

The Role of the Ulema Consultative Assembly in Government Policy Making in Aceh

¹Husni Jalil, Teuku Ahmad Yani, Andri Kurniawan

Universitas Syiah Kuala

¹Corresponding E-mail: husnijalil@unsyiah.ac.id

ABSTRACT

This study aims to determine the considerations that the MPU has given in influencing the policies of the Aceh Government and Regency/Municipal Governments. In addition, to determine the MPU's obstacles in realizing its role to give these considerations. This research uses a socio-legal approach. The textual study method was used to obtain research data. The data obtained in this study were then analyzed qualitatively. The results show that the considerations that the MPU has given in influencing the policies of the Aceh Government and Regency/Municipal Governments, namely the participation of the MPU in the assistance team. In addition, the MPU provides considerations in discussing the Draft Qanun, both those related to Islamic Shari'a and those that are not directly related to Islamic Shari'a. Meanwhile, the MPU obstacles in the discussion of Qanun of Aceh or Qanun of Regency/Municipal are human resource factors and formal juridical factors. In addition, the MPU's involvement in the legislative process in the DPRA and DPRK has not been comprehensively regulated. In this case, the forum did not provide an optimal space for the MPU to provide considerations. Therefore, it is recommended that MPU better understand the positive legal context that applies in Indonesia. In addition, it is recommended that the Government harmonize the provisions on the establishment of Qanun of Aceh with Qanun of Aceh No. 2 of 2009 so that the MPU can maximize its role in giving consideration to regional policies.

Keyword: *Consideration; MPU; Policy Making; Role and Function; Ulema.*

Submitted: April 7, 2022

Accepted: April 20, 2022

Published: May 4, 2022

Doi: <https://doi.org/10.56087/aijih.v25i1.289>

INTRODUCTION

The existence of ulema in Aceh has been recognized since the days of the Aceh kingdom. Ulema was the driver of the resistance against the Netherland.¹ Ulema fought against the Netherland until the kingdom of Aceh fell into the hands of the Netherland in

¹Paisal, J. (2021). Peran Ulama dalam Masyarakat Aceh dari Masa Kemasa. *At-Tanzir: Jurnal Ilmiah Prodi Komunikasi Penyiaran Islam*, 12(1), pp. 97-98.

1873.² The Prophet hadith narrated by Abud Daud and Tirmidzi explained that “ulema are the heirs of the Prophet.” In this case, ulema conveys shari’a law, teaches humans, and warns them to be aware and careful.³

The role of the ulema in the Aceh kingdom was very strategic because the ulema had the authority to form laws. The role of the ulema in Acehese culture is expressed by a proverb or hadith maja, that “*adat is like Po Teumeureuhom, hukom is like Sjah Kuala, meudjeulih kanun is like Putroe Phang, resam is like Bentara.*”⁴ Today, ulema has a role in solving problems and religious problems in society.⁵

The beginning of the authority of ulema in the government system in Aceh was based on Law of the Republic of Indonesia Number 44 of 1999 on Implementation of the Privileges of the Special Region of Aceh Province (hereinafter referred to as Law No. 44 of 1999) and Regulation of the Province of Special Region of Aceh Number 3 of 2000 on Establishment of Organization and Work Procedure of Ulema Consultative Assembly of the Special Region of Aceh Province. As for the function of the authority of the ulema, as based on Article 9 section (2) of Law No. 44 of 1999, regulates that:

“The agency referred to... is independent, which functions to give consideration to regional policies, including the fields of government, development, society, and the Islamic economic order.”

From the above provisions, it can be understood that the role of the ulema is made one of the four privileges of Aceh. Furthermore, Law No. 44 of 1999 remains in effect, even though the Legislator has established Law of the Republic of Indonesia Number 18 of 2001 on Special Autonomy for the Special Region of Aceh Province as the Province of Nanggroe Aceh Darussalam (hereinafter referred to as Law No. 18 of 2001) and Law of the Republic of Indonesia Number 11 of 2006 on Aceh Government (hereinafter referred to as Law No. 11 of 2006). Law No. 11 of 2006 even further strengthens the position of the ulema through the Ulema Consultative Assembly (MPU) in the government system in Aceh.

Law No. 11 of 2006 became the basis for establishing Qanun of Aceh Number 2 of 2009 on the Ulema Consultative Assembly (hereinafter referred to as Qanun of Aceh No. 2 of 2009). The existence of the MPU is not only at the Provincial level but also at the Regency/Municipal level throughout Aceh. MPU is a partner of the Aceh Government, Regency/Municipal Government, DPRA, and DPRK. Based on Article 139 section (1) of

²Raliby, O. (1980). Aceh, Sejarah, dan Kebudayaanannya. In Ismail Suny (Ed.), *Bunga Rampai Aceh*. Jakarta: Bhatara, p. 37.

³Fariana, A. (2017). Urgensi Fatwa MUI dalam Pembangunan Sistem Hukum Ekonomi Islam di Indonesia. *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 12(1), p. 98.

⁴Gayo, A. A. (2017). Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh. *Jurnal Penelitian Hukum de Jure*, 17(2), p. 133.

⁵Nurlaila, N. & Zulihafnani, Z. (2019). Pengaruh Fatwa Ulama Dayah dalam Masyarakat Aceh. *Substantia: Jurnal Ilmu-Ilmu Ushuluddin*, 21(2), pp. 98-99.

