PROBLEM AND SOLUTION IMPLEMENTING REGULATIONS THE LAW ON GOVERNMENT OF ACEH, INDONESIA

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ABSTRACT

Memorandum of Understanding between the Government of Republic of Indonesia and the Free Aceh Movement (MoU Helsinki) as a concrete step in the Aceh conflict termination results a consensus to establish the Law on the Government of Aceh (the LoGA). The law is very important not only to regulate the various sectors of the implementation of special autonomy in Aceh, but also to help determine the future prospects of peace for Aceh within the Unitary Republic of Indonesia (NKRI). In the legislation referred, it is determined that to must finish product implementing regulations. Without these products, not all of the content of the Law on Government of Aceh could be run. This paper aimed at answering any problems that occur in the process of completing the regulations implementating of the Law on Government of Aceh.

Keywords: Regulations, Implementing, The Law on Government of Aceh.

Introduction

For Acehnese, the Law on the Government of Aceh (LoGA) [Act Number 11 Year 2006 regarding the Government of Aceh, the Official Gazzette of the Republic of Indonesia Year 2006 Number 62, Additional Gazzette of the Republic Indonesia Number 4633; enacted on 1 August 2006], is not an ordinary Act. It is an outstanding Act which denotes a significant meaning not only for Acehnese particularly but also for Indonesian generally.

This Act was drawn up through a long process. One of the backgrounds of this legislation is the Memorandum of Understanding between the Government of Republic Indonesia and the Free Aceh Movement, signed in Helsinki on August 15, 2005. By the MoU, the Government of Republic Indonesia and the Government of Aceh assert their commitment to peacefully, comprehensively, sustainably, civilized, resolve the conflict in Aceh, and the parties are determined to create conditions so that the Aceh Government can be manifested through a fair and democratic process within the Unitary State of Republic of Indonesia.

Therefore, the Memorandum of Understanding as the concrete step in terminating the conflict in Aceh has generated a consensus in drawing up the LoGA. With this Act, the Aceh Province has a greater authority to regulate various sectors of the special autonomy implementation, as a consequence of the peace agreement.

To understand the importance of the position of this Act, it can be seen in the general section of the general explanation of the LoGA, at least there are five basic substantial principles to the born of the Act. These five principles are: First, the state administrative journey of the Republic Indonesia places Aceh as a special and privileged local government.
institution, related to the typical and distinctive character of the Acehnese war history that has high resilience and perseverance. Second, the high resilience and perseverance are based on the Islamic syaria worldview which delivers strong Islamic culture. Third, the dynamic aspirations of the Acehnese not only in the tradition, cultural, social, and political which adopted the Aceh privilege, but also provide legal certainty in any issues as the religious life foundation of the Acehnese has formed attitudes, high fighting spirit, and strong Islamic culture. Fourth, the political solution to the Aceh conflict resolution is the Act No. 18 Year 2001 which regulates the implementation of the special autonomy for Aceh Special Region Province as the Province of Nanggroe Aceh Darussalam, where the Act implementation is not sufficient enough to accommodate aspirations and interests of the economic development and political justice. Fifth, natural disasters, earthquake, and tsunami happened in Aceh has grown the solidarity all the nation potential to rebuild the society and Aceh region. Also, the stronger awareness has grown from the Government and the Aceh Free Movement party to resolve the conflict peacefully, comprehensively, and sustainably, and dignified permanently in the framework of the Unitary Republic of Indonesia (Ismail, 2010).

These five basic principles can be understood that Aceh receives a distinguished position in the state administration. The Aceh Province has a greater authority, as regulated in Article 7 of the LoGA, that is governmental affairs in all sectors, but the national, foreign affair, defence, security, justice, monetary, and national fiscal, and particular religious issues.

The problem is after six years the MoU and seven years the LoGA, there are some issues that are not running well as expected. It is crucial particularly in the context of peace sustainable/continuity in the Unitary State of Republic Indonesia.

