



---

## Normative construction of nomination threshold in Qanun Aceh no. 12 of 2016 concerning the governor and vice governor, the regent and vice regent, and the mayor and vice mayor

Agung Munandar<sup>1</sup>, Eddy Purnama<sup>2</sup>, Teuku Saiful<sup>2</sup>

<sup>1</sup> Student, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

<sup>2</sup> Lecturer, Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

---

### Abstract

The percentage of the nomination threshold for district head via political parties in Qanun Aceh No. 12 of 2016 is opposed to the Act of the Republic of Indonesia No. 10 of 2016. This research tries to explain the clashing norms between regional rules and higher regulations, explain the legal hierarchy, and provide answers. This study employs a normative legal methodology, namely the description of secondary data gathered from the literature. The research findings show that the control of political parties can only be accomplished by national rules, such as laws and derivative regulations, so long as they do not result in normative inconsistencies. This is distinct from the regional laws, such as qanuns, that govern local political parties. These contradictory norms may be resolved preventively by harmonizing laws and regulations or punitively through the government's revocation of qanun or the Supreme Court's material review.

**Keywords:** political party, local political party, election, governor

---

### Introduction

Political parties are national organizations formed by a group of Indonesian citizens based on a common will and ideals to fight for and defend the political interests of members, society, nation, and state. In contrast, local political parties are organizations formed by a group of Indonesian citizens who are domiciled in Aceh voluntarily based on equality of will and ideals to fight for the interests of members, society, nation, and state.

Aceh is a special autonomous region in Indonesia that has its regulations in the election of district head, namely Qanun Aceh Number 12 of 2016 concerning the Election of Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Vice Mayors (Qanun Aceh No. 12 of 2016). One of the stages in the election of district head is the nomination of district head. The nominations for governor and vice governor, regent and vice regent, and the mayor and vice mayor in Aceh are selected by political parties or coalitions of political parties, local political parties, or coalitions of local political parties, combinations of political parties and local political parties, or individuals.

Qanun Aceh No. 12 of 2016 requires the percentage threshold for the nomination of district head in Aceh for local political parties and individuals. Accordingly, local political parties are required to meet the requirements for obtaining at least 15% (fifteen percent) of the total seats in the DPRA/DPRK or 15% (fifteen percent) of the accumulated valid votes in the election of members of the DPRA/DPRK in the region concerned in the last general election. This provision also applies to political parties. In addition, political parties have their threshold in Act Number 10 of 2016 concerning the Second Amendment to Act Number 1 of 2015 concerning Stipulation of Government Regulations instead of Act Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Laws. (Act No. 10 of 2016). Act No. 10 of 2016 requires a threshold for political parties of 20% (twenty percent) of the total seats of the Regional House of Representatives or 25% (twenty-five percent) of the accumulated valid votes in the general election for members of the Regional House of Representatives in the region concerned.

Article 58 paragraphs (1) and (2) Act of the Republic of Indonesia No. 13 of 2022 concerning the Second Amendment to Act Number 12 of 2011 concerning the Establishment of Legislation (Act No. 13 of 2022) states that the harmonization, unanimity, and consolidation of the conception of the draft provincial regulations are coordinated by the minister or the head of the institution that administers government affairs in the field of Formation of Legislative Regulations and carried out by vertical agencies of ministries or institutions that carry out government affairs in the field of Formation of Legislations.

The factor causing the non-compliance with the rules for the percentage of political party thresholds in the two regulations above is due to the lack of harmonization between Qanun Aceh No. 12 of 2016 with Act No. 10 of 2016 and its amendments.

The nomination of district head through individual channels in Qanun Aceh No. 12 of 2016 is also not in line with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (NRI 1945 Constitution).

Therefore, the nomination of district head from the individual path in Qanun Aceh No. 12 of 2016 is required to obtain the support of a minimum of 3% (three percent) of the total population spread over a minimum of 50% (fifty percent) of the total regencies/cities for the election of governor and vice governor and 50% (fifty percent) of the total number of sub-district for the election of regents and vice regents, or mayors and vice mayors.

