

Participation of the Acehnese Indigenous People in the Formation of Legislation

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Abstract

This journal discusses the participation of the Aceh traditional society in the formation of laws and regulations in Nanggroe Aceh Darussalam. Aceh is a regional government that has a special autonomy related to one of the distinctive characteristics of using Islamic Sharia in forming its policies. Article 96, paragraph 1, of Law Number 13 of 2022 is the legal basis for the public to participate in the formation of statutory regulations. Public participation in the formulation of legislative regulations is the implementation of the objectives of Indonesia for the well-being of the entire Indonesian people. Seeing this, problems arise regarding how to apply Acehnese customary law in regional regulations and the participation of the Acehnese traditional community in the formation of regional regulations. The research method used in this writing is normative juridical, by examining library materials or secondary data. This research explains that the application of customary law in Aceh in regional regulations is called qanun, which is based on Islamic sharia. Then, Ulama and traditional institutions have an important role and certain authority in the formation of laws and regulations.

Abstrak

Jurnal ini membahas tentang partisipasi Masyarakat adat Aceh dalam pembentukan peraturan perundang-undangan di Nanggroe Aceh Darussalam. Aceh merupakan satuan pemerintahan daerah yang bersifat khusus atau istimewa terkait dengan salah satu karakter khas menggunakan syariah Islam dalam melakukan pembentukan kebijakannya. Pasal 96 ayat (1) Undang-Undang Nomor 13 Tahun 2022 menjadi dasar hukum bagi masyarakat agar dapat berpartisipasi dalam pembentukan peraturan perundang-undangan. Partisipasi Masyarakat dalam pembentukan peraturan perundang-undangan merupakan implementasi dari tujuan Indonesia untuk mencapai kesejahteraan seluruh rakyat Indonesia. Dengan melihat hal tersebut muncul permasalahan tentang bagaimana penerapan hukum adat aceh dalam peraturan daerah dan partisipasi Masyarakat adat aceh dalam pembentukan peraturan daerah. Metode penelitian yang digunakan dalam penulisan ini adalah yuridis normative, dengan meneliti bahan pustaka atau data sekunder. Hasil dari penelitian ini menunjukkan bahwa penerapan hukum adat di Aceh dalam peraturan daerah disebut qanun yang berlandaskan syariah Islam. Kemudian, Ulama dan Lembaga Adat memiliki peran penting dan wewenang tertentu dalam pembentukan peraturan perundang-undangan.

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1. BACKGROUND

In the Preamble to the 1945 Constitution of the Republic of Indonesia, one of Indonesia's goals was to realize general prosperity for all Indonesian people without exception. To realize these ideals, policies are needed in the form of legislative products. The People's Representative Council (DPR), Regional Representative Council (DPD), and the Government as legislative institutions in the process of forming laws should involve public participation, as well as during the implementation and supervision of these laws. In this way, the aim of establishing laws to realize general welfare can be achieved.

Community participation in the context of the formation of laws and regulations actually aims to ensure that the community has broad opportunities and access to express aspirations which are their rights, obligations and responsibilities as citizens. Besides that, participation can improve the community's ability to monitor the public. Public supervision aims to ensure that regulators in making policies do not act arbitrarily in using their power and authority.

Indonesia as a legal state has an obligation to guarantee the creation of shared prosperity in people's lives through laws made by the DPR, DPD and the Government regarding economic, social, cultural, legal, educational and political interests. The Indonesian legislative system is a series of written legal elements that are interrelated and integrated and cannot be separated from each other, based on the philosophy of Pancasila and the 1945 Constitution.

There are three (3) types of legal force, namely juridical, sociological and philosophical. Juridical validity is fulfilled if a law meets the formal requirements for the formation of a law. Sociologically valid is fulfilled if a law applies effectively, which means that the regulation is accepted and implemented by society regardless of the fact that the regulation was formed to fulfill formal requirements or not. Meanwhile, philosophical validity is fulfilled if a legal product meets the legal ideals of establishing a regulation. Ideally, order will be created if a law that meets formal requirements is accepted and implemented by the community, and fulfills the legal ideals of establishing the law.

The success of implementing regional autonomy cannot be separated from the active participation of community members. Regional communities, both as a unified system and as individuals, are a very important integral part of the regional government system, because in principle the implementation of regional autonomy is aimed at creating a prosperous society in the region concerned. Therefore, the responsibility for administering regional government is not only in the hands of the Regional Head, DPRD, and implementing officials, but also in the hands of the regional community.

In principle, customary law protects and regulates the rights and obligations of local indigenous communities. Meanwhile, the philosophical aim of customary law aims to maintain and create balance and ensure that human life can run well and smoothly. The compliance of customary communities with customary law as a guide to life is a very high value of legal effectiveness, because customary law was born based on procedures that have grown and developed, been agreed upon and used as a reference in living life together in their customary community.

