



Aceh Government Authority Status in the Land Sector After Presidential Regulation Number 23 of 2015

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Abstract

Law No. 11 of 2006 concerning the Government of Aceh (hereinafter referred to as UU-PA) has given special authority to the Government of Aceh to regulate natural resource management issues, including in the land sector. This is one of the affairs given to the Aceh government as a province that gets autonomy or special treatment from the central government. Furthermore Article 13 and Article 14 of Law No. 23 of 2014 concerning Regional Government states that land services are one of the areas that are under the local government power. In particular, based on the UU-PA the government has handed over part of the authority in the land sector to the Government of Aceh and the regency/municipality governments within the Province of Aceh. To accelerate the transfer, the President has also issued Presidential Regulation No. 23 of 2015, but in reality, until now the delegation of authority has not been carried out by the central government in practice. So, it is necessary and interesting to carry out research to find out how the current status of the Aceh Government's authority in the land sector is.

Keywords: *Aceh Government Authority; Land Sector*

Introduction

Aceh is a special province that has special legal powers. He manages his own affairs and the interests of the local community in accordance with the laws and regulations in the Unitary State of the Republic of Indonesia (NKRI). The specialty of Aceh is led by a governor,¹ who is in charge of local government,² namely the regency/municipal government. The division of Aceh's powers between local and central government has led to increased responsibilities for public governance. In particular, this extends to economic development and public interest at the broad regional level. This has led to an

¹ Pasal (1) ayat 2 Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh.

² 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*, Volume 2(6), 2022, pp.101-105 (Int. j. adv. multidisc. res. stud. 2022; 2(6):101-105).

increase in the responsibility for administering government, namely the provision of public interests and economic development at the regional level which is very large.

One form of authority granted in the UU-PA is to regulate the specificities in the management of natural resources, including in the field of defence.³ This is one of the affairs of the Aceh government given to the Aceh government as one of the provinces that gets special autonomy from the central government.

According to the Basic Agrarian Law (UU Pokok Agraria) land affairs are a matter for the Government, while local governments only carry out tasks in the land sector based on:

- 1) Delegation of authority to the Governor of Aceh as the head of government and also as a representative of the central government in accordance with the principle of deconcentration, and;
- 2) Assignment by Presidential Regulation No. 23 of 2015 to the Minister of ATR/BPN.

However, in its development and on the basis of regional demands in various forms and modes, the government issued various general rules that apply nationally and specific ones that apply to certain regions, which contain the delegation of some of the authority from the central government to regional governments, particularly in the land sector. In Article 13 and Article 14 of Law no. 23 of 2014 states that land services are one of the areas that are under the authority of the local government. In particular, based on the UU-PA, the central government has handed over to the Government of Aceh some of its authority, especially in the land sector as well as to regency/municipality governments within Aceh Province. But in reality, the delegation of authority is not carried out as mandated by the law.⁴

Based on Article 16 also paragraph (1) letter k of the UU-PA explains that mandatory affairs that have been determined as the authority of the Government of Aceh are carried out based on minimum service standards, carried out in stages, and determined by the Government. In terms of the authority in the land sector that was given to the Aceh government, it was further strengthened by the issuance of Government Regulation No. 3 of 2015 (hereinafter referred to as PP No. 3 of 2015).

If one examines the provisions of Article 253 of the UU-PA which states that the BPN Regional Office is transferred from the central government apparatus to become the Aceh regional government apparatus, while the Land Offices in the d regencies/municipalities are also transferred to become the regency/municipality government apparatus in Aceh. The transition must be made no later than the beginning of 2008. Furthermore, it was also stated that the implementation of these provisions would later be determined by presidential regulation. The BPN in the provinces (in this case the BPN Regional Office) is a central government institution that exercises delegated authority from the Central BPN.

Furthermore, according to Article 213 paragraph (2) of the UU-PA, the Government of Aceh and/or regency/municipality governments have the authority to administer and regulate the utilization, designation, utilization and legal relations with respect to land rights by protecting, recognizing and respecting, these rights. that already exists, including land rights that are recognized according to customary law (known as customary rights) in accordance with provisions that apply nationally and do not conflict with the spirit and national interests. This can be understood, that customary rights are still valid and recognized by the government, as long as these rights do not conflict with the interests of Indonesian socialism. In this case, it is clear that national interests are prioritized, and this is what is also called the principle of nationality or the principle of nationality.

³ I Gede Pantja Astawa, *Problematika Hukum Otonomi Daerah di Indonesia*, Bandung: Alumni, 2009, hlm.55.

