



## Optimizing Aceh's Traditional Institutions to Provide Legal Protection for Children in Legal Conflict

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### Abstract

Children as the next generation of our nation, play a crucial role in the development and sustainability of a country. Society aspires to have children who are healthy, intelligent, cheerful, and assured of their survival and growth. However, the social reality often tells a different story, as many children must navigate the legal system for various reasons. Law Number 11 of 2012, concerning the Juvenile Criminal Justice System, introduces the concept of diversion. This concept aims to protect Children in Legal Conflict by shifting the resolution of their cases from the judicial process to an alternative process outside the criminal justice system. In this juvenile justice framework, Traditional Institutions also play an essential role. The involvement of community leaders in the implementation of the diversion agreement demonstrates that "traditional law" is still recognized and applicable in resolving children's cases. Based on this context, the study formulates the following questions: Why do Children in Legal conflicts have the right to protection? And how Optimizing Aceh's Traditional Institutions can Provide Legal Protection for Children in Legal Conflict? The purpose of this study is to raise awareness and understanding of the significance of providing protection to Children in Legal Conflict while enhancing the role of Traditional Institutions in this legal protection. This research is categorized as normative legal research, utilizing secondary data obtained from legal materials. Data collection techniques include library research with qualitative data analysis. The findings reveal that children in legal conflict have the right to protection because Indonesia's ratification of the Convention on the Rights of the Child mandates it. This international commitment underscores key principles such as the best interests of the child, non-discrimination, survival and development, and respect for the child's participation, which must be prioritized in ensuring their protection. In this regard, the Aceh's Traditional Institution plays a vital role in realizing this legal protection by resolving cases with an emphasis on deliberation. Therefore, optimizing the function of the Aceh's Traditional Institution is necessary to achieve effective legal protection for children in conflict with the law.

**Keywords:** Aceh's Traditional Institutions; Children in Legal Conflict; Legal Protection; Optimizing.

### Introduction

Children, as the nation's next generation, play a crucial role in the development and sustainability of a country. Society generally aspires to raise children who are healthy, intelligent, cheerful, and capable of ensuring their own survival and growth. However, social realities often present a different, sometimes even contradictory, picture to these ideals. This is particularly evident in the case of teenagers who, for various reasons, have to deal with legal problems.<sup>1</sup>

Children who engage in delinquency based on physical, mental, or social development are in a weaker position compared to adults, so they need to be handled specifically. Delinquent children must be protected from actions that could

<sup>1</sup>Hadi Supeno, *Kriminalisasi Anak* (Gramedia Pustaka Utama, 2013), p.99 .

hinder their growth and development, so in handling them, a specialized legal framework for juvenile offenders is necessary, encompassing substantive criminal law, procedural criminal law, and the implementation of the punishment.<sup>2</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was established to provide special protection to children in conflict with the law. This law introduces new provisions including restorative justice and diversion, which are not included in Law Number 3 of 1997 concerning Juvenile Courts. Restorative justice is an approach to resolving criminal cases that involves the perpetrator, the victim, their families and other relevant parties to reach a fair solution. It emphasizes restoring the original condition rather than seeking retribution. Meanwhile, diversion refers to redirecting the resolution of juvenile cases from the formal criminal justice process to alternative pathways outside the criminal justice system.<sup>3</sup>

In the juvenile justice system, traditional institutions also play a significant role, as regulated in government regulations and other legal provisions. For instance, Law No. 11 of 2012, Government Regulation No. 65 of 2015, and Supreme Court Regulation (Perma) No. 4 of 2014 allow the involvement of "community leaders" in the implementation of diversion agreements. This demonstrates that in resolving juvenile criminal cases, "traditional law" remains recognized, with its application often involving traditional institutions that continue to be acknowledged today.

The definition of a traditional institution according to the Regulation of the Ministry of Home Affairs Number 5 of 2007 concerning Guidelines for the Arrangement of Community Institutions, Traditional Institutions are Community Institutions that are either intentionally formed or that have naturally grown and developed in the history of society or in a particular traditional law society with legal territory and rights to property in the traditional law, and have the right and authority to regulate, manage and resolve various life problems related to and referring to the customs and traditional law in force.

Traditional institutions collaborate with the government in planning, directing, and aligning development programs to follow traditional values and societal. This collaboration aims to achieve harmony, balance, justice, and community welfare. Furthermore, traditional institutions function as a means of controlling security, peace, harmony, and public order, both preventively and repressively, including: a) Resolving social problems in society; and b) As mediators or "peace judges" to reconcile disputes arising in society.<sup>4</sup>

Traditional Institutions in Aceh have been regulated in Article 2 of Aceh Qanun Number 10 of 2008 concerning Traditional Institutions. The article states that traditional institutions function as platforms for community participation in government, development, community empowerment, and the resolution of social problems in society. These institutions operate autonomously and independently as partners of the Aceh Government and district/city governments at their respective levels. The traditional institutions in Aceh as regulated in the Article include: 1.