Law No. 11 of 2006 regulates that:

“The MPU functions to determine fatwa which can be one of the considerations for regional government policies in government, development, community development, and the economy.”

Based on the above provisions, it is clear that the MPU has a role in policy-making in Aceh. The above provisions were implemented by establishing Qanun of Aceh Number 13 of 2017 on the Procedure for Giving Consideration of the Ulema Consultative Assembly (hereinafter referred to as Qanun of Aceh No. 13 of 2017). MPU targets in considering the Provincial and Regency/Municipal level Governments throughout Aceh, as based on Article 7 section (2) juncto Article 8 section (2) of Qanun of Aceh No. 13 of 2017, regulates that *“consideration ... is given in the fields of religion, government, development, economy, social-cultural, and society.”*

Thus, the MPU also has a strategic role in legal development in Aceh. Meanwhile, the Governor and the Regent/Mayor have their policy directions based on their vision and mission during the campaign. In this case, it is established in the Regional Medium-Term Development Plan. On the other hand, one example is that the MPU has attempted to consider the Aceh Qanun related to Islamic Shari’a. The Aceh Qanuns in question include:

1. Qanun of Aceh Number 10 of 2007 on the Baitul Mal;
2. Qanun of Aceh Number 7 of 2013 on the Jinayat Procedural Law;
3. Qanun of Aceh Number 6 of 2014 on the Jinayat Law;
4. Qanun of Aceh Number 8 of 2014 on Principles of Islamic Shari’a;
5. Qanun of Aceh Number 8 of 2015 on Guidance and Protection of Aqidah;
6. Qanun of Aceh Number 8 of 2016 on Halal Product Assurance System;
7. Qanun of Aceh Number 11 of 2018 on Shari’a Financial Institution; and
8. Draft Qanun of Aceh of 2019 on Family Law (Ahwal Al-Syakhshiyah).

In addition, Qanun of Aceh No. 8 of 2014 also emphasizes several things that the Aceh Qanun must further regulate. In this case, Qanun of Aceh No. 8 of 2014 is positioned as a Basic Qanun in the field of Islamic shari’a.

The existence of the MPU towards the establishment of Qanun of Aceh and Qanun of Regency/Municipal usually contradicts higher Laws and Regulations.⁶ In addition, another problem is that the Qanun of Aceh tends to favor the ulema group and gives the impression of coercion of will.⁷ Therefore, the Ministry of Internal Affairs canceled the Qanun.⁸ Furthermore, the Ministry of Internal Affairs considers that the Aceh

⁶S., I. R. R. (2012). Model Ideal Partisipasi Masyarakat dalam Pembentukan Peraturan Daerah. *Jurnal Dinamika Hukum*, 12(1), p. 136.

⁷Nurdin, R. (2018). Kedudukan Qanun Jinayat Aceh dalam Sistem Hukum Pidana Nasional Indonesia. *Miqot: Jurnal Ilmu-ilmu Keislaman*, 42(8), p. 366.

⁸Asrun, A. M., et al. (2019). Mempertanyakan Legalitas Qanun Aceh: Sesuikah dengan Sistem Peraturan Perundang-Undangan. *Kanun: Jurnal Ilmu Hukum*, 21(9), p. 292.

Government and Regency/Municipal Governments are not participatory in establishing Qanun because they have not been able to accommodate the aspirations of all levels of society.⁹ So that when the Government is about to implement the Qanun, it is contrary to what the people want.¹⁰ This condition shows that the Government must also involve community elements in establishing Qanun so that the policy has a better output.¹¹

On the other hand, the DPRA and DPRK continue to pay attention to and accommodate the community's aspirations and input and suggestions from external stakeholders bound by the laws and regulations under them. In addition, the success of the MPU's consideration of DPRA and DPRK policies is also inseparable from the DPRA/DPRK Rules of Procedure from each Regency/Municipal throughout Aceh.

Based on the introduction above, this study aims to determine the considerations that the MPU has given in influencing the policies of the Aceh Government and Regency/Municipal Governments. In addition, to determine the MPU's obstacles in realizing its role to give these considerations.

METHOD

This research uses a socio-legal approach. The textual study method was used to obtain research data. In this case, analyze critically, then explain the meaning and implications of the laws and regulations and the various regulations under them on the authority of Aceh Government and Regency/Municipal Governments.¹² The data obtained in this study were then analyzed qualitatively, namely by interpreting the data in prose, then connected with other data to obtain clarity of truth or vice versa to make clear conclusions.¹³

RESULTS AND DISCUSSION

A. Considerations of the Ulema Consultative Assembly in Influencing the Policies of the Aceh Government and Regency/Municipal Governments

Since Islam first arrived in Aceh, ulema has played an essential role in various aspects of Acehnese life.¹⁴ Many experts view that the ulema network factor has given an intellectual color to Aceh. The community also expected their presence

⁹S., I. R. R. (2012). *Op. Cit.*, p. 137.

¹⁰Surbakti, E. D. & Agoestian, E. (2020). Analisis Yuridis Qanun Jinayat dalam Strukturisasi Hukum Pidana Nasional. *Rechtenstudent Journal*, 1(2), pp. 117-118.

