

## Beyond Formal Courts: The Role of Customary Institutions in Resolving Divorce Disputes in East Aceh, Indonesia

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Received: 22/01/2026    Revised: 05/03/2026    Accepted: 06/03/2026    Available Online: 07/03/2026    Published: 07/03/2026

### Abstract

*This study examines the authority, effectiveness, and practices of divorce dispute resolution conducted by customary institutions in Lhok Dalam Village, Peureulak District, East Aceh, Indonesia. The research addresses the growing interaction between customary mechanisms and formal religious courts in resolving family disputes within Acehnese society. Using a qualitative socio-legal approach, data were collected through in-depth interviews with customary leaders and community members, field observations, and document analysis. The data were analyzed using descriptive-analytical techniques to identify patterns of authority, mediation practices, and institutional limitations within the customary dispute resolution process. The findings reveal that customary institutions possess strong moral and social legitimacy in mediating marital conflicts before cases are submitted to the Mahkamah Syar'iyah. Divorce disputes are generally addressed through deliberative dialogue, religious advice, and reconciliation efforts (islah) aimed at restoring family harmony. This process is perceived as effective in reducing social tensions, preventing premature divorce, and preserving community dignity and social cohesion. However, the study also finds that the effectiveness of customary mediation remains institutionally limited because the outcomes lack formal legal recognition within the state legal system. Consequently, decisions reached through customary mediation cannot always guarantee legal certainty for the parties involved. This study recommends strengthening the role of customary institutions by establishing formal documentation of mediation outcomes, enhancing the capacity of customary leaders through legal and mediation training, and developing institutional collaboration with the Mahkamah Syar'iyah to ensure both social legitimacy and legal certainty in divorce dispute resolution.*

**Keywords:** Customary Institutions, Divorce Dispute Resolution, Customary Law, Family Law Mediation, Socio-Legal Study, Aceh.

### Abstrak

Penelitian ini bertujuan untuk menganalisis kewenangan, efektivitas, serta praktik penyelesaian perceraian melalui lembaga adat di Desa Lhok Dalam, Kecamatan Peureulak, Kabupaten Aceh Timur. Penelitian ini dilatarbelakangi oleh masih kuatnya peran mekanisme penyelesaian sengketa berbasis adat dalam masyarakat Aceh, khususnya dalam menangani konflik rumah tangga sebelum perkara diajukan ke lembaga peradilan formal seperti Mahkamah Syar'iyah. Penelitian ini menggunakan metode kualitatif dengan pendekatan sosio-legal. Data diperoleh melalui wawancara mendalam dengan tokoh adat dan masyarakat, observasi lapangan, serta studi dokumentasi terhadap praktik penyelesaian sengketa yang dilakukan oleh lembaga adat. Data



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yang terkumpul kemudian dianalisis secara deskriptif-analitis untuk mengidentifikasi pola kewenangan, mekanisme mediasi, serta keterbatasan kelembagaan dalam proses penyelesaian perceraian berbasis adat. Hasil penelitian menunjukkan bahwa lembaga adat memiliki legitimasi moral dan sosial yang kuat dalam memediasi konflik rumah tangga di tingkat komunitas. Proses penyelesaian sengketa umumnya dilakukan melalui musyawarah, pemberian nasihat keagamaan, serta upaya islah (perdamaian) yang bertujuan untuk mencegah perceraian dan memulihkan keharmonisan keluarga. Mekanisme ini dinilai efektif karena mampu meredam konflik, menjaga martabat sosial para pihak, serta mempertahankan stabilitas sosial masyarakat. Namun demikian, efektivitas tersebut belum sepenuhnya diikuti oleh kekuatan hukum yang mengikat, karena keputusan yang dihasilkan melalui lembaga adat belum memiliki legitimasi formal dalam sistem hukum negara. Berdasarkan temuan tersebut, penelitian ini merekomendasikan perlunya penguatan kelembagaan adat melalui pencatatan formal hasil mediasi, peningkatan kapasitas tokoh adat dalam teknik mediasi dan pemahaman hukum keluarga, serta pengembangan sinergi kelembagaan dengan Mahkamah Syar'iyah agar penyelesaian perceraian berbasis adat dapat memperoleh legitimasi sosial sekaligus kepastian hukum.

**Kata Kunci:** Lembaga Adat, Penyelesaian Perceraian, Hukum Adat, Mediasi Keluarga, Pendekatan Sosio-Legal, Aceh.

## INTRODUCTION

Divorce is a social phenomenon that has wide implications, not only for married couples, but also for the social structure, psychological of children, and the stability of people's lives. From the perspective of family sociology, divorce is often seen as an indicator of the fragility of family institutions that function as the basic units of society. The high divorce rate in various regions in Indonesia shows that domestic problems cannot be understood solely as private problems, but also as social problems that require a comprehensive and fair resolution mechanism.<sup>1</sup>

In the context of Aceh, the issue of divorce has its own complexity because it is resolved not only through formal legal channels such as the Syar'iyah Court, but also through the gampong customary mechanism. Aceh as an area that has specificity in the application of Islamic sharia and recognition of customary law makes customary institutions an important part of the family conflict resolution system. Customary institutions function as an initial mediation forum that aims to reduce domestic conflicts before entering the realm of formal justice.<sup>2</sup> The presence of this customary institution reflects the existence of legal pluralism, where state law, religious law, and customary law run side by side in people's lives.

