

THE ENFORCEMENT OF GOMPONG IN THE QANUN OF ACEH AND ITS RELATIVE POSITION IN THE INDONESIAN CONSTITUTION

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Abstract

This paper aims to learn how the Qanun of Aceh, particularly Qanun No. 4 on Mukim and Qanun No. 5 on Gampong Government enforce *Gampong* as a government body. It further compares the hierarchical relationship between the qanun and the higher regulations in Indonesia such as Village Government Act No. 32 of 2004, Privileges of Aceh Act No. 44 of 1999, Special Autonomy No. 18 of 2001 and Aceh Government Act No. 11 of 2006. The study found that the Qanun integrates Acehnese identity coupled with the Islamic values into the *Gampong* institution. The Qanun on *Gampong* Government, in fact, does not negate any higher regulations in the Indonesian constitution. The principle of decentralization implemented post-*Orde Baru* requires a massive change in the government system in Indonesia from the centralized system of local state government, to local self-government and finally the decentralized system of the local community. The Qanun on *Gampong* government is in line with the local community spirit due to greater public participation channeled through *Reusam Gampong*. *Reusam Gampong* is the public aspiration, and its application shall not conflict with the higher regulation. In its cultural manifest, *Resuam Gampong* is an instrument that promotes the marriage between culture and religion into a single government body.

Tulisan ini bertujuan melihat bentuk penguatan lembaga gampong yang terdapat dalam Qanun Aceh, terutama dalam Qanun No. 4 Tentang Pemerintah Mukim dan Qanun No. 5 Tentang Pemerintah Gampong. Selain itu, penelitian ini juga bertujuan melihat hubungan hierarkis antara qanun-qanun tersebut dengan peraturan yang lebih tinggi lagi seperti UU Nomor 32 Tahun

2004 Tentang Pemerintahan Desa, UU No. 44 Tahun 1999 Tentang Keistimewaan Aceh, UU No. 18 Tahun 2001 Tentang Otonomi Khusus dan UU No. 11 Tahun 2006 tentang Pemerintah Aceh. Dari hasil kajian ditemukan bahwa penguatan kelembagaan gampong dalam Pemerintahan Gampong berupa penguatan identitas keacehan yang tidak dapat dipisahkan dengan nilai-nilai keislaman. Selain itu, keberadaan Qanun Pemerintahan Gampong juga tidak bertentangan dengan peraturan-peraturan yang berada di atasnya. Karena prinsip desentralisasi yang diterapkan pasca rezim orde baru menghendaki adanya perubahan masif dari pemerintahan yang bersifat *local state government* (pemerintahan pusat di daerah) yang sentralistik, menjadi pemerintah daerah yang otonom (*local self-government*) dan pada akhirnya menjadi komunitas lokal (*local community*) yang desentralistik. Keberadaan Qanun Pemerintahan Gampong selaras dengan semangat *local community* karena adanya partisipasi masyarakat yang lebih besar melalui *reusam gampong*. Secara struktural *reusam gampong* merupakan peraturan yang berangkat dari aspirasi masyarakat yang dalam penerapannya tidak boleh bertentangan dengan peraturan yang lebih tinggi. Namun secara kultural *reusam gampong* merupakan instrumen yang menghidupkan kembali asimilasi adat dengan agama dalam sebuah institusi pemerintahan.

Keywords: *Qanun, Mukim, Gampong, Reusam.*

Introduction

Gampong is a residential unit in Aceh that has been known since the Aceh Darussalam Sultanate in the 16th century AD.¹ Sociologically, *gampong* is the lowest legal entity that was born before the existence of *mukim*. As a traditional territory, the *gampong* has a device consisting of the *geuchik*, *tuba pent* and *imuem chik*.² Each of these devices has its own function which is associated as a combination of ‘father, mother and child’ from the Acehnese community. Therefore, that it can be said that the *gampong* contains ideas about the system of division of labor in the family.

¹ Hanantyo Sri Nugroho, “Menimbang Pentingnya Penguatan Kelembagaan Pemerintahan Desa”, *Journal of Governance*, vol. 3, no. 1 (2018), p. 42.

² Mahmuddin, Laura M. Kolopaking, Rilus A. Kinseng, Sadu Wasistiono, and Saharuddin Saharuddin, “The Existence of Gampong in the Middle of Changing Community”, *Komunitas: International Journal of Indonesian Society and Culture*, vol. 8, no. 1 (2016), p. 102.

