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**Clash of Regulations in Autonomous Province:
Aceh-Indonesia Case Study**

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Abstract. This article will investigate the application of autonomous law in Aceh that creating significant debate and indicated as mission impossible. The implementation of autonomy in Aceh Province-Indonesia have not only stopped the armed conflict, but also creating another conflict called clash of regulation. The clash of regulation has affected the provincial atmosphere including economic welfare. Several articles in the Act of Government of Aceh has potentially impossible to implement because indicated as contradicting regulation in central level. Thus, the principal of autonomous province seems impossible to implement, as some significant authorities still strongly griped by central government.

Keywords: Clash of Regulations; Autonomy Law; Government of Aceh; Armed Conflict; Qanan

1 Introduction

Discussion throughout this article will briefly critique the implementation of autonomy in Aceh-Indonesia following 30 years of conflict lasting from 1975–2005. The Aceh autonomy appears to be compensation awarded as agreement to finish the conflict. However, despite the permanent ending of the 30 years conflict, the central government of Indonesia appears to have created a new conflict—in the form of the clash of regulations. The Government of Aceh have been legally ordered by an Act of the Government of Aceh to establish specific bylaws (in Aceh, also called *gaseuek*). However, the central government seem unwilling to pass such bylaws. This paper explores these bylaws which generate public attention on a national and a provincial level.

The constitutionality of Aceh's autonomy in Indonesia in Article 1 point (1) of the 1945 Constitution stipulates that "Indonesia is a Unitary State in the form of Republic". When considering the geography of Indonesia, the "Unitary State" emphasis is an archipelagic nation which consists of a wide range of waters and a myriad of islands. "Republic" denotes a governing system based upon democracy. The regions that make up Indonesia are therefore called provinces, instead of states. Local governing systems are based upon the principles of autonomy and assistance (co-administration) for the governing of the provinces.

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Clash of Regulations

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Abstract. This article will investigate the application of autonomous law in Aceh that creating significant debate and indicated as mission impossible. The implementation of autonomy in Aceh Province-Indonesia have not only stopped the armed conflict, but also creating another conflict called clash of regulation. The clash of regulation has affected the provincial atmosphere, including economic welfare. Several articles in the Act of Government of Aceh has potentially- impossible to implement because indicated as contradicting regulation in central level. Thus, the principal of autonomous province seems impossible to implement, as some significant authorities still strongly griped by central government.

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1 Introduction

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De-concentration is the delegation of tasks or workload by the central government to regional representatives for decision making purposes. Authority delegation (transfer of authority by the central government) means the handover of decision-making authority to the regions or to local governing units which lie beyond the reach of central government control. Devolution is the delegation of governing function and authority by the central government to local government which then becomes autonomous and out of the control of the central government [Asshiddiqie, 2006].

However, if compared to autonomy in other Indonesian provinces, the autonomy in Aceh has specific privileges. One such privilege is legislating specific bylaws (called *Qanun*) which include those relating to culture, land, Islamic criminal law, coat of arms law and so forth. The bylaws create long debate, chiefly on the constitutionality of the specific bylaws i.e. if analyzed only from a political perspective rather than from a judicial perspective, then the characteristics of specific bylaws have contradictory norms. In this article, writers will discuss only two bylaws. Namely, the land bylaw; and the flag bylaw. The writer will also discuss the associated escalation of regulation conflict between central government and local government.

2 Literature Review

Various aspects of the issue of autonomy in Aceh are focused on in several articles. In 2006 Miller discussed the topic of autonomy in Aceh but focused only on the occurrence of violence in Aceh, before and after the implementation of autonomy. The problem of the occurrence of regulation conflict after autonomy was not touched upon in the same book chapter [Miller, 2006]. In another publication, McGibbon researched autonomy in Aceh using the comparative approach, taking Papua as a sample. In his 103-page work, McGibbon observed the political choice to grant different autonomy to Aceh and Papua. The autonomy implemented because of demanding independence activities in Aceh and Papua, followed the 1998 downfall of President Suharto authoritarian government [McGibbon, 2004].