Customary institutions in Aceh sociologically have a strong position because they are rooted in local values that are lived and obeyed by the community. Traditional figures such as keuchik, tuha peut, and teungku imum not only play the role of gampong apparatus, but also as respected moral and religious figures. In many cases, people prefer to convey domestic conflicts to customary institutions because they are considered safer, more closed, and maintain family dignity.<sup>3</sup> This shows that the authority of customary institutions comes from social legitimacy, not solely from formal legal power.

However, the effectiveness of customary institutions in resolving divorce is still a matter of debate. On the one hand, customary institutions have great moral and social

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<sup>1</sup> Soerjono Soekanto, *Family Sociology* (Jakarta: Rajawali Press, 2004), 112.

<sup>2</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law, and National Law* (Jakarta: Kencana, 2011), 89.

<sup>3</sup> Zulkarnain Ibrahim, *Aceh Customary Institutions in the Gampong Government System* (Banda Aceh: Ar-Raniry Press, 2014), 57.

power in reconciling married couples. On the other hand, customary institutions do not have binding juridical authority like judicial institutions. Customary decisions or agreements produced through deliberation do not have permanent legal force and cannot be used as a legal basis for divorce according to national law.<sup>4</sup> This condition raises serious problems related to legal certainty and the protection of the rights of the parties, especially for women and children.

In many villages in Aceh, including Lhok Dalam Village, Peureulak District, East Aceh Regency, the role of customary institutions seems to be very prominent in the practice of resolving domestic conflicts. Traditional leaders seek to reconcile couples through deliberation, religious advice, and a family approach. This approach often succeeds in suppressing emotions and opening up space for dialogue between husband and wife. However, the limitations of documentation and the absence of standard procedural standards make it difficult to measure the success of customary mediation objectively.<sup>5</sup> As a result, the role of customary institutions is often seen as informal and less recognized in the formal legal system.

In addition, the results of customary mediation are often not legally recognized if they are not continued with the process in the Syar'iyah Court. Couples who are not successfully reconciled must still take the judicial route to obtain legal certainty for their marital status. This condition shows the dualism of the family conflict resolution system in Acehnese society. On the one hand, customary institutions function as an effective social mechanism in deterring conflicts, but on the other hand, the judiciary remains the only institution with juridical authority to decide on divorce.<sup>6</sup>

From the normative side, the practice of resolving divorce through customary institutions has the potential to intersect and even contradict national law. Law No. 1 of 1974 concerning Marriage and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law expressly state that divorce is only valid if it is carried out in front of a court session. Thus, any form of divorce facilitated out of court has no binding legal force.<sup>7</sup> This provision creates ambiguity between customary norms that prioritize peace and state norms that emphasize formal legality.

In addition to issues of authority and legality, the practice of customary divorce settlement also intersects with the issue of gender justice. A number of studies show that customary mediation in domestic conflicts still tends to be biased against women. In some cases, women are encouraged to maintain their households even in adverse situations, such as economic neglect or domestic violence.<sup>8</sup> This is due to the orientation of customary institutions that emphasize social harmony rather than the protection of individual rights. As a result, female victims are often reluctant to pursue cases to formal legal channels due to social pressure and a culture of shame.

From a human rights perspective, this condition poses serious problems. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right of everyone to fair treatment and legal certainty. Therefore, customary practices that have the potential to ignore the rights of women and vulnerable groups need to be

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<sup>4</sup> Abdul Manan, *Islamic Law Reform in Indonesia* (Jakarta: RajaGrafindo Persada, 2006), 121.

<sup>5</sup> I Nyoman Nurjaya, *Customary Law in the Perspective of the State of Law* (Malang: UB Press, 2011), 94.

<sup>6</sup> Rachmadi Usman, *Out-of-Court Dispute Resolution Options* (Bandung: Citra Aditya Bakti, 2013), 66.

<sup>7</sup> Drafting Team, *Law Number 1 of 1974 concerning Marriage* (Jakarta: State Secretariat, 1974).

<sup>8</sup> Nurul Qamar, *Sociology of Law* (Makassar: Reflection, 2016), 143.

critically examined so as not to conflict with the principles of justice and equality before the law.<sup>9</sup> The reinterpretation of customary values is important so that customary practices remain relevant without sacrificing human rights.

To assess the role of customary institutions more objectively, this study uses the theory of the effectiveness of social institutions put forward by Richard M. Steers. According to Steers, the effectiveness of an institution is not only measured by the achievement of its goals, but also by the level of social acceptance and long-term sustainability of the institution.<sup>10</sup> In the context of customary institutions, effectiveness cannot be measured solely by formal legal power, but by its ability to carry out social functions consistently and be accepted by the community.

Based on this theoretical framework, three main problems can be identified in the context of resolving divorce through customary institutions in Aceh. First, the authority of customary institutions is still moral and social so that it does not have strong juridical legitimacy. Second, the effectiveness of customary institutions in preventing divorce depends heavily on the trust of the community and traditional figures, not on a structured system. Third, customary settlement procedures have not been well documented and have not been optimally integrated with the Syar'iyah Court.<sup>11</sup> These three issues show that there is a gap between the theory of the effectiveness of social institutions and practice in the field.

