



The Impact of the Governor's Consultation and Consideration on Central Government Administrative Policy in Aceh

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Abstract: The Central Government's administrative policies relevant to the Aceh Government are executed subsequent to consultation and deliberation with the Governor, as specified in Article 8, paragraph (3) of Law Number 11 of 2006 about the Aceh Government (UUPA). This encompasses issues such as geographical delineation, the formation of designated zones, and the formulation and enactment of statutes and regulations pertinent to the Aceh Government. This authority contrasts with the distinct and exceptional position of the Provinces of Papua and West Papua, the Province of the Special Region of Yogyakarta, and the Regional Government together. This study seeks to evaluate the efficacy of the Governor's authority in consultation and deliberation of the administrative policies of the Central Government in Aceh. Aceh, acknowledged for its distinctive autonomy status, holds distinct jurisdiction in the execution of governmental administrative responsibilities. This is qualitative research, in which method of data collection includes in-depth semi-structured interviews and document analysis. The findings demonstrate that the Governor's capacity to engage and deliberate is essential for aligning central policies with local needs. However, other problems hinder the execution, including inadequate coordination among agencies and differing interpretations of rules between the Central Government and the Aceh Government. Moreover, there is little oversight by the Aceh Special Autonomy Monitoring Team from the DPR-RI, coupled with an absence of penalties for delays in the execution of the UUPA. For effective execution, it is imperative that both the Central Government and the Aceh Government exhibit political will and consistency. The collaboration between the Central Government and the Aceh Government Consultation Teams should transform into an Ad-Hoc Team to promote a mutual understanding and provide continuous oversight of the implementation process.

Keywords: Effectiveness, Governor's Consultation and Consideration, administrative policies, Central Government, Government of Aceh

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Abstrak: Kebijakan administratif Pemerintah Pusat yang berkaitan langsung dengan Pemerintahan Aceh, dilakukan setelah konsultasi dan pertimbangan Gubernur, sebagaimana Pasal 8 Ayat (3) Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh (UUPA), seperti, pembagian wilayah, pembentukan kawasan khusus, perancangan dan pembentukan peraturan perundang-undangan yang berkaitan langsung dengan Pemerintahan Aceh. Kewenangan ini berbeda dengan kekhususan dan keistimewaan Provinsi Papua dan Papua Barat, Provinsi DIY, dan Pemerintahan Daerah secara umum. Tujuan penelitian ini mengevaluasi efektivitas implementasi kewenangan konsultasi dan pertimbangan Gubernur terhadap kebijakan administratif Pemerintah Pusat di Aceh. Sebagai daerah berstatus otonomi khusus, Aceh memiliki wewenang tertentu dalam menjalankan fungsi administrasi pemerintahan. Studi ini menggunakan pendekatan kualitatif dengan metode deskriptif analitis, mengumpulkan data melalui wawancara mendalam dan analisis dokumen. Hasil penelitian diperoleh, kewenangan konsultasi dan pertimbangan Gubernur, mempunyai peran penting dalam menyeimbangkan kebijakan pusat dengan kebutuhan lokal. Namun, terdapat sejumlah tantangan yang menghambat implementasi, termasuk koordinasi antar lembaga yang kurang optimal dan perbedaan interpretasi regulasi antara Pemerintah Pusat dengan Pemerintahan Aceh, serta lemahnya pengawasan Tim Pemantau Otonomi Khusus Aceh dari DPR-RI dan tidak diatur sanksi keterlambatan pelaksanaan UUPA. Oleh karenanya, agar implementasi efektif, perlu political will dan konsistensi Pemerintah Pusat dan Pemerintahan Aceh dalam penyelenggaraannya, kolaborasi Tim Konsultasi Pemerintah Pusat dan Pemerintah Aceh menjadi Tim Ad-Hoc, untuk tercapai persepsi yang sama, serta konsisten melakukan pengawasan implementasi.

Kata Kunci: Efektivitas, Konsultasi dan Pertimbangan Gubernur, Kebijakan Administratif, Pemerintah Pusat, Pemerintahan Aceh

Introduction

The Aceh Province exhibits a historical interplay that has varied in relation to the Central Government of Jakarta. During the early days of independence, when President Soekarno designated Aceh as the capital region of Indonesia, the government's efforts in military, political, and economic spheres were bolstered by appreciation in confronting Dutch colonial forces.¹ Following the independence, the dynamics between Aceh and the Central Government became increasingly strained, leading to the emergence of resistance from *Darul*

¹Amira Schiff, "On Success in Peace Processes: Readiness Theory and the Aceh Peace Process," *Peace and Conflict Studies* 20, No. 1 (2013), p. 27-57. Nazaruddin Sjamsuddin, *Revolusi di Serambi Mekkah*, Jakarta: UI-Press, 1999, p. 282. Teuku Kemal Fasya, et.al., "Political Trauma of Uleebalang Descendants over Past Conflict in the City of Lhokseumawe, Aceh." *Cogent Arts & Humanities* 10, no. 1 (2023).

