

## **Aceh Expansion Mechanism By Constitution And Local Government Constitution Of Aceh**

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**Abstract:-** Grounded in the context of state laws Indonesia splitting Aceh into three provinces need an extensive review of the angle of law and politics, through the Political Law Indonesia in the constitution of the State, Act Local Government (Government Law), the Law on Governing Aceh (LOGA) and Memorendum Of Understanding (MoU) between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM).

**Keywords:** *MoU Helsinki*

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### **I. INTRODUCTION**

The issue of the division of Aceh into three Provincial emerged since 1999, but the plan is to sink from the surface Expansion in line with the enforcement of martial law and civil emergency in Aceh. Problems expansion plan Aceh re-emerged after the plenary session of the Parliament of the Republic of Indonesia (RI) at the date of January 22 2008 which mengendakan delivery of the opinion fraction by proposing 21 draft law initiative proposal of the Parliament of the Republic of Indonesia (RI) for division 21 regional district or province in Indonesia with produce decisions very spectacular from 10 (ten) fraction 7 (seven) faction approved the splitting Aceh into three provinces and three (3) faction, namely the National Mandate Party (PAN), Party of the Functional Group (Golkar) and party national revival (PKB) can be agreed with the proposal notes that are discussed in the next meeting.

Viewed from the reality of the issue of the division of Aceh into three provinces have always coincided with the general elections in Aceh, which raised pertanyaan, whether the purpose of the division of Aceh for the people's interests or the interests of the political elite who want to gain power. Such thinking is based on the statement of one of the Coordinator for Aceh division into three provinces, namely, Haji Rabusah, that behind splitting Aceh into three provinces there is a group of people who have an interest. Haji Rabusah also pessimistic about the division of Aceh into three provinces can be realized because of the expansion of regions in need of funds, the provincial government approval of the parent, on the Parliament of the Republic of Indonesia (RI), and the approval of the President of the Republic of Indonesia (RI). Judging from its requirements, the proposed division of Aceh into three provinces have not fulfilled these requirements into account.

Nonetheless, the bearer splitting Aceh into three provinces continue to urge the Parliament of the Republic of Indonesia (RI) in various ways such as lobbying the Members of Parliament of the Republic of Indonesia (RI), to mempekuat proposed splitting Aceh into three provinces some people brought to senayan. The agitation was continued until now that the Parliament of the Republic of Indonesia (RI) Act authorizing the expansion of Aceh.

Grounded in the context of state laws Indonesia splitting Aceh into three provinces need an extensive review of the angle of law and politics, through the Political Law Indonesia in the constitution of the State, Act Local Government (Government Law), the Law on Governing Aceh (LOGA) and Memorendum Of Understanding (MoU) between the Government of the Republic of Indonesia and the Free Aceh Movement (GAM).

### **II. FORMULATION OF THE PROBLEM**

Based on the background of the problems mentioned above, it can be formulated several problems, as follows:

1. Does the proposed expansion of Aceh submitted directly to the Parliament of the Republic Indonesi (RI) without going through the Governor of Aceh are in accordance with the legislation in force?
2. Does the Parliament of the Republic of Indonesia RI initiative to propose draft legislation without the approval of Parliament Redistricting Aceh Aceh are in accordance with the mechanism set out in the legislation?
3. What are the consequences if the central government adopted a policy that contrasts with the Memorandum of Understanding (MOU) Helsingki and the Constitution on Govermt of Aceh?

### **III. RESEARCH METHODOLOGY**

This study is a normative legal research using the approach of legislation (Statue Approach) and approach to history (hystorical). Approach to the legislation made to various laws that are the focus and central theme of this study. While the approach made history by looking at past events related to the theme of this study.

The data source for this study was obtained from the research library (Library Research). The technique of collecting data is literature by studying the primary legal materials, secondary materials and tertiary legal materials. Primary legal materials, among others: Law of 1945, Constitution on local Government, the Law on Government of Aceh and the Memorandum of Understanding (MoU).