Spatially during the Aceh Darussalam Sultanate, the gampong is a collection of dwellings with meunasah (houses of worship) as the center of its activities.³ Generally a village consists of several juroeng (aisles), tumpok (collection of houses) and ujoeng (village boundaries).⁴ A gampong is called a territorial unit that describes a pattern of settlement which is also a social organization which consists of individuals/groups with social groupings based on their existing roles and functions and develop according to the context of space and time.

The attachment of Islamic ideology to customary law which is integrated into the daily life of Acehnese people has become a cultural legitimacy that is still maintained by the community until now. Acehnese people are known for their philosophy, “*Adat bak poteumeruebom, hukum bak Syiah Kuala, Qanun bak Putroe Phang, Reusam bak Beuntara* (the policy in the hands of the sultan, the law in the power of the ulama, the qanun in the hands of statesmen and customs is in the hands of experts). Furthermore, in the Aceh proverb also mentioned, “*bukom ngon adat age z̄at ngoen sifcut, bukoem hana adat tabei, adat hana bukom tumpoi*” (laws and customs are like substances and God’s nature cannot be separated. Law without bland customs, adat without blunt law). The purpose of the above sayings is that religion and customs cannot be separated. The identity of religion as a cultural, cultural and political entity cannot be separated from the building of religious ideology.

The gampong institution that began in the period of the Sultanate of Aceh until the present is a long history that shows the relationship between the state and local institutions, where customary values and religion are integrated and deeply entrenched in the social system to be marginalized by governmental forms of government local by the central government.

The collapse of the New Order government in 1998 has caused various changes and new developments in governance in Indonesia,

³ Umaimah Wahid, “Meunasah, Power and Self-Critics Towards Government and Aceh Political Elite on Aceh Women Political Struggle”, *Journal of Asian Scientific Research*, vol. 5, no. 8 (2015), p. 388.

⁴ Umaimah Wahid, “Perubahan Politik dan Sosial Budaya Masyarakat Gampong Aceh Di Era Internet–New Media”, *Jurnal Communicate*, vol. 1, no. 1 (2017), p. 17.

including in Aceh.⁵ The Reform Order rolled out decentralization and regional autonomy policies through Law No. 22 of 1999 concerning Regional Government which was later amended by Law No. 32 of 2004. Both laws replaced the New Order centralization policy through Law No. 5 of 1979 concerning Village Government.

In the context of Aceh, the birth of the Act. No. 44 of 1999 concerning Aceh's Privileges and then replaced with Law No. 18 of 2001 concerning Special Autonomy, the Government of Aceh restructured the structure of the mukim and gampong institutions. This change was followed by the ratification of Qanun No. 4 of 2003 concerning the Government of the Mukim and Qanun No. 5 of 2003 concerning Gampong Government. With the existence of the qanun, the gampong became the lowest government organization under the mukim in the organizational structure of the Nanggroe Aceh Darussalam Province administration. The gampong institution has the task of organizing the government, carrying out development, fostering the community and improving the implementation of Islamic law.

In Article 12 of Qanun No. 5 of 2003 concerning the Gampong Government, the *geuchik* is the government organizer and the executor of the customs that develops in the community. Regarding the problems of people's lives, all problems and problems that develop in the community are decided by deliberation and consensus by involving *tuba peut gampong* and *imuem chik* or other community leaders. This shows that the developing democratic system does not take the form of representation, but in the form of deliberation or consensus.

The shifting of the paradigm of centralism in the New Order government towards decentralization and regional autonomy in the reformation period, directly or indirectly ended the patterns of central government in the region (local state government) towards the direction of autonomous regional government (local self-government).⁶ The shifting of the central government's policy from

