



The Authority of Adat Institutions in Resolving Marital Disputes in Aceh: A Legal Review

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Abstract

Aceh's legal framework is distinctive due to the coexistence of state law, Islamic law, and adat (customary) law, particularly in handling marital disputes. Adat institutions hold a significant role within local communities, as they provide culturally grounded mechanisms for resolving conflicts, often emphasizing restorative justice and social harmony. However, the precise legal authority of these institutions remains complex, especially when their jurisdiction overlaps or conflicts with formal judicial bodies such as the Mahkamah Syar'iyah. This study aims to critically review the legal basis and scope of authority of adat institutions in resolving marital disputes in Aceh within the context of Indonesian law. Utilizing a normative legal research method combined with conceptual and statutory analyses, this research examines relevant legislation, including Law No. 11 of 2006 on the Governance of Aceh and Law No. 23 of 2004 on the Elimination of Domestic Violence. Additionally, it draws on doctrinal sources and practical adat dispute resolution cases in Aceh. The findings demonstrate that adat institutions remain trusted mediators that prioritize reconciliation and community consensus in marital conflicts. Nonetheless, their authority is not absolute and is limited by national legal frameworks, especially concerning divorce proceedings, child custody, and cases of domestic violence, which fall under the jurisdiction of Islamic courts. This overlapping jurisdiction can lead to legal ambiguities and inconsistent outcomes. The study contributes valuable insights for policymakers and legal practitioners seeking to enhance coordination and integration between adat dispute resolution mechanisms and formal legal systems. Strengthening regulatory clarity and fostering collaboration can support more effective dispute resolution that respects Acehnese cultural traditions while aligning with national legal standards.

Keywords: Adat Institutions, Absolute Competence, Legal Pluralism, Marital dispute

Abstrak

Kerangka hukum Aceh memiliki ciri khas karena adanya coexistensi antara hukum negara, hukum Islam, dan hukum adat, khususnya dalam menangani sengketa perkawinan. Lembaga adat memegang peranan penting dalam masyarakat setempat, karena mereka menyediakan mekanisme penyelesaian konflik yang berlandaskan budaya, yang seringkali kali



menekankan keadilan restoratif dan keharmonisan sosial. Namun, otoritas hukum dari lembaga-lembaga ini tetap kompleks, terutama ketika yurisdiksi mereka tumpang tindih atau bertentangan dengan badan peradilan formal seperti Mahkamah Syar'iyah. Penelitian ini bertujuan untuk mengkaji secara kritis dasar hukum dan cakupan wewenang lembaga adat dalam menyelesaikan sengketa perkawinan di Aceh dalam konteks hukum Indonesia. Dengan menggunakan metode penelitian hukum normatif yang dikombinasikan dengan analisis konseptual dan perundang-undangan, penelitian ini mengkaji peraturan perundang-undangan yang relevan, termasuk Undang-Undang No. 11 Tahun 2006 tentang Pemerintahan Aceh dan Undang-Undang No. 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga. Selain itu, penelitian ini juga merujuk pada sumber doktrin dan kasus-kasus penyelesaian sengketa adat di Aceh. Hasil penelitian menunjukkan bahwa lembaga adat tetap menjadi mediator yang dipercaya yang mengutamakan rekonsiliasi dan konsensus komunitas dalam konflik perkawinan. Meskipun demikian, wewenang mereka tidak bersifat mutlak dan terbatas oleh kerangka hukum nasional, terutama terkait dengan proses perceraian, hak asuh anak, dan kasus kekerasan dalam rumah tangga, yang berada di bawah yurisdiksi pengadilan Islam. Tumpang tindih yurisdiksi ini dapat menimbulkan ambiguitas hukum dan hasil yang tidak konsisten. Penelitian ini memberikan wawasan yang berharga bagi pembuat kebijakan dan praktisi hukum yang berupaya meningkatkan koordinasi dan integrasi antara mekanisme penyelesaian sengketa adat dan sistem hukum formal. Memperkuat kejelasan regulasi dan mendorong kolaborasi dapat mendukung penyelesaian sengketa yang lebih efektif yang menghormati tradisi budaya Aceh sambil tetap sejalan dengan standar hukum nasional.