Islam/Tentara Islam Indonesia (DI/TII) during the period of 1953-1959.² The Free Aceh Movement (GAM) sought independence from 1976 to 2005.³ The Aceh peace process initiated with discussions surrounding the Joint Understanding on Humanitarian Pause for Aceh in 2000, followed by the Cessation of Hostilities Agreement (CoHA) in 2002, both of which were facilitated by the Henry Dunant Center (HDC) located in Geneva, Switzerland.⁴ Following the unsuccessful negotiations, Aceh declared a Military Emergency in 2004 and a Civil Emergency in 2005.⁵

The disaster caused by the earthquake and tsunami on December 26, 2004, in Aceh significantly altered the perspectives of both the Central Government and GAM. The negotiations persisted, supported by the Crisis Management Initiative (CMI), under the leadership of Martti Ahtisaari. On August 15, 2005, a Memorandum of Understanding (MoU) was set to be signed in Helsinki, Finland, referred to as the Helsinki MoU.⁶ Although the Helsinki MoU exists as an executive agreement,⁷ in point 1.1.1. Helsinki MoU states that, a new Law on the Governing of Aceh will be promulgated and will enter into force as soon as possible and no later than 31 March 2006, and then in point 1.1.2. letter d stated that administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation with and with the consent of the head of the Aceh administration.⁸

The discussion surrounding the draft law revealed a divergence of opinions between the Government and the Indonesian House of Representatives

² Damien Kingsbury, "The Free Aceh Movement: Islam and Democratisation," *Journal of Contemporary Asia* 37, No. 1 (2007), p. 166-189. Nur El-Ibrahimi, *Peranan Tgk M. Daud Beureueh Dalam Pergolakan Aceh*, Jakarta: Media Da'wah, 2001, p. 22. Suadi Zainal, et.al., "Conflict Resolution in Aceh: A Sociological Study of Ecological Sustainability and Palm Oil," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, No. 3 (2024).

³Amrizal J. Prang and Nanda Amalia, "Proses Pembentukan Undang-undang Pemerintahan Aceh," *Jurnal Hukum Respublica* 6, No. 2 (2007), p. 193. Farkhani, et, al., Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province, *Al-Manāhij: Jurnal Kajian Hukum Islam*, Vol. 17 No. 2, 2023, p. 216. M. Rizwan, Dinamika Politik Hukum Pembentukan Undang-Undang Pemerintahan Aceh, *Istinbāth, Jurnal Hukum dan Ekonomi Islam*, Vol. 21, No. 1. 2022, p. 147.

⁴Darmansjah Djumala, *Soft Power Untuk Aceh, Resolusi Konflik dan Politik Desentralisasi*, Jakarta: Gramedia Pustaka Utama, 2013, p. 41-48. Mohammad Hasan Ansori, "From Insurgency to Bureaucracy: Free Aceh Movement, Aceh Party and the New Face of Conflict," *Stability: International Journal of Security and Development* 1, No. 1 (2012), p. 31.

⁵Amrizal J. Prang, *Aceh dari Konflik ke Damai*, Banda Aceh: Bandar Publishing, 2008, p. 12-13.

⁶Memorandum of Understanding antara Pemerintah dengan Gerakan Aceh Merdeka, 2005, di Helsinki, Finlandia, 15 Agustus 2005.

⁷Ismail Suny, *Ada Materi RUU PA yang Bisa Dihapus*, Kompas, 1 Maret 2006.

⁸Memorandum of Understanding antara Pemerintah dengan Gerakan Aceh Merdeka, 2005.

(DPR RI) regarding the terminology employed, including terms like "Aceh Government," "Self-Government," and "Special Autonomy".⁹ On August 1, 2006, Law Number 11 of 2006 concerning the Governing of Aceh (UUPA) was ratified, comprising 40 chapters and 273 articles.¹⁰ The UUPA maintains Aceh's special status, as outlined in Law No. 44 of 1999 regarding the Implementation of the Special Status of the Special Region of Aceh Province (Law No. 44 of 1999).

One of the materials pertaining to the relationship between the Central Government and the Aceh Government indicates that the administrative policies of the Central Government,¹¹ which directly impact the Aceh Government, are implemented following consultation and consideration with the Governor of Aceh. According to Article 8 paragraph (3) of the UUPA, it is articulated: "Administrative policies directly related to the Aceh Government that will be formulated by the Central Government are to be executed with consultation and consideration by the Governor". The Explanation of Article 8 paragraph (3) outlines that the aim of administrative policies directly associated with the Aceh Government includes aspects such as regional expansion, the establishment of special areas, and the planning and modification of laws and regulations pertinent to the Aceh region.

A Presidential Regulation (Perpres) was established to facilitate the consultation and consideration of the governor, as outlined in Article 8 paragraph (4). In addition, on December 24, 2008, Perpres No. 75 of 2008 was established regarding the Procedures for Consultation and Providing Consideration on Planned International Agreements, Planned Formation of Laws, and Administrative Policies Directly Related to the Aceh Government (Perpres No. 75 of 2008). In addition, certain implementations of UUPA (Aceh Government Law) are subject to further regulation by the Government Regulation (PP), Presidential Regulation (Perpres), and Aceh *Qanun*. Furthermore, there exist policy regulations pertaining to norms, standards, and procedures, which are articulated through ministerial or institutional regulations. Consequently, following the ratification of UUPA, it is essential to develop supporting

⁹Farhan Hamid, *Jalan Damai Nanggroe Endatu, Catatan Seorang Wakil Rakyat Aceh*, Jakarta: Suara Bebas, 2006, p. 323. Hamid Awaluddin, *Damai di Aceh: Catatan Perdamaian RI-GAM di Helsinki*, Jakarta: Centre for Strategic and International Studies, 2017.

¹⁰ Undang-Undang Pemerintahan Aceh, UU No.11 Tahun 2006, LN No. 62 Tahun 2006, TLN No. 4633.