Secondary law is among others, the writings of scientific experts dealing with the issues to be studied or related to the primary legal materials, including textbooks, papers, journals and research results. Hereinafter referred to tertiary legal materials is like the Great Indonesian Dictionary, Dictionary Dutch-Indonesian Legal Terms.

### **IV. DISCUSSION**

Before discussing the division of Aceh into three provinces of the Indonesian legal and political perspective first bit discussed the concept of the Rule of Law. Indonesia is a country of law and democracy. the concept of State of Law Indonesia, following the opinion of Garry F.Bell in his book *The New Indonesian Laws Relating to Regional Autonomy Good Intentions, Law Confusing*, in the context of a state of law, that the law states Indonesia closer to the continental legal concept (*rechtsstaat*), compared the concept of Rule of Law in the countries of Anglo-Saxon. Indonesia has formally since 1945, through the 1945 pre-amendment, has declared itself as a state of law is evident in the 1945 explanation never expressly stated "Indonesia is a state based on law and not a state based on mere power". Then the concept of Indonesian law states reaffirmed by the 1945 amendments in Article 1, paragraph 3 which states "Indonesia is a country of law".

Observe the formulation of the concept of legal state of Indonesia, Ismail Sunny noted four conditions constitutional state formally that is our obligation to carry out in the Republic of Indonesia: 1) human rights, 2) the division of power, 3) the rule of law, and 4) Judicial Administration , In line with the description of the concept of the legal state, there are two basic substance which is very closely related, namely: 1) the existence of understanding the constitution (constitutionalism), 2) democratic system of government.

Nomos mean values or norms are assumed as a concept which recognizes that the ruling actually not a person but the law itself. That is, the leader of a country that is not really a person, but a system of rules that must be used as a handle by anyone who happens to occupy positions of leadership. This is the essence of understanding of the rule of law and the rule of law (*rechtsstaat*) according to Continental European tradition.

Indonesia is a democratic constitutional state, both must move forward in a balanced way, because the law and democracy is a bilingual single, democracy must be acknowledged by law that do not lead to anarchism, while on the other hand, the law must be based on democracy, so as not to lead to otoritarisme, or absolutism, or totalitarianism.

Related to the mechanism of regional expansion in Indonesia can be done in two ways, first through the government, both through Parliament. Legally regional expansion mechanism based on the Law on Regional Government (Local Government Act). The Regional Government Law No. 23 Year 2014 regional expansion are described as follows:

- a. Regional breakdown of provinces or districts / cities to be two or more new area;
- b. Merging parts of Regions Regions are coupled into one (1) Regions province into a new area.

The process is done through the Regional Expansion stage Preparation area. Preparation prior forming regions must meet the basic requirements and administrative requirements. The basic requirements include, the requirements of local capacity and regional requirements. Capacity requirements of the area is the region's ability to thrive in the public welfare. While the regional requirements are:

- a. minimum area;
- b. total population;
- c. borderline;
- d. regional coverage; and
- e. minimum age limit area

Furthermore the administrative requirements for the province include:

- a. Mutual consent regency / city with a regent / mayor who will be the Regional Preparatory Coverage province;
- b. Parliament approval together with the governor of the province of the parent holding provincial Regions.

After fulfilling the basic requirements of territorial and administrative requirements, Establishment of the Regional Preparatory proposed by the governor to the Central Government, the House of Representatives of the Republic of Indonesia, or the Regional Representative Council of the Republic of Indonesia. Under the proposal, the Central Government to assess the fulfillment of the basic requirements of territorial and

administrative requirements as set out in the legislation. Results of the assessment are then delivered by the central government to the House of Representatives of the Republic of Indonesia and the Regional Representative Council of the Republic of Indonesia.

Based on the proposed establishment of staging areas that have been approved by the House of Representatives of the Republic of Indonesia and the Regional Representative Council of the Republic of Indonesia, the central government establish an independent review team assigned to conduct a review of the basic requirements of the Regional capacity. Independent teams study results submitted to the Central Government for further consultation to the House of Representatives of the Republic of Indonesia and the Regional Representative Council of the Republic of Indonesia. The results of these consultations into the consideration of the Central Government in determining the feasibility of the establishment of the Regional Preparatory stipulated by government regulation.