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<sup>2</sup> Nandang Sambas, *Nandang Sambas, Pembaharuan Sistem Pemidanaan Anak Di Indonesia* (Yogyakarta: Graha Ilmu, 2010) p. 82.

<sup>3</sup> Mansari Mansari, 'Peran Tuha Peut Dalam Perlindungan Anak Yang Berhadapan Dengan Hukum Di Aceh BeSAR', *Aceh Anthropological Journal* 2, no. 1 (30 April 2018): 54–70, <https://doi.org/10.29103/aaj.v2i1.1147>, p. 55.

<sup>4</sup> Neo Adhi Kurniawan, 'Pemanfaatan Serta Optimalisasi Penggunaan Hukum Pidana Secara Adat Dalam Menciptakan Keadilan Bagi Korban Dan Pelaku', *Jurnal Paris Langkis* 1, no. 2 (20 March 2021): 98–112, <https://doi.org/10.37304/paris.v1i2.2460>, p. 103-104 .

*Aceh Traditional Council (MAA), 2. Imeum Mukim, 3. Imeum Chik, 4. Tuha Lapan, 5. Keuchik, 6. Imeum Meunasah, 7. Tuha Peut, 8. Kejrueu Blang, 9. Panglima Laot, 10. Pawang Glee, 11. Peutua Seuneubok, 12. Hariya Peukan, and 13. Syahbanda.*<sup>5</sup>

Currently, the handling of children in legal conflict in the criminal justice system still faces various challenges. *First*, the implementation of the law often fails to fully align with the provisions of applicable regulations, resulting in inadequate protection of children's rights. *Second*, there is a lack of uniformity in perspectives among law enforcement officers on the most effective approach to handling children in legal conflict, which undermines efforts to uphold the best interests of the child. *Third*, the facilities and infrastructure available to handle children during the judicial process, both before and after the court's decision, are still very limited. *Fourth*, coordination among various stakeholders in the criminal justice system, including police, prosecutors, judges, advocates, the Correctional Center (Bapas), detention centers, and correctional institutions, is frequently hindered by sectoral egos.<sup>6</sup>

In this context, traditional institutions can play a significant role in addressing some of these challenges through the implementation of restorative justice. Recognized under traditional law and actively functioning in regions such as Aceh, traditional institutions serve as partners in resolving social issues, including juvenile criminal cases. By employing traditional approaches based on deliberation and consensus, these institutions can help harmonize perceptions between law enforcement officers and local communities. Moreover, they provide a resolution mechanism that prioritizes recovery and restoration over punitive measures.<sup>7</sup> To address the limitations of facilities, traditional institutions can utilize local resources such as community halls for diversion and rehabilitation programs. Furthermore, the elements within traditional institutions, such as *Imeum Mukim*, *Tuha Peut*, *Keuchik*, and others, are highly respected figures within Acehnese communities. They can also play a role in enhancing coordination by acting as neutral mediators to bring together relevant parties, such as the police, courts, and families, to focus on the welfare of the child.<sup>8</sup>

### Formulation of the problem

Based on the explanation above, the author believes it is important to conduct a deeper analysis of the role of Acehnese traditional institutions in protecting children in legal conflict. The issues to be examined are as follows:

1. Why do children in legal conflict have the right to receive protection?
2. How optimizing Aceh's Traditional Institutions can provide legal protection for children in legal conflict?

### Research Method

The research method used in this study is by using the Normative Juridical research method. Where this normative legal research is a library research. Library studies are needed to collect the necessary legal materials, such as primary legal

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<sup>5</sup> Aceh, 'Qanun Aceh Nomor 10 Tahun 2008 tentang Lembaga Adat', Pub. L. No. 10, Peraturan Daerah (2008).

<sup>6</sup> D. S. Dewi and Fatahillah A. Syukur, *Mediasi penal: penerapan restorative justice di pengadilan anak Indonesia* (Indie Pub., 2011), p. 59.

<sup>7</sup> M. Ridha, *Peumat jaroe: proses mediasi menuju harmoni dalam masyarakat Aceh* (Pusat Kajian Pendidikan dan Masyarakat, 2016).

<sup>8</sup> *Ibid.*, p. 287

materials which include laws and regulations governing the juvenile criminal justice system and child protection, as well as other related laws and regulations. Secondary legal materials, such as books, legal scientific works, and other written materials used to provide explanations of several terms used in this writing. The research specifications used are descriptive-analytical. The data collection method used is library research, namely by searching for legal materials and data that are relevant to the material being studied in this writing.<sup>9</sup> Furthermore, this study uses primary data sources, in the form of laws. Secondary sources include related literature and are then analyzed descriptively and qualitatively and presented in narrative text.

