



CUSTOMARY LAW APPROACHES TO *HADĀNAH* DISPUTES IN ACEH: ARGUMENTS AND SOCIAL IMPLICATIONS

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Abstrak: Tulisan ini membahas praktik *hadanah* pada masyarakat Muslim berdasarkan studi kasus di Aceh, Indonesia. Tulisan berfokus pada argumentasi pemilihan mekanisme resolusi konflik pengasuhan anak yang terjadi akibat perceraian sepasang suami-istri. Penelitian menggunakan pendekatan kualitatif dengan sumber data dikumpulkan melalui wawancara mendalam terhadap keluarga yang sedang atau pernah menjalani proses penyelesaian konflik *hadanah* secara litigasi atau non-litigasi. Penulis mengeksplorasi argumentasi masyarakat Aceh dalam memilih penyelesaian konflik *hadanah* secara non-litigasi baik dari aspek ekonomi, adat, pemahaman dan kesadaran hukum, serta aspek jarak dan waktu. Tulisan ini menemukan bahwa pilihan mekanisme penyelesaian konflik *hadanah* dalam masyarakat Aceh merupakan bagian dari proses negosiasi antara hukum nasional, hukum Islam dan konteks lokalita Aceh. Tulisan ini pada akhirnya menyimpulkan bahwa meskipun suatu mekanisme penyelesaian konflik *hadanah* yang dipilih dilandasi pada mekanisme yang dianggap terbaik, anak tetap menjadi pihak yang dirugikan akibat konflik perdata diantara kedua orang tua mereka.

Kata kunci: *hadanah*; resolusi konflik; litigasi; non-litigasi

Abstract: This paper discusses *ḥaḍānah* practice in Muslim communities based on a case study in Aceh, Indonesia. This paper focuses on society's arguments in choosing a conflict resolution mechanism in post-divorce child custody. This study is based on in-depth interviews with families experienced in using litigation and non-litigation approaches in custody cases. The authors explore Acehnese people's foundational arguments in choosing the non-litigation solution based on economic, customary, legal understanding and awareness, distance and time consideration. The result shows that their choice is a part of the negotiation process of the national law, Islamic law, and local context of Aceh. However, this study finds out that, children still suffer from loss of reciprocal relationship from their parents although the *ḥaḍānah* cases well resolved.

Keywords: *ḥaḍānah*, conflict resolution; litigation; non-litigation

Introduction

In Aceh, as in other parts of Indonesia, divorce, for Muslims (as the majority population), is handled by the Sharia Court, a legal body to ensure the proceeding is applied as regulated and is as fair as possible (Asni, 2021). Islam regulates post-divorce issues, starting from the post-divorce allowance for wives, inheritance, alimony, and most importantly, child custody. After the court declares the divorce, another potential conflict between the parties is *ḥaḍānah* or child custody. The conflict sometimes becomes a polemic. Both parties often claim the other has neglected the obligations as a parent. Consequently, the situation is likely to influence the child's mental and psychological states. The child's best interests must be the primary consideration in this case.

For some Acehnese people, taking *ḥaḍānah* cases to court, which is the Sharia Court, may not be the best choice as it is time-consuming. In addition, the process requires a large amount of money and makes the people look for other alternatives outside the formal judicial process. Even though the law regulates that *ḥaḍānah* disputes have to be resolved in the court through litigation, most Acehnese people still resolve *ḥaḍānah* conflicts through non-litigation because it is more efficient and suitable for the community. Deciding cases through customary institutions in Aceh is regulated by Aceh Qanun (Bylaw) No. 10, 2008 concerning Customary Institutions (Junaidy, 2017).

Maṣlahah is one of the ideas that has become a part of Islamic legal history. The theory guides current generations in developing and administering law (Tono, 2005). Moreover, this Islamic law actualization is implemented by the Sharia Court, a judicial institution authorized by the state to provide justice for matters under their jurisdiction. Therefore, 'benefit' as the essence of *maqāṣid al-sharīah* (sharia objectives) must be an essential consideration for judges in deciding legal cases.