¹¹ Abdulmajeed Hassan-Bello, Sharia in the Nigerian Constitutions: Examining the Constitutional Conferences and the Sharia Debates in the Drafts, *Al-Ahkam: Jurnal Pemikiran Hukum Islam*, Vol 29 No 1 (2019), p. 4. Ali Abubakar, et, al., The Postponement of The Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Perspective of 'Urf Theory and Legal Pluralism, *El-Usrah: Jurnal Hukum Keluarga*, Vol. 6 No. 2 (2023), p, 414. Lies Ariany and Risni Ristiawati, The Urgency of Creating Regional Regulations For supporting the Implementation of Regional Autonomy, *Syariah: Jurnal Hukum dan Pemikiran* Vol. 19, No. 1, 2019, p. 76

instruments for the execution of UUPA in the form of PP and Perpres.¹²

This is qualitative research alongside a descriptive analytical method to assess the effectiveness of the Governor's consultation and consideration policies in relation to the administrative policies of the Central Government that directly impact the Aceh Government. This methodology was selected to achieve a comprehensive understanding of the dynamics surrounding policy and its implementation within the framework of Aceh's special autonomy or asymmetrical decentralization).¹³

The study involved an in-depth interview with stakeholders, such as central and regional government officials, academics, and legal practitioners to gain important data. The objective was to acquire insights and firsthand experience regarding the execution of the governor's consultation and consideration authority. The individual was directly involved in various consultation forums and coordination meetings between the Central Government and the Aceh Government, to observe the decision-making process and interactions between institutions.

The researcher gathered and examined a range of pertinent documents, such as statutes and regulations, official reports, and policy papers. This analysis aims to comprehend the legal and regulatory framework regarding specificity, the authority of consultation, and the considerations of the governor, while also identifying barriers to implementation. The analysis of data gathered from interviews and document analysis was conducted through thematic lens. Subsequently, pinpoint and establish connections with pertinent theories and concepts within the examination of regional autonomy and asymmetric decentralization. This thematic analysis aims to assess the effectiveness of the policy and pinpoint the factors that affect the implementation of the authority. The findings aim to illuminate the function of the Governor's consultation and consideration policy in reconciling central policies with local requirements. This study will also pinpoint challenges encountered in the execution of authority, such as issues with inter-institutional coordination, varying interpretations of regulations, and inadequate supervision.

Authorities of Social Autonomy Special Region

The governor's authority to consult and consider administrative policies of the Central Government that directly impact the Aceh Government is a unique power, not found in other Regional Governments. In accordance with Law No. 32

¹² Taqwadin, et.al., *Sejarah Lahirnya Undang-Undang Pemerintahan Aceh, Perspektif Partisipasi di Aceh*, Banda Aceh: Fakultas Hukum Unsyiah, 2009. p. 183-184.

¹³Rossy Lambelanova, et.al., *Paradigma Baru Desentralisasi Asimetris di Indonesia*, Jatinangor: Institut Pemerintahan Dalam Negeri, 2022. Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 2 (2021).

of 2004 regarding Regional Government, which has been superseded by Law No. 23 of 2014 pertaining to Regional Government (Law No. 23 of 2014). It is important to note that this also differs from the specific regions governed by Law No. 21 of 2001 in conjunction with Law No. 2 of 2021 regarding Special Autonomy for Papua Province, as well as Law No. 13 of 2012 concerning the Special Autonomy of the Special Region of Yogyakarta. The foundation for this consultation and consideration authority is outlined in point 1.1.2. The letter d of the Helsinki MoU, along with Article 8 paragraph (3) of the UUPA, constitutes an integral aspect of the execution of the decentralization principle.

Hilaire Barne noted that “local government represented an early form of localized self-regulation. The country is divided into local authorities – either county or district – each having law making and administrative powers as delegated by Parliament”.¹⁴ Joachim Wehner also noted that the variation in granting autonomy among different regions is a prevalent practice in the governance structures of numerous countries. This phenomenon is observed in both unitary and federative states. This pattern of unequal arrangements is referred to as asymmetrical decentralization, asymmetrical devolution, or asymmetrical federalism, and is generally categorized under asymmetrical intergovernmental arrangements.¹⁵

The 1945 Constitution of the Republic of Indonesia (UUD RI 1945) establishes the framework for consultation and deliberation or consensus between the President and the DPR-RI, as well as the judiciary, within the context of the separation of powers. According to Article 11, paragraphs (1) and (2), the president must obtain the approval of the DPR RI when declaring war, making peace, and entering into agreements with other nations. Article 14, paragraphs (1) and (2), stipulates that the president grants pardons and rehabilitations while considering the Supreme Court's (MA) recommendations, as well as amnesties and abolitions based on the DPR RI's considerations. Furthermore, Article 24A, paragraph (3), indicates that candidates for supreme court justices are proposed by the Judicial Commission (KY) with the DPR RI's approval and are appointed by the president as justices of the supreme court. In addition, Article 24B stipulates that member of KY are appointed and dismissed by the president, contingent upon the approval of the Indonesian House of Representatives.

In the context of Regional Government, Article 18A paragraph (1) delineates that the authority relationship between the central government and provincial, district, and city governments, as well as between provinces and

¹⁴Hilaire Barne, *Constitutional and Administrative Law*, Ed. Ke-3, London: Cavendish Limited, 2000, p. 496.