¹¹Abidin, Z. (2021). Peran Ulama dalam Sistem Pemerintahan di Propinsi Aceh. *Journal of Governance and Social Policy*, 2(2), pp. 163-164.

¹²Qamar, N. (2021). Theory Position in the Structure of Legal Science. *SIGn Jurnal Hukum*, 3(1), p. 53.

¹³Fitrah, F. A., et al. (2021). The Position of Civil Servant Investigator of Directorate General of Tax (DGT) in the Frame of Taxation Criminal Law Enforcement in Indonesia. *SIGn Jurnal Hukum*, 3(1), p. 8.

¹⁴Nurdin, A. (2012). Reposisi Peran Ulama dalam Penerapan Syariat Islam di Aceh. *Al-Qalam*, 18(1), p. 63.

at that time to teach the teachings of Islam. Ideally, conceptually, historically, and sociologically, the role of ulema and umara in the lives of Muslims is very strategic and decisive. The existence of ulema is local wisdom in Aceh. This local wisdom is based on a system of values and religion that has developed in the minds of the Acehnese. The religious teachings and beliefs of the Acehnese people have inspired and influenced them so that their lives can take place well.

Cultural legitimacy reflects Islamic values, namely the Acehnese people's customs and culture. For example, the lowest government structure, known as the *gampong* (village), is led by a village head called the *keuchik*, who is in charge of administrative and government issues, while the one in charge of religious matters is the *teungku imum*. This structure is applied equally to the highest level, namely the state (kingdom), the sultan, and the *qadhi malikul adil* (ulema). The Acehnese proverb states that "*Adat is like potuemeurehum hukom like syiah kual* (custom comes from the government, and law comes from ulema)."¹⁵

The role of ulema institutionally in Aceh has long emerged since the principle of good relations between ulema and umara (government) during the Aceh kingdom. The ulema institution in Aceh's history has long been known as the highest state institution led by a person with the title Qadli Malikul Adil and assisted by four Shaykhul Islam, namely the Mufti of the Shafi'i Mazhab, Maliki Mazhab, Hanafi Mazhab, and Hanbali Mazhab. The Acehnese people's belief in ulema as the holder of religious authority creates a solid social cohesion after the community provides social recognition or acknowledgment of ulema. Thus all the justifications for religious norms that come out of Aceh's ulema become a deep dependence on the people. Including what relates to the individual actions of the community regarding social, economic, educational, and political.¹⁶

On the other hand, some ulema feels uneasy after seeing religion's intellectual and institutional freedom. Therefore, figures and ulema such as Tengku Abd. Rahman Meunasah Muncap, Tengku Islamil Muncap, Tengku Muhammad Daud Beureuh, Tengku Muhammad Nur al-Ibrahimi, Tengku Ismail Yakub, Tengku Abdul Wahab Seulimun, and Tengku Hasballah Indrapuri established a forum or organization of ulema called the All Aceh Ulema Association (PUSA) on May 5, 1939. The establishment of this PUSA was a reflection of the efforts of modernist clerics.¹⁷

¹⁵Jafar, M. (2015). Legitimasi Hukum Pemberlakuan Syari'at Islam di Aceh: Tinjauan Yuridis, Sosiologis dan Filosofis. *Ulumuna*, 19(1), p. 60.

¹⁶Wangsa, S., et al. (2019). Analisis terhadap Kendala Perlindungan Konsumen oleh Majelis Permusyawaratan Ulama Aceh Terhadap Sertifikasi Label Halal Produk. *Jurnal Magister Hukum Udayana*, 8(4), p. 484.

¹⁷Akbar, K. (2017). Politik Hukum Pembentukan Komisi Kebenaran dan Rekonsiliasi Aceh. *Lex Renaissance*, 2(2), p. 197.

The objectives of the establishment of PUSA include:¹⁸

1. As an effort to broadcast, enforce, and defend Islam.
2. As an effort to unite the understanding of Acehese ulema on Islamic laws.
3. As an effort to improve and unify the curriculum of religious schools throughout Aceh.

Since its founding in 1939, PUSA has only been running the organization for two years in a calm situation. For the rest, until 1953, PUSA more focused on domestic and foreign political issues and looked at the situation in the Aceh region itself. The first Head elected at the first MPU deliberation on 17 and 18 December 1965 in Banda Aceh was Tengku Haji Abdullah Ujong Rimba. In addition, the name of the MPU changed to MPU of the Special Region of Aceh, based on the Decision of the Governor of Aceh Number 38 of 1968. PUSA is vital because it is rooted in Acehese society.

Ten years later, the Indonesian Ulema Council (MUI) was formed on 17 Rajab 1395 Hijri or 26 July 1975 in Jakarta. The establishment of the MUI was marked by the making of the “charter for the establishment of the MUI,” which was signed by 51 ulemas representing MUI Level I regions throughout Indonesia and other elements.¹⁹ This formation affected the MPU nomenclature in Aceh so that the MPU of the Special Region of Aceh was changed to MUI of the Special Region of Aceh for reasons of uniformity.²⁰

Unlike MUI, MPU is more independent, which considers regional policies based on Article 9 section (2) of Law No. 44 of 1999.²¹ In addition, the MPU functions to determine fatwa, which can be one of the considerations for regional government policies, as based on Article 139 section (1) of Law No. 11 of 2006.