This paper is aimed at answering what cause that led to the unaccomplished of the various provision and how are the alternative solution.

Methods
This study focusses on the document study. The main data used are the primary legal material that are legislations related to the Aceh authority after the LoGA legalization. Moreover, some related research results are also used to help explaining problems encountered. This study applies quantitative analysis by descriptive explanation.

Results and Discussion
MoU dan LoGA
The MoU contracted with LoGA describes the expectation of uplifting/happily law achievement in Indonesia. However, in fact, there are still several levels of problems found, i.e, the LoGA construction and the implementation.

Sociologically, the birth of the MoU should recall the two keys: (a) the disaster that bring up an awareness to the peace realization in the Unitary Republic of Indonesia (NKRI). The awareness engenders the commitment to terminate the continuous conflict “hitam di atas putih” by a MoU followed by the drawing up (formation) of the LoGA; (b) The LoGA has to concretize the principles of good governance in the governance administration and development implementation in Aceh to fully bring the welfare, justice as well the advancement, fulfilment, and protection of human rights for the people.

Grounded on these two important keys, the problems are: first, do all the contents of the MoU was already accommodated in the Act? In this case, it can be said that the LoGA is not fully accommodate the MoU. It can be understood as the authority to carry out those two issues are on two different institutions. The MoU was signed by the Government, meanwhile, the authority to draw up/establish the LoGA is in the legislative. It leads to different interpretations.
of what is agreed/believed. The different point of views are found until today.

Second, have all stipulated in the LoGA already been completed? This question is crucial as in fact there are still some implementing provisions of the LoGA to seven years of the age since it was born, is not finished yet. It should be remembered that the implementing provisions are not only the government obligation (Jakarta). In fact, there are not all qanun resolved in the Aceh level.

Both questions are crucial to be answered. It is said that the shortages becomes the problems, particularly could lead to the “vacuum” of the law. In this case, the law should be regulated by the LoGA. However, since the implementing provisions have not been finished yet, the national law is then used.

In the law draft, the concept of implementing regulation itself has particular stratification. To measure a product of legislation, there is a parameter in Law. For example, to find anything mentioned as the product of legislation regulation, it must be seen in the Act No. 12 Year 2011 regarding the Establishment of the Legislation. The Act sets up a hierarchy of the Act, ranging from the Constitution of the republic Indonesia of 1945; the People's Consultative Assembly Decree; Act/Regulations in Lieu of Law; government regulation; Presidential Regulation; Provincial Regulation, and Regulation District / city. Legal force of legislation in accordance with the hierarchy.

At the same time, the Act also sets principles, at least first, the principle of lex superior derogate lex inferiori (the lower legislation regulation must not be conflicted with the higher one); second, the principle of lex specialis derogate lex generalis (the more specific legislation regulation overrides the more common one); and third, the principle of lex posterior derogate lex priori (the legislation regulation which comes after overrides the one that was established first should the material regulated in the legislation regulation is similar).

Assuming on the stratifications and principles, then actually the so-called conflict of Law, it can be basically resolved. By the concept of legal principles mentioned above, it most likely happened is the conflict of law interpretation. Eventhough there is a way out in the Law that are several model of legal/law interpretationcan be done gramatically, sociologically, historically, and comparison. By these six interpretation models, basically the differences emerging in interpreting the Act content can be found.

**The Difference of Politic Way and Special Authority**

In the context of Aceh, it seems that all this time happens is the different view on the one hand, and the political will on the other hand. Both the view and political view are two things that are opened to be resolved by the Government (Jakarta) and the Government of Aceh.

The two resolving process will show the most important linking point in an Act, that are, politic, law, and interests. Eventhough our state constitution clearly mentions that Indonesia is the country of laws, not power, though empirically the political domination can not be ignored.

We have been through some crucial phase in interpreting some articles in the Act of Aceh Government. By the experiences, I believe the winning power is the power that can bring the confidence on the law interpretation. The power (it) will change according to the social development surrounded. It has been shown that some power of Aceh can convince their version of legal/law interpretation.