¹⁵Agung Djojosoekarto, et.al., *Kebijakan Otonomi Khusus di Indonesia, Pembelajaran dari Kasus Aceh, Papua, Jakarta, dan Yogyakarta*, Jakarta: Kemitraan, 2008, p. 10. Gabriel Lele, “Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia,” *Territory, Politics, Governance* 11, No. 1 (2021), p. 1-19.

districts and cities, is governed by law, considering the unique characteristics and diversity of the regions. In the meantime, Article 18B paragraph (1) indicates that the state acknowledges and honors regional government units that possess special characteristics, as outlined by law. Law No. 23 of 2014 does not define the powers related to consultation and consideration by the governor. Similarly, it stands apart from other designated and unique areas, as outlined by Law No. 13 of 2012 and Law No. 2 of 2021. Analysis of the unique and specific regulations across Aceh, Papua and West Papua, as well as the Special Region of Yogyakarta (DIY), is presented in the table below, including various aspects:

Table 1: Comparison on the authorities of special autonomy regions, Aceh, Papua and DIY

| Aceh | Papua and West Papua | DIY |
|---|---|--|
| 1) Special Autonomy Fund; 2) Local identity; 3) Local symbols, including flags, languages, and emblems; 4) Local political parties; 5) <i>Wali Nanggroe</i> Institution 6) Assembly of Consultative Scholars 7) Consultation and deliberation with the DPRP over international agreements, as well as the establishment and amendments of laws pertaining to Aceh and UUPA conducted by the Central Government; 8) Consultation and deliberation with the Governor over the administrative policies of the Central Government in Aceh; 9) Islamic Sharia; 10) Specific Government Regulation and the | 1) Special Autonomy Fund; 2) The Governance is Papuan native; 3) Papuan People Assembly; 4) Special Regional Regulation; 5) The Government's evaluation on international collaboration established by the central government 6) Two types of regional regulations: a. Regional Regulation b. Special Regional Regulation (<i>Perdasus</i>) | 1) Special Fund 2) DIY Sultanate/ Ngayogyakarta Hadiningra Sultanate. 3) Pakualam Duchy 4) Two Types of Regional Regulations: a. Regional Regulation b. Special Regulation (Perdais). 5) Governor and Vice Governor is Sultan and Pakualam |

| | | |
|--|--|--|
| 11) President Regulation Local government regulation, referring to <i>Qanun</i> | | |
|--|--|--|

In the framework of executing regional autonomy within the Republic of Indonesia, the distinctions among various regions can be categorized into standard regional autonomy, special regional autonomy, and/or original regional autonomy.¹⁶ The governor's role in consultation and consideration is integral to the execution of uniqueness, particularly within the framework of special autonomy or asymmetrical decentralization.¹⁷ The philosophical foundation of Pancasila acknowledges diversity through the motto *Bhineka Tunggal Ika*, aligning with its fourth principle, "deliberation." According to Article 18 B of the 1945 Constitution of the Republic of Indonesia, the existence of special regional units is acknowledged constitutionally.

The political experience of the old order era carries significant implications for the discord in relations between the Central Government and Aceh. The ongoing new order and reform era has been influenced by the inconsistent application of Law No. 44 of 1999, Law No. 37 of 2000 regarding the stipulation of Perpu No. 2 of 2000 on the Free Trade Zone and Free Port of Sabang, as well as Law No. 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh, known as the Province of Aceh.

In the meantime, from a sociological perspective, the community's demands for peace in Aceh following the conflict are evident.¹⁸ Ultimately, the ethical implications of the agreement between the Central Government and GAM in the Helsinki MoU are significant. The role of the authority to consult and take into account the perspectives of the Governor, Sofyan Jalil, who served as the coordinating minister for communication and information from 2004 to 2009 and acted as the Central Government Negotiator, is crucial. He indicated that this proposal was a focal point of our discussions in Helsinki, particularly due to GAM's apprehensions regarding the potential for the Government to retract what has been granted. Consequently, the request for approval pertains to specific interests concerning Aceh. During that period, we sought advice, and the Government indicated that due to specific interests related to Aceh, a notable example presented by Mr. Ginting highlighted that the division of the province

¹⁶ Astim Riyanto, *Teori Negara Kesatuan*, Bandung: Yapemdo, 2010, p. 202.

¹⁷ Rossy Lambelanova, et.al., *Paradigma Baru Desentralisasi Asimetris*, p. 101-104. Amrizal J. Prang, *Desentralisasi Asimetris Aceh, Konteks Konsultasi dan Pertimbangan Gubernur dan Dewan Perwakilan Rakyat Aceh*, Banda Aceh: Bandar Publishing, 2020, p. 151-152.

¹⁸ Halilul Khairi, et, al., Traditional in Modern: The Existence of Village Governance Indonesia, *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol.25 No. 1 (2025), p. 127

was merely an administrative process. However, one of GAM's primary concerns at that time revolved around issues pertaining to the Aceh Government. Consequently, the formulation necessitates approval. What are the reasons for the Government's acceptance of it? This matter pertains to the specific interests of a region that is quite restricted.¹⁹

Similarly, GAM Negotiator, Nur Djuli, articulated the rationale behind the terminology of "consultation and approval" to ensure that the Central Government's implementation of administrative policies in Aceh is not arbitrary, and that the powers granted to the Aceh Government are duly recognized and respected. The events that transpired during the Old Order concerning the essence of the "*Ikrar Lamteh*" involved the DI/TII under the leadership of Teungku M. Daud Beureueh and the Central Government. This situation was marked by unfulfilled expectations, particularly in relation to the implementation of Islamic law, which ultimately led to a rebellion.²⁰

Ahmad Farhan Hamid states that the aim of the governor's consultation and evaluation of the Central Government's administrative policies, which are directly linked to the Aceh Government, is to eliminate any lingering impressions and perceptions reminiscent of the Old Order, New Order, and Reform eras. Whenever a new policy is issued, any existing authority is revoked, often without the Aceh Government being informed. In the meantime, Setia Budi indicates that the rationale for reinforcing the governor's authority in consultation and approval processes is to ensure that the interests of Aceh are adequately represented. Mawardi Ismail stated that the aim of the consultation and the governor's considerations is to offer insights to the Central Government regarding the policies established in Aceh.²¹

Execution of Administrative Policy

According to Article 1 number 10 of Presidential Regulation No. 75 of 2008, it states: Administrative Policy refers to a policy that is directly associated with the Aceh Government, in accordance with Law Number 11 of 2006 regarding the Aceh Government. This includes matters such as regional expansion, the establishment of special areas, and the planning for the creation and modification of laws and regulations that pertain directly to the Aceh region. Article 1 number 11 states: Those directly associated with the Aceh Government

¹⁹ Risalah Rapat Panitia Khusus DPR-RI tentang RUU Pemerintahan Aceh, Rapat Kerja, Masa Persidangan III, Tahun Sidang 2005-2006, dalam Acara Penjelasan Pemerintah RI terhadap RUU Pemerintahan Aceh, Jumat, 24 Februari 2006, p. 55-56.