The transformation back from MUI to MPU can be a new chapter in the role of ulema in Aceh. Because previously, MUI did not appear to be independent, it could even be said to be subordinate to the government. The presence of the MPU again indicates a repositioning of the position of the ulema. Ulema was reinstated properly, par with the Government and DPRA.²² In this case, MPU obtains facilities and funds from the Regional Revenue and Expenditure Budget to carry out its

¹⁸Sari, E. (2019). “Lembaga Ulama dalam Hukum Tata Negara: Studi Sosio-Legal Pergeseran Peranan Lembaga Ulama dalam Pemerintahan Aceh”. *Dissertation*. Universitas Sumatera Utara, p. 139.

¹⁹Mudzhar, M. A. (1993). *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia, 1975-1988*. Jakarta: INIS, pp. 55-56.

²⁰Jamhir, J. (2019). Hukum Pidana di Provinsi Aceh Analisis terhadap Dampak Penerapan Qanun Syari’at. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, 4(2), p. 109.

²¹Jalil, H. (2007). Fungsi Majelis Permusyawaratan Ulama dalam Pelaksanaan Otonomi Khusus di Provinsi Nanggroe Aceh Darussalam. *Jurnal Equality*, 12(2), pp. 131-132.

²²Jalil, H., et al. (2010). Implementasi Otonomi Khusus di Provinsi Aceh Berdasarkan Undang-Undang Nomor 11 Tahun 2006. *Kanun: Jurnal Ilmu Hukum*, 12(2), p. 221.

programs. When he was still the MUI, because he did not have a special allocation of funds from the government, the Aceh MUI seemed to be a beggar. MUI Aceh asks for funds from the government or other parties to implement the program. This case has been done by the Central MUI and other Provincial MUIs in Indonesia.

The ulema institution in Aceh continues to be fought for to have its existence in the field of government. In this case, ulema is expected to have a role in the government sector. This role is indeed inseparable from the system of government in Indonesia, known as Regional Government. Based on Article 18 section (1) of the 1945 Constitution of the Republic of Indonesia, it regulates that:

“The Unitary State of the Republic of Indonesia is divided into provinces and the province is divided into regencies and municipalities, each of which has local government which is regulated by law.”

From the above provisions, it can be understood that there are two institutions, namely the executive and legislative bodies of regional government. The executive branch is carried out by the Governor for the Province level and the Regent/Mayor for Regency/Municipal. Meanwhile, the legislative body is carried out by the DPRA/DPRK. Meanwhile, the ulema institution has not yet had a place as an official institution in the regional government system, including Aceh Province and Regency/Municipal in Aceh. On the other hand, Law No. 22 of 1999 on Local Government is closely related to the momentum for establishing Law No. 44 of 1999. Article 1 point 8 of Law No. 44 of 1999, explains that *“privileges are special authorities to organize religious life, customs, education, and the role of ulema in determining regional policies.”*

Article 3 of Law No. 44 of 1999, regulates that:

- (1) Privileges are an acknowledgment from the Indonesian people given to the region because of the struggle and the intrinsic values of society preserved from generation to generation as a spiritual, moral, and humanitarian foundation.
- (2) Implementation of Privileges includes:
 - a. implementation of religious life;
 - b. implementation of customary life;
 - c. education implementation; and
 - d. the role of ulema in determining regional policies.

In line with political and security developments in Aceh, the Central Government gave special autonomy to Aceh based on Law no. 18 of 2001. Although one of the considerations of Law No. 18 of 2001 is to harmonize it with Law No. 44 of 1999, the role of ulema in Aceh is not explicitly regulated. The specific regulation regarding the role of ulema in Aceh is precisely based on Law No. 11 of 2006. The

regulation is contained in Article 138 to Article 140 Chapter XIX of Law No. 11 of 2006. On the other hand, Law No. 11 of 2006 does not provide a setting on the procedure for considering the MPU but based on Article 139 section (2) of Law No. 11 of 2006, it regulates that *“further provisions regarding the procedure for giving consideration ... are regulated in the Qanun of Aceh.”*

From the above provisions, it can be understood that the Qanun of Aceh referred to is Qanun of Aceh No. 13 of 2017. Meanwhile, regarding the MPU institution, it has been regulated in Qanun of Aceh No. 2 of 2009. Article 1 point 22 of Qanun of Aceh No. 2 of 2009, regulates that *“considerations are the main points of MPU’s thoughts related to regional policies submitted in writing.”*

Based on Article 5 section (1) of Qanun of Aceh No. 2 of 2009, regulates that the MPU has the authority to:

- a. determine fatwa on issues of government, development, economy, socio-culture, and society;
- b. provide direction for differences of opinion on religious issues, both among Muslims and other religious communities.

Furthermore, based on Article 9 section (1) and section (2) of Qanun of Aceh No. 13 of 2017, regulates that:

- (1) The consideration of the Aceh MPU was given to comply with Islamic Shari’a.
- (2) The consideration of the Aceh MPU is determined by the Decision of the MPU Aceh and or the Decision of the Head of the MPU Aceh.

