



The establishment of “*Qanun Gampong*” based on laws and regulations (A study in Bahagia Village, Krueng Sabe Subdistrict, Aceh Jaya District)

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Abstract

Village regulations can vary in Indonesia, such as in Aceh it is called “*Qanun Gampong*” based on Law No.11 of 2006 concerning Aceh Government. “*Qanun Gampong*” statutory regulations stipulated by the *Keuchik* together with “*Tuha Peut*”, which apply in certain “*Gampongs*”. Its preparation requires community participation, so that the final results of the drafted “*Qanun Gampong*” can fulfill legal aspects and can be implemented in accordance with the objectives of its formation. *Gampong Bahagia*, Krueng Sabe District, Aceh Jaya Regency, in its government there are still regulations and policies that are made far from what is needed, many people do not know that there is a *Qanun* formed by *Keuchik* and *Tuha Peut* which is already in operation. If you look again at the provisions in Article 149 of the Aceh Jaya Regency *Qanun* No.4 of 2018 concerning *Gampong* Government, it is emphasized that the community is given the right to provide input or suggestions on the Draft “*Qanun Gampong*” and this must be consulted with the community. This research is empirical juridical research, using a statutory approach. Data collection was carried out through observation, interviews and documents. The data obtained was analyzed qualitatively. The establishment of *Qanun* in *Gampong Bahagia* has been carried out in accordance with statutory regulations, socialization and evaluation have also been carried out by authorized institutions despite all limitations. However, community participation in the preparation of the “*Qanun Gampong*” is limited by the *Gampong* Government. The obstacles or obstacles faced in the process of forming the “*Qanun Gampong*” are the lack of adequate human resources from both the *Gampong* and District Governments, in addition to the lack of budget provided by the Aceh Jaya Regency Government or the *Gampong Bahagia* Government, so as to carry out socialization activities related to the procedures for forming the “*Qanun Gampong*” is still very limited.

Keywords: “*Qanun Gampong*”, legislation

Introduction

The existence of the reform era has indirectly provided many lessons for the Indonesian people, one of which is the regional autonomy granted by the Central Government to the Regions, up to the Village Government level with the enactment of Law No.6 of 2014 concerning Villages. Moving the wheels of development must be accompanied by awareness to understand the spirit of autonomy for all village community drivers and the capacity of the apparatus and community in understanding government governance. Especially in Aceh, villages are called *Gampong* (Rini Fitriani *et al*, 2022: 233) [9]. *Gampong* implemented in Aceh is a government system that includes the power to carry out customs and customary law in Aceh. *Gampong* government is an organization, so the organization must be simple and effective and pay attention to the community (Nur Daud, 2003: 635) [8]. *Gampong* is the smallest or lowest level of organization or government structure and is closer to the community, having an important role in carrying out the autonomy mandated by the constitution as a path to a prosperous society. The village is an autonomous institution with its own traditions, customs and laws that are relatively independent (Gunawan Widjaja, 2003:3) [4].

The process of forming legislative regulations in Indonesia generally tends to be elitist, closed in nature and the public is rarely given the opportunity or opportunity to participate. In fact, community participation is often left out in the process of drafting statutory regulations, even though the people most interested in forming these regulations are the community, where these regulations will later be enforced in

society (Fidhia Aruni *et al*, 2023: 23-27). So there is an andaiium which says that where there is society, there is law. In general, legislative regulations are processed through various stages, starting from the preparation stage, the stipulation stage (usually there is an agreement), implementation, evaluation or assessment and reintroduction of the finished process. A designer of legislative regulations must have good and adequate knowledge of the socio-cultural conditions, socio-political conditions and economic conditions of society. Furthermore, good knowledge and understanding of the procedures and procedures outlined in the applicable governance system are also required. However, this is a phenomenon that occurs in society, many laws and regulations are not in accordance with the needs and conditions of society (Ni'matul Huda and Nazriyah, 2011: 7) [7].

The name of the term Village Regulation can vary in Indonesia, for example in Aceh it is called *Qanun Gampong* based on Law No.11 of 2006. “*Qanun Gampong*” are statutory regulations stipulated by the *Keuchik* together with *Tuha Peut*, which apply in certain *Gampongs*. *Qanun Gampong* is a further elaboration of higher laws and regulations by taking into account the socio-cultural conditions of the local *Gampong* community. “*Qanun Gampong*” are prohibited from conflicting with public interests and/or higher laws and regulations. The community has the right to provide oral or written input in the context of preparing or discussing the “*Qanun Gampong*” Draft. To implement the *Gampong Qanun*, the *Keuchik* establishes

Keuchik Regulations and *Keuchik* Decrees. “*Qanun Gampong*” requires community participation in its formation. This is intended so that the final results of the “*Qanun Gampong*” that are prepared can fulfill legal aspects and can be implemented in accordance with the purpose of its formation. Community participation can take the form of input and brainstorming in the formulation of the substance of *Gampong Qanun* regulations. The strength of law and the effectiveness of legislative regulations will occur if they fulfill 3 (three) foundations at once, namely philosophical, juridical and sociological. Failure to fulfill these three basic principles will result in the ineffectiveness of laws and regulations.

