CUSTOMARY APPROACH AND RULE OF LAW BY PANGLIMA LAOT IN RESOLVING FISHERMEN'S DISPUTE IN ACEH

Muhammad Nasir, Hasan Basri, Ferdy Saputra

Faculty of Law Malikussaleh University
Kampus Bukit Indah Jl. Jawa, Padang Sakti, Lhokseumawe 24355
E-mail: muhammadnasir@unimal.ac.id; Phone: 085216145662

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ABSTRACT

This research aims to examine the effectiveness of Panglima Laot's institution authority in the maritim area to resolve sea disputes and to find an ideal dispute resolution model to be used. This research uses qualitative method by sociological juridical approach in the form of descriptive analytical. The Panglima laot's authority in an effort to assist the government in resolving maritime disputes is a formal authority granted by a law which is attributively regulated in Article 28 of Qanun Aceh Number 10 of 2008 concerning Customary Institutions. However, when dealing with certain cases between fishermen where the regulation is not very clear in the Qanun, Panglima Laot seeks to resolve cases by using traditional approaches, religious values, propriety, a sense of justice and human conscience. Therefore, Panglima Laot needs detailed and written instructions for carrying out tasks in the form of Government Regulations or Qanuns. Including dealing with refugees who come from abroad.

Key Word: Panglima laot; Authority; Dispute Resolution; Fishermen at Sea; Aceh

INTRODUCTION

Indonesia is an archipelago state that has a huge and diverse potential for marine and fisheries. Its actualization is formulated in Indonesia's development policy in the reform era that introduces and adopts the importance of recognition and protection of national law against indigenous peoples and their local wisdom (Rahayu, 2014). In this case, Indonesia's development is based on interests, knowledge and ways that local communities have based on local knowledge and wisdom in managing their environment.

Open access marine resources have the potential to cause disputes between indigenous marine dispute resolution agencies that have the right of sea ullahat is communal (common property) with modern fishermen or fishing businesses that use fishing fleets, tools and technology that are not environmentally friendly. It should be explained that the right of understanding ullahat rights according to the Regulation of the Minister of Agrarian Affairs of
the Republic of Indonesia / Head of BPN No. 5 of 1999, article 1 number 1 mentions *ulayat* rights is an authority that according to customary law belongs to certain indigenous law peoples over certain areas that are environmental areas of their citizens to benefit from natural resources, including land in the region, for its survival and life, which arises from outward and inner relationships for generations and is not disconnected between the indigenous peoples and the territory concerned.

This is an initial phenomenon that continues to develop in accordance with certain conditions caused by the actions of fishermen at sea when carrying out their activities. This condition is not infrequently in contact with legal symptoms that are realized or have not been through a legal act and lead to the emergence of disputes.

There are often disputes in fishing procedures at sea and stranding of fishermen in North Aceh, East Aceh and Lhokseumawe City to other countries’ sea areas, or vice versa, such as the entry of refugees into the sea area within the scope of this research site. The phenomenon of legal events that occur among fishermen when using the sea as a means of meeting the needs of life, is often influenced by natural conditions such as storms, heavy currents, high waves of the sea, damage to boats or ships that cause loss of direction to remain in the jurisdiction of the sea of his own country, so that it is dragged or carried into the sea area of another country. Intentionally or not the occurrence of such conditions has given birth to violations of the provisions of the sea borders of other countries. This phenomenon can develop in the form of other legal events as a result of certain actions committed by fishermen.

Violations of other countries' sea provisions cause legal conflicts between countries that require their own settlement model. The Method of Customary Law of the Aceh Sea as one of the local wisdom in the national legal system has regulated indigenous institutions including the *panglima laot* with duties and authorities as stipulated in articles 27, 28 and 29 Qanun Aceh Number 10 of 2008 concerning customary Institutions. The phenomenon of Commander Laot's position in the national legal system is interesting to know how much authority the *panglima laot* has over efforts to resolve marine disputes caused by fishermen.

The provisional assumption in this study is the assumption that Acehnese fishermen who have been either intentionally or unintentionally stranded enter the sea area of other countries are generally caused by a lack of knowledge about marine provisions that have been agreed upon by countries in the world. The existence of the role of the *panglima laot* in the marine area in Aceh has the position and authority to play a role in resolving fishermen disputes in the
Aceh sea area, providing advocacy to Acehnese fishermen who are stranded or enter the sea of other countries.

