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### DOES GOVERNMENT OF ACEH AUTHORIZE REVISING AUTONOMY LAW? A CRITIQUE OF ACEH'S AUTONOMY LAW

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**Article ID: 857***Dear Authors,*

We have sent you the **revision request** for your submission to **Jurnal Ilmiah Peuradeun**, entitled "**DOES GOVERNMENT OF ACEH AUTHORIZE REVISING AUTONOMY LAW? A CRITIQUE OF ACEH'S AUTONOMY LAW**", with a revised time of two weeks from the date of the notice. However, until now, when we sent this email, you had not responded and sent the results of your revised manuscript to us.

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## DOES GOVERNMENT OF ACEH AUTHORIZE REVISING AUTONOMY LAW? A CRITIQUE OF ACEH'S AUTONOMY LAW

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### Abstract

The proposal for amendments to Law Number 11 of 2006 concerning the Aceh Government (UUPA) by the Expertise Board of the House of Representatives of the Republic of Indonesia (Dewan Perwakilan Rakyat Republik Indonesia-DPR RI) needs to consult and obtain approval from the Aceh legislature for clarity of context and objectives. This matter follows the mandate of the Helsinki Memorandum of Understanding (MoU) point 1.1.2. The purposes of this writing include; (1) The Aceh Government's authority over the proposed revision of Law Number 11 of 2006 concerning The Aceh Government by the DPR RI Expertise Board, (2) the targets and scope of proposed changes to the UUPA, and (3) the proposed arrangement's target, scope, and direction for the revised Bill on Amendments to the UUPA. The method of writing is juridical normative. The proposed amendment to the UUPA by the DPR RI Expertise Board aims to strengthen peace in Aceh Province through the Helsinki MoU. The authority of the proposed amendment has violated procedures and is contrary to the mandate of the Helsinki MoU. This problem must be understood by the DPR RI to be transparently accountable to the Acehese people because the proposed revision of the UUPA is not a guide for the interests of the political elite. The proposed revision of the UUPA must be implemented by taking into account local wisdom that is special and capable of promoting the independence of the Aceh Province in managing its household in a dignified manner.

**Keywords:** Authority, Proposed changes, UUPA, Indonesia Government, DPR RI Expertise Board

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## A. Introduction

This article will analyze the authority to propose amendments to Law Number 11 of 2006 concerning the Aceh Government (UUPA), which the DPR RI Expertise Board carries out. The preparation of the academic text (*naskah akademik*-NA) of the draft law on amendments to the UUPA by the DPR RI Expertise Board is the agenda of or the National Legislation Program (Program Legislasi Nasional-Proleknas) for the 2019-2024 period, which carries the mission that UUPA enacted in 2006 must be revised and renewed, taking into account it has been applied for more than 15 years, from the date of promulgation on 1 August 2006 to 2022 (Basri, H. & Nabiha, 2014; McGibbon, 2004; May, 2008).

In addition, the UUPA is considered different from the Regional Autonomy Law in general in several respects, including the UUPA itself, which is considered too specific, so it must be renewed. Examples can be seen in the regulations related to the election of regional heads/deputy regional heads and local parties, so they must be harmonized with the National Election Law based on Law Number 7 of 2017 concerning Elections (Suryadinata, 2005; Lewis, 2020; Siahaan C & Tampubolon, 2021; Mutiara Fahmi et al., 2020).

The cancellation of several articles by the Constitutional Court (Mahkamah Konstitusi-MK) contained in the UUPA through a juridical review was also a consideration for the proposed revision (Armia, 2018), including Article 256 of Law Number 11 of 2006 concerning the Aceh Government regarding independent candidates who are no longer valid because they are considered contrary to the 1945 Constitution of the Republic of Indonesia (UUD 1945). Besides, Article 67, Paragraph (2) also concerns candidates for governor/deputy governor, regent/deputy regent, and the mayor/deputy mayor, who must be at least 30 years old, as stated in point (e).

The age issue of candidates for governor/deputy governor, regent/deputy regent, and mayor/deputy mayor is not a crucial issue. Thus, the UUPA is considered urgent for a proposed revision because

materially, the age factor of 30 years is related to the maturity and maturity of thinking.

The proposed revision of article 67 paragraph 2 point (b), which reads "a candidate is obliged to carry out his religious law," may be implemented. The element required to carry out the Sharia for his religion can be replaced with the following sentence; "A candidate for governor/deputy governor, regent/deputy regent, and mayor/deputy mayor in Aceh Province must be Muslim and committed to implementing Islamic law in Aceh." This point is a form of Aceh's privileges that have not been included in the UUPA based on the constitutional mandate.

The Aceh Government's authority to take care of its household, specifically prioritizing local wisdom, is a constitutional mandate. This regulation is in Article 18 B Paragraph 1,

"The State recognizes and respects special regional government units regulated by law," and Article 18 B Paragraph 2,

"The State recognizes and respects customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of The Unitary State of the Republic of Indonesia, which are regulated by law."

The State recognizes and respects each region's characteristics and local wisdom, as confirmed in the UUD 1945. Each region has different local wisdom. For example, Aceh Province is famous for implementing Islamic Sharia as a way of life and the spirit of struggle for the Acehnese people against Dutch colonialism as a bargaining chip in the eyes of the world for Indonesia (Lukito, 2019). This characteristic is, of course, different from the characteristics of Bali Province, where the majority of people live by Hindu teachings or people in Papua Province who adhere to Christian teachings. Like Indonesia, countries on the European continent also recognize local wisdom as a constitutional consensus and are considered part of the single majority principle, which is recognized in their constitution. Likewise, in America, a presidential candidate must be a Christian and show his baptismal certificate from the church.

Responding to the planned revision of the UUPA, which is a National Legislation Program, the DPR RI must consult and obtain

approval from *Dewan Perwakilan Rakyat Aceh* or the Aceh Province's House of Representatives (DPRA) and the Aceh Government in advance on points that are considered urgent. The revised plan must also be discussed carefully by involving elements of the Acehnese community and strategic groups, NGOs, academics, and combatant groups so that fears of reaping new conflicts in Aceh Province will not occur again. The UUPA is an elaboration of the Helsinki MoU. Every affair and issue regarding matters deemed significantly related to the Aceh must consult and obtain approval from the DPRA and the Aceh Government. This matter has been stated in point 1.1.2 Helsinki MoU as follows;

- a) Decisions of DPR RI Expertise Board relating to Aceh Government will be carried out in consultation with and with the approval of the Aceh legislature,
- b) The Indonesian Government's administrative policies concerning Aceh Province will be implemented with the consultation and approval of the head of the Aceh Government.

Some provisions in the UUPA that are no longer valid due to a permanent legal decision by the Constitutional Court need to be revised. Thus, there is no need to explore other obvious essential matters. The hope is that the authorities can become justice producers in democratically fighting for the people's interests.

The proposed revision of the UUPA does not fall into elementary areas, and there is no need for terms that can confuse meaning with exceptions, limitations, or modifications that may disturb the spirit of peace. The revision must also not contain arguments because they will only lead to conflicts of opinion that can injure the values of justice in society and lead to misleading interpretations (Pleasence, P & Balmer, 2019; Kogelmann, 2017; Freiman, 2017).

The spirit and ideals of the birth of the UUPA are a tangible manifestation of the long road of the Acehnese people, in fighting for Indonesian independence and Islamic law (A Hamid Sarong & Nur A Fadhil Lubis, 2019), remaining upright in Aceh Province as mandated by the Helsinki MoU as well as Article 18, Article 18A and Article 18B of the UUD 1945.

Legal arrangements regarding the specialty of Aceh's local wisdom should not be compared with other regions. There is a view that the UUPA is not *lex specialis* from the Regional Autonomy Law in general. It is deemed necessary to be revised to harmonize it with the law. These legal arrangements do not seem right and unfair if it is forced to also apply to the UUPA.

The UUPA should not be considered as not being *lex specialis* with the Regional Government Law in general. The UUPA was also established based on Law Number 12 of 2011 concerning Regulations for the Establishment of Legislation, valid in Indonesia and following the UUD 1945. Objectively, the formulation, meaning, and content of the legal rules contained in the UUPA are in line with the clarity of objectives and functions to protect the interests of the Acehnese people. For example, such as the position of Acehnese local parties, the position of the *Wali Nanggröe* Institution, the position of the Sharia Court as the applicable law in Aceh Province (Huda, 2020).

The proposed revision of the UUPA must be viewed from a theoretical and practical point of view so that it does not affect elementary matters of reasoning and justice. Poor, unnecessary, and unfair regulations will cause people to disrespect the laws and eventually destroy The State's authority.

From the discussion above, several things will be discussed in this article; (1) The Aceh Government's authority over the proposed revision of Law Number 11 of 2006 concerning The Aceh Government by the DPR RI Expertise Board, (2) targets and scope of proposed changes to the UUPA by DPR RI Expertise Board, and (3) the proposed arrangement's target, scope, and direction for the revised Bill on Amendments to the UUPA.

## B. Method

This research is juridical normative, meaning that it is conducted through literature/library studies by examining various secondary data, such as research results or studies, literature, and related regulations, both at the level of laws and implementing regulations and various related legal documents. The library studies included review on laws and regulations

**Commented [B2]:** In the introduction I did not see any research gap, so what is the background of this research from the factual conditions in the field is not clearly illustrated, and how the impact of the theory is there. Finally, I don't see what's new from this research from similar research ever done.



related to the implementation of regional autonomy in Aceh Government, as follows.

- a. The UUD 1945.
- b. Law Number 11 of 2006 concerning the Aceh Government.
- c. Law Number 44 of 1999 concerning the Implementation of the Privileges of the Aceh Province.
- d. Law Number 23 of 2014 concerning Regional Government.
- e. Law Number 7 of 2017 concerning General Elections.
- f. Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations, in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors.
- g. Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties.
- h. Law Number 12 of 2011 concerning the Establishment of Legislation.

### C. Result and Discussion

#### 1. Legal Basis for the Establishmen of the UUPA

##### a. Philosophical Foundation

Pancasila is the Indonesian philosophical foundation, manifested in various universal dimensions: mutual respect, equality of rights and positions, independence, diversity, truth, justice, and others. The noble values contained in Pancasila are abstracted in the constitution, which is the spirit of justice in Indonesian law, namely the UUD 1945 (Emilia, S. et al., 2022; Dewantara, J. A. et al., 2019).

In the preamble of the UUD 1945, the first paragraph states that independence is the right of all nations, so colonialism must be abolished because it is not in line with humanity and justice. Therefore, with the independence achieved by the Indonesian people, in the fourth paragraph, it was emphasized that the Indonesia Government "...protect all regions of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace, and social justice, ...".

The construction of an Indonesian State to achieve Indonesia's vision is regulated in the Articles of the UUD 1945. Article 1 Paragraph (1)

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of the UUD 1945 states that "The Indonesia State is a unitary state, in the form of a republic." Furthermore, Article 18 of the UUD 1945 regulates the division of the unitary state and regional government, which reads as follows:

- a) The Unitary State of the Republic of Indonesia is divided into provincial regions, divided into regencies, and cities, each of which has a regional government, as regulated by law.
- b) The province, regencies, and city governments regulate and manage their government affairs according to the principles of autonomy and co-administration.
- c) The province, regencies, and city governments have *Dewan Perwakilan Rakyat Daerah* or the Regional's House of Representatives, whose members are elected through general elections.
- d) The governors, regents, and mayors, respectively as heads of the province, regencies, and city governments, are democratically elected.
- e) Regional governments exercise the broadest possible autonomy, except for government affairs determined by law to be the affairs of the central government.
- f) Regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks.
- g) The structure and procedures for administering regional government are regulated by law.

Article 18 of UUD 1945 mandates that the Unitary State of the Republic of Indonesia has broad autonomy, except for government affairs which are determined by law as affairs of the central government.

In constructing the relationship of authority between the central government and the Aceh Government, it is not only seen to pay attention to the specificity and diversity of the region but the UUD 1945 also requires the State to acknowledge, respecting the special regional government units (Muda, 2017), as regulated in the UUD 1945 Article 18B Paragraph (1). Article 18B Paragraph (2) also asserts that the State is obliged to recognize and respect customary law community units and their traditional rights as long as they are still valid and under the development of society and the

principles of the Unitary State of the Republic of Indonesia, as regulated by law.

All issues related to regional specialties or privileges must be stated or regulated by law (Shen, 2020), including in the context of the existence of the Aceh Province as the autonomous region. The specificity of Aceh is related to one of the distinctive characteristics of the history of the struggle of the Acehnese people, having high resilience and fighting power against the struggle of the nation and the Republic of Indonesia.

#### **b. Sociological Foundation**

The birth of the UUPA was motivated by the sociological situation of the Aceh conflict that had lasted for a long time, especially the conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka*-GAM) and the Republic of Indonesia. This protracted conflict ended peacefully in Helsinki on 15 August 2005. This agreement is contained in the Helsinki MoU between the Indonesia Government and GAM. The Helsinki MoU consists of six points agreed between the two parties, one of which is about the administration of governance in Aceh by establishing the UUPA (Qonita Royani Salpina et al., 2018). This MoU is a legal document that describes the agreement between the two parties.