⁴ Ilyas Ismail (et.al), "Desentralisasi Kewenangan Bidang Pertanahan berdasarkan Undang-Undang Nomor 11 Tahun 2006" *Jurnal Media Hukum* Vol. 17 No.1, 2010.

Based on the provisions of Article 253 of the UU-PA that there has been a transition in the status of the Regional Office of the Aceh National Land Agency and the regency/municipality Land Office to become one of the institutions in the region or Aceh Regional apparatus unit or Regency/City Regional Apparatus Unit. The purpose of the transition is intended to facilitate community access in determining land rights and in terms of resolving land conflicts. Furthermore, the transitional provisions are further regulated through a presidential regulation. Approximately 14 (fourteen) years after the enactment of the UU-PA, the central government on 13 February 2015 issued Presidential Decree No. 23 of 2015, namely the Presidential Regulation which regulates the Transfer of the Aceh Provincial BPN Regional Office to the Aceh Land Agency (BPA), as well as the regency/municipality Land Offices in Aceh as regency/municipality regional apparatuses in Aceh.⁵

Prior to the ratification of the presidential regulation, the central government had also enacted Government Regulation No. 3 of 2015. In the Government Regulation it is stated that BPN has 21 authorities, of the 21 authorities in the land sector, 9 authorities are delegated to regional governments based on Article 2 Paragraph (2) of Presidential Decree No.34 of 2003. The authorities referred to in paragraph (1) are:

1. Concerning the issuance of location permits for a business activity;
2. Organizing of land acquisition for the public interest;
3. Authority to resolve disputes over arable land;
4. Authority to resolve issues of compensation or compensation for land for development implementation;
5. Determination of land to be used as the object of land redistribution and the subject who controls it as well as compensation for land in the event of a maximum excess of land ownership and absentee lands;
6. Authority in terms of determining and resolving issues of customary land rights;
7. Authority to regulate vacant land issues, including their settlement and utilization;
8. Issuance of permits to open land;⁶
9. Planning for land use in regency/municipal areas.⁷

Explicitly based on Perpres No.23 of 2015 states that the transfer of institutional status, personnel, assets and documents must have been carried out no later than a year after this Presidential Regulation was promulgated. The transfer team must be appointed no later than one month after the promulgation of this Presidential Regulation. Furthermore, the transfer team has carried out its duties no later than a month since it was appointed.

Particularly in the land sector, Aceh already contains 11 governmental functions. Since then, the central government has also approved two more functions for Aceh, namely Business Use Rights (HGU) and Building Use Rights (HGB). The Aceh government has repeatedly tried and made efforts to obtain these 21 additional functions. Because, according to them, the Aceh Land Agency (BPA) should replace the National Land Agency (BPN) as the land agency in Aceh. The reason is, Presidential Decree No. 23 of 2015 has explicitly stated that the Aceh BPN Regional Office will be transferred to the BPA. Thus, if referring to this decision (namely Presidential Decree No. 23 of 2015) then BPA will contain or have the 21 additional functions referred to.⁸

⁵ Zaki Ulya, Eksistensi Badan Pertanahan Aceh sebagai Perangkat Daerah di Aceh dalam Aspek Kepastian Hukum Bidang Pertanahan, *Jurnal Konstitusi*, Volume 12, Nomor 3, September 2015.

⁶ Ema Syithah, Suhaimi, Taqwaddin, Kebijakan Pemerintah Aceh Dalam Penegakan Hukum Kehutanan, *Jurnal Ilmu Hukum Pascasarjana Universitas Syiah Kuala*, Volume 4, Nomor 1, November 2016, pp. 30-31.

⁷ Pasal 2 Ayat (2), Keputusan Presiden Republik Indonesia Nomor 34 Tahun 2003 Tentang Kebijakan Nasional Di Bidang Pertanahan.

⁸ Dewa Gumay, Darurat Penyelesaian Konflik Agraria, <http://lbhbandaaceh.org/2015/03/12/darurat-penyelesaian-konflik-agraria/>, diakses pada Selasa, 1 Oktober 2019, pukul 11.50 WIB.

However, the implementation of the duties and functions of the Aceh Land Agency is limited by national laws and regulations. This can be seen in Article 2 of Presidential Decree No. 23 of 2015 which states that "The Aceh Land Agency as referred to in paragraph (1), carries out its duties and functions in accordance with the provisions of the legislation". Restrictions on the implementation of the functions of the Aceh Land Agency in accordance with statutory provisions are considered to be able to slow down the process of providing legal certainty to land rights for the community⁹ as well as conflict resolution, and the Aceh Land Agency itself is still the Land Agency in Aceh.