From the above provisions, it can be judged that the MPU has provided input on the establishment of several Qanuns of Aceh, especially those concerning Islamic shari’a. However, most of the MPU’s considerations on the Qanun of Aceh were conveyed to the DPRA orally. In addition to the Qanun of Aceh previously mentioned, there are many other Qanun of Aceh, but they are not related to Islamic shari’a. Although Law No. 11 of 2006 and Qanun of Aceh No. 13 of 2017 regulate that the consideration of the Aceh MPU is not only for Qanun related to Islamic shari’a but also on broader aspects. However, the Aceh MPU has not given more intense consideration to the Qanun of Aceh, which is not related to Islamic shari’a.

Of the several considerations given by the MPU in oral form, only one Qanun of Aceh was given written consideration. In this case, in the form of tausyiah against the draft Qanun of Aceh No. 2 of 2009. The tausyiah was given based on the Decision of the MPU of the Province of Nanggroe Aceh Darussalam No. 3 of 2006. In its decision, the MPU confirmed that it accepted and supported the draft Qanun of Aceh on the Ulema Consultative Assembly. In this case, the draft was made by the

working team of MPU Province of Nanggroe Aceh Darussalam.

In addition to considering the draft Qanun of Aceh, the MPU also determined the fatwa based on Article 139 section (1) of Law No. 11 of 2006 and Article 5 section (1) of Qanun of Aceh No. 2 of 2009. Based on Article 1 point 21 of Qanun of Aceh No. 2 of 2009 explains that “*fatwa is an MPU decision related to Islamic law on government, development, economy, social-cultural, and society issues.*”

In addition to giving consideration and decision fatwa, there are also tausyiah as MPU’s considerations delivered specifically to social conditions. However, the Aceh MPU and Regency/Municipal MPU have different powers. MPU Aceh has more strategic authority than MPU Regency/Municipal. Based on Article 5 section (2) of Qanun of Aceh No. 2 of 2009 regulates that Regency/Municipal MPUs have the authority to:

- a. implement and secure the fatwa issued by the MPU as referred to in section (1);
- b. provide consideration and input to Regency/Municipal Governments, including the fields of government, development, society, and the Islamic economic order.

Based on the difference in authority and duties between the Aceh MPU and the Regency/Municipal MPU, the Regency/Municipal MPU does not have the authority to make fatwa or tausyiah decisions. However, the Regency/Municipal MPU may propose a discussion of the Regency/Municipal issue to the Aceh MPU to obtain a fatwa decision based on the procedures for establishing a fatwa. In addition, Regency/Municipal MPUs can also be involved in establishing a fatwa. In this case, Regency/Municipal MPU can provide suggestions and input on the substance of certain fatwas. On the other hand, for a fatwa that the Aceh MPU has decided, Regency/Municipal MPUs are obligated to implement it in their respective regions.

Based on this function, the Regency/Municipal MPU coordinates with the Regency/Municipal Regional Leadership Meeting, now called the Regional Leadership Coordination Meeting. In addition, the Regency/Municipal MPU harmonizes and synchronizes its duties and functions with Offices related to Islamic shari’a, namely the Islamic Shari’a Office and Regency/Municipal Dayah Education Office throughout Aceh.

Regarding efforts to create order in society, the Police also involved the MPU in granting crowd permits. Without the MPU’s recommendation, the Police will not give the crowd permission requested by the community. Even the Banda Aceh Municipal Government requires that someone who wants to open a salon business or extend a business license must obtain a recommendation from the MPU and

a recommendation from the Police. This policy is carried out so that there is no deviation in the function of the salon. In this case, greetings under the guise of places of prostitution, narcotics, and liquor.

In implementing Islamic shari'a, Regency/Municipal MPU supports Regency/Municipal government policies. For example, the Regent of West Aceh Regency, Ramli M. S. (Period 2006-2011), establish a Regent Regulation on the Headscarf and Muslim Clothing. This Regent's regulation aims to make women wear the hijab, not tight clothing, including jeans. The Regent provided hundreds of skirts distributed to women who wore jeans and tights during the WH raid. Before the regulation was implemented, the Regent consulted intensely with ulema and MPU in West Aceh.²³ Regardless of whether the Regent's Regulation is effective or not, it is clear that the West Aceh Regency Government has taken courage and a breakthrough to create an aspiration for Muslim women to wear decent clothes.

B. Obstacles to the Ulema Consultative Assembly in Giving Consideration to Aceh Government and Regency/Municipal Governments

In addition to the success in carrying out the functions, authorities, and duties of the MPU, as mentioned in the previous discussion, it also faces several obstacles in its implementation. Obstacles MPU Aceh and MPU Regency/Municipal give consideration, especially in legislation. Several Qanuns of Aceh and Qanun of Regency/Municipal, but the MPU's role is still minimal.

The factors that influence the MPU in the Qanun legislative process are MPU members themselves, who do not understand all master the logic of positive law applied in Indonesia.²⁴ Although MPU has an autonomous body in charge of law, human resources are minimal. In addition to the human resource factor, the formal juridical factor is also one of the obstacles to the MPU. Therefore, the MPU rarely gives institutional consideration to a draft Qanun of Aceh. This case, whether initiated by the DPRA or the Aceh Government and the DPRK or the Regent/Mayor.