In considering the formation of the UUPA, the sociological conditions in Aceh Government at that time were illustrated. Two sociological conditions become the background of the problem. First, the administration and implementation of development in Aceh Government up to that time had not fully realized the welfare of the people, justice and the promotion, fulfillment, and protection of human rights. Hence, the Aceh Government needed to be developed and implemented based on the principles of good governance. Second, the earthquake and tsunami disaster that occurred in Aceh Province on 26 December 2004 had fostered the solidarity of all the potentials of the Indonesian nation to rebuild the people and region of Aceh Province and resolve conflicts in a peaceful, comprehensive, sustainable, and dignified manner within the framework of The Unitary State of the Republic of Indonesia.

The proposed amendment to the UUPA must provide sustainable benefits to the people of Aceh Province in the framework of maintaining peace and should no longer cause vertical conflicts between the Indonesian Government and the people in Aceh. In addition, another critical issue is improving the welfare of the Acehnese people. The community's poverty level is still relatively high, 40.2%. However, the poverty rate fell to 32.60% after the existence of the Aceh Special Autonomy Fund, and it continues to decline to 15.01%. However, Aceh Province is still placed at number 3 at the national level. Therefore, the Aceh Special Autonomy Fund needs to be made permanent (*Delivered in a Meeting with the DPR RI Expertise Board Data Collection Team at the Aceh Governor's Office, Banda Aceh, on 13 February 2020., 2020*).

On a sociological basis, there are two crucial points for changes to the UUPA. First, continue and maintain peace in Aceh Province, which has been agreed and stated in the Helsinki MoU. Second, continue to encourage efforts to improve welfare for the people of Aceh through specific steps, including concerning the Aceh Special Autonomy Fund, which must be continued.

### **c. Juridical Foundation**

Provisions related to special regions are regulated in Article 18B of the UUD 1945; namely, the State recognizes and respects special regional government units regulated by law. Aceh Province is a special regional government unit designated as capital for the struggle to seize and defend the independence of The Unitary State of the Republic of Indonesia (Law Number 11 of 2006 Concerning Aceh Government). Furthermore, the provisions of the UUD 1945 in Article 18B Paragraph (2) stipulate that the State is obliged to recognize and respect customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

The people of Aceh have customs, traditions, arts and culture, and local wisdom as an identity rooted in life. For the people of Aceh, tradition is something written or unwritten that becomes a guide in society.

Specifically, in terms of forming statutory regulations, the government issued Law Number 12 of 2011 concerning the Establishment of Legislation. Law Number 15 of 2009 concerning Regulations for the Formation of Laws and Regulations is used as a guide. In every legislation formed, there is clarity of purpose following the hierarchy and made by an authorized institution that adapts its content material to the development of society. The birth of this law is based on the idea that the Indonesian State is a legal state that regulates all aspects of life. The goal is that every existing element helps each other anticipate and overcome problems in society (Aldeia, J. & Alves, 2019), nation, and state. The stages of the formation of laws and regulations include planning, drafting, discussing, ratifying, and determining. According to the hierarchy and nomenclature, promulgation is generally formed and determined by the authorized institution or official through procedures. In Article 7 Paragraph (1) concerning the Law on the Formation of Legislations, the types and hierarchy of laws and regulations consist of:

- a. The UUD 1945;
- b. Decree of the People's Consultative Assembly;
- c. Laws/Government Regulations in Lieu of Laws;
- d. Government Regulations;
- e. Presidential decree;
- f. Provincial Regulations; and
- g. Regency/City Regional Regulations.

Article 7 Paragraph (2) states that the legal force of the legislation is in line with the hierarchy as referred to in Paragraph (1). Furthermore, in the elucidation of Article 7 Paragraph (1) letter f, it is stated that what is included in regional regulations include *Qanun* in force in Aceh Province, Special Regional Regulations (*Peraturan Daerah Khusus-Perdatus*), and Provincial Regulations (*Peraturan Daerah Provinsi-Perdasi*) in force in Papua and West Papua Provinces. Then in the explanation of Article 7 Paragraph (1), letter g, it is stated that what is included in the regency/city

regional regulation is the *Qanun* that applies in the regency/city in Aceh Province.

The link between the law on the Establishment of Legislation and UUPA is the acknowledgment of the existence of *Qanun* as a term explicitly used in Aceh Province. It is because Aceh, as stated in the UUPA, is a province with a particular legal entity and is given special authority to regulate and manage its government affairs, and the interests of the local community in accordance with the laws and regulations in the system and principles of The Unitary State of the Republic of Indonesia.

## 2. The Position of Law Number 11 of 2006 concerning the Aceh Government

As a result of the Aceh earthquake and tsunami disaster, the administration of government, that previously could not be fully implemented for the welfare of the people, justice, and the protection of human rights in Aceh Province. This country has fostered solidarity with all the nation's potentials to rebuild the people and region of Aceh, including to resolve conflicts peacefully in Aceh (Lee, 2020). The issuance of Law Number 11 of 2016 concerning the Aceh Government, as a substitute for the law on the Implementation of Special Autonomy for the Nanggroe Aceh Darussalam Province, is the result of Helsinki MoU. The UUPA, promulgated on 1 August 2006 and consists of 40 chapters and 273 articles.

Article 7 of the UUPA regulates the authority in government affairs in all public sectors, except for government affairs which are the government's authority. Article 12 of the UUPA regulates government affairs that fall under its authority, except for those that are under the authorities of the central government. Those authorities have consisted of government affairs of a national nature, foreign policy, defense, security, judiciary, national monetary and fiscal matters, and specific affairs in the religious field (Bauw, 2016; Lequesne, C. & Paquin, 2017; Ker-Lindsay, 2012).

Article 16 of the UUPA regulates matters that include mandatory affairs, other mandatory affairs, and optional affairs. Mandatory affairs

under the Aceh Government's authority still present at the Aceh provincial scale include; (a) planning, utilization, and supervision of spatial planning; (b) development planning and control; (c) the administration of public order and public peace; (d) provision of public facilities and infrastructure; (e) handling of the health sector; (f) implementation of education and allocation of potential human resources; (g) overcoming social problems across districts/cities; (h) services in providing employment and human resources across districts/cities; (i) facilitation of the development of cooperatives, small and medium enterprises including across districts/cities; (j) environmental control; (k) land services, including across districts/cities (Chairul Fahmi & Muhammad Siddiq Armia, 2022); (l) population and civil registration services; (m) government general administration services; (n) investment administration services, including across districts/cities; and the implementation of other basic services that have not been able to be implemented by the district/city government.

Other mandatory affairs under the Aceh Government's authority include: (a) the implementation of religious life in performing Sharia for its adherents in Aceh while maintaining inter-religious harmony; (b) organizing traditional life based on Islam; (c) providing quality education and adding local content under Islamic Sharia; (d) the role of the ulama in setting Aceh policies; and (e). organizing and managing the pilgrimage by statutory regulations.

Aceh's optional government affairs include government affairs that have real potential to improve the community's welfare under the conditions, characteristics, and superior potential of Aceh. Article 21 of the UUPA stipulates that the administration of the Aceh Government consists of the Aceh Government itself and the DPRA. In contrast, the district/city administration consists of the district/city government of the City's House of Representatives (*Dewan Perwakilan Rakyat Kota-DPRK*).

It should be noted that the nomenclature of the people's representative institutions in Aceh Province is different from other regional governments that use the nomenclature of the Provincial's House of Representatives (*Dewan Perwakilan Rakyat Daerah Provinsi - DPRD Provinsi*)

and or Regency/City's House of Representatives (Dewan Perwakilan Rakyat Daerah Kabupaten/Kota-DPRD Kabupaten/Kota). Even the nomenclature of Regional Regulations (Peraturan Daerah-Perda) in Aceh is different from other regional governments because it does not use the nomenclature of Provincial Perda and Regency/City Perda. The Aceh Government uses the *Qanun*, a type of regional regulation that regulates governance and the lives of the Acehnese people.

In addition, several other matters are also regulated in the UUPA, different from other regional autonomy laws, which only regulate general matters related to the region. In the UUPA, there are content materials that are specifically regulated, for example, related to the organizers of the presidential/vice-presidential election, DPR members, DPD members, DPRA members, DPRK members as well as regional head/deputy regional head elections, the Aceh Independent Election Commission, the Aceh Election Supervisory Committee, and Local Party. In addition, there is also content regarding the *Wali Nanggroe* Institution, the customary leadership authorized to foster and supervise the implementation of the life of traditional institutions customs and give titles and traditional ceremonies, the existence of a Sharia Court (Muhammad & Rosmawardani, 2020; Armia, Muhammad Siddiq, Zuhlul Pasha Karim, Sarong et al., 2022), which is an Islamic sharia court for the Muslim community in Aceh, the existence of the Ulema Consultative Assembly (*Majelis Permusyawaratan Ulama-MPU*) consists of Muslim scholars and scholars who are working partners of the Aceh Government and the DPRA in establishing *fatwa* (a ruling on the point of Islamic law given by a recognized authority) as consideration for regional government policies in the fields of government, development, community development, and the economy. There are also arrangements regarding flags, symbols, and hymns as symbols reflecting the peculiarities and specialties of Aceh (Barter, 2017; Armia, 2017).

### 3. The position of the Helsinki on the UUPA

The MoU (Memorandum of Understanding) between the Indonesia Government and GAM in Helsinki, 15 August 2005 by the Minister of Law



and Human Rights, Hamid Awaluddin, and Prime Minister of GAM, Malik Mahmud, marked a new chapter in the history of Aceh Province and the lives of its people towards Aceh which peace, justice, and prosperity (Academic Draft of the Aceh Governance Bill, Ministry of Home Affairs, 2006).

In the Helsinki MoU, several things were agreed upon as follows; First, the Indonesia Government and GAM affirm their commitment to resolving the Aceh conflict in a peaceful, comprehensive, sustainable, and dignified manner for all. Second, the Republic of Indonesia and GAM are determined to create conditions so that governance in Aceh can be realized through a democratic and fair process within The Unitary State and Constitution of the Republic of Indonesia. Third, both parties involved firmly believe that only a peaceful settlement of the conflict can enable progress and success in rebuilding Aceh after the earthquake and tsunami disaster of 26 December 2004. Fourth, both parties involved in the conflict are determined to build mutual trust.

The Helsinki MoU details the contents of the agreement to be reached and the principles used to guide the transformation process. Specifically regarding governance arrangements in Aceh, it has been agreed to give special authority to the Aceh Province through a new UUPA, which will come into force no later than 31 March 2006. In particular, in the field of Politics and General Elections, the MoU emphasizes the establishment of local political parties in Aceh and free and fair local elections to elect the head of the Aceh Government and other elected officials and members of the Aceh legislature (Academic Draft of the Aceh Governance Bill, Ministry of Home Affairs, 2006).

Philosophically, the Helsinki MoU is the philosophical basis of the UUPA, which is a fundamental principle of the governance of Aceh. Meanwhile, from a sociological perspective, the Helsinki MoU has been optimally stated in the UUPA, following the Helsinki MoU guidelines. From a juridical perspective, both in substance or in the UUPA content is under the conditions developed.

#### 4. Problems Related to the Proposed Amendment to the UUPA

##### a. Problems Related to Institutional Authority

According to the law concerning the regulations for the formation of laws and regulations, Article 5 states that the making of laws and regulations includes the principle of clarity of purpose; the appropriate forming institution or official; suitability between types, hierarchies, and payload materials; can be implemented; usability and effectiveness, clarity of formulation, and openness. In addition, the content of this bill is based on the principle of the content of laws and regulations, as regulated in Article 6 of the Law on the Formation of Legislation which includes, among others, the principles of protection, humanity, nationality, kinship, archipelago, diversity in diversity, justice, equality of position in law and government, order and legal certainty, and balance and harmony.

The proposed amendment to the UUPA by the DPR RI Expertise Board must absorb the people's aspirations correctly and directly to comply with the principle of clarity of purpose (Flückiger, 2016). The proposed amendment to the law on the Aceh Government Bill must follow the procedures and provisions that apply to Aceh as a special region that was born based on the mandate of the Helsinki MoU; both regulated in the UUPA and the provisions of Presidential Regulation Number 75 of 2008 concerning procedures for consultation and granting, consideration of plans for the international agreements, plans for forming laws, and administrative policies directly related to the Aceh Government. Thus, any decisions taken must be in accordance with the agreed results.

In particular, changes to the UUPA take into account the following:

- a) Item 1.1.2 letter c of the Helsinki MoU, that the DPR RI decisions related to Aceh will be carried out with consultation and approval from the Aceh legislature.
- b) Article 8 Paragraph (2) of the UUPA that the plan for forming a law by the DPR directly related to the Aceh Government is carried out in consultation and consideration from the DPRA.

- c) Article 269 Paragraph (3) of the UUPA that in the event of a plan to amend this law, it is carried out through a consultation process to obtain consideration from the DPRA.

Amendments to the UUPA must be based on the principles of the Helsinki MoU. In addition, national laws applied to the Aceh Province need to consider the Helsinki MoU and the UUPA, or there is a clause "This Law also applies to Aceh as long as it is not regulated separately in the UUPA." Every time a ministry proposes establishing legislation for Aceh Province, the Helsinki MoU, and the UUPA are the material that must be considered. The proposed revision of the UUPA needs to be re-aligned to conform to the points of the Helsinki MoU. It is intended that the contents contained in the UUPA are in accordance with the wishes and demands of the Acehnese people.