The population distribution in each region for individual paths for district head candidates in Aceh is not regulated by local and national political parties, so the Qanun Aceh does not provide justice and equal treatment before the law. Aceh, as an area that implements Islamic law, certainly upholds Islamic values that do not conflict with human rights, gender, democracy, etc. Islam has a gap that can be used to draw a principle that can be brought to a broader and egalitarian understanding and guarantees freedom, justice, and equality among human beings <sup>[1]</sup>.

### Research methods

The research methodology used in this study is normatively legal. The normative juridical study aims to examine the implementation of the rules or standards in the relevant positive law. When there are voids, ambiguities, or contradictions between standards, normative legal research is used to develop legal justifications <sup>[2]</sup>.

This study employs a socio-legal methodological approach. The socio-legal technique is used to undertake textual research, particularly on legislative items, while explaining the significance and ramifications of legal topics <sup>[3]</sup>. The socio-legal method will contribute significantly to the study of conventional law by explicating the link between law and several social phenomena <sup>[4]</sup>.

### Results and Discussion

#### Setting the Threshold for Political Parties in District Head Elections in Aceh

The election of district head is included in the electoral regime after the enactment of Act No. 22 of 2007 concerning General Election Organizers. Constitutional Court Decision No. 55/PUU-XVII/2019 strengthens the position of district head elections as part of the general election.

The first direct nomination of district heads was carried out in Indonesia when Act no. 12 of 2008 concerning the Second Amendment to the Act of the Republic of Indonesia No. 32 of 2004 concerning Regional Government, pairs of candidates who can participate in district head elections are not only pairs of candidates proposed by political parties or coalitions of political parties, but also from individuals <sup>[5]</sup>.

The existence of political parties in Indonesia is regulated in Act no. 2 of 2011 concerning Political Parties. However, some provisions of political parties related to district head elections, such as setting the nomination threshold, are regulated by other laws, such as Act No. 6 of 2020.

The threshold for political parties to nominate pairs of district head in Indonesia has begun to be regulated in derivative rules such as Government Regulation of the Republic of Indonesia Number 49 of 2008 concerning the Third Amendment to Government Regulation Number 6 of 2005 concerning Election, Ratification of Appointments, and Dismissal of District Head and Vice District Head. (PP RI No. 49 of 2008), Regulation of the General Election Commission of the Republic of Indonesia Number 3 of 2017 concerning Nominations for the Election of Governors and Vice Governors, Regents and Vice Regents, and/or Mayors and Vice Mayors (PKPU RI No. 3 of 2017), Specifically for the Aceh region, the Aceh Independent Election Commission Decree Number 27/Kpts/KIP Aceh/2016 concerning Amendments to the Aceh Election Independent Commission Decision Number 19/Kpts/KIP Aceh/2016 concerning Technical Guidelines for Candidates for the Election of Governor and Vice Governor of Aceh is regulated 2017 (Aceh KIP Decree No. 27/2016).

PP RI No. 49 of 2008 is a derivative rule of Act No. RI. 12 of 2008, which contains material on the political party threshold of 15% in the nomination of district head. These rules and their amendments are automatically no longer valid since Act No. 12 of 2008 was revoked and replaced by the Act of the Republic of Indonesia No. 23 of 2014 concerning Regional Government. Meanwhile, PKPU RI No. 3 of 2017 does not change the substance of the threshold for political parties in nominating pairs of district head. The threshold stated remains at 20% (twenty percent) of the number of seats in the Regional House of Representatives or 25% (twenty-five percent) of the accumulated valid votes in the general election for members of the Regional House of Representatives in the region concerned. However, Aceh KIP Decree No. 27/2016 still equalizes the percentage of the political party threshold at 15%, considering that the legal basis for its formation refers to Qanun Aceh No. 12 of 2016.