## Results and Discussion

### 1) Protection Rights for Children in Legal Conflict

Children are valuable assets for the nation and are the next generation that will shape the future of society. As valuable assets for the nation and to ensure they grow up healthy, intelligent, and have strong character, children need optimal attention, guidance, and protection.

Furthermore, Mahdin Gultom argues that Child Protection is all efforts made to create conditions so that children can exercise their rights and obligations for the development and growth of children in a natural way, both physically, mentally, and socially. Child protection is a manifestation of justice in a society, thus child protection is attempted in various areas of national and social life. Child protection activities have legal consequences, both concerning written and unwritten laws.<sup>10</sup> This perspective aligns with the view of Arif Gosita, who defines child protection as an effort to establish conditions and circumstances that support the fulfillment of children's rights and obligations in a humane and equitable manner.<sup>11</sup>

One of the instruments used in child protection is the law commonly referred to as child protection law. Legal protection for children can be interpreted as an effort to protect the law against various violence and children's rights and various efforts related to child welfare.<sup>12</sup>

Child protection is a complex issue and raises various challenges so that this cannot be overcome alone but must work together with many parties. Therefore, handling it requires collective efforts and becomes a shared responsibility.<sup>13</sup> As the next generation who will later take an important role in building and directing the development of society, it is necessary to ensure that their rights are fulfilled and protect them from all forms of violence or neglect and this is not only the responsibility of the family, but also the obligation of society and the state. This is in line with Article 11 paragraph (2) of Law No. 4 of 1979 concerning Child Welfare and Article 20 of Law No. 23 of 2002 concerning Child Protection as amended by Law No. 35 of 2014, which states that the parties who are required to strive for the protection of children are: the State, Government, Regional Government, families, and Parents/guardians.

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<sup>9</sup>Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Prenada Media, 2018). p. 202

Maidin Gultom and Aep Gunarsa, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia* (Bandung: Refika Aditama, 2008). p. 40

<sup>11</sup>*Ibid.*

<sup>12</sup>Harrys Pratama Teguh, *Hukum Pidana Perlindungan Anak Di Indonesia* (Bandung: Cv Pustaka Setia, 2020)., p. 1

<sup>13</sup>Arif Gosita, *Masalah perlindungan anak* (Bhuana Ilmu Populer, 2004). p. 11-12.

Society generally aspires to raise children who are healthy, intelligent, cheerful, and capable of ensuring their own survival and growth. However, social realities often present a different, sometimes even contradictory, picture to these ideals. This is particularly evident in the case of teenagers who, for various reasons, have to deal with legal problems.<sup>14</sup>

Cases of children in conflict with the law, according to data from the Directorate General of Corrections, Ministry of Law and Human Rights, showed an increasing trend in the period 2020 to 2023. As of August 26, 2023, there were almost 2,000 recorded cases of children in conflict with the law. A total of 1,467 children have the status of detainees and are still undergoing the trial process, while 526 children are serving sentences as convicts.<sup>15</sup> Faced with this reality, the state must be present to provide protection to children both as victims and as perpetrators ensuring their rights are upheld and their welfare safeguarded.

State protection for children does not only cover children as victims or witnesses, but also ensures that children in legal conflict receive adequate legal protection. Children who are perpetrators of a crime are very vulnerable to unfair law enforcement because they are often treated with the same legal procedures as adult perpetrators of crimes. This special protection is important to prevent children from being exposed to a harsh legal system that can damage their psychological development and to ensure a process that is more in line with the needs and best interests of the child. Treating the criminal process for children the same as adults is very unfair. This treatment has the potential to deprive children of their freedom and give them a negative stigma that can leave a mark on them if it is not handled properly.<sup>16</sup>

Children involved in illegal acts are not simply criminals, but individuals who are still developing and vulnerable to various influences.<sup>17</sup> Providing proper protection and guidance for children in legal conflict is very important, because they are part of the next generation who still have the opportunity to contribute positively to society if they receive the necessary support and direction. They require a different approach from that applied to adults, one that emphasizes guidance, education, and rehabilitation. Such an approach enables them to recognize their mistakes, take responsibility for their actions, and be given the opportunity to reform and improve themselves.<sup>18</sup>

Indonesia has ratified and implemented Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which aims to provide special protection to children in conflict with the law. This law defines a child in conflict with the law as an individual who is at least 12 (twelve) years old but not yet 18 (eighteen) years

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<sup>14</sup>Supeno, *Kriminalisasi Anak*, *Op.Cit.*, p. 99

<sup>15</sup>Yohanes Advent Krisdamarjati, 'Meningkatnya Kasus Anak Berkonflik Hukum, Alarm bagi Masyarakat dan Negara', *kompas.id*, 28 August 2023, <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>.

