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Strategy of Political Law on Conflict Terror on the use of Aceh's Flag as a Resistance Message to *Quo Vadis* Legal System

¹ Irvan Setiawan, ² Dahlan Ali, ³ Darmawan, ⁴ Suhaimi

¹ Master of Law, Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

^{2,3,4} Faculty of Law, Universitas Syiah Kuala, Banda Aceh, Indonesia

Corresponding Author: **Suhaimi**

Abstract

The Helsinki MoU granted Aceh the authority to design its own flag, and Aceh Qanun No. 3 of 2013 respecting the Aceh Flag and Coat of Arms established the flag's design. According to Aceh Qanun No. 3 of 2013, the sign used is the crescent moon. However, according to Government Regulation No. 77 of 2007 Concerning Regional Symbols, it is illegal to fly a crescent moon flag in Indonesia. The normative juridical approach was utilised in the preparation of this study. This paper aims to explicate the political strategy of the legal terror battle for the enforcement of the Aceh Flag as a message of defiance to the status quo legal system. In accordance with the findings of the research, the Government Regulation No. 77 of 2007 specifies the

standards for the forbidden forms of flags, with the crescent moon flag being outlawed. In addition, the Aceh Qanun No. 3 of 2013, which incorporated one of the flag's designs, a white crescent, enabled Aceh to design its own flag based on the Qanun. The use of the term crescent moon in Government Regulation No. 77 of 2007 and Aceh Qanun No. 3 of 2013 creates legal uncertainty as to whether or not the flags regulated in the Qanun comply with statutory regulations. Even though the Aceh Qanun No. 3 of 2013 has not been constitutionally revoked or annulled, this does not mean that the shape of the flag does not fundamentally conflict with the Government Regulation No.77 of 2007.

Keywords: Political Law, Conflict Terror, Aceh Flag, *Quo Vadis*

1. Introduction

The Republic of Indonesia's Minister of Law and Human Rights and representatives from the Free Aceh Movement, or GAM, signed a Memorandum of Understanding in 2005. The MoU was intended to resolve the violence in Aceh. It grants Aceh the right to use regional symbols such as flags, coats of arms and hymns. There is no mention of Aceh's flag in the MoU; however, it is stated in the fourth point of Article 4 that "the GAM has demobilized all 3,000 of its soldiers." GAM members must remove any military insignia or uniforms when they sign this pact. The Aceh flag also complies with these rules; it doesn't display any military symbols or slogans. Also, the Aceh flag must follow the same design principles as GAM's military insignia or symbol. Article 246 paragraph 4 of Law No. 11 of 2006 of the Government of Aceh states that the Aceh Qanun, which is governed by statutes, contains additional restrictions regulating the shape of the flag as a symbol, as mentioned in paragraph 2. Article 246 paragraph 4 makes it clear that the Aceh Qanun will govern the shape of the Aceh flag.

The Aceh Province separatist movement's crescent moon flag and logo are banned from use by No. 77 of 2007 Government Regulation on Regional Emblems. Additionally, Aceh flags featuring the Mambruk bird are banned, as is the logo for Aceh's national anthem, Hari Merdeka. The Morning Stain also falls under this regulation; its logo is banned for being too similar to the Aceh flag. The Concerning the Flag and Coat of Arms of Aceh Qanun Number 3 of 2013 states that a symbol used in Aceh is the white crescent moon. Aceh Regulation No. 3 of 2013 states that Crescent moons aren't allowed in their flag or coat of arms. As stated in Article 6 paragraph 4 of Government Regulation of No. 77 of 2007, this is because the crescent moon shape is regulated by Aceh Qanun No. 3 of 2013.

The Blue Crescent Flag, a prohibited symbol in Aceh, is indicated in Qanun Aceh No. 3 Tahun 2013. According to Pasal 6 ayat (4) PP No. 77 Tahun 2007, the blue crescent moon is considered a flag that should never be used in Aceh. Because it has a specific shape, this can pose a problem; thus many people wonder whether or not Qanun Aceh No. 3 Tahun 2013 can be ignored in Aceh. This is because the Qanun has been in effect for nearly 10 years as of now and still cannot be implemented. The state minister of internal affairs claims that the Qanun pertaining to Acehnese flags and banners has not been officially adopted. As a result, it's impossible to implement. Additionally, he discourages people from displaying Aceh flags and banners

out of hope that the public will wait to see what they don't want before being patient enough to maintain peace and order in their country without any undesired consequences.¹ Actually, the symbols and flags for an area are important, including the province of Aceh. Important, because it reflects the identity of a region. Likewise, the Indonesian state has an identity with the symbol Garuda, the Red and White Flag, the Indonesian language and the national ideology or philosophy, namely Pancasila.² So that the Aceh region also needs an identity in the form of a symbol and flag, as the pride of the Acehnese people.

To answer the question whether the shape of the flag regulated by Qanun Aceh Number 3 of 2013 concerning the Flag and Coat of Arms of Aceh can or cannot be hoisted in Aceh does not merely refer to Government Regulations and Qanuns, but must be investigated further regarding the legal politics of establishing Qanun Aceh No. 3 of 2013, from this description, according to the author, it is important to answer the question, namely how is the legal politics of implementing the Aceh quo vadis flag?

2. Methodology

In accordance with the problems previously stated, the type or type of research that is appropriate for this study is a type of normative legal research or also called normative juridical, because the focus point being studied here is a study that is a legal norm contained in legislation that do. In this case there is no dispute between *dassollen* and *dassein*, between the provisions that should be with the provisions that apply in the practice of life in society. Thus, the data in this study were obtained from books and laws and regulations that apply in society.³ The results of the review of books and laws and regulations will later be processed and analyzed through a qualitative approach and presented prescriptively.

3. Results and Discussions

According to Imam Syaokani and A. Ahsin Thohari, who was cited by Isharyanto, the term legal politics is an Indonesian translation of the Dutch legal term *Recht Politik*, which is a combination of the words *rech* and *politiek*. Isharyanto is of the belief that politics and law are the foundation of legal politics, with the proviso that the implementation of legal political development cannot be divorced from the implementation of overall political development. Or, one could say that the fundamental principles governing political growth will likewise govern the application of legal politics expressed in statutory rules.⁴ According to Satjipto Rahardjo, the definition of legal politics is the practice of adopting and employing a means to

attain particular social and legal goals in society.⁵ Sunaryati Hartono defines legal politics as a tool or means and actions that the government can employ to construct the desired national legal system, with which the goals of the Indonesian country would be achieved.⁶ In the mid-1990s, Moh. Mahfud MD was of the opinion that the study of legal politics should be incorporated into the curriculum of the Law Faculty. Prior to that, the study of legal politics in the Faculty of Law in Indonesia was deemed an unnecessary foreign area. During that time, the Faculty of Law viewed the law as a set of norms or rules encompassing obligations and prohibitions whose infractions were punishable by governmental authority. However, who and how these norms are chosen to become state law are rarely given the attention they merit. This has led to many legal scholars becoming disillusioned and even upset since they cannot see *ius constituent* and *ius constituted* laws frequently contradict. Legal politics can explain the emergence of a crossroads between the *ius constituent* and the *ius constituted*.⁷

According to Moh. Mahfud MD, legal politics entails the following: first, legal development, which entails creating and updating legal resources in accordance with needs. Second, the application of current legal requirements, including the reaffirmation of institutional functions and the growth of law enforcers. Then, Moh Mahfud MD defined legal politics as the state's official policy (legal policy) about laws that will be enforced or not enforced (forming new rules or repealing old rules) in order to accomplish state objectives.⁸

Political law elements are as follows:⁹

1. Policy Options;
2. State Authority Determination;
3. Formation, Direction, and Range of Material Charges;
4. Explanation of the nation's legal aspirations;
5. Implementation/law enforcement;
6. Heightened public legal awareness;
7. and Realization of the State's objectives.