²⁰ Interview with Nur Djuli, delegation of the MoU Helsinki of the GAM side, 4 February 2022.

²¹ Interview with Mawardi Ismail, the Former Dean of the Faculty of Law, Syiah Kuala University and the consultation team member of the Aceh Government, on 5 February 2023.

include the International Agreement Plan, the Law Formation Plan, and the Administrative Policy to be developed, the content of which specifically addresses regulations pertaining to Aceh.

Article 1 number 13 outlines that consultation involves a series of communication activities, including correspondence or meetings, between the initiator from the Head of the Department or Non-Departmental Government Institution and the DPR-RI, as well as the Head of the DPRA or the Governor of Aceh. The purpose of this process is to achieve a mutual understanding regarding plans for International Agreements, Law Formation, and Administrative Policies that are directly associated with the Aceh Government.²² Additionally, Article 1 number 14 articulates: "Consideration is a documented opinion from the Governor or DPRA directed to the DPR Head of the Department/Non-Departmental Government Institution initiator, intended to serve as input for an International Agreement Plan, Law Formation Plan, and Administrative Policy that pertains directly to the Aceh Government."

The Presidential Regulation No. 75 of 2008 indicates that the administrative policy is not constrained. Sofyan Jalil, during the dialogue regarding the Aceh Government Bill with the DPR-RI, expressed: We envision the special interests concerning the expansion of the Aceh region. The extreme example we discussed at that time, such as renting an island for a foreign base, falls under the purview of international relations, which is the domain of the Central Government. Consider the possibility that Simeulue Island might one day lose its autonomy in foreign policy due to global political machinations, potentially leading to a scenario where it could be leased as a foreign military base. In this scenario, obtaining approval from the Aceh DPR is essential. Furthermore, if the nuclear energy policy is to be implemented in Aceh, it requires the endorsement of the Aceh Government. There are also apprehensions regarding the designation of the Sabang free port as a special area, raising concerns that the refill decision may necessitate approval from the Aceh DPR...."²³

During its implementation, Mawardi Ismail noted that there was a process of consultation and consideration between the Aceh Government Consultation Team and the Government Team (Initiator),²⁴ rather than reaching an agreement on the substantive discussion of the PP and Perpres. Rather, reaching a consensus

²² Dahlia Darida, et. Al., Legal Protection for Disputing Parties Through the Aceh Customary Court, *al-Ihkam: Jurnal Hukum dan Pranata Sosial*, Vol 15 (1), (2020), p. 4.

²³ Minutes of the DPR-RI Special Committee Meeting on the Aceh Government Bill, Working Meeting, Session Period III, Session Year 2005-2006, in the Explanation Event of the Indonesian Government on the Aceh Government Bill, Friday, February 24, 2006, p. 56.

²⁴ Khamami Zada, Sharia and Islamic State in Indonesia: Constitutional Democracy: an Aceh Experience, *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol 23 No. 1, 2023, p. 5. Ahmad Musonnif, et, al., Government Position in Religious Authority Contestation in Indonesia: Reviewing the Government Authority in Demermining the Beginning of Islamic Months, *De Jure: Jurnal Hukum dan Syari'ah*, Vol. 16, No. 2 (2024), p. 346.

on the format of meetings across different regions. The aforementioned opinion indicates that the administrative policies of the Central Government, which directly pertain to the Aceh Government, extend beyond the provisions outlined in the Explanation of Article 8 paragraph (3) and Perpres No. 75 of 2008. Furthermore, the future dynamics between the Central Government and the Aceh Government, particularly with the implementation of asymmetrical decentralization (special autonomy), are likely to produce additional legal challenges.

The Role of Governor in Consultation and Consideration

According to Article 7 of the Presidential Regulation No. 75 of 2008, the Head of the Department or Non-Departmental Government Agency is required to submit ideas, concepts, and draft administrative policies to the Governor, along with the necessary supporting documents, for consultation and consideration. In addition, it is clarified that the drafting team, which represents the Head of the Department or Non-Departmental Government Agency, is tasked with presenting to the Governor either on the initiative of the Department or Non-Departmental Government Agency or at the Governor's request.

Article 8 specifies that the Governor must deliver written considerations regarding the draft administrative policy within a maximum timeframe of 30 (thirty) working days from the date the administrative policy plan is received. Should the Governor be unable to furnish consideration, upon the Governor's request, the Government will grant an extension not exceeding a maximum of 15 (fifteen) working days. During the extension period, the Governor does not offer consideration; therefore, the Head of the Department or Non-Departmental Government Agency initiating the process may proceed with the formulation of administrative policies. In the interim, Article 9 specifies that the Governor's considerations shall be presented as proposals aimed at enhancing the draft administrative policy, complete with justifications and relevant supporting documents. In such a case, if the governor's considerations cannot be fully addressed or are only partially addressed, the Head of the Department or Non-Departmental Government Agency will initiate discussions with the Governor.