As for the sources of funding of governance at the Regional Preparatory derived from:

- a. Preparation of Regional development aid from the State Budget;
- b. Part of the income of the parent Regions revenues derived from the Regional Preparatory;
- c. Revenues from the equalization fund parent Regions; and
- d. Other legitimate sources of income in accordance with the provisions of the legislation.

Funding sources in the framework of regional implementation of Preparation as mentioned above, shall be reflected in the budget revenue and expenditure parent Regions. In terms of implementation preparation area, the Central Government is obliged to provide guidance, supervision, and evaluation of the Regional Preparatory during the Regional Preparatory. While the House of Representatives of the Republic of Indonesia and the Regional Representative Council of the Republic of Indonesia also conducts supervision of the Regional Preparatory. Furthermore, the central government must deliver developmental coaching, supervision, and evaluation of the Regional Preparation of the House of Representatives of the Republic of Indonesia and the Regional Representative Council of the Republic of Indonesia.

After the deadline for future preparation area in a period of 3 (three) years, the Central Government conduct a final evaluation of the Preparation area. The evaluation results of the end of the consultation to the House of Representatives of the Republic of Indonesia and the Regional Representative Council of the Republic of Indonesia. If the results of the final evaluation as feasible, the area of preparation upgraded to a new area and are set by law.

Thus, the mechanism of each area willed conduct regional expansion. What if in the process of regional expansion not through mechanisms that have been set in legislation, will certainly lead to consequences of all aspects of political, legal, economic, social and cultural, which is ultimately the goal of regional expansion will impact the misery is not the welfare of society as autonomy goals and objectives of its own regional expansion.

With regard to the proposed mechanism of regional expansion through the initiative of the Indonesian Parliament on the draft law establishing regional, legally based on the Constitution of the Republic of Indonesia (RI Constitution) Year 1945. Law No. 17 Year 2014 concerning Pemusyawaratan People's Assembly, the House of Representatives, Regional Representatives Council, and the Regional Representatives Council (MD3), Law on the Establishment of regulatory legislation (P3) and the rules of Parliament.

Article 20A of the 1945 Constitution (Amendment) that the Indonesian Parliament has legislative function. RI through the legislative function of Parliament is entitled to file and shape legislation. One is the Regional Expansion Draft. Proposed bill may come from **M**Ps, commissions, and fractions. Then the draft proposals submitted to the leadership of the Parliament, then the leadership to bring the proposed bill to the plenary meeting of Parliament. If 2/3 (two thirds) of the lawmakers present approved it, the proposal included in the Draft National Legislation Program (Prolegnas). In the end, the appropriate mechanism in order to set the rules of parliament, the bill was discussed with the government for approval together. Thus, the mechanism of submission of the initiative proposed bill terhadap Parliament.

See the usage rights mechanisms parliamentary initiative against the very instant Regional Expansion and political, many areas that have divided it is unable to perform government functions well. That is because the Expansion of area under the guise of community interests, in terms of just sheer political elite interests that want to occupy political office and divide the sheer power.

Issues relating to the division of the province of Aceh studied from a legal and political, have different colors from other regions in Indonesia. Aceh is a special and privileged areas in the Unitary Republic of Indonesia. Aceh region expansion mechanism in addition to referring to the Government Law No. 23 of 2014, also refers to the Aceh Government Law No. 11 Year 2006 and the MoU.

Historically the existence of Aceh within the Republic of Indonesia has a very long history since Aceh was once a five Islamic empire in the world. The unification of the Republic of Indonesia Aceh still dipemalahkan legality among international legal experts. Aceh conflict against the central government

occurred three phases. The first conflict began in 1945 to 1946 known as the war events Cumbok, consequently many nobles Aceh were killed, both starting from September 21, 1953 to May 9, 1962, known as the events of DI / TII As a result of not less than 4000 people were killed. The third began on December 4, 1976 with GAM declared in mountain Halimon Pidie by Tengku Hasan Tiro with the aim to secede from the NKRI, ending on August 15, 2005 with the signing of the MoU between the GoI and the GAM in Helsinki. In the third phase is also claimed that quite a lot.