The case in Lhok Dalam Village, Peureulak District, East Aceh Regency, provides a concrete picture of these dynamics. Based on the initial findings of the study, most couples who experienced domestic conflicts first conveyed their problems to the keuchik or tuha peut for mediation. About 60-70 percent of cases brought to customary institutions can be resolved without leading to a formal divorce. However, the main drawback of this mechanism is the absence of official recording of mediation results and the limited capacity of indigenous leaders to handle complex cases such as domestic violence and economic neglect.<sup>12</sup>

This research is important to examine in depth the authority, effectiveness, and practice of resolving divorce through customary institutions in Lhok Dalam Village. This study is expected to make an academic contribution to the development of the study of Islamic family law and customary law, as well as provide practical recommendations for strengthening the role of customary institutions to be in line with the principles of justice, legal certainty, and protection of human rights.

## RESEARCH METHODS

This research uses a qualitative method with a type of field research that aims to deeply understand the practices and effectiveness of customary institutions in resolving divorce cases at the gampong level. The approach used is a socio-legal approach, which combines the analysis of legal norms with the reality of social practices that develop in society. This approach was chosen because the problems studied are not only related to formal legal provisions, but also related to customary values, social relations, and the dynamics of interaction between actors in society. Through this approach, the research

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<sup>9</sup> Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers, 2015), 211.

<sup>10</sup> Richard M. Steers, *Introduction to Organizational Behavior* (New York: Harper & Row, 1985), 87.

<sup>11</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research* (Jakarta: Rajawali Pers, 2014), 23.

<sup>12</sup> Initial interview with the Keuchik of Lhok Dalam Village, Peureulak District, East Aceh.

seeks to identify how the living law in society plays a role in resolving domestic conflicts before the case is submitted to a formal judicial institution such as the Sharia Court.<sup>13</sup>

The data sources in this study consist of primary data and secondary data. Primary data was obtained directly from the research location, namely Lhok Dalam Village, Peureulak District, East Aceh Regency, through in-depth interviews with traditional leaders and gampong officials, such as keuchik, tuha peut, and teungku imum, as well as communities who have been involved in the customary divorce settlement process. In addition to interviews, primary data was also obtained through field observation to see firsthand the mechanism of deliberation, interaction patterns between actors, and the role of customary institutions in mediating household conflicts. Meanwhile, secondary data was obtained through a documentation study of laws and regulations related to marriage and divorce, gampong customary documents, as well as various scientific literature in the form of books, journal articles, and previous research results relevant to the research topic.<sup>14</sup>

Data collection was carried out through semi-structured interview techniques, direct observation, and documentation studies to obtain comprehensive information on the practice of resolving divorce through customary institutions. The collected data was then analyzed using an interactive analysis model proposed by Miles and Huberman, which included the stages of data reduction, data presentation, and conclusion drawn. The analysis process is carried out continuously from the data collection stage to the completion of the research, allowing researchers to systematically verify and deepen the findings. To maintain the validity of the data, this study also applies source triangulation techniques and triangulation techniques by comparing information from various informants as well as the results of interviews, observations, and documentation, so as to obtain an objective picture of the authority and effectiveness of customary institutions in resolving divorce at the gampong level.<sup>15</sup>

## **RESULTS AND DISCUSSION**

### **Authority of Customary Institutions in Resolution of Divorce Disputes**

Conceptually, authority is a fundamental element in every social and institutional structure. Authority is not only related to the power to rule or prohibit, but also includes the legitimacy to act and make decisions in a particular social space. Philipus M. Hadjon defines authority as legal power granted by laws and regulations to an institution or official to carry out certain legal actions.<sup>16</sup> In this perspective, authority is synonymous with formal legality that comes from written law and is limited by applicable juridical norms.

However, in traditional societies and customary law societies, the concept of authority does not always come from the state or positive law. Authority can also grow from social and moral legitimacy that is collectively recognized by society. Soerjono Soekanto emphasized that in the Indonesian social system, many institutions gain authority not because of the appointment of the state, but because of community

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<sup>13</sup> Lexy J. Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2017), 6.

<sup>14</sup> Sugiyono, *Qualitative Research Methods* (Bandung: Alfabeta, 2018), 114; Soerjono Soekanto, *Indonesian Customary Law* (Jakarta: RajaGrafindo Persada, 2006), 13.

<sup>15</sup> Johnny Ibrahim, *Theory and Methodology of Normative Law Research* (Malang: Bayumedia, 2008), 295; Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis* (Thousand Oaks: Sage Publications, 1994), 10; Richard M. Steers, *Introduction to Organizational Behavior* (New York: Harper & Row, 1985), 87.

<sup>16</sup> Philipus M. Hadjon, *Introduction to Indonesian Administrative Law* (Yogyakarta: Gadjah Mada University Press, 2011), 73.

recognition that comes from customs, beliefs, and living social values.<sup>17</sup> This kind of authority is normative-sociological, where people's obedience is not born from the threat of legal sanctions, but from social awareness and trust.