The Central Government has implemented an administrative policy involving the establishment of 10 regulations and 3 presidential decrees that are directly associated with the Aceh Government. In this context, it is crucial to recognize the role of the Aceh governor. According to Farhan Hamid, the essence of the administrative policy outlined in Article 8 paragraph (3) suggests that the Central Government may exercise its six absolute authorities in the future. This includes enhancing the international security system at sea by bolstering its Navy in Aceh to ensure safety for both the community and the state, and such actions

should be undertaken with the consultation and consideration of the Aceh governor.²⁵

Subsequently, Setia Budi noted that during the consultation and deliberation on various PP (the Government Regulation) and Perpres (The Presidential Regulation), under the leadership of Governor Irwandi Yusuf from 2007 to 2012, a Consultation Team was established by the Aceh Government. This team was chaired by the Aceh Regional Secretary and comprised members from the Aceh Government bureaucracy, as well as academics, practitioners, and representatives from NGOs. The dialogue regarding PP and Perpres in relation to the Aceh Government, initiated by the Ministry, is coordinated by the Ministry of Home Affairs, with subsequent involvement from other relevant Departments or Ministries, taking place in Jakarta.²⁶

Setia Budi also noted that with the consultation and consideration of the governor, the governor's role significantly impacts the communication of Aceh's interests. This leads to beneficial outcomes in the relationship between the Central Government and the Aceh Government, particularly in enhancing trust and mutual understanding concerning the determination of the substance of PP and Perpres. While certain substances may exhibit limitations at times. The core finding is that certain substances align with the UUPA and the Helsinki MoU. To date, the following has been established: 5 (five) PPs and 3 (three) Perpres, as detailed in the table below:

Table 2: PP and Perpres directly related to the Government of Aceh

| No. | Name | UUPA | PP & Perpres |
|-----|---|-----------|---------------------------|
| 1. | Protocols for Consultation and Deliberation on the International Agreement Framework, Legislative Formation Plan, and Administrative Policies | Pasal 8 | Perpres No.75 Tahun 2008 |
| 2. | Collaboration between the Aceh Government and Foreign Institutions or Agencies | Pasal 9 | Perpres No. 11 Tahun 2010 |
| 3. | Local Political Parties in Aceh | Pasal 95 | PP No. 20 Tahun 2007 |
| 4. | Criteria and Protocols for the Appointment and Termination of the Aceh Regional Secretary and the District/City Secretaries | Pasal 107 | PP No. 58 Tahun 2009 |

²⁵Interview with Ahmad Farhan Hamid, Member of the Special Committee for the Aceh Government Bill, Member of the Indonesian House of Representatives for the 1999-2004 and 2004-2009 Periods, and Deputy Chairman of the Indonesian People's Consultative Assembly for the 2009-2014 Period, December 15, 2022.

²⁶Interview with Setia Budi, Regional Secretary of Aceh, 2010-2012 period and Head of the Aceh Government Consultation Team, February 4, 2023.

| | | | |
|----|---|-----------|---------------------------|
| | in Aceh. | | |
| 5. | Collaborative Administration of Oil and Gas Natural Resources in Aceh. | Pasal 160 | PP No 23 Tahun 2015 |
| 6. | Delegation of governmental authority to the Sabang Regional Council. | Pasal 170 | PP No. 83 Tahun 2010 |
| 7. | National Government Authority in Aceh. | Pasal 270 | PP No. 3 Tahun 2015 |
| 8. | Transfer of the Aceh BPN Regional Office and District/City offices to the BPA and the Aceh District/City Land Office. | Pasal 253 | Perpres No. 23 Tahun 2015 |

Challenges in Implementation

While certain implementations have taken place, others remain unexecuted, facing challenges related to both formal and substantive legal issues. Initially, regarding formal legal considerations, encompassing:

- 1) Five PPs ordered by UUPA remain undetermined, specifically: i) the establishment of special areas aside from free trade and/or free ports. (Article 4); ii) protocols for executing the responsibilities and powers of the governor as an agent of the government. (Article 43); iii) establishment of standards, norms, and procedures for the development and oversight of civil servants in Aceh and district/city levels. (Article 124); iv) The payment of zakat serves to decrease the total income tax liability for taxpayers. (Article 191-Article 192); v) the designation of Aceh, along with the titles of officials within the Aceh Government. (Article 251).
- 2) The creation and determination were executed without the governor's consultation and consideration:
 - a. The establishment of PP No. 77 of 2007 regarding Regional Symbols was communicated by the Governor of Aceh, Zaini Abdullah, to the Ministry of Home Affairs via Letter Number 180/20378 on April 5, 2013. The letter indicated that the formation process lacked proper consultation and consideration by the Governor, rendering it unjust and inconsistent with Article 8 paragraph (3) of the UUPA.²⁷
 - b. The establishment of the Regulation of the Minister of Energy and Mineral Resources No. 25 of 2015 pertains to the delegation

²⁷ Biro Hukum Setda Aceh, *Memorie van Toelichting, Pembahasan Qanun Aceh Nomor 3 Tahun 2013 tentang Bendera dan Lambang Aceh*, Banda Aceh, 2016.

of authority for granting licenses within the mineral and coal mining sector, aimed at facilitating an integrated one-stop implementation process under the jurisdiction of the Head of the Investment Coordinating Board. Consequently, on September 27, 2019, the Governor of Aceh, Nova Iriansyah, initiated a judicial review (JR) or material test of the Regulation at the Supreme Court (MA).

Nonetheless, the Supreme Court Decision Number 75/P/HUM/2019, dated October 28, 2019, dismissed the JR. In the legal considerations, paragraph 9, it is stated: "... even though the authority has been delegated, it can be retracted by the authority holder if the implementation does not meet the expectations of the authority giver and does not conflict with higher regulations, specifically Law Number 11 of 2006 concerning the Government of Aceh..."

