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Adjustment of Aceh Barat Daya district Qanun number 9 of 2012 concerning Gampong government after the enactment of law number 6 of 2014 concerning villages

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Abstract

Introduction: The Aceh Barat Daya District Government actually already has a Qanun on Gampong Governance, namely Qanun No. 9 of 2012 (which is called Gampong Government Qanun). However, with the issuance of Law No. 6 of 2014 concerning Villages, the Gampong Government Qanun needs to be adjusted.

Aims/Objectives: This research aims to find out what are the things that cause the Gampong Government Qanun to be adjusted to the Village Law and what things must be considered in adjusting the Gampong Government Qanun to the Village Law.

Methods: This research method is a normative research method based on a statute approach. In the context of legal research, this study can be classified as normative-dochtrinal research with a conceptual approach.

Result: The results of the research show that the Gampong Government Qanun needs to be immediately adjusted to the Village Law, this is because the Village Law contains several very fundamental changes, especially regarding the roles, duties and authorities of the Gampong Government. Therefore, if adjustments are not made immediately, the Qanun will not be effective.

Keywords: Penyesuaian, Qanun, Gampong Government, Villages Qanun

Introduction

Indonesia is a "Unitary State in the form of a Republic", ^[1] namely "an archipelagic country with the characteristics of the Archipelago with the location or boundaries of its territory, which are determined by law", ^[2] with the consequence that it has rights within the scope of its territory. Thus the Unitary State of the Republic of Indonesia (NKRI) is a sovereign state in the form of islands and is characterized by an archipelago that stretches its territory from Sabang to Merauke. The Republic of Indonesia consists of various tribes, languages, cultures and customs. Regarding the territorial boundaries and rights governing the NKRI, it is stipulated by law.

"The NKRI is divided into provincial regions, then each provincial area is further divided into regency and city areas, where each province, regency and city has regional administration which is regulated by law". ^[3] The use of the word "divided" in the above article is a manifestation of the State of Indonesia as a unitary state. In the sense that basically the entire territory of Indonesia is a unit which is then divided into provinces. These provinces are further divided into districts or cities. The word "divided" is different from the word "consisting of" which can be interpreted as something that was initially separated and then combined. The division of the region into provinces and districts/cities with administrations in each area is a confirmation of regional autonomy.

"The concept of a unitary state, is a form of state that is single in nature and is not composed of several countries that have sovereignty, are not divided, and a central government holds regional authorities". ^[4]

¹ Pasal 1 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

² Pasal 25A Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

³ Pasal 18 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

⁴ <https://sumber.belajar.kemdikbud.go.id/repos/FileUpload/Makna%20NKRI%20-%20DWI/ Bentuk-Negara-dan-Pemerintahan-NKRI.html>.

Thus the principle of a unitary state is that the state is not composed of several states, each of which has its own sovereignty, so that the state is not divided and the full authority rests with the central government. However, the NKRI recognizes and respects special and special regional government units.

The conception built into the division of regions and local government in Indonesia as stipulated in the constitution within the framework of the *eenheidsstaat* or unitary state is that the division of Indonesia's regions is divided into large regions and small regions where the deliberative system is highly maintained and remains the main basis for administering the state government system and maintaining rights of origin in special areas.^[5]

The most basic element in local government in Indonesia within the framework of a unitary state is the village as well as the village government which is an integrated part. Even though the emphasis on autonomy is placed at the district/municipality level, in essence this independence must actually start from the government at the smallest or lowest level, namely the Village (in Aceh Province it is known as Gampong).^[6] This is understandable, because when viewed in more depth from a historical perspective, the village (gampong) is the most concrete form of a nation.^[7]

Village Autonomy (Gampong) is a system of village governance (Gampong) where the village (Gampong) is a legal community unit that lives in an area and has the authority to manage and regulate the interests of the local community, based on their own origins and customs and also based on the origin of the national government and is in the district area. The meaning of Village Autonomy (Gampong) for village communities (Gampong) is involvement and freedom in managing and developing their village in accordance with the customs, culture, norms and values and potential of the local village (Gampong).^[8]

The enactment of Law no. 6 of 2014 concerning Villages (hereinafter referred to as the Village Law) further strengthens the implementation of village administration (Gampong) based on village autonomy (Gampong). Village administration (Gampong) is defined as administering government affairs and the interests of the local community within the NKRI government system. The village government (Gampong) is run by the village government (Gampong) which consists of the village head assisted by village officials (Gampong Devices) as elements of the village administration (Gampong). The role of the Village Head (in Aceh it is known as the *Keuchik*).