Kata Kunci: Lembaga Adat, Kompetensi Absolut, Pluralisme Hukum, Sengketa Perkawinan

Introduction

Aceh is known for its distinctive legal system, where the coexistence of state law, Islamic law, and customary (adat) law plays a significant role in various aspects of its society. In the context of dispute resolution, particularly marital disputes, these three legal systems often interact, creating a complex dynamic.¹ On one hand, adat institutions hold a crucial role in maintaining traditions and resolving community issues informally. On the other hand, the presence of formal judicial bodies, such as the Mahkamah Syar'iyah (Sharia Court), adds a layer of complexity to dispute resolution, especially when dealing with divorce, child custody, and domestic violence issues.²

The main issue addressed in this study concerns the lack of clarity regarding the authority of adat institutions in resolving marital disputes. Although adat institutions serve as mediators within the community, they sometimes face limitations in legal authority, particularly in cases already regulated by national legislation or Islamic law, such as divorce or child custody matters. This limitation often causes confusion among the public when determining the appropriate legal path to resolve their disputes, as well as potential conflicts between adat institutions and formal judicial bodies.

¹ Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 25, 2021): 529–51, <https://doi.org/10.22373/sjhk.v5i2.11082>.

² Muhazir Muhazir and Azwir Azwir, "Divorce Bureaucracy in the Sharia Space: Examining Practices in Aceh, Aceh," *At-Ta'fikir* 17, no. 1 (2024): 44–55; Ratno Lukito, "Shariah and the Politics of Pluralism in Indonesia," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 4, no. 1 (April 1, 2019): 1–18, <https://doi.org/10.22373/petita.v4i1.8>.

Muhazir's research on legal institutions in Aceh explains that divorce in Aceh involves not only religious courts but also village apparatus in the divorce process.³ Azwir's research provides a general overview of a study investigating divorce practices in Aceh, with a focus on the relationship between Islamic law and state law in divorce resolution. This study emphasizes that Islamic law, particularly fiqh produced by ulama (Muslim scholars), holds significant influence in every legal decision related to divorce within the Acehnese community. This highlights the close relationship between religion and law in the local legal culture, suggesting that for the people of Aceh, religious norms play a dominant role in their understanding of legal rights and obligations, especially regarding divorce. The findings of this research reveal that the majority of the people in Aceh adhere to the Shafi'i school of thought when considering the legality of divorce, indicating the dominance of Islamic legal norms. However, it is also noted that state law is utilized when necessary, particularly for administrative purposes such as divorce registration and ensuring post-divorce rights. The reference to public awareness of state law reflects a growing recognition of the importance of formal legal mechanisms, even though their primary legal framework remains Islamic law. This illustrates the intersection of local cultural practices with formal legal structures, showing the existence of an interconnected legal system and the practical approach taken by the people of Aceh in handling divorce cases.⁴

Arskal Salim's research illustrates the dynamics of legal pluralism in Aceh, Indonesia, by highlighting the contestation over jurisdictional claims between the Sharia courts and other tribunals within the context of dynamic legal pluralism. During the Aceh Sultanate, Islamic law and customary law coexisted and were often difficult to distinguish. However, the arrival of the Dutch colonizers led to a clearer separation between Sharia law and customary law, with Dutch policies favoring customary institutions and their leaders. Although customary law was diminished after Indonesia's independence to support national unity, customary norms were still upheld and applied by state courts. Meanwhile, certain aspects of Islamic law were applied by religious courts.⁵

Different from that research, this study offers a new perspective by specifically focusing on the role and authority of adat institutions in resolving marital disputes in Aceh. Unlike previous studies that generally examine adat institutions within a broader context, this research delves into the handling of disputes involving complex family issues. This study also explores how existing regulations, such as Law No. 11 of 2006 on the Governance of Aceh, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law, influence the implementation of adat authority in marital disputes, while highlighting the tensions between adat law and formal law in this context.

