

# Autonomy In Aceh-Indonesia, From Armed Conflict To Regulation Conflict

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## Autonomy In Aceh-Indonesia, From Armed Conflict To Regulation Conflict

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### Abstract

The Memorandum of Understanding (MoU) in Helsinki in 2005, the Government of Aceh agrees to unconditionally accept the Act of Government of Aceh, delivering the principles of special autonomy and ending the 30-years conflict. The Act orders explicitly and implicitly to legislate some bylaws for implementing the norms of autonomy. Despite passing bylaws, both Government of Aceh and Central Government have involved in endless regulation conflict, including land and flag bylaw. This article uses black-letter law approach as research method, focusing on several government official texts, and case law happening during this conflict.

**Keywords:** armed conflict, regulations conflict, land tenure law, flag bylaws, autonomy

### Introduction

This article will briefly critique the implementation of autonomy in Aceh-Indonesia, having a long historical background as a compensation of ending 30 years' conflict happened during 1975-2005. Despite finishing conflict permanently, the central government tend to create a new conflict called regulation conflict. On one hand, the Government of Aceh legally ordered by Act of Government of Aceh to legislate specific bylaws, on the other hand the central government seemed unwilling to pass those specific bylaws. This discussion will explore those bylaws, generating public attention in national and provincial level.

For basic understanding, autonomy in Indonesia states in Article 1 point (1) of the 1945 Constitution stipulates that *Indonesia is a Unitary State in the form of Republic*. The unitary state emphasized is an archipelagic nation, considering the geography of Indonesia, which consists of a wide range of waters and myriads of islands. Republic denotes a governing system based upon democracy. The regions that make up Indonesia are therefore called provinces instead of states. A local governing system is based upon the principles of autonomy and assistance (co-administration) for the governing of the provinces.

Decentralization is the delegation of tasks or workload by the central government to the representatives of the central government in the regions with the absence of authority delegation, to make decisions. Authority delegation (transfer of authority by the central government) means the

handover of decision making authority to the regions or local governing units that lie beyond the reach of the central government's control. Devolution is the delegation of governing function and authority by the central government to Local Government, which becomes autonomous and out of the control of the central government (Asshiddiqie, 2006, p. 28).

However, the autonomy in Aceh has specific privilege if compared with the autonomy in other provinces in Indonesia. One of privilege are legislating specific bylaws (called Qanun), including Islamic criminal law, culture, land, coat of arms law, and so forth. The bylaws create long debate chiefly on the constitutionality of those specific bylaw. Because the character of by specific bylaws close to have contradiction norms, if analyzed by political aspect only instead of judicial aspect. So, in this article writer will discuss only two laws namely land bylaw and flag bylaw, escalating regulation conflict between central and local government.

### Literature Review

The topic of autonomy in Aceh commonly finds in several articles, discussed in some aspect of knowledges. The topic of autonomy in Aceh discussed by Miller in 2006, but only focused on violence happening in Aceh pre and post the implementation of autonomy. This book chapter did not touch the problem of regulation conflict occurred after the autonomy (Miller, 2006, pp. 292-314). In another publication, McGibbon also conducted research on autonomy in Aceh. But he used comparative approach taking Papua as sample. In his 103 pages work, McGibbon observe the contextual to the political choice to grant different autonomy to Aceh and Papua. The autonomy replies to rapidly rising independence activities in Aceh and Papua, followed the downfall of the authoritarian government of President Suharto in 1998 (McGibbon, 2004, p. vii). However, the discussion on the regulation conflict, discussed specifically in this article, have not previously published in any papers. In this discussion, the writer tries to explore more about several regulations, escalating new conflict between central and provincial government.

### Research Method

The research method used in this research is black-letter law (Gilchrist & Coulson, 2015, pp. 141-147). It refers to the basic standard elements or principles of law, which are generally known and free from doubt or dispute. It describes the basic principles of law that are accepted by most judges in most states. For example, it can be the standard elements for a contract or the technical definition of assault. This research method is characterized by the study of legal texts, including case law. When people use this term, generally the implication is that the law in question is accepted and not open to argument. On the other hand, with other types of laws, it may be widely open to interpretation (Perillo, 1994, p. 281).

