

TRADITIONAL ROLES OF *PENGHULU* IN RESOLUTION OF DISPUTES: A COMPARATIVE STUDY FROM PASIR MAS, KELANTAN (MALAYSIA) AND INDRAGIRI HILIR, RIAU (INDONESIA)

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ABSTRACT

Keywords:

Traditional Role;
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The present exploratory research attempts to study the traditional roles of Malay head villagers or *Penghulu* in achieving resolution of disputes among their subjects. A comparative perspective is appreciated by looking into two different countries from two different provinces. Whilst, province of Pasir Mas, Kelantan was selected to represent Malaysia; province of Indragiri Hilir, Riau was chosen from many territories of Indonesia. Based on qualitative research method, proximately ten exclusive interviews are done with the selected head villagers. The respondents are well-known head villagers and participate actively in resolution of disputes among their subjects. Through the in-depth interviews, the practicality of dispute resolution by *Penghulu* in their traditional roles is investigated. With a view in finding concrete evidences on advantages of such dispute resolution processes, validation of the said practices with the established legal systems of both countries is affirmed.

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INTRODUCTION

Malays traditions and cultures are rich and vast. The said traditions and cultures are spread and can be found in majority countries of South East Asia, such as in Malaysia, Indonesia, Thailand, Philippines, and Brunei. Intertwined with religion and faith, the Malays traditions and cultures foster through the centuries and managed to survive the colonial era of imperialists. *Penghulu* or head villagers are usually appointed by the villagers or their subjects based on trust and confident. Religious and pious are considered as added values for their appointments. They are respected personals who capable to act as leaders at local level and have the ability to unite their subjects. With such capacity, in occurrences of disputes among the subjects, they are the first frontier to be referred to in resolving the disputes.

Through the advanced of time and modernity, it is imperative to know as research objectives: (a) whether the traditional roles of *Penghulu* in resolving disputes among their subjects are still in practice or not. Even if it is practiced, it is important to know as to (b) what extent such practices are applicable and relevant to current modern surrounding. Additionally, (c) it is crucial to know in what manner the process of resolving the dispute is conducted by the *Penghulu*. By having such in mind, a comparative approach is appreciated here by looking into two different provinces of two different countries from South East Asia. The selections are made based on vast populations of Malays and their strong dependency to Malays traditions and cultures. The province of Pasir Mas from State of Kelantan is chosen to represent a territory from Malaysia and province of Indragiri Hilir, Riau is selected to represent a territory from Indonesia. This present research is an attempt to reveal the extent of relevancy of such practices (if any) and its suitability in order to support the current established legal systems for both of the countries i.e. Malaysia and Indonesia.

In manner of presentation, this research is organized based on the following sections: section one provides the introduction of the research. Section two captures the relevant literature review; section three contains the details of qualitative research method which consists of in-depth interviews with several *Penghulu* who are experienced, prominent and famous in the selected provinces for resolving disputes among their subjects or villagers. Section four presents the analysis of overall findings of the research. Last but not least, section five provides conclusion and relevant recommendation(s) of the research.

LITERATURE REVIEW

The heads of villagers or *Penghulu* is the main leaders for villages. Usually these villages can have minimum of 50 to 200 families of villagers and with maximum of 200 to 500 families. The existence of administration system of *Penghulu* or head villagers at local level can be traced as early as 1600s. However, researchers such as Bastin and Winks credibly believe that the said system is already existed even prior to such date. Hickling notes that such practices are applied throughout generations of Malays, and methods of alternative dispute resolution such as mediation and conciliation are rampantly practiced by *Penghulu* in resolution of disputes among their subjects. Such methods are considered as natural processes and formed part of their traditions and cultures in occurrences of disputes.

Motivated by Islam as their religion which highly influences their traditions and cultures, Syed Hassan and Cederroth's research proves a clear link between process of conciliation and *sulh* (the concept of dispute resolution in Islam), as applied in resolution of dispute in family law matters. While proving the existence of court system in accordance to Islamic law, Wan Muhammad explains the traditional roles of *Penghulu* in resolution of disputes among their subjects as evidenced from Malaysia, where she said:

“The Sultan stood at the top of the court hierarchy. He heard any dispute or case that was brought to his unlimited jurisdiction. He would seek advice from the Mufti or Kadi on religious matters. In fact, as early as the 1600s, most of the cases or disputes were handled by the Ketua Kampung or village headman as a devout Muslim in their respective villages. People approached the village headman because, among other things, they approved of the reconciliation method adopted by the headman in resolving societal problem”.