Furthermore, the stages in establishing Qanun of Aceh and Qanun of Regency/Municipal Aceh must be based on Law of the Republic of Indonesia Number 15 of 2019 on Amendment to Law Number 12 of 2011 on Legislation Making (hereinafter referred to as Law No. 15 of 2019). In this case, Law No. 15 of 2019 does not recognize the obligation for the MUI to consider the draft Qanun or Regional Regulations. However, the laws and regulations in Aceh on the establishment of Qanun of Aceh and Qanun of Regency/Municipal in Aceh are based on Qanun of

²³Results of Interview with Muhammad Isa, S.Pd. Head of Islamic Shari'a Office, Regency of West Aceh. July, 2021.

²⁴Lutfiana, A. F. (2020). Keistimewaan Qanun di Aceh dalam Perspektif Sociological Yurisprudence Menurut Eugen Ehrlich. *Jurnal Hukum dan Pembangunan Ekonomi (JHPE)*, 8(2), p. 206.

Aceh Number 5 of 2011 on Procedures for Making Qanun (hereinafter referred to as Qanun of Aceh No. 5 of 2011). However, Qanun of Aceh No. 5 of 2011 also does not accommodate the stages of MPU consideration for establishing Qanun of Aceh and Qanun of Regency/Municipal. Based on Article 16 of Qanun of Aceh No. 5 of 2011, regulates that:

“Draft Qanun before being submitted to the Aceh House of Representatives/Regency/Municipal House of Representatives, with the involvement of the Ulema Consultative Assembly as a member of the Assistance Team for Discussion of the Draft Qanun.”

Based on Article 17 of Qanun of Aceh No. 5 of 2011, regulates that the Assistance team is tasked with:

- a. collect the necessary materials;
- b. create a Problem Inventory List (DIM);
- c. arrange discussion schedule;
- d. perfecting the Pre-Drafted Qanun; and
- e. participate in the discussion of Draft Qanun both at the executive and legislative levels.

Although normatively, there is an MPU element in the Assistance Team, not all Regency/Municipal places the MPU as an assistance team. There is no sanction if it does not involve MPU in the Assistance Team as the cause of this condition. However, in 2021, the Banda Aceh Municipal Government has invited the MPU leadership to participate in the draft Qanun, which will be discussed together with DORK Banda Aceh. The draft Qanun in question is the Draft Qanun of Municipal of Banda Aceh on Halal Tourism. The Draft Qanun is an initiative of the Banda Aceh Municipal DPRK. The MPU's involvement in the discussion of the Draft Qanun is intended to obtain input on the substance of the Draft Qanun. This policy was formed because the concept of halal tourism is closely related to shari'a values. Therefore, MPU's considerations and suggestions are essential, considering that the development of halal tourism developed should not deviate from Islamic shari'a.

Likewise, in discussing the Draft Qanun in the DPRA and DPRK, it is also unnecessary to ask the MPU for consideration. Discussion of the draft Qanun in the DPRA/DPRK as regulated in Article 36 of Qanun of Aceh No. 5 of 2011. Based on this Article, there are no stages for consideration from the MPU, either before, temporarily, or after joint discussions by the DPRA/DPRK with the Governor/Regent/Mayor or the assigned assistance team. According to Qanun of Aceh No. 5 of 2011, the joint discussion was carried out only through two stages of discussion, covering:

1. The first level discussion is conducted in the Commission Meeting/Combined Commission/Legislation Board/Special Committee/Budget Board; and
2. The second level discussion is carried out in a plenary meeting.

Furthermore, based on the rules of the Aceh House of Representatives/Regency/Municipal House of Representatives, there were no stages to request written consideration from the MPU. In this case, the preparation of the DPRA/DPRK regulations is only based on Government Regulation of the Republic of Indonesia Number 12 of 2018 on Guidelines for the Preparation of Rules of Regional House of Representatives Province, Regency, and Municipal. Likewise, consultations on a draft Aceh Qanun, in which only the DPRA and the Aceh Government were consulted, were carried out in a meeting between the DPRA Leaders and the Aceh Government Heads. The Consultation is carried out to:

1. Initial discussion regarding the content of the Draft Qanun and or Draft General Budget Policy as well as the Priority and Provisional Budget Ceiling in the context of preparing the RAPBA;
2. Discussion on handling a problem that requires a joint decision/agreement with the DPRA and the Aceh Government based on laws and regulations; or
3. Requests for clarification regarding specific policies or work programs determined or implemented by the Head of the Aceh Government.

From the discussion above, it can be understood that the MPU obstacles in the discussion of Qanun of Aceh or Qanun of Regency/Municipal are human resource factors and formal juridical factors. In addition, the considerations given by the MPU are more spontaneous, without being preceded by a study and discussion by the MPU management to issue a consideration. On the other hand, MPU's involvement in the legislative process in the DPRA and DPRK has not been comprehensively regulated. In this case, there were no stages to request written consideration from the MPU. Therefore, the forum did not provide an optimal space for the MPU to provide considerations.