### Results and Discussion

#### *a. regulation conflict on land tenure issue*

Land issue is very sensitive and closely related to justice, because land supply is regarded rare, limited, and a basic need of every human being. It is not easy to design a land policy perceived fair by all parties. A policy

providing greater ease to a small number of people may be justified, if it comes together with similar policies intended for another larger group. Thus, there is always a policy that serves to correct or restore the balance (Abdurrahman, 1994, p.11).

<sup>3</sup> Essentially, a regional autonomy is granted to the people of a legal community unit that is authorized to regulate and manage its own government affairs. The grant is handed by the Central to the Local government. The autonomy implementation is carried out by the administration head of the region, with the assistance of the region's administration functionaries, and the Parliament. The government affairs delegated to the local government derives from the government power laying at the hands of the President. According to the concept of a unitary state, the ultimate responsibility of the government is at the hands of the President. In order that the execution of government affairs transferred to the regions runs in line with the national policy, the President is obliged to provide guidance and supervision over the regional administration.

Considering the dynamic policy making, the central government issued many implemented regulations or operational guidelines that confused the local governments. The central government, apparently, is still trying to retain the BPN (National Land Agencies) and its offices both in the province and districts/municipalities as the vertical agencies. The BPN oversees the implementation of the central government's duties in land matters across national, regional and sectorial spheres. It also regulates that the BPN has 21 functions. The functions include ruling and determining over the land rights; providing consultation; handling the general administrative services in land matters; working on agrarian reform; and management for the special regions.

Thus, the local government, on one hand, practically acts as a mere spectator, because all authority in the administration of land belongs to the business of the BPN. It is a legal vertical institution executing the governmental tasks over land (agrarian) matters both in the center and periphery<sup>6</sup>. On the other hand, in conjunction with the local government authority in the land sector, the central government has, moreover, issued the regulation arranging the authority of the central government and the provincial government as an autonomous region. However, these government regulations, particularly regulating to land matters, do not function properly because of overlapping rules and authority in the land sector.

The land sector now is under the authority of the BPN, having a regional agency in each province, and an office in the district/municipality. The rights of control are owned by the central government, but must be working together with the autonomous province regarding land acquisition. The land administration affair is a mandatory authority of the district/municipality that is regulated in several regulations.

Therefore, the presence of authority transfer, from the central to district/municipality government over land affairs, has laid down the judicial

argument, and logic, for the local government to have autonomy in the land sector. In addition to that, it is subsequently reinforced with the issuance of the PP, affirming the distribution of authority in land affairs between the center and regions.

The determination and arrangement have included land use planning. Furthermore, the control and legal acts over land and land registration has always been administered by the central government. It is possible to delegate authority to local government or autonomous regions, notwithstanding, the delegation is carried out<sup>6</sup> in the framework of de-concentration to the central government officials in the regions.

The delegation of authority could also be given to local government as an autonomous region, but it is only in the context of co-administration, instead of decentralization or regional autonomy (Morangki, 2012, p.63; Herry, 2011, p.53). With this point, the local government does not fully control its own land.

The constraints faced by local government in the execution of its authority in the land sector are; namely - firstly, the dis-synchronization of horizontal norms amongst the Act of Agrarian, the Act of Local Government, as well as the Act of Governing of Aceh.

The Act of Agrarian affirms that land affairs are under the central government administration that can only be co-administered to the region; conversely, the Act of Local Government asserts that land affairs constitute an obligatory matter that has been decentralized to the regions. Contradiction, unfortunately, have also happened in the vertical norms between the Act of Local Government and the PP of BPN, later stated by Dewa as the emergency situation in the context of implementation of Aceh's land policy (Gumay, 2015).

The polemic over several regulations as the derivations to the Act of Governing of Aceh remained unfinished, even until the end of the tenure of Susilo Bambang Yudhoyono (SBY) as the President of the Republic of Indonesia, on 20 October 2014. In fact, he seemed to postpone some of the crucial derivatives regulations regarding Aceh's special autonomy.