According to Imam al-Shatibi, Islamic law aims to achieve goodness and reject badness. The whole notion of *taklīf* (legally responsible), reflected in the concept of *al-ahkām al-khamsah* (five legal categories: *wājib*/ obligatory, *sunnah*/ recommended, *mubāh*/ neutral, *makrūh*/ disapproved, and *harām*/ forbidden), belongs to benefits of the world and the hereafter. *Maṣlahah* (public interest) has been used as the primary consideration.

In *ḥadānah*, those theories are used as considerations. Furthermore, *darūriyah al-khamsah* (five fundamental needs), as the elaboration of *maqāsid al-sharīah*, are used in solving *ḥadānah* cases. These five fundamental needs include protection of religion (*hifẓ al-dīn*), life (*hifẓ al-naḥs*), mind (*hifẓ al-ʿaql*), progeny (*hifẓ al-naṣl*), and wealth (*hifẓ al-māl*). These all must be maintained well. Any mistake in implementing this principle will lead to serious consequences (Tono, 2005).

In *ḥadānah* resolution, those five elements should be considered in dealing with children as divorce victims. In the Sharia Courts in Aceh, child-related legal cases that often occur after a divorce are custody and child maintenance (Risपालman & Islami, 2019). However, in many cases, fathers often neglect the obligation to provide for their children after the divorce. Consequently, the fundamental principles of the *maṣlahah*, the sharia objectives, and the fulfillment of five fundamental needs are not achieved. Islam insists that fathers must provide a decent life for their children in any circumstances (Nelli, 2017).

***Ḥadānah* Model in Aceh**

The Acehnese people use litigation and non-litigation methods in resolving *ḥadānah*. The litigation model is a formal resolution involving judicial institutions. In contrast, a non-litigation method resolves the dispute by a customary institution and *Gampong* (Village, an administrative territory in Aceh equal to *Kelurahan* in other provinces). In *ḥadānah* litigation, judges consider children as the victims of a divorce.

Most often, the Acehnese relies on deliberation in resolving *ḥadānah* disputes. This is to avoid further social problems and maintain harmonious communication between divorced spouses and their families. No-fault divorce has been practised in society for many centuries (Amalia et al., 2018). They have felt that resolving conflicts has brought them harmonious, fair, and just lives. In this way, the people immediately solve every conflict without ignoring togetherness values and individual rights.

A non-litigation method in resolving *ḥadānah* disputes is considered more effective and efficient, without harming children's psychology caused by their parent's divorce. Several laws used in a *ḥadānah* case are Law No. 1 of 1974 on Marriage Article 41 and 25; the Compilation

of Islamic Law Article 105 and 156; Law No. 23 of 2002 on Child Protection Law. Based on these laws, it is clear that children have a right to protection and nurturing. However, judges do not always decide based on the existing laws because they consider children's' interests the primary consideration (Firdausia, 2020).

It is unfortunate that even though litigation and non-litigation methods can be chosen in resolving *ḥaḍānah* disputes, no laws guarantee the execution of the court or *Gampong* final decisions or agreement. In many cases, fathers still can avoid fulfilling their obligation to pay for children maintenance, and no laws can punish them.

The Right to Become *Ḥādīn* (Male Guardian) or *Ḥādīnah* (Female Guardian) in Aceh

Judges in the Sharia Court usually consider Islamic law, the Compilation of Islamic Law and Child Protection Law in dealing with *ḥaḍānah*, but do not always decide the mothers as the guardians. Article 105 of the Compilation of Islamic Law states that nurturing children before seven is the mother's responsibility. Again, the decision is more based on children's interests.

Judges give their legal opinions to be included in consideration of the final decisions. In this case, the authors dug information from some judges about their knowledge and experiences in making decisions on *ḥaḍānah* disputes in the Sharia Court.

“...the essential consideration is what is best for the children. The Compilation of Islamic Law Chapter 105 is taken into account when the case is a common dispute, and the couple is not harming children's mentality, morality and so on. Besides, the reference also comes from the Child Protection Law as well as jurisprudence from the Indonesian Supreme Court (Hakim, 2019).”

In the Sharia Courts, decisions related to *ḥaḍānah* based on children's interests as also written in Child Protection Law No 23 of 2002 and a Jurisprudence issued by the Supreme Court No. 110 K/AG/2007. It is all about nurturing. The judges do not only see who has the right but also who is ready to provide for the children. In other words, the children's interests are prioritized over the rights to raise them. In this case, judges do not encourage the court to apply Article 105 of the Compilation of Islamic Law (Mansari & Maulana,

2018). This Article is only applicable for couples with no children issues before their divorce.

