

THE CHALLENGES IN ESTABLISHING A PARTICIPATORY QANUN OF GAMPONG

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ABSTRACT

This article aims to analyze the challenges of establishing a participatory *qanun of gampong*. This research was conducted in the village under Syiah Kuala University supervision, Ingin Jaya sub-district, Aceh Besar. This study examined into legal resources, particularly *qanuns*, in order to analyze the participatory law-making process. The substitution of Aceh Besar *Qanun* Number 11 Year 2009 with Aceh Besar *Qanun* Number 2 Year 2020 has caused several legal issues, especially with regard to the supervision of *gampong qanuns*, which are no longer have a legal basis. Starting with the concept of legal development, replenishment is essential. Due to the lack of rules that act as guidelines, the process of establishing *qanuns of gampong* has become more complicated. The main reason is that participatory processes are hard to accomplish. It is advised to the Aceh Besar District Government to draft recommendations for the drafting *qanun of gampong* as soon as possible as a form of guidance for the *gampong* government. This guidance will also substantially help the *gampong* government's efforts in preparing numerous requirements for *qanuns of gampong*.

Keywords: *qanun gampong*; participatory *qanun*; formation of *qanun*.

INTRODUCTION

This study aims to examine the challenges in establishing a participatory *qanun of gampong*. The intended context of participation is the maximum community involvement in the process of formulating *gampong* regulations. Regulation at the village level is a decision made by the village community that is used as the basis for implementing village government with the aim of regulating living together, preserving rights and obligations, and organizing village government based on aspirations (Rosidina, 2019).

In principle, participatory law-making process is related to the achievement of development goals, including legal development. This development can be seen in the context of comprehensive

concept of development, which includes legal products (Adli, 2019). This article focuses on village-level legal development.

Legal products at the lowest levels of government are important to drawing attention, especially in light of the enactment of Law No. 6 Year 2014 concerning Villages, which has direct implications for village funds sources. This law divides villages into traditional villages and villages, both of which are inextricably linked to the rights of origin and/or traditional rights recognized and acknowledged by the government of this country (Dirjen Pemdes, 2007).

In the context of each village managing its household, the availability of legal products is also highly significant in addition to the authority of the village or *gampong* (Winarno, 2005; Hadjon, 2011). To put it another way, village funds are essential to village autonomy.

The Village Law's enactment is critical in understanding this context well, particularly in terms of village funds and assets. Village funds, according to Article 71 of the Village Law, are all village rights and responsibilities that can be valued in money, as well as any money and goods relevant to the implementation of village rights and obligations.

After deducting the Special Allocation Money (DAK) by 10%, the government provides financial allocation support to villages from the balancing fund of the State Revenue and Expenditure Budget (APBN) obtained by the Regency/City in the Regional Revenue and Expenditure Budget (APBD). The amount of financial allocation granted to each village will vary depending on the location (geography) of the village, the number of residents, and the number of deaths. This is also confirmed in Government Regulation Number 60 Year 2014.

The allocation of these funds will later be used as costs for administering village government, development implementation, fostering village communities, and empowering local village communities. Thus, one of the important ideas in managing village funds is to realize community and village independence through economic empowerment.

These various allocations must be supported by arrangements at the village level – for the context of *gampong* in Aceh. The district provides the legal foundation for the establishment of regional regulations, or *qanuns* of *gampong*. The regulation of *gampong qanuns* in Aceh Besar has been carried out through Aceh Besar *Qanun* Number 11 Year 2009 concerning *Gampong* Government. This *qanun* focuses on the *gampong* regulation, which is the groundwork for making the *gampong qanun*. However, this *qanun* has been substituted with Aceh Besar *Qanun* Number 2 Year 2020 concerning *Gampong* Government. It becomes a big question, because the *qanun* of *gampong* is not regulated in this *qanun*. Finally, the notion of *gampong qanun* can be found in Minister of Home Affairs Regulation (Permendagri) Number 111 of 2014 concerning Technical Guidelines for Village Regulations, which is simply a guide.

This situation must be addressed in order to establish a basic *gampong qanun* in the district which has 604 villages (BPS, 2021). As previously noted, the *gampong qanun* is also used to receive village funds from the APBN. The management of village funds, which begins with program design and continues with implementation after being accounted for, must be supported by concise regulations at the *gampong* level.