³ Muhazir Muhazir, Azwir Azwir, and Zubir Zubir, "Legal Institutions in Resolving Divorce Cases in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 211-30, <https://doi.org/10.29240/jhi.v9i1.8529>.

⁴ Azwir Azwir, Pagar Pagar, and Muhammad Syukri Albani Nasution, "The Legality of Divorce in Aceh: A Study of Divorce Practices Out of Religious Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, November 25, 2022, 165-80, <https://doi.org/10.24090/mnh.v16i2.6389>.

⁵ Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh," *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (January 2010): 1-29, <https://doi.org/10.1080/07329113.2010.10756640>.

The primary objective of this study is to provide a deeper understanding of the scope and limitations of adat institutions in resolving marital disputes in Aceh, while considering the broader framework of Indonesian law. This study also aims to offer constructive recommendations for better coordination between the adat and formal legal systems, ensuring a more efficient and fair dispute resolution process. Furthermore, the findings are expected to guide policymakers and legal practitioners in formulating policies that are more responsive to the unique legal landscape of Aceh, ultimately promoting justice for the community without disregarding its cultural traditions.

The research method used in this study is doctrinal legal research with a normative and legal sociology approach.⁶ This study will examine relevant regulations, such as Law No. 11 of 2006 on the Governance of Aceh, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law, to analyze the implementation of adat institutions' authority in resolving marital disputes in Aceh. Additionally, this research involves a literature review of relevant literature, legal documents, and other secondary sources related to the topic. The data obtained from this review will be analyzed qualitatively to uncover the interaction between adat law and formal law, as well as to understand their roles and influences in resolving marital disputes in Aceh.

Adat and State: Legal Pluralism and Customary Courts in Marital Disputes in Aceh

Customary courts are institutions that function to resolve disputes among members of a customary law community within their respective customary settings. When the term "customary court" is mentioned, it often evokes the perception of a court held at the village or local community level. The primary objective of these courts is to resolve conflicts based on the customs and traditions of the local community. In many cases, customary courts are closely linked to customary law, which operates traditionally. To understand the concept of a customary court, it is essential to first examine customary law itself. In Indonesia, customary law (*adat*) has long been a subject of scholarly study and has been practiced since the colonial periods of Dutch and Japanese rule, as previously explained.⁷

The Aceh Customary Council (MAA) was the first institution to introduce and popularize customary courts in Aceh, which later received support from several local and international NGOs.⁸ Each institution that manages customary courts has its own programs and approaches. As a result, the term "customary court" is now increasingly recognized, particularly among those studying customary practices and a small portion of the general public. However, in practice, customary courts still operate according to local customs and traditions. Despite the fact that many customary leaders have undergone training on the

⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Prenada Media, 2017).50

⁷ RR Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 16, 2023), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/32549>.

⁸ Sitti Mawar and Muhammad Iqbal, "Multicultural Dispute Resolution System in Aceh Before and After the Issuance of the Customary Institution Qanun," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (March 30, 2025): 560–74, <https://doi.org/10.22373/sjhc.v9i1.19767>.

mechanisms of customary court procedures similar to formal courts, the actual process continues to follow traditional methods.⁹

The primary aim of customary courts is to resolve issues between community members at the village level. However, the decisions made by these courts do not have formal legal power. For instance, even though a couple who divorces through a customary court is considered divorced under customary law, they still need to undergo formal legal procedures to obtain official legal recognition.¹⁰ Customary courts and the implementation of customary law represent a form of legal pluralism that continues to persist in Indonesia today. In a society where people live amidst various interests and characters, conflicts or disputes are inevitable. These conflicts often arise from serious legal issues, such as land boundary disputes or disagreements over previously made agreements.¹¹

In the context of a rule-of-law state, the Indonesian constitution guarantees equality for every citizen before the law, which is one of the fundamental principles in national life. Based on this principle, every citizen is entitled to legal recourse and the restoration of their rights, as well as a fair legal resolution. The state has the obligation to ensure the fulfillment of these rights and to provide access to justice, which is a constitutionally guaranteed human right. However, the limitations of state institutions in providing swift and accessible justice present significant barriers, particularly for poor, marginalized, or indigenous communities, who face challenges in resolving their issues through formal legal institutions.