Islamic law regulates that a mother must nurture children under 12-year-old, but, in some cases, the rights can be given to a father (Novitasari et al., 2019). This applies in Decision No. 0155/pdt.G/2016/MS.LGS, which considered the children's interests. This is in line with the findings in the interview with a judge in the Sharia Court. He stated:

“To me, the primary reference is the Compilation of Islamic Law and Children Protection Law. However, if it is found in the hearing that the child has long lived with the father and felt comfortable living with him, then the final decision will give the custody rights to the father.”

It is mentioned that The Compilation of Islamic Law and Children Protection Law are the primary references. However, those laws can be neglected when the judges consider the children's best interests. The interviewee continued:

“In the trial, judges listened to the witnesses, followed by the written evidence or other facts provided by litigants. Besides Islamic laws, some principles should have been paid attention to, like justice, benefits, and legal standing. Those three principles must not be eliminated when a decision is made. Suppose the legal standing considers the mother should nurture the children. In that case, it does not guarantee that the children will not be harmed mentally.”

Based on this interview, it is proven that judges carefully decide by examining the facts and evidence exposed in the trial about whether or not the parents behaved well. Also, the consideration includes matters related to children's psychology (Mushthofa & Aminah, 2019). In the court, judges also took three essential principles: justice, benefits, and legal standing. A case may be decided based on the legal standing principle, yet it can seriously harm the children. Therefore, judges should decide the case wisely.

Judges' Considerations

Hadānah disputes petitioned by parents often ignore children's rights as regulated in Child Protection Law. This dispute ruins their rights and their development. Moreover, it will be more destructive when the children are under pressure and mentally and physically harassed.

Ignoring children's rights violates Article 4, 13, 16, 19 Section (1) and (2) of Child Protection Law (Tarigan & Nuruddin, 2004).

In the Sharia Courts, judges refer to the Compilation of Islamic Law Article 105 (a) in dealing with *hadānah* cases. This law states that children under 12-years-old are in the mothers' guardianship. There have been cases where the fathers obtain guardianship rights with a careful examination by the judges (Pane, 2017). Meanwhile, after reaching older than 12-years-old, the children can choose the father, mother, or other people to be the rightful guardian. Article 156 (c) of the Compilation of Islamic Law mentions that if the mother cannot ensure the physical and mental safety of the child, custody will be given to their father.

Besides the Compilation of Islamic Law, the judges should also consider Law No. 23 of 2002 Article 2 (b). This particular law states that child protection should be based on Pancasila (The Five Principles), the 1945 Constitution, and the Convention on the Children Rights principles. These principles include: (a) non-discrimination; (b) best interests of children; (c) right to survival and development; and (d) the views of the child (Mushtofa & Aminah, 2019).

The custody concept in Islamic law is not much different from the concept brought by general rules. These rules require judges to carefully pay attention to parents' records and children needs, physically and psychologically. Article 229 of the Compilation of Islamic law states that judges should also pay attention to the customary traditions to ensure that their decisions are consistent with the value of justice. To grant custody to a father, the judges need to state clearly their considerations in their decisions.

“Actually, as a judge, I prefer to choose a decision suitable with Islamic laws and Child Protection Law. Pre-adult children are indeed given to their mothers. However, if the children do not feel comfortable living with their mothers, while they have already left the children for a long time, we harm them when the *hadānah* right is granted to their mothers. Moreover, so far, the children have been living comfortably with their father (Hakim, 2019).”

The interviews with the judges reveal that in deciding custody, judges consider Islamic law and traditional customary laws. The judges also consider the close relationship between the children with each

parent. If the children have lived comfortably with their father, judges decide that the father would receive the right to nurture them (N. Harahap, 2018). This contradicts Article 105 of the Compilation of Islamic Law, stating that custody can be granted to the father when both parents agree to the custody arrangement. It is called “*contra legem*”, or judges ignoring the existing laws over more just considerations.