<sup>16</sup>Sapto Budoyo and Ratna Kumala Sari, 'Eksistensi Restorative Justice Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Anak Di Indonesia', *Jurnal Meta-Yuridis* 2, no. 2 (13 October 2019), <https://doi.org/10.26877/m-y.v2i2.4689>, p. 79

<sup>17</sup>Julius Michael Butarbutar, 'Penjatuhan Pidana Maksimal Terhadap Anak Berhadapan Hukum Ditinjau Dari Tujuan Hukum Pemidanaan Indonesia', *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 1 (19 November 2024): 484–94, <https://doi.org/10.38035/jihhp.v5i1.3077>, p. 487

<sup>18</sup>Dedi Sofhan and Ermania Widjajanti, 'Diversi Dalam Penyelesaian Perkara Pidana Anak Melalui Pendekatan Restorative Justice', *Ensiklopedia of Journal* 7, no. 1 (29 October 2024): 179–85, <https://doi.org/10.33559/eoj.v7i1.2709>, p. 181

old and is suspected of committing a criminal offense.<sup>19</sup> This law aims to establish a justice system that ensures legal protection for children by prioritizing their best interests, particularly for children in conflict with the law.<sup>20</sup>

In addition, the new provisions in the Law also include restorative justice and diversion, for Children in Legal Conflict that are not included in Law Number 3 of 1997 concerning Juvenile Courts. Restorative justice is an approach to resolving criminal cases involving perpetrators, victims, families from both parties, and other related parties to find a fair solution, with a focus on restoring the original state rather than on retaliation.<sup>21</sup> Meanwhile, diversion refers to the transfer of the resolution of child cases from the criminal justice process to a path outside the criminal justice system.<sup>22</sup>

In the context of legal protection for Children in Legal Conflict in the juvenile criminal justice system, the legal protection approach must focus on Restorative Justice. This aims to create balanced justice, where children who commit crimes are given the opportunity to improve themselves and correct their mistakes without having to accept criminal sanctions. This approach prioritizes recovery and rehabilitation, not punishment so that children can reintegrate into society and have the opportunity for a better future.<sup>23</sup>

A Restorative Justice-based legal protection approach is essential for the future of children in conflict with the law. *First*, this approach provides an opportunity for children to correct their mistakes and develop themselves without the burden of stigmatization due to criminal punishment, which can often affect their lives in the long term. Without formal punishment, they can more easily reintegrate into their families and communities, which are important environments for their moral and social development. *Second*, by focusing on rehabilitation and recovery, children can learn from their mistakes without losing self-confidence or experiencing the trauma that often occurs in the judicial process. This allows them to grow up with positive values that can shape a better and more productive future.

The protection of children in legal conflict is essential to ensure that their rights are upheld in accordance with the fundamental principles of the Convention on the Rights of the Child, which the Indonesian government ratified through Presidential Decree Number 36 of 1990. These principles are also reflected in Law No. 4 of 1979 concerning Child Welfare, Law No. 23 of 2002 concerning Child Protection, and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). All of these regulations emphasize the main principles in child protection, namely the principle of non-discrimination, the best interests of the child, the right to survival and development, and respect for the child's participation.

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<sup>19</sup> Indonesia, 'Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak' Pasal 1 Ayat (3).

<sup>20</sup> Leni Dwi Nurmala and Yayan Hanapi, 'Kajian Perlindungan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak', *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 3, no. 1 (5 July 2023): 1–7, <https://doi.org/10.35912/jihham.v3i1.1801>, p. 1-7

<sup>21</sup> Indonesia, Undang-Undang No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak *Op. Cit.* Pasal 1 ayat (6).

<sup>22</sup> *Ibid* Pasal 1 ayat (7)

<sup>23</sup> Indra Wijayanti, Elsa Rina Maya Toule, and Sherly Adam, 'Penyelesaian Perkara Tindak Pidana Penganiayaan Dengan Pelaku Anak Menurut Undang-Undang Nomor 11 Tahun 2012', *PAMALI: Pattimura Magister Law Review* 1, no. 2 (12 October 2021): 73–89, <https://doi.org/10.47268/pamali.v1i2.618>, p 73–89.

The basic principles of the convention also emphasize that every child has the right to be protected, to have their dignity recognized, and to be given the opportunity to grow in an environment conducive to their development. Legal protection for children in legal conflict must be based on the principle of the best interests of the child, which means that legal decisions must be oriented toward the welfare and future of the child.

In addition, the Convention on the Rights of the Child also emphasizes the importance of the right to survival and development for every child, including the right to be free from discrimination and the right to be treated fairly. Approaches such as Restorative Justice, which provide children with the opportunity to rehabilitate themselves without facing criminal punishment, aim to realize these principles so that children still have the opportunity to develop into responsible individuals without damaging their future.