As an alternative, to strengthen access to justice, there is encouragement to utilize customary courts as a means of resolving disputes. In many cases, customary courts are seen as more effective and appropriate for local culture, capable of settling issues without exacerbating relationships between the parties involved. In this context, the existence of customary courts becomes crucial, particularly in remote areas that have not been fully reached by formal judicial systems. Furthermore, the limited capacity of formal courts has also contributed to the increasing importance of customary courts in resolving disputes. Customary courts in Aceh are supported by various regulations, such as Law No. 44 of 1999 on the Special Autonomy of Aceh, Law No. 11 of 2006 on the Governance of Aceh, and various qanuns that govern customary life and customary institutions in Aceh.¹²

Islam and Governmental Regulations: Analysis of Divorce in Indonesia

Regulations concerning private matters such as marriage and other civil affairs are structured to achieve the fundamental objectives of law itself. This underscores the crucial

⁹ Gunawan Adnan, "Islamic and Customary Law in Aceh Darussalam Constitution," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 2, no. 2 (2013): 146–64, <https://doi.org/10.31291/hn.v2i2.112>.

¹⁰ Airi Safrijal et al., "Settlement of Meugoe Blang Disputes Through Customary Law of Aceh," *Journal of Law and Sustainable Development* 11, no. 5 (September 1, 2023): e525–e525, <https://doi.org/10.55908/sdgs.v11i5.525>.

¹¹ Muhammad Rudi Syahputra, Muksalmina, and Sari Yulis, "The The Principles and Implemetation of Case Settlement Through Aceh Customary Courts Process," *Justitia Jurnal Hukum* 8, no. 2 (October 7, 2024), <https://doi.org/10.30651/justitia.v8i2.23750>.

¹² Mukhsin Nyak Umar et al., "The Local Governance System Based on the Special Autonomy Law in Indonesia," in *Emerging Perspectives and Trends in Innovative Technology for Quality Education 4.0* (London: Routledge, 2020).

role of legal frameworks in the social order.¹³ Similarly, in the concept of marriage, the codification of formal legal provisions is necessary to regulate, uphold, and protect individual rights, ensuring that every person is safeguarded by a legally binding system. Marriage, in particular, pertains to a highly significant private matter that requires strong legal protection due to the various challenges arising from family-related issues, including the protection of the rights of the wife, husband, and children.¹⁴

Marriage and family shape the distinctive character of a society. The established marriage system is expected to foster relationships between men and women that are founded on mutual respect and approval.¹⁵ Marriage serves as the most appropriate and secure means to channel human instincts and desires, ensuring the birth and proper upbringing of future generations. Moreover, it creates a well-ordered and peaceful social environment. The legal provisions on marriage according to Islamic law are binding upon every Muslim, meaning that all Muslims are obligated to fully adhere to them. Beyond that, Muslims must always be aware that marriage embodies religious values, forming a strong and sacred bond (*mitsaqan ghalidza*) as stated in Law No. 1 of 1974 on Marriage.¹⁶

Marriage is considered essential to be regulated to establish an adequate legal mechanism. This necessity has driven the government to formulate laws incorporating Islamic principles, ensuring their formal recognition by the state. The formalization of Islamic law, particularly in the domain of marriage, has been institutionalized through Law No. 1 of 1974 on Marriage. The ultimate goal of this regulation is to uphold legal stability and protection for the Muslim community in conducting marriages that are legally recognized by the state. As Indonesia is a nation governed by law, all actions taken by its citizens must conform to legal provisions, including those related to marriage.¹⁷