Rights for Maintenance

The Indonesian law enables women to file for a divorce. However, if the husband does not come to court, the wife will find it difficult to ask for her and her children's rights. Decisions are often issued in Sharia Courts *in absentia* (without the presence of one party). Many of the divorce cases being tried in the *Sharia* Courts from 2016 to 2018 were divorces filed by women. The decisions were made *in absentia*, which primarily grants mothers the right to nurture their children. Even though the custody is given to the wife, the husband is still obliged to provide for his child(ren). However, many neglect this obligation after the divorce. In some cases, the money given by the husbands is not enough to meet the needs of the children (Nelli, 2017).

A fatwa from Aceh Consultative Council of Ulama (later called MPU) No. 2 of 2015 states that a *talaq* (divorce declaration) outside the Court is legal. This is followed by a high number of *talaq* outside of the court. However, a wife cannot file a divorce to Sharia Courts to get her rights. This causes more negative impacts on children because they need a right to living and proper education (Sya'idun, 2019).

In many cases, fathers often do not obey the law and the court decision by ignoring the obligation to provide for their children's expenses. This is even more complicated in extra-legal divorces or divorce outside the court. A father's awareness is crucial to ensure to fulfilment of child rights. Children's rights are at stake without fathers' attention and awareness, no matter how just the judges decide (Rozali, 2017). In *talaq* divorce (a divorce initiated by the husband), the decision is still made when the wife is absent. Matters related to the rights for providing are discussed outside the court (Dewi, 2009). The trial finishes quickly without the husband's presence as the judges only listen to the claimant. Usually, the hearing will be held four to five times. *In absentia* trials, the decision will be made after two trials.

Judges in the Sharia Courts maintained that many divorce cases in Aceh were brought to the courts after a divorce had been made in *Gampong*. *Gampong* is a merely customary institution and cannot issue a divorce certificate. Even if the husband initiates the divorce, the litigants make as the divorce is made by the wife to fasten to process. Without the response from the husband, the court will continue the process after the second call (Novitasari et al., 2019).

In the case that the defendant (husband) ignores the court's invitation, as long as the petition does not mention any demand except for a divorce, the defendant should not have any concern unless he does not want a divorce (Cahyani & Komariah, 2018). This is different if the petition contains the demand for *ḥadānah* and joint-property sharing. The defendant can see the urgency to get involved in the trial process in such a case.

The law allows judges to decide divorce and *ḥadānah* cases *in absentia*. However, this practice often leads to a problem. Due to his absence, a husband may not know his obligation, including the money he should give for child maintenance. It is also possible that the amount of money that the husband should give for child maintenance, as ordered by the courts, does not suit his earnings. This means that the child's financial security is at stake.

Fathers' awareness is crucial in ensuring the fulfilment of children's rights. A just decision made by the court would mean nothing without fathers' awareness. Currently, the courts do not have any power to ensure and enforce fathers' obligation to provide for their children.

Many divorce cases do not mention the *ḥadānah* claim. The absence of a *ḥadānah* claim in a divorce petition will make judges unable to resolve the issue. The judges are bound by the principle of *ultra petita* in civil procedures. This means that the judges cannot examine and resolve any cases not mentioned in the petition or more than what is claimed.

Regarding the amount of money a father should provide for his child(ren), the judges consider the child(ren)'s necessities, the father's income, and his willingness to provide. Even though the father earns much but is only willing to give a certain amount of money, judges will decide based on this willingness. This is based on judges' *ex officio* rights principle, or the rights of judges to decide what is not mentioned in *petitum* subsidies (the plaintiff's claim or request). Judges consideration,

in this case, is that the father's commitment and agreement are better for the child(ren) than his disobedience due to his disagreement. Therefore, the decision is likely not to exceed a father's capability.

Fathers often do not know or comply with court decisions regarding the obligation to pay for their 'children's living (Aini et al., 2016). Other information obtained in this research stated that married couples often do not take legal action in the Sharia Courts regarding child supports because the child(ren) may be embarrassed. After all, the family problem is known by the public. In addition, when a mother finds the ignorance of a father, she only sees it useless to make an effort, although she knows that the father can afford child supports (Adhani, 2019). When the issue is taken to the Sharia Court, some see that such effort will lead to more problems, such as family embarrassment and others.

Factors contributing to this disobedience in *ḥaḍānah*-related obligation are poverty, faith, and religious knowledge in a family. The lack of communication due to geographical barriers also plays a vital role.