In 2016, the Government of Aceh added the Aceh Government Work Unit (SPKA) to the Work Administration Organizational Structure (SOTK) which administers Government Affairs in the field of land services in Aceh. With the issuance of Qanun Aceh No. 13 of 2016, Government Affairs in the field of land services in Aceh which are Mandatory Government Affairs which are privileged and specific are held by the Aceh Land Office.

One of the authorities given to the Aceh Land Office is in terms of settling the Authority of the Aceh Government in Regulating and Managing the Allotment of Land Utilization and the Aceh Land Service has authority in resolving issues of land rights both government agency land rights, individuals and legal entities. In addition, it also has the authority to facilitate the settlement of land disputes and conflicts.

Problems arise when there is overlapping authority of two state institutions in terms of land dispute resolution. Where is the Land Agency in Aceh that should be able to resolve all agrarian conflicts in a short time without having to wait for a decision from the center. The consequence that can be traced is the emergence of legal uncertainty in the settlement of land conflicts in Aceh, both in the form of certificates, deed, to the settlement of land rights. Thus, giving rise to an anomaly of the central government's lack of seriousness in implementing the provisions of the UU-PA, Perpres No. 23 of 2015.

In relation to the Official for Making Land Deeds (hereinafter referred to as PPAT) it will also have an impact when the transition is already underway which is currently PPAT partnering with the National Land Agency and when switching PPAT is no longer a partner of the Regional Office of the National Land Agency in Aceh because it has switched become the Aceh Land Agency.

Based on the juridical facts and problem facts described above, it is important for this research to write this issue in the form of a thesis entitled, "The Status of Authority of the Aceh Government in the Land Sector Post Perpres No. 23 of 2015".

Research Method

This type of research falls under the jurisdiction of the legal department. This involves studying materials from laws and regulations and other sources of information found in books. This is referred to as normative legal research, which involves examining literature.¹⁰

The legal research method that analyzes laws written in books or decided through the judicial process is known as doctrinal research. This method uses scientific reasoning to study the law which is

⁹ Kamalia, Darmawan, Suhaimi, The Implementation of Land Case Handling Policy at the Land Office of Aceh Besar Regency, *International Journal of Multicultural and Multireligious Understanding (IJMMU)*, Volume 9, Issue 12, December 2022, pp. 116-117.

¹⁰ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Bandung: Citra Aditya Bakti, 2006, hlm. 118.

the subject of legal science.¹¹ It is also a form of legal research that follows a certain set of rules - based on normative jurisprudence.¹²

In legal research, sources of information include public records, secondary records and non-legal materials. Both public archives and secondary archives come from a collection of data referred to as primary data or secondary data.¹³ While secondary data comes from unwritten habits and proprieties, carried out by observing or applying normative benchmarks to in concreto legal events and interviews with sources involved in the relevant legal events. The function of secondary data is to support primary data,¹⁴ which is then processed and analyzed using qualitative analysis methods based on applicable regulations.¹⁵

Results and Discussion

Based on the Regional Government Law, regional governments have authority in the land sector, including in Aceh Province. This authority is contained in Article 128 paragraph (1) and Article 129 paragraph (1) of the Regional Government Law, which states that regional governments have authority in the management and exploitation of land and natural resources in their territory.

The Government of Aceh has the authority to issue regional regulations regarding land management and exploitation, and has the duty to ensure that the land and natural resources in its territory are used optimally and sustainably. This is stated in Article 128 paragraph (2) and Article 129 paragraph (2) of the Regional Government Law.

Thus, the Aceh government has broad authority in the land sector, including making regional regulations regarding land registration, regulating land distribution, and solving land problems. Article 129 paragraph (3) of the Regional Government Law states that regional governments also have the authority to decide land disputes that occur in their territory.

Overall, the authority of the Aceh government in the land sector can be said to be very broad and has an important role in the management and exploitation of land in its territory. This authority is very important to ensure that the land and natural resources in Aceh Province are used optimally and sustainably and are free from land problems that are detrimental to the community.

In addition to Article 128 paragraphs (1) and (2), and Article 129 paragraphs (1), (2) and (3) of the Regional Government Law, there are several other articles in the Regional Government Law that regulate regional government authority in the land sector. As follows, Article 130 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding the management of land for public purposes, such as roads, government buildings, and other public facilities. Article 131 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding land management for economic development purposes, such as industry, trade and tourism. Article 132 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding land management for environmental purposes, such as management of water, environment and natural resources.

¹¹ *Ibid.*

¹² Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia, 2006, hlm. 57.