Related to the nature of the consultation and consideration of the DPRA is the status of Consultation and Approval, not just Consultation and Consideration. An Approval has a legal stipulation, while consideration has a less precise meaning. For example, Article 269 Paragraph (3) in the UUPA is sufficient with the consultation and consideration of the DPRA; it should only regulate *Pemilihan Ketua Daerah* or the Election of Governors, Regents, and Mayors (Pilkada) with approval. In addition, 70 percent of the natural products for Aceh Province in the Helsinki MoU discussion are different from the UUPA. Therefore, this should be the Aceh Government's authority to determine the appropriate distribution percentage.

The Helsinki MoU is the core of the philosophy of the UUPA, which is a fundamental principle. Any changes need to be adjusted as long as they support the implementation of the Helsinki MoU. The provisions contained in the Helsinki MoU have not been fully accommodated in the UUPA. Therefore, if a revision is to be made, it must accommodate all agreements in the Helsinki MoU. For example, Article 8 Paragraph (2) mentions the word "consultation," in contrast to that contained in the Helsinki MoU, namely "Agreement."

The Helsinki MoU was created due to lasting peace for the welfare of the people of Aceh (Taydas Zeynep & Dursun Peksen, 2012;

Pippa, 2012; Oliver P, 2008). The Helsinki MoU must be used as a guideline for amending the UUPA as part of the spirit of peace. Thus, the limitations that must be complied with and adjusted are regarding the following:

First, even if there are changes, they will still pay attention to the four features of Aceh in terms of organizing traditional life, education administration, and the role of the ulama in determining Regional policies), namely in terms of Election Governance. This change includes the affirmation of the existence of election management institutions in Aceh and local political parties as part of the specialty/privilege of Aceh.

Second, there is a guarantee that Aceh has an independent electoral management system and does not have to be the same as election governance at the central level (Karim, 2019; Pasha, 2018). Thus, Aceh does not have to follow national regulations regarding all changes to the laws and regulations regarding the General Election and Regional Head Elections because they are subject to the provisions of the UUPA and *Qanun*.

Third, Consultation and Approval in the Helsinki MoU is important, not limited to Consultation and Consideration. Thus, the provisions that are not in harmony should not be carried out, as well as legal products that have been issued but are not yet in line with the MoU, so they must be reviewed.

#### **b. Regulatory and Content Problems**

The evaluation and analysis of the DPR RI through a special team of the DPR RI Expertise Board considers that the UUPA is no longer appropriate and relevant to current legal developments, including those related to both the Law on Regional and National Elections. It is alleged that the law has undergone several changes, so that the UUPA is also need revising, adjusted to the generally accepted laws nationally. For example, related to the requirements for candidates for regional heads and deputy regional heads, Article 67 Paragraph (2) letter e UUPA stipulates that candidates must be at least 30 years old. On the other hand, in Article 7 Paragraph (2) letter e Law Number 10 of 2016 concerning the Second

Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations, in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (*Undang-undang Pemilihan Ketua Daerah-UU Pilkada*), it stipulates that candidates must be at least 30 years old for governor and deputy governor candidates, as well as 25 years old for regent and deputy regent candidates, and the mayor and deputy mayor candidates.

The Law on Regional Autonomy which is generally applicable nationally, is inappropriate compared to Law Number 11 of 2016 concerning the Aceh Government as a special autonomous region. Therefore, the issues related to the age limit for regional head candidates contained in the UUPA do not necessarily have to be harmonized with the National Election Law based on Law Number 7 of 2017 concerning Elections (Orba, 2012).

### **c. Problems with the Constitutional Court's Decision**

Following up on the Constitutional Court Decision No. 35/PUU-VIII/2010, and the Constitutional Court Decision No. 51/PUU-XIV/2016, should substantially no longer apply, following Article 10 of Law Number 12 of 2011 concerning the Establishment of Regulations Legislation (Law on P3). Even though the Constitutional Court's decision has been in effect since it was read in general at the Constitutional Court reading session, there is still a need for follow-up to revise the law. The follow-up to the Constitutional Court's decision is considered in line with the Indonesian legal system, namely civil law, where the laws and regulations take precedence over court decisions.

The proposed revision of the Draft Law on Amendments to the UUPA was formed by considering the Constitutional Court's Decision No. 61/PUU-XV/2017 and the Constitutional Court Decision No. 66/PUU-XV/2017, which cancels the validity of Article 557 Paragraph (2) and Article 571 letter d of the Law on General Elections. In the Constitutional Court Decision Number 61/PUU-XI/2017, Article 57 and Article 60 of the Law on Elections have been annulled. One of the provisions in the UUPA, which

states any changes to the law related to Aceh, must first be consulted with the DPRA. However, when the Constitutional Court's decision was read out in court, the Ministry of Home Affairs (*Kementerian Dalam Negeri-Kemendagri*), and DPR RI could not show strong evidence that they had consulted with the DPRA. Of course, this is very detrimental to the Aceh Government. Thus, if the government and the DPR RI wish to revise all UUPAs, then in the future, they are required to follow the procedures specified in the UUPA.

##### 5. Consideration of Proposed Changes and Rearrangements

Law Number 11 of 2006 concerning the Aceh Government, which is approximately 14 years old, is a tangible manifestation of the peace agreement between the Indonesia Government and GAM. The normalization of the principle of legal justice in the UUPA aligns with Article 18, Article 18A, and Article 18B of the UUD 1945. These ideals are contained in Article 18, Article 18A, and Article 18B, namely that The State recognizes and respects regional government units that are special or are privileges regulated by law, as well as guaranteeing regional independence in managing their households through autonomy, and protecting the traditional values of customary law community units found in each province. Therefore, the UUPA in certain respects is different from the regional autonomy law in general. UUPA regulates many things specifically. This law is certainly different from what is regulated in the regional autonomy law generally applicable because it is part of local wisdom that is special and special, as mandated by the Helsinki MoU, which is in line with the UUD 1945.

The proposed amendment to the Aceh Governance Bill, based on the mandate of the Helsinki MoU, has been regulated in clause 1.1.2, which states that the new law on Governance in Aceh will be based on the following principles.

- a) Aceh Government will exercise authority in all public sectors, which will be held in conjunction with civil administration and justice, except in the field of foreign relations. External defense,

- national security, monetary and fiscal matters, judicial power, and freedom of religion, wherein these policies are the authority of the Indonesia Government under the constitution.
- b) International agreements entered into by the Indonesia Government relating to matters of particular interest to Aceh will enter into force with consultation and approval of the legislature in Aceh.
  - c) Decisions of the DPR RI relating to the Aceh Government will be made in consultation with and with the approval of the Aceh legislature.
  - d) Administrative policies taken by the Indonesian Government concerning Aceh will be implemented with the consultation and approval of the head of the Aceh Government.

Consequently, the UUPA differs from the Regional Government Law, generally applicable to all regions. This difference is because the content material regulated in the UUPA contains local wisdom that is special and special in Aceh based on the mandate of the Helsinki MoU and is in line with the UUD 1945. Regarding the proposed changes to several articles contained in the UUPA due to the Constitutional Court decision, these are the only articles that must be revoked in the UUPA because they are no longer valid and adapted to current legal developments. Issues related to regulatory conflicts with several rules that nationally apply to differ from those regulated in the UUPA, it is mandatory to pay attention to the principles of Acehnese local wisdom, which are noteworthy (Aspinall, 2005; Mita, 2019).

Proposed changes to the UUPA need to consider the basic principles of granting special powers and governance. In administering the government, the people of Aceh have a role in formulating policies, establishing policies, implementing policies, and evaluating the policies of the Aceh Government. The implementation of the special powers of the Aceh Government should further enhance the roles and functions of the legislative, executive, political parties, and other social institutions in Aceh. There needs to be a clear arrangement starting from the preparation

implementation to the supervision of each program and activity that will be funded by the special autonomy fund (Abrar et al., 2020; Jalil et al., 2019). Change activities are a strategic development program, have a strong driving force, and have a significant impact on achieving a better, more honest, fair, and responsible Acehese people's welfare that involves the Acehese people.

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## E. Conclusion

The proposed amendment to the UUPA by the DPR RI aims to strengthen peace in Aceh through the Helsinki MoU. The authority has violated procedures and is contrary to the mandate of the Helsinki MoU. In point 1.1.2, any UUPA changes need to be consulted and get the approval of the DPRA and the Aceh Government first. The scope and proposals for changes by the DPR RI to the UUPA must be transparently accountable to the people so that the proposed revision of the UUPA is not a distraction and is for the benefit of the political elite. The proposed revision of the UUPA must be implemented by taking into account the principles of unique local wisdom and promoting the independence of the Aceh Province in managing its household in a dignified manner. This is because the proposed revision of the UUPA aims to improve it.

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## DOES GOVERNMENT OF ACEH AUTHORIZE REVISING AUTONOMY LAW? A CRITIQUE OF ACEH'S AUTONOMY LAW

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### Abstract

The proposal for amendments to Law Number 11 of 2006 concerning the Aceh Government (UUPA) by the Expertise Board of the House of Representatives of Republic of Indonesia (Dewan Perwakilan Rakyat Republik Indonesia-DPR RI) needs to consult and obtain approval from the Aceh legislature for clarity of context and objectives. This matter follows the mandate of the Helsinki Memorandum of Understanding (MoU) point 1.1.2. The purposes of this writing include; (1) The Aceh Government's authority over the proposed revision of Law Number 11 of 2006 concerning The Aceh Government by the DPR RI Expertise Board, (2) targets and scope of proposed changes to the UUPA, and (3) the proposed arrangement's target, scope, and direction for the revised Bill on Amendments to the UUPA. The method of writing is juridical normative. The proposed amendment to the UUPA by the DPR RI Expertise Board aims to strengthen peace in Aceh Province through the Helsinki MoU. In fact, the authority of the proposed amendment has violated procedures and is contrary to the mandate of the Helsinki MoU. This problem is essential to be understood by the DPR RI to be transparently accountable to the Acehese people because the proposed revision of the UUPA is not a guide for the interests of the political elite. The proposed revision of the UUPA must be implemented by taking into account local wisdom that is special and capable of promoting the independence of the Aceh Province in managing its household in a dignified manner.

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We ask authors to create abstracts that provide readers with a clear overview of the paper. This gives authors direction while they revise the remainder of their manuscript and aids in helping them arrange their thoughts. Please compose your abstract in 200 words or fewer to demonstrate how the paper is structured in a logical and precise manner. Putting your abstract into a five-sentence essay is one method to accomplish this:

You should describe the issue, the subject of your research, or the gap you hope to address in the first sentence. The research topic or hypothesis for your study would be discussed in the second sentence. You would discuss the subjects and methodology of your study in the third sentence. The fourth sentence should discuss the findings of your investigation. The key points of your discussion of the findings would be covered in the fifth sentence.

**Keywords:** Authority, Proposed changes, UUPA, Indonesia Government, DPR RI Expertise Board

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## A. Introduction

This article will analyze the authority to propose amendments to Law Number 11 of 2006 concerning the Aceh Government (UUPA), which the DPR RI Expertise Board carries out. The preparation of the academic text (*naskah akademik-NA*) of the draft law on amendments to the UUPA by the DPR RI Expertise Board is the agenda of or the National Legislation Program (Program Legislasi Nasional-Proleknas) for the 2019-2024 period, which carries the mission that UUPA enacted in 2006 must be revised and renewed, taking into account it has been applied for more than 15 years, from the date of promulgation on 1 August 2006 to 2022 (Basri, H. & Nabiha, 2014; McGibbon, 2004; May, 2008).

In addition, the UUPA is considered different from the Regional Autonomy Law in general in several respects, including the UUPA itself, which is considered too specific, so it must be renewed. Examples can be seen in the regulations related to the election of regional heads/deputy regional heads and local parties, so they must be harmonized with the National Election Law based on Law Number 7 of 2017 concerning Elections (Suryadinata, 2005; Lewis, 2020; Siahaan C & Tampubolon, 2021; Mutiara Fahmi et al., 2020).

The cancellation of several articles by the Constitutional Court (Mahkamah Konstitusi-MK) contained in the UUPA through a juridical review was also a consideration for the proposed revision (Armia, 2018), including Article 256 of Law Number 11 of 2006 concerning the Aceh Government regarding independent candidates who are no longer valid because they are considered contrary to the 1945 Constitution of the Republic of Indonesia (UUD 1945). Besides, Article 67, Paragraph (2) also concerns candidates for governor/deputy governor, regent/deputy regent, and the mayor/deputy mayor, who must be at least 30 years old, as stated in point (e).

The age issue of candidates for governor/deputy governor, regent/deputy regent, and mayor/deputy mayor is not a crucial issue. Thus, the UUPA is considered urgent for a proposed revision because

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2. The need to justify the aims and objectives should be stated in the introduction. The authors need to discuss the significance of the study.
3. The literature review should be conducted by investigating the definition of terms, existing related work, and the available space as a gap to contribute towards problem-solving. By carefully reviewing this, it will help to look at the particular contribution to the existing literature.
4. In your review, there are no references to prior work that is pertinent; perhaps you should briefly mention any in your introduction.
5. We advise you to concentrate on writing your introduction. Please mention some of the literature as a theory to help with your claim and issue, and then take a look at some of the earlier research to see how your study differs from that of others.

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materially, the age factor of 30 years is related to the maturity and maturity of thinking.