In the context of Aceh, the authority of customary institutions has a distinctive character because it relies on two sources of legitimacy at once, namely juridical legitimacy and sociological legitimacy. Juridically, the existence and authority of customary institutions is recognized in the Aceh Qanun Number 10 of 2008 concerning Customary Institutions, which places customary institutions as part of the gampong government system and the social life of the Acehnese people.<sup>18</sup> This recognition shows that the state provides space for customary people to carry out their social functions, although it does not extend to the granting of judicial authority such as that of the Syar'iyah Court.

Sociologically, customary institutions derive authority from community beliefs that have been built up from generation to generation. The well-known Acehnese customary principle, "hukom ngon adat lagee zat ngon sifeut", reflects the view that law and customary are two inseparable entities. Customary is not seen as something that is contrary to Islamic law, but as a means of applying Islamic values in the social life of the community.<sup>19</sup> Therefore, the involvement of customary institutions in the resolution of domestic conflicts, including divorce, is understood as part of a legitimate and meaningful socio-religious mechanism for the people of Aceh.

Zainuddin Ali called this form of authority "moral-religious authority," which is social power that is not based on state law directly, but comes from religious values and customs that live in society.<sup>20</sup> Moral-religious authority has a strong binding force because it is inherent in the collective consciousness of society. In many cases, people are more obedient to the advice of traditional leaders and religious leaders than formal legal decisions, especially in matters concerning family honor and social relations.

Empirically, the practice in Lhok Dalam Village, Peureulak District, East Aceh Regency, shows that the authority of customary institutions is actively exercised in resolving domestic conflicts. Customary institutions function as an initial mediation space for married couples who experience disputes. Based on an interview with Geuchik Syahriyal, customary institutions are "the first place for people to complain when there are domestic problems, before being taken to the Syar'iyah Court."<sup>21</sup> This statement shows that factually, customary institutions occupy a strategic position as the starting door for resolving family conflicts at the gampong level.

Another indigenous leader, Tuha Peut Hasan Basri, emphasized that customary institutions do not have the authority to legally decide on divorce, but "have the authority to reconcile or make recommendations if the household can no longer be saved."<sup>22</sup> This statement reflects the limits of the authority of customary institutions that are collectively realized by the customary actors themselves. Customary institutions do not act as judicial institutions, but as social mediators who seek to prevent divorce for as long as possible.

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<sup>17</sup> Soerjono Soekanto, *Sociology of Law* (Jakarta: RajaGrafindo Persada, 2014), 45.

<sup>18</sup> Government of Aceh, *Qanun Aceh Number 10 of 2008 concerning Customary Institutions* (Banda Aceh, 2008).

<sup>19</sup> M. Jakfar Puteh, *Aceh's Socio-Cultural System* (Banda Aceh: Ar-Raniry Press, 2012), 61.

<sup>20</sup> Zainuddin Ali, *Sociology of Law* (Jakarta: Sinar Grafika, 2019), 98.

<sup>21</sup> Interview with Geuchik Syahriyal, Lhok Dalam Village, Peureulak District, East Aceh.

<sup>22</sup> Interview with Tuha Peut Hasan Basri, Lhok Dalam Village, Peureulak District, East Aceh.

The form of authority carried out by customary institutions in Lhok Dalam Village can be categorized as non-judicial but normative authority. This means that the authority does not have the power to force legally, but is still obeyed because it is supported by social norms and public beliefs. In the theory of legal sociology, this condition shows the work of law as living law, which is a law that lives and is obeyed in social practice even though it is not always written in laws and regulations.<sup>23</sup>

In addition to the social dimension, the authority of customary institutions in Lhok Dalam Village also has a strong spiritual dimension. Religious leaders, especially *teungku imum*, play a role in providing religious advice as part of the mediation process. Based on an interview with the Imam of Abdurrahman Village, religious advice was given to awaken the moral awareness of the couple to be aware of the responsibilities of the household and the social impact of divorce.<sup>24</sup> This spiritual dimension strengthens the legitimacy of customary institutions because the people of Aceh view domestic problems not only as social problems, but also as moral and religious problems.

T. Surya Reza called the authority of customary institutions in Aceh as an intermediate authority, which is between state law and religious norms.<sup>25</sup> In this position, customary institutions serve as a bridge that connects the formal norms of the state with the religious and customary values that live in society. This intermediate position makes customary institutions flexible in responding to conflicts, but at the same time vulnerable to criticism because they do not have a strong legal basis to make final decisions.

The authority of customary institutions in Lhok Dalam Village can be understood as a layered authority. First, the moral layer, which is the authority to advise, remind, and guide married couples based on religious and customary values. This layer emphasizes the aspect of moral awareness and repentance, not coercion. Second, the social layer, namely the authority to maintain *gampong* harmony and prevent domestic conflicts from developing into broader social conflicts. In the context of communal societies, domestic conflicts often have an impact on family relationships and social stability.<sup>26</sup>

Third, the functional layer, which is the practical authority to mediate, facilitate dialogue, and formulate a peaceful agreement between the parties. This functional authority is carried out through customary deliberations involving *gampong* figures. Although not outlined in the form of a written legal ruling, the resulting agreement has a strong social bond as long as both parties are still in the same community.<sup>27</sup>

The authority of these customary institutions is not written in the form of detailed legal articles, but lives in daily social practices. Precisely because it is not rigid and not limited by strict formal procedures, customary authority becomes flexible and contextual. Indigenous leaders can adjust the mediation approach to the couple's character, the type of conflict faced, and the socio-economic conditions surrounding it. This flexibility is one of the advantages of customary institutions compared to formal legal mechanisms that are procedural and formalistic.