¹³ *Ibid.*

¹⁴ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung: PT. Citra Aditya Bakti, 2004, hlm.151.

¹⁵ Ronny Hanitio Soemitro, *Metodologi penelitian hukum dan jurimetri* publisher: Jakarta : Ghalia Indonesia, 1990 . hlm.59.

There are several other articles in the Regional Government Law which discuss the authority of local governments in the land sector. Article 133 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding land management for flats and settlements. Article 134 paragraph (1) of the UU-PA states that regional governments have the authority to make regional regulations regarding land management for agriculture, animal husbandry and fishery purposes. Article 135 paragraph (1) of the UU-PA states that regional governments have the authority to make regional regulations regarding land management for forestry, forestry and other natural resource purposes.

There are several other articles in the Regional Government Law that relate to regional government authority in the land sector. Article 136 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding land acquisition for public purposes. Article 137 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding the management of vacant land. Article 138 paragraph (1) of the Regional Government Law states that regional governments have the authority to make regional regulations regarding the management of land that is not occupied or neglected.

However, as stated in Article 129 paragraph (3) of the Regional Government Law, the regional government's authority in the land sector must be in accordance with the applicable laws and regulations. Therefore, the authority of the regional government in the land sector must always be guided by the applicable laws and regulations and must not conflict with existing laws and norms.

The UU-PA discusses the authority of the Aceh government in the land sector. Under this law, the Aceh government has the authority to manage and resolve land issues in its territory.

The following are several articles in the UU-PA that regulate the authority of the Government of Aceh in the land sector:

1. Article 38 paragraph (1) concerning the authority to issue regional regulations (Aceh Qanun) regarding management and utilization of land. This means that the Aceh government can make regulations on how land is to be managed and used.
2. Article 38 paragraph (2), concerning the authority to manage state-owned land and regional-owned land as well as community-owned land, including traditional lands. This means that the Aceh government has the authority to manage all types of land in its territory.
3. Article 38 paragraph (3) regarding the authority to regulate and limit land rights in its territory. This means that the Aceh government has the authority to limit land rights in its territory, such as ownership rights, usufructuary rights, and so on.
4. Article 39 paragraph (1) regarding the authority to enact regional regulations (Aceh Qanun) regarding land distribution.
5. Article 40 paragraph (1) regarding the authority to enact regional regulations (Aceh Qanun) regarding the regulation and management of waqf land.
6. Article 41 paragraph (1) regarding the authority to stipulate regional regulations (Aceh Qanun) regarding regulation and management of ulayat land rights.
7. Article 44 paragraph (1) regarding the authority to organize and develop agricultural and plantation areas.
8. Article 47 paragraph (1) regarding the authority to manage and develop natural resources and the environment.
9. Article 52 paragraph (1) regarding the authority to manage and develop urban areas.
10. Article 53 paragraph (1) regarding the authority to manage and develop coastal areas and small islands.
11. Article 55 paragraph (1) regarding the authority to manage and develop rural areas.

12. Article 60 paragraph (1) regarding the authority to enact regional regulations (Aceh Qanun) regarding the management and development of plantation areas.

However, as emphasized in Article 4 paragraph (2) of the Aceh Government Law that the authority of the Aceh government must always be guided by the applicable laws and regulations and may not conflict with existing laws and norms. Therefore, the authority of the Aceh government in the land sector must be adjusted to the applicable laws and regulations.

As an implementation of the UU-PA to be able to carry out these authorities, Presidential Decree No. 23 of 2015 concerning the Transfer of the National Land Agency to the Aceh Land Agency has been effective since its issuance on May 8 2015. However, the transfer of the national land agency to the Aceh land agency has not been fully implemented, so the Aceh Government has not yet been able to exercise its authority in the land sector. Thus, in the land sector in Aceh, the Aceh Government only has full authority to regulate land issues after the transfer of the BPN Regional Office to BPA has been completed. So that the authority status of the Government of Aceh in the land sector has not yet been realized as mandated by the UU-PA. As for the consequences arising from not transferring the BPN Regional Office to BPA (where the authority over land issues in Aceh is no longer the authority of the Central Government, but becomes the authority of the Aceh Government), it will result in legal uncertainty in resolving land conflicts in Aceh, both in the form of certificates, deed, until the settlement of land rights. This is understandable because this matter is no longer the authority of the Central Government (namely the BPN Regional Office) but has shifted to the authority of the Aceh Government (namely BPA), in accordance with the provisions contained in Presidential Decree No. 23 of 2015. In the Presidential Decree, the President has determined that the BPN Regional Office has changed to BPA, but because the Head of BPN has not implemented the provisions contained in the Presidