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Juridical Analysis of the Amendment to the Qanun of Bireuen Regency Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM)

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Abstract

Law Number 23 of 2014 concerning Regional Government and Government Regulation Number 54 of 2017 concerning Regional Owned Enterprises mandates local governments to make adjustments to the form of business for existing regional companies to become Regional Public Companies or Regional Government Companies. So that the Regional Government of Bireuen Regency made changes to one of the regional companies, namely the Krueng Peusangan Regional Drinking Water Company (PDAM) to become the Krueng Peusangan Regional Public Drinking Water Company. This paper discusses the problems faced in changing the legal form of the Krueng Peusangan Regional Water Company to the Krueng Peusangan Regional Public

Water Company and how these problems can be overcome. The results of the study indicate that the amendment is intended so that local governments can improve the welfare of the people in their regions through Regional Public Companies. Changes and adjustments to the legal form of the Krueng Peusangan Regional Drinking Water Company to become the Krueng Peusangan Regional Public Drinking Water Company, as well as to provide the basis and guidelines in the preparation and discussion of the draft on changing the legal form of the regional drinking water company into a regional public company. The changes are also based on the principles of the formation of laws and regulations as regulated in Article 5 of Law no. 12 of 2011.

Keywords: Amendment, Qanun, Regional Drinking Water Company

1. Introduction

One of the goals of the Republic of Indonesia stated in the Preamble to the 1945 Constitution is "... to promote the general welfare and to educate the life of the nation....". This goal can be achieved by implementing development in all fields, including development in the economic sector.

Indonesia as a democratic country, of course the implementation of national economic development is based on economic democracy, in order to prosper all Indonesian people. This is understandable because without being based on economic democracy, the national economic power will be concentrated in one or a few groups which are feared to affect politics in Indonesia. In practice, the concept of economic democracy has been implemented in Law Number 19 of 2003 concerning State-Owned Enterprises (BUMD). Likewise in the regions by forming Regional Owned Enterprises (BUMD).¹

Law Number 23 of 2014 concerning Regional Government and Government Regulation Number 54 of 2017 concerning Regional Owned Enterprises mandates local governments to make adjustments to the form of business for existing regional companies to become Regional Public Companies or Regional Government Companies.²

As a realization of the above mandate, Bireuen Regency, which had previously established a Regional Drinking Water Company based on Bireuen Regency Qanun Number 31 of 2004, has planned to amend the Qanun. So that later the Krueng Peusangan Regional Drinking Water Company will turn into the Krueng Peusangan Regional Public Drinking Water Company.

¹ Teguh Setiadi, Urgensi Pengaturan Status Badan Hukum PDAM Tirta Pakuan Kota Bogor Menjadi Perusahaan Umum Daerah (PERUMDA), Pakuan Law Review, Vol. 5 Nomor 2, Desember 2019, p. 81

² Baren Sipayung, Penyesuaian Bentuk Hukum BUMD Pasca Pemberlakuan PP Nomor 54 Tahun 2017 Tentang BUMD, https://www.researchgate.net/publication/331988649_Penyediaan_Bentuk_Hukum BUMD_pasca_Pemberlakuan_PP_Nomor_54_Tahun_2017_tentang BUMD, accessed on March 4, 2022.

The change is not just a change in name (nomenclature), but how local governments can improve the welfare of the people in their regions through Regional Public Companies. This needs to be a concern of the local government, because the Regional Public Company which is one of the Regional Owned Enterprises (BUMD) has a strategic role in the current era of regional autonomy.³ Especially with “the development of the era of globalization as it is today, which demands that various business entities, both government/regional and private, compete with each other. Thus, the competition is conducted in a healthy manner by taking into account the rules and good governance. So far, both central and regional governments have the authority to form legal entities. The conditions are constitutionally fulfilling the spirit of the provisions of Article 33 of the 1945 Constitution in which the establishment of a business entity as a legal entity is intended for the greatest prosperity of the community”.⁴ Thus the local government establishes a regionally owned company in the hope of obtaining economic benefits for the region as well as providing services to the community. This is considering that in essence, Regional Owned Enterprises themselves have a strategic role for the region considering its dual function, namely one of the means for regional financial receipts and providing public services in the regions according to the type of business.

Based on the background described above, the problems that will be discussed in this paper are: What problems are faced in changing the legal form of the Krueng Peusangan Regional Water Company to become the Krueng Peusangan Public Water Supply Company and how these problems can be overcome. Furthermore, why is it necessary to draft a Qanun for Bireuen Regency as the basis for solving this problem.

2. Methodology

The research method used is a normative method based on a statutory approach, namely by reviewing and analyzing the relationship between this Draft Qanun and several laws that are related and relevant to the topic of the problem to be studied. The analytical method used is the critical analysis method through a comprehensive analysis approach. Types and sources of data used are secondary data, obtained through literature study. Secondary data sources come from primary legal materials such as applicable laws and regulations, secondary legal materials such as textbooks and so on as well as tertiary legal materials such as dictionaries, legal dictionaries and others. The data analysis technique was carried out deductively, all existing data were interpreted and described based on the applicable theories.

3. Results and discussion

The Qanun amendments to Qanun Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM) are intended to guarantee and protect the people's right to the availability of clean water on the one hand and the protection and rescue of

water resources on the other, as a form of fulfillment of the requirements for the principle of legality in the state of law "rechtstaat", which requires that the form of protection must be regulated in legal instruments, namely laws, and for regions in the form of Regional Regulations or Qanun. Regional regulations or Qanun are legal legitimacy for local governments in the implementation of accountable public services, namely public services based on law. In addition, water is a primary need for all community groups, both rural and urban communities, households, industry and non-industries.⁵

A. Hamid S. Attamimi⁶ stated that the theory of legislation is goal-oriented to explain and clarify the understanding of the makers, implementers, enforcers, and the public on the material of the law in a cognitive nature. This thinking emphasizes understanding the basics. Therefore, in making Qanun, it is necessary to understand the character of the norms and functions of the Qanun in the administration of local government.

If viewed from the applicable laws and regulations, it is hoped that these regulations will be effective. A statutory regulation can be said to be effective if it can be applied in people's lives, that is, the regulation can be implemented in society.⁷

Article 1 number 2 of Law no. 12 of 2011 concerning the Establishment of Legislations stipulates that laws and regulations are written regulations that contain legally binding norms in general and are formed or determined by officials or institutions authorized to do so, wherein this must go through a mechanism or procedure that has been established. specified in the applicable regulations. Likewise, regional regulations or qanuns are also formed by authorized officials or institutions, namely the Regional People's Representative Council together with the Government, which in this case is called the Aceh People's Representative Council (DPRA) for the provincial qanun and the Regency People's Representative Council. /City (DPRK) for Regency/City qanuns. This is an elaboration of Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which uses the phrase "divided into", i.e., the Unitary State of the Republic of Indonesia is divided into provinces and districts/cities, all of which have their own regional governments. and regulated by law.

The phrase “divided up” indicates that the power of the state is distributed among regions, thus giving the regions the power to manage their household. Therefore, this shows that the local government has a *regeling* (regulating) function.

⁵ Husain Latuconsina, *et al.*, Filterisasi Air Bersih dan Penyelamatan Sumber Mata Air di Desa Mulyoasri, Kecamatan Ampelgading, Kabupaten Malang, Agrikreatif (Jurnal Ilmiah Pengabdian Kepada Masyarakat), Vol. 8(1), Maret 2022, p. 121.

⁶ A. Hamid S. Attamimi dalam H. Rosjidi Ranggawidjaja, Pengantar Ilmu Perundang-Undangan Indonesia, Penerbit CV. Mandar Maju, Bandung, 1998, p.14-15.

⁷ Al Irsyad Gani, Suhaimi, Analysis of the Effectiveness of Sanctions for Violator of Health Protocols During the 2019 Corona Virus Disease Pandemic in Banda Aceh Municipality, International Journal of Advanced Multidisciplinary Research and Studies, Vol. 2(4), 2022, p. 881.

³ Yustinus Bere, Soeratno, Peran BUMD Terhadap Pendapatan Asli Daerah Di Provinsi Nusa Tenggara Timur (Studi Kasus Pada PD Flabamor), Tesis, Magister Ekonomika Pembangunan, Universitas Gajah Mada, 2009, p. 1.

⁴ Teguh Setiadi, Op. Cit.

With this function, viewed from the point of view of the "principle of legality" (government actions based on law) shows the authority of local governments to form regional regulations, as referred to in Article 1 point 7 of Law no. 12 of 2011, which states that the Regency/City Qanun is established by the DPRK with the mutual consent of the Regent/Mayor.

Juridically, the principles for the formation of laws and regulations are stated in Article 5 of Law no. 12 of 2011 covers the principles of: clarity of purpose, proper institutional or official formation, compatibility between types, hierarchies, and content material, can be applied or implemented, has efficiency and effectiveness, clear formulation, openness or transparency.