The proposed revision of article 67 paragraph 2 point (b), which reads "a candidate is obliged to carry out his religious law," may be implemented. The element required to carry out the Sharia for his religion can be replaced with the following sentence; "A candidate for governor/deputy governor, regent/deputy regent, and mayor/deputy mayor in Aceh Province must be Muslim and committed to implementing Islamic law in Aceh." This point is a form of Aceh's privileges that have not been included in the UUPA based on the constitutional mandate.

The Aceh Government's authority to take care of its household, specifically prioritizing local wisdom, is a constitutional mandate. This regulation is in Article 18 B Paragraph 1,

"The State recognizes and respects special regional government units regulated by law," and Article 18 B Paragraph 2,

"The State recognizes and respects customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of The Unitary State of the Republic of Indonesia, which are regulated by law."

The State recognizes and respects each region's characteristics and local wisdom, as confirmed in the UUD 1945. Each region has different local wisdom. For example, Aceh Province is famous for implementing Islamic Sharia as a way of life and the spirit of struggle for the Acehnese people against Dutch colonialism as a bargaining chip in the eyes of the world for Indonesia (Lukito, 2019). This characteristic is, of course, different from the characteristics of Bali Province, where the majority of people live by Hindu teachings or people in Papua Province who adhere to Christian teachings. Like Indonesia, countries on the European continent also recognize local wisdom as a constitutional consensus and are considered part of the single majority principle, which is recognized in their constitution. Likewise, in America, a presidential candidate must be a Christian and show his baptismal certificate from the church.

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Responding to the planned revision of the UUPA, which is a National Legislation Program, the DPR RI must consult and obtain approval from *Dewan Perwakilan Rakyat Aceh* or the Aceh Province's House of Representatives (DPRA) and the Aceh Government in advance on points that are considered urgent. The revised plan must also be discussed carefully by involving elements of the Acehnese community and strategic groups, NGOs, academics, and combatant groups so that fears of reaping new conflicts in Aceh Province will not occur again. The UUPA is an elaboration of the Helsinki MoU. Every affair and issue regarding matters deemed significantly related to the Aceh must consult and obtain approval from the DPRA and the Aceh Government. [This matter has been stated in point 1.1.2 Helsinki MoU as follows;

- a) Decisions of DPR RI Expertise Board relating to Aceh Government will be carried out in consultation with and with the approval of the Aceh legislature,
- b) The Indonesian Government's administrative policies concerning Aceh Province will be implemented with the consultation and approval of the head of the Aceh Government.

Some provisions in the UUPA that are no longer valid due to a permanent legal decision by the Constitutional Court need to be revised. Thus, there is no need to explore other obvious essential matters. The hope is that the authorities can become justice producers in democratically fighting for the people's interests.

The proposed revision of the UUPA does not fall into elementary areas, and there is no need for terms that can confuse meaning with exceptions, limitations, or modifications that may disturb the spirit of peace. The revision must also not contain arguments because they will only lead to conflicts of opinion that can injure the values of justice in society and lead to misleading interpretations (Pleasence, P & Balmer, 2019; Kogelmann, 2017; Freiman, 2017).

The spirit and ideals of the birth of the UUPA are a tangible manifestation of the long road of the Acehnese people, in fighting for Indonesian independence and Islamic law (A Hamid Sarong & Nur A Fadhil Lubis, 2019), remaining upright in Aceh Province as mandated by

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We do not criticize what you wrote related to the constitution in Aceh or Indonesia, but I see that what you wrote is not focused; this is still like a problem in the research report that was submitted.

We are very happy to see that you are trying to improve your paper according to the rules of writing scientific papers, focused and straight to the heart of the matter.

the Helsinki MoU as well as Article 18, Article 18A and Article 18B of the UUD 1945.

Legal arrangements regarding the specialty of Aceh's local wisdom should not be compared with other regions. There is a view that the UUPA is not *lex specialis* from the Regional Autonomy Law in general. It is deemed necessary to be revised to harmonize it with the law. These legal arrangements do not seem right and unfair if it is forced to also apply to the UUPA.

The UUPA should not be considered as not being *lex specialis* with the Regional Government Law in general. The UUPA was also established based on Law Number 12 of 2011 concerning Regulations for the Establishment of Legislation, valid in Indonesia and following the UUD 1945. Objectively, the formulation, meaning, and content of the legal rules contained in the UUPA are in line with the clarity of objectives and functions to protect the interests of the Acehnese people. For example, such as the position of Acehnese local parties, the position of the *Wali Nanggroe* Institution, the position of the Sharia Court as the applicable law in Aceh Province (Huda, 2020).

The proposed revision of the UUPA must be viewed from a theoretical and practical point of view so that it does not affect elementary matters of reasoning and justice. Poor, unnecessary, and unfair regulations will cause people to disrespect the laws and eventually destroy The State's authority.

From the discussion above, several things will be discussed in this article; (1) The Aceh Government's authority over the proposed revision of Law Number 11 of 2006 concerning The Aceh Government by the DPR RI Expertise Board, (2) targets and scope of proposed changes to the UUPA by DPR RI Expertise Board, and (3) the proposed arrangement's target, scope, and direction for the revised Bill on Amendments to the UUPA.

## **B. Method**



This research is juridical normative, meaning that it is conducted through literature/library studies by examining various secondary data, such as research results or studies, literature, and related regulations, both at the level of laws and implementing regulations and various related legal documents. The library studies included review on laws and regulations related to the implementation of regional autonomy in Aceh Government, as follows:

- a. The UUD 1945.
- b. Law Number 11 of 2006 concerning the Aceh Government.
- c. Law Number 44 of 1999 concerning the Implementation of the Privileges of the Aceh Province.
- d. Law Number 23 of 2014 concerning Regional Government.
- e. Law Number 7 of 2017 concerning General Elections.
- f. Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations, in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors.
- g. Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties.
- h. Law Number 12 of 2011 concerning the Establishment of Legislation.

### C. **Result and Discussion**

#### 1. **Legal Basis for the Establishmen of the UUPA**

##### a. **Philosophical Foundation**

Pancasila is the Indonesian philosophical foundation, manifested in various universal dimensions: mutual respect, equality of rights and positions, independence, diversity, truth, justice, and others. The noble values contained in Pancasila are abstracted in the constitution, which is the spirit of justice in Indonesian law, namely the UUD 1945 (Emilia, S. et al., 2022; Dewantara, J. A. et al., 2019).

In the preamble of the UUD 1945, the first paragraph states that independence is the right of all nations, so colonialism must be abolished because it is not in line with humanity and justice. Therefore, with the independence achieved by the Indonesian people, in the fourth paragraph, it was emphasized that the Indonesia Government "...protect

#### **Commented [RV9]:**

The research design should be clearly explained. In addition, we noticed that your methods are lacking detail on how exactly the study was performed. How data is collected, and how it is analyzed. you should explain this in detail and briefly. Please remember that the reader should be able to reproduce your study based on the level of detail you provide. For instance, for qualitative studies involving interviews and focus groups. The method may need to be explained in more detail related to the research subject so that it becomes clear who is the subject.

#### **Commented [RV10]:**

You must explain the important points of your findings so that there is a correlation with the discussion. The analysis of the paper must be clear and comprehensive. The author must be explained research findings in the specific sub-topic. Strengthen statements or findings with data evidence from the data collection techniques used. In the discussion section, compare the findings with the latest theories or findings from international studies.

#### **Commented [RV11]:**

The discussion and/or analysis must be relevant to the study results and needs more narration about how the data can be linked to the problem. Then, what is the argument of this paper? Please add the argument and start by saying what the author really wants to argue in this article. A conceptual framework needs to be made clear to get the appropriate discussion.

all regions of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace, and social justice, ...".

The construction of an Indonesian State to achieve Indonesia's vision is regulated in the Articles of the UUD 1945. Article 1 Paragraph (1) of the UUD 1945 states that "The Indonesia State is a unitary state, in the form of a republic." Furthermore, Article 18 of the UUD 1945 regulates the division of the unitary state and regional government, which reads as follows:

- a) The Unitary State of the Republic of Indonesia is divided into provincial regions, divided into regencies, and cities, each of which has a regional government, as regulated by law.
- b) The province, regencies, and city governments regulate and manage their government affairs according to the principles of autonomy and co-administration.
- c) The province, regencies, and city governments have *Dewan Perwakilan Rakyat Daerah* or the Regional's House of Representatives, whose members are elected through general elections.
- d) The governors, regents, and mayors, respectively as heads of the province, regencies, and city governments, are democratically elected.
- e) Regional governments exercise the broadest possible autonomy, except for government affairs determined by law to be the affairs of the central government.
- f) Regional governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks.
- g) The structure and procedures for administering regional government are regulated by law.

Article 18 of UUD 1945 mandates that the Unitary State of the Republic of Indonesia has broad autonomy, except for government affairs which are determined by law as affairs of the central government.

In constructing the relationship of authority between the central government and the Aceh Government, it is not only seen to pay attention to the specificity and diversity of the region but the UUD 1945 also requires the State to acknowledge, respecting the special regional

government units (Muda, 2017), as regulated in the UUD 1945 Article 18B Paragraph (1). Article 18B Paragraph (2) also asserts that the State is obliged to recognize and respect customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

All issues related to regional specialties or privileges must be stated or regulated by law (Shen, 2020), including in the context of the existence of the Aceh Province as the autonomous region. The specificity of Aceh is related to one of the distinctive characteristics of the history of the struggle of the Acehnese people, having high resilience and fighting power against the struggle of the nation and the Republic of Indonesia.

#### **b. Sociological Foundation**

The birth of the UUPA was motivated by the sociological situation of the Aceh conflict that had lasted for a long time, especially the conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka-GAM*) and the Republic of Indonesia. This protracted conflict ended peacefully in Helsinki on 15 August 2005. This agreement is contained in the Helsinki MoU between the Indonesia Government and GAM. The Helsinki MoU consists of six points agreed between the two parties, one of which is about the administration of governance in Aceh by establishing the UUPA (Qonita Royani Salpina et al., 2018). This MoU is a legal document that describes the agreement between the two parties.

In considering the formation of the UUPA, the sociological conditions in Aceh Government at that time were illustrated. Two sociological conditions become the background of the problem. First, the administration and implementation of development in Aceh Government up to that time had not fully realized the welfare of the people, justice and the promotion, fulfillment, and protection of human rights. Hence, the Aceh Government needed to be developed and implemented based on the principles of good governance. Second, the earthquake and tsunami disaster that occurred in Aceh Province on 26 December 2004 had fostered

the solidarity of all the potentials of the Indonesian nation to rebuild the people and region of Aceh Province and resolve conflicts in a peaceful, comprehensive, sustainable, and dignified manner within the framework of The Unitary State of the Republic of Indonesia.

The proposed amendment to the UUPA must provide sustainable benefits to the people of Aceh Province in the framework of maintaining peace and should no longer cause vertical conflicts between the Indonesian Government and the people in Aceh. In addition, another critical issue is improving the welfare of the Acehnese people. The community's poverty level is still relatively high, 40.2%. However, the poverty rate fell to 32.60% after the existence of the Aceh Special Autonomy Fund, and it continues to decline to 15.01%. However, Aceh Province is still placed at number 3 at the national level. Therefore, the Aceh Special Autonomy Fund needs to be made permanent (*Delivered in a Meeting with the DPR RI Expertise Board Data Collection Team at the Aceh Governor's Office, Banda Aceh, on 13 February 2020., 2020*).

On a sociological basis, there are two crucial points for changes to the UUPA. First, continue and maintain peace in Aceh Province, which has been agreed and stated in the Helsinki MoU. Second, continue to encourage efforts to improve welfare for the people of Aceh through specific steps, including concerning the Aceh Special Autonomy Fund, which must be continued.

### **c. Juridical Foundation**

Provisions related to special regions are regulated in Article 18B of the UUD 1945; namely, the State recognizes and respects special regional government units regulated by law. Aceh Province is a special regional government unit designated as capital for the struggle to seize and defend the independence of The Unitary State of the Republic of Indonesia (Law Number 11 of 2006 Concerning Aceh Government). Furthermore, the provisions of the UUD 1945 in Article 18B Paragraph (2) stipulate that the State is obliged to recognize and respect customary law community units and their traditional rights as long as they are still valid

and under the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

The people of Aceh have customs, traditions, arts and culture, and local wisdom as an identity rooted in life. For the people of Aceh, tradition is something written or unwritten that becomes a guide in society.

Specifically, in terms of forming statutory regulations, the government issued Law Number 12 of 2011 concerning the Establishment of Legislation. Law Number 15 of 2009 concerning Regulations for the Formation of Laws and Regulations is used as a guide. In every legislation formed, there is clarity of purpose following the hierarchy and made by an authorized institution that adapts its content material to the development of society. The birth of this law is based on the idea that the Indonesian State is a legal state that regulates all aspects of life. The goal is that every existing element helps each other anticipate and overcome problems in society (Aldeia, J. & Alves, 2019), nation, and state. The stages of the formation of laws and regulations include planning, drafting, discussing, ratifying, and determining. According to the hierarchy and nomenclature, promulgation is generally formed and determined by the authorized institution or official through procedures. In Article 7 Paragraph (1) concerning the Law on the Formation of Legislations, the types and hierarchy of laws and regulations consist of:

- a. The UUD 1945;
- b. Decree of the People's Consultative Assembly;
- c. Laws/Government Regulations in Lieu of Laws;
- d. Government Regulations;
- e. Presidential decree;
- f. Provincial Regulations; and
- g. Regency/City Regional Regulations.