There have been a number of studies relating to this area, particularly those related to the process of establishing village regulations, which Putri sees as a critical subject in achieving good regulations (Putri, 2016). Even though village regulations are the basis for attaining village sovereignty, the process of forming *gampong* regulations has not gone smoothly (Sulaiman, 2012). (Darusman, 2021). Because village regulations are formed by two parties, it is critical to strengthen the BPD's role in the development and enactment of village regulations (Ngarsiningtyas, 2016).

According to a number of other research, community participation is required (Rosidina, 2019). In reality, only a small percentage of the population participates (Prasetya, 2016).

RESEARCH METHODS

This article was written based on the results of assistance in the preparation of the *Gampong Qanun* in Ingin Jaya District, Aceh Besar. The process of drafting the *qanun* of *gampong* was preceded by a legal study of the laws and regulations in Aceh Besar. In addition, a special study regarding the existence of *gampong qanuns* was also conducted. This study is not only based on legal materials (Sulaiman, 2018), but also empirically analyzed its legal conditions. Technically, legal politics is one of the things that is done to see legal developments, as well as offer legal strengthening for *qanuns* of *gampong*.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) Regulations at the village level

The *Gampong* Government can play a more active role in ensuring the community's welfare and independence by growing the sector as a business field owned by the *gampong*, with the *Gampong Qanun* supervising its management. The *Qanun* of *Gampong* serves a vital role in the *gampong* government as an autonomous regulation created by the *gampong* apparatus to manage community life and government administration.

Conceptually, the *Qanun* of *Gampong* is a statutory regulation enacted by the *Gampong* Apparatus after consultation and agreement with *Tuha Peut*. *Gampong Qanun* products are essential as guidelines for the *Gampong* government in operating the government in order to achieve tranquility, peace and comfort.

In order to identify whether or not *gampong qanuns* exist, the concept of *gampong* as the main aspect must be explored. According to Nya' Pha, a religious territorial community in Aceh, family life in Aceh is parental and, in certain cases, bilateral, and inhabiting in an area known as *gampong* or *meunasah*, which is led by a *Keuchik* and *Teungku Imeum Meunasah* (religious leader) who, like a father and mother, directly under *Imuem Mukim* (Pha, 1998).

The *gampong*, which is the smallest territorial form of government organization in Aceh, was established during the reign of Sultan Iskandar Muda (1607-1636). At that time, a *gampong* consisted of a group of houses located close to each other. The *gampong*'s leader is known as a *keuchik* or *geuchik*, and he is assisted by a religious expert known as a *teungku meunasah*. Other leadership elements in a *gampong* are known as *waki*, who are representatives of the *keuchik* and are also known as *ureung tuha* (a class of village elders who are respected and experienced in their community). According to tradition, there are four of them known as *tuha peut*, as well as eight people known as *tuha lapan* (Sufi, 2002).

Meanwhile, the *gampong* is the smallest territorial entity, according to Snouck Hurgrunje. A *gampong* is surrounded by a fence, connected by a gate with a road (*rèt* or *rót*), a road that passes through *blang* or *lampoih* and *tamah* that leads to another *gampong*. Each *gampong* used to have one *kawōm* (territorial and tribal units) or sub *kawōm*, which would only increase its population by marrying within its own environment, or at the very least by requesting from members of the same ethnic group who lived nearby (Hurgrunje, 1985). According to Hurgrunje, *meunasah* has two meanings: a place of worship and a place to rest for men who have attained puberty and other village men who stop in the area (Hurgrunje, 1985).

Gampong and *meunasah* are occasionally perceived interchangeably. Some consider *meunasah* and *gampong* to be regions or territories. Some people consider the *meunasah* to be a place of worship only. In this context, a *meunasah* is a place where religious and social activities take place. However, some other people believe that *meunasah* is just another term for a *gampong*. Even if *meunasah* is just considered an institution in the sense of a gathering place for religious and social activities, it is one of the institutions that plays a significant role in assisting the government implementation. Considering that this institution is very close to the culture and way of life of indigenous people.