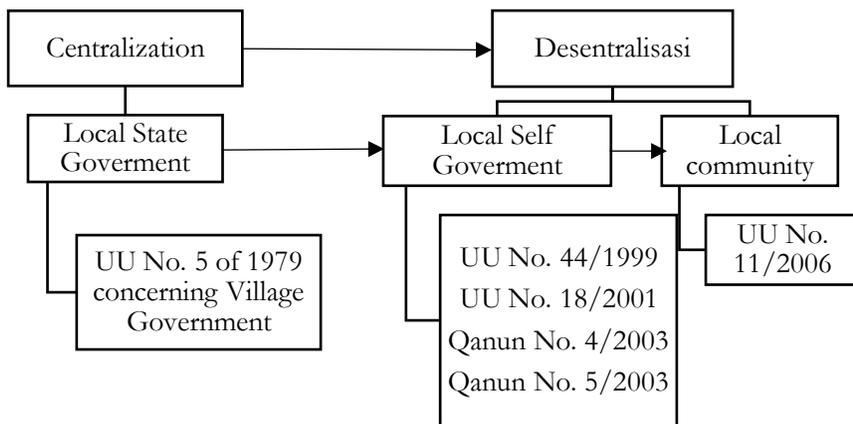
⁵ R. Michael Feener, and Patrick Daly, "Religion and Reconstruction in the Wake of Disaster (Special Issue: Salvage and Salvation: Religion and Disaster Relief in Asia)", *Asian Ethnology*, vol. 75, no. 1 (2016), p. 197.

⁶ R. Michael Feener, *Sharia and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (New York: Oxford University Press, 2013), p. 110.

centralization to decentralization is nothing but one manifestation of the radical changes in political policy and development after the New Order regime which were covered by all regions including Aceh.

After the end of the armed conflict between the Free Aceh Movement (GAM) and the Indonesian Government, a new regulation was agreed to govern the privilege of Aceh. The rule is Law No. 11 of 2016 concerning the Governing Aceh (LoGA). LoGA places the gampong as a strategic line from the local state government towards the local community based on the customary level and the value of the local community. LoGA provides space for the discourse of social revitalization of the gampong community. Recognizing the existence of customary institutions and other essential aspects of the life of the gampong community. As the cultural identity of the Acehnese people in which there is a unitary community unit on the principle of law in a territorial manner, the gampong institution becomes very essential as the identity of the Acehnese people who uphold religion and customs.

Table 1. Shift in the Paradigm of Village Government



Strengthening the local value instrument based on gampong cultural identity is an interesting discussion when the regulations passed by the central and regional governments which are then implemented in the form of existing qanun are not as easy as turning the palm of the hand to restore the village identity. In addition to the regulatory issues that lacked detailed technical instructions on the implementation of the gampong government, problems arose related

to their existence which were still limited to mere formality, resulting in the diminishing role of adat in gampong institutional governance. This means that the issue still leaves various problems related to village organization among the qanun in the Village Governance Law itself.

This paper tries to look for forms of gampong institutional strengthening in the Aceh qanun. Especially in Qanun No. 4 of 2003 concerning the Government of the Mukim and Qanun No. 5 of 2003 concerning Gampong Government. In addition, this paper wants to see the hierarchical relationship between the two qanuns with higher regulations such as Law No. 32 of 2004 concerning Regional Government.

Qanun and Efforts to Restore the Identity of Gampong

The term qanun began to be introduced through Law No. 18 of 2001 concerning Special Autonomy for the Province of NAD which was later replaced by the LoGA. This can be seen based on the provisions of Article 98 Paragraph 4 stated that, “further provisions regarding the duties, authority, rights and obligations of customary institutions, empowerment of customs as referred to in paragraphs 1, 2 and 3 are regulated by Aceh Qanun.”

In this case the qanun is a regional regulation (*perda*) of the Aceh Province that can exclude other laws and regulations by following the principle of *lex specialis derogat lex generalis* (special provisions that limit general provisions) and the Supreme Court has the authority to test material on a qanun. Qanun Aceh is a regional regulation as an executor of the Law in the territory of the Aceh Province in the implementation of special autonomy. In other words, the Aceh qanun is a statutory regulation similar to provincial regulations governing the administration and life of the Acehnese people.⁷ Whereas the following is mentioned by the regency/city qanun is a statutory regulation similar to regency/city regulations that govern the administration and life of the regency/city community in Aceh. Qanun No. 4 of 2003, Qanun No.5 of 2003 or Qanun No. 10 of 2008

⁷ Jum Anggriani, “Kedudukan Qanun dalam Sistem Pemerintahan Daerah dan Mekanisme Pengawasannya”, *Ius Quia Iustum Law Journal*, vol. 18, no. 3 (2011), p. 320.

concerning customary institutions included in the Aceh Qanun category.