In Sidodadi Village, an informant said:

“...never (ma'am), even he never dropped by to see his child. Sometimes, my mother gives me money because what I earn is not enough to cover all the costs. Fortunately, I can pay all tuition and living costs by selling snacks. (Rika, 2019).”

Mrs Rahma also said the same:

“...after divorce, my ex-husband never even once gave money to the children. Then I lived with my parents. Perhaps, my parents feel pity for my children, so that my mother and father help provide the living costs for my children (Rahma, 2019).”

Likewise, Mrs Intan said:

“My ex-husband never gave allowance to his child, even he never dropped by to see the child. Now, I don't know where he has gone. I think the divorce negatively affects my child, that a father as a family leader is supposed to be responsible for fulfilling his child's demands. To myself, when asked about the solution, like it or not, I have to work hard for my child's living. Sometimes my father helps me. (Intan, 2019).”

Unlike the case above, Linda's confession is somewhat different. She said:

“I got divorced from my ex-husband without conflicts because he had been with a better woman—according to him. My ex-husband and I

agreed to get a divorce in the Sharia Court, and till today we have both communicated well. About financial providing for children after divorce, my ex-husband transfers money around Rp.500.000 to Rp.1.000.000 every month. I think, it is adequate to fulfill the demands because my child is still in elementary school. I also work as a part-time teacher to fulfill my child's needs (Linda, 2019).”

According to Mr Anto about child's financial responsibility, he said:

“Concerning money for child's living after divorce, I assume it depends on the parents. Often, they agreed to it after the divorce. However, some fathers do not take responsibility, and most mothers nurture most children. Frequently, there have been conflicts between parents, leading them to ignore the responsibility to provide for the children after the divorce (Anto, 2019).”

From the interviews above, it can be concluded that divorce implications considerably influence children's living. In many cases, a mother as a single parent has to make an effort to earn for her children. More often, grandparents help support children's needs when they see the mother's burdens. From several cases above, children's allowances after divorce no longer come from their fathers. Few fathers still give money to their children, but the amount is not adequate, less than children's needs nowadays. The lack of good communication between parents contributes to this issue.

Law enforcement concerning providing for children as divorce victims remain insufficient and ineffective. This is in line with a statement from Mr Arif:

“... in Seulalah Village, many villagers do not understand the laws and regulations about post-divorce child maintenance. The laws regulating children's rights and parents' obligations, as written in the Compilation of Islamic law and Child Protection law, are not effectively applied in society. As a matter of fact, after divorce, many mothers nurture their children, and their fathers do not support and provide for their children anymore. (Arif, 2019).”

Similarly, another interviewee also says that:

“Society's understanding of the rules regulating children's rights is critically inadequate, especially among mothers who are not well-educated. This also results from their limited knowledge and society's awareness of existing regulations. In addition, poverty and the lack of religious understanding contribute to this failure, the failure to provide for children's living by both parents (Abdul, 2019).”

The statements from the local public figures above imply that laws protecting children's rights after divorce are still inadequate. The limited knowledge and awareness in society become among the reasons for that.

Factors Influencing the Preference in Choosing *Ḥadānah* Resolution Methods

This research finds that people prefer non-litigation solutions to resolve their *ḥadānah* conflicts. The community chooses the forms of non-litigation dispute resolution because they follow customs and culture based on the rules established in Aceh (Grobbelaar, 2019). Commitments and support from the government to realize justice and the community's welfare by paying attention to the living laws in society are essential.

The Fatwa of the Ulama Consultative Council (UCC) No. 2 of 2005 is the driving factor for conflict resolution to be carried out in *Gampong* (Qanun No. 2 2009 Ttg MPU, 2009). The fatwa states:

“Considering that the Sharia Court needs to give the *Keuchik* (leader of *Gampong*) and *Mukim* (government structure higher than *Gampong*) (and their respective *Tuha Peut/ Gampong* administrators) opportunities to resolve disputes through peace before being examined by the Sharia Court.”