In this case, the *meunasah* institution serves as a way for indigenous people to run the government at the *gampong* level, and the existence of the *meunasah* institution identifies the characteristics of a *gampong*, because every *gampong* has a *meunasah*. It cannot be considered a *gampong* if there is no *meunasah* (Gani, 1998).

The village is led by a *Keuchik*. Historically, the position was hereditary, appointed by the *imuem mukim*. *Keuchik* based on the essential fact is the one who defends the people's interests and aspirations, both against *uleebalangs* and other *gampongs*. *Keuchik* is in charge of one *gampong*, but there are others who are in charge of 2-3 *gampongs*. So the *keuchik* is really the elder, *teungku ma* (*keuchik* as father and *teungku* as mother) (Hurgrunje, 1985). Some pronounce *Keuchik* – the village leader – as *Geusiyik*. *Geuchik* is mentioned by Teuku Djuned (Djuned, 1997).

The *gampong* apparatus in Qanun Number 5 Year 2003 contains *Keusiyik* and *Teungku Imuem meunasah*, as well as *Tuha Peut Gampong* (an institution that represents elements of *ulama*, youth and women leaders, traditional leaders, and intellectuals). The village apparatus has the rights, obligations, authorities, duties, and each functions. Related to this program, one of the function is submitting and discussing the *Reusam Gampong*.

According to Article 53 of Qanun Number 5 Year 2003, the *Reusam Gampong* Draft was submitted by *Keusiyik* or *Tuha Peut Gampong*, discussed by *keusiyik* and *tuha peut*, and *Keusiyik* determined the *reusam gampong* after the approval of *tuha peut*.

The *gampong* issue is described in Article 115, Article 116, and Article 117 of Law No. 11 Year 2006 on the Government of Aceh. The law stated that the issue of *gampong qanuns* is regulated through district/city *qanuns* regarding *gampongs*.

Regulations at the *gampong* level are also known as *reusam*, in addition to the term *qanun*. Several ratified district/city *qanuns* are usually referred to as *qanuns of gampong* (Sulaiman, 2012). Furthermore, what is meant is the *qanun* at the *gampong* level, not the *qanun* regarding *gampong*.

2) Participatory Community Requirements

There are significant differences between *Qanun Aceh Besar No. 11 Year 2009 on Gampong Government* and *Aceh Besar Qanun No. 2 Year 2020 on Gampong Government*. If viewed from the time of formation, *Qanun No. 2 Year 2020* is the *qanun* that is applied.

There is still a separate chapter in *Aceh Besar Qanun 11/2009* that regulated the *gampong qanun*. Specifically regulated in Chapter V, Articles 59-69 (11 articles). Meanwhile, there is no longer any regulation related *gampong qanuns* in *Aceh Besar Qanun 2/2020*. This, of course, leads to issues because there is a legal void regarding *gampong qanun* regulation. Guidelines for village-level regulations can be referred to Permendagri 111/2014 concerning Technical Guidelines for Village Regulations.

The distinction between the terms *qanun* and *reusam gampong* is notable in *Aceh Besar Qanun 11/2009*. Article 1 number 16 and 31 are using the same term, *reusam gampong*, with the same concept. *Reusam gampong* or other names known as the rules of customary guidance sets by *keusyik*, after getting the *tuha peut gampong's* agreement.

In *Aceh Besar Qanun 11/2009*, the types of legislation at the *gampong* level include *gampong qanuns*, *keuchik* regulations, and *keuchik* decisions. The *keuchik* regulation as an elaboration of the implementation of the *qanun* of *gampong* which is regulatory in nature. Meanwhile, the *keuchik* decision explains how the *qanun* of *gampong* and *keuchik* regulations are enforced (Article 59).

The procedure is regulated by Article 60. The *gampong qanun* is determined by the *keuchik*, which is a further elaboration of higher laws and regulations that takes into account the socio-cultural conditions of the local community. *Qanun* is prohibited from conflicting with the public interest and/or the prevailing laws and regulations. Then, *Qanun* was also formed in the context of implementing *gampong* government, *gampong* development, and society.

The draft of *gampong qanun* that has been agreed with the *keuchik* and *tuha peut* is submitted by the leader of the *tuha peut* to the *keuchik* for stipulation. This submission is made within seven

days from the date of stipulation. The draft of *gampong qanun* which, apart from dealing with the APBG, levies and spatial planning, must be determined by the *keuchik* by affixing a signature within 30 days of the receipt of the draft *qanun* (Article 63). The *gampong qanun* is submitted by the *keuchik* to the regent through the camat as material for supervision and guidance no later than seven days after it is stipulated (Article 64).