Therefore, in making it qanun is divided into two parts, namely: (1) Qanun which contains the policies of the administration of government in general (general qanun). This type of Qanun is the same as the regional regulation in other regions; (2) Qanun which contains the rules for implementing government specifically (special qanun) given to Aceh Province.⁸ Nevertheless, the term qanun itself is understood in a variety of ways at various levels. Starting from Aceh Qanun, Regency/City Qanun and Gampong Qanun itself. Gampong Qanun can be said as gampong rules that are made and agreed upon by the gampong community. In some places this Gampong Qanun is called reusam gampong.

The rules arranged in a village are a tool to create a harmonious and equilibrium society order in a village. Therefore, when the program was written in the Gampong Qanun, it was nothing but the structural and cultural legitimacy of the existence of traditional values in the gampong institutional arrangement.⁹ As often mentioned in the Acehese proverb *kiwing ateung beuneung penteupat, kiwing ureung adat penteupat* (the ridge of the rice field is straightened with thread, if the deviant person is straightened by adat).

Reusam or also called Gampong Qanun is the mandate of the LoGA which also regulates gampong government. In addition to the mandate of the LoGA, the reusam is the mandate of the qanun on the rules that have been ratified by the legislature whose substance depends on the wishes of the people, what they want to regulate is permitted to be included in the report as long as it does not conflict with national law. While the district/city government will facilitate the gampong government in compiling the report until its approval by the executive. This is simply so that each gampong government has its own rules that govern social order in accordance with the conditions of the culture and social system of the local community.

⁸ Abdul Gani Isa, "Implementation of Islamic Shariah in Special Autonomy: A Case of Aceh Province", *Miqot: Jurnal Ilmu-ilmu Keislaman*, vol. 38, no. 1 (2014), p. 119.

⁹ Sulaiman, "Pembentukan Reusam Gampong di Kecamatan Panteraja Kabupaten Pidie Jaya", *Kanun: Jurnal Ilmu Hukum*, vol. 14, no. 3 (2012), p. 449.

The agreed upon regulations are the main pillars for the continued flight of the social system in a gampong community.¹⁰ These rules all certainly have a strong enough influence in maintaining the social system of the gampong community. The special autonomy policy and the LoGA have certainly provided space for the discourse of social reform in the gampong community which not only touches on the formalities of institutional existence, but also the essential aspects of the life of the gampong community.¹¹

To integrate customary and legal values in the gampong institutional structure as a whole. Then, through Gampong Qanun, the Gampong community was formed as a mechanism for implementing customary life in all aspects of the life of the gampong community.¹² Article 52 Paragraph 2 Gampong Qanun mentions, “*Reusam gampong has the same status as the Provincial Qanun or Regency Qanun or City Qanun, which is to regulate basic matters, regulate and bind and burden gampong residents and therefore must be stipulated together with the agreement of Tuha Peuet Gampong*”.

Strengthening the gampong government through qanun is an effort of the gampong revitalization process as a basis for development that is not only fixed on institutional aspects, but also on economic, political and cultural fields. Gampong Qanun which contains 72 articles in it specifies about authority, position, relationship arrangement between institutions, functions and roles of gampong institutions to financial management of gampong, mentioned as the locomotive of the direction of progress of a gampong.¹³ That is, if the gampong and community institutions are able to interpret optimally from the existing qanun it will be very possible to realize the independence of the gampong.

¹⁰ Nyimas Latifah Letty Aziz, “Otonomi Desa dan Efektivitas Dana Desa”, *Jurnal Penelitian Politik*, vol. 13, no. 2 (2016), p. 193.

¹¹ R. Michael, Feener, *Sharia and Social Engineering*...., p. 101.

¹² Ibnu Mujib, Irwan Abdullah, and Heru Nugroho, “Gagasan Aceh Baru: Pembentukan Identitas Aceh Dari Dalam Reaktualisasi Ruang Publik Bagi Aksi Pengelolaan Kearifan Lokal Pasca-Konflik Dan Tsunami”, *Jurnal Kawistara*, vol. 4, no. 1 (2014), p. 57.

¹³ Nanda Amalia, Mukhlis Mukhlis, and Yusrizal Yusrizal, “Model Penyelesaian Sengketa dan Peradilan Adat di Aceh”, *Ius Quia Iustum Law Journal*, vol. 25, no. 1 (2018), p. 166.