Additional articles have discussed research in to conflict occurring in other countries [Suleymanli, 2014; Ujomu, 2014; Arul; 2016]. However, specific discussion regarding the conflict surrounding clash of regulation has not previously been published in any papers, other than this article. The writer aims to explore the aspect of autonomy in Aceh regarding several regulations and their apparent role in generating and escalating fresh conflict between central government and provincial government.

3 Research Methodology

The research methodology utilized throughout this article is *black-letterlaw* [Gilchrist and Coulson, 2015]. *Black-letterlaw* refers to the fundamental standard elements or principles of law which are generally known, and are free from doubt or dispute. Black-letter law describes the basic principles of law that are accepted by most judges in most states. For example, it can be the standard element for a contract; or for the technical definition of assault. This research method is characterized by the study of legal texts, including case law. Generally, when people use the term "black-letter law", the implication is that the law in question is accepted and not open to argument. On the other hand, other types of laws may be widely open to interpretation.

4 Result and Discussion

4.1 Clash of Regulation on Land Tenancy

The land issue is very sensitive and closely related to justice because land supply is regarded rare, limited, and a basic need of every human being. It is not easy to design a land policy perceived to be fair by all parties. A policy providing greater ease to a small number of people may be justified—if it comes together with similar policies intended for another larger group. Thus, there is always a policy that serves to correct or restore the balance (Abdurrahman, 1994).

Essentially, a regional autonomy is granted to the people of a legal community unit that is authorized to regulate and manage its own government affairs. The autonomy is granted by the central government to the local government. The autonomy is implemented by the administrative head of the region, with the assistance of the region's administration functionaries and the parliament. The government affairs delegated to the local government derives from the governing power laying at the hands of the president. According to the concept of a unitary state, the ultimate responsibility of the government lays at the hands of the president. In order that the execution of government affairs transferred to the regions runs in line with national policy, the president is obliged to provide guidance and supervision over regional administration.

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

Thus, on one hand, the local government acts as a mere spectator because all authority in the administration of land belongs to the business of the BPN. The BPN is a legal vertical institution executing the governmental tasks over land (agrarian) matters both in the center and the peripheries. On the other hand, the central government has, moreover, issued the regulation arranging the authority of the central government and the provincial government as an autonomous region. In another word, local government must obey central government in the land sector. However, these government regulations, particularly regulating to land matters, do not properly function because of overlapping rules and authority.

The land sector is currently under the authority of the BPN which has a regional agency in each province, and an office in the district/municipality. The rights of control are owned by central government but should be working in conjunction with the autonomous province regarding land acquisition. The land administration affair is a mandatory authority of the district/municipality and is regulated through several regulations.

Therefore, the presence of authority transfer over land affairs, from central to district/municipality government, has laid down the judicial argument and logic for local government to have autonomy in the land sector. Additionally, the issuance of the government decree, called *Peraturan Pemerintah* or *PP* in Indonesia, subsequently reinforces the distribution of authority in land affairs between the center and the regions.

The determination and arrangement have included land use planning. Furthermore, the control and legal acts over land and land registration has always been administered by the central government. It is possible to delegate authority to local government or autonomous regions, notwithstanding, the delegation is carried out in the framework of de-concentration to the central government officials in the regions. The delegation of authority could also be given to local government as an autonomous region, but currently it is in the context of co-administration, rather than decentralization or regional autonomy [Morangki, 2012; Herry, 2011]. However, with co-administration system, the local government does not fully control its own land. The constraints faced by local government in the execution of its authority in the land sector are: the dis-synchronization of horizontal norms amongst the Act of Agrarian; the Act of Local Government; and the Act of Governing of Aceh.