Divorce is an event that is highly undesirable in a household. However, in some cases, it becomes unavoidable. Research findings indicate that divorce has a significant impact on children, affecting both their behavior and psychological well-being. These effects cannot be ignored, as they have negative consequences for a child's development. Furthermore, divorce also influences the emotional state of both the husband and wife, especially if the separation is preceded by conflicts and disputes. Divorce initiated through the process of talak (repudiation) by the husband towards the wife carries legal aspects,

¹³ Fathol Hedi, Abdul Ghofur Anshori, and Harun Harun, "Legal Policy of Interfaith Marriage in Indonesia," *Hasanuddin Law Review* 3, no. 3 (December 26, 2017): 263–76, <https://doi.org/10.20956/halrev.v3i3.1297>.

¹⁴ Elvina Jahwa et al., "Konsep Perkawinan Dalam Hukum Islam Dan Hukum Nasional Di Indonesia," *Innovative: Journal Of Social Science Research* 4, no. 1 (January 9, 2024): 1692–1705, <https://doi.org/10.31004/innovative.v4i1.8080>.

¹⁵ Syawaluddin Hanafi, "Legal Politics of Changes to Marriage Laws in Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (July 22, 2024): 68–85, <https://doi.org/10.32505/qadha.v11i1.8867>.

¹⁶ Husain Husain et al., "Legal Discovery of Religious Court Judges in Marriage Itsbat Cases: An Effort to Reform Marriage Law in Indonesia," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (October 1, 2024): 158–75, <https://doi.org/10.32505/qadha.v11i2.8996>.

¹⁷ Abdur Rohman and Ita Rahmania Kusumawati, "Penerapan Undang-Undang Batas Minimal Usia Perkawinan Dan Dampaknya Dalam Masyarakat," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 9, no. 2 (December 6, 2022): 377–93, <https://doi.org/10.32505/qadha.v9i2.5059>.

meaning that talak does not immediately take effect and reconciliation remains possible. In Islam, talak is classified into several aspects;

First, in terms of the timing of its pronouncement, Islamic law does not absolutely prohibit a husband from divorcing his wife. However, there are specific legal provisions regarding when a husband is allowed to issue a divorce and when it is forbidden. In this regard, talak is divided into two categories: talak sunni and talak bid'i. Talak sunni refers to a divorce pronounced by the husband in accordance with Islamic teachings, meaning it does not contradict or violate the commands of Allah and the Sunnah of the Prophet. Scholars unanimously agree that a divorce pronounced by the husband while the wife is in a state of purity (not menstruating) and has not engaged in marital relations (jima') with him falls under talak sunni. The legal basis for this is derived from Surah At-Talaq (65:1).

Second, talak can be classified based on the clarity of its pronouncement. In this context, talak is divided into two types: talak sharih and talak kinayah. Talak sharih refers to a divorce that is explicitly stated by the husband to the wife using clear and direct words that explicitly indicate divorce or repudiation, such as "*I divorce you (one talak)*" or "*I am divorcing you*'." Meanwhile, talak kinayah refers to an implicit or indirect form of divorce, where the words used do not explicitly state divorce but may imply it, requiring further clarification of the husband's intent. Examples of talak kinayah include statements like "*Go back to your parents' house*." Talak can be pronounced directly, whether in the form of sharih or kinayah. However, for a mute person, talak may be expressed through gestures. The majority of Islamic scholars (jumhur ulama) also permit talak to be issued in written form, provided that it is accompanied by a clear intention and unambiguous wording. In this regard, Imam Shafi'i holds the opinion that talak issued through writing is valid if the husband intends or desires to divorce his wife.