In the considerations outlined in paragraph 10, one of the three judges, Is Sudaryono, presented a dissenting opinion, highlighting the following points: 1) Aceh is recognized as a special region under the UUPA; 2) Article 8 paragraph (3) stipulates that administrative policies of the Government concerning Aceh must be developed with the consultation and consideration of the Governor; 3) The delegation of authority to issue permits in the mineral and coal mining sector to the Head of the Investment Coordinating Board presents a conflict of interest, leading to legal uncertainty and contradicting the UUPA, necessitating its cancellation.

- 3) Ambiguity in the administration and issuance of permits for mineral and coal natural resources between the Central Government and the Aceh Government. On June 21, 2021, Nova Iriansyah, the Governor of Aceh, formally submitted an objection to the Ministry of Home Affairs via Letter No. 543/11240 concerning the special authority for the management of minerals and coal in Aceh. On July 22, 2021, the Minister of Home Affairs issued a response via Letter No. 118/4773/OTDA, indicating that the management of minerals and coal in Aceh falls under the jurisdiction of the Aceh Government, as outlined in Article 156 and PP No. 3 of 2015. However, the implementation of this management is to adhere to the regulations established by the central government.
- 4) The Central Government and the DPR-RI failed to engage in consultation with the DPRA regarding the establishment of Law No. 3 of 2020, which amends Law No. 4 of 2009 concerning Mineral and Coal Mining. Notably, certain aspects of this law are directly pertinent

to the governance of Aceh. Similarly, the establishment of Law No. 7 of 2017 regarding General Elections includes provisions that annul certain articles of the UUPA related to the Aceh KIP and the Aceh Panwaslih. Consequently, a JR was conducted by the DPR and the Aceh KIP to the Constitutional Court (MK). The MK Decision No. 61/PUU-XV/2017 and Decision No. 66/PUU-XV/2017 resulted in the revocation and annulment of the articles governing the Aceh KIP and the Aceh Panwaslih, citing their inconsistency with Article 28D paragraph (1) of the 1945 Constitution and the legal ambiguity surrounding the applicability of the UUPA.²⁸

The Constitutional Court's ruling, which declares a law non-binding due to its contradiction with the 1945 Constitution of the Republic of Indonesia, simultaneously establishes a new legal context. Should the government or other state institutions fail to adhere to a decision that has been rendered null and void, lacking any binding legal force, such an action constitutes an unlawful act.²⁹

- 5) There are no penalties for delays in the implementation of the UUPA regulations (special PP for Aceh).

Secondly, challenges to execution regarding material and legal factors include:

- 1) The content of PP No. 23 of 2015 and Perpres No. 23 of 2015 does not align with the UUPA. On July 3, 2015, Zaini Abdullah, the Governor of Aceh, submitted a letter to the Ministry of Home Affairs, identified as Letter Number 188/15497, advocating for a revision of both PP and Perpres. Additionally, the Ministry of Home Affairs, in response to the letter from the Governor of Aceh, as indicated in Letter Number 188/5725/SJ dated October 12, 2015, stated that the two regulations were not part of the planning program for the compilation of government regulations and presidential regulations.
- 2) There is a lack of clarity between the Head of the Department/Non-Departmental Government Institution, who is the initiator, and the Aceh Government Consultation Team concerning the substance of the UUPA in relation to other laws and regulations.³⁰

In relation to the aforementioned issues, it was affirmed by the Acting Head of the Legal Bureau of the Aceh Regional Secretariat, Dekstro Alfa, that certain implementing regulations of the UUPA, specifically PP and policy regulations, have yet to be established by the pertinent Ministry.

²⁸Amrizal J. Prang, *Desentralisasi Asimetris Aceh*, p. 151-152.

²⁹Amrizal J. Prang, "Implikasi Hukum Putusan Mahkamah Konstitusi," *Kanun Jurnal Ilmu Hukum* No. 53, Th. XIII, (2011), p. 85-86.

³⁰Interview with Setia Budi, the secretary of the province 2010-2012 period and the chair of the Aceh Government Consultation team, February 4, 2023.

It appears that certain aspects of the formation of PP were not discussed with the Governor. Similarly, concerning Law No. 3 of 2020 and Law No. 7 of 2017, as stipulated in Article 8 paragraph (2) and Article 269 paragraph (3) of the UUPA, it is imperative that the Government and the Indonesian House of Representatives consult and obtain input from the DPRA. It is indeed accurate that the Aceh Government has sought a revision of the substance of PP No. 3 of 2015 and Presidential Regulation No. 23 of 2015, as the content does not align with the UUPA. Nevertheless, there remains a lack of clarity regarding the formation of the remaining PP, and there is no confirmation on when this certainty will be established.”³¹

- 3) The policy assessment carried out by the DPR-RI as an institution authorized to carry out supervision (controlling), has not been running optimally. According to Farhan Hamid, supervision was once carried out by the DPR-RI by the UUPA Monitoring Team, around 2009 and had summoned the Government represented by the coordinating minister and related ministers, using soft supervision, only summoning and questioning its implementation.³² Likewise, the Team Leader Priyo Budi Santoso, Deputy Chairman of the DPR RI, in 2014 will evaluate a number of issues. Regarding the report that a number of PPs and Presidential Regulations mandated by the UUPA have not been completed, it was agreed that a coordination meeting with the government was needed. However, up to recently there has been no change, even the follow-up working visit, on October 23, 2017, tended to supervise the implementation and utilization of special autonomy funds, not related to the implementation of special PPs and Presidential Regulations.³³

Effective Implementation

Satjipto Rahardjo posits that the implementation of law within the society is not instantaneous or straightforward. There are at least four essential steps that must be fulfilled to ensure that laws, rules, or provisions operate effectively: a) the presence of law enforcement officials or apparatus; b) the existence of individuals or communities engaging in legal acts; c) the awareness of these individuals regarding the regulations; and d) the actions of these individuals, as

³¹ Interview with Dekstro Alfa, acting chair of the Legislative Section in the Law Bureau of the Aceh Province on 15 April 2024.