This article was written to expand and enrich previous research related to *Gampong Qanuns* in statutory regulations. In this research the author focuses his discussion on the formation of *Gampong Qanun* based on statutory regulations. This research will explain the position and form of testing the constitutionality of “*Qanun Gampong*” in statutory regulations, the process of drafting *Gampong Qanuns* and obstacles in drafting “*Qanun Gampong*” in Gampong Bahagia, Krueng Sabee District, Aceh Jaya Regency.

Research Method

The type of research used in this research is empirical juridical, namely research that emphasizes applicable legal regulations, and in this case the research was carried out starting from research on secondary data which was then continued with research on primary data in the field (Bambang Sunggono, 2015:75) ^[1]. The research approach used in this research is: The legal approach is an approach carried out by reviewing and analyzing all laws and regulations related to the legal issue being handled (Bambang Sunggono, 2015: 91) ^[1].

The data collection technique in this research is literature study, and also uses observation, namely collecting data by direct observation of the research object (Sugiyono, 2014: 227) ^[1]. Then an interview is a conversation with a specific purpose by 2 (two) parties, namely the interviewer as the asker/giver of questions and the interviewee as the answerer to the question (Basrowi & Suwandi, 2008:127) ^[2]. And documentation is a method of collecting and exploring written data such as literature studies and other documents related to research (Lexy J, Moleong, 1999: 196) ^[5]. The data obtained was analyzed qualitatively using inductive analysis instruments.

Results and Discussion

Position and Form of Constitutional Review of “*Qanun Gampong*” in Legislation

The “*Qanun Gampong*” is formed in the context of administering the *Gampong* Government, thus the “*Qanun Gampong*” must be a further elaboration of higher statutory regulations, and must not conflict with public interests and/or higher statutory regulations, and must pay attention to conditions socio-cultural of local communities, in an effort to achieve long-term, medium-term and short-term goals of government, development and community services. “*Qanun Gampong*” arrangements must be established based on Law No.12 of 2011 concerning the Formation of Legislative Regulations as has been amended several times, most recently by Law No.13 of 2022 concerning the Second Amendment to Law No.12 of 2011 concerning the

Formation of Legislative Regulations. There are several principles for the formation of statutory regulations contained in the provisions of Article 5 of Law No.12 of 2011 which explains that in forming Legislative Regulations it must be carried out based on the principles of forming good statutory regulations, which include: clarity of purpose; the appropriate forming institution or official; correspondence between types, hierarchies, and content materials; can be implemented; usefulness and usefulness; clarity of formulation; and openness. The “*Qanun Gampong*” returns to its position as Legislative Regulations apart from the statutory regulations contained in the hierarchy in accordance with the provisions of Article 7 paragraph (1) and Article 8 of Law No.12 of 2011. Seeing this relationship, the “*Qanun Gampong*” after the ratification of the Law Law No.6 of 2014 concerning Villages no longer exists merely as a further elaboration of higher statutory regulations, but rather acts as statutory regulations in the context of organizing *Gampong* Government in implementing *Gampong* authority based on the rights of origin and local scale authority. *Gampong*. Thus, “*Qanun Gampong*” has a function as an instrument for implementing *Gampong* autonomy.

The importance of the *Qanun Gampong* after the enactment of Law No.6 of 2014 is because this law has strengthened the position of the village government (*gampong*), which indirectly also requires the *Qanun Gampong* in its implementation. This is also a consequence in the field of statutory regulations, where *Qanun Gampong* is very much needed in its implementation (Suhaimi, M. Gaussyah, Abdurrahman, Mahfud, 2023: 25-30) ^[10].

Law No.23 of 2014 concerning Regional Government as amended several times, most recently with Law No.9 of 2015 concerning the Second Amendment to Law No.23 of 2014 concerning Regional Government, it can be seen that the law regulates the limitations on regional autonomy. Not all rules can be set by the Regional Government, only certain rules are given autonomous rights to the regions to regulate them in accordance with the provisions of the law. This is also in accordance with the provisions of the theory of autonomy used by the author, which states that the concept of regional autonomy here is dividing authority between the center and the regions with the aim that all matters, whether mandatory or optional, can be carried out in accordance with their respective authorities. The essence of granting autonomy to regions is in order to create independence, not as an independent government unit. The aim of autonomy itself is to improve community welfare which is achieved through increasing the rights and responsibilities of regional governments to manage and regulate their own household affairs (Faisal, Syahbandir and Eddy Purnama, 2010: 235) ^[3].