The Act of Agrarian affirms that land affairs are under central government administration and can only be co-administered to the region. Conversely, the Act of Local Government asserts that land affairs constitute an obligatory matter that has been decentralized to the regions. Further contradiction exists in the vertical norms between the Act of Local Government and the PP of BPN-the latter being stated by Dewa as the crucial regulations when considered in the context of implementation of Aceh's land policy [Gumay, 2015].

The polemic over several regulations as derivations to the Act of Governing of Aceh remained unfinished, even until the end of the tenure of Susilo Bambang Yudhoyono (SBY) as the President of the Republic of Indonesia, on 20 October 2014. In fact, he seemed to postpone some of the crucial derivative regulations regarding Aceh's special autonomy. The polemic re-emerged upon the inauguration of Joko Widodo. Tjahjo Kumolo, as Home Affairs Minister in the cabinet of Joko Widodo. Kumolo refocused his attention on many regulations pertaining to the Province of Aceh, whether a legal product in the form of local regulations (bylaw), called *Qanun* in Aceh; or specific law concerning the derivative regulations for the Act of Governing Aceh.

One derivative regulation, not yet drafted, is the President Decree on the BPN in Aceh. This issue on the authority delegation of land affairs should have been completed during the reign of Susilo Bambang Yudhoyono. Therefore, the basic problem of the people's livelihood, which relies on land ownership, has not completely been handled. Land is the fundamental asset of the people's economy for the fulfilment of their daily needs. Recently, conflict over land issues either vertically or horizontally; between the people and the government; between the people and companies; and even among individuals in the community itself have become increasingly emergent. Such conflicts keep growing and escalating due to the slow response of the authorities to overcome them.

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

The main factor leading to wide spread emergence of agrarian conflicts is the absence of systematic efforts made by the government to resolve these conflicts-especially towards the fulfilment of justice and human rights. The MPR Decree on the agrarian reform and natural resource management has assigned the government to immediately resolve the land-born conflicts as well as improve the structure of land ownership in Indonesia. After the tsunami and the Helsinki MoU signing, Aceh emerged like a newly opened gold mine and became

susceptible to seizure by countries possessing large capital with which to exploit the natural riches. The regions along the west, south, and east coasts of Aceh are becoming eye-turners to some investors. The identified natural riches, such as iron ore, tin, gold, coal, and oil deposits, have been hot discussion topics in Aceh, and even in foreign countries. Because of its attractive position, Aceh has become a target for entrepreneurs and investors from developed countries. This poses a threat and challenge to the government and the people of Aceh in designing and bridging an investment proposal which will directly affect the lives, the socio-cultural order, the political structure, the Aceh development policy direction, as well as the land tenure issues [Phelps, 2011].

The regulation concerning the right over land emphasized in the Act of Government of Aceh mandates the government of Aceh to administer the land rights as further stipulated in the regional regulation, so called *Qanun*, with regards to the existing superior judicial norms and legislation. In conjunction with the land rights, the Government of Aceh should be able to provide facilities to foreign investors by granting the business-site use rights and building-site use rights in accordance with the regulation, legislation, and the Aceh *Qanun*. Consequently, the BPN must be automatically a part of the Aceh government working unit. This indicates that the assignment of the BPN as part of the Aceh government working unit should be further regulated through the presidential regulation. The insertion of the BPN into the Aceh government working unit should have happened by the beginning of 2008. Conversely, the presidential decree was approved on 13 February 2015. The regulation *only* changes the BPN to be the Badan Pertanahan Aceh (BPA). However, to this point, the BPN authorities *have not* been delegated to the BPA.