Setting the threshold for political parties in Qanun Aceh No. 12 of 2016 changed the original provisions of 20% and 25% to 15%, such as for local political parties. In fact, setting the threshold for local political parties at 15% is specific to the province of Aceh, whose provisions have been contained in Act No. 11 of 2006 concerning the Government of Aceh, so it cannot be equated with the percentage of the threshold for political parties that have been previously stated in national regulations.

A law has hierarchical guidelines so that every rule that is formed remains in sync and in harmony with other laws and regulations. The order or hierarchy of the legal system of a country can be stated by postulating the basic norms in which the constitutional position occupies the highest order. There is a principle that lower regulations should not conflict with higher regulations. If the lower regulation contradicts the higher regulation, then the regulation can be sued for cancellation or even null and void <sup>[6]</sup>.

All laws and regulations must be guided by the following hierarchical order: 1. Constitution of the Republic of Indonesia 1945, 2. MPR Decree, 3. Act/Government Regulation a Substitute to Law (Perpu), 4. Government Regulations, 5. Presidential Regulation, 6. Provincial Regulation and 7. Local regulation of Regency/City <sup>[7]</sup>.

The legal force of laws and regulations must be in accordance with the hierarchy, and lower laws and regulations, such as qanuns, must not conflict with laws and regulations of a higher level<sup>[8]</sup>. Since the qanun is a statutory regulation at the level of a regional regulation, the government has the authority to cancel it if the qanun is contrary to the provisions of higher legislation<sup>[9]</sup>.

### **Preventive Solutions for Setting the Threshold for District Head Candidates in Aceh**

The solution to the prevention of conflicting legal norms is harmonization. The harmonization of the national legal system will be formed if there is harmony, balance, and consistency and there is no conflict between one legal regulation and another, both vertically and horizontally. The ideal step in the harmonization of the national legal system is realized by aligning, harmonizing, balancing, and maintaining the consistency of the elements of the legal system based on the philosophy of Pancasila and the Constitution NRI 1945<sup>[10]</sup>.

Legal harmonization is realized to enforce legal certainty, law order, law enforcement, and legal protection. Harmonization in the national legal system has a direct relationship with the process of building harmony and balance in the substance of the law or statutory regulations. If examined from its substance, laws or statutory regulations/regional regulations formulated by authorized institutions must reflect the principles and legal norms that apply in society so that the laws formed reflect the aspirations of the citizens or are democratic<sup>[11]</sup>.

The harmonization of laws and regulations at the regional level begins when the regional regulations are drafted. Harmonization of regional regulations is carried out at the stage of drafting regional regulations in the following order: preparation of academic texts, drafting of regional regulations, and ends with harmonization, unanimity, and consolidation of conceptions<sup>[12]</sup>.

### **Repressive Solutions for Setting the Threshold for District Head Candidates in Aceh**

The percentage of the threshold for the nomination of district head through political parties in Qanun Aceh No. 12 of 2016 is contrary to the Act No. 10 of 2016, and if the lower laws and regulations conflict with those above, then those regulations can be demanded to be canceled or null and void (*van rechtswegenietig*)<sup>[13]</sup>.

The cancellation of regional regulation can be carried out by the government if it is contrary to a higher level of legislation and/or is in conflict with the public interest. The government can cancel qanuns that conflict with: the public interest, inter qanuns, and higher laws and regulations unless otherwise regulated in Act Number 11 of 2006 concerning the Government of Aceh<sup>[14]</sup>.

The principle of hierarchy also gives rise to the birth of the right to examine regional regulations, both formally (*formele toetsingsrecht*) and materially (*materiele toetsingsrecht*). The right to formal examination is the authority to assess whether a legal product has been made through procedures as determined/regulated in laws and regulations. Meanwhile, the right to examine material is an authority to investigate and then assess whether a legal product contains its contents in accordance with higher-level regulations and whether a certain power (*verordenende macht*) has the right to issue certain regulations<sup>[15]</sup>.

The right of material review is carried out by the Supreme Court on the laws and regulations under Law<sup>[16]</sup>, including the examination of qanuns. However, following the development of modern countries, judicial power has been separated from government power due to the influence of the Trias Politica concept, which prohibits the arbitrary interference of the government power in judicial power<sup>[17]</sup>. Thereby, material testing is the right choice to deal with conflicting norms in regional regulations such as qanuns.