CONCLUSIONS AND SUGGESTIONS

Based on the description of the results and discussion above, it can be concluded that the considerations that the MPU has given in influencing the policies of the Aceh Government and Regency/Municipal Governments, namely the participation of the MPU in the assistance team. In addition, the MPU provides considerations in discussing the Draft Qanun, both those related to Islamic Shari'a and those that are not directly related to Islamic Shari'a. Meanwhile, the MPU obstacles in the discussion of Qanun of Aceh or Qanun of Regency/Municipal are human resource factors and formal juridical factors. In addition, the MPU's involvement in the legislative process in the DPRA and

DPRK has not been comprehensively regulated. In this case, the forum did not provide an optimal space for the MPU to provide considerations. Based on the description of these conclusions, it is recommended that MPU better understand the positive legal context that applies in Indonesia. In addition, it is recommended that the Government harmonize the provisions on the establishment of Qanun of Aceh with Qanun of Aceh No. 2 of 2009 so that the MPU can maximize its role in considering regional policies.

REFERENCES

The 1945 Constitution of the Republic of Indonesia.

- Abidin, Z. (2021). Peran Ulama dalam Sistem Pemerintahan di Propinsi Aceh. *Journal of Governance and Social Policy*, 2(2), 156-168. doi: <https://doi.org/10.24815/gaspol.v2i2.23663>
- Akbar, K. (2017). Politik Hukum Pembentukan Komisi Kebenaran dan Rekonsiliasi Aceh. *Lex Renaissance*, 2(2), 195-212. doi: <https://doi.org/10.20885/JLR.vol2.iss2.art11>
- Asrun, A. M., et al. (2019). Mempertanyakan Legalitas Qanun Aceh: Sesuikah dengan Sistem Peraturan Perundang-Undangan. *Kanun: Jurnal Ilmu Hukum*, 21(9), 273-294. doi: <https://doi.org/10.24815/kanun.v21i2.12632>
- Fariana, A. (2017). Urgensi Fatwa MUI dalam Pembangunan Sistem Hukum Ekonomi Islam di Indonesia. *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 12(1), 87-106. doi: <https://doi.org/10.19105/al-lhkam.v12i1.1191>
- Fitrah, F. A., et al. (2021). The Position of Civil Servant Investigator of Directorate General of Tax (DGT) in the Frame of Taxation Criminal Law Enforcement in Indonesia. *SIGN Jurnal Hukum*, 3(1), 1-25. doi: <https://doi.org/10.37276/sjh.v3i1.107>
- Gayo, A. A. (2017). Aspek Hukum Pelaksanaan Qanun Jinayat di Provinsi Aceh. *Jurnal Penelitian Hukum de Jure*, 17(2), 131-154. doi: <http://dx.doi.org/10.30641/dejure.2017.V17.131-154>
- Government Regulation of the Republic of Indonesia Number 12 of 2018 on Guidelines for the Preparation of Rules of Regional House of Representatives Province, Regency, and Municipal (State Gazette of the Republic of Indonesia of 2018 Number 59, Supplement to State Gazette of the Republic of Indonesia Number 6197).
- Jafar, M. (2015). Legitimasi Hukum Pemberlakuan Syari'at Islam di Aceh: Tinjauan Yuridis, Sosiologis dan Filosofis. *Ulumuna*, 19(1), 59-78. doi: <https://doi.org/10.20414/ujs.v19i1.1250>
- Jalil, H. (2007). Fungsi Majelis Permusyawaratan Ulama dalam Pelaksanaan Otonomi Khusus di Provinsi Nanggroe Aceh Darussalam. *Jurnal Equality*, 12(2), 131-137.

- Jalil, H., et al. (2010). Implementasi Otonomi Khusus di Provinsi Aceh Berdasarkan Undang-Undang Nomor 11 Tahun 2006. *Kanun: Jurnal Ilmu Hukum*, 12(2), 206-233.
- Jamhir, J. (2019). Hukum Pidana di Provinsi Aceh Analisis terhadap Dampak Penerapan Qanun Syari'at. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, 4(2), 108-126. doi: <http://dx.doi.org/10.22373/justisia.v4i2.5964>
- Law of the Republic of Indonesia Number 22 of 1999 on Local Government (State Gazette of the Republic of Indonesia of 1999 Number 60, Supplement to State Gazette of the Republic of Indonesia Number 3839).
- Law of the Republic of Indonesia Number 44 of 1999 on Implementation of the Privileges of the Special Region of Aceh Province (State Gazette of the Republic of Indonesia of 1999 Number 172, Supplement to State Gazette of the Republic of Indonesia Number 3893).
- Law of the Republic of Indonesia Number 18 of 2001 on Special Autonomy for the Special Region of Aceh Province as the Province of Nanggroe Aceh Darussalam (State Gazette of the Republic of Indonesia of 2001 Number 114, Supplement to State Gazette of the Republic of Indonesia Number 4134).
- Law of the Republic of Indonesia Number 11 of 2006 on Aceh Government (State Gazette of the Republic of Indonesia of 2006 Number 62, Supplement to State Gazette of the Republic of Indonesia Number 4633).
- Law of the Republic of Indonesia Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2011 Number 82, Supplement to State Gazette of the Republic of Indonesia Number 5234).
- Law of the Republic of Indonesia Number 15 of 2019 on Amendment to Law Number 12 of 2011 on Legislation Making (State Gazette of the Republic of Indonesia of 2019 Number 183, Supplement to State Gazette of the Republic of Indonesia Number 6398).
- Lutfiana, A. F. (2020). Keistimewaan Qanun di Aceh dalam Perspektif Sociological Jurisprudence Menurut Eugen Ehrlich. *Jurnal Hukum dan Pembangunan Ekonomi (JHPE)*, 8(2), 199-212. doi: <https://doi.org/10.20961/hpe.v8i2.49770>
- Mudzhar, M. A. (1993). *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia, 1975-1988*. Jakarta: INIS.
- Nurdin, A. (2012). Reposisi Peran Ulama dalam Penerapan Syariat Islam di Aceh. *Al-Qalam*, 18(1), 54-65. doi: <http://dx.doi.org/10.31969/alq.v18i1.244>
- Nurdin, R. (2018). Kedudukan Qanun Jinayat Aceh dalam Sistem Hukum Pidana Nasional Indonesia. *Miqot: Jurnal Ilmu-ilmu Keislaman*, 42(8), 356-379. doi: <http://dx.doi.org/10.30821/miqot.v42i2.542>

