis as intervention institutions outside of court according to the 1945 Constitution and Laws in the context of Aceh. Legal basis for

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² Sri Walny Rahayu, Indigenous Institutions and the Local Wisdom Values in Indonesia as one of the Prevention Strategies of the Child Trafficking in the AEC, Proceeding on the International Conference: “The Strategy in Building The Competitiveness in the ASEAN Economic Community ERA (SBC-AEC)”, Aceh Besar: University of Abulyatama, 2016, p. 94.
³ Ibid, p. 93.
Adat Institution are stipulated in Article 98 of Law No. 11/2006 on the Government of Aceh and its subsequent regulation including various provincial laws and Governor Regulation No 60 Year 2013. Factually, positive laws that serves as legal basis for Adat Institution and dispute settlement institutions in the form of Adat Justice only have the authority to settle misdemeanors. The objective of this short paper is to examine the adaptability of Adat Justice, Acehnese Adat Institutions, and their intervention models in Aceh society in facing global issue of preventing transnational crimes.

RESULT AND DISCUSSION

1) Threat of Transnational Crimes in the Era of AEC

Conceptually transnational crimes are crimes committed across national borders. Transnational crimes are committed by perpetrators from two countries or more with modern modus operandi. According to 2000 United Nations (UN) Convention against Transnational Organized Crime, a crime is transnational in nature if, (1) It is committed in more than one State; (2) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (3) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (4) It is committed in one State but has substantial effects in another State.

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4 Art. 98 (1) LoGA, “Customary institutions function and act as a vehicle for community participation in the administration of Aceh Government and district/city government in the areas of security, peace, harmony, and public order. Art. 98(3): a. Majelis Adat Aceh; b. imeum mukim or the other name; c. imeum chik or the other name; d. keuchik or the other name; e. tuha peut or the other name; f. tuha lapan or the other name; g. imeum meunasah or the other name; h. keujreun blang or the other name; i. panglima laot or the other name; j. pawang glee or the other name; k. peuta seuneubok or the other name; l. haria peukan or the other name; and, m. Syahbanda or the other name.


6 Chapter VI titled “Dispute Settlement”, Art. 13-15 Qanun No. 9 of 2008. Chapter VII Art. 16 on Forms of Adat Sanctions, including warning; admonishment, apology; sayam; diyat; fine; damages; ostricizedby village community or other terms; expulsion from village community or other terms; revocation of adat honors; and other forms of sanctions pursuant to local adat customs. More over family members are also responsible. Dispute settleement that can be
The UN in 1995, identified 18 categories of transnational crimes, which are: money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit traffic in arms, sea piracy, hijacking on land, Insurance fraud, computer crime, environmental crime, trafficking in persons, trade human body parts, illicit drug trafficking, fraud bankruptcy, infiltration of legal business, corruption, bribery of public officials, and other offences committed by organized criminal groups.

The leaders of ASEAN countries in their efforts to prevent and address transnational crimes, have proclaim the establishment of an ASEAN Community, which consists of 3 (three) pillars, the ASEAN Security Community (ASC), the ASEAN Economic Community (AEC), And the ASEAN Socio-Cultural Community (ASCC). These three pillars of the ASEAN Community supporters are a new paradigm, driving ASEAN cooperation towards a new community and identity which bind the States parties.

Within the scope of ASEAN cooperation, there are 8 (eight) categories of transnational crimes that are serious enough and to be cautious about and therefore require an integrated handling between States parties. The eight crimes are drug trafficking, human trafficking, sea-piracy, weapons smuggling, money laundering, terrorism, international economic crime, and cyber crime. All of the crimes are regulated in the 2002 ASEAN Plan of Action to Combat Transnational Crimes (ASEAN-PACTC). 

2) Status of Acehnese Adat Justice in Indonesia

Aceh as a province/regional administrative division, possesses special status and privilege and are rich in diversity, ethnicity, culture, language and legal system applied in its society is respected and acknowledged in accordance with Article 18 B Paragraph (1) of the 1945
Constitution. The special status and privilege of Aceh was established through a certain law as mandated by the 1945 Constitution. Therefore, in Aceh, in addition to the state law system which applied uniformly in Indonesia, there are systems of Islamic Law and Adat Law that apply simultaneously.

Historically since the reign of Sultan Iskandar Muda, Aceh had had 4 (four) types of judicial institutions, namely, the Civil Court, the Criminal Court, the Religious Courts and the Trade Court. Adat Justice and Adat Institutions in Aceh had long been developed, and served important role of fostering cultural values, customs norms and rules to create security, order, peace, harmony and prosperity for its people in accordance with Islamic values. This fact indicates the adaptability of the Adat Justice in Aceh as a system has long been recognized and practiced, long before the emergence of the codification system introduced and enforced by the Dutch to the Indies based on the principle of concordance, which eventually became part of the positive legal system in Indonesia.