This is also in line with what is mandated in Law Number 35 of 2014 concerning Child Protection which states that every child has the right to receive protection from being the target of abuse, torture, or inhumane punishment. Every child also has the right to obtain freedom in accordance with the law, and the arrest, detention, or criminal act of imprisonment of a child is only carried out in accordance with applicable law and can only be carried out as a last resort.<sup>24</sup>

## **2) Legal Protection for Children in Legal Conflict through the Optimization of Aceh's Traditional Institutions**

The government system of the Unitary State of the Republic of Indonesia recognizes and respects regional government units that are special or unique based on the 1945 Constitution of the Republic of Indonesia. In this context, Aceh is placed as a government unit that has a special and unique status, especially because of the long history of the struggle of the Acehnese people who are known to have high fighting spirit and resilience.<sup>25</sup>

The amendments to the 1945 Constitution that took place between 1999 and 2002 brought about various changes, including Article 18 on Regional Government which became the basis for the establishment of traditional institutions in various regions. Article 18B of the amendment stated:

- Article (1): The State recognizes and respects regional government units that are special or unique in nature, as regulated by law.
- Article (2): The State also recognizes and respects traditional law community units and their traditional rights, as long as they remain relevant and align with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

As a manifestation of this recognition, Law Number 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province was enacted. The special status referred to here is a special authority in the implementation of religious life, customs, education, and the role of religious scholars in determining regional policies.<sup>26</sup> This special feature in terms of

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<sup>24</sup> Indonesia, 'Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak' Pasal 17. Indonesia, perubahan dari 'Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak'.

<sup>25</sup>Hardi, *Daerah Istimewa Aceh: Latar Belakang Politik dan Masa Depan* (Cita panca sergkai, 1993), p. 152

<sup>26</sup> Indonesia, 'Undang-Undang No. 44 Tahun 1999 Tentang Penyelenggaraan Keistimewaan Provinsi Daerah Istimewa Aceh' Pasal 1 ayat (8).

organizing traditional life is the legal basis for the Aceh Government to formulate various Qanuns or Regional Regulations (Perda) related to traditional life in Aceh.<sup>27</sup>

The enactment of these regulations also provides greater authority to the regional government to develop, implement, and maintain customs and institutions in the lives of the people of Aceh. This is as stated in Article 3 paragraph (2) of Law Number 44 of 1999 that the Implementation of Special Status includes: a) the implementation of religious life; b) the implementation of traditional life; c) the implementation of education; and d) the role of religious scholars in determining regional policies.

In relation to the implementation of traditional life mentioned in the article, this has given greater authority to the regional government to develop, implement, and maintain customs and community institutions in Aceh. In order to implement this traditional life, the region has the authority to form traditional institutions and recognize the existence of existing traditional institutions according to their respective positions, starting from the provincial, district/city, sub-district, to settlement, sub-district/village, or village levels.<sup>28</sup>

In its development, especially related to the implementation of Traditional Justice in Aceh, although no specific traditional justice name was found in the settlement at the village level, the Acehnese people in reality continue to apply and maintain traditional law in resolving traditional problems or violations. The existence of traditional criminal justice in Aceh itself is specifically manifested in the existence of Qanun Number 9 of 2008 concerning the Development of Traditional Life and Customs and Aceh Qanun Number 10 of 2008 concerning Traditional Institutions.<sup>29</sup>

Based on Article 2 of Aceh Qanun Number 10 of 2008 concerning Traditional Institutions, it is stated that Traditional institutions function as a means for community participation in the implementation of government, development, community welfare, and the resolution of social problems in society. These traditional institutions are autonomous and independent, serving as partners to the Aceh Government and the district/city governments according to their levels.

Social problems within society may take the form of issues or disputes that fall under the category of traditional law and can be resolved by traditional institutions, including various types of conflicts, including: a) disputes in the household; b) family disputes related to the division of inheritance (*fara'id*); c) disputes between residents; d) cases of *khalwat* or indecent acts, e) disputes over property rights; f) disputes within the family; g) disputes over joint property (*sehareukat*) or joint property; h) minor theft; i) theft of livestock; j) violations of traditional law related to livestock, agriculture, and forests; k) disputes at sea, l) disputes in the market; m) minor abuse; n) forest burning that is detrimental to the traditional community on a small scale; o) harassment, slander, incitement;

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Kurniawan Kurniawan, 'Eksistensi Masyarakat Hukum Adat Dan Lembaga-Lembaga Adat Di Aceh Dalam Penyelenggaraan Keistimewaan Dan Otonomi Khusus Di Aceh', *Yustisia* 1, no. 3 (1 December 2012), <https://doi.org/10.20961/yustisia.v1i3.10084>, p. 48-49

<sup>28</sup> Indonesia, Undang-Undang No. 44 Tahun 1999 tentang Penyelenggaraan Keistimewaan Provinsi Daerah Istimewa Aceh *Op.Cit* . Pasal 7

<sup>29</sup> Amrullah Amrullah, 'Perlindungan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum Pidana Adat Di Aceh Selatan (Studi Terhadap Pelaksanaan Qanun Kemukiman Kuala Ba'U Kecamatan Kluet Utara Kab. Aceh Selatan)', *Gender Equality: International Journal of Child and Gender Studies* 4, no. 1 (25 February 2019): 55-72, <https://doi.org/10.22373/equality.v4i1.4481>, p. 57



defamation; p) environmental pollution on a small scale; q) threats depending on the type of threat, and r) other disputes that violate local customs and traditions.<sup>30</sup>

It is further stated that the resolution of traditional and traditional disputes/disputes is resolved in stages and law enforcement officers provide an opportunity for disputes/disputes to be resolved first according to traditional law in the *Gampong* or other name.<sup>31</sup> The meaning of the word gradual here is that it begins with traditional resolution in the village, then traditional resolution in the *Mukim*, and finally traditional resolution in the *Laot*.<sup>32</sup>

*Gampong* is a specialization regulated by various laws and regulations with various authorities in the framework of implementing specialization and specialization in Aceh. Speaking of *gampong* for other areas, there is something called a village. *Gampong* is an original government, meaning a form of government that grows from the community itself, not an imitation or copying from others.<sup>33</sup> Based on Qanun Number 5 of 2003 concerning Village Government, a Village or other name defines it as a legal community unit that has the lowest government organization directly under the Mukim or other name that occupies a certain area, led by a Keuchik or other name and has the right to organize its own household affairs.<sup>34</sup>

The traditional criminal justice system in Gampong involves several essential stages. The process begins with the traditional law institution receiving a report, followed by summoning the involved parties and witnesses. Subsequently, deliberations are conducted to reach a final decision, which is determined by the head of the traditional institution. This process aims to achieve conflict resolution in accordance with traditional law.<sup>35</sup>

Traditional settlements in *Gampong* are carried out by traditional leaders consisting of: a. *Keuchik*; b. *imeum meunasah*; c. *tuha peut*; d. village secretary; and e. ulama, intellectuals and other traditional figures in the *gampong* according to needs.<sup>36</sup> However, apart from this, there is also the involvement of Ulee Jurong or the hamlet head in accordance with Article 7 of Qanun Number 5 of 2003 concerning Village Government which states that in the village area there are a number of hamlets/*jurong* or other names headed by the Head of Hamlet/*Jurong* or other names, who are the implementing elements of the village government.

Thus, the process of resolving cases in the *Gampong* traditional court begins with a report from the victim to *Ulee Jurong* (Head of Hamlet). However, the report can also be submitted directly to the *Keuchik*. In certain situations, the Head of Hamlet or *Ulee Jurong* can handle the case at an early stage if it is considered not too serious and can still be resolved. However, for more serious, complex cases or those involving public interest, the *Ulee Jurong* will immediately report it to the

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<sup>30</sup> Provinsi Nanggroe Aceh Darussalam, 'QANUN Provinsi Nanggroe Aceh Darussalam No. 9 Tahun 2008 Tentang Pembinaan Kehidupan Adat Dan Adat Istiadat' Pasal 13 ayat (1) .

<sup>31</sup> *Ibid.* Pasal 13 ayat (2) dan (3).

<sup>32</sup> *Ibid* Pasal 14 ayat (1)

<sup>33</sup> Mukhlis, *Buku Ajar: Otonomi Daerah Dan Mukim Di Aceh* (Lhokseumawe: CV Biena Edukasi Lhokseumawe, 2016.) p. 41

<sup>34</sup> Pemerintah Kota Banda Aceh, 'Qanun Kota Banda Aceh Nomor I Tahun 2019 Tentang Pemerintahan Gampong' Pasal 1 Ayat (6) .

<sup>35</sup> Budi Bahreisy, Ferdy Saputra, And Hidayat Hidayat, 'Penerapan Restorative Justice Melalui Lembaga Adat Terhadap Anak Yang Berkonflik Dengan Hukum Di Kota Lhokseumawe', *Eksekusi* 4, No. 1 (26 July 2022): 89–105, <https://doi.org/10.24014/Je.V4i1.17273>. P. 89-105

<sup>36</sup> Provinsi Nanggroe Aceh Darussalam, QANUN Provinsi Nanggroe Aceh Darussalam No. 9 Tahun 2008 tentang Pembinaan Kehidupan Adat dan Adat Istiadat *Op.Cit.* Pasal 14 ayat (2).

*Keuchik* as the leader of the *Gampong*. After that, the *Keuchik* together with the *Gampong* apparatus will hold a meeting to discuss handling the case.<sup>37</sup>

Technically in the application of local traditional law, a case will be processed according to traditional law at the village level with traditional courts, so the case must first be reported to the traditional apparatus. If a case has been reported to the *keuchik*, *tuha peuet*, *teungku imum*, or village secretary by the victim, then it can be resolved according to traditional law. However, without a report from the community, the village apparatus does not take action except in very urgent or crucial problems such as murder, assault, and other public order. For problems within the family such as heirs, marriage and other problems, even though they are known by the village apparatus, they are rarely processed immediately, but first wait for the report.<sup>38</sup>