In addition, the Gampong Qanun is expected to be able to revive the electability of customary institutions that were previously marginalized by state policies on the governance of local communities. However, vice versa, when the qanun is only a tool of power transfer over the control of the gampong resources, it is very possible that the potential for conflict in the community will be wide open.

Position of Gampong Qanun in the Village Government Law

The rules regarding the gampong and mukim government have actually begun since the reign of the Sultanate of Aceh Darussalam in power. During the Iskandar Muda Sultanate, for example, there were Meukuta Alam Qanun which regulated the customary institutions that existed in Acehnese society.¹⁴ During the Dutch colonial period in 1937 there was an acknowledgment of the existence of the mukim institution. Likewise, during the Japanese occupation in 1942-1945 in Aceh, there were recognized mukim and gampong governments which were adapted to the Japanese government system.¹⁵ From the existing regulation system, it can be seen that mukim and gampong have their own historical flow and identity from the culture of the Acehnese people which are strongly integrated in the two institutions.

Entering the New Order government regulations in the gampong and mukim governance underwent quite radical changes with the passing of Law No. 5 of 1979 concerning Village Government. Through this law all local custom institutions in Indonesia are uniformed under the hierarchical system of village government bureaucratization.¹⁶ Automatically through this Act removes all existing laws before. These changes have a considerable impact from the gampong and mukim governance models to enter into modern governance desired by the state.

¹⁴ Amirul Hadi, *Islamic and State in Sumatra: A Study of Seventeenth-Century Aceh*, ed. by Wadad Kadi and Rotraud Wielandt, 48th ed. (Leiden-Boston: Brill, 2000), p. 27.

¹⁵ Michelle Ann Miller, *Rebellion and Reform in Indonesia: Jakarta's Security and Autonomy Policies in Aceh*, *Rebellion and Reform in Indonesia: Jakarta's Security and Autonomy Policies in Aceh* (London: Routledge Taylor & Francis Group, 2008), p. 66.

¹⁶ Firdaus, "The Effort to Splitting Nagari Post-Implementation of Village Law 2014 in West Sumatra, Indonesia," *2nd International Conference on Sociology Education*, October (2017), p. 371.

Sociologically, each village should be understood as a fairly complex unit which certainly has its own characteristics. The classification of villages into advanced, transitional, traditional or underdeveloped is one form of entrapment in the concept of economic count.¹⁷ A village even though it has been categorized as a backward village with minimal road access, still has its own rationality based on the culture of the local community. When the state imposes a village under the form of universal diversity, it is there that the identity of the village adat institution is destroyed.

Susan Klinker said that there are several important points of the fading relationship between the rights of local values in the village and the various existing laws and regulations regarding the village. *First*, villages lose natural resources. In the past, all village communities used to take sufficient natural resources. Now that all natural resources have been taken over by the state, it is no longer possible to easily take natural resources without state permission. *Secondly*, the issue of missing local government power structures. Previously, each village had a very local structure, namely customs. The central government changes it with a uniform modern structure. As a result, the village structure cannot run optimally. *Third*, leadership. Leaders should be held by people who have authority and charisma. It used to be common to assume that the leader was sought by the people. But now prospective leaders are precisely those who are looking for potential supporters or the people. *Fourth*, all communities have a tradition of community justice or customary justice in accordance with customs. All problems are resolved at the local level. When customary justice continues, many things can be decided at the local court without having to be brought to the law enforcement authorities. So that various conflicts in the community are resolved peacefully at the village level.¹⁸

After the New Order came to power, a number of formal legal rules passed by the state as a form of answers to various political,

¹⁷ Muhammad Zen Azahari Ramli, Munauwar Mustafa, and Rushami Zein Yusoff, "Strategic Planning and Organizational Performance in the Public Sector: A Study of Local Government in Aceh, Indonesia", *The Social Sciences*, vol. 12, no. 6 (2017), p. 902.

¹⁸ Susan Klinker, "Shelter and Sustainable Development", in *Building Without Borders: Sustainable Construction for the Global Village*, ed. by Joseph F. Kennedy (Canada: New Society Publishers, 2004), p. 15.

economic, social and cultural problems forced the central government to revise some of the previous laws related to local government and village government. At the local government level, Aceh itself passed several legal regulations as a follow-up to the ongoing conflict from the Old Order to the post-New Order era.