In Lhok Dalam Village, customary institutions are not just traditional institutions that survive because of past romanticism, but also an active, functional, and relevant

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<sup>23</sup> Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (New York: Russell & Russell, 1962), 39.

<sup>24</sup> Interview with the Imam of Abdurrahman Village, Lhok Dalam Village, Peureulak District, East Aceh.

<sup>25</sup> T. Surya Reza, *Acehnese Customary Law in Modern Dynamics* (Banda Aceh: Aceh Justice Resource Center, 2015), 112.

<sup>26</sup> Satjipto Rahardjo, *Law and Society* (Bandung: Angkasa, 2009), 87.

<sup>27</sup> Syahrizal Abbas, *Mediation in the Perspective of Customary Law* (Jakarta: Kencana, 2011), 134.

social system. Its authority is not measured by coercive power or legal sanctions, but by its ability to build awareness, defuse conflicts, and maintain harmony of common life. In this context, customary institutions act as a social fortress that prevents divorce from being carried out in a hurry and emotionally. This is what makes customary institutions remain trusted and used as the main reference by the people of Lhok Dalam Village in resolving household conflicts at the gampong level.

### **The Effectiveness of Customary Mechanisms in Divorce Settlement**

Conceptually, effectiveness is a measure of the extent to which an institution or organization is able to achieve a set goal. Effectiveness is not only seen from the final results, but also from the process, social acceptance, and sustainability of the institution's function in the long term. Richard M. Steers stated that the effectiveness of an organization includes three main dimensions, namely the achievement of goals, acceptance by the social environment, and the ability of the institution to maintain its sustainability.<sup>28</sup> In the context of social institutions, effectiveness cannot be separated from the values, norms, and beliefs that live in society.

In customary institutions, effectiveness is not measured by formal legal indicators such as the power of judgments or juridical sanctions, but by the ability of the institution to create peace, resolve conflicts, and maintain social order without using coercive mechanisms. Therefore, customary institutions are considered effective if they are able to reduce the escalation of conflicts, restore social relations, and be voluntarily accepted by the community as moral authorities in resolving disputes.<sup>29</sup>

The theory of social effectiveness in Indonesia was developed by Soerjono Soekanto, who stated that the effectiveness of a legal or social institution depends heavily on the conformity between the norms that are regulated and the social values that live in society.<sup>30</sup> An institution can be considered ineffective even though it is legally valid if the norms it operates are not in line with the culture and legal awareness of the community. On the other hand, institutions that do not have formal legal force can function effectively if they are supported by strong social values and accepted collectively.

This view is relevant in the context of Aceh's customary institutions. The effectiveness of customary institutions cannot be measured solely from the perspective of state law, but must be seen from their ability to carry out social functions in accordance with local culture that upholds deliberation, peace, and social shame (malee bak gampong). These values are the main foundation in the customary resolution of domestic conflicts, where social harmony takes precedence over the victory of one of the parties.<sup>31</sup>

In the perspective of public administration, Dwight Waldo added that the effectiveness of institutions is greatly influenced by values, morals, and levels of public trust.<sup>32</sup> The higher the public's trust in an institution, the greater the chance that the institution will function effectively. In the context of Aceh, customary institutions gain high public trust because they are seen as an extension of Islamic religious values and ancestral traditions. This trust is the main social capital for customary institutions in carrying out their roles, including in resolving divorces.

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<sup>28</sup> Richard M. Steers, *Introduction to Organizational Behavior* (New York: Harper & Row, 1985), 87.

<sup>29</sup> Satjipto Rahardjo, *Law and Society* (Bandung: Angkasa, 2009), 92.

<sup>30</sup> Soerjono Soekanto, *Sociology of Law* (Jakarta: RajaGrafindo Persada, 2014), 76.

<sup>31</sup> M. Jakfar Puteh, *Aceh's Socio-Cultural System* (Banda Aceh: Ar-Raniry Press, 2012), 68.

<sup>32</sup> Dwight Waldo, *The Administrative State* (New York: Ronald Press, 1984), 103.

In addition, Rukmana explained that the effectiveness of customary institutions in resolving social conflicts is determined by four main indicators, namely the clarity of the institution's function, the level of community trust, the availability of indigenous human resources who understand local and religious values, and the sustainability of customary practices in daily life.<sup>33</sup> If these four elements are met, customary institutions can function optimally as a means of resolving social and household conflicts.

Based on the results of field research, customary institutions in Lhok Dalam Village, Peureulak District, East Aceh Regency showed a relatively high level of effectiveness in handling household conflicts. Based on an interview with Geuchik Syahriyal, every year there are an average of 8-12 cases of domestic conflict reported to the indigenous authorities. Of these, around 60-70 percent were successfully resolved through the customary deliberation mechanism without leading to a formal divorce, while the other 30-40 percent were still continued to the Sharia Court after going through the customary mediation process.<sup>34</sup>

Geuchik Syahriyal explained that customary institutions always strive for peace as the first step. He stated: "*Whenever there is a couple who has problems, we call both of them. If we can refer to it, we will try to deliberation first. If we can't do it, then we will help make a customary certificate to be brought to the Syar'iyah Court.*"<sup>35</sup> This statement shows that customary institutions function as social filters that extend the space for dialogue before the final decision is taken.