The traditional justice structure in the village has the following structure: The *Keuchik* acts as the Chair of the Session, the *Gampong* Secretary acts as the Clerk, the *Ulee Jurong* acts as the Recipient of the Initial Report, while the *Tuha Peuet*, *Imum Meunasah*, as well as Ulama, Intellectuals, and traditional figures act as Members in the traditional justice process.<sup>39</sup>

The organizers of traditional justice in the *Gampong*, such as *Keuchik*, *Imum Meunasah*, *Tuha Peuet*, and *Ulee Jurong*, are not officially appointed to the role. However, because of their positions in the *Gampong*, they automatically carry out the function of organizers of traditional justice. In addition, membership in traditional justice is not limited to men, women must also be involved, especially in handling cases related to women and children, which require the involvement of female figures.<sup>40</sup> For deliberation sessions to resolve disputes/conflicts, are held in the *Meunasah* or other name at the *Gampong* level and in the Mosque at the *Mukim* level or other places designated by the *Keuchik* and *Imum Mukim*.

Based on Article 16 paragraph (1) of Qanun Number 9 of 2008 concerning Traditional Life and Customs, there are types of sanctions that can be imposed in resolving traditional disputes, including: a. advice; b. reprimand; c. apology; d. punishment; e. diyat; f. fine; g. compensation; h. ostracized by the village community or other name; i. expelled from the village community or other name; j. revocation of traditional title; and k. other forms of sanctions in accordance with local customs.

Dispute resolution through traditional law at the village level has similarities with the concept of diversion and restorative justice, where cases involving children are attempted to be resolved outside the formal justice system. Based on the concept of diversion, every case of a child in legal conflict should first be resolved through non-litigation channels. This is where traditional institutions can play a role as a means of resolving a problem in accordance with local values in society. A life based on custom often has a positive impact on resolving children's cases with dignity, while also creating a sense of satisfaction among indigenous communities. Based on this perspective, it is important to see and compare how indigenous communities handle children's cases in order to create solutions that are in harmony

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<sup>37</sup>Majelis Adat Aceh, *Pedoman Peradilan Adat di Aceh: Untuk Peradilan Adat yang Adil dan Akuntabel* (Banda Aceh: Majelis Adat Aceh, 2008), p. 9-16

<sup>38</sup>Juniarti Juniarti, 'Peran Strategis Peradilan Adat Di Aceh Dalam Memberikan Keadilan Bagi Perempuan Dan Kaum Marjinal' (Conference Proceedings: Annual International Conference on Islamic Studies (AICIS) XII, Surabaya – Indonesia, 2012), 2446–66, <https://digilib.uinsa.ac.id/7554/>.

<sup>39</sup>Bahreisy, Saputra, and Hidayat., *Opcit*

<sup>40</sup>*Ibid.*

with local culture and meet the best interests of the child.<sup>41</sup> This is because traditional settlement in the village prioritizes settlements that are in accordance with local cultural values, focusing on restoring social relationships and offering children opportunities for self-improvement without subjecting them to formal criminal proceedings. This approach enables children to receive protection within a cultural framework that is both understood and accepted by the surrounding community.

Furthermore, Aceh Qanun No. 11 of 2008 concerning Child Protection also regulates matters relating to children in conflict with the law. Article 39 paragraph (1) states that every child in conflict with the law has the right to receive protection. Children in Legal Conflict referred to here include children as perpetrators and victims of crimes. The form of protection referred to is for children in conflict with crimes, the resolution of which can be carried out outside the courts by prioritizing the principle of the best interests of the child and using local traditional or cultural law but with the following provisions:<sup>42</sup>

- a. children aged 12 years and under;
- b. the threat of punishment is up to 1 (one) year;
- c. the consequences resulting from the crime are material in nature and are not related to the body and life;
- d. all cases of theft not related to body and soul; and
- e. fights that do not result in physical disability or loss of life.

The purpose of an out-of-court settlement using traditional law or local community culture can also involve traditional institutions as part of community participation. Community participation as intended is to include traditional leaders, religious leaders, community leaders and other institutions that care about child protection.<sup>43</sup> This is where the role of traditional institutions in providing protection for Children in Legal Conflict becomes very important. Traditional institutions not only function as a medium for resolving disputes, but also as a means of recovery for children through a more educational process and focus on restoring social relations. In the context of Aceh Qanun No. 11 of 2008, traditional institutions prioritize resolving children's cases outside the formal judicial system by upholding the principle of the best interests of the child and incorporating cultural values and local wisdom into the process.

Through this approach, Children in Legal Conflict are expected to receive protection that reduces negative stigma and prevents greater psychological impacts. This traditional process also involves the community to support child rehabilitation and reduce the potential for children to re-commit crimes. Ultimately, traditional institutions are expected to contribute to the formation of children's character in a positive way through solutions that prioritize recovery and strengthen social values that are beneficial to children and society.