- Nurlaila, N. & Zulihafnani, Z. (2019). Pengaruh Fatwa Ulama Dayah dalam Masyarakat Aceh. *Substantia: Jurnal Ilmu-Ilmu Ushuluddin*, 21(2), 93-103. doi: <http://dx.doi.org/10.22373/substantia.v21i2.3742>
- Paisal, J. (2021). Peran Ulama dalam Masyarakat Aceh dari Masa Kemasa. *At-Tanzir: Jurnal Ilmiah Prodi Komunikasi Penyiaran Islam*, 12(1), 89-104. doi: <https://doi.org/10.47498/tanzir.v12i1.513>
- Qamar, N. (2021). Theory Position in the Structure of Legal Science. *SIGn Jurnal Hukum*, 3(1), 52-64. doi: <https://doi.org/10.37276/sjh.v3i1.126>
- Qanun of Aceh Number 10 of 2007 on the Baitul Mal (Regional Gazette of Nanggroe Aceh Darussalam of 2007 Number 10, Supplement to the Regional Gazette of Nanggroe Aceh Darussalam Number 10).
- Qanun of Aceh Number 2 of 2009 on the Ulema Consultative Assembly (Regional Gazette of Aceh of 2009 Number 2, Supplement to the Regional Gazette of Aceh Number 24).
- Qanun of Aceh Number 5 of 2011 on Procedures for Making Qanun (Gazette of Aceh of 2011 Number 10, Supplement to the Gazette of Aceh Number 38).
- Qanun of Aceh Number 7 of 2013 on the Jinayat Procedural Law (Gazette of Aceh of 2013 Number 7, Supplement to the Gazette of Aceh Number 51).
- Qanun of Aceh Number 6 of 2014 on the Jinayat Law (Gazette of Aceh of 2014 Number 7, Supplement to the Gazette of Aceh Number 66).
- Qanun of Aceh Number 8 of 2014 on Principles of Islamic Shari'a (Gazette of Aceh of 2014 Number 9, Supplement to the Gazette of Aceh Number 68).
- Qanun of Aceh Number 8 of 2015 on Guidance and Protection of Aqidah (Gazette of Aceh of 2016 Number 2, Supplement to the Gazette of Aceh Number 76).
- Qanun of Aceh Number 8 of 2016 on Halal Product Assurance System (Gazette of Aceh of 2016 Number 11, Supplement to the Gazette of Aceh Number 83).
- Qanun of Aceh Number 13 of 2017 on the Procedure for Giving Consideration of the Ulema Consultative Assembly (Gazette of Aceh of 2018 Number 2, Supplement to the Gazette of Aceh Number 97).
- Qanun of Aceh Number 11 of 2018 on Shari'a Financial Institution (Gazette of Aceh of 2019 Number 8, Supplement to the Gazette of Aceh Number 111).
- Raliby, O. (1980). Aceh, Sejarah, dan Kebudayaannya. In Ismail Suny (Ed.), *Bunga Rampai Aceh*. Jakarta: Bhatara.
- Regulation of the Province of Special Region of Aceh Number 3 of 2000 on Establishment of Organization and Work Procedure of Ulema Consultative Assembly of the Special Region of Aceh Province.

- S., I. R. R. (2012). Model Ideal Partisipasi Masyarakat dalam Pembentukan Peraturan Daerah. *Jurnal Dinamika Hukum*, 12(1), 135-148. doi: <http://dx.doi.org/10.20884/1.jdh.2012.12.1.111>
- Sari, E. (2019). "Lembaga Ulama dalam Hukum Tata Negara: Studi Sosio-Legal Pergeseran Peranan Lembaga Ulama dalam Pemerintahan Aceh". *Dissertation*. Universitas Sumatera Utara.
- Surbakti, E. D. & Agoestian, E. (2020). Analisis Yuridis Qanun Jinayat dalam Strukturisasi Hukum Pidana Nasional. *Rechtenstudent Journal*, 1(2), 110-120. doi: <https://doi.org/10.35719/rch.v1i2.25>
- Wangsa, S., et al. (2019). Analisis terhadap Kendala Perlindungan Konsumen oleh Majelis Permusyawaratan Ulama Aceh Terhadap Sertifikasi Label Halal Produk. *Jurnal Magister Hukum Udayana*, 8(4), 480-493. doi: <https://doi.org/10.24843/JMHU.2019.v08.i04.p04>