The provisions governing public participation in the formation of statutory regulations are regulated in Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. Based on this Law, Article 96 paragraph (1) clearly states that the public has the right to provide input verbally and/or in writing at every stage of the Formation of Legislative Regulations. Then specifically, as an implementation of decentralization, the implementation of regional government is also regulated in Article 237 paragraph (3) which explains that the community has the right to provide verbal and/or written input in the formation of Regional Regulations.

Decentralization can basically be understood from 2 (two) perspectives. First, from a political perspective, decentralization is the transfer of power from the center to the regions in carrying out government functions. Then from an administrative perspective, decentralization is the granting of authority from higher government units to institutions, organizations or individuals at lower levels to plan, make decisions and regulate functions related to the public interest.

Since Indonesia was established as a sovereign country, customary law has occupied its own role and in its development, customary law has actually had a special place in the development of national law. Even in the formation of state law, the customs (often called local wisdom) that live in society are an important consideration in the formation of state law, both in the formation of laws and in the formation of regional regulations. The concept of legal pluralism no longer develops in the realm of dichotomy between the state law system on the one hand and the folk law system and religious law on the other. At this stage of development, the concept of legal pluralism places more emphasis on the interaction and existence of various legal systems that influence the operation of legal norms, processes and institutions in society.

Providing special autonomy for the special region of Aceh through a system of decentralization from the central government to regional governments, so that the province of Aceh remains part of the unitary state of the Republic of Indonesia. Law Number 11 of 2006 concerning the Government of Aceh is a statutory regulation that is equivalent and at the same level as regional regulations in managing their own region according to community initiative.

The central government's efforts to provide special autonomy for regions, especially Aceh, are to maintain nationalism so that Aceh continues to uphold the Unitary State of the Republic of Indonesia (NKRI) by looking at the ideals of Pancasila and the Constitution (UUD). The purpose

of this writing is to understand community participation in the formation of laws and regulations, and community involvement in the implementation and supervision of laws.

Sharia-based customs are two important elements in Acehese society that cannot be separated. Talking about customs, in itself, speaks about and involves sharia law. Islamic law has crystallized and animated the Acehese indigenous people not only in discourse, but also in the moral awareness and application of the entire community.

The ratification of Law No. 44 of 1999, Law of the Republic of Indonesia Number 18 of 2001 and Law of the Republic of Indonesia Number 11 of 2006. It is the legal umbrella for implementing Islamic law in Aceh. Moreover, with the promulgation of Law no. 11 of 2006 concerning Aceh Government has provided a stronger foundation for fostering traditional life and customs in the Province of Nangroe Aceh Darussalam.

Based on the background description above, the author is interested in writing this journal with the title "Participation of the Acehese Indigenous People in the Formation of Legislation".

2. FORMULATION OF THE PROBLEM

Based on the background description above, the main problem in this paper is

1. How is Acehese customary law implemented in the Aceh Regional Regulations?
2. What is the role of the Acehese traditional community in the formation of Aceh Regional Regulations?

3. RESEARCH METHOD

The type of research used in this writing is normative juridical, which means that this research refers to the analysis of legal norms with the aim of finding the truth based on scientific logic from the normative side, where research is carried out by examining library materials or secondary data. This research is also called library legal research, namely by studying books, statutory regulations and other documents related to this research.

The primary legal materials used in this research are:

1. Law Number 13 of 2022 concerning the Formation of Legislative Regulations.
2. Law Number 11 of 2006 concerning Aceh Government
3. Law Number 23 of 2014 concerning Regional Government

Meanwhile, secondary legal materials are based on theories, concepts, literature and legal journals related to the legal issues discussed in this research.

The research approach used in this research uses 3 (three) types of approaches, namely:

1. The statutory regulatory approach (statute approach),
2. Conceptual approach (conceptual approach), and
3. Analytical approach (analytical approach).

4. RESULTS AND DISCUSSION

4.1. Application of Acehese Customary Law in Aceh Regional Regulations

One of these societal arrangements is what is called custom. Etymologically, the term adat actually comes from Arabic which means habit. Another opinion says that the word custom comes from the Sangsengkerta language which consists of the words "a" meaning not and "dato" which means "material nature, thus custom is actually immaterial in nature which concerns matters related to the belief system. Apart from that, customs can also be seen from English as "habit, wont, custom, practice". In Javanese, the word adat is more commonly referred to as ngadat, similarly, Gayo people prefer to call adat with the word edet, meaning custom.

If you trace back its history, as C. Snouck Hurgronje said, the term customary law, which means customary rules, has long been known in Indonesia. During the Dutch colonial period, this law was better known as "adat recht". C. Snouck Hurgronje himself in his research in Aceh (1891-1892) defined customary law as "die rechtsgevolgen hebben" (custom which has legal consequences).