In relation to concept of *sulh* as applied in Islam, as investigated by Rashid and further confirmed by Oseni, there is no major differences in the methods of resolution of disputes and they are almost identical with modern alternative dispute resolution as applied today.

Similar with system of *Penghulu* in Malaysia, in Indonesia, *Penghulu* are known as authorized personals for welfare of local people and villagers. According to Muhamad Hisyam, before the independence of Indonesia, the Dutch administration empowers the *Penghulu* with authority of judges and they are acted as advisors to justice in deciding matters or to resolve disputes. Their traditional roles are intertwined with their positions as leaders for their subjects, Kadi (judges) and at certain

times, as *Kiai* or religious authority. They are known as *landraad* by the Dutch.

With the establishment of current legal systems as applied in both countries (especially after the independences), Malaysia is influenced with common law background; while, the legal system in Indonesia is highly influenced with civil law background. Under these formal establishments, the traditional roles of *Penghulu* are reduced to local leaders for their subjects and their authorities are limited to their responsibilities as approved by their subjects. In certain scenario, certain *Penghulu* are indirectly subjected to the authorities of local politicians who are motivated through their political affiliations and sponsorships for the villagers' welfares.

By referring to the literatures as provided above, it is evident that there are traditional roles of *Penghulu* in resolution of disputes among their subjects. Such practices are parts of Malays traditions and cultures, which motivated by religion and faith. Shared from a similar root of tradition and culture, acceptances of traditional roles of *Penghulu* in resolution of disputes can be traced, both in Malaysia and Indonesia. However, there is no clear indication for such practices to be existed under current established legal systems of both countries. Therefore, it is a genuine gap which this research attempts to fulfil accordingly and stands as new contributions for studies on dispute resolution for both, Malaysia and Indonesia.

QUALITATIVE RESEARCH METHOD

The qualitative research method is chosen for this investigation on the traditional roles of *Penghulu* in resolving disputes among their subjects. Such research method is selected due to its suitability in acquiring proper understanding for current reality of practices, while supported with easy technique of in-depth interviews with the selected respondents with an intention to obtain their knowledge, views, experiences and interpretations. It is also viable and flexible in collecting new information with two ways of communications (question and answer) in providing context and meaning for the research objectives.

As for sample design, the respondents are selected from *Penghulu* who have 5 to more than 15 years' worth of experiences in handling and resolving disputes among their subjects. They are officially appointed, famously known as credible *Penghulu* and actively participated in societal order of the villages or their subjects. By following the opinions of Cooper and Schindler, a representative sample of population is necessary to be selected for purposes of generalization and prediction, especially when the research is to examine practical aspects in reality of surroundings. Equally representing by five different *Penghulu* for each province from Malaysia

and Indonesia, all of them are Malays, males aged between 45 to 65 years old and Muslims by faith.

An in-depth semi structured face to face interview is completed by the researchers within period of one month. Steps as suggested by Sekaran are accordingly followed, where the questions are developed in accordance to the research objectives and they are notified to the selected respondents early before the actual interviews are done. This is essential in order to avoid any unnecessary time taking from the respondents' busy schedules. Open ended types of questions are employed, with total duration for each interview is done between 15 to 30 minutes. Approximately, a total of 5 hours is spent for the entire interviews. In relax manners, the selected respondents are motivated and encouraged to share their thoughts concerning to the questions freely in relation to their experiences, knowledge, practices and faith. Audio recorded are used for the interviews as long as it is consented by the respondents. Notes are taken as written records during the processes of interviews. This is done to ensure conformity of information as obtained from the respondents. The data is organized based on the developed questions by looking into the answers' pattern from the respondents, either on differences or similarities. Later, the data is reviewed and prepared for data integration and analysis. Caught under ethical requirements, the identities of the respondents are treated as confidential.