³² Interview Ahmad Farhan Hamid, Member of the Special Committee for the Aceh Government Bill, Member of the Indonesian House of Representatives for the 1999-2004 and 2004-2009 periods, and Deputy Chairman of the Indonesian People's Consultative Assembly for the 2009-2014 period, December 15, 2022.

³³ <https://www.dpr.go.id/berita/detail/id/18088/t/javascript>, Accessed, on July 25, 2024

subjects or objects of law, in accordance with the law.³⁴

In the context of the principle of the rule of law, Jimly Assiddiqie identifies three targets: 1) aspects of governance by law, 2) procedural aspects, and 3) substantive values. Within the procedural aspects, there are three scopes of functions: the function of law making, the function of law applying, and the function of law enforcement. To effectively implement the principle of the rule of law, it is essential to fulfill the requirements across all three functions simultaneously.³⁵

In examining the procedural aspects, it is evident that the authority of consultation and consideration of the Governor has faced challenges in effective implementation. The principle of the rule of law, both in formal and material juridical matters, has not been realized adequately. Regarding law-making, there remain PPs and *beleidsregel* that are yet to be established.³⁶ Furthermore, in the application of law, there is a notable dissonance between the substance of the PP and *Perpres* and the UUPA, alongside contradictions with the authority of the Aceh Government.

Achmad Ali stated that the effectiveness of a legal regulation hinges on the optimality and professionalism of law enforcement officers. This encompasses the entire process, beginning with the creation of the regulation, its socialization, and the enforcement stages, which involve legal discovery through reasoning, interpretation, and construction, as well as its application to specific cases.³⁷

To ensure the effective and proper implementation of the authority delegated to the Aceh Government (Governor), several key factors must be considered: 1) the political will of the Central Government to maintain consistency in implementation; 2) the need for synergy in the relationship between the Central Government and the Aceh Government; 3) the establishment of collaboration in forming a consultation and consideration team involving the Ministry of Home Affairs and relevant ministries alongside the Aceh Government, which should function as an *ad hoc* team to achieve a shared understanding of the authority outlined in the UUPA; and, 4) the importance of

³⁴ Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2000, p. 70-72.

³⁵ Jimly Assiddiqie, *Pengujian Formil Undang-Undang di Negara Hukum*, Jakarta: Konstitusi Press, 2020, p. 36-42. Sepa Munawar, "Review of Law Enforcement in Indonesia," *Ahkam 2*, No. 1 (2023), p. 136-147.

³⁶ Hartati Hartati and Zainal Amin Ayub, "Jurisdictional Disputes between Central and Local Governments in the Management of Coal Mining," *Sriwijaya Review Law* 8, No. 2 (2023).

³⁷ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprodudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Jakarta: Kencana Prenada Media, 2009, p. 376-378. Saldi Isra, et.al., "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia," *Hasanuddin Law Review* 3, No. 2 (2017).

consistent oversight from the DPR RI.

Conclusion

The delegation of authority for consultation and consideration by the governor regarding administrative policies of the Central Government that are directly related to the Aceh Government is a special authority. First, philosophically this authority is in accordance with Pancasila, recognizing diversity in the motto of *Bhineka Tunggal Ika* and the principle, consultation and consideration of the governor, is the intention of "deliberation", in the fourth principle of Pancasila. Second, sociologically, the demands of the Acehnese people are due to disharmony between the Central Government and Aceh, since the Old Order, New Order and Reformation era due to the Central Government's inconsistency in implementing the authority of the Aceh Government. Thus, with this authority, the trust of the Acehnese people is restored. Third, morally, there is the Helsinki MoU, which was agreed upon between the Central Government and GAM. The authority of consultation and consideration of the governor regarding the administrative policies of the Central Government that are directly related to the Aceh Government, becomes a facilitation forum between the Central Government and the Aceh Government. Thus, with this forum, the existence and relationship between the Central Government and the Aceh Government become balanced. Obstacles to the implementation of consultation and consideration of the governor, namely: 1) differences in perception between the Central Government (Initiator) and the Aceh Government regarding the substance of the UUPA. 2) no sanctions are regulated for delays in implementing the UUPA, such as the formation of special PP and Perpres; 3) lack of political will of the Central Government and the Aceh Government in implementing the substance of the UUPA quickly and accurately. 4) weak supervision of the Aceh Special Autonomy Monitoring Team from the DPR-RI regarding the implementation of the UUPA. In fact, the Aceh Special Autonomy Monitoring Team tends not to run well. 5) lack of collaboration between the Central Government Consultation Team and the Aceh Government Consultation Team. In order for the authority to be implemented properly and effectively, it is necessary, among other things: 1) political will from the Central Government to be consistent in implementation; 2) synergy in the relationship between the Central Government and the Aceh Government; 3) collaboration in the formation of a consultation and consideration team between the Ministry of Home Affairs and related ministries with the Aceh Government, becoming an ad hoc team to gain a single perception and understanding regarding the existence and authority regulated in UUPA; and, 4) there needs to be consistency from the DPR RI in supervising the implementation of the formation and implementation of special regulations for Aceh.

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