The Dutch colonial era placed and recognized the Adat Justice as the justice system of the indigenous people. When the Japanese entered and colonized Indonesia, Adat Justice was kept alive until it was finally abolished by the Government of Indonesia in 1951. This was of course very unfortunate. The removal of the of Adat Institutions’ authority was made official with the

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8 Law No. 44/1999 on the Implementation of the Special Status of the Special Region of Aceh. Undang-Undang Nomor 18 Tahun 2001 on Special Autonomy for Special Region of Aceh as Nanggroe Aceh Darussalam Province, repealed by LoGA.


10 Denys Lombard, Kerajaan Aceh Zaman Sultan Iskandar Muda (1607-1636), Winarsih Arifin (penerjemah), Jakarta: Kepustakaan populer Gramedia (KPG), 2007, p. 118.


12 Adat Justice System was abolished by Article 1 (2) of Law No. 1/1951, which states ” At a time that will gradually be determined by the Minister of Justice abolished ... all Customary Tribunal (Inheemse rechtspraak in rechtstreeksbestuurd gebied) except for religious courts if the judiciary is by a living law a separate part of the customary court.” General Explanation of Law No. 1 of 1951 states that reasoning behind the abolishment of Adat Justice, (1) Adat Justice no longer fulfill court requirements pursuant to 1950 Temporary Constitution; and (2) no longer supported by the people.
enactment of Law no 5 of 1974 concerning local governance (1974 Local Governance Law). The law regulates and brings into uniformity the Adat Institutions in Indonesia by replacing them with villages and village courts. However, such effort did not reduce the recognition value and adaptive ability of Adat Justice in Indonesia, including Aceh.\textsuperscript{13} The prosecutorial function the Adat Justice continued to be practiced by indigenous groups in Indonesia even when Adat Justice was no longer placed in Indonesia's positive legal system.\textsuperscript{14} Law Number 48 Year 2009 on Judicial Power (hereinafter referred to as the Judicial Power Law) also does not acknowledge Adat Justice. This law only recognizes village courts as a type of non-litigation settlement institutions.

The relevance of Adat Justice as an alternative dispute settlement survives until now because its decisions that is based on local wisdom that lives and grows in the society involving community participation. However, behind its survival, it lacks in terms of the enforcement of judgement and its verdicts does not always satisfy the parties. Adat Justice is undeniably declining as time goes by. For instance, indigenous groups that live in locations nearby urban areas are starting to abandon Adat Justice. This phenomenon occurs because people are apprehensive about enforcement power of the Adat Justice in settling a case. Another factor is the existence of Adat Justice separated from state judiciary specifically has yet to be regulated in the form of law.\textsuperscript{15}

The discourse of Adat Justice basically reflects the relationship between the state and the people. The relationship is simply said to be the political reality that in a country there is a space for society. The space is the overall authority and its related structure that is left to the State to be regulated, while some other affairs are maintained by the people themselves because they are capable and more effective in doing so.\textsuperscript{16}

\textsuperscript{15} Sri Walny Rahayu, “Penyelesaian Sengketa Bisnis Kelautan...\textit{Op. cit.}, p. 139-140.
In the Indonesian legal system, there is space available for Adat Justice. One may refer to Article 18 B Paragraph (1) in conjunction with Article 28 (1) Paragraph (3) of the 1945 Constitution. The another provision which may be used as a basis is in the Article 24 Paragraph (3) of the 1945 Constitution states that, "other bodies whose functions are related to judicial power are regulated in a law." Adat Justice in nature has a function of judicial power but the function must be regulated by laws.

Law No. 6/2014 on Villages (hereinafter the 2014 Village Law) does not govern Adat Justice. Only the "Desa Adat" (Adat Village) arrangement is found in Article 96 to Article 111 of the 2014 Village Law. However, it should be noted that the 2014 Village Law recognizes gampongs (villages) in Aceh as Adat Law Communities. The enactment of the Village Act of 2014 in its implementation should take into account the Law No. 11/2006 on the Government of Aceh.

Other relevant provisions can be observed in the 2014 Local Governance Law, which recognizes and regulates the Kepala Desa Adat (Adat Village Chief), Adat Institutions, and Adat Law Communities, but has not explicitly recognized the Adat Justice as an alternative settlement system even if it exists in the community. Various matters can be resolved by Adat Justice on adat community level. The term used in the Regional Government Law of 2014 is the Kepala Desa Adat or other names.

The recognition of Kepala Desa Adat or other names and Adat Institutions as well as Adat Law in the 2014 Local Governance Law, according to my understanding, shows that the 2014 Local Governance Law also has to recognize the judgements of Adat Village Chiefs which were produced to settle disputes within Adat Law Communities. This proves the existence Adat Village Courts.

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18 Sri Walny Rahayu, Penyelesaian Sengketa Bismis Kelautan. Loc. cit.
19 Explanation of Law 6 of 2014 regulates Special Provisions for Aceh, Papua and West Papua Provinces, Local Governments in enacting policies on villages must consider: Law No. 21 of 2001 on Special Autonomy for Papua Province, amended by Law No. 35/2008 and LoGA
20 See Annex to Law No. 23/2014, point M, Distribution of Power in Governing, Department of Society and Villages Empowerment. Amended by Law No.9 of 2015.
which are the same as “Adat Justice”. Therefore Adat Justice, despite not explicitly regulated in Indonesian legal system, but manifests as an institution which has autonomus judicial function within Indonesian society.