Third, talak can be classified based on the husband's right to reconcile (rujuk). In this regard, talak is divided into two types: talak raj'i and talak ba'in. Talak raj'i refers to a divorce pronounced by the husband upon his wife with whom he has consummated the marriage. In this case, the husband has the right to rujuk (reconcile) with his wife without the need for a new marriage contract or dowry (tajdid an-nikâh). The legal basis for talak raj'i is found in Surah Al-Baqarah 2:229:

"Divorce (that can be revoked) is only allowed twice. Then, a wife must be retained honorably or released with kindness. It is not lawful for you to take back anything you have given them unless both fear that they cannot maintain the limits set by Allah. So if you fear that they will not uphold Allah's limits, there is no blame on either of them if she compensates to free herself. These are the limits set by Allah, so do not transgress them. And whoever transgresses Allah's limits, it is they who are the wrongdoers."

The verse serves as the legal basis that allows a husband to reconcile (rujuk) with his wife if talak has occurred twice. Meanwhile, talak ba'in is divided into two types: ba'in sughra and ba'in kubra. Talak ba'in sughra is a type of talak that cannot be reconciled like talak raj'i. However, the husband is still allowed to remarry his wife by conducting a new marriage contract (akad nikah) and providing a new dowry (mahar), even if it is still within the iddah period. This is explained in Kompilasi Hukum Islam (KHI) Article 119, which states:

Paragraph (1): *Talak Ba'in Sughra is a divorce that cannot be reconciled but allows for a new marriage contract with the former husband, even within the iddah period.*

Paragraph (2): *Talak Ba'in Sughra, as mentioned in paragraph (1), includes: a. Talak that occurs before consummation (qabla al-dukhul); b. Talak with compensation or khulu'; c. Talak pronounced by the Religious Court (Pengadilan Agama).*

Thus, in the case of talak ba'in sughra, the ruling differs from talak raj'i. This means that if a husband has divorced his wife and does not reconcile until the iddah period ends, then if he wishes to reunite with his wife, he must perform a new marriage contract and provide a new dowry (tadjid an-nikâh). On the other hand, talak ba'in kubra refers to a talak that has been pronounced three times, either in a single declaration or in separate instances. The legal consequence of talak ba'in kubra is that the husband cannot reconcile with his wife unless she has remarried another man and subsequently divorced him after consummating the marriage (jima') with her new husband (muhallil). The legal basis for talak ba'in kubra is QS. Al-Baqarah 2:230, which aligns with KHI Article 120, stating:

"Talak Ba'in Kubra is a divorce that occurs for the third time. This type of divorce cannot be reconciled, nor can the couple remarry unless the former wife has married another man, and after consummation (ba'da al-dukhul), a divorce occurs and her iddah period is completed."

Fourth. Divorce Based on the Number of Pronouncements. In practice at the Religious Court, even if a husband pronounces triple talaq, the court still rules it as talaq ba'in sughra. The concept applied by the Mahkamah Syar'iyah is based on the principle that divorce should be made difficult. The meaning of "made difficult" is that during the divorce process, the state seeks to facilitate mediation to prevent the occurrence of divorce. Even if the divorce is ultimately granted, the pronounced talaq is still categorized as talaq ba'in sughra (even if triple talaq has been declared outside the court), which allows the husband to reconcile with his wife. This perspective differs from the view of the Shafi'i school, which states that if a husband pronounces triple talaq at once, it is considered talaq ba'in kubra, and such talaq is permissible under Islamic law. This opinion aligns with the views of Imam Malik and Abu Hanifa, who assert that triple talaq pronounced at once is still counted as three, although it is considered haram according to Islamic teachings.

The opinion of these scholars contrasts with that of Ibn Taymiyyah, who argues that triple talaq pronounced at once should only be counted as one talaq, and this practice is deemed haram. Ibn Taymiyyah based his argument on the fact that there is no clear textual evidence regarding the ruling on triple talaq pronounced at once. Meanwhile, Ibn Hazm holds the view that triple talaq pronounced at once will take effect as three talaqs if it is intended by the husband.

The attempt to transform Islamic law into legislation has sparked controversy within society, as many believe that the substantive aspects of the law remain inadequate and do not fully address marital issues. The process of formulating Islamic legal norms derived from the Qur'an, Sunnah, and classical fiqh texts must result in regulations that are general, impartial to any particular school of thought, and binding and enforceable, ensuring their application aligns with the conditions of Indonesian society. Therefore, it is crucial to further examine the relationship between fiqh munakahat (Islamic family jurisprudence) and family law legislation in Indonesia.