The polemic re-emerged upon the inauguration of Joko Widodo to be the succeeding President of the Republic of Indonesia. Tjahjo Kumolo, as Home Affairs Minister in the cabinet of Joko Widodo, refocused his attention on many regulations pertaining to the Province of Aceh, whether a legal product in the form of local regulations (bylaw), which is called Qanun in Aceh; or specific law, concerning the derivatives regulations for the Act of Governing Aceh.

One of derivatives regulations, which is not yet drafted, is the President Decree on the BPN in Aceh. This issue on the authority delegation of land affairs should have been completed during the reign of Susilo Bambang Yudhoyono. Therefore, the basic problem of the people's livelihood that lies on land ownership, has not completely been handled. Besides, the land issue



is the fundamental asset of the people's economy towards the fulfilment of their daily needs.

Recently, the conflict over land has increasingly been emerging issues either vertically or horizontally, both between the people and the government, between the people and companies, and even among individuals in the community itself. Such conflicts keep growing and escalating due to the slow response of the authority to overcome them.

The injustice control of the land ownership policies is compounded by numerous government rules. <sup>13</sup>his appears to contradict the 1945 Constitution, stating explicitly that the earth, water, and the wealth contained therein are fully controlled by the state, and must be used for the optimum prosperity of the people. The basic philosophy providing the guidance and directives mandate as stipulated in the 1945 Constitution has been elaborated into the Act of Agrarian. It tolerates the qualities of nationalism, populism, and is based on the customary law of Indonesia.

The main factor leading to wide spread emergence of agrarian conflicts is the absence of systematic efforts made by the government to resolve these conflicts, especially towards the fulfilment of justice and human rights. The MPR Decree on the agrarian reform and natural resource management has assigned the government to immediately resolve the land-born conflicts as well as improve the structure of land ownership in Indonesia.

After the tsunami and the Helsinki MoU signing, Aceh emerges like a newly opened gold mine and becomes prone to seizure by some countries with large capital to exploit the natural riches. The regions along the west, south, and east coasts of Aceh are becoming eye-turners to some investors. The identified natural riches, such as iron ore, tin, gold, coal, and oil deposits, have been hot discussion topics in Aceh and even in foreign countries.

Aceh's position as an attractive object has become a target to entrepreneurs and investors from developed countries. This poses a threat and challenge to the government and the people of Aceh in designing and bridging an investment proposal, which will directly affect the lives, the socio-cultural order, the political structure, the development policy direction in Aceh, as well as the land tenure issues (Phelps, 2011, pp. 418-426).

The regulation concerning the right over land emphasized in the article above mandates the government of Aceh to administer the land rights as further stipulated in the regional regulation, so called Qanun, with regards to the existing superior judicial norms and legislation.

In conjunction with the land rights, the Government of Aceh should be able to provide facilities to foreign investors by granting the business site use rights and building site use rights in accordance with the regulation, legislation, and the Aceh Qanun. For these consequences, the BPN has to be automatically a part of the Aceh government working unit.

This indicates that the assignment of the BPN as part of the Aceh government working unit should be further regulated through the presidential regulation. For all that the insertion of the BPN into a part of Aceh government working unit should have happened by the beginning of 2008; conversely, the presidential decree has just approved on 13 February 2015. The regulation only changes the BPN to be the *Badan Pertanahan Aceh* (BPA), but the BPN does not delegate its authorities with the BPA so far.

*b. establishment of flag bylaw*

In the MoU Helsinki between the Indonesian government and the GAM (Free Aceh Movement) that ended the Aceh conflict has provided for the privileges for Aceh province through special autonomy. Along with the MoU, the Government of Aceh has been legally allowed to have their own flag stood together with the Indonesia flag, as well as emblems, and hymn. This allows the Government of Aceh to determine and legislate upon the Flag and the Coat of Aceh as the symbols of specificity and privilege of Aceh. The flag and coat of arms depict the struggle and unity of the Aceh people (Aguswandi and Large, 2008, p. 9).

These privileges are then provided for in the Aceh Bylaw on the flag and coat of arms. Those symbols are one of the symbols of the Aceh people's unity, that reflects the privilege and specificity of Aceh. The consideration for the formulation of the bylaw is legally referred to in the Act of Governing of Aceh. It states that the government of Aceh can determine and decide on its regional flag and coat of arms as the symbols that reflect the specificity and peculiarity of Aceh.