The Village Law has in fact brought about very basic changes to the roles, duties and authorities of the village government (Gampong). The consequence is that the local government must immediately make changes to the laws and regulations (Regional Regulation or in Aceh it is called Qanun) regarding Village Government (in Aceh it is called Gampong Government), in accordance with the Village Law.

Likewise with the Aceh Barat Daya District Government, with the enactment of the Village Law, adjustments to the

Gampong Government Qanun are in line with the Village Law. Thus the Southwest Aceh District Government, which previously had the Southwest Aceh District Qanun No. 9 of 2012 concerning Gampong Government (Qanun Gampong Government), the Qanun must be adjusted to the Village Law. If adjustments are not made immediately, the Qanun will be difficult to implement because there are several very fundamental changes, especially regarding the roles, duties and authorities of the Gampong Government.

Research Method

This research is a normative legal research based on a statute approach, namely by studying and analyzing the relationship between this Draft Qanun and several other laws and regulations that are related and relevant to the problem to be studied. In the context of legal research, this study can be classified as normative-doctrinal research with a conceptual approach. Through a conceptual approach, it will later refer to legal principles that can be found in the views of scholars or legal doctrines.

Then with the method of critical analysis (critical analysis) through a comprehensive analysis approach (comprehensive analysis), researchers will reveal not only aspects of imperfection, but also aspects of excellence (philosophically, sociologically, and juridically) and at the same time offer solutions to the object of the problem being studied. The type and source of data used is secondary data, which was obtained through literature study. The data analysis was carried out in a deductive manner, all existing data were interpreted and explained based on the prevailing theories.

Results and Discussion

An important thing that must be considered in the preparation of legal products in the form of laws and regulations (including Regional Regulations (Perda), in Aceh called Qanuns), must pay attention to the principles or general legal principles that apply in the hierarchy of a legislation. One of the principles is regulations a higher level is the basis or legal basis for lower level regulations or those below it (*lex superioe derogat legi inferiore*), namely a principle which states that laws of a higher level (*lex superioe*) overrule lower laws (*lex inferiore*). This principle is usually also referred to as the principle of hierarchy of laws and regulations.^[9]

According to Sudikno Mertokusumo, in the formation or preparation of a statutory regulation there are at least 3 (three) generally accepted legal principles that must be considered:^[10]

1. "*Lex superioe derogat legi inferiore*" which means that higher regulations overrule lower ones or are a hierarchical principle.
2. "*Lex specialis derogat legi generali*," is a principle which states that the rule of law that applies specifically (*lex specialis*) overrides the rule of law that applies in general (*lex generalis*). For example, in Article 18 of the 1945 Constitution, governors, regents and mayors must

⁵ https://www.mkri.id/public/content/infoumum/undang/pdf/Anotasi_86_No%206%20thn%20201-4%20Tng%20Desa%20rev%20budi%20final-.pdf

⁶ <https://jdih.kalteng.go.id/berita/baca/pemilihan-kepala-desa-dan-pandemi-corona-virus-disease-2019>

⁷ HAW. Widjaja, *Otonomi Desa Merupakan Otonomi yang Bulat dan Utuh*, Rajawali Pers, Jakarta, 2003, hlm.5.

⁸ <https://publikasi.fisip.unila.ac.id/index.php/JASP/article/download/13/3/http://repository.unmuha.ac.id/xmlui/bitstream/handle/123456789/535/09.%20BAB%20II.pdf?sequence=10&isAllowed=y>

⁹ https://id.wikipedia.org/wiki/Lex_superior_derogat_legi_inferior.

¹⁰ Sudikno Mertokusumo, *Mengenal Hukum (Sebuah Pengantar)*, Liberty, Yogyakarta, 2003, hlm. 35-36.

be democratically elected. This rule is general (*lex generalis*). Besides that, a provision is also regulated that in the context of respecting regional administrations that are special in nature (*lex specialis*), so that the privileges of regions whose governors are not democratically elected, such as the Special Region of Yogyakarta, are maintained.