Gampong qanuns must also be based on the establishment of good legislation, which includes: clarity of purpose, appropriate institutional or forming organs, conformity between types and content of subject matter, usability and effectiveness, clarity of formulation, and openness in the operational process of their formation (Article 61). Furthermore, the community has the right to contribute oral or written comments throughout the preparation and/or discussion of the draft of *gampong qanun*. This input can be provided during the drafting of the *gampong qanun* (Article 62).

The draft of *gampong qanun* addressing APBG, levies, and spatial planning that has been mutually agreed upon by the *keuchik* is submitted to the regent through the sub-district head for evaluation in no later than three days. The results of the evaluation must be returned to the *keuchik* within 20 days. If it is not returned within 20 days, the *keuchik* can declare its *gampong qanun* right away. Specifically for the draft *Qanun* of APBG, the Regent can delegate to the sub-district head (Article 65).

The *qanun* of *gampong* is required to determine the time limit for determining implementation in order for operations to work properly. Unless otherwise stated in the *qanun*, the *gampong qanun* is deemed to have come into existence and has binding legal force since its stipulation. Furthermore, the *gampong qanun* may not be used retroactively (Article 66)

Qanun AB 11/2009 regulates all of the above. This *Qanun* has been superseded by *Qanun* AB Number 2 Year 2020, which is about the *Gampong* Government. In this *qanun*, a part from not regulating the *gampong qanun*, two terms have been distinguished in the previous *qanun*: *gampong qanun* and *reusam gampong*. *Gampong qanuns* are statutory regulations enacted by the *keuchik*

after consultation with and agreement from the *tuha peut* (Article 1 point 23). Meanwhile, *reusam gampong*, or other names, are regulations or guidelines for customs that the *keusyik* establishes after getting the *tuha peut*'s consent (Article 1 number 40).

This *qanun* outlines the main responsibilities and functions of the *keuchik* and *tuha peut* in relation to the *gampong qanun*'s existence. Establishing *gampong qanuns* is one of the *keuchik*'s powers. Other duties include preparing drafts and establishing *gampong qanuns* (Article 5). While the position of *tuha peut* as *gampong* legislation (Article 100), one of its functions is to discuss and agree on *gampong qanuns* with the *keuchik* (Article 101). Members of *Tuha Peut* are also eligible to submit draft of *gampong qanuns* (Article 103).

In regards of the sub-district head's guidance and supervision of *gampongs*, *Qanun AB 2/2020* regulates the type of facilitation provided by the sub-district head by facilitating the formation of *gampong qanuns* and *keuchik* regulations (Article 116).

In the absence of special regulations governing *gampong qanuns*, there will be no district-level regulations governing this topic. The existence of the *qanun* can only be governed by Permendagri 111/2014 for its operation. This Permendagri draws a distinction between village laws and regulations at the village. Village laws are statutory rules enacted by the village after consultation and agreement with the Village Consultative Body (BPD) (Article 1 point 6). Regulations at the village, on the other hand, are made up of village rules, joint village head regulations, and village head regulations (Article 1 point 5).

This Permendagri divides the discussion process in planning, preparation, determination, promulgation, and dissemination. In addition, certain village regulations must be evaluated. Generally, village regulations also have a clarification process.

The village head and BPD determine the planning for drafting village regulations in the village government work plan. Village institutions such as correctional institutions, traditional

institutions, and other village institutions can provide input to the local government and/or BPD in the formulation of village regulations (Article 5).

There are tasks that are conducted by the village head and those that are carried out by the BPD in the context of preparation. The local authority initiates the process of preparedness in the village. The village community must be consulted on the draft of village regulations, which can also be consulted with the sub-district head for comments. Priority parties are members of the community or community groups who are directly involved in the substance of the regulation material. Following up on the process of developing village laws, which are then submitted to the village to the BPD for discussion and mutual agreement, input from the community and the sub-district head is used (Article 6). Exceptions were given for: (1) the draft of village regulation on the village medium-term development plan; (2) the village government work plan; (3) the Village Budget; and (4) the accountability report on the reality of the Village Budget implementation in the BPD's design to the village (Article 7). The BPD invites the village head to discuss and agree on a draft village regulation as part of the process (Article 8). The BPD leadership submits the mutually agreed-upon draft village regulation to the village head for stipulation within seven days of the agreement, and it must be stipulated by affixing a signature within 15 days of receipt (Article 10).