4.2 Creation of the Flag and Coat of Arm Bylaw

The MoU Helsinki existing between the Indonesian government and the GAM (Free Aceh Movement), which lead to the cessation of the Aceh conflict, has provided privileges for Aceh province through special autonomy. Along with the MoU, the Government of Aceh has been legally allowed to have their own flag stood together with the Indonesia flag, emblems, and hymn. This allows them to determine and legislate upon the flag and the coat of arms of Aceh, as symbols of the specificity and privilege of Aceh. The flag and coat of arms depict the struggle and unity of the Aceh people. These privileges are then provided for in the Aceh Bylaw on the flag and coat of arms. Those symbols represent the Aceh people's unity and reflect the privilege and specificity of Aceh. The consideration for the formulation of the bylaw is legally referred to in the Act of Governing of Aceh. It states that the government of Aceh can determine and decide on its regional flag and coat of arms as the symbols that reflect the specificity and peculiarity of Aceh. In this instance the flag is meant as a symbol of privilege, not a symbol of sovereignty and should not be treated as such. In other words, it can be stated that Aceh, by the rule of law, has a legal justification to determine and decide upon its regional flag and coat of arms.

The DPRA endorsed the Aceh flag and coat of arm on 22 March 2013 [Abdullah, 2015]. However, the flag of Aceh province was not approved by the central government because it resembles the flag of the GAM. The same thing happened to its coat of arms. According to the central government, the *Qanun* on the Aceh flag and coat of arms, put into the Aceh legislative gazette, contradicts with the government decree on local symbols. In this situation, the Government of Aceh and its parliament keep insisting on preserving the flag and symbols, instead of obeying central government. Therefore, reactions have emerged both from the Ministry of Home Affairs and the Government of Aceh. *Firstly*, is the reaction of rejection

from central government. The issues relating to the flag and coat of arms subsequently received numerous protests, especially from central government officials. They have argued that the design of the flag and coat of arms exactly resemble those of the GAM-which were previously known as the rebellion symbols. Ethically, however, the use of emblems such as a flag and a coat of arms, are not provided under the concept of the "Unitary State of the Republic of Indonesia". The 1945 Constitution and the Act of State Symbols states that the flag of the Republic of Indonesia is the Red-and-White Flag, and the national coat of arms is the Garuda Pancasila.

In preventing the bylaw from later being applied, the government immediately issued the PP on the regional symbols. The PP states that, in terms of principle and entirety, the design of the regional flag and coat of arms should not resemble any organization or separatist organization/ association/institution/movement banned in the Republic of Indonesia. According to Baldwin, the PP cannot be considered a good regulation because it has been created by unfair, inaccessible, undisclosed procedures [Baldwin, Cave, Lodge, 2012; Croley, 2011].

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

The PP on the regional symbols is a tool for the central government to deal with local government on same issue. Regional symbols serve as the people's social bond within the framework of the nation of Indonesia. Therefore, there would be good reason for having symbols compatible with the values of Pancasila, especially for the provinces of Aceh and Papua which have been granted special autonomy status through specific acts. This would bring into consideration the historical aspects of both provinces when, during their previous conflict with the central government, they formed identities using flags and coats of arms. It is believed that their flags and other emblems have been recognized by all the people, in both regions.

Therefore, the legislation of the GAM's flag and coat of arms to Aceh's regional flag and coat of arms are strongly disallowed (a breach). Two facts arise here, Firstly, is the position of the bylaw being inferior to government regulation; and, secondly, is that those symbols were used by the banned organization. Furthermore, on behalf of central government and the Ministry of Home Affairs, Fauzi stated that the bylaw directly violates the regulation superior to it which disapproves of the use of any separatist movement symbols as regional symbols. Therefore, the central government seeks an unprotracted resolution to this polemic to avoid the emergence of anxiety amongst the Aceh people [Fauzi, 2015]. Moreover, Fauzi has insisted that the Government of the Republic of Indonesia remains at its original inception with the argument to carry the spirit of the MoU Helsinki, as aspired in the peace agreement, the use of flag and emblems which essentially resemble GAM's symbols should not be used [Fauzi, 2015]. Consequently, the Government of Aceh must follow the requirements for provincial emblem and flag as imposed by central government.

According to the Minister of Internal Affairs, the requirements as provided by law stipulate that the flag should not resemble those of a banned organization or separatist movement. Owing to this fact, and on behalf of the president, the Ministry of Home Affairs has the authority to annul the flag. Therefore, the content of the bylaw concerning the Aceh flag and

coat of arms would be reviewed to make it agree with the regulation's product superior to it because, as mentioned earlier, a bylaw should not contradict any nationally applied regulations.