Customary and State Authority in Divorce Settlement in Aceh, Aceh

In divorce settlements in Aceh, Aceh, there is a dualism of authority between customary law and state law. The Acehnese people, who strongly adhere to their traditions, often resolve marital conflicts, including divorce, through customary mechanisms before bringing the matter to formal legal institutions. Customary institutions such as *tuha peut* and *imam gampong* play a crucial role in mediating and resolving household disputes through a deliberative and reconciliatory approach. Meanwhile, the state, through the *Mahkamah Syar'iyah* (Sharia Court), holds official authority in legalizing divorces based on Islamic law and prevailing regulations.

The interaction between customary and state authority in divorce settlements in Langsa often reflects both harmonization and potential conflicts. On one hand, the role of customary law helps reduce the number of cases that escalate to the formal legal system by resolving them at the community level. However, when the state does not legally recognize customary decisions, it can lead to uncertainty for the disputing parties. Therefore, synergy between customary institutions and the state is crucial in establishing a fair and effective divorce settlement mechanism that aligns with Islamic legal values and the local wisdom of Acehnese society.

Based on the interview results, it was found that during his tenure as the Head of the Office of Religious Affairs (KUA), the respondent encountered cases of divorce that took place outside the court. This issue came to light when an individual applied for a second marriage but was unable to provide a divorce certificate as an administrative requirement. According to state law, individuals who are legally divorced must possess a divorce certificate as proof that their previous marriage has been officially dissolved. Upon further inquiry, the individual admitted that their previous marriage had been conducted informally or through an unregistered process, which consequently meant that the divorce was also not legally recorded. Additionally, many people in the region rely solely on religious divorce, believing that once a husband has pronounced *talaq* three times, the marriage is considered dissolved without the need for official registration.¹⁸

This statement reflects the continued prevalence of out-of-court divorces, which contradict the legal framework in Indonesia. Legally, divorces must be processed through the religious court to be considered valid and recognized by the state. However, in practice, many people prioritize religious and customary laws over formal legal procedures. The consequences of this practice are significant, particularly in terms of marriage administration and an individual's legal status. A person who has divorced religiously but lacks a divorce certificate will face difficulties when seeking to remarry legally, as their status remains unrecognized by the state. Furthermore, unregistered divorces can lead to various legal complications in the future, such as inheritance rights, alimony, and child custody. This phenomenon highlights the gap between state regulations and prevailing socio-religious practices, posing a challenge to the implementation of family law in Indonesia.

¹⁸ Muhsin, Interview with the head of the Religious Affairs Office of Aceh, 2022.

Conclusion

This study concludes that in Aceh, customary and religious institutions play a central role in resolving divorce cases, often taking precedence over formal legal mechanisms. The strong social legitimacy and moral authority of traditional leaders make their decisions highly influential within the community. The findings underscore the importance of acknowledging and integrating these local practices within the broader legal framework. To ensure effective legal governance, the state should work towards harmonizing formal legal processes with the deeply rooted customary and Islamic practices prevalent in Acehnese society.

Customary institutions play a crucial role within local communities by offering dispute resolution mechanisms grounded in cultural practices that prioritize restorative justice and social harmony. However, the authority of these customary institutions is not absolute and is constrained by national legal frameworks, particularly regarding divorce, child custody, and domestic violence, which fall under the jurisdiction of Sharia courts. This overlap in jurisdiction creates legal ambiguities and inconsistent outcomes. This study advocates for better coordination between customary dispute resolution mechanisms and formal legal systems, aiming to establish a clearer regulatory framework that respects both cultural traditions and national law. Strengthening this integration would enhance the effectiveness of dispute resolution in Aceh, ensuring that customary institutions and formal courts collaborate to provide fair, culturally relevant, and legally sound solutions.

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