The law has many functions in the Indonesia life. It is not merely as the rules governing good and bad. The law (Act exactly) can serve for various purposes, including efforts to resolve the conflict peacefully between Aceh and Jakarta for the last three decades.

Understanding the desire, there be found the essesntial legal/law interest, that is,
resolving problems (Mahfud, 1998). In addition, the Act also allows greater authority for Aceh (Sulaiman, 2012). Several particular authorities of Act. 11/2006 are as follows: (1) the authority to draw up the Act/Law, international agreement, and administrative policy that are directly related to Aceh (Article 8); (2) the authority in terms of international cooperation (article 9); (3) the authority in terms of establishing agencies/institutions/commission (Article 10).

In addition, there are some other particular rules that distinguish it from the existing provisions. First: Local Institution. There are two local institutions, (a) which are similar to other regions such as Governor, KIP, Supervisory Committee, and Syaria Court, (b) institutions which only exist in Aceh such as Wali Nanggroe, MPU, MPD, MAA, KKR, and Human Right Court.

Second, the governor is elected through the general/local election of candidates proposed by the political parties, independent candidates, and local parties. The governor has particular duties and authorities such as implementing the syaria law, giving any considerations to the government policies that are directly related to the Aceh Government, providing approvals to the appointment of the Chief of Police (Article 205) and the Chief of Higher Judiciary (Article 209), determining a policy to be noted in the selections to be commissioned officer and police officers conducted by the Aceh Police Department (Article 207 Paragraph (1)).

Third, DPRA / DPRK; the number of DPRA member is 125 % of the national provision, the organization completeness is adjusted with the specificities, elected by a general election attended by the national and local parties, and have particular/additional authorities, such as, (1) Giving any considerations on the international agreement draft that are directly related to Aceh, (2) Giving any considerations to the draft of Act drawn up by the House of Representaive which are directly related to Aceh, (3) Proposing the establishment of the Aceh KIP and the Supervisory Committee.

Fourth, the local parties are explicitly admitted (Article 75 Paragraph (1)). Besides, the LoGA also clearly acknowledges the participation of women.

Fifth, Wali Nanggroe institution functions as an indigenous leadership, fostering indigenous life and giving consideration to the drawing up of customary provisions by traditional institutions, granting an honorary or a traditional award. This is not political institutions nor government agencies (Article 96-97).

Sixth, the implementation of Islamic Law. There have been regulated several provisions, such as the existence of criminal provisions (jinayat) administered by the qanun (Article 125), and qanun on Islamic Law can only be terminated by a judicial review by the Supreme Court (Article 235 paragraph (4)).

Seventh, the position of the Syaria Court has an additional authority in Aceh, that is, to prosecute the criminal case related to the implementation of Islamic law, and procedural law regulated by Aceh Qanun.

Eighth, the Court of Human Rights, established by the Government no later than one year after the ratification of this Act, and it applies to any cases of human rights violations that occur after the promulgation of this Act (Article 228, Article 259).

Ninth, the KKR was formed and became effective one year after the promulgation of this Act. KKR is part of the national KKR, which works based on the national legislation and customary principles of living in society (Article 229; Article 260). However, as it is constrained with the Law. 27/2004, the Constitutional Court later cancel it.

Tenth, the management of natural resources. There are a few issues governing the article, those are, Article 156 regulating the authority, Article 157 regarding guarantees reclamation and rehabilitation of lands, Section 158 setting compensation for communities in
the management of non-renewable natural resources, Article 159 about the community
development funds, Article 160 concerning the joint management of oil and gas, and Section
165 settling permits.

Eleventh, gradual abolition of the kelurahan. As stipulated in Article 267, kelurahan in
Aceh should be phased out and replaced by gampong.

Grounded on the facts, the democratic national law is actually being examined, the
development of the law should allow the participation and aspirations of the society through a
fair, transparent, and accountable mechanism; and social-justice oriented development; and
ensuring a civilized and religious tolerance life in society (Ramli, 2008).