The flag here is meant as a symbol of privilege, not a symbol of sovereignty, and shall not be treated as the flag of Aceh's sovereignty. In other words, it can be stated that Aceh, by the rule of law, has a legal justification to determine and decide upon its regional flag and coat of arms.

The DPRA endorsed the Aceh flag and coat of arm on 22 March 2013 (Abdullah, 2015). However, the flag of Aceh province was not approved by the central government because it resembles the flag of GAM. The same thing happened to its coat of arms. According to the central government, the Qanun on Aceh flag and coat of arms which have been put into the Aceh legislative gazette, as contradicted with the PP on the Local Symbols. Despite obeying the central government, the Government of Aceh and its parliament keep insisting on preserving the flag and symbols.

Therefore, reactions have emerged both from the Ministry of Home Affairs and the Government of Aceh. Firstly, is the reaction of rejection from the central government. The issues on the flag and coat of arms subsequently received numerous protests, especially from central government officials. They have argued that the design of the flag and coat of arms exactly resemble those of the GAM, which were previously known as the rebellion symbols.

Ethically, however, the use of emblems such as a flag and a coat of arms, are not provided under the concept of the Unitary State of the Republic of

Indonesia. The 1945 Constitution and the Act 6 State Symbols has stated that the flag of the Republic of Indonesia is the Red-and-White Flag, and the national coat of arms is the Garuda Pancasila.

In preventing the bylaw from being applied, later, the government immediately issued the PP on the regional symbols. It states that the design of the regional flag and coat of arms should not resemble, in terms of principle and entirety, a banned organization or separatist-organization/association/institution/movement in the Republic of Indonesia.

The examples of the flag and logo design of a banned organization/association/institution/separatist-movement as provided in the government regulation are - the Crescent Flag used by the separatist movement in Aceh Province; the Buraq Bird logo and the Morning Star Flag, used by the separatist movement in Papua Province; and the King's Thread Flag, used by the separatist movement in Maluku Province. For this reason, Djoehermansyah stated that discussion regarding Aceh's flag must be cooling down for a while (Djohan, 2015).

The PP on the regional symbols is a tool for the central government to deal with local government, especially in the issues of regional symbols. They serve as the people's social bond within the framework of the nation of Indonesia. So, it has purposed to make them compatible with the values of Pancasila, especially for the provinces of Aceh and Papua that have been granted special autonomy status through the specific acts. This is in consideration to the historical aspects of both provinces. They were previously in conflict with the central government and had used identity such as flags and coats of arms in that time. It is believed that their flags and other emblems have been recognized by all the people in both regions.

Therefore, the legislation of the GAM's flag and coat of arms to Aceh's regional flag and coat of arms are strongly disallowed (a breach). Two facts arise here. Firstly, is the position of the bylaw being inferior to government regulation; and, secondly, is that those symbols were used by the banned organization.

On the behalf of central government, furthermore, the Ministry of Home Affairs, Fauzi, stated that the bylaw directly violates the regulation superior to it, that disapproves of the use of any separatist movement symbols as regional symbols. Therefore, the central government seeks a resolution to this polemic, rather than making it protracted, to avoid the emergence of anxiety amongst the Aceh people (Fauzi, 2015).

Moreover, he has insisted that the Government of the Republic of Indonesia remains at its original inception with the argument to carry the spirit of the MoU Helsinki as aspired in the peace agreement, the use of Flag and Emblems which essentially resemble GAM's symbols should not be used (Fauzi, 2015). With this consequence, the government of Aceh must follow the requirements of provincial emblem and flag imposed by central government.



The requirements as provided by law, according to the Minister of Internal Affairs, should not resemble those of a banned organization or separatist movement. Owing to this fact, the Ministry of Home Affairs on the behalf of the President, has the authority to annul it. Therefore, the content of the bylaw concerning the Aceh flag and coat of arms would be reviewed to make it agree with the regulations product superior to it, because, as mentioned before, a bylaw should not contradict any nationally applied regulations.