However, the UCC's fatwa is not a very decisive factor. Other factors influencing the community to choose non-litigation conflict resolutions in the *Gampong* are as follows:

Lack of Legal Understandings

It is a fact that the public does not sufficiently understand and know exactly how to make a claim in the Sharia Court. The lack of socialization and promotion by the Sharia Courts about how to submit a petition and solve problems in the courts leads to people's ignorance of the court existence, especially those who live far away from the courts. This makes the people avoid the court to solve their problems (Abubakar, 2020).

“People know about the existence of the Sharia court. However, people are lazy to make a lawsuit to the Sharia Court because they do not understand how to make a claim in the Sharia Court. They are afraid to bring problems to the court, especially those who are far from urban areas (JM, 2019).”

Economic Factors

It has been explained that most of the *Gampong* residents in Aceh work as farmers, planters, and fishers. As farmers and fishers, some people only have enough to meet their daily needs. Some of them only work as farm laborers who only rely on manual labor in exchange for their daily needs (Jum'addi, 2018). People have believed that dealing with the *Sharia* Courts is expensive. Although taking a case to court is inexpensive, the transportation cost to the *Sharia* Court's location is expensive for poor people who live in rural areas.

The distance between the villages and the *Sharia* Court, coupled with damaged roads, is why people prefer the non-litigation conflict resolution. The costs for the judicial process are expensive and increase when one party loses and has to pay fines, administrative costs, and others. Therefore, the economic difficulty is essential for people choosing non-litigation dispute resolutions (Nurhanifa et al., 2019).

The expenses proven by official court receipts can be calculated as court costs (trial examination fees and execution costs). The court fee evidence is only valid in the form of an official receipt issued by the court. Apart from the expenses with valid evidence, others cannot be charged as court fees. It is not justified to extend the validity of expenses based on evidence issued by other agencies outside the *Sharia* Court (M. Y. Harahap, 2009).

The costs depend on the distance from the litigants' residence to the court. The length of the case process can also influence it. The longer the case is completed, the more costs can be incurred. The court fee in the *Sharia* Court has been regulated in Articles 89 to 91 of Law on Religious Courts No. 7 of 1989. In more detail, this is explained in the guidelines for the implementation of duties and administration of the Religious Courts Book II Revised 2013 Edition. The costs are for (Djawas & Fajrina, 2019):

1. Registrar and stamp duty;
2. Witness, expert witness, interpreter, including oath fee;
3. Local examination and other judge's actions;
4. Inviting the litigants;
5. Implementing the decision and so on

They are expectations for those who cannot pay court fees. They can propose a *prodeo* procedure where the litigants are free from charges as the state handles them. To obtain this, the litigants must submit a certificate of incapacity issued *Keuchik*, known to the sub-district head. Even though there are provisions regarding *prodeo*, people still find it challenging to pay for other fees. Meanwhile, many people in Aceh are classified as poor people (Afif, 2019) and have limited income for living.

Socio-Cultural Factors

The community upholds and respects customary laws in terms of social life, such as marriage and other family events. The Aceh value of brotherhood, togetherness, harmony and deliberation are the order in social life. Implementing a culture of deliberation has taken place for a long time in the Acehnese society (Djawas & Fajrina, 2019). Another aspect that causes the Acehnese people to refuse litigation-based conflict resolution in the courts is the perception that peace can only be obtained through conflict resolution in the *Gampong*.

In addition, the public also assumes that only substantial, thoughtful, and rich people can afford to hire a lawyer who will win their case in the Sharia Court (Noviana, 2019). It is understood that family matters related to marriage, divorce, and reconciliation are considered personal, private and internal family problems. People tend to feel ashamed if other people know their family problems.

Customary factors

Indonesian people, including the Acehnese, are bound by customs. Many aspects of life in the community come from customs and traditions, including resolving conflicts. It has become common that many people still get divorced outside the Sharia Court because it is considered taboo to resolve the custody issue in the Sharia Court. For this reason, the community chooses a non-litigation solution by appointing a third party to resolve their conflict (Husin, n.d.).

Even if the internal family cannot resolve the conflicts, people still refuse the court. They asked for *Keuchik* and *Tuha Peut* in *Gampong* to resolve their problems (Noviana, 2019). The customary judges' decision is accepted sincerely by the community to maintain honor, dignity, and

authority. No one feels lost and harmed because the settlement is based on local customs and *Sharia*.