3. "Lex posterior derogat legi priori", namely the new regulations apply and are equal, can shift the validity of the old legal rules. So the regulations that have been replaced with new regulations, automatically based on this principle the old regulations are no longer valid. Usually in laws and regulations it is explicitly stated that reflects this principle.

The application of the principle of "*Lex superiore derogat legi inferiore*" is the main requirement that cannot be neglected, because this is intended to maintain synchronization between regional regulations/Qanuns and national legal policies. The existence of this principle causes the law with a higher position to override the legal rules below it, or in other words, the lower level law must be in accordance with the provisions above it. Although in this case, it is emphasized that the use of this principle must also consider the aspect of equality with the specific Qanun that applies in Aceh Province.^[11]

Thus these basic principles form the basis for preparing the Draft Qanun relating to Gampong Government in Southwest Aceh District. Therefore, it is necessary to first identify the positive law in the form of regulations that are above the Qanun relating to Gampong Government. With this identification, it is hoped that full harmonization and synchronization efforts will be made to the draft Qanun which is drawn up with higher laws and regulations, which regulate either directly or indirectly regarding Gampong Government in Aceh Barat Daya District.

Referring to the goals of the Indonesian nation which are contained in the Preamble of the 1945 Constitution, all actions of the government or state administrators must refer to the realization of the national goals of the Indonesian nation. Therefore the policy of the Regional Government of Southwest Aceh District to form a Gampong Government Qanun, sociologically aims to realize the ideals of the Indonesian people, namely to create a prosperous and advanced society,^[12] especially the people of Southwest Aceh District.

With the Gampong Government Qanun, sociologically speaking, it will create prosperity in society, prosperity and justice as the goals of the Indonesian nation contained in the Preamble of the 1945 Constitution, because most of the Indonesian population and all their problems live in villages/gampongs. But so far, development has tended to be growth-oriented and is usually prioritized in cities. The economic resources that grow in the village/gampong area are taken up by greater powers, so that the village/gampong runs out of resources and causes an urbanization of village/gampong residents to move to the city. This condition creates injustice, poverty and underdevelopment which is always attached to the village/gampong. Therefore, with the

Gampong Government Qanun in Aceh Barat Daya District, the organization and work procedures of the Gampong Government are important to prove commitment in realizing a Village/Gampong Government structure that is able to realize Village/Gampong independence.

Thus sociologically, the existence of the Aceh Barat Daya District Qanun related to Gampong Administration in Aceh Barat Daya District will basically be more complementary and provide legal certainty, as well as guidelines for the formation of Gampong organizations or apparatus and work procedures for the Gampong Government and all Gampong Government stakeholders. in Southwest Aceh District.

Furthermore, from a sociological perspective, the establishment of the Southwest Aceh District Qanun on Gampong Governance concerns the interests of the wider community. Therefore the handling must be done wisely, planned and sustainable.

If it is related to the juridical basis used as the basis for the preparation of the Draft Aceh Barat Daya District Qanun regarding Gampong Governance, one of the legal provisions can be described, namely as contained in Article 118 of the Village Law, so that it can be read:

1. The current term of office of the Keuchik shall remain valid until the term of office expires.
2. The periodization of the Keuchik's tenure follows the provisions of the Village Law.
3. Members of the Village Consultative Council (in Aceh it is called Tuha Peut) will continue to carry out their duties until their membership term expires.
4. The membership periodization of Tuha Peut follows the provisions of the Village Law.
5. Gampong officials who do not have the status of civil servants continue to carry out their duties until the end of their term of office.
6. Gampong officials with the status of Civil Servants carry out their duties until their placement is determined as regulated by a Government Regulation.

Thus for Village/Gampong Officials who are not Civil Servants (PNS), their tenure follows regional regulations/qanuns at the time of their appointment as Village/Gampong Officials. Meanwhile, village officials with civil servant status continue to carry out their duties until their placement is determined.

After the existence of the Village Law, all regulations directly related to the village/gampong must comply with the Village Law as stipulated in Article 119 of the Village Law that: "All provisions of laws and regulations directly related to the Village must base and adjust the arrangement to the provisions of this Law." Therefore, legally speaking, the formation of the Southwest Aceh District Qanun on Gampong Governance must be formed immediately, because this is an urgent matter to be implemented.