Apart from the definition of customary law above, Indonesian customary law experts also provide different definitions of customary law. This can be seen from the definition put forward by Soepomo, a professor of customary law who divides the definition of customary law into two parts. First, what he calls nonstatutory law. Namely, the law is mostly customary law and a small part is Islamic law. Customary law also includes law that is based on the judge's decisions which contain legal principles in the environment in which he determines the case. Customary law is deeply rooted and rooted in living traditional legal culture, because it embodies the real legal feelings of the people in accordance with their own nature. Second, what he calls unwritten law which is synonymous with customary law, law that lives as a convention in the state legal body (parliament) law that arises because of a judge's decision "judge-made law", law that lives as customary rules maintained in social life. city and village (customary law) all of this is called customary law.

The implementation of law in Aceh began with the founding of Islam and the birth of ulama in the realm of Pasai. The Islamic Kingdom of Aceh, which originates in the Pasai Ocean, has given birth to many prominent scholars in the archipelago. In the saga of Raja Pasai and Malay history, the names of several scholars are mentioned, including Nur al-Haq al-Masriqi and Abu Ishaq al-Maqrani, who are thought to have come from the Perlak kingdom.

Traditional institutions historically cannot be separated from applicable legislation, because these institutions have played an important role for the people of Aceh in resolving the various problems they face. Therefore, as an effort to preserve these traditional institutions, the Aceh government law has been reorganized so that Aceh's traditional institutions become legal and legally take an active role in carrying out various affairs that are needed by the community. What is meant by Traditional Institutions in the Aceh Government Law Article 98 paragraph (3) includes:

- a. Aceh Traditional Council;
- b. imeum mukim or other names;
- c. imeum chik or another name;
- d. keuchik or other name;
- b. tuha peut or another name;
- c. tuha lapan or other names;
- d. imeum meunasah or another name;
- e. keujreun blang or other names;
- f. Panglima Laot or another name;
- g. glee handler or other name;
- h. peutua seuneubok or another name;
- i. Haria Peukan or another name; And
- j. syahbanda or another name.

The implementation of Islamic Sharia in Aceh cannot be separated from the role of these traditional institutions. These institutions have had quite broad authority for implementing laws regarding various problems faced by the people of Aceh.

The laws that were in effect before the implementation of Islamic Sharia was ratified in many cases refer to laws that were formed in society since a long time ago. These laws are implemented by existing institutions and are recognized by the community as a source of reference for implementing laws in various problems faced by local communities.

The people of Aceh are known as a society that has a distinctive and deeply rooted culture from the time of royal rule, the colonial period until the present. The Aceh Government Law explains, among other things, the role and authority of traditional institutions in Aceh. This law is an elaboration of one of the special features and Special Autonomy of Aceh. Thus, the customs referred to in this Law are customs that are in harmony with Islam.

4.2. The Role of Acehese Indigenous Peoples in Forming Aceh Regional Regulations

The history of Aceh and Indonesia has placed the people of the Veranda of Mecca in a unique position, and this uniqueness is even more so in matters of religion. Islamic Sharia for the people of Aceh is an inseparable part of their customs and culture. Almost the entire structure of people's daily lives is measured by the standards of Islamic teachings, in the sense of referring to religious beliefs, although perhaps with understandings or interpretations that are not always appropriate and relevant. Herein lies the psychological content of the importance of implementing Islamic law for Muslim communities. And this is also part of the reason why the implementation of Islamic law in Aceh will greatly determine the future of this region.

The implementation of Islamic Sharia and special autonomy provides additional matters for the Aceh Government. Article 16 paragraph 2 of Law of the Republic of Indonesia Number 11 of 2006 concerning the Government of Aceh emphasizes: Other mandatory matters which fall under the authority of the Government of Aceh are the implementation Aceh's special features include:

- a. organizing religious life in the form of implementing Islamic law for its adherents in Aceh while maintaining harmony between religious communities;
- b. implementation of traditional life based on the Islamic religion;
- c. providing quality education and adding local content material in accordance with Islamic law;
- d. the role of ulama in determining Aceh policy; And
- e. organizing and managing the Hajj pilgrimage in accordance with statutory regulations.

As a privilege, of course this opportunity must be grateful for and make the best use of it, especially regarding the role of the community in determining Aceh policy. More specifically, one real form of policy determination is the preparation of regional regulations which are a form of implementation of Islamic Sharia. This shows the important role of the Acehese traditional community in forming regional regulations to enable Muslims in Aceh to continue to practice their beliefs in various forms of government.

Referring to historical data from the time of the Aceh Darussalam Sultanate, it is clear that the ulama played a role as advisors to the king and Chief Justice of the Supreme Court. Apart from that, Acehese ulama were also involved in drafting the constitution in the Kingdom of Aceh Darussalam. Looking at the role of ulama in historical records, it can be believed that this spirit will be passed down as one of the unique elements of Aceh today.