Lastly, is the reaction of local government resistance. In this context, the Government of Aceh has not fully accepted the reasons argued by the Central Government. With the signing of the MoU, GAM no longer bore the status as separatist movement or a movement with a will to separate Aceh from the Republic of Indonesia. Therefore, the use of emblem, logo, and hymn that were used by GAM can no longer be legally regarded as part of the existence of a separatist movement.

Thus, there emerge two arguments for the Aceh Bylaw on the regional flag and coat of arms. The first argument is that the legislation of Aceh regional flag and coat of arms is constitutionally valid, because of fully referring to the Act of Governing of Aceh. This implies that Aceh government has the right to determine its regional flag and coat of arms regardless of its contradiction to the PP. In terms of the hierarchy of regulations, the Act of Governing of Aceh is superior to the PP.

The second argument is in the light of legitimacy. The arguments about the symbols used previously by GAM, are still a controversy. The flag and coat of arms not originally belong to GAM. They have previously been used even long before the existence of GAM. In the history documentation, the flag and the coat of arms was used since the time of the Sultanates of Aceh. They led the fight against the colonialism in Aceh.

The delegations of Aceh Government lobbying the bylaw have explained that the attestation of the flag and coat of arms was to accommodate the aspiration of the Aceh people, owing to the flag and the coat of arms representing the symbols of struggle and unity of the Aceh people. Muzakkir asserted that the legislation of the bylaw is not intended to revive GAM in Aceh (Manaf, 2015). The bylaw providing the flag and the coat of arms has denoted the symbols of privilege and specificity of Aceh, not symbols of sovereignty or separatism.

The 1945 Constitution and its derivative acts have not provided for any banning of a region from having its regional flag and coat of arms reflecting specificity, peculiarity, and privilege as unifying symbols for the people in the region, if, of course, the symbols do not stand in contest to the symbols of the nation's sovereignty.

This unnecessary controversy would not have happened, if all parties recognized the special status entitled to Aceh since the signing of the MoU Helsinki. Automatically, after signing the MoU, GAM had explicitly recognized the status of Aceh as part of the Unitary State of the Republic of Indonesia. Consequently, Aceh has the special characteristics distinguished from other

regions. Since then on, GAM and all its elements can no longer be viewed as part of a separatist movements. Moreover, the Government of Indonesia has announced a variety of special programs including the amnesty for the political prisoners.

Likewise, the PP on the regional symbols will be understood differently, when Aceh still bears the status as an in-conflict region having a separatist movement, that carries weapons for the liberation of Aceh. To that end, the provisions prohibiting the use of any flag, emblem, and hymn have resembled the separatist group, which formerly organized a separatist movement. In fact, the context of the PP is certainly applicable for the regions with special status that still have unresolved armed and political conflict, such as Papua.

To defuse heated political conflict, the Central Government, through the Ministry of the Home Affairs, offered a solution by allowing Aceh to participate in the management and exploitation of oil and gas within the area of 200 miles offshore, on condition that Aceh would alter the characteristics and features of the Aceh regional flag and emblems (Djohan, 2015). Unlike the wish of the Indonesian Government, however, the Government of Aceh still stands firm, not willing to amend to its endorsed flag and emblems which resemble the GAM's.

### **Conclusions**

The main causes of regulation conflict in autonomy province such as happening in Aceh are the interpretation of norms, and the enforcement of top-down political power. Both central government and provincial government have strong legal argument, stated in the several acts. The central government uphold in the new acts, coming after the Act of Government of Aceh. But the Government of Aceh also has a convincing argument based on Act of the Government of Aceh. So far, the central government will always be the single-winner by using the enforcement of top-down political approach. This conflict will not really solve the regulation conflict, however. This approach called win-lose-solution approach, instead of win-win solution approach, and unfortunately the regulation conflicts most likely happen in the future.

As Indonesia is a state-law, the conflict of regulation including conflict of norms, must be solved through due-process of law, involving the Supreme Court as the final decision maker. With this approach, all parties can argue and can defend the constitutionality of an act, including legality of norms or hierarchical regulations, and also will have final binding decision. So, the same cases will rarely happen in years to come.

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