The importance of this study to find out the effectiveness of the panglima laot's authority in helping the government resolve fishermen disputes at sea. On the other hand, the need to get an ideal marine dispute resolution model to be used by panglima laot according to his authority.

Based on the background description mentioned above, this article aims to examine the effectiveness of Panglima Laot's institution authority in the maritim area to resolve sea disputes caused by fishermens.

METHODS

This research uses methods of sociological juridical approach in the form of descriptive analytical. The required data includes secondary data obtained from literature materials and primary data obtained from field research using interview methods to support and supplement secondary data. Respondents in this study include: 1. Panglima Laot Aceh; 2. Panglima Laot Lhok; 3. Panglima Laot North Aceh Regency. 4. Harbormaster Aceh and North Aceh Regency. The informants are: 1. Aceh Sea customary stakeholders; 2. Panglima Laot of the previous period; 3. Expert in Aceh Sea Customary Law; 4. Fifteen fishermen of the north Aceh sea coast and Banda Aceh.

This research was carried out in several stages, namely the first stage of preparation and initial data collection for the preparation of proposals to review the position of the Panglima Laot in the settlement of fishermen's disputes in North Aceh, East Aceh and Lhokseumawe City. In the first stage, observe the duties and authority of the Panglima Laot. The second stage identifies the data according to the direction of the research to be conducted. The third stage, field data collection through in-depth interviews. The fourth stage, verification and analysis and reducing data.

RESULT AND DISCUSSION

According to Lawrence M. Friedman (Friedman, 1975), A legal system is a legal entity consisting of three elements, namely the legal structure, legal substance and legal culture. Simply put, the legal structure is related to institutions or institutions implementing law or can be said to be law enforcement officers.
Another aspect of the legal system is its substance (Ali, 2002). The substance is the rules, norms, and patterns of human behavior that reside in that system. So the substance of the law concerns applicable laws and regulations that have binding powers and become guidelines for law enforcement officials. Legal culture concerns the legal culture that is the attitude of humans (including the legal culture of law enforcement officials) towards the law and the legal system. No matter how good the structuring of the legal structure to carry out the established rule of law and as good as the quality of legal substance made without the support of the legal culture by the people involved in the system and society, law enforcement will not run effectively.

Furthermore, the substance of law is the whole of the principles, legal norms and the rule of law, both written and unwritten. The third element in the legal system is the legal culture that is the habit or culture of society that accompanies in law enforcement. The culture of the law is in the community as well as in law enforcement officials. In principle, the legal culture of a nation is proportional to the progress made by the nation concerned because the law of a nation is a reflection of the social life of the nation concerned (Rahardjo, 1986).

Substantially (legal substance) the authority of the panglima laot has been regulated in the provisions of legislation which include Article 27 and 28 Qanun Aceh Number 10 of 2008 concerning customary Institutions, Article 98 Republic of Indonesia of Law Number 11 of 2006 concerning the Government of Aceh and Qanun Aceh Number 1 of 2020 concerning the Zoning Plan of Coastal Areas and Small Islands of Aceh 2020-2040 which has indirectly been included in the scope of one of the elements contained in the theory of the system, It is an element of legal substance.

Laot in Acehnese means sea and panglima is the leader, therefore the panglima laot can be interpreted as a marine leader. In this case the panglima laot is the person who leads the customs, customs that apply in the field of fishing in the sea, including regulating fishing places/areas and resolving disputes that occur between fishermen. In general, the panglima laot has authority in the field of development and enforcement of laot customary law, regulation and utilization of marine resources and marine customary justice (NAD, 2006).

Panglima laot is the one who presides over customs, customs that apply in the field of fishing and dispute resolution. In general, the panglima laot has the authority that is in the field of development and enforcement of marine customs, regulations, and utilization of marine
resources and marine customary justice (Puteh, 2016). *Panglima laot* is an indigenous institution that is authorized to regulate fishing procedures at sea.

*Panglima Laot* is part of the Community Monitoring Group which was formed and empowered to act as a community group that plays an active role in monitoring the utilization of marine and fishery resources (Nasution et al., 2021). The existence of *Panglima Laot* as the Community Monitoring Group is based on Ministerial Decree Number 58 of 2001 on Procedures for the Implementation of Community Supervision System in the Management and Utilization of Marine and Fishery Resources. *Panglima Laot* as part of the Community Monitoring Group makes The *Panglima Laot*'s position clearer and firmer in preventing illegal fishing in Aceh waters and providing benefits for *Panglima Laot* in financial terms and remains trusted by the public and private sector (Nasution et al., 2021).