Law is part of society's culture, so it cannot be separated from the soul and way of its people's thinking. Moreover, the law also is a spiritual structure of society. Therefore, in legal research, elements of culture cannot be ignored (Sofyarto, 2018). However, the implementation of the Compilation of Islamic Law and Child Protection Law was hampered by the indifferent attitudes of the people.

Legal Awareness Factors

Legal awareness is essential for a successful implementation of the law, either Islamic or state law. Every citizen should have legal awareness. If the level of legal awareness of the community is low, it is difficult for a law to be enforced or effectively applied. When lawmakers issue regulations that are not in accordance with the community's legal awareness or unagreeable, there will be resistance from the community. The greater the conflict between the rules and awareness, the more difficult it is to enforce them (Soekanto & Taneko, 2002).

Distance and Time Factor

Usually, resolving cases at the *Sharia* Court is time-consuming because people must undergo several trials. In contrast, problems taken to *Gampong* are directly resolved. The *Sharia* Courts are mostly located in the district or city capital. This makes it difficult for justice seekers living in remote areas to visit them. People need to take a very far and challenging trip (H, 2019). In addition, there are still many new districts, due to the new division of territories, that do not have a *Sharia* Court. The territorial condition is one problem that hinders justice seekers from obtaining legal and justice services from the *Sharia* Courts.

The trial period, which consumes a great deal of time and is relatively complicated, is also why people resolve disputes outside the *Sharia* Courts. From submitting a lawsuit to the judge's final decision, the litigation process at the *Sharia* Court must be followed. The laws have regulated this (Cahyani & Komariah, 2018).

The litigation procedure at the *Sharia* Court is divided into two stages. The first stage is claim submission. This process starts when the

lawsuit is submitted (registered) until the trial is determined. The second stage includes trials, the issuance of the court decision, and its execution (Misran & Murdiana, 2019). The litigation procedure certainly takes quite a long time, sometimes up to months and even years, if it reaches the level of cassation. Thus, people are reluctant to submit their lawsuit to the *Sharia* Court and prefer to take a relatively easy route of the customary conflict resolution.

The people refuse to come to the Sharia Court because they must attend several trials. At the same time, they have to work to meet their daily needs. If they have to take a day off to attend the trial, they will not be able to meet their needs for that day. Finally, people seemingly do not pay much attention to the legal provisions written in the laws because of their financial limitations (Kushidayati, 2015).

Although there are principles in the trial process, namely simple, fast and low cost, judges can seek to resolve the case amicably. Therefore, the problem will be resolved quickly, and the costs incurred will be fewer. The fact is not all civil law cases be resolved in a simple, fast, and low costs way (Arifin, 2018). These principles can be applied to neither complicated nor complex issues, such as divorce cases, inheritance, joint property, civil servant divorce, *hadānah* rights, and others. When facing a more complicated case, the court will take longer to solve it.

Both parties also influence the trial's length. One of the concerns is that the summoning process will take a long time if the litigants live far away. Another problem is that the courts have to handle many cases at a certain period. Therefore, the officer can call litigants outside the scheduled times.

Impacts of Society's Conflict Resolution Choices

There are at least two impacts when the society chooses the customary conflict resolution method over the litigation in the *Sharia* Courts: positive and negative impacts.

Positive Impacts

The positive impacts obtained from the non-litigation conflict resolution are deliberation and consensus. The philosophical value that lives and continuously develops among the indigenous peoples is the

value of deliberation (win-win solution); there is no win or lose. The conflict resolution process is resolved through deliberation between the parties using a third party as an intermediary. This third party is chosen among *Tuha Peut*, *Keuchik*, and *Gampong Imam* (Muhajir, 2017).

Second, traditional conflict resolution prioritizes community harmony. The customary way does not cause resentment, eliminates hostility, and maintains harmony. After being reconciled by the *Gampong* apparatus through a traditional procession, two parties having a conflict will shake hands, and the grudge between them will disappear (Sahlan, 2012). The choice of conflict resolution through traditional institutions, especially at the *Gampong* level, is due to the community's desire to resolve conflicts peacefully without involving any judicial courts. The concept of resolving conflicts in traditional institutions is a problem-solving adjusted to the traditions and culture of the Acehnese people.