The primary purpose of legal political objectives is to fulfill specific social and legal objectives in society, to realize the ideals of the Indonesian nation, and to attain state objectives. One of the goals of the Outlines of State Policy (GBHN) as outlined in the MPR Decree Number IV/MPR/1999 concerning Outlines of State Policy 1999-2004 is to provide special emphasis to the development of special and special regional administrations. Outlines of State Policy (GBHN) is defined as the state policy regarding the administration of the state in outline as a comprehensive and integrated

¹ <https://news.detik.com/berita/d-2314238/mendagri-qanun-belum-sah-bendera-aceh-tetap-dilarang-berkibar>.

² Enzus Tinianus, Suhaimi, Roslaini Ramli, Ilyas Ismail, Abdurrahman, Synchronization of Pancasila Values in Law Number 8 of 2016 concerning Persons with Disabilities, *International Journal of Multicultural and Multireligious Understanding (IJMMU)*, Volume 9, Issue 7, July, 2022, p. 73-79.

³ Amiruddin, Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, 2012, hal. 118.

⁴ Isharyanto, *Politik Hukum*, Surakarta: Kekata Group, 2016, hlm. 1-2.

⁵ Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 1991, hlm. 352.

⁶ Sunaryati Hartono, *Politik Hukum Menuju Satu sistem Hukum Nasional*, Alumni, Bandung, 1991, hlm. 1.

⁷ Mahfud MD, "Politik Hukum Dalam Perda Berbasis Syari'ah", *Jurnal Hukum*, No. 1 Vol. 14 Januari 2007, hlm. 2, <https://journal.uui.ac.id>.

⁸ Moh. Mahfud MD, *Politik Hukum di Indonesia*, Jakarta: LP3ES, 2001, hlm. 2.

⁹ Edison Manik, "Politik Hukum Perundang-undangan dan Arah Kebijakan Peraturan Perundang-Undangan", 2021, hlm. 3. <https://jdih.riau.go.id/>.

statement of the will of the people determined by the People's Consultative Assembly for a period of five years in order to realize just people's welfare.¹⁰

Observing the broad conditions outlined in MPR Decree No. IV/MPR/1999 about the Outlines of State Policy for 1999-2004, the Government of Indonesia believes that discontent with central government policies was the root of the conflict. In accordance with MPR Decree Number IV/MPR/1999 on Outlines of State Policy for 1999-2004, Aceh and Irian Jaya each received a special region, whereas Maluku did not receive a special or special region. The MPR Decree No. IV/MPR/1999 on the Outlines of State Policy for 1999-2004 stipulates that the establishment of the Special Region of Aceh must be governed by legislation, which was incorporated in the issuing of Law No. 18 of 2001 on Special Autonomy for Province of Nanggroe Aceh Darussalam.

According to MPR Decree Number IV/MPR/1999 concerning Outlines of State Policy for 1999-2004, Aceh and Irian Jaya each received a special area, although Maluku did not receive a special or special region. The MPR Decree No. IV/MPR/1999 on the Outlines of State Policy for 1999-2004 stipulates that the establishment of the Special Region of Aceh must be governed by legislation, which was incorporated in the issuing of Law No. 18 of 2001 on Special Autonomy for Province of Nanggroe Aceh Darussalam.

Regional emblems, such as nature or the splendour banner, are emblematic of the privilege and uniqueness of the Province of Nanggroe Aceh Darussalam. Considering the Law No. 24 of 2009 as well as the National Anthem separating the state flag from the pennant, the meaning of the Flag of the Indonesia, hereafter referred to as the State Flag, is Red and White.

A banner is a flag designed to demonstrate the status and glory of an individual or organisation. The banner, as specified by the Law No. 24 of 2009, can be regarded as a flag if it is reconstructed; however, the banner is not interpreted as a symbol of sovereignty or a symbol of the state. Law No.18 of 2001 has been amended and replaced by Law No. 11 of 2006, which is not the same as Law No.18 of 2001, which uses the term "panji"; CHAPTER XXXVI of the Law No. 11 of 2006.