3) The Strength of Adat institutions and Adat Justice in Aceh as a Legal System

Adat Justice as a system has components and sub-systems, so has an element to be called a legal system. Hilman Hadikusuma mentioned that a system is an orderly arrangement of various elements, in which one elements are functionally interlocked one another, thus providing an understanding.\(^\text{21}\) Furthermore, a system is a functioning and moving arrangement,\(^\text{22}\) therefore a system is components that are related and mutually influential, bound by certain principles, therefore legal systems also have elements or components with their respective functions.

Sunaryati Hartono, provides a definition of the system as follows:\(^\text{23}\)

"A system is something consisting of certain elements or components that constantly influence one another and are related to each other by one or several principles, in order for such elements to be integrated, it requires a certain organization and principles, therefore if the organization or one of the principles of the elements is changed, the changes in the system shall occur simultaneously, the system is no longer the original system.”

From the various definitions it can be understood that a system emphasizes the following, (1) A system consists of an arrangement of elements or components; (2) it is functionally mutually influential; (3) it has an open-ended nature, because it is connected to other environmental systems; (4) Systems have to be compatible with each other; (5) Organizational transformation resulted in something of value; (6) A system has control, which is the desire to unite and maintain itself.

Based on the concept of a system described above, the function and role of Adat Justice and Acehnese Adat Institutions as a legal system should be optimalized from the functions prescribed in


Article 98 paragraph (1) of LoGA, Qanun (Acehnese Local Law) No 9 of 2008 in conjunction with Acehnese Governor Regulation No. 30 of 2013. The functions of Adat Justice and Acehnese Adat Institutions can be expanded without violating the provisions of higher-level laws, in this case the 1945 Constitution and LoGA. Customary courts and customary institutions are faced with the threat of transnational crime, committed in Aceh.

4) Intervention Model By Adat Aceh Institution

The Province of Aceh stipulates Adat Institutions, the judicial functions and their role as well as types of criminal offenses that can be resolved by Adat Justice through its local legislation, Qanun No. 9 of 2008 in conjunction with Governor Regulation No. 30/2013. Sofyan DJalil mentioned that the type of cases that can be resolved by Adat Justice of Aceh based on Adat law in the form of misdemeanors (petty crimes) as part of restorative justice that can be done in Indonesia.

It can be argued that the concept of restorative justice, Adat Institutions and Adat Justice in Aceh as a legal system that serves to safeguard security, peace, harmony, and public order can be expanded against the threat of AEC-era transnational crime. Adat Justice and Adat Institutions are the front guard for the prevention of crimes of illegal fishing, illegal mining, illegal logging, drug trafficking, human trafficking, weapons smuggling, terrorists and prostitution taking place in Aceh. Although it is important to note that transnational crime is an extraordinary crime organized across the jurisdiction and borders of the State. Therefore, the role of maintaining the integrity, defense and security remains primarily in the national armed force/police.

The Intervention model by Adat justice and Adat Institutions in Aceh relies on the availability of qualified human and institutional resources to discover the indications, elements and modes of

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24 See notes 5-7.
transnational crimes. The ability of Adat Justice and Adat Institutions perform integrated coordination, build network among Adat Institutions and Adat leaders in 23 districts /municipalities of Aceh Province and other stakeholders with cooperation in the form of simulation program of early prevention of transnational crime as a form of community awareness. This is because the Adat Institutions has a strategic position to mobilize the community to build the defense and solidarity in its the Adat law jurisdictions. Adat institutions have the first impetus to prevent various transnational crime problems in their communities.

People and Institutions in Aceh should be aware of and sensitive to other forms of crime around them, such as invitations to women or girls on the pretext of finding work elsewhere especially through unofficial channels that can lead to them being trapped Into trafficking of persons or children and prostitution. Adat institutions and leaders are considered to have a certain authority as the preserver of local values. The Adat Institution became the first reference of the people to report indications of transnational crime in its territorial jurisdiction. Aceh Adat Institutions should be able to take a leading role when community issues clash with local wisdom values, such as prostitution, child trafficking, terrorism, illegal fishing, drugs, and other serious transnational crime which gain serious attention from ASEAN Plan of Action to Combat Transnational Crimes (ASEAN-PACTC).

SIMPULAN

A decade since the enactment of the LoGA in 2006, the ability of Adat Justice and Adat Institutions in Aceh to adapt, they have a strong legal basis in Indonesian Law. The strength should be expanded in addressing the challenges and threats of transnational crime as a result of the implementation of AEC in Indonesia. Adat courts and Adat institutions are the forefront in preventing transnational crime in Aceh. Preventive interventions that can be carried out including strengthening the capacity of Adat Justice and Adat institutions, building community awareness on
the threats of transnational crime, building networks of stakeholders in 23 districts of Aceh Province as referral institutions and forming cooperation programs on transnational crime prevention simulation for Adat courts and Adat institutions in Aceh.

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