Article 7 Paragraph (2) states that the legal force of the legislation is in line with the hierarchy as referred to in Paragraph (1). Furthermore, in the elucidation of Article 7 Paragraph (1) letter f, it is stated that what is included in regional regulations include *Qanun* in force in Aceh Province, Special Regional Regulations (*Peraturan Daerah Khusus-*

Perdasus), and Provincial Regulations (Peraturan Daerah Provinsi-Perdasi) in force in Papua and West Papua Provinces. Then in the explanation of Article 7 Paragraph (1), letter g, it is stated that what is included in the regency/city regional regulation is the *Qanun* that applies in the regency/city in Aceh Province.

The link between the law on the Establishment of Legislation and UUPA is the acknowledgment of the existence of *Qanun* as a term explicitly used in Aceh Province. It is because Aceh, as stated in the UUPA, is a province with a particular legal entity and is given special authority to regulate and manage its government affairs, and the interests of the local community in accordance with the laws and regulations in the system and principles of The Unitary State of the Republic of Indonesia.

## **2. The Position of Law Number 11 of 2006 concerning the Aceh Government**

As a result of the Aceh earthquake and tsunami disaster, the administration of government, that previously could not be fully implemented for the welfare of the people, justice, and the protection of human rights in Aceh Province. This country has fostered solidarity with all the nation's potentials to rebuild the people and region of Aceh, including to resolve conflicts peacefully in Aceh (Lee, 2020). The issuance of Law Number 11 of 2016 concerning the Aceh Government, as a substitute for the law on the Implementation of Special Autonomy for the Nanggroe Aceh Darussalam Province, is the result of Helsinki MoU. The UUPA, promulgated on 1 August 2006 and consists of 40 chapters and 273 articles.

Article 7 of the UUPA regulates the authority in government affairs in all public sectors, except for government affairs which are the government's authority. Article 12 of the UUPA regulates government affairs that fall under its authority, except for those that are under the authorities of the central government. Those authorities have consisted of government affairs of a national nature, foreign policy, defense, security, judiciary, national monetary and fiscal matters, and specific affairs in the

religious field (Bauw, 2016; Lequesne, C. & Paquin, 2017; Ker-Lindsay, 2012).

Article 16 of the UUPA regulates matters that include mandatory affairs, other mandatory affairs, and optional affairs. Mandatory affairs under the Aceh Government's authority still present at the Aceh provincial scale include; (a) planning, utilization, and supervision of spatial planning; (b) development planning and control; (c) the administration of public order and public peace; (d) provision of public facilities and infrastructure; (e) handling of the health sector; (f) implementation of education and allocation of potential human resources; (g) overcoming social problems across districts/cities; (h) services in providing employment and human resources across districts/cities; (i) facilitation of the development of cooperatives, small and medium enterprises including across districts/cities; (j) environmental control; (k) land services, including across districts/cities (Chairul Fahmi & Muhammad Siddiq Armia, 2022); (l) population and civil registration services; (m) government general administration services; (n) investment administration services, including across districts/cities; and the implementation of other basic services that have not been able to be implemented by the district/city government.

Other mandatory affairs under the Aceh Government's authority include: (a) the implementation of religious life in performing Sharia for its adherents in Aceh while maintaining inter-religious harmony; (b) organizing traditional life based on Islam; (c) providing quality education and adding local content under Islamic Sharia; (d) the role of the ulama in setting Aceh policies; and (e). organizing and managing the pilgrimage by statutory regulations.

Aceh's optional government affairs include government affairs that have real potential to improve the community's welfare under the conditions, characteristics, and superior potential of Aceh. Article 21 of the UUPA stipulates that the administration of the Aceh Government consists of the Aceh Government itself and the DPRA. In contrast, the district/city

administration consists of the district/city government of the City's House of Representatives (*Dewan Perwakilan Rakyat Kota-DPRK*).

It should be noted that the nomenclature of the people's representative institutions in Aceh Province is different from other regional governments that use the nomenclature of the Provincial's House of Representatives (*Dewan Perwakilan Rakyat Daerah Provinsi - DPRD Provinsi*) and or Regency/City's House of Representatives (*Dewan Perwakilan Rakyat Daerah Kabupaten/Kota-DPRD Kabupaten/Kota*). Even the nomenclature of Regional Regulations (*Peraturan Daerah-Perda*) in Aceh is different from other regional governments because it does not use the nomenclature of Provincial Perda and Regency/City Perda. The Aceh Government uses the *Qanun*, a type of regional regulation that regulates governance and the lives of the Acehnese people.

In addition, several other matters are also regulated in the UUPA, different from other regional autonomy laws, which only regulate general matters related to the region. In the UUPA, there are content materials that are specifically regulated, for example, related to the organizers of the presidential/vice-presidential election, DPR members, DPD members, DPRA members, DPRK members as well as regional head/deputy regional head elections, the Aceh Independent Election Commission, the Aceh Election Supervisory Committee, and Local Party. In addition, there is also content regarding the *Wali Nanggroe* Institution, the customary leadership authorized to foster and supervise the implementation of the life of traditional institutions customs and give titles and traditional ceremonies, the existence of a Sharia Court (Muhammad & Rosmawardani, 2020; Armia, Muhammad Siddiq, Zahlul Pasha Karim, Sarong et al., 2022), which is an Islamic sharia court for the Muslim community in Aceh, the existence of the Ulema Consultative Assembly (*Majelis Permusyawaratan Ulama-MPU*) consists of Muslim scholars and scholars who are working partners of the Aceh Government and the DPRA in establishing *fatwa* (a ruling on the point of Islamic law given by a recognized authority) as consideration for regional government policies in the fields of government, development, community development, and the



economy. There are also arrangements regarding flags, symbols, and hymns as symbols reflecting the peculiarities and specialties of Aceh (Barter, 2017; Armia, 2017).

### **3. The position of the Helsinki on the UUPA**

The MoU (Memorandum of Understanding) between the Indonesia Government and GAM in Helsinki, 15 August 2005 by the Minister of Law and Human Rights, Hamid Awaluddin, and Prime Minister of GAM, Malik Mahmud, marked a new chapter in the history of Aceh Province and the lives of its people towards Aceh which peace, justice, and prosperity (Academic Draft of the Aceh Governance Bill, Ministry of Home Affairs, 2006).

In the Helsinki MoU, several things were agreed upon as follows; First, the Indonesia Government and GAM affirm their commitment to resolving the Aceh conflict in a peaceful, comprehensive, sustainable, and dignified manner for all. Second, the Republic of Indonesia and GAM are determined to create conditions so that governance in Aceh can be realized through a democratic and fair process within The Unitary State and Constitution of the Republic of Indonesia. Third, both parties involved firmly believe that only a peaceful settlement of the conflict can enable progress and success in rebuilding Aceh after the earthquake and tsunami disaster of 26 December 2004. Fourth, both parties involved in the conflict are determined to build mutual trust.

The Helsinki MoU details the contents of the agreement to be reached and the principles used to guide the transformation process. Specifically regarding governance arrangements in Aceh, it has been agreed to give special authority to the Aceh Province through a new UUPA, which will come into force no later than 31 March 2006. In particular, in the field of Politics and General Elections, the MoU emphasizes the establishment of local political parties in Aceh and free and fair local elections to elect the head of the Aceh Government and other elected officials and members of the Aceh legislature (Academic Draft of the Aceh Governance Bill, Ministry of Home Affairs, 2006).

Philosophically, the Helsinki MoU is the philosophical basis of the UUPA, which is a fundamental principle of the governance of Aceh. Meanwhile, from a sociological perspective, the Helsinki MoU has been optimally stated in the UUPA, following the Helsinki MoU guidelines. From a juridical perspective, both in substance or in the UUPA content is under the conditions developed.

#### **4. Problems Related to the Proposed Amendment to the UUPA**

##### **a. Problems Related to Institutional Authority**

According to the law concerning the regulations for the formation of laws and regulations, Article 5 states that the making of laws and regulations includes the principle of clarity of purpose; the appropriate forming institution or official; suitability between types, hierarchies, and payload materials; can be implemented; usability and effectiveness, clarity of formulation, and openness. In addition, the content of this bill is based on the principle of the content of laws and regulations, as regulated in Article 6 of the Law on the Formation of Legislation which includes, among others, the principles of protection, humanity, nationality, kinship, archipelago, diversity in diversity, justice, equality of position in law and government, order and legal certainty, and balance and harmony.

The proposed amendment to the UUPA by the DPR RI Expertise Board must absorb the people's aspirations correctly and directly to comply with the principle of clarity of purpose (Flückiger, 2016). The proposed amendment to the law on the Aceh Government Bill must follow the procedures and provisions that apply to Aceh as a special region that was born based on the mandate of the Helsinki MoU; both regulated in the UUPA and the provisions of Presidential Regulation Number 75 of 2008 concerning procedures for consultation and granting, consideration of plans for the international agreements, plans for forming laws, and administrative policies directly related to the Aceh Government. Thus, any decisions taken must be in accordance with the agreed results.

In particular, changes to the UUPA take into account the following:

- a) Item 1.1.2 letter c of the Helsinki MoU, that the DPR RI decisions related to Aceh will be carried out with consultation and approval from the Aceh legislature.
- b) Article 8 Paragraph (2) of the UUPA that the plan for forming a law by the DPR directly related to the Aceh Government is carried out in consultation and consideration from the DPRA.
- c) Article 269 Paragraph (3) of the UUPA that in the event of a plan to amend this law, it is carried out through a consultation process to obtain consideration from the DPRA.

Amendments to the UUPA must be based on the principles of the Helsinki MoU. In addition, national laws applied to the Aceh Province need to consider the Helsinki MoU and the UUPA, or there is a clause "This Law also applies to Aceh as long as it is not regulated separately in the UUPA." Every time a ministry proposes establishing legislation for Aceh Province, the Helsinki MoU, and the UUPA are the material that must be considered. The proposed revision of the UUPA needs to be realigned to conform to the points of the Helsinki MoU. It is intended that the contents contained in the UUPA are in accordance with the wishes and demands of the Acehnese people.

Related to the nature of the consultation and consideration of the DPRA is the status of Consultation and Approval, not just Consultation and Consideration. An Approval has a legal stipulation, while consideration has a less precise meaning. For example, Article 269 Paragraph (3) in the UUPA is sufficient with the consultation and consideration of the DPRA; it should only regulate *Pemilihan Ketua Daerah* or the Election of Governors, Regents, and Mayors (Pilkada) with approval. In addition, 70 percent of the natural products for Aceh Province in the Helsinki MoU discussion are different from the UUPA.

Therefore, this should be the Aceh Government's authority to determine the appropriate distribution percentage.

The Helsinki MoU is the core of the philosophy of the UUPA, which is a fundamental principle. Any changes need to be adjusted as long as they support the implementation of the Helsinki MoU. The provisions contained in the Helsinki MoU have not been fully accommodated in the UUPA. Therefore, if a revision is to be made, it must accommodate all agreements in the Helsinki MoU. For example, Article 8 Paragraph (2) mentions the word "consultation," in contrast to that contained in the Helsinki MoU, namely "Agreement."

The Helsinki MoU was created due to lasting peace for the welfare of the people of Aceh (Taydas Zeynep & Dursun Peksen, 2012; Pippa, 2012; Oliver P, 2008). The Helsinki MoU must be used as a guideline for amending the UUPA as part of the spirit of peace. Thus, the limitations that must be complied with and adjusted are regarding the following:

First, even if there are changes, they will still pay attention to the four features of Aceh in terms of organizing traditional life, education administration, and the role of the ulama in determining Regional policies), namely in terms of Election Governance. This change includes the affirmation of the existence of election management institutions in Aceh and local political parties as part of the specialty/privilege of Aceh.

Second, there is a guarantee that Aceh has an independent electoral management system and does not have to be the same as election governance at the central level (Karim, 2019; Pasha, 2018). Thus, Aceh does not have to follow national regulations regarding all changes to the laws and regulations regarding the General Election and Regional Head Elections because they are subject to the provisions of the UUPA and *Qanun*.

Third, Consultation and Approval in the Helsinki MoU is important, not limited to Consultation and Consideration. Thus, the provisions that are not in harmony should not be carried out, as well as

legal products that have been issued but are not yet in line with the MoU, so they must be reviewed.

#### **b. Regulatory and Content Problems**

The evaluation and analysis of the DPR RI through a special team of the DPR RI Expertise Board considers that the UUPA is no longer appropriate and relevant to current legal developments, including those related to both the Law on Regional and National Elections. It is alleged that the law has undergone several changes, so that the UUPA is also need revising, adjusted to the generally accepted laws nationally. For example, related to the requirements for candidates for regional heads and deputy regional heads, Article 67 Paragraph (2) letter e UUPA stipulates that candidates must be at least 30 years old. On the other hand, in Article 7 Paragraph (2) letter e Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations, in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (*Undang-undang Pemilihan Ketua Daerah-UU Pilkada*), it stipulates that candidates must be at least 30 years old for governor and deputy governor candidates, as well as 25 years old for regent and deputy regent candidates, and the mayor and deputy mayor candidates.

The Law on Regional Autonomy which is generally applicable nationally, is inappropriate compared to Law Number 11 of 2016 concerning the Aceh Government as a special autonomous region. Therefore, the issues related to the age limit for regional head candidates contained in the UUPA do not necessarily have to be harmonized with the National Election Law based on Law Number 7 of 2017 concerning Elections (Orba, 2012).