Thus, all levels of society have the widest opportunity to provide input in the formation of legislation. This is a form of community participation, because after all the purpose of the establishment of legislation is for the welfare of the entire Indonesian nation. If the principles in Article 5 of Law no. 12 of 2011 concerning the Establishment of the Legislation is used to review the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Water Company, it can be identified as follows:

1. The Principle of Clarity of Purpose, that the purpose of the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Water Company is to seek to harmonize with higher regulations and to create a climate of good corporate governance in public drinking water companies.
2. Appropriate Forming Officials or Institutions, that the Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Water Company will be formed jointly by the Regent and DPRK of Bireuen Regency.
3. Conformity between types, hierarchies, and content material, that the formation of the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Drinking Water Company, takes into account the hierarchy, types and materials contained.
4. Can be applied or implemented, the philosophical reason for the need for the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Water Company is intended to improve welfare and fulfill the community's right to clean water. The sociological reason for the need for the Qanun is in the context of improving the services of the Regional Public Water Company of Bireuen Regency.
5. Efficiency and effectiveness, that the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Drinking Water Company can be efficient and effective in improving the services of the Bireuen Regency Public Water Supply Company in order to meet the basic needs of the community for clean water.
6. Clarity of the formulation, that the establishment of the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Water Company still pays attention to the choice of words, equivalent words or the use of appropriate terms, systematics and language that is clear and easy to understand, vague and not complicated. convoluted, so

as not to give rise to various interpretations in its application or implementation in the field.

7. Openness, Establishment of the Bireuen Regency Qanun concerning the Establishment of the Krueng Peusangan Regional Public Water Company, starting from the planning stage of its formation, drafting, discussing by authorized officials or institutions, ratification or stipulation by authorized officials, and legislation is open, transparent and participatory.

The above principles serve as guidelines for the formation of the Draft Qanun of Bireuen Regency concerning the Establishment of the Krueng Peusangan Regional Public Water Company. The elaboration of these principles are: the principle of protection, the principle of humanity, the principle of nationality, the principle of kinship, the principle of the archipelago, the principle of justice, the principle of Bhinneka Tunggal Ika, the principle of equality and position in law and government, the principle of legal certainty, the principle of harmony, balance and harmony.

Thus, in the preparation of the draft Qanun of Bireuen Regency regarding the Establishment of the Krueng Peusangan Regional Public Drinking Water Company to replace the Bireuen Regency Qanun Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM), the principles that must be considered in the formation of these laws and regulations and used as a guide in its formulation, because this principle is the basis in the formation of a statutory regulation in Indonesia.

In order to meet the needs of the community for the availability of clean water that meets the standards, in Bireuen Regency there is already a Krueng Peusangan Regional Drinking Water Company (PDAM), which was established under the Bireuen Regency Qanun Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM). However, it is very unfortunate that PDAM Krueng Peusangan is only able to serve about 21% of the population of Bireuen Regency.

This situation can be understood because the condition of the means of production (WTP) in Bireuen Regency is the transfer of assets from North Aceh Regency to the Bireuen Regency Regional Government in the form of debris from the destruction which at that time Aceh was in a state of conflict. In this case, PDAM is the main target in terms of destruction because the location of the production equipment (WTP) is far from people's homes and is very easy to damage and even burn.

In the period of the formation of Bireuen Regency from 1999 to now there has been no capital investment from the Bireuen Regency Government to carry out the rehabilitation of PAPS that have been destroyed. Even though PDAM managers almost every year submit applications to be able to improve the WTPs, the Regional Government has not been able to provide funds to carry out this. Even if there is assistance, the Regional Government is only able to add to the pipeline network through Ministry funds, namely DAK funds, while the pure APBD funds for PDAMs have not been touched.

The person in charge of PDAM Krueng Peusangan, Bireuen Regency, began in 2001 to structure the PDAM, draft a Qanun for the Establishment of PDAM and socialize the PDAM and make improvements to the production equipment (WTP) which is the heart of the PDAM.

However, this is very difficult to do because in addition to the uncertain security conditions, the PDAM's financial condition is not there at all, and there is no capital participation from the Regional Government and the company's condition is in ruins. So that in 2001 PDAM Krueng Peusangan experienced 2 (two) major problems, namely:

1. PDAM must bear production costs such as:

- arrears of electricity costs;
- Chemical material;
- Diesel fuel;
- Destroyed network;
- Missing water meter;
- Salaries of employees who are in arrears.

2. PDAM must repair all production equipment because what was handed over from the Regional Government of Aceh Utara Regency to the Regional Government of Bireuen Regency as shown in the picture is in a destroyed condition.

From the two problems above, from 2001 to now PDAM Krueng Peusangan, Bireuen Regency has not stopped making improvements by doing what can be made independently, which means that without using APBD funds, PDAM Krueng Peusangan can improve itself from destruction to progress. and can serve the community 24 hours continuously.

In its journey, many things have become operational obstacles for PDAM Krueng Peusangan, starting from assets whose condition is mostly damaged and requires maintenance and replacement due to the lack of adequate maintenance during the construction of the assets to date. This is a serious challenge for PDAM Krueng Peusangan to be able to optimize services when PDAM Krueng Peusangan begins to operate, a lot of infrastructure that must be repaired or must be replaced. Both from processing, transmission, and distribution units. In addition, improving human resources must also be carried out in a sustainable manner to support the performance and goals of PDAM Krueng Peusangan as a quality company that provides quality water for the people of Bireuen Regency.