Legal protection for Children in Legal Conflict through the optimization of traditional institutions is an important approach to creating justice that is in accordance with local values and culture. Traditional institutions, as social

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<sup>41</sup> Analiyansyah Analiyansyah and Syarifah Rahmatillah, 'Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia Dan Peradilan Adat Aceh)', *Gender Equality: International Journal Of Child And Gender Studies* 1, No. 1 (1 March 2015): 51–68, <https://doi.org/10.22373/Equality.V1i1.779>, p. 52-53

<sup>42</sup> Pemerintah Provinsi Nanggroe Aceh Darussalam, 'Qanun Aceh Nomor 11 Tahun 2008 Tentang Perlindungan Anak' Pasal 40 Ayat (1) Dan (2).

<sup>43</sup> *Ibid* Pasal 40 Ayat (4).

structures that exist in society, have a significant role in dealing with the problems of children involved in legal conflicts.

Traditional institutions can involve community members, religious leaders, families, and the broader community in resolving cases involving children through customary law. For instance, traditional leaders can lead mediation and resolution processes based on customary norms,<sup>44</sup> religious leaders can provide spiritual guidance,<sup>45</sup> families can support the child's rehabilitation with care and supervision, and the general community can assist in reintegrating the child without stigma.<sup>46</sup> This approach ensures a fair, educational resolution that focuses on the child's recovery and rehabilitation, enabling them to contribute positively to their environment.

Optimizing traditional institutions in child protection also provides space for local wisdom values that can help educate children about the impact of their behavior and encourage them to contribute positively to society. In addition, this approach takes into account the best interests of the child, so that Children in Legal Conflict are not only seen as violators but also as individuals who have the potential to grow and develop in a supportive environment.

Through cooperation between legal institutions and traditional institutions, it is hoped that a more holistic and sustainable protection system can be created for children so that they do not get caught up in negative stigma due to the legal conflicts they experience.

## Conclusion

Children involved in illegal acts should not be viewed solely as criminals but as individuals in the process of development, who are vulnerable to various influences. Recognizing their potential for growth is key to creating interventions that focus on rehabilitation, education, and guidance rather than punishment. By providing proper support, these children can take responsibility for their actions, learn from their mistakes, and contribute positively to society. Indonesia has established legal frameworks, such as Law No. 11 of 2012 on the Juvenile Criminal Justice System, to ensure special protection for children in conflict with the law. These laws align with the principles of the Convention on the Rights of the Child, ratified through Presidential Decree No. 36 of 1990 which is also reflected in Law No. 4 of 1979 concerning Child Welfare, Law No. 23 of 2002 concerning Child Protection, and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). All of these regulations emphasize the main principles in child protection, namely the principle of non-discrimination, the best interests of the child, the right to survival and development, and respect for the child's participation.

Traditional institutions play an important role in the juvenile justice system, as recognized by regulations such as Law No. 11 of 2012, Government Regulation No. 65 of 2015, and Supreme Court Regulation (Perma) No. 4 of 2014. These laws allow community leaders to participate in diversion agreements, reflecting the

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<sup>44</sup> Nikolas Simanjuntak, Penguatan Lembaga Adat sebagai Alternatif Penyelesaian Sengketa, *Jurnal Negara Hukum*, Vol. 4, No. 1, Juni 2023, p 35-66

<sup>45</sup> Faraniena Yunaeni Risdiana, Lovita Nurindah Sari, Peran Kiai dalam Proses Diversi ABH (Anak Yang Berkonflik dengan Hukum), *Proceedings of 4th International Conference on Islamic Studies (ICONIS) 2020*, 18 November 2020, p.1-10

<sup>46</sup> Mitro Subroto1, Muhammad Saddam Aliyandra, Peran Masyarakat Dalam Mencegah Dampak Buruk Stigma Sosial Terhadap Anak Binaan Pemasyarakatan, *Jurnal Ilmiah Kesetahan Masyarakat Dan Sosial*, Volume 2 Nomor 4 November 2024, p. 49-57

ongoing recognition of traditional law in resolving juvenile cases. At the village level, traditional law often aligns with the principles of diversion and restorative justice, seeking to resolve cases outside formal judicial processes. Traditional institutions, guided by local values, can resolve cases involving children with dignity and provide satisfaction to the community. They offer culturally sensitive solutions that support the best interests of the child, emphasizing rehabilitation and education. Optimizing these institutions helps incorporate local wisdom to educate children on the consequences of their actions and encourage their positive development. This approach ensures children in legal conflict are not merely seen as offenders but as individuals with the potential to grow and contribute to society in a supportive environment. To strengthen the application of customary law in protecting children in conflict with the law, it is important to formally integrate customary institutions into the juvenile justice system. This can be done by recognizing their role in laws and regulations, ensuring that their practices align with national and international child protection standards. Customary leaders should receive training on children's rights, restorative justice principles, and legal procedures, enabling them to handle cases effectively while prioritizing the best interests of the child.

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