Actually, Aceh Barat Daya District already has Qanuns on Gampong Governance, namely Aceh Barat Daya District Qanun Number 9 of 2012 Concerning Gampong Governance (Aceh Barat Daya District Gazette of 2012 Number 9). However, with the existence of the Regional Government Law and the Village Law, the Aceh Barat Daya District

¹¹ <https://icjr.or.id/prinsip-lex-superior-derogat-legi-inferiori-harus-digunakan-seluruh-peraturan-daerah-perda-harus-tunduk-pada-kuhp/>.

¹² Suhaimi, Darmawan, Analysis of the Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016 concerning Regency

Qanun is no longer in line with the development of the constitutional system of the Republic of Indonesia as well as developments or dynamics in society. Moreover, in Article 119 of the Village Law it is stated that: "All statutory provisions directly related to the Village must base and adjust their arrangements with the provisions of the Village Law."

As previously stated, the Village Law underwent fundamental changes regarding the roles, duties and authorities of the Gampong Government. Therefore the Qanun on Gampong Governance throughout Aceh Province, particularly in Aceh Barat Daya District, must be amended or established in accordance with the Village Law.

Thus it is clear that Qanun Aceh Barat Daya District No. 9 of 2012 concerning Gampong Government, it is necessary to make adjustments again in accordance with the Village Law. The adjustment of the Qanun must of course be carried out through the Southwest Aceh District Qanun, so that empirically as soon as possible the Southwest Aceh District Government needs to establish a Southwest Aceh District Qanun concerning Gampong Governance.

In establishing the Southwest Aceh District Qanun concerning Gampong Governance, the first thing that must be adjusted is the basic principles or principles of the Qanun, this can refer to the principles contained in the Village Law.

Based on the basic principles or principles contained in the Village Law, the formulation of the Aceh Barat Daya District Qanun concerning Gampong Governance must later be based on the principles contained in the Village Law. In addition, the Southwest Aceh District Qanun on Gampong Government which will be formed later must also pay attention to the material contained in the Village Law, because there are several provisions in the Village Law that are different from the provisions or previous statutory regulations, such as the periodization of the the position of Village Head (Keuchik). Article 39 of the Village Law states that the position of village head/keuchik is 6 years after being appointed. Then the tenure of the village head/keuchik is 3 times, either consecutively or not consecutively.

Likewise with Village Head Candidates, where in Article 33 letter e it is emphasized that Village Head Candidates are at least 25 (twenty five) years old at the time of registration, while the previous rule was 25 (twenty five) years old and a maximum of 60 (sixty) years at the time of nomination. If one looks at these provisions, the maximum age for candidate village heads is 60 years which has been abolished by the Village Law. This is understandable, because in reality nowadays in society a person who is 60 years old is generally still strong and still capable of carrying out leadership as a village head. So what's wrong if someone who is still able to carry out his duties as village head is given the opportunity to register as a candidate for village head. Especially if that person has good behavior, high authority, is respected by the community and has charisma as a village leader. Therefore the Village Law still provides an opportunity for someone to register as a Candidate for Village Head, even though they have reached 60 years of age.

In reality, there are still many people who do not know about the provisions mentioned above, let alone the lack of socialization of the problem. Meanwhile the Regional Government must also immediately prepare a set of laws and regulations that can accommodate the provisions mentioned above. Therefore the formation of the Aceh Barat Daya District Qanun concerning Gampong Governance is one of the urgent matters to be implemented. So that people know

that even those who are 60 years old are still allowed to register themselves as Candidates for Village Heads. If this is not socialized, then the right of people who are 60 years old to register as a candidate for village head will be neglected, even though this person has the potential to become a village head, both in terms of the knowledge he has and in terms of the experience he has.

Based on the description above, the consideration that can be used as a fairly basic reason that encourages the need for changes to the Gampong Government Qanun is intended to adapt the Aceh Barat Daya District Qanun to the Village Law. Thus, with changes to the Gampong Government Qanun, it will provide a basis and guideline for the implementation of Gampong Governance in Southwest Aceh District.

With the amendment to the Gampong Government Qanun, it will provide a basis and guideline for the implementation of Gampong Government in Southwest Aceh District. So it is deemed necessary to carry out an analysis and study in advance related to the changes to the Gampong Government Qanun. It is necessary to make adjustments to the Qanun, because this is in line with the provisions of Article 117 of the Law on Governing Aceh which states the need for regulation in the form of a Qanun concerning the functions, position, organization, financing and apparatus of the gampong government in Aceh.