Third, the settlement process is faster, easier and cheaper. Resolving conflicts in *Gampong* does not require a long time, and it can be done within days, weeks, or months. In the *Gampong* trial, the costs are lower than the court litigation costs. This is because the *Gampong* is not a commercial institution and maintains the principle of humanity and kinship. In addition, through the provincial and district/city MAA, the government allocates funds for problem-solving in the *Gampong*. The parties very much determine time efficiency in the process of resolving cases. People's faith and religious submission will likely shorten the trial process (Cahyani & Komariah, 2018).

Fourth, the conflict resolution in *Gampong* is based on religious, customary, and cultural values. In the Acehnese community, the power of customary decisions, apart from being regulated in state laws and regulations, is also strengthened by regional regulations, both in provincial and district/municipal *qanuns* (Rahman, 2019). In addition to state laws and regulations, local customs also play a significant role in Acehnese society. The people of Aceh are obedient and devoted to the applicable customary provisions, including the peace decision made based on mutual agreements of the community. Another reason for determining community obedience is respect for community leaders, especially the religious leaders (*ulama*).

The diversity of laws in Indonesia, especially family law, cannot be separated from society's openness to the spread of foreign cultures. The

community's practice of more than one law (customary, Islamic and Western law) is called legal pluralism (Bowen, 2003). Islam and local culture collaborate in solving legal cases. Both customs and religion have an important place in society. These two legal cultures are seen as integrated concepts that are difficult to be separated.

Negative Impact

A negative impact of non-litigation conflict resolution is that the results of village meeting decisions are sometimes not considered legal standing. The decision must be documented as an official report that can be stored as an archive in the *Keuchik* office or the *Tuha peut* office. One day, if needed, the written evidence is available and can be used by the conflicting parties (Junaidy, 2017). However, no decisions record has been taken in every attempt to settle the law through *Gampong* deliberation. Consequently, this raises concerns that there will be legal loopholes in the future and make irresponsible parties take advantage of these administrative weaknesses.

The records of *ḥadānah* conflict resolution are scarce. This is due to the common practice that one of the conflicting parties calls the *Gampong imam* or *Tuha peut* to their house to discuss and solve the problem, and witnessed by the family. It is rarely practised that the conflict is resolved in the office. The records will be archived at the *Tuha Peut* office or the *Keuchik* office, if it is about inheritance and land issues.

Conclusion

In Aceh, the *ḥadānah* cases are resolved in two main methods: litigation (through courts or the *Sharia* Courts) and non-litigation (through local customs). The issue is limited to who has the right to child custody. Both parents (divorced husbands and wives) deal with their child(ren)'s rights. Although the Compilation of Islamic Law and Child Protection Law regulates parents' obligation to their children after the divorce, its implementation is relatively uneasy. Many fathers ignore the courts' order to fulfill the child maintenance obligation. This is why the Acehnese people prefer to resolve the *ḥadānah* conflict with the non-litigation method.

Another factor that makes the non-litigation model preferable is the lack of public understanding of *hadānah* laws. Conflict resolution procedures and mechanisms at formal judicial institutions are considered complicated. In addition, people find that the litigation requires significant costs and takes a relatively long time. Therefore, the *hadānah* conflict resolution by *Gampong*'s deliberation has been the ideal method for the Acehnese people. This is because the result is more applicable, practical, and minimizes losses.

Acknowledgments

This Article is a section of my doctoral dissertation. I thank my supervisors, Professor Pagar Hasibuan and Professor Asmuni, for their critical feedback and insightful comments on this manuscript. I appreciate participants' helpful comments and suggestions at the Islamic Law Class, Program Pascasarjana Universitas Islam Negeri Sumatera Utara.

The data presented in this study was collected in 2019 in East Aceh, Langsa city, and Aceh Tamiang, Aceh Province. Surveys and interviews were conducted with a wide array of local people and officials. This study was made possible thanks to financial support from 'Indonesia's Ministry of Religious Affairs, Langsa State Islamic Institute, Indonesia, under a grant from the DIPA.

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Interview

- Interview with Abdul, 2019.
- Interview with Anto, 2019.
- Interview with Arif, 2019 .
- Interview with Linda, 2019.
- Interview with Hakim, H., 2019.
- Interview with Intan, 2019
- Interview with JM., 2019.
- Interview with Rahma, 2019.
- Interview with Rika, 2019.

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