*Panglima Laot* in addition to being an institution as well as a chairman of the institution so that people refer to them as *Panglima Laot*. In its role and function, *Panglima Laot* is authorized to regulate all affairs / procedures of laot customs in terms of rights and obligations related to fishing and and its sale to the market level (Ismail, 2008).

Indigenous stakeholders are people who occupy positions in customary institutions. While laot customary stakeholders can be said to be institutional *Panglima Laot* (Rizqi et al., 2018).

In addition to the *Panglima Laot* and indigenous stakeholders of the sea are also known for fishermen disputes and sea disputes. The existence of the laot *Panglima Laot* institution in the order of customary sea law in Aceh has been recognized and considered necessary by the coastal communities in particular and Acehnese people in general, this view has been rooted and cultured so that it is believed and believed the regulations and decisions of the *Panglima Laot* regarding the procedure of use of the sea as a means of fisheries in meeting the needs of life need to be adhered to as a living order to regulate the association of life peacefully to achieve well. Conditions like this without scientific awareness have fulfilled the third element of the system theory, namely legal culture or community legal culture.

Regarding the position of the *Panglima Laot* in the Indonesian legal system, it is described succinctly that the *Panglima Laot*'s Institution is the manager of sea customs, the existence of the customary institution of *Panglima Laot* before the Law of the Republic of Indonesia Number 11 of 2006 concerning the Government of Aceh has first been stipulated in Regional Regulation Number 7 of 2000 concerning the Implementation of Customary Life
contained in article 1 paragraph (14) mentioned Panglima Laot is the person who leads the customs. and the prevailing customs in the field of fishing and dispute resolution. But in the regional regulation does not explain about the procedures for the implementation of sea customs, it only further reinforces the existence of Panglima Laot in the customary law of the sea (Fitrah, 2018).

Indonesia has recognized and adopted laot customary institutions as one of the potential local wisdom of Aceh region named Panglima Laot, then regulated and stipulated in Aceh Qanun Number 10 of 2008 as a series of legal system in Indonesia.

In Article 98 Republic of Indonesia of Law Number 11 of 2006 concerning the Government of Aceh, mentions that indigenous institutions (one of which is Panglima Laot) function and act as a vehicle for community participation in the implementation of government. Article 7 of Law Number 44 of 1999 concerning the Specialness of Aceh mentioned that the region can form customary institutions and recognize existing customary institutions in accordance with their respective positions in the Province, Regency / City, District, Kemukiman, and Village/Village or gampong.

There is a method in Aceh's customary sea law that anyone stranded on the high seas humanitarianly must be assisted. The problem is that the general principle of humanity results in biased interpretations by people who feel the same in facing challenges at sea. The case of stranding refugees has absolutely no arrangement in Aceh's customary law methods. The provision of assistance by fishermen and the community to refugees on the basis of customary methods that emphasize the principle of humanity, cannot be fully understood by the community about the enactment of positive legal provisions specifically in Indonesia causing humanitarian actions carried out by the community against the refugee unwittingly has violated certain existing laws and regulations. In this case not a few people are blamed for being considered to have committed an act against the law that is not appropriate to do, even though in their understanding according to the methods and principles of customary law of the sea the actions they do are right.

Furthermore, Article 6 Paragraph 2 of Law Number 31 of 2004 on Fisheries mentioned that the management of fisheries for the purposes of fishing and cultivation must consider customary law and/or local wisdom and pay attention to the participation of the community.

Based on the law above the national legal system has accommodated the values of customary law that live in the social life of the community. In connection with this, the
Government of Aceh has established Qanun Number 10 of 2008 concerning Indigenous Institutions in which it also regulates one of the customary institutions, namely the Panglima Laot Institution.

Note the phenomenon of legislation above that can not be separated from its influence on the authority of the five laot as a marine customary institution in Aceh. To base the discussion on this, it is necessary to put forward a theory of authority which is a scientific rule to be used in analyzing the next problem.