This role as a social filter is very important in the context of communal societies such as Lhok Dalam. The local community tends to view the resolution of domestic problems through customs as a more respectable way than directly taking the case to court. The settlement of customary is considered to be able to maintain family dignity and social honor (meupham), as well as prevent conflicts from developing into hostilities between families.<sup>36</sup>

The effectiveness of customary institutions is also reflected in the level of community acceptance of the results of customary mediation. Based on an interview with Tuha Peut Hasan Basri, most couples who underwent the customary mediation process accepted the results with open arms and maintained good relations after resolving the conflict. He said: "*Our goal is not only to unite, but also to keep even if we separate, it does not become hostility. Customs teach separation well.*"<sup>37</sup> This shows that the success of customary institutions is not only measured by preventing divorce, but also by its ability to maintain social relations after the conflict is resolved.

The effectiveness of customary institutions in Lhok Dalam is supported by a number of social and cultural factors. First, the level of public trust in traditional leaders and religious leaders is still very high. Figures such as Imam Abdurrahman Village had a strong spiritual influence in shaping the moral consciousness of the community. In his interview, he said that many couples have abandoned their intention to divorce after receiving religious advice on the responsibilities of husband and wife in Islam.<sup>38</sup>

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<sup>33</sup> Rukmana, *Customary Institutions and Social Conflict Resolution* (Bandung: Refika Aditama, 2018), 55.

<sup>34</sup> Interview with Geuchik Syahriyal, Lhok Dalam Village, East Aceh.

<sup>35</sup> Ibid.

<sup>36</sup> Syahrizal Abbas, *Mediation in the Perspective of Customary Law* (Jakarta: Kencana, 2011), 141.

<sup>37</sup> Interview with Tuha Peut Hasan Basri, Lhok Dalam Village.

<sup>38</sup> Interview with the Imam of Abdurrahman Village, Lhok Dalam Village.

Second, the process of resolving customs is family and relatively closed, so that it does not cause embarrassment in front of the wider community. The culture of malee like gampong makes couples prefer traditional deliberation rather than open court processes. Third, customary settlement costs are very low and often even at no cost, in contrast to formal legal processes that require administrative costs and long time. Fourth, the involvement of religious leaders in each stage of mediation adds religious weight to customary decisions, making them easier to accept by the parties.<sup>39</sup>

However, behind this relatively high level of effectiveness, there are a number of obstacles that affect the performance of customary institutions. First, customary decisions do not have permanent legal force. If one of the parties does not comply with the agreement, the customary institution does not have a coercive mechanism to enforce it. Second, the lack of documentation of mediation results makes it difficult to track the success data of customary institutions administratively and academically. Third, the mediation skills of traditional leaders have not been standardized because most of them have not received modern mediation training or an in-depth understanding of positive law. Fourth, complex cases such as domestic violence (KDRT) often cannot be resolved customarily and must be transferred to formal legal institutions.<sup>40</sup>

In practice, the effectiveness of customary institutions can also be seen from the gradual settlement mechanism implemented. The process begins with a report from one of the parties to the keuchik or tuha peut, followed by the summoning of both parties to sit together in a deliberative forum. Initial meetings are usually exploratory in nature to dig into the roots of the conflict and find common ground. If the conflict is minor, the mediation process can immediately end with peace (islah).

If the conflict is severe, the process is continued in several stages. Couples are usually given a cooling-off period (tareh jak meupakat) for a few days before a follow-up meeting. At this stage, religious leaders take a spiritual approach to soothe emotions and foster moral awareness. This phased approach has proven effective in suppressing the escalation of conflict and preventing hasty divorce decisions.

In cases that cannot be resolved, customary institutions prepare minutes of mediation and issue customary certificates as a moral basis to continue the process to the Syar'iyah Court. Thus, customary institutions not only play a role in preventing divorce, but also regulate the divorce process to take place with dignity and minimal social conflict.

Referring to Richard M. Steers' theory, the effectiveness of customary institutions in Lhok Dalam Village can be explained through three main indicators. First, the achievement of the goal, namely the success of resolving 60-70 percent of domestic conflicts without divorce. Second, social acceptance, which is reflected in the attitude of the community who accept the results of customary mediation voluntarily. Third, sustainability, namely the consistent use of customary mechanisms to date.<sup>41</sup>

From the perspective of legal sociology, this condition can be understood as a form of living law, which is a law that lives because it is obeyed by the community.<sup>42</sup> In addition, T. Surya Reza emphasized that the effectiveness of Acehese customary institutions cannot be measured from the formal legal side alone, but from their ability to

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<sup>39</sup> Zainuddin Ali, *Sociology of Law* (Jakarta: Sinar Grafika, 2019), 121.

<sup>40</sup> Nurul Qamar, *Sociology of Law* (Makassar: Reflection, 2016), 154.

<sup>41</sup> Richard M. Steers, *Introduction to Organizational Behavior*, 90.