The drinking water supply system in Bireuen Regency will be managed by PDAM Krueng Peusangan, Bireuen Regency. The PDAM Krueng Peusangan piping system will serve the people of Bireuen Regency by relying on 14 (fourteen) PAPs from 6 (six) IKKs (District City Installations) spread across Bireuen Regency, namely IKK Samalanga, IKK Jeunieb, IKK Peudada, IKK Peusangan, IKK Kuta Blang, and IKK July.

So far, the 6 (six) IKKs in Bireuen Regency are operating well. Looking at the current installed capacity, the estimated service area will not be optimal. Looking at the service coverage based on installed capacity, it can be concluded that capacity building and the construction of new installation units need to be carried out in order to maximize services, especially to areas that have not been reached by PDAM Krueng Peusangan.

Thus, it is hoped that with the new regulation in the form of the Bireuen Regency Qanun concerning the Establishment of the Krueng Peusangan Regional Public Drinking Water Company, the people of Bireuen Regency who need clean water can be served in order to realize the welfare of the community in general and the welfare of the people of Bireuen Regency in particular.

Based on the description above, the Regional Government of Bireuen Regency considers it necessary to make changes to the Bireuen Regency Qanun Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM), with the following considerations:

1. Provision of drinking water is one of the efforts to fulfill the basic needs of the people which needs to be well organized so that the needs of the people can be fulfilled properly.
2. The fulfillment of the people's need for drinking water and the provision of drinking water is part of the regional government's constitutional obligation to provide public services to fulfill the people's constitutional rights to fulfill their basic needs.
3. Bireuen Regency Qanun Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM) was enacted about 16 years ago, so that it is no longer able to meet various needs that arise as a result of social changes and changes in community needs which are developing very rapidly and are multidimensional.
4. During these 16 years, various regulatory products have been issued that affect the validity of the Bireuen City Qanun Number 31 of 2004, which further affects the validity of PDAM's actions as a regional company which has the potential to cause various legal problems that can affect the company's performance and accountability.
5. PDAM as the only regional company engaged in the provision of clean water services must be able to provide public services in the field of clean water supply in accordance with community expectations based on performance that meets the requirements of good corporate governance, so that the procurement service drinking water can balance the interests between protection and availability of water resources in the context of providing sustainable services with the community's drinking water needs on the other side.⁸

These considerations are the basic reasons that encourage the need for amendments to Qanun Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM).

Meanwhile, Law Number 12 of 2011 stipulates various requirements in the formation and amendment of laws and regulations, including:

1. Requirements for the existence of a theoretical study as well as a field study that is practical in nature and the reality that exists in society;
2. The requirements for the analysis of laws and regulations, in this case, the regulations relating to this matter must be analyzed, so that there is harmonization and synchronization between the applicable laws and regulations;
3. Terms of philosophical, sociological, and juridical foundations. In this case, it must be considered philosophically why it is necessary to establish or amend the regulation, sociologically what are the benefits for the community, whether the community

⁸ <https://jdih.acehprov.go.id/dih/view/5e789062-ce73-4bf8-9f5a-6b80dc08b254>, accessed on March 6, 2022.

really needs the regulation and juridically what are the legal impacts or consequences of the regulation, including the relationship with other laws and regulations; as well as

4. Terms of coverage, direction of regulation, material and scope of regulation of the established or amended regulations, which in this case are in the form of Regency/Municipal Qanun.

The Bireuen Regency Government, which owns the Krueng Peusangan Regional Drinking Water Company, is obliged to immediately make adjustments to the legal form to become a regional public company or Regional Persero which is stipulated by a regional regulation on changing the legal form of a regional drinking water company into a regional public company.

Changes and adjustments to the legal form of the Krueng Peusangan Regional Drinking Water Company to become the Krueng Peusangan Regional Public Drinking Water Company, determined by the Qanun of Bireuen Regency. To provide the basis and guidance in the preparation and discussion of the draft regarding the change in the legal form of a regional drinking water company into a regional public company.

4. Conclusion

Bireuen Regency had previously established a Regional Drinking Water Company based on the Bireuen Regency Qanun Number 31 of 2004, then the Qanun had to be changed, so that later the Krueng Peusangan Regional Drinking Water Company turned into a Krueng Peusangan Regional Public Drinking Water Company. These changes are intended so that local governments can improve the welfare of the people in their regions through Regional Public Companies. Changes and adjustments to the legal form of the Krueng Peusangan Regional Drinking Water Company to become the Krueng Peusangan Regional Public Drinking Water Company, as well as to provide the basis and guidelines in the preparation and discussion of the draft on changing the legal form of the regional drinking water company into a regional public company. The changes are also based on the principles of the formation of laws and regulations as regulated in Article 5 of Law No. 12 of 2011.

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