According to Ateng Syafrudin (Syafrudin, 2000) There is a difference between the notion of authority and authority, authority (autority gezag) is what is called formal power, power derived from the power granted by law, while authority (competence bevoegheid) only regards a certain "onderdeel" (part) of authority only. Within the authority there are powers (rechtsbe voegdheiten) (Syafrudin, 2000). Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but includes authority in the framework of the implementation of duties, and gives authority and distribution of authority primarily stipulated in the laws and regulations. Juridically the sense of authority is the ability provided by laws and regulations to cause legal consequences (Lotulung, 1994).

In public law, authority is related to power. Power has the same meaning as authority because the power possessed by the Executive, Legislature and Judiciary is formal power. Power is an essential element of a state in the process of administering government in addition to other elements, namely: 1. law; 2. authority (authority); 3. justice; 4. honesty; 5. wisdom; and 6. Virtue (Kantaprawira, 1998). From the various notions of authority as mentioned above, that authority (authority) has a different understanding with authority (competence). Authority is a formal power derived from legislation, while authority is a specification of authority, meaning whoever (the subject of law) is authorized by law, then he is authorized to do something within that authority.

The authority of the panglima laot that has existed so far still needs to be analyzed as follows:

a. Attribution, in accordance with the above authority theory attributesively the authority of the panglima laot is clearly ascertained in Article 28 of Qanun Law Number 10 of 2008 concerning Customary Institutions. Based on the provisions of this Qanun, the authority of panglima laot is a strong authority in the existing rule of law. The national legal system
has recognized this authority when qanun number 10 of 2008 was passed and applies within the jurisdiction of Aceh province. In the legal system the position of authority is at the level of legal substance (legal substance). The substance of the law is a series of laws that have ensured the existence of such authority so that the panglima laot is legal in carrying out his duties and functions. Related to the problem of refugees entering the sea area of the local panglima laot's cooperation both panglima laot lhok and panglima laot of Regency / City, it is entirely the authority of the Government through the authorities to find, find or help the refugees in accordance with the applicable rules. Panglima laot is only authorized to report the influx of refugees to the authorities. In the view of customs, humanity and religious values that any or number of people stranded, washed or adrift at sea must be given help, not least for refugees who save themselves because of a bad situation that occurs in their home country. It is a humanitarian dilemma when relief efforts against refugees need to be adapted to Indonesia's positive legal policy consisting of laws and regulations unknown to many fishermen. So that actions based on good deeds are not caught up in an act against the law, the Government should facilitate the socialization of related rules about the sea to fishermen and coastal communities in general. Although the authority of the panglima laot is certainly attributed, the the authority is not absolute because it is limited to certain matters that are more detailed and complete arrangements in national laws and government regulations and the decisions of officials concerned.

b. Delegation, The handover of authority (authority) in the field of marine and fisheries to the Regional Government should be understood not as the surrender of ownership of marine waters, but the handover of management authority solely within the framework of regional autonomy. The panglima laot has an obligation to set the limits of the provisions regarding the system of management of marine resources and the problems of social implementation in a decree of sea. The institutional panglima laot became stronger and more effective with the formal recognition of the local government, namely with the issuance of Qanun Aceh Number 9 of 2008 on the Construction of Customary and Customs Life. Specifically, Qanun Aceh Number 10 of 2008 has been established on Customary Institutions in which it regulates the authority, duties and functions of panglima laot. Referring to Qanun Number 7 of 2010 on fisheries that the existence of the panglima laot is as a partner of the local government in this case there is no administrative command line from the local government to the panglima laot. This means that the panglima laot is purely as an
institution of customary law that has its own authority to function as a partner of the government to be able to help each other complete certain tasks and cases. Administratively it is not possible for delegation to be carried out by the governor to the panglima laot (Teuku Muttaqin, personal interview, 22 Oktober 2021).

c. Mandate, there is no transfer of authority but the mandator (mandator) gives authority to other organs (mandataries) to make decisions or take an action on his behalf. In this case the, panglima laot allows to receive a mandate from the local government to carry out certain tasks in order to assist the implementation of government tasks related to fisheries issues and the use of the sea as a means of life.

During this time the guidelines of the panglima laot in resolving disputes are advised on the method of laot customary law as local wisdom in Aceh, values of propriety, benefit, and religious values. The research found the desire of the existing panglima laot so that the government facilitates the existence of bookkeeping of standard laot customary values to be used together in resolving sea disputes that occur (Hamdani, personal interview, 13 Oktober 2021).