Law No. 11 of 2006 uses flag terminology, in Article 246 paragraph (1) confirms that the Red and White Flag is the national flag in the Unitary State of the Republic of Indonesia based on the UUD 1945, and in Article 246 paragraph (2) stipulates that the Government of Aceh may determine and establish the flag of the Aceh region as a symbol that reflects the privilege of the Aceh region. Although the Government of Aceh can designate and determine the Aceh flag, according to the provisions of Article 246 paragraph (3), the Aceh flag is not a symbol of sovereignty or a flag of sovereignty. However, the purpose of the Aceh flag is evident from the provisions of Article 246 paragraph (2), namely to reflect the characteristics and

particulars. Article 246 subsection (4) says that further restrictions regulating the shape of the flag as a symbol, as mentioned in subsection (2), are governed by the Aceh Qanun, which is guided by statutory laws. From Article 246 paragraph (4), we can deduce that rules and regulations are first issued as recommendations, and then a Qanun or Qanun exists.

Following the issuance of the Government Regulation of No. 77 of 2007 on Regional Symbols, the Aceh Qanun No. 3 of 2013 Aceh Qanun No. 3 of 2013 specifies that one of the used symbols is a white crescent moon, whereas Article 6 paragraph (4) of No. 77 of 2007 Concerning Regional Symbols prohibits the use of the crescent moon flag in Aceh.

As for the consequences of the central government's political stance is that the design of the Aceh flag governed by Aceh Qanun No. 3 of 2013 cannot be used, the central government is reluctant to enforce the Helsinki MoU's provisions. If the Aceh Qanun No. 3 of 2013 were to be subjected to a judicial review and declared null and void by the Supreme Court, would this not give the impression that the central government is unwilling to follow the Helsinki MoU's provisions?

The purposes of Indonesian legal politics are to protect the nation as a whole and all its violence, promote public welfare, educate the public's life and implement a world order based on freedom, eternal peace, and social justice. The best legislative moves according to the writer are Aceh Qanun No. 3 of 2013 and 2007's Government Regulation No.77. Both were passed without judicial review. Because the Helsinki MoU states that GAM no longer has any military personnel, the PP No.77 of 2007 forbids the design of Aceh's flag. Because of this, the government should clarify why regulations regarding the flag are written in Qanun form. Furthermore, military symbols like uniforms and badges are absolutely forbidden. After signing this Memorandum of Understanding between GAM and the Indonesian government, all 3,000 of its members were demobilized from the army and removed from army badges and symbols.

Amendments to Government Regulation No. 77 of 2007 must also involve the Government of Aceh so that there is consensus regarding the prohibited flag designs and the interpretation of GAM military emblems and symbols. In reality, the Government Regulation No. 77 of 2007 is also subject to judicial review by the Supreme Court, but the participation of the people of Aceh, represented by the Government and members of the legislature, is not bridged if the matter involves legal politics.

If the Government Regulation No. 77 of 2007 has been amended, then the Aceh Qanun No. 3 of 2013 must also be amended in accordance with the guidelines outlined in the Government Regulation No. 77 of 2007.

4. Conclusion

In accordance with Government Regulation No. 77 of 2007, which specifies forbidden flag forms, the crescent moon flag is illegal. In addition, the Aceh Qanun No. 3 of 2013, which features one of the flag's designs, a white crescent, enables Aceh to design its own flag based on the Qanun. The use of the term crescent moon in Government Regulation No. 77 of 2007 and Aceh Qanun No. 3 of 2013 creates legal uncertainty as to whether or not the flags regulated in the Qanun comply with statutory regulations. Even though the

¹⁰ Suhaimi, M Gaussyah, Chadijah Rizki Lestari, 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), International Journal of Advanced Multidisciplinary Research and Studies, Vol. 2(6), 2022, p. 101-105. Int. j. adv. multidisc. res. stud. 2022; 2(6):101-105.

Aceh Qanun No. 3 of 2013 has not been constitutionally revoked or annulled, this does not mean that the shape of the flag does not fundamentally conflict with the Government Regulation No. 77 of 2007. Actually, the Central Government must be firm and able to provide a way out, so that the issue of the Aceh flag and symbol does not drag on in uncertainty.

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