The signed draft of village regulation is submitted to the village secretary for promulgation (Article 11) and placed in the village sheet for determination. Since their promulgation, village regulations have been declared effective and have binding legal force (Article 12).

Dissemination of village regulations is carried out by the village government and the BPD from the establishment of the plan for drafting village regulations to promulgation. Dissemination is carried out to provide information and/or obtain input from the community and stakeholders (Article 13).

The village head delivers draft village rules to the regent/mayor through the Camat no later than three days for evaluation about the Village Budget, levies, spatial planning, and village

government organizations that have been discussed and agreed upon by the village head and BPD (Article 14). The review process takes 14 working days, and the village head is required to amend it after obtaining the evaluation results (Article 15) within 20 days of receiving the evaluation results (Article 16).

Village regulations that have been promulgated are sent by the village head to the regent/mayor for clarification within 30 days (Article 19), in addition to village regulations that need to be evaluated. The results of the clarifications were related to the public interest and/or higher statutory provisions (Article 20).

In general, the provisions of Permendagri 111/2014 are based on the Village Law, which stipulated that village regulations are established by the village head after discussion and agreement with the BPD (Article 1 point 7). The village head has the authority to adopt local regulations as one of his or her responsibilities. In addition, the village chief has the authority to propose a draft and set village rules (Article 26). The BPD also works with the village head to discuss and agree on draft of village regulations (Article 55). Members of the BPD has the right to submit draft of local regulations (Article 62).

The procedure for drafting village regulations is similar to that outlined in Permendagri 111/2014. Another crucial thing that many district/city governments have yet to accomplish is provide guidance in the form of recommendations for preparing village regulations and village head regulations (Article 115).

Special provisions for traditional villages are another issue that is regulated (Chapter XIII Articles 96-111). Village regulations are adjusted to reflect customary law and norms that prevail in traditional villages, as long as they do not contradict with legal and regulatory provisions.

With this situation, determining the legal development's direction is critical (Syaukani, 2007). This concept can be reconciled with legal politics in the context of its formation, which cannot be

separated from the interaction and competition between political wills (Mahfud, 2006; Marzuki, 2007). This procedure is still not part of the legal formation system.

Statutory regulations, in a broader context, are parts of the law that are produced intentionally by the authorized entity (Rahardjo, 2014). As a result, a *qanun* cannot come out of nowhere; it was developed for a specific cause and purpose.

Reading such interests, it is critical to strengthen the legal basis in a *qanun* so that it may serve as the foundation for the establishment of legislation under it.

Participation is required at many stages of the process, in addition to the strengthening of the law. The participation of the community in the preparation of the *gampong qanun* reflects the evolution of the *gampong*. It is important in this case to ensure participation in the formation of the *gampong qanun*.

In practice, citizens who are concerned about the concept of participatory development minimize this involvement. This is owing to the high level of activity among residents during the day. It is common for formation and deliberation to take place at night. On the one hand, at night, to provide additional opportunity for people to join. The density of activity, on the other hand, causes them to become exhausted and prefer to rest.

CONCLUSIONS

The substitution of Aceh Besar *Qanun* Number 11 of 2009 with Aceh Besar *Qanun* Number 2 of 2020 has produced legal issues, particularly with regard to the regulation of *gampong qanuns*, which no longer have a legal basis. Filling in the re-arrangements, beginning with the concept of legal evolution, is critical. *Gampong* leaders must guarantee maximum community participation in the participatory *qanun* formation process. Choosing the correct timing to respond to problems in maximizing citizen engagement can be an option.

The Aceh Besar District Government is advised to prepare recommendations for the arrangement of the draft of *gampong qanun* as soon as possible as a form of guidance for the *gampong* government. This guidance will also substantially assist the *gampong* government's efforts to prepare numerous requirements for *gampong qanuns*.

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