The collected data from the respondents are analysed by using content analysis method. For data integration and analysis, these following steps are followed: (a) the obtained data are examined, analysed and categorized by referring to the research objectives; (b) the process of coding is completed for the entire data. This is important to secure the confidentiality of respondents' backgrounds. Example: codes of R1, R2, until R10 are used to represent the respondents. Then, (c) constant comparative analysis of data as proposed by Glaser and Strauss is accordingly followed. Boeije states that such constant comparative analysis is advantageous for purposeful approach, such as in reaching the research objectives as done this research. (d) The themes or issues (which relevant to research objectives) are generated and derived from the collected data which consistently portrayed the respondents' experiences, knowledge, practices and faith. (e) The findings of the investigation as completed from the interviews are organized properly.

FINDINGS AND ANALYSIS

Based on the research objectives, there are six keys themes or issues which are generated and derived from the collected data. The obtained themes are: (i) whether the traditional roles of *Penghulu* in resolving disputes among their subjects are still existed or not; (ii) whether they are referred

as first choice by their subjects in resolution of disputes; (iii) what is the process which commonly used in their resolution of dispute; (iv) whether such resolution of disputes can be considered as part of formal legal system; (v) what are the considerations given by the *Penghulu* in deciding the resolution; and (vi) whether there is any advantage or benefit to the subjects or villagers that refer their disputes with the *Penghulu*. The analysis from the data and the findings are presented as follows:

Whether the traditional roles of *Penghulu* in resolving disputes among their subjects are still existed or not:

Majority of the selected respondents are in agreement that there is existence of traditional roles of *Penghulu* in resolving disputes among the villagers or subjects. The disputes are not necessary happened within the boundaries of the villages. It is found that as long as the *Penghulu* are requested by any members of the villages to resolve occurrence of dispute, then the *Penghulu* are responsible to fulfil such request as performing part of their duties and responsibilities in keeping the peace for their subjects. There are variety of the disputes which complained by the villagers to the *Penghulu*, which may cover civil and criminal matters. Examples for such complaints are: loss of property, damage to property, family matters such as elopement of young teenagers, rape, and divorces,

Whether the *Penghulu* are referred as first choice by their subjects in resolution of disputes:

In appreciation of the nature of dispute resolution processes, the choice is left for the villagers or subjects to select whether they want to refer the dispute to the *Penghulu* or not. There is no compulsion made upon the villagers to submit themselves to the dispute resolution process as available for them based on the traditional roles of *Penghulu* in resolving disputes among the villagers or subjects. The villagers are free to go and ask assistances from any relevant authorities as established under the current legal systems such as from police officers or court process. These can be done by making a simple police report or filing a lawsuit in court. Of course, they have to finance themselves for such processes.

As for those poor and uneducated villagers, it is found that they are usually more inclined to refer their disputes with their responsible *Penghulu* first for resolution of disputes or just for a mere advice. This is done without any payment at all. The *Penghulu* is willing to assist the villagers as part of performing his duties and to fulfil his role. In Indragiri Hilir of Riau Province, Indonesia, there is a specific law known as Law No.6/2014 which authorizes the *Penghulu* to resolve any disputes between the villagers. The said law also acknowledges the *Penghulu* as a protector and mediator in resolving problems in the villages with the objective of reaching agreement between the disputing parties. As applied in Pasir Mas, Kelantan, Malaysia, when the disputing parties who already made a reference to the authority such as the police; suddenly want to refer to the

Penghulu for resolution of disputes, a formal letter with a formal seal and signature from the *Penghulu* is issued to the police for record when the disputing parties manage to reach the resolution. With such formal letter from the *Penghulu*, the authority considers the dispute is resolved. However, when the court is involved such as by way of filing a claim, the resolution as achieved between the disputing parties with intermediary of the *Penghulu* will not negate the court's process. The disputing parties must themselves make official withdrawal of the case in the court. Or, the court may strike out the case when it is already lapse in time based on the Rules of High Court 2012.