Based on Law no. 11 of 2006 concerning the Government of Aceh, Islamic Sharia implemented in Aceh includes *aqidah*, *syar'iyah* and morals as regulated in Article 125 paragraph (1). The Islamic Sharia includes worship, *ahwal al-syakhshiyah* (family law), *muamalah* (civil law), *jinayah* (criminal law), *qadha'* (judiciary), *tarbiyah* (education), *da'wah*, preaching and defense of Islam. Then in the same article paragraph (3) further provisions regarding the implementation of Islamic law as referred to in paragraph (1) are regulated by the Aceh Qanun.

The term *qanun* in Arabic is the verb form of *qanna*. This is as explained by Ridwan, in Arabic the verb *qanun* is *qanna* which means to make law (to make law, to legislate). In its development, the word *qanun* means law, regulation, and statute.

Etymologically, the word *qanun* means rules that apply according to certain predetermined rules. Meanwhile, etymologically, the word *qanun* means a collection of rules that regulate public relations where, if necessary, someone will be forced by the government to follow these rules.

From the explanation above, it can be interpreted that the *qanun* referred to in Article 125 paragraph (3) of the Aceh Government Law is a Regional Regulation. So, the implementation of Islamic sharia in the Acehese traditional community will be regulated later in Regional Regulations.

The role of ulama as equal partners to the government is not something new for the people of Aceh. The success of the mission to convert the Hindu community in Aceh is an indicator of how big the role of the ulama is, so that they are highly respected by the community. The intensive involvement of ulama in society causes ulama to receive honor that even exceeds the glory of a king. Another proof of the large role of ulama is the fact that settlement areas were formed as a result of the encouragement of the needs of religious practice.

The involvement of ulama during the Aceh Darussalam Kingdom enabled the realization of religious norms in community customs in Aceh. The combination of religion and custom also means the integration of all government implementing agencies. Presumably this assumption is what led James T. Siegel to the conclusion that Aceh is one unit which consists of uleebalang, ulama, farming communities, and sultans. They are a group of people who have their own views originating from Islam and custom.

The description above shows the integration of religion and customs in the consciousness of the Acehnese people. This awareness gives rise to the assumption that implementing customs will mean implementing sharia which includes aqidah, syar'iyah and morals as regulated in Article 125 paragraph (1) of the Aceh Government Law.

The explanation above shows the traditions of the Acehnese people who place Islam as the foundation of the prevailing culture and politics. In conditions like this, ulama are the most important element who make a very significant contribution to efforts to formulate policies on Islamic themes.

In the General Provisions Chapter, Article 1 number 16 of the Aceh Government Law, it is stated that the Ulama Consultative Council, hereinafter abbreviated to MPU, is an assembly whose members consist of Muslim ulama and intellectuals who are working partners of the Aceh Government and the DPRA. Then in number 17 it is stated that the Wali Nanggroe Institution is a traditional leadership institution that unifies society and preserves traditional and cultural life.

From the explanation above, the participation of the Acehnese traditional community in the formation of laws and regulations is closely related to the role of Islamic scholars and scholars in practice. However, the Law on Aceh Government does not at all mention the role of the MPU in forming legislative regulations, including when outlining regulatory duties by the legislature. Even when explaining the duties of the MPU in article 140, the MPU is only tasked with:

- a) giving fatwas, whether requested or unsolicited, on matters of government, development, community development and the economy; And
- b) provide direction to differences of opinion in society on religious matters

Based on this article, the role of ulama representing the Acehnese community is still not sufficient in forming government policies. Apart from the MPU and the Wali Nanggroe Institution, Article 98 of the Law on Aceh Government also regulates Traditional Institutions which function and act as vehicles for community participation in the administration of the Aceh Government and district/city governments in the fields of security, peace, harmony and public order.

5. CONCLUSION

Based on the discussion outlined above, it can be concluded that Nanggroe Aceh Darussalam as one of the Special Regions with Special Autonomy has customary law that is in line with Islamic law sharia. The participation of the Acehnese Indigenous People in the Formation of Legislative Regulations is closely related to the role of Islamic scholars and scholars in Aceh as policy makers with Islamic themes, as well as traditional institutions which function as a place for the community to participate in the formation of Qanuns/regional regulations for the Aceh government. The role of Islamic scholars and scholars in forming policies in Aceh is very necessary so that in forming laws and regulations the Aceh Government does not deviate

from Islamic sharia while still paying attention to Pancasila and the 1945 Constitution. Then traditional institutions as a vehicle for community participation in the formation Policy has an important role in enforcing Sharia, provided that it does not contradict the principles of Islamic law itself. This regulation of Islamic law and customary law is also a characteristic of Nanggroe Aceh Darussalam.

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