The Peace Law

To measure as well build laws for the peace, there are two phases that are crucial to be
considered. First, the phase in which the process of the formation of the LoGA which fairly
accommodate various inputs comparing with the process of the formation of other Acts in
Indonesia. Since the beginning, the formation process of this Act has "supervision" from the
stakeholders. There some provisions which are occur-pull starting but finally was sucessfully
to be agreed on, because of the ongoing communication. It indicates that there is an open
communication at the time this Act was drawn up. However, in terms of results, there still
several issues are being debated.

Second, the phase of implementation provision, which has not fully developed. Among
a number of required implementation provisions, there only four are completed. The delay is
concerned to affect the democratization process of the law itself. The democratization is any
social changes happen untiil then the law established and clarify it as an attempt to ensure and

In this case, we should not close ignore our obligation to view the fact that social is
changing. Moreover, the democratization concept, so-called procedural democracy
mentioned by Gaffar. Here, the democracy is a common concept as an attempt to carry out an
ideal practice by the country (Gaffar, 2006; Skolnick, 1966). Mahfud MD said that democracy
must apply the law in order to sustain it. These two things are intertwined like two sides of a
coin. Democracy needs law, and democracy itself determines the quality of laws (Mahfud,
1999).

As it is known that in the formation of the LoGA, political denying and dragging
happens apparently. In one hand, the power is always associated with the intention of law
formation which benefits the status quo position. On the other hand, the democratization phase
has led to an interaction which at the same time there are also some other interests are
accomodated. It then shows that “law as a means” can be clearly interpreted. However, again,
the result is not entirely democratic as there are some particular issues that still be debated until
now.

Law as the process of achieving peace is also reflected in a number of provisions
regulating special provisions mentioned above. In this case, the LoGA also adopts many
provisions derived from the concept of "living law" in society. The meaning in the context of
'law in the book’, a number of concept "living law" have been accomodated, that the evidences
will be more valuable from the sociological standpoint in the future (Unger, 1998).

This reality is unlikely to happen by itself. There is a strong foundation built on the
democratization process, the "permanence of peace". A number of prerequisites and conditions
of the implementation of the Act in turn also affects to the extent of the government attempts
to encourage "the permanence of peace" for Aceh. However, the strengthening peace process
is also needed from the bottom, from the public. The fact brings an picture that a law product, at the end must be persistently improved, as it borrows indicators in the progressive law, that the law as something that is still being in progress. It is also associated with social development that continuously changes.

Moreover, the obligation of each party should be run. Government is mandated to totally implement the rules and provisions, completing it as an attempt to carry out the law. Similarly, other stakeholders should also perform their obligations.

Establishing the law for a sustainable peace will face problems should the parties do not perform their obligations. Drawing up the law for the peace in Aceh is also determined by the extent of attempts to improve the law product in accordance with their social development.

The LoGA Implementation

If we refer to the LoGA, there are at least 82 implementing rules that must be resolved, including ten Government Regulation (PP), three Predisen Regulations (Perpres), 68 Aceh Qanun, and the Governor Regulation (gubernatorial). From all the implementing rules to be established, up to 2013, there still some are unfinished yet.

From ten Government Regulation (PP), a new three-PP are completed already, the Government Regulation No. 20 Year 2007 on Local Political Parties (Article 95), PP No. 58 Year 2009 on Terms and Procedures for Appointment and Dismissal of Aceh Regional Secretary and District Secretary / City (Article 107), and PP No. 83 Year 2010 on Delegation of Authority to the DKS (Article 170). In addition, there are two Government Regulation are still being discussed, the draft Joint Management PP Oil and Gas Aceh (Article 160) and the Draft Regulation Authority The National Command in Aceh (Article 270).