The legalized legal product starts from Law No. 44 of 1999 concerning the Implementation of the Privileges of the Province of the Aceh Regional Region, Law No. 18 of 2001 concerning Special Autonomy for the Province of NAD and Law No. 11 of 2006 concerning the Aceh Government. UU no. 18 of 2001 then explained in more detail in the form of Qanun No. 4 of 2003 concerning the Mukim and Qanun Government No. 5 of 2003 concerning Gampong Government. In the qanun it is stated that gampong is an area led by a geuchik or other name which is a community unit under the mukim and has the right to organize its own household affairs.¹⁹

When compared with the previous law, there was a significant leap carried out with the existence of the qanun. In addition to the identity of the village, it is recognized as part of the culture of the Acehnese people, the position of the gampong is under the mukim and has authority, as well as the role of customary institutions clearly. Strengthening the existing adat institutions was also strengthened again by the issuance of Qanun No. 10 of 2008 concerning Customary Institutions. The qanun contains more about the functions and roles of the traditional institutional apparatus in the Aceh community. from the duty of a geuchik to the role of the Aceh Adat Assembly (MAA) which helps the Wali Nanggroe in fostering and coordinating existing traditional institutions. However, in practice, it has not been able to optimally encourage the functions and roles of the gampong and also mukim institutions in an effort to realize the identity of the gampong and mukim as mandated in the qanun.

Table 2. Customary Institutions in Qanun No. 10 of 2008

| No | Institution | Authority |
|----|-------------------------|---|
| 1 | Aceh Customary Assembly | The assembly organizers of traditional life in Aceh whose institutional structure is up to the level of gampong |

¹⁹ Mukhlis, "Mukim Concept as Government Administrators in Aceh", *Dinamika Hukum*, vol. 3, no. 2 (2015), p. 202.

| | | |
|----|---------------------------------|--|
| | (MAA) | |
| 2 | <i>Imuem Mukim</i> | Head of the Mukim Government |
| 3 | <i>Imuem chik</i> | Imam of the mosque at the mukim level. People who lead community activities at the mukim level that are related to the field of Islam and the implementation of Islamic law |
| 4 | <i>Geuchik</i> | It is the head of the alliance of gampong indigenous peoples who are tasked with organizing gampong governance, preserving customs and customary laws, and maintaining security, harmony, peace and order in society |
| 3 | <i>Tuba Peut</i> | Gampong government element which functions as a gampong consultative body |
| 4 | <i>Tuba Lapan</i> | Traditional institutions at the mukim and gampong levels that function to help <i>imuem mukim</i> and <i>geuchik</i> . |
| 5 | <i>Imeum Meunasah</i> | The person who leads the activities of the community in Gampong with regard to the field of Islam, the implementation and enforcement of Islamic law |
| 6 | <i>Keujruen Blang</i> | People who lead and organize activities in the field of rice fields |
| 7 | <i>Panglima Laot</i> | People who lead and regulate customs in the coastal and marine fields |
| 8 | <i>Peutua Seuneubok</i> | People who lead and regulate customary provisions regarding the opening and use of land for cultivation/plantations. |
| 9 | <i>Haria Peukan</i> | People who regulate customary provisions regarding market order, order, security and cleanliness of the market and carry out assistance tasks |
| 10 | <i>Syabbanda</i> | People who lead and regulate customary provisions regarding ship/boat moorings, ship/boat outbound and inbound traffic in seas, lakes and rivers that are not managed by the government |
| 11 | <i>Pawang Glee/Pawang Uteun</i> | People who lead and regulate customs relating to the management and preservation of the forest environment |

In LoGA, it is clearly stated that the gampong community consists of family units and individuals who are integrated into a system of interaction between the traditional culture of the meunasah (gampong) and the process of shari'a values from the mosque (mukim).²⁰ The reciprocal relationship between them contains a fairly strong philosophy between *adat ngoen hukum lage z'at ngoen sijent*. Meunasah and mosques are the basic foundations of Acehese culture.²¹ If both are lost, automatically the form of gampong and mukim will also be extinct. Relations that binds both textually implies that the internalization of the position of mukim and gampong is very important in Acehese society. contextually, the issue of the legitimacy of formal law and also the political aspects is a separate issue from the current weak form of gampong and mukim.