#### **c. Problems with the Constitutional Court's Decision**

Following up on the Constitutional Court Decision No. 35/PUU-VIII/2010, and the Constitutional Court Decision No. 51/PUU-XIV/2016, should substantially no longer apply, following Article 10 of

Law Number 12 of 2011 concerning the Establishment of Regulations Legislation (Law on P3). Even though the Constitutional Court's decision has been in effect since it was read in general at the Constitutional Court reading session, there is still a need for follow-up to revise the law. The follow-up to the Constitutional Court's decision is considered in line with the Indonesian legal system, namely civil law, where the laws and regulations take precedence over court decisions.

The proposed revision of the Draft Law on Amendments to the UUPA was formed by considering the Constitutional Court's Decision No. 61/PUU-XV/2017 and the Constitutional Court Decision No. 66/PUU-XV/2017, which cancels the validity of Article 557 Paragraph (2) and Article 571 letter d of the Law on General Elections. In the Constitutional Court Decision Number 61/PUU-XI/2017, Article 57 and Article 60 of the Law on Elections have been annulled. One of the provisions in the UUPA, which states any changes to the law related to Aceh, must first be consulted with the DPRA. However, when the Constitutional Court's decision was read out in court, the Ministry of Home Affairs (*Kementerian Dalam Negeri-Kemendagri*), and DPR RI could not show strong evidence that they had consulted with the DPRA. Of course, this is very detrimental to the Aceh Government. Thus, if the government and the DPR RI wish to revise all UUPAs, then in the future, they are required to follow the procedures specified in the UUPA.

##### **5. Consideration of Proposed Changes and Rearrangements**

Law Number 11 of 2006 concerning the Aceh Government, which is approximately 14 years old, is a tangible manifestation of the peace agreement between the Indonesia Government and GAM. The normalization of the principle of legal justice in the UUPA aligns with Article 18, Article 18A, and Article 18B of the UUD 1945. These ideals are contained in Article 18, Article 18A, and Article 18B, namely that The State recognizes and respects regional government units that are special or are privileges regulated by law, as well as guaranteeing regional independence in managing their households through autonomy, and

protecting the traditional values of customary law community units found in each province. Therefore, the UUPA in certain respects is different from the regional autonomy law in general. UUPA regulates many things specifically. This law is certainly different from what is regulated in the regional autonomy law generally applicable because it is part of local wisdom that is special and special, as mandated by the Helsinki MoU, which is in line with the UUD 1945.

The proposed amendment to the Aceh Governance Bill, based on the mandate of the Helsinki MoU, has been regulated in clause 1.1.2, which states that the new law on Governance in Aceh will be based on the following principles.

- a) Aceh Government will exercise authority in all public sectors, which will be held in conjunction with civil administration and justice, except in the field of foreign relations. External defense, national security, monetary and fiscal matters, judicial power, and freedom of religion, wherein these policies are the authority of the Indonesia Government under the constitution.
- b) International agreements entered into by the Indonesia Government relating to matters of particular interest to Aceh will enter into force with consultation and approval of the legislature in Aceh.
- c) Decisions of the DPR RI relating to the Aceh Government will be made in consultation with and with the approval of the Aceh legislature.
- d) Administrative policies taken by the Indonesian Government concerning Aceh will be implemented with the consultation and approval of the head of the Aceh Government.

Consequently, the UUPA differs from the Regional Government Law, generally applicable to all regions. This difference is because the content material regulated in the UUPA contains local wisdom that is special and special in Aceh based on the mandate of the Helsinki MoU and is in line with the UUD 1945. Regarding the proposed changes to several articles contained in the UUPA due to the Constitutional Court

decision, these are the only articles that must be revoked in the UUPA because they are no longer valid and adapted to current legal developments. Issues related to regulatory conflicts with several rules that nationally apply to differ from those regulated in the UUPA, it is mandatory to pay attention to the principles of Acehese local wisdom, which are noteworthy (Aspinall, 2005; Mita, 2019).

Proposed changes to the UUPA need to consider the basic principles of granting special powers and governance. In administering the government, the people of Aceh have a role in formulating policies, establishing policies, implementing policies, and evaluating the policies of the Aceh Government. The implementation of the special powers of the Aceh Government should further enhance the roles and functions of the legislative, executive, political parties, and other social institutions in Aceh. There needs to be a clear arrangement starting from the preparation implementation to the supervision of each program and activity that will be funded by the special autonomy fund (Abrar et al., 2020; Jalil et al., 2019). Change activities are a strategic development program, have a strong driving force, and have a significant impact on achieving a better, more honest, fair, and responsible Acehese people's welfare that involves the Acehese people.

#### **E. Conclusion**

The proposed amendment to the UUPA by the DPR RI aims to strengthen peace in Aceh through the Helsinki MoU. The authority has violated procedures and is contrary to the mandate of the Helsinki MoU. In point 1.1.2, any UUPA changes need to be consulted and get the approval of the DPRA and the Aceh Government first. The scope and proposals for changes by the DPR RI to the UUPA must be transparently accountable to the people so that the proposed revision of the UUPA is not a distraction and is for the benefit of the political elite. The proposed revision of the UUPA must be implemented by taking into account the principles of unique local wisdom and promoting the independence of the

#### **Commented [RV12]:**

The conclusion needs to discuss comprehensively. That section needs to be synthesized comprehensively, especially in terms of the author's critical evaluation of research findings, and must explain your contribution to knowledge. Correspondence of conclusions with results is highly recommended. Conclusions must certainly be able to answer the purpose of this study.



Aceh Province in managing its household in a dignified manner. This is because the proposed revision of the UUPA aims to improve it.

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**Questioning the Contitutionality of Amandement Aceh's Autonomy Law  
by Central Government: Who has the Authority?**

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## QUESTIONING THE CONSTITUTIONALITY OF AMENDMENT ACEH'S AUTONOMY LAW BY CENTRAL GOVERNMENT: WHO HAS THE AUTHORITY?

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### Abstract

*This article criticized the decision of the House of Representatives of the Republic of Indonesia (Dewan Perwakilan Rakyat Republik Indonesia-DPR RI) to amend several articles regarding Aceh's autonomy authorities. The DPR RI should consult the norms of Aceh's autonomy to Aceh's Parliament. Unfortunately, the DPR RI tended to consult and involve Aceh's Parliament before making decisions. Most of the decisions regarding Aceh's autonomy had been decided by the DPR RI, creating a potential conflict of regulation in the year to come and distrust between central and provincial governments. This article used a qualitative method with the black letter law approach concerning some regulations as the primary data. The author claimed that the central government had ignored the principle of checks and balances between the central dan provincial governments and also broke the principle of consultation as stated in Law Number 11 of 2006 concerning the Aceh Government.*

**Keywords:** *Constitutionality of Amendment; Aceh's Autonomy Law; Central Government.*





## A. Introduction

This paper will investigate the authority to propose amendments to Law Number 11 of 2006 concerning the Aceh Government (called *Undang-Undang Pemerintah Aceh-UUPA*), which the DPR RI expertise board carries out. On the one hand, the Government of Aceh has the authority to be consulted regarding Aceh's autonomy law. On the other hand, the central government, through the DPR RI, has tended to ignore the Aceh Government regarding amendments to Law Number 11 of 2006 concerning the Aceh Government (*UUPA*). This problem can create potential distrust between the central dan provincial governments.

Furthermore, The preparation of the academic text (*naskah akademik-NA*) of the draft law on amendments to the UUPA by the DPR RI Expertise Board is the agenda of the National Legislation Program (Program Legislasi Nasional-Proleknas) for the 2019-2024 period, which carries the mission that UUPA enacted in 2006 must be revised and renewed, taking into account it has been applied for more than 15 years, from the date of promulgation on 1 August 2006 to 2022 (Basri, H. & Nabihah, 2014; McGibbon, 2004; May 2008).

In addition, the UUPA is considered different from the Regional Autonomy Law in several respects, including the UUPA itself, which is considered too specific, so it must be renewed. Examples can be seen in the regulations related to the election of regional heads/deputy regional heads and local parties, so they must be harmonized with the National Election Law based on Law Number 7 of 2017 concerning Elections (Suryadinata, 2005; Lewis, 2020; Siahaan C & Tampubolon, 2021; Mutiara Fahmi et al., 2020).

The cancellation of several articles by the Constitutional Court (Mahkamah Konstitusi-MK) contained in the UUPA through a juridical review was also a consideration for the proposed revision (Armia, 2018), including Article 256 of Law Number 11 of 2006 concerning the Aceh Government regarding independent candidates who are no longer valid because they are considered contrary to the 1945 Constitution of the Republic of Indonesia (UUD 1945). Besides, Article 67, Paragraph (2) also concerns candidates for governor/ deputy governor, regent/ deputy regent, and the mayor/ deputy mayor, who must be at least 30 years old, as stated in point (e).

The age issue of candidates for governor/deputy governor, regent/deputy regent, and mayor/deputy mayor is optional. Thus, the UUPA is considered urgent for a proposed revision because the age factor of 30 years is materially related to the maturity and maturity of thinking.

The proposed revision of Article 67, paragraph 2 point (b), which reads "a candidate is obliged to carry out his religious law", may be implemented. The element required to carry out the Sharia for his religion can be replaced with the following sentence; "A candidate for governor/deputy governor, regent/deputy regent, and mayor/deputy mayor in Aceh Province must be Muslim and committed to implementing Islamic law in Aceh". This point is a form of Aceh's privileges not included in the UUPA based on the constitutional mandate.

The Aceh Government's authority to care for its household, specifically prioritizing local wisdom, is a constitutional mandate. This regulation is in Article 18 B, Paragraph 1.

"The State recognizes and respects special regional government units regulated by law", and Article 18 B Paragraph 2.

"The State recognizes and respects customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of The Unitary State of the Republic of Indonesia, which are regulated by law".

The State recognizes and respects each region's characteristics and local wisdom, as confirmed in the UUD 1945. Each region has different local wisdom. For example, Aceh Province is famous for implementing Islamic Sharia as a way of life and the spirit of struggle for the Acehnese people against Dutch colonialism as a bargaining chip in the eyes of the world of Indonesia (Lukito, 2019). This characteristic is different from the characteristics of Bali Province, where most people live by Hindu teachings, or people in Papua Province adhere to Christian teachings. Like Indonesia, countries on the European continent also recognize local wisdom as a constitutional consensus and are considered part of the single majority principle, which is recognized in their constitution. Likewise, in America, a presidential candidate must be a Christian and show his baptismal certificate from the church.



Responding to the planned revision of the UUPA, a National Legislation Program, the DPR RI must consult and obtain approval from *Dewan Perwakilan Rakyat Aceh* or the Aceh Province's House of Representatives (DPRA) and the Aceh Government in advance on points that are considered urgent. The revised plan must also be discussed carefully by involving elements of the Acehnese community and strategic groups, NGOs, academics, and combatant groups so that fears of reaping new conflicts in Aceh Province will not occur again. The UUPA is an elaboration of the Helsinki MoU. Every affair and issue regarding matters deemed significantly related to the Aceh must consult and obtain approval from the DPRA and the Aceh Government. This matter has been stated in point 1.1.2 Helsinki MoU as follows;

1. Decisions of the DPR RI Expertise Board relating to the Aceh Government will be carried out in consultation with and with the approval of the Aceh legislature,
2. The Indonesian Government's administrative policies concerning Aceh Province will be implemented with the consultation and approval of the head of the Aceh Government.

Some provisions in the UUPA that are no longer valid due to a permanent legal decision by the Constitutional Court need to be revised. Thus, there is no need to explore other evident essential matters. The hope is that the authorities can become justice producers in democratically fighting for the people's interests.

The proposed revision of the UUPA does not fall into elementary areas, and there is no need for terms that can confuse meaning with exceptions, limitations, or modifications that may disturb the spirit of peace. The revision must also not contain arguments because they will only lead to conflicts of opinion that can injure the values of justice in society and lead to misleading interpretations (Pleasence & Balmer, 2019; Kogelmann, 2017; Freiman, 2017).

The spirit and ideals of the birth of the UUPA are a tangible manifestation of the long road of the Acehnese people in fighting for Indonesian independence and Islamic law (A Hamid Sarong & Nur A Fadhil

Lubis, 2019), remaining upright in Aceh Province as mandated by the Helsinki MoU as well as Article 18, Article 18A and Article 18B of the UUD 1945.

Legal arrangements regarding Aceh's local wisdom specialty should differ from other regions. There is a view that the UUPA is not *lex specialis* from the Regional Autonomy Law in general. It is deemed necessary to be revised to harmonize it with the law. These legal arrangements do not seem right and unfair if it is forced to also apply to the UUPA.

The UUPA should not be considered as not being *lex specialis* with the Regional Government Law. The UUPA was also established based on Law Number 12 of 2011 concerning Regulations for the Establishment of Legislation, valid in Indonesia and following the UUD 1945. Objectively, the formulation, meaning, and content of the legal rules contained in the UUPA are in line with the clarity of objectives and functions to protect the interests of the Acehnese people, for example, the position of Acehnese local parties, the position of the *Wali Nanggroe* Institution, the position of the Sharia Court as the applicable law in Aceh Province (Huda, 2020).