Regarding the preparation or formation of “*Qanun Gampong*”, it can be seen in the Minister of Home Affairs Regulation No.111 of 2014 concerning Technical Guidelines for Village Regulations. Apart from being regulated in the Minister of Home Affairs Regulation No.111 of 2014, it has also been regulated in detail in the Aceh Jaya Regency *Qanun* No.4 of 2018 concerning *Gampong* Government regarding the correct procedure for forming “*Qanun Gampong*” so that it can make it easier for the *Gampong* Government to prepare and form legal products. Testing of the constitutionality of the “*Qanun Gampong*” in the form of an executive review in the form of

supervision is carried out by giving authority to the Regent (State Administrative Official/bestuur) to supervise the “*Qanun Gampong*” and can cancel it if it conflicts with higher statutory regulations and/or the public interest. The preparation of the “*Qanun Gampong*” cannot be separated from the hierarchy of statutory regulations in accordance with what is explained by legislative theory, where legislation is a law-making process in order to give birth to positive law whose stages start from planning, drafting, formulating, discussing, ratifying, promulgating, and socializing product of law. Legislation does not only mean establishing laws but is also defined as: the power to make laws; legislative acts; drafting and enforcing laws; making laws through legislation, different from laws made and determined by courts; and formulating rules for the future (Tifani Rizki, 2022:300) ^[12]. There are 5 (five) stages in the preparation of laws or legislation in Indonesia, namely: planning; preparation; discussion; ratification or determination; and invitations.

Process of Preparing Qanun in Gampong Bahagia, Krueng Sabee District, Aceh Jaya Regency

According to Article 18 of the UUD 1945, Provincial and Regency/City Regional Governments are given the authority to manage and regulate government affairs themselves based on the principles of autonomy and assistance duties. In order to carry out good autonomous government functions, one of the districts in Aceh, namely Aceh Jaya District, has made various efforts, one of which is by forming regional legal products in the form of District Regional Regulations (Qanun), Regent Regulations and Regent Decrees. It is hoped that this regulation will create benefit and prosperity for the people of Aceh Jaya Regency. Apart from that, the importance of regulation in the form of Qanun is intended to fulfill, pay attention to the development and needs of the local community concerned (Muhammad Isa, Efendi, Suhaimi, 2020: 73-88) ^[6].

The formation of the “*Qanun Gampong*” carried out by the Gampong Bahagia Government must be based on the Aceh Jaya Regency Qanun No.4 of 2018. In forming the “*Qanun Gampong*”, the Gampong Bahagia Government must also be guided by the Aceh Jaya Regent's Regulation No.44 of 2015 concerning Procedures for Forming Regulations in Gampong. The “*Qanun Gampong*” Draft is initiated by the Gampong Government or Tuha Peut. It can also prepare and propose a Draft of *Qanun Gampong* to be discussed together and consulted with the community and the sub-district head to obtain input regarding the substance of the regulatory material. Discussion of the Draft “*Qanun Gampong*” was carried out through the *Gampong* Deliberation which was attended by the community.

The process of forming the Gampong Bahagia Qanun has followed regulations regarding the procedures for its formation, such as Aceh Jaya Regency Qanun No.4 of 2018 concerning Gampong Government and Aceh Jaya Regent Regulation No.44 of 2015 concerning Procedures for Forming Regulations in Gampong. Tuha Peut is a legislative institution that plays an active role in the creation of the “*Qanun Gampong*” which was discussed with the *Keuchik* and mutually agreed upon. The material regulated in the “*Qanun Gampong*” is related to the Gampong Revenue and Expenditure Budget (APBG), Gampong authority and higher regulatory orders. Regarding guidance on the process of forming the “*Qanun Gampong*”, it has been carried out

by the Women's Community Empowerment and Family Planning Service (DPMPKB) and the Subdistrict, but it is rare and very limited (Interview with Jefri Zulizal, Keuchik Gampong Bahagia).

The parties involved in making the “*Qanun Gampong*” are the *Keuchik*, *Tuha Peut* and other Gampong Officials, as well as the Gampong Community. However, community participation is often involved in the process of making Qanun regarding the Gampong Revenue and Expenditure Budget (APBG). Regarding the process of forming other Qanuns, the Gampong Government rarely involves the community. In the process of forming the “*Qanun Gampong*”, the Gampong Government submitted an evaluation of the Draft Qanun which had been discussed and agreed upon with *Tuha Peut* to the Subdistrict Head, then improvements were made according to the results of the evaluation and then it was determined (Interview with Syarbini, Tuha Peut Gampong Bahagia).