Common process which is used in the *Penghulu*'s resolution of dispute:

Based on the research conducted in both of the stipulated area in Malaysia and Indonesia, it is found that the *Penghulu* utilize a combination of advice, negotiation, mediation and conciliation processes in reaching appropriate and necessary resolution of dispute between the disputing parties. A specific term of *musyawarah* is used in Indragiri Hilir, Riau for such processes. The said processes used are similar with application of *sulh* under Islamic law. With their advanced skills in communication and well-versed knowledge in relation to the villagers' personalities and backgrounds, as well as the high respect given to them as the *Penghulu*, confrontation and negative emotions such as anger between the disputing parties manage to be set aside; while, proper resolution is discussed between the involved parties. There is no written record made for any of the resolution of dispute's sessions. In event of resolution of dispute reached between the disputing parties, they become witnesses towards themselves with the present of the *Penghulu* as negotiator, mediator and conciliator. Intertwined within the session of resolution of dispute made by the *Penghulu*, the disputing parties are reminded to commit themselves to good deeds as promote by Islam as their religion and fear to Allah the Exalted.

Whether such resolution of disputes by the *Penghulu* can be considered as a part of formal legal system:

Such resolution of disputes as done by the *Penghulu* is considered as informal process by majority of the *Penghulu*. Since, it is an informal process of dispute resolution; they do not consider such process as a part of formal legal system. Moreover, there are no written records made. Witnesses are exempted in the session of resolution of dispute made by the *Penghulu*. The *Penghulu* are also not responsible to attend as a witness before a court of law for any of the disputing parties in relation to any evidence presented during the resolution of dispute's session. In refusal of the parties to accept the resolution of dispute as made by the *Penghulu*, the said session of resolution of dispute is treated as confidential and private. Even, if the *Penghulu* is called before the court of law, any evidence or

confession made in front of the *Penghulu* is fall under rule of hearsay evidence.

Considerations which are given by the Penghulu in deciding the resolution

In deciding the resolution of dispute between the disputing parties, the main consideration which is considered by the *Penghulu* is the best interests of both of the parties, while balancing such interests in fair manner for sake of reaching the resolution. Other considerations are basically depended on the nature of the disputes as presented before them. For examples: (a) in a case of theft happened between the villagers, the thief must accordingly return the stolen good or pays the value of the good to the rightful owner. The return of the stolen good is placed as main consideration for this case. (b) In case of elopement by young couple, the security and welfare of the couple are given as priority consideration in order to save them of angry families from both sides. (c) In a domestic violence dispute in a family, where the wife is injured by the husband, a serious warning is given towards the husband with safety of the wife as a priority consideration. If the serious warning is ignored, the wife is advised to file a complaint to the police and *Shariah* court. However, when the dispute becomes serious such as murder which disturb the harmony of the entire village, the *Penghulu* or other villagers (who will inform the *Penghulu* afterwards) usually will contact the relevant authorities (such as police) for further actions.

Advantages or benefits to the subjects or villagers that refer their disputes to the Penghulu's resolution of dispute

The villagers or subjects who refer their disputes to the *Penghulu's* resolution of dispute can gain several apparent advantages or benefits. Economically, the villagers are not acquired to make any payment to the *Penghulu*, since it is a part of duties and responsibilities of the *Penghulu* to take care of and make peace between their subjects. The resolution of disputes can be achieved in time effective manner. Emotional risks between the disputing parties can be avoided, while securing their dignities and maintaining their good relationships (*silaturrahim*) with each other by having proper discussion in reaching the resolution of their disputes. It is flexible without any requirement for procedures and technicalities and simple in sense of the casual manner where the disputing parties can express their feelings and problems.

CONCLUSION AND RECOMMENDATION

From overall findings of this exploratory research, the research objectives are essentially affirmed. The traditional roles of *Penghulu* in resolving disputes among their subjects or villagers are still in practice by the Malay societies in Pasir Mas (Kelantan, Malaysia) and Indragiri Hilir (Riau,

Indonesia). As to the extent of such practice, it is considered as informal dispute resolution process where the *Penghulu* act as negotiator, mediator and conciliator. And, in certain extent, the *Penghulu* also placed as the advisor in resolving the dispute. However, due to its informal nature, such process cannot be considered as part of formal legal system; yet, it is relevant in coping with current modern surrounding especially for a dispute resolution platform at the village's level. The dispute resolution processes as used by the *Penghulu* are similar with modern alternative dispute resolution processes such as mediation, negotiation and conciliation. And, at the same time, they have similar values with the concept of *sulh* as acknowledged under the *Shariah*.

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