Secondly, is the reaction of local government resistance. In this context, the Government of Aceh has not fully accepted the reasons argued by central government. With the signing of the MoU, GAM no longer bore the status as separatist movement or a movement with a will to separate Aceh from the Republic of Indonesia. Therefore, the use of the emblem, logo, and hymn that were used by GAM can no longer be legally regarded as part of the existence of a separatist movement. Thus, two arguments emerge for the Aceh Bylaw on the regional flag and coat of arms. The first argument is that the legislation of the Aceh regional flag and coat of arms is constitutionally valid because of fully referring to the Act of Governing of Aceh. This implies that the Aceh government has the right to determine its regional flag and coat of arms, regardless of its contradiction to the PP. In terms of the hierarchy of regulations, the Act of Governing of Aceh is superior to the PP. The second argument is in the light of legitimacy. The arguments about the symbols used previously by GAM remain controversial. The flag and coat of arms do not originally belong to GAM. Even long before the existence of GAM, they were previously used. According to history documentation, the flag and the coat of arms have been used since the time of the Sultanates of Aceh, who led the fight against colonialism in Aceh.

The delegations of Aceh Government lobbying the bylaw have explained that the attestation of the flag and coat of arms was to accommodate the aspirations of the Aceh people, owing to the flag and the coat of arms representing their struggle and unity. Muzakkir asserted that the legislation of the bylaw is not intended to revive GAM in Aceh [Manaf, 2015]. The bylaw providing the flag and the coat of arms denote symbols of the privileges and specificity of Aceh—not symbols of sovereignty or separatism.

The 1945 Constitution and its derivative acts have not provided for any banning of a region from having its regional flag and coat of arms reflecting specificity, peculiarity, and privilege as unifying symbols for the regional people—on the condition, of course, that the symbols do not stand in contest to the symbols of the nation's sovereignty. If all parties recognized the special status entitled to Aceh since the signing of the MoU Helsinki, then this unnecessary controversy would not have happened. Automatically, after signing the MoU, GAM explicitly recognized the status of Aceh as part of the Unitary State of the Republic of Indonesia. Consequently, Aceh has special characteristics as distinguished from other regions. Thenceforth, GAM, and all elements of GAM, can no longer be viewed as part of a separatist movements. Moreover, the Government of Indonesia has announced a variety of special programs including the amnesty for political prisoners.

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

To defuse heated political conflict the central government, via the Ministry of the Home Affairs, offered a solution whereby Aceh could participate in the management and exploitation of oil and gas within a 200 miles offshore area, on condition that Aceh would alter the characteristics and features of the Aceh regional flag and emblems [Djohan, 2015]. Unlike the wish of the Indonesian Government, the Government of Aceh stands firm, unwilling to make amendment to its endorsed flag and emblems which resemble that of the GAM's.

5 Conclusions

The clash of regulations occurring in Aceh is caused by the wide range of norm interpretation and the enforcement of a top-down political approach, rather than a balancing approach. Both central government and provincial government have a solid legal argument, stated in some acts. Central government uphold in the new acts, coming after the Act of Government of Aceh. But the Government of Aceh also has a convincing argument based on the Act of the Government of Aceh. To date, the central government will always be the single winner through using the enforcement of a top-down political approach, an approach that will not permanently solve the clash of regulations. This political approach is called a win-lose solution, as opposed to a win-win solution. Unfortunately, the win-lose clash of regulations is likely to continue into the future. Indonesia is a state-law and so the clash of regulations, including the clash of norms, should be solved through due-process of law which involves the Supreme Court holding the final judgement. This judicial approach provides a mechanism by which all parties can argue and defend the constitutionality of legal norms, including the legality of norms or hierarchical regulations, and will also have the final binding decision. So, the same cases will not happen in years to come.

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