For example, catching fish that have previously been herded first by other fishermen, if this happens then the solution is taken as follows: (1) the panglima laot examines the chronological event occurs; (2) provide customary advice and instructions of both parties to the dispute in the hope of mutual understanding. The habit that has been in force so far to the case the party who earlier herded the fish that then the fish that was herded and entered into other fishermen's fishing gear, then the fishermen gave a code by banging galah (long sticks) into the water which indicates that the fish hordes were first herded by them, because the fish had entered other fishing gear that he deliberately detained then fishermen who Getting the fish must divide the catch of the fish together between the first fishermen who first herd the fish. This is a customary rule that is often used to resolve such disputes (Hamdani, personal interview, 13 Oktober 2021).

In the event of a fight at sea or on the beach, the settlement taken is to use customary fines as a security that has been agreed by the community so far in the form of the obligation to slaughter a buffalo charged to both parties involved in the fight. It becomes a problem when the fines imposed cannot be met by the parties involved in the fight, because the economic conditions are very unlikely to be met. Usually this is re-offered by the panglima laot together
to establish sanctions in accordance with the economic conditions of the parties (Baharuddin, wawancara, 22 Oktober 2021). The method of customary sea law in resolving disputes like this in general in Aceh has been agreed and adhered to by the local coastal community although there are slight differences that may occur in accordance with certain areas.

Parties involved in the resolution of certain fishermen's disputes are highly dependent on the type of dispute that occurs. In the event of a dispute over the area where the fishing place of the panglima laot lhok coordinates with the panglima laot district or local city so that the deliberation of the dispute resolution efforts can reach a good agreement in accordance with the prevailing methods of sea customary law (Syafaat, personal interview, 21 Oktober 2021).

Regarding the forms of policies used, administratively the commander-in-chief has room to issue a policy, but the opportunities provided by existing laws and regulations are never used by the panglima laot to issue a policy in writing in order to coordinate fellow panglima laot in Aceh Province. The policy that has been issued is in the form of actions providing instructions for the benefit to adhering to the methods of customary sea law by all coastal communities and fishermen.

CONCLUSION

The effectiveness of the panglima laot's authority in an effort to help the government to resolve sea disputes caused by fishermen, if viewed from the theory of authority is what is called formal power, power derived from the power granted by the Act. Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions, but also includes authority in the framework of the implementation of duties, and gives the authority and distribution of its main authority stipulated in the laws and regulations. The authority of the panglima laot that has existed so far can be analyzed as follows: (a) Attribution, in accordance with the theory of authority attributed to the authority of the panglima laot clearly ascertained in the legislation of Article 28 Qanun Number 10 of 2008 concerning Customary Institutions. The authority of the panglima laot is a strong authority in the existing rule of law. The national legal system has recognized this authority when Qanun Number 10 of 2008 was passed and applies within the jurisdiction of Aceh Province. When dealing with certain cases between fishermen who are not so clear the arrangement in the Qanun, panglima laot seeks to resolve with indigenous approaches, religious values, propriety, feelings of justice and human conscience. Regarding the issue of refugees entering the sea area...
of the cooperation jurisdiction of *panglima laot*, it is entirely the authority of the Government through the authorities to find, find or assist the refugees in accordance with the applicable rules. *panglima laot* is only authorized to report the influx of refugees to the authorities. In the view of customs, humanity and religious values that any or number of people stranded, washed or adrift at sea must be given help, not least for refugees who save themselves because of a bad situation that occurs in their home country. However, the authority of the commander-in-chief is not absolute because it is limited to kasuistic matters whose arrangements are more detailed and complete in national laws and government regulations and decisions of relevant officials. Delegatedly, the function of Commander Laôt includes three things, namely maintaining security at sea, regulating the management of natural resources in the sea and regulating the management of the marine environment. In the investigation found the desire of the existing *panglima laot* so that the government facilitates the existence of a bookkeeping of standard marine customary values to be used together in resolving sea disputes that occur. The policy that has been issued is in the form of actions providing instructions for the benefit to adhere to the methods of customary sea law by all coastal communities and fishermen. Including the issue of humanitarian principles in dealing with refugees results in biased interpretation by people who feel the same in facing challenges at sea.

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