Meanwhile five unfinished Government Regulation unfinished: (1) Implementation Procedure Duties and Authorities of the Governor as Deputy Government (Article 43), (2) Standards, Norms and Procedures Development and Supervision of Civil Servants Aceh / Regency / City (Article 124), (3) Name and title of Aceh Government Officials (Article 251), (4) Supplying of Infrastructure, Finance, Personnel and Education Documents Related to MI and MTs (Article 264), (5) Supplying Port / airport to the District / City (Article 265).Whereas, the regulation completed is the Presidential Decree No. 75 Year 2008 regarding the Procedures for Consultation and Approval Plans Considerations For International, Plan Establishment Act, and the Administrative Policies directly associated with the Aceh Government (Article 8), and Presidential Decree No. 11 Year 2010 on the Aceh Government Cooperation with the Institute or Agency Abroad (Article 9). The Government Regulation that are not completed yet is regarding the delivery of the Regional Office of the National Land Agency of Aceh and District Land Office / City to be the regional (Article 253).

While of 68 Qanun Aceh needs to be solved, there still 24 qanun remaining to be completed. However, different from Government Regulation and Presidential Decree, the qanun position itself is in Aceh. Should the Government Regulation and Presidential Decree issues associated to Government, so that the Qanun itself relates the executive and legislative performance. The logic is should we ourselfe can not finish the work, we can not expect the Government to complete it. Surely, this psychology issue must be clearly understood by the executive and legislative in Aceh.

The delay in the completion of the implementation provisions, at least caused by three main factors. First, the communication gap between Aceh and Jakarta in the process of completing the implementing provisions at the central government level. One of the Government Regulation Draft being drawing up, having carried out in 80 times meeting, for one to another meeting, the officials present change at times, hence, the decision can not be
determined. Second, the failure to build a trust, that the existing authority actually utilized by the Government of Aceh in accordance with regulations established. Third, at the level of Aceh, the political interest to resolve the remaining qanun is at stake by the legislative and the executive.

These three things are actually influenced by the worldview and political interest. The perspective often causes any suspicion, especially between Aceh-Jakarta relations. By the differences in perspectives, the continous communication is important to be performed. In addition, determining the political interest to consistently resolve the uncompleted issues.

All parties should be aware that in the context of Aceh the law is being projected as a means to solve the problem (conflict). Although it is not exactly the similar, the concept is related to what expressed by Roscoe Pound, namely as a tool of social engineering. The concept is "familiar" in Indonesia, thanks to Mochtar Kusuma Atmaja. However, this concept has been criticized, as Atmaja opinión, that Pound opinion regarding the function of law as an instrument of social engineering is not expressed on the basis of positivistic understanding of law that explain the law (law) as the legislation including government policies.

The concept of law (law) in the sense of Roscoe Pound does not significantly mean Act (Act), or other legal rules made by the executive, but the meaning of the law (law) in the sense of law as tool of social engineering, is a law made by the judge or the better known as verdict or judge made law, because such law practice is produced by state common law system, not the civil law systems as in Indonesia (Rahardjo, 2006). Through official law as an instrument of politics, this function-consciously or not-to is indisputable.

The function is in line with the Friedman concept states the importance to further following up the regulations, considering that one of the functions of the regulation is to govern the behaviours (Friedman, 1975). Therefore, the political interest to resolve the provisions is essential.

It is understood that as a political instrument, the law is used to achieve certain goals. In our life, we have seen the functions of law as a political instrument. The authorities often use the law to strengthen their power, even on the other hand. Law can be used as a tool to achieve justice and other intended purposes.

Conclusions

Having found that there are still many unfinished implementing provisions, it is clear that the executive and legislative coming challenges are serious. The Aceh Government should strive to build political communication with the Central Government.

There are at least two obstacles all this times. First, the communication with the Government is not smooth. The Government Officials should be informed more about the authority and specificity regulated in the Act of Government of Aceh (the point is there is a difference by the general authority of other regions in Indonesia). Second, the Aceh legislative and executive political communication should be performed is regarding to many uncompleted Qanun.

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