The proposed revision of the UUPA must be viewed from a theoretical and practical point of view so that it does not affect elementary matters of reasoning and justice. Poor, unnecessary, and unfair regulations will cause people to disrespect the laws and eventually destroy The State's authority.

From the discussion above, several things will be discussed in this article; (1) The Aceh Government's authority over the proposed revision of Law Number 11 of 2006 concerning The Aceh Government by the DPR RI Expertise Board, (2) targets and scope of proposed changes to the UUPA by DPR RI Expertise Board, and (3) the proposed arrangement's target, scope, and direction for the revised Bill on Amendments to the UUPA.

## **B. Method**

This research is juridical normative, meaning that it is conducted through literature/ library studies by examining various secondary data, such as research results or studies, literature, and related regulations, both at the



level of laws and implementing regulations and various related legal documents. The library studies included a review of laws and regulations related to implementing regional autonomy in the Aceh Government, as follows.

1. The UUD RI 1945;
2. Law Number 11 of 2006 concerning the Aceh Government;
3. Law Number 44 of 1999 concerning the Implementation of the Privileges of the Aceh Province;
4. Law Number 23 of 2014 concerning Regional Government;
5. Law Number 7 of 2017 concerning General Elections;
6. Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations, instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors;
7. Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties;
8. Law Number 12 of 2011 concerning the Establishment of Legislation.

## **C. Result and Discussion**

### **1. Legal Basis for the Establishment of the UUPA**

#### **a. Philosophical Foundation**

Pancasila is the Indonesian philosophical foundation, manifested in various universal dimensions: mutual respect, equality of rights and positions, independence, diversity, truth, justice, and others. The noble values contained in Pancasila are abstracted in the constitution, which is the spirit of justice in Indonesian law, namely the UUD 1945 (Emilia, S. et al., 2022; Dewantara, J. A. et al., 2019).

In the preamble of the UUD 1945, the first paragraph states that independence is the right of all nations, so colonialism must be abolished because it is not in line with humanity and justice. Therefore, with the independence achieved by the Indonesian people, in the fourth paragraph, it was emphasized that the Indonesia Government "...protect all regions of Indonesia and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace, and social justice, ...".



The construction of an Indonesian State to achieve Indonesia's vision is regulated in the Articles of the UUD 1945. Article 1 Paragraph (1) of the UUD 1945 states, "The Indonesia State is a unitary state, in the form of a republic". Furthermore, Article 18 of the UUD 1945 regulates the division of the unitary State and regional government, which reads as follows.

- 1) The Unitary State of the Republic of Indonesia is divided into provincial regions, divided into regencies, and cities, each of which has a regional government, as regulated by law;
- 2) The province, regencies, and city governments regulate and manage their government affairs according to the principles of autonomy and co-administration;
- 3) The province, regencies, and city governments have *Dewan Perwakilan Rakyat Daerah*, or the Regional House of Representatives, whose members are elected through general elections;
- 4) The governors, regents, and mayors, respectively, as heads of the province, regencies, and city governments, are democratically elected;
- 5) Regional governments exercise the broadest possible autonomy, except for government affairs determined by law to be the affairs of the central government;
- 6) Regional governments can stipulate regional and other regulations for autonomy and assistance tasks;
- 7) The structure and procedures for administering regional government are regulated by law.

Article 18 of UUD 1945 mandates that the Unitary State of the Republic of Indonesia has broad autonomy, except for government affairs which are determined by law as affairs of the central government.

In constructing the relationship of authority between the central government and the Aceh Government, it is not only seen to pay attention to the specificity and diversity of the region, but the UUD 1945 also requires the State to acknowledge and respect the special regional government units (Muda, 2017), as regulated in the UUD 1945 Article 18B Paragraph (1). Article 18B Paragraph (2) also asserts that the State is obliged to recognize and respect customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.



All issues related to regional specialties or privileges must be stated or regulated by law (Shen, 2020), including in the context of the existence of the Aceh Province as an autonomous region. The specificity of Aceh is related to one of the distinctive characteristics of the history of the struggle of the Acehnese people, having high resilience and fighting power against the struggle of the nation and the Republic of Indonesia.

### **b. Sociological Foundation**

The birth of the UUPA was motivated by the sociological situation of the Aceh conflict that had lasted for a long time, especially the conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka*-GAM) and the Republic of Indonesia. This protracted conflict ended peacefully in Helsinki on 15 August 2005. This agreement is in the Helsinki MoU between the Indonesia Government and GAM. The Helsinki MoU consists of six points agreed upon between the two parties, one of which is about the governance administration in Aceh by establishing the UUPA (Qonita Royani Salpina et al., 2018). This MoU is a legal document that describes the agreement between the two parties.

In considering the formation of the UUPA, the sociological conditions in Aceh Government at that time were illustrated. Two sociological conditions become the background of the problem. First, the administration and implementation of development in the Aceh Government up to that time had not fully realized the welfare of the people, justice, and the promotion, fulfillment, and protection of human rights. Hence, the Aceh Government needed to be developed and implemented based on the principles of good governance. Second, the earthquake and tsunami disaster that occurred in Aceh Province on 26 December 2004 fostered the solidarity of all the potentials of the Indonesian nation to rebuild the people and region of Aceh Province and resolve conflicts in a peaceful, comprehensive, sustainable, and dignified manner within the framework of The Unitary State of the Republic of Indonesia.

The proposed amendment to the UUPA must provide sustainable benefits to the people of Aceh Province while maintaining peace. It should no





longer cause vertical conflicts between the Indonesian government and the people in Aceh. In addition, another critical issue is improving the welfare of the Acehnese people. The community's poverty level is still relatively high, at 40.2%. However, the poverty rate fell to 32.60% after the existence of the Aceh Special Autonomy Fund, and it continues to decline to 15.01%. However, Aceh Province is still placed at number 3 at the national level. Therefore, the Aceh Special Autonomy Fund must be made permanent (*Delivered in a Meeting with the DPR RI Expertise Board Data Collection Team at the Aceh Governor's Office, Banda Aceh, on 13 February 2020., 2020*).

Sociologically, there are two crucial points for changes to the UUPA. First, maintain peace in Aceh Province, which has been agreed upon and stated in the Helsinki MoU. Second, continue to encourage efforts to improve welfare for the people of Aceh through specific steps, including concerning the Aceh Special Autonomy Fund, which must be continued.

### **c. Juridical Foundation**

Provisions related to particular regions are regulated in Article 18B of the UUD 1945; the State recognizes and respects special regional government units regulated by law. Aceh Province is a unique regional government unit designated as the capital for the struggle to seize and defend the independence of The Unitary State of the Republic of Indonesia (Law Number 11 of 2006 Concerning Aceh Government). Furthermore, the provisions of the UUD 1945 in Article 18B Paragraph (2) stipulate that the State is obliged to recognize and respect customary law community units and their traditional rights as long as they are still valid and under the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.

The people of Aceh have customs, traditions, arts and culture, and local wisdom as an identity rooted in life. For the people of Aceh, tradition is something written or unwritten that becomes a guide in society.

Specifically, in forming statutory regulations, the government issued Law Number 12 of 2011 concerning the Establishment of Legislation. Law





Number 15 of 2009 concerning Regulations for the Formation of Laws and Regulations is used as a guide. In every legislation formed, there is clarity of purpose following the hierarchy and made by an authorized institution that adapts its content material to the development of society. The birth of this law is based on the idea that the Indonesian State is a legal state that regulates all aspects of life. The goal is that every existing element helps each other anticipate and overcome societal problems (Aldeia, J. & Alves, 2019), nation and State. The stages of forming laws and regulations include planning, drafting, discussing, ratifying, and determining.

According to the hierarchy and nomenclature, promulgation is generally formed and determined by the authorized institution or official through procedures. In Article 7 Paragraph (1) concerning the law on the Formation of Legislations, the types and hierarchy of laws and regulations consist of.

- 1) The UUD 1945;
- 2) Decree of the People's Consultative Assembly;
- 3) Laws/Government Regulations instead of Laws;
- 4) Government Regulations;
- 5) Presidential decree;
- 6) Provincial Regulations; and
- 7) Regency/ City Regional Regulations.

Article 7 Paragraph (2) states that the legal force of the legislation is in line with the hierarchy, as referred to in paragraph (1). Furthermore, in the elucidation of Article 7 Paragraph (1) letter f, it is stated that what is included in regional regulations include *Qanun* in force in Aceh Province, Special Regional Regulations (*Peraturan Daerah Khusus-Perdadas*), and Provincial Regulations (*Peraturan Daerah Provinsi-Perdasi*) in force in Papua and West Papua Provinces. Then in the explanation of Article 7 Paragraph (1), letter g, it is stated that what is included in the regency/ city regional regulation is the *Qanun* that applies in the regency/ city in Aceh Province.

The link between the law on the Establishment of Legislation and UUPA is the acknowledgment of the existence of *Qanun* as a term explicitly used in Aceh Province. It is because Aceh, as stated in the UUPA, is a



province with a particular legal entity and is given special authority to regulate and manage its government affairs and the interests of the local community by the laws and regulations in the system and principles of The Unitary State of the Republic of Indonesia.

## **2. The Position of Law Number 11 of 2006 concerning the Aceh Government**

As a result of the Aceh earthquake and tsunami disaster, the administration of government that previously could not be fully implemented for the welfare of the people, justice, and the protection of human rights in Aceh Province. This country has fostered solidarity with all the nation's potential to rebuild Aceh's people and region, including resolving conflicts peacefully in Aceh (Lee, 2020). The issuance of Law Number 11 of 2006 concerning the Aceh Government, as a substitute for the law on implementing Special Autonomy for the Nanggroe Aceh Darussalam Province, is the result of the Helsinki MoU. The UUPA, promulgated on 1 August 2006, consists of 40 chapters and 273 articles.

Article 7 of the UUPA regulates the authority in government affairs in all public sectors, except for government affairs which are the government's authority. Article 12 of the UUPA regulates government affairs that fall under its authority, except for those under the central government's authority. Those authorities have consisted of government affairs of a national nature, foreign policy, defense, security, judiciary, national monetary and fiscal matters, and specific affairs in the religious field (Bauw, 2016; Lequesne, C. & Paquin, 2017; Ker-Lindsay, 2012).

Article 16 of the UUPA regulates matters that include mandatory affairs, other mandatory affairs, and optional affairs. Mandatory affairs under the Aceh Government's authority still present at the Aceh provincial scale include; (a) planning, utilization, and supervision of spatial planning; (b) development planning and control; (c) the administration of public order and public peace; (d) provision of public facilities and infrastructure; (e) handling of the health sector; (f) implementation of education and allocation of potential human resources; (g) overcoming social problems across districts/



cities; (h) services in providing employment and human resources across districts/ cities; (i) facilitation of the development of cooperatives, small and medium enterprises including across districts/ cities; (j) environmental control; (k) land services, including across districts/cities (Chairul Fahmi & Muhammad Siddiq Armia, 2022); (l) population and civil registration services; (m) government general administration services; (n) investment administration services, including across districts/ cities; and the implementation of other essential services that have not been able to be implemented by the district/ city government.

Other mandatory affairs under the Aceh Government's authority include (a) the implementation of religious life in performing Sharia for its adherents in Aceh while maintaining inter-religious harmony; (b) organizing traditional life based on Islam; (c) providing quality education and adding local content under Islamic Sharia; (d) the role of the ulama in setting Aceh policies; and (e). she is organizing and managing the pilgrimage by statutory regulations.

Aceh's optional government affairs include government affairs that have real potential to improve the community's welfare under Aceh's conditions, characteristics, and superior potential. Article 21 of the UUPA stipulates that the administration of the Aceh Government consists of the Aceh Government itself and the DPRA. In contrast, the district/ city administration consists of the district/ city government of the City's House of Representatives (*Dewan Perwakilan Rakyat Kota-DPRK*).

It should be noted that the nomenclature of the people's representative institutions in Aceh Province is different from other regional governments that use the nomenclature of the Provincial House of Representatives (*Dewan Perwakilan Rakyat Daerah Provinsi - DPRD Provinsi*) and or Regency/ City's House of Representatives (*Dewan Perwakilan Rakyat Daerah Kabupaten/ Kota-DPRD Kabupaten/ Kota*). Even the nomenclature of Regional Regulations (*Peraturan Daerah-Perda*) in Aceh differs from other regional governments because it does not use the nomenclature of Provincial Perda and Regency/ City Perda. The Aceh Government uses the *Qanun*, a type of regional regulation that regulates governance and the lives of the Acehnese people.

In addition, several other matters are also regulated in the UUPA, different from other regional autonomy laws, which only regulate general matters related to the region. In the UUPA, there are content materials that are specifically regulated, for example, related to the organizers of the presidential/ vice-presidential election, DPR members, DPD members, DPRA members, DPRK members, as well as regional head/ deputy regional head elections, the Aceh Independent Election Commission, the Aceh Election Supervisory Committee, and Local Party.

There is also content regarding the *Wali Nanggroë* Institution, the customary leadership authorized to foster and supervise the implementation of the life of traditional institutions customs and give titles and traditional ceremonies, the existence of a Sharia Court (Muhammad & Rosmawardani, 2020; Armia, et al., 2022), which is an Islamic sharia court for the Muslim community in Aceh, the existence of the Ulema Consultative Assembly (*Majelis Permusyawaratan Ulama-MPU*) consists of Muslim scholars and scholars who are working partners of the Aceh Government and the DPRA in establishing *fatwa* (a ruling on the point of Islamic law given by a recognized authority) as consideration for regional government policies in the fields of government, development, community development, and the economy. There are also arrangements regarding flags, symbols, and hymns as symbols reflecting the peculiarities and specialties of Aceh (Barter, 2017; Armia, 2017).