As for the regulatory scope of the Draft Aceh Barat Daya District Qanun regarding Gampong Governance, they are as follows:

Chapter I which is the General Provisions, regulates the meanings of the terms used in the Draft Southwest Aceh District Qanun Concerning Gampong Governance.

Then Chapter II, which has the form of Gampong Governance, regulates the elements of gampong government, gampong government, keuchik, reports of keuchik, bans of keuchik, dismissal of keuchik, interim election of keuchik, term of office of keuchik, gampong apparatus, appointment of gampong apparatus, dismissal of gampong apparatus, prohibition village apparatus, appointment of hamlet heads, Chapter II, entitled Procedures for Election of Keuchik, regulates the election of keuchik, preparation for election of keuchik, election committee for keuchik, election committee, voter requirements, procedures for voter registration, requirements for keuchik candidates, candidacy for keuchik, campaign, election for keuchik candidates, forms of ballot papers, voting, implementation of the vote count, determination of the results of the vote count, disputes on the results of examinations, costs for selecting the keuchik, validation, appointment and inauguration of the keuchik, Keuchik, Gampong Officials and Civil Servants as Keuchik Candidates, coaching for the keuchik, disputes and gampong deliberations.

Furthermore, Chapter IV entitled Tuha Peut, regulates the requirements for Tuha Peut members, the inauguration of Tuha Peut members, the term of Tuha Peut membership, the composition of Tuha Peut membership, the Tuha Peut deliberation mechanism, the finances of Tuha Peut, the position and function of Tuha Peut, rights, obligations and prohibitions of Tuha Peut, filling Tuha Peut membership from time to time, dismissal, replacement of the leadership and members of Tuha Peut, and Tuha Peut's working relationship with other institutions.

Chapter V, entitled Imeum Meunasah, regulates the duties and obligations of the Imeum Meunasah, as well as the dismissal of the Imeum Meunasah. Meanwhile, Chapter VI

regarding Gampong Development and Supervision by the Camat, regulates the sub-district head's duties and the oversight mechanism for Gampong.

Then, because this Qanun is a Qanun changing from the previous Qanun, it is necessary to have a Chapter regarding transitional provisions (Chapter VII) so that there is no legal vacuum. The Chapter on Transitional Provisions regulates transitional periods in the event that Tuha Peut, Imeum Meunasah and Gampong officials are still carrying out their duties/functions when this Qanun comes into effect.

Finally, Chapter VIII as the Closing Chapter regulates:

1. Declaration of the validity of the Southwest Aceh District Qanun concerning Gampong Governance and a statement of the status of the Southwest Aceh District Qanun regarding the old Gampong Governance that had existed previously.
2. Statement of the validity of implementing regulations from the Southwest Aceh District Qanun concerning Gampong Governance that existed before the Qanun was enacted.
3. A statement on the entry into force of the Southwest Aceh District Qanun regarding Gampong Administration and the order to place it in the Regional Gazette of Southwest Aceh District so that everyone can know.

Conclusion and Suggestion

Conclusions

Based on the studies and analysis that has been carried out in this academic paper, it can be concluded that it is appropriate to form a Southwest Aceh District Qanun concerning Gampong Governance, which was preceded by the preparation of a Southwest Aceh District Qanun regarding Gampong Governance. This is because Aceh Barat Daya District Qanun Number 9 of 2012 concerning Gampong Government is no longer in accordance with the development of the constitutional system of the Republic of Indonesia as well as developments or dynamics in society. With the changes to the Gampong Government Qanun, it will provide a foundation and guidelines for the implementation of Gampong Government in Southwest Aceh District.

Suggestions

It is suggested to the Southwest Aceh District Government and the Southwest Aceh District House of Representatives to immediately form and discuss the Draft Southwest Aceh District Qanun on Gampong Governance and declare it no longer valid or revoke the Southwest Aceh District Qanun Number 9 of 2012 concerning Gampong Governance, because is no longer in accordance with the current developments or dynamics of society, in particular it is no longer in accordance with the Village Law. So that the Village Head/Keuchik later in carrying out his daily duties and positions in the community, has a strong legal basis or umbrella, and can be accountable, both to the community, to the nation and state and to God Almighty.

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