Referring to Law No. 32 of 2004 and PP No. 72 of 2005 and special formal law, namely Law No. 11 of 2006 which was later elaborated in Qanun No. 4 of 2003 and Qanun No. 5 In 2003 it became a separate issue that the gampong and mukim arrangements should refer to Law No. 32 of 2004 not to the LoGA.²² Because gampong is also positioned as a village if you see Law No. 32 of 2004 and also PP No. 72 of 2005. This position certainly will give the potential for the emergence of bias from the existing authority over gampong and mukim in the state government system. However, this can be combined by looking at the two sides of the Law that exist either in general or specifically.

By looking at the essential differences embodied in the three formal rules, both laws that are more universal and those in the Gampong Qanun and Mukim are more specific. In Law No. 32 of 2004 does not contain ownership of customary land does not explain the property itself, the absence of customary deliberation institutions and also does not contain Islamic law. Different of course with the rules was outlined in the two qanuns that have existed so far.

²⁰ Mukhlis, "Penataan Mukim Sebagai Penyelenggara Pemerintahan Di Kabupaten Aceh Barat Daya," *Al-Risalah*, vol. 16, no. 2 (2016), p. 272.

²¹ Mizaj Iskandar, "Dayah Darussalam Network and Dayah Awakening in Aceh", *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, vol. 1, no. 3 (2018), p. 17.

²² Mahmuddin et. al., "*The Existence of Gampong...*", p. 25.

The essence of the content that wants to be strengthened in Qanun Mukim and Gampong Qanun shows how the identity of the Acehnese people who are bound by religion and adat must be a reflection of the basic production in the governance system in Aceh that had existed in the post-independence LoGA.²³ Religion and customs always accompany all policy processes contained in existing laws. Customs and religions are the basic foundations at stake politically, economically, socially and culturally as manifestations of local culture that have existed since the time of the Aceh Darussalam Sultanate. Equally, during the Soekarno administration the mobilization of the period using the meaning of adat became a political argument used in order to explain the concept of a nation.²⁴ The same thing was done by Hatta when he stated the roots of Indonesian democracy manifested in the daily life of the Minangkabau people. But ironically while adat was considered an important part of the political debate between 1945-1950s and was recognized in the 1945 Constitution by respecting the forms of diversity of adat that existed in the regions, on the other hand the central government in the 1950s abolished all customary justice in the region and replace it with the civil justice system.

Political movements to restore customary identity and cultural diversity again received the government's attention through Law No. 22 of 1999. This law authorizes districts and lists villages must remain part of the national legal system, but also states that villages can enter adat systems in government and village regulations. With this law the strengthening of customary institutions that had existed in the community was a backward act on the revitalization of indigenous cultural identities which had previously been marginalized in the New Order era.

The issue of regional autonomy provides space for regions to implement various development programs including cultural aspects of the local community. This law also gave birth to several other laws in Aceh, especially Law No. 44 of 1999 until Law No. 11 of 2006 by

²³ Hans Antlöv, Anna Wetterberg, and Leni Dharmawan, "Village governance, community life, and the 2014 village law in Indonesia", *Bulletin of Indonesian Economic Studies*, vol. 52, no. 2 (2016), p. 169.

²⁴ Faisal Ismail, *Islam, politics and ideology in Indonesia: a study of the process of muslim acceptance of the Pancasila*, PhD dissertation (McGill University Libraries, 1995), p. 97.

prioritizing one of its development programs is to restore the cultural and religious identity of the community.

Interestingly, perhaps what Bouchier said is that the customary articles contained in Law No. 22 of 1999 is less noticed if on the island of Java, adat has not long been one part of the political issues that exist on the island of Java. However, for areas outside Java, indigenous identity is an essential part of local political issues.²⁵ On the other hand, adat also gets new value in the clash of identities and natural resources in some parts of Sumatra, Kalimantan, Sulawesi and even in Papua.

The Village Government Law with several existing authorities and also with the existence of the Gampong Qanun is not considered as a form of conflict. This means that Gampong Qanun is a regional product that still refers to the regulations above. The authorities in the gampong government structure place qanun as a special regulation that contains various authorities in implementing gampong government. This is in accordance with the main goal of the revamp of the gampong government with the implementation of special autonomy to restore the functions and authority of the gampong government in the administration of government and to increase the implementation of Islamic law and develop customs.