### **Conclusion**

Based on the results of the study that set the threshold for the nomination of district head in Aceh through political parties as regulated in Qanun Aceh No. 12 of 2016 is contrary to the Act No. 10 of 2016. The regulation of political parties can only be regulated in national regulations such as laws and derivative rules as long as they do not cause a conflict of norms. This is different from the regulation of local political parties, which can be regulated in regional regulations such as qanuns. Solutions to overcome these conflicting rules can be carried out preventively through the harmonization of laws and regulations and repressively through the cancellation of qanun by the government or material review by the Supreme Court.

### **References**

1. Saiful T. Perspektif Keadilan Gender dalam Formalisasi Syariat Islam di Aceh. *Doctrinal*,2016:1(1):131-56.
2. Djulaeka, Rahayu D. *Buku Ajar Metode Penelitian Hukum*. Surabaya: Scopindo Media Pustaka, 2019, 20.
3. Irianto S, Shidarta. *Metode Penelitian Hukum: Konstelasi dan Refleksi*. Jakarta: Yayasan Pustaka Obor Indonesia,2013:(2):15-16.
4. Cahyadi A, Danardono D. *Sosiologi Hukum dalam Perubahan*. Jakarta: Yayasan Pustaka Obor Indonesia, 2009:(1):1.
5. Labolo M, Ilham T. *Partai Politik dan Sistem Pemilihan Umum di Indonesia: Teori, Konsep dan Isu Strategis*. Jakarta: Rajawali Pers,2015:(1):174.
6. Taib M. *Dinamika Perundang-Undangan di Indonesia*. Bandung: Refika Aditama, 2017, 80.
7. Widarto J. *Constitutionality of the People's Consultative Assembly Decree in Article 7 Paragraph (1) Item b Law No. 12 Year 2011 on the Establishment of the Regulation Legislation*. *JL Pol'y & Globalization*,2016:52:1.

8. Nurdin R, Ridwansyah M. Aceh, Qanun and National Law: Study on Legal Development Orientation. Samarah: Jurnal Hukum Keluarga Dan Hukum Islam.,2020:4(1):107-31.
9. Husna A, Purnama E, Syahbandar M. Pembatalan Qanun Aceh Melalui Executive Review dan Judicial Review. Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial.,2020:21(2):129-46.
10. Asshiddiqie J. Perihal Undang-Undang. Jakarta: PT. RajaGrafindo Persada, 2010.
11. Suganda A, Firmansyah H. Transformasi Hukum Islam ke dalam Hukum Nasional. Jurnal At-Tatbiq: Jurnal Ahwal al-Syakhsiyah.,2022:7(1):1-25.
12. Redi A. Hukum Pembentukan Peraturan Perundang-undangan. Jakarta: Sinar Grafika, 2018, 28.
13. Aditya ZF, Winata MR. Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction of The Hierarchy Of Legislation In Indonesia). Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan,2018:9(1):79-100.
14. Asrun AM, Rosyadi AR, Milono YK. Mempertanyakan Legalitas Qanun Aceh: Sesuikah dengan Sistem Peraturan Perundang-Undangan. Kanun Jurnal Ilmu Hukum.,2019:21(2):273-94.
15. Setiawan AR, Khamid MI, Akhyarudin M. Mengurai Peraturan Daerah Dalam Peta Peraturan Perundang-Undangan Indonesia., 2022.
16. Wibowo TYW. Hak Uji Materiil oleh Mahkamah Agung untuk Menguji Peraturan Perundang-Undangan Dibawah Undang-Undang di Indonesia. Webinar Hak Uji Materiil pada Bab Penjelasan Undang-Undang Landasan dan Akibat Hukumnya., 2022.
17. Andryan A, Purnama E, Suhaidi S, Nasution FA. Prerogative Right of the President in Granting Pardon (Comparative Analysis on a Number of Countries),, 2021.