### **3. The position of Helsinki on the UUPA**

The MoU (Memorandum of Understanding) between the Indonesia Government and GAM in Helsinki, on 15 August 2005, by the Minister of Law and Human Rights, Hamid Awaluddin, and Prime Minister of GAM, Malik Mahmud, marked a new chapter in the history of Aceh Province and the lives of its people towards Aceh which peace, justice, and prosperity (Academic Draft of the Aceh Governance Bill, Ministry of Home Affairs, 2006).

In the Helsinki MoU, several things were agreed upon. First, the Indonesian Government and GAM affirm their commitment to resolving the Aceh conflict peacefully, comprehensively, sustainably, and dignifiedly for



all. Second, the Republic of Indonesia and GAM are determined to create conditions to realize governance in Aceh through a democratic and fair process within The Unitary State and Constitution of the Republic of Indonesia. Third, both parties firmly believe that only a peaceful settlement of the conflict can enable progress and success in rebuilding Aceh after the earthquake and tsunami disaster of 26 December 2004. Fourth, both parties involved in the conflict are determined to build mutual trust.

The Helsinki MoU details the contents of the agreement to be reached and the principles used to guide the transformation process. Specifically regarding governance arrangements in Aceh, it has been agreed to give special authority to the Aceh Province through a new UUPA, which will come into force no later than 31 March 2006. In particular, in the field of Politics and General Elections, the MoU emphasizes the establishment of local political parties in Aceh and free and fair local elections to elect the head of the Aceh Government and other elected officials and members of the Aceh legislature (Academic Draft of the Aceh Governance Bill, Ministry of Home Affairs, 2006).

Philosophically, the Helsinki MoU is the philosophical basis of the UUPA, a fundamental principle of the governance of Aceh. Meanwhile, from a sociological perspective, the Helsinki MoU has been optimally stated in the UUPA, following the Helsinki MoU guidelines. From a juridical perspective, both in substance and the UUPA content are under the conditions developed.

#### **4. Problems Related to the Proposed Amendment to the UUPA**

##### **a. Problems Related to Institutional Authority**

According to the law concerning the regulations for the formation of laws and regulations, Article 5 states that the making of laws and regulations includes the principle of clarity of purpose; the appropriate forming institution or official; suitability between types, hierarchies, and payload materials; can be implemented; usability and effectiveness, clarity of formulation, and openness. In addition, the content of this bill is based on the principle of the content of laws and regulations, as regulated in Article 6 of the Law on the Formation of Legislation, which includes, among others, the

principles of protection, humanity, nationality, kinship, archipelago, diversity in diversity, justice, equality of position in law and government, order and legal certainty, and balance and harmony.

The proposed amendment to the UUPA by the DPR RI Expertise Board must absorb the people's aspirations correctly and directly to comply with the principle of clarity of purpose (Flückiger, 2016). The proposed amendment to the law on the Aceh Government Bill must follow the procedures and provisions that apply to Aceh as a particular region that was born based on the mandate of the Helsinki MoU, both regulated in the UUPA and the provisions of Presidential Regulation Number 75 of 2008 concerning procedures for consultation and granting, consideration of plans for the international agreements, plans for forming laws, and administrative policies directly related to the Aceh Government. Thus, any decisions taken must be by the agreed results.

In particular, changes to the UUPA take into account the following.

- 1) Item 1.1.2, Letter C of the Helsinki MoU states that the DPR RI decisions related to Aceh will be carried out with consultation and approval from the Aceh legislature;
- 2) Article 8 Paragraph (2) of the UUPA states that the DPR's plan for forming a law directly related to the Aceh Government is carried out in consultation and consideration of the DPRA;
- 3) Article 269 Paragraph (3) of the UUPA states that in the event of a plan to amend this law, it is carried out through a consultation process to obtain consideration from the DPRA.

Amendments to the UUPA must be based on the principles of the Helsinki MoU. In addition, national laws applied to the Aceh Province need to consider the Helsinki MoU and the UUPA, or there is a clause that "This Law also applies to Aceh as long as it is not regulated separately in the UUPA". Every time a ministry proposes establishing legislation for Aceh Province, the Helsinki MoU and the UUPA are the material that must be considered. The proposed revision of the UUPA needs to be re-aligned to conform to the points of the Helsinki MoU. It is intended that the contents contained in the UUPA are by the wishes and demands of the Acehnese people.



Related to the nature of the consultation and consideration of the DPRA is the status of Consultation and Approval, not just Consultation and Consideration. Approval has a legal stipulation, while consideration has a less precise meaning. For example, Article 269 Paragraph (3) in the UUPA is sufficient with the consultation and consideration of the DPRA; it should only regulate *Pemilihan Ketua Daerah* or the Election of Governors, Regents, and Mayors (Pilkada) with approval. In addition, 70 percent of the natural products for Aceh Province in the Helsinki MoU discussion are different from the UUPA. Therefore, the Aceh Government's authority should determine the appropriate distribution percentage.

The Helsinki MoU is the core of the philosophy of the UUPA, a fundamental principle. Any changes need to be adjusted as long as they support the implementation of the Helsinki MoU. The provisions contained in the Helsinki MoU have yet to be fully accommodated in the UUPA. Therefore, if a revision is to be made, it must accommodate all agreements in the Helsinki MoU. For example, Article 8 Paragraph (2) mentions the word "consultation", in contrast to that contained in the Helsinki MoU, namely "Agreement".

The Helsinki MoU was created due to lasting peace for the welfare of the people of Aceh (Taydas Zeynep & Dursun Peksen, 2012; Pippa, 2012; Oliver P, 2008). The Helsinki MoU must be a guideline for amending the UUPA as part of the spirit of peace. Thus, the limitations that must be complied with and adjusted are regarding the following.

First, even if there are changes, they will still pay attention to the four features of Aceh in terms of organizing traditional life, education administration, and the role of the ulama in determining Regional policies), namely in terms of Election Governance. This change includes affirming the existence of election management institutions in Aceh and local political parties as part of the specialty/ privilege of Aceh.

Second, there is a guarantee that Aceh has an independent electoral management system and does not have to be the same as election governance at the central level (Karim, 2019; Pasha, 2018). Thus, Aceh does not have to follow national regulations regarding all changes to the laws and regulations





regarding the General Election and Regional Head Elections because they are subject to the provisions of the UUPA and *Qanun*.

Third, Consultation and Approval in the Helsinki MoU are essential, not limited to Consultation and Consideration. Thus, the provisions that are not in harmony should not be carried out, and legal products that have been issued but still need to be in line with the MoU, so they must be reviewed.

### **b. Regulatory and Content Problems**

The evaluation and analysis of the DPR RI through a unique DPR RI Expertise Board team consider that the UUPA is no longer appropriate and relevant to current legal developments, including those related to the Law on Regional and National Elections. It is alleged that the law has undergone several changes, so the UUPA also needs to be revised and adjusted to the generally accepted laws nationally. For example, regarding the requirements for candidates for regional heads and deputy regional heads, Article 67 Paragraph (2) letter e UUPA stipulates that candidates must be at least 30 years old. On the other hand, in Article 7 Paragraph (2) letter e Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations, instead of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (*Undang-undang Pemilihan Ketua Daerah-UU Pilkada*), it stipulates that candidates must be at least 30 years old for governor and deputy governor candidates, as well as 25 years old for regent and deputy regent candidates, and the mayor and deputy mayor candidates.

Generally applicable nationally, the Law on Regional Autonomy is inappropriate compared to Law Number 11 of 2016 concerning the Aceh Government as a particular autonomous region. Therefore, the issues related to the age limit for regional head candidates in the UUPA do not necessarily have to be harmonized with the National Election Law based on Law Number 7 of 2017 concerning Elections (Orba, 2012).





### **c. Problems with the Constitutional Court's Decision**

Following up on the Constitutional Court Decision No. 35/PUU-VIII/2010 and the Constitutional Court Decision No. 51/PUU-XIV/2016 should substantially no longer apply, following Article 10 of Law Number 12 of 2011 concerning the Establishment of Regulations Legislation (Law on P3). Even though the Constitutional Court's decision has been in effect since it was read in general at the Constitutional Court reading session, there is still a need for follow-up to revise the law. The follow-up to the Constitutional Court's decision is considered in line with the Indonesian legal system, namely civil law, where the laws and regulations take precedence over court decisions.

The proposed revision of the Draft Law on Amendments to the UUPA was formed by considering the Constitutional Court's Decision No. 61/PUU-XV/2017 and the Constitutional Court Decision No. 66/PUU-XV/2017, which cancels the validity of Article 557 Paragraph (2) and Article 571 letter d of the Law on General Elections. In Constitutional Court Decision Number 61/PUU-XI/2017, Articles 57 and 60 of the Law on Elections have been annulled. One of the provisions in the UUPA states that any changes to the law related to Aceh must first be consulted with the DPRA. However, when the Constitutional Court's decision was read out in court, the Ministry of Home Affairs (*Kementerian Dalam Negeri-Kemendagri*) and DPR RI could not show strong evidence that they had consulted with the DPRA. Of course, this is very detrimental to the Aceh Government. Thus, if the government and the DPR RI wish to revise all UUPAs, then in the future, they are required to follow the procedures specified in the UUPA.

## **5. Consideration of Proposed Changes and Rearrangements**

Law Number 11 of 2006 concerning the Aceh Government, which is approximately 14 years old, is a tangible manifestation of the peace agreement between the Indonesia Government and GAM. The normalization of the principle of legal justice in the UUPA aligns with Article 18, Article 18A, and Article 18B of the UUD 1945. These ideals are contained in Article 18, Article 18A, and Article 18B, namely that The State recognizes and respects regional

government units that are special or are privileges regulated by law, as well as guaranteeing regional independence in managing their households through autonomy, and protecting the traditional values of customary law community units found in each province. Therefore, the UUPA, in certain respects, is different from the regional autonomy law in general. UUPA regulates many things specifically. This law is certainly different from what is regulated in the regional autonomy law generally applicable because it is part of local wisdom that is special and special, as mandated by the Helsinki MoU, which is in line with the UUD 1945.

The proposed amendment to the Aceh Governance Bill, based on the mandate of the Helsinki MoU, has been regulated in clause 1.1.2, which states that the new law on Governance in Aceh will be based on the following principles.

- a. Aceh Government will exercise authority in all public sectors, which will be held in conjunction with civil administration and justice, except in foreign relations. External defense, national security, monetary and fiscal matters, judicial power, and freedom of religion, wherein these policies are the authority of the Indonesia Government under the constitution;
- b. International agreements entered into by the Indonesia Government relating to matters of particular interest to Aceh will enter into force with consultation and approval of the legislature in Aceh;
- c. Decisions of the DPR RI relating to the Aceh Government will be made in consultation with and with the approval of the Aceh legislature;
- d. Administrative policies taken by the Indonesian Government concerning Aceh will be implemented with the consultation and approval of the head of the Aceh Government.

Consequently, the UUPA differs from the Regional Government Law, which generally applies to all regions. This difference is because the content material regulated in the UUPA contains local wisdom that is special and special in Aceh based on the mandate of the Helsinki MoU and is in line with the UUD 1945. Regarding the proposed changes to several articles in the UUPA due to the Constitutional Court decision, these are the only articles that must be revoked in the UUPA because they are no longer valid and



adapted to current legal developments. Issues related to regulatory conflicts with several rules that nationally apply to differ from those regulated in the UUPA, it is mandatory to pay attention to the principles of Acehese local wisdom, which are noteworthy (Aspinall, 2005; Mita, 2019).

Proposed changes to the UUPA need to consider the basic principles of granting special powers and governance. In administering the government, the people of Aceh have a role in formulating policies, establishing policies, implementing policies, and evaluating the policies of the Aceh Government. The implementation of the extraordinary powers of the Aceh Government should further enhance the roles and functions of the legislative, executive, political parties, and other social institutions in Aceh. There needs to be a straightforward arrangement starting from the preparation and implementation to the supervision of each program and activity that will be funded by the special autonomy fund (Abrar et al., 2020; Jalil et al., 2019). Change activities are a strategic development program, have a solid driving force, and significantly impact achieving a better, more honest, fair, and responsible Acehese people's welfare that involves the Acehese people.

#### **D. Conclusion**

The central government, including the *DPR RI*, must ask for the consultation and consideration of Aceh's government regarding the amendment of Aceh's autonomy laws. The amendment of Aceh's autonomy law without consulting and considering Aceh's government has been indicated as unconstitutional. Therefore, the proposed amendment to the UUPA by the *DPR RI* aims to strengthen peace in Aceh through the Helsinki MoU. The authority has violated procedures and is contrary to the mandate of the Helsinki MoU. In point 1.1.2, any UUPA changes need to be consulted and get the approval of the DPRA and the Aceh Government first. The scope and proposals for changes by the *DPR RI* to the UUPA must be transparently accountable to the people so that the proposed revision of the UUPA is not a distraction and is for the benefit of the political elite. The proposed revision of the UUPA must be implemented by taking into account the principles of



unique local wisdom and promoting the independence of the Aceh Province in managing its household in a dignified manner. This is because the proposed revision of the UUPA aims to improve it.

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