<sup>42</sup> Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (New York: Russell & Russell, 1962), 39.

bridge customary, religious, and state law values.<sup>43</sup> Thus, the effectiveness of customary institutions in Lhok Dalam Village lies not only in the final result in the form of peace, but also in the social process that builds community awareness and moral responsibility.

### **Custom Based Divorce Mediation Procedures and Practices**

The customary divorce settlement procedure in Lhok Dalam Village, Peureulak District, East Aceh Regency reflects a combination of Islamic legal values, Acehese customs, and local social practices that emphasize deliberation, peace, and safeguarding family honor. This customary mechanism does not stand as a formal justice system, but as a social means that functions to control domestic conflicts so that they do not directly lead to divorce. From the perspective of legal sociology, this practice can be understood as a living law that grows from the need of society to resolve conflicts in a dignified and contextual manner.<sup>44</sup>

Based on the results of field interviews, the process of resolving customary began, when one of the parties, both husband, wife, and family member, reported a domestic conflict to the customary officials, especially Geuchik Syahriyal or Tuha Peut Hasan Basri. The report is generally submitted informally and behind closed doors, reflecting the character of the Acehese people who consider household issues as private matters that are not appropriate to be disclosed in the public sphere.<sup>45</sup> After receiving the report, the customary parties immediately invited both parties to attend the initial meeting which is usually held at the meunasah or at the keuchik house.

The first meeting serves as a stage of clarification and exploration of the problem. In this stage, traditional leaders together with the Imam of Abdurrahman Village tried to explore the roots of the conflicts that occurred, both economic, communication, family intervention, and moral issues. The approach used is persuasive and dialogical, where each party is given the opportunity to express their views without pressure. Traditional leaders and religious leaders then provide moral and religious advice as an effort to build awareness of household responsibilities and the social impact of divorce.<sup>46</sup>

If the conflict is considered to still have a chance to be resolved, customary institutions recommend that both parties undergo a cooling period (*tareh jak meupakat*) for three to seven days. This period is meant to dampen emotions and provide space for reflection for the couple. During this period, *gampong* imams or religious leaders carry out spiritual guidance separately to each party. This spiritual approach has proven effective in many cases because it touches on the moral and religious dimensions that are highly valued by the people of Aceh.<sup>47</sup>

If after the cooling period peace has not been achieved, customary institutions will hold further deliberations involving families from both parties. Family involvement is seen as important because domestic conflicts often do not stand alone, but are related to kinship relationships and broader social dynamics. In this stage, customary institutions affirm their position as neutral mediators, not as case deciders. The main purpose of deliberation is to find a fair common ground, both to refer back and to separate amicably (*islah*).<sup>48</sup>

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<sup>43</sup> T. Surya Reza, *Acehnese Customary Law in Modern Dynamics* (Banda Aceh: AJRC, 2024), 118.

<sup>44</sup> Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (New York: Russell & Russell, 1962), 39.

<sup>45</sup> Soerjono Soekanto, *Sociology of Law* (Jakarta: RajaGrafindo Persada, 2014), 88.

<sup>46</sup> Interview with Geuchik Syahriyal, Lhok Dalam Village, East Aceh.

<sup>47</sup> Zainuddin Ali, *Sociology of Law* (Jakarta: Sinar Grafika, 2019), 132.

<sup>48</sup> Syahrizal Abbas, *Mediation in the Perspective of Sharia Law and Customary Law* (Jakarta: Kencana, 2011), 97.

This mediation approach is in line with the concept of dispute resolution in Islamic law which places peace as the main goal before formal legal steps are taken. Syahrizal Abbas explained that mediation in the context of Islamic family law is not just a technical procedure, but a means of maintaining benefits and preventing greater social damage.<sup>49</sup> In traditional practice in Lhok Dalam, this principle is translated into a deliberation mechanism that prioritizes patience, empathy, and social responsibility.

If after several deliberations no agreement is reached, the customary institution prepares a customary minutes that contain the chronology of the problem, the mediation efforts that have been carried out, and the final agreement of the parties. If the final decision is to separate, the customary institution issues a customary certificate stating that the case has been handled customarily and can be forwarded to the Syar'iyah Court. This letter has no binding legal force, but serves as a moral and social basis for the parties to proceed with the formal legal process.<sup>50</sup>

This procedure shows that customary institutions are not intended to replace the role of the Syar'iyah Court, but rather as a pre-judicial stage that prepares the psychological and social conditions of the parties. With the customary process, divorce is not done in a hurry and emotionally, but through reflective stages that allow for peace or, if inevitable, a dignified separation. In this context, customary institutions act as a social buffer that reduces the negative impact of divorce.<sup>51</sup>

In terms of normative conformity, the practice of customary settlement in Lhok Dalam is in line with the values of Islamic law which emphasizes the peaceful and gradual resolution of conflicts. The approach of deliberation and moral advice reflects the ethical orientation of Islamic law that prioritizes the integrity of the family and social welfare. In addition, this traditional practice is also in line with the Acehese tradition that places the household as the main foundation of *gampong* life.<sup>52</sup>

A closed and familial process is a distinct advantage of the customary mechanism. In Acehese culture, maintaining social honor (*meupham*) is a highly upheld value. Settling domestic conflicts openly in court is often considered embarrassing and potentially damaging to a family's reputation. Therefore, customary mechanisms that are private provide a sense of security for couples to solve problems without excessive social pressure.<sup>53</sup>

However, from a formal legal perspective, customary settlement practices have a number of limitations. First, the results of customary mediation do not have binding legal force and cannot be used as a legal basis for divorce according to Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law which requires divorce to be carried out in front of a court session.<sup>54</sup> Second, customary institutions do not yet have a standardized official recording mechanism, making it difficult to conduct long-term evaluations of the effectiveness of customary mediation.

Third, in cases involving domestic violence (KDRT) or gross neglect, customary institutions often face limited authority. Without legal authority to provide protection to victims, especially women, customary settlements have the potential to ignore aspects of legal protection. A number of studies have shown that traditional approaches that

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<sup>49</sup> Ibid., 101.

<sup>50</sup> Interview with Tuha Peut Hasan Basri, Lhok Dalam Village, East Aceh.

<sup>51</sup> Satjipto Rahardjo, *Law and Society* (Bandung: Angkasa, 2009), 119.

<sup>52</sup> M. Jakfar Puteh, *Aceh's Socio-Cultural System* (Banda Aceh: Ar-Raniry Press, 2012), 74.

<sup>53</sup> Nurul Qamar, *Sociology of Law* (Makassar: Reflection, 2016), 162.

<sup>54</sup> Abdul Manan, *Islamic Law Reform in Indonesia* (Jakarta: RajaGrafindo Persada, 2006), 134.

overemphasize peace can be risky for victims of violence if not accompanied by adequate protection mechanisms.<sup>55</sup>

Despite these limitations, sociologically, customary institutions still play an effective role in controlling conflicts and preventing unnecessary divorces. The success of customary institutions is not measured by the number of cases that are formally resolved, but by their ability to maintain social harmony, morality, and community cohesion. In the context of Lhok Dalam Village, customary institutions function as a dialogue space that allows couples to be aware of the social consequences of every decision taken.<sup>56</sup>

The practice of customary divorce settlement in Lhok Dalam Village shows that customary values and Islamic law can go hand in hand as a humane and contextual conflict resolution mechanism. As long as customary institutions are able to maintain a balance between the values of peace and the protection of individual rights, these mechanisms will remain relevant as part of the family conflict resolution system in Aceh. Better integration with the formal legal system is an important step forward so that the role of customary institutions is not only socially effective, but also in line with the principles of legal certainty and justice.

## **CONCLUSION**

Based on the results of this study, it shows that customary institutions in Lhok Dalam Village have moral and social authority in handling divorce issues at the community level. This authority is exercised by traditional apparatus such as keuchik, tuha peut, and teungku imum through the mechanism of deliberation, provision of religious advice, and a family approach based on customary values and Islamic sharia that live in the community. Although customary institutions do not have the juridical authority to decide talaq or fasakh as the authority of formal judicial institutions such as the Syar'iyah Court, their existence is still recognized and respected by the community as an institution that serves as the starting door in resolving domestic conflicts. Therefore, it is necessary to strengthen the role of customary institutions through more systematic integration with the formal justice system so that customary-based mediation functions can run more effectively and in a more directed manner.

The role of customary institutions in resolving divorce cases is reflected in their ability to reduce domestic conflicts and prevent hastily divorces. Most of the cases handled can be resolved through peace efforts or at least directed to a well-conducted separation process without causing prolonged conflicts. The high level of public trust, the settlement process that is humane, does not require costs, and the ability to maintain family dignity make customary mechanisms more acceptable than formal settlement routes. However, the effectiveness is still social and moral because customary decisions do not yet have binding legal force in the country's legal system. Based on these findings, this study recommends the need to strengthen the legitimacy of customary institutions through regulations that provide clearer recognition of the results of customary mediation.

In addition, the procedures and practices for customary divorce settlement in Lhok Dalam Village show a relatively systematic mechanism, starting from community complaints, summoning parties, customary deliberations, providing religious advice, to referral efforts as a form of family reconciliation. If peace is not achieved, the customary institution facilitates an agreement to separate amicably and provides customary

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<sup>55</sup> Rika Saraswati, *Women and Family Conflict Resolution* (Bandung: Refika Aditama, 2018), 56.

<sup>56</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research* (Jakarta: RajaGrafindo Persada, 2014), 29.

information as a basis for the parties to continue the legal process to the Sharia Court. This practice shows that customary institutions function as a social filtering mechanism that keeps the resolution of domestic conflicts within the corridor of ethics, religion, and social harmony of the community. Therefore, this study recommends strengthening the capacity of indigenous leaders through family mediation training, formal recording of the results of customary deliberations, and the development of institutional synergy between customary institutions and judicial institutions to create a more effective and legally stable divorce settlement system.

### **ACKNOWLEDGMENTS**

The author would like to express his deepest gratitude to the two supervisors who have provided direction, guidance, and constructive input during the research and writing process of this article. The academic support, constructive criticism, and attention given greatly contributed to the refinement of the substance and quality of this writing. The author also expressed his appreciation to all parties who have helped and supported the implementation of this research, so that this research can be completed properly.

### **FUNDING INFORMATION**

This research did not receive funding assistance from any party.

### **CONFLICTING INTEREST STATEMENT**

The author states that there is no conflict of interest in the implementation of the research or in the publication of this article.

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