The inception of the MoU on the consideration of the philosophical, sociological, juridical, political, and natural disasters. Therefore, the MoU should be a source of law in making regulations relating to Aceh. The idea of splitting Aceh into three povinsi appear before and sudah the MoU Helsinki. However, the division proposal hampered by administrative requirements are not fulfilled, the approval of Parliament Aceh and Aceh Governor. Aceh government assess the division of Aceh Being three Aceh province special autonomy damage and the contents of the MoU.

Thus, When analyzed from the juridical aspect departing from the decision of the plenary session of the Parliament of Republic of Indonesia On January 22, 2008 which was scheduled delivery of the opinion fraction of the 21 (twenty-one) Bill proposed the initiative of Parliament RI for regional expansion district or province in Indonesia resulted in the decision approve splitting Aceh into three province without the consent of the Aceh administration. Tesebut policy is contrary to the principles of the constitutional state.

Article 1 (3) 1945 (Amendment) explains that "Indonesia is a State of Law", the formulation in Article 1, there are two principles that are related to each other, namely the principles of democracy konstiusional set out in Article 1 Paragraph (2), and the rule of law set forth in Article 1 Paragraph (3). The association showed that the sovereignty of the people and the rule of law in the state constitution dipersandingkan Indonesia. Konstek law in the country in general, every aspect of government action should be based on law. It means that state institutions can not act without the basis of the authority of government and state agencies can not perform government action if such action is contrary to applicable law.

In the context of the State Law Indonesia as defined in Article 1 Paragraph (3) of the 1945 Constitution after the amendment, it is understood that Indonesian law oriented kontinentalis not understand Anglo Saxonis. Kontinentalis understanding considers that the policy is derived from the law, even sometimes liken policies and laws. While the Anglo Saxonis understanding of the view that the policy is derived from democratic politics. Therefore, any policy that is decided by the Indonesian state institutions such as the Parliament RI policy should be oriented to form Kontinentalis not Anglo Saxonis policy. That, due to the political system in Indonesia is still very berorientasi on kontinental system.

Article 7 of Law No. 12 Year 2011 on the Establishment of legislation, regulating levels of Indonesian policy as follows:

- a. UUD 1945
- b. Law / government regulations in lieu of law;
- c. Government regulations;
- d. Presidential decree;
- e. Local regulation

From the level of the above, it is known that Indonesia adheres kontinentalis pattern. Thus, if the state institutions like the Indonesian parliament took the initiative for the proposed expansion policy Aceh without the requirements of Administrative and without prior consultation and requested consideration Aceh Government as stipulated in the legislation in force, it can not be justified.

Administrative requirements as stated in the Local Government Act No. 23 of year 2014 is as follows:

Articel 37

Administrative requirements as referred to in Article 33 paragraph (3) shall be prepared by the sort order as follows:

- a. Regions province to include:
  1. mutual consent regency / city with a regent / mayor who will be the Regional Preparatory Coverage province; and
  2. the approval of the provincial parliament holding together the Regional provincial governor province Indonesia.

Article 38

(1) The establishment of the Regional Preparatory referred to in Article 33 paragraph proposed by the governor to the Central Government, the House of Representatives of the Republic of Indonesia, or the Regional Representative Council of the Republic of Indonesia after fulfilling the basic requirements territoriality referred to in Article 34 paragraph (2), and administrative requirements as referred to in Article 37.

Under the provisions of Article 37 and 38 of the Regional Government Law above can be seen that the act of proposing it directly to Parliament RI is inprosudural act as the authority to submit a proposal to Parliament is the authority of the Governor of Aceh. In addition, the provision of regional expansion mechanism according to the Government Law No. 23, 2014 that the proposed expansion of the area only through government alone. While the proposal of regional expansion through the initiative of the Indonesian Parliament, since the enactment of Government Law No. 23 Year 2014 can not be used anymore due to the formation of new autonomous regions formed beforehand preparation area, which is determined by government regulations. The length of the preparation area at least 3 (three) years and a maximum of 5 years.

Similarly, Parliament RI policies directly related to Aceh should be guided by Article 8 of Law PA and MoU Helsinki. In Article 8 of the Law PA defined as follows:

1. The establishment plan into law by the House of Representatives relating directly to the government of Aceh done with consultation and consideration parlemen Aceh.
2. Administrative policies directly related to the Government of Aceh that will be made by the Government in consultation with and consideration of the Governor

Thus, the policy of the Indonesian parliament in the establishment plan of legislation relating directly to Aceh and government policies relating Aministratif lansung to Aceh without consultation and consideration of local government in Aceh, have consequences. One of them is a law that was born without consultation and consideration of Aceh parliament can in Judicial Review.

Relating to the Helsinki MoU theoretically MoU include international agreements, but legally the MoU are still different views of the experts. According Cakra Arbas in Indonesian state administration, the MoU is not International agreements, but it is a promise for an agreement that does not have binding force. Such thinking, departing from the legal context of Indonesia are very thick with kontinetalis flow, that the law is legislation.

However, the Vienna Convention 1969 and Act No. 24 of 2000 which requires no particular klatur nomen in an agreement, then the use of nomen klatur MoU would be binding on the parties to the agreement as a whole if they menyutujuinya and written in a clause of the agreement.

Regardless of dissent, clearly MoU binds morally and politically. Morally attachment in a treaty would be fatal if the parties violated. what a deal was witnessed by international parties, namely, the European Union. Political consequences, international support against those who violate will be reduced.

Relating the wording of Article 8 BAL can not be understood to be the intent of Article 8 is to just look tesknya alone, but must be known in what tesk atmosphere was created, thus, can understand what the intent of the Act PA. Article 8 of the Law PA contains a definition of "consent" because Article 8 derivative of points MOU Helsinki 1:12 c. Basically tesk "consultation" together with tesk "approval" that says is "the decisions of the House of Representatives of the Republic of Indonesia with regard to Aceh will be done in consultation with and consent of the legislature of Aceh". In order to maintain the authority of the Republic of Indonesia in the form of state kesaatuan tesk "consent" is not written explicitly but implicitly the sentence is still there.

Historical consequences of Norma BAL remaining problems between the central and Aceh, what if erroneous understanding of Article 8 of the Law PA, will be fatal to the integrity of the Republic. in addition, Aceh expansion policy could trigger a new conflict in the Aceh conflict either horizontally or vertically, in turn disrupted the national stability and people's welfare can not be realized

The potential for conflict in Aceh is very strong when splitting Aceh accommodated by the Indonesian government as deputy Governor of Aceh revelation Muzakir Manaf familiarly called Mualem as representatives of the central government in Aceh. Muzakir Manaf called on the group proposing the division of Aceh in order not to continue to urge the center in ways that can not be justified legally because the issue of the division of Aceh could lead to a split of the Acehnese.

Seeing the reality of the current political situation in Aceh, the Indonesian government is not possible to accommodate the establishment of Aceh into three provinces because it will disturb national stability. In view of the angle of the horizontal and vertical conflict is impossible goals Expansion of regional autonomy and the objective can be achieved because kemudharatan area greater than kemaslatan society. Therefore, the expansion of Aceh in terms of Indonesian Legal Politics can not are conducted.

## **V. CONCLUSION**

Based on the descriptions above discussion, it can be deduced and advice.

1. The action initiators of splitting Aceh into three provinces by proposing directly to the House of Representatives can not be justified by the law as opposed to the mechanism set out in the legislation.
2. Policies of Parliament when it decided to proposes laws without parliamentary approval carving Aceh Aceh is not justified legally because the decision was Inprosudural.

3. Expansion of Aceh contains Potential Conflict Vertical (Aceh and Central) and Conflict Horizontal (Supporting Expansion and Support Integrity of Aceh).
4. Expansion of Aceh damage Helsinki MOU.
5. Expansion of Aceh resulted LoGA No. 11 Year 2006 should be revised or replaced