If you look back at the gampong institutional arrangements, it does not only refer to Law No. 11 of 2006 and Gampong Qanun. But also refers to Law No. 32 of 2004 (before the implementation of Law No. 6 of 2014) and PP No. 72 of 2005. If mukim is seen as a form of federation, then the gampong is a place of wider autonomy than the autonomy possessed by the mukim. Mukim is positioned as a traditional village (self-governing community), the gampong is in the domain of an autonomous village while still paying attention to the traditional values of local culture as a step towards the spirit of traditional villages, although the domain of the state government is still strong from traditional governance.

LoGA and the existing qanun shows state control that is still very dominant over mukim and gampong.²⁶ The structure of the local

²⁵ David Bouchier, *Liberal Democracy in Indonesia: The Ideology of the Family State*, (London and New York: Routledge Taylor & Francis Group, 201), p. 112.

²⁶ Blane D. Lewis, "Decentralising to villages in Indonesia: Money (and other mistakes)", *Public Administration and Development*, vol. 35, no. 5 (2015), p. 347.

government is arranged very hierarchically starting from the district, sub-district, mukim and gampong. The position of the mukim power is under the sub-district, the gampong is under the mukim, finally the gampong is also under the sub-district structure indirectly. On the other hand, this regulation also very much contrasts with Law No. 32 of 2004, where the head of sub-district and village head relations are not hierarchical-instructive relationships, but facilitation and coordination relationships. With this model the position of mukim and gampong under the sub-district power structure is not much different from the old pattern of Law No. 5 of 1979 concerning the Village Government. In real terms, when there is an authority or policy concerning the problems in the village, the geuchik directly takes the matter to the sub-district without first coordinating with the mukim.

Basically regulations seek to integrate between adat and the state. However, the reality that has developed in local governance has not been able to answer the dualism between adat and the state. This attraction is a form of obscurity between domains that exist in custom and state. Indigenous people have not found a bargaining position in front of the country. This position certainly reminds us of Hans Kelsen's analysis of regulation itself from the perspective of legal sociology. The regulation mentioned by Kelsen where the vertical dynamics of norms in stages, whose validity is regressus (backward) is determined by the higher norms so that the grundnorm is a pre-supposed norm.²⁷ In the context of sociology, norms are strongly influenced by cultural values and the development of society from a community. In this context, the position of the gampong and also mukim regulations will face upward pulls through the hierarchical system of legislation, and the downward pull to build a system responsive to local values.

If this is integrated into the local government, there will be a lack of clarity of the domain in the mukim, gampong and sub-districts. Therefore, the institutional development programs of the gampong are still dominated by the government above. For this reason, efforts must be made to synergize and coordinate the development of regional governments in an effort to realize regulations that are not

²⁷ Hans Kelsen, *General Theory of Law and State (Law and Society Series)*, ed. by Javier Trevino, 2nd ed. (London: Transaction Publishers, 2006), p. 66.

only rooted in the level of regulation, but also more importantly how the implementation of the existing qanun runs optimally for the gampong community.

Conclusion

With the Special Autonomy Law No. 18 of 2001 which was then followed up with Qanun No. 4 of 2003 concerning the Mukim and Qanun and Government Regulation No. 5 of 2003 concerning the Gampong Government increasingly opens the space for revitalizing the gampong and mukim institutions back within the framework of its Acehnese identity culture based on religious values and customs.

Gampong Qanun really needs to be a guide to all the rules related to organizing gampong. There is arranged how to appoint the geuchik to how to empower the gampong financial management. However, in order to understand the rules and guidelines contained in the qanun, it is not certain that all gampong officials can understand them in detail. Moreover, there are some authorities and responsibilities that are still very general and not yet binding. That is, the realization of the qanun becomes important when the practice of its translation is still very absurd and has not been deeply rooted in the gampong institutional governance.

Gampong Qanun occupies an important portion and plays an active role and synergizes with each other in the process of building gampong. The Village Government Law with several existing authorities and also with the existence of the Gampong Qanun is not considered as a form of conflict. This is because the Qanun of the Gampong Government is a regional product that still refers to the regulations above. This is in accordance with the main objective of the revamp of the gampong government with the implementation of special autonomy to restore the functions and authority of the gampong government in the administration of the government and to increase the implementation of Islamic law and develop customs/culture.

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