So far, the process of forming “*Qanun Gampong*” in Aceh Jaya Regency, including Gampong Bahagia, has not had a very high trend or not too many “*Qanun Gampong*” have been established because they are not supported by human resources such as legal drafting. So far, only routine Qanuns have been prepared, such as the Gampong Revenue and Expenditure Budget (APBG), Gampong Government Work Plan (RKPG) or fundamental Qanuns (Interview with Muhammad Milsa, Head of the Legal Section of the Regional Secretariat of Aceh Jaya Regency).

The community in the process of forming the “*Qanun Gampong*” is not always involved in the process of drafting it, they only know about the existence of the “*Qanun Gampong*” regarding APBG, where the Qanun is posted on the notice board at the *Keuchik* Office so that it can be known by all Gampong Bahagia people who read it. For the rest, the community does not know at all what Qanuns have been established and promulgated in Gampong Bahagia (Interview with Afandi and Nurlaila, Gampong Bahagia Community).

Obstacles in Preparing Qanun in Gampong Bahagia, Krueng Sabee District, Aceh Jaya Regency

There are still obstacles in the process of forming the “*Qanun Gampong*” which was formed by *Keuchik* and *Tuha Peut*. Syarbini as *Tuha Peut* Gampong Bahagia said that the process of making the Qanun in Gampong Bahagia experienced various obstacles or constraints, one of which was not being supported by adequate human resources in preparing the “*Qanun Gampong*”. Legal drafting in the Gampong is still very lacking so that many Gampong officials involved in making the “*Qanun Gampong*” do not fully understand what can and cannot be regulated and there is still a need for socialization and assistance from related parties in the process of making the “*Qanun Gampong*” (Interview with Syarbini, Tuha Peut Gampong Bahagia).

Apart from the obstacles explained by the District Head of Krueng Sabee and also the Head of the DPMPKB *Mukim* and *Gampong* Development Division, the Head of the Legal Section of the Regional Secretariat of Aceh Jaya Regency also explained several obstacles or constraints in the formation of the “*Qanun Gampong*”, namely: 1) the apathy of the community itself regarding product needs the law at the Gampong level or the lack of enthusiasm and will from the community to form a “*Qanun Gampong*”; 2) regarding the capacity of the Gampong apparatus itself, both *Keuchik*,

Tuha Peut and other *Gampong* apparatus are still very lacking, making it difficult for the Regency to carry out a more detailed coaching process, because in terms of preparing the material or substance of the legal product, it still really needs assistance. quite intensive; 3) the communication relationship between *Keuchik* and *Tuha Peut*, this is also sometimes an obstacle. The disharmony in the relationship between the executive and the legislature can also impact the effectiveness of the preparation of legal products at the *Gampong* level and in fact this is very detrimental to the community, because the need for this *Qanun* is for the prosperity and welfare of the community; and 4) regarding the budget, there are budget limitations at the *Gampong* level, as well as at the Regency level, so that there is very little socialization regarding the mechanism for forming the “*Qanun Gampong*”. This socialization is only carried out annually and is not carried out every year, so that the expected results of each legal product are of course still a little far from the systematic suitability and also the substantive suitability of the legal product itself (Interview with Muhammad Milsa)

Conclusion

“*Qanun Gampong*” as a regulation stipulated by the *Keuchik* is a type of statutory regulation whose existence is recognized and has binding legal force. Meanwhile, regarding the testing of the constitutionality of the “*Qanun Gampong*” in the form of an executive review in the form of supervision, it is carried out by giving the Regent the authority to supervise the “*Qanun Gampong*” and can cancel it if it conflicts with higher laws and/or the public interest. The formation of the *Qanun* in *Gampong Bahagia* has been carried out in accordance with statutory regulations. Socialization and evaluation of the formation of the “*Qanun Gampong*” have also been carried out by authorized institutions, although only once a year and not every year. However, community participation in the preparation of the “*Qanun Gampong*” is limited by the *Gampong* Government. The community is only involved in the formation of the “*Qanun Gampong*” regarding the *Gampong* Revenue and Expenditure Budget (APBG), apart from this *Qanun* the community is not included so that the people of *Gampong Bahagia* only know about the “*Qanun Gampong*” regarding the APBG. The obstacles or obstacles faced in the process of forming the “*Qanun Gampong*” are the lack of adequate human resources in both the *Gampong* and District Governments, in addition to the lack of budget provided by the *Aceh Jaya* Regency Government or the *Gampong Bahagia* Government so that socialization of the procedures for forming the “*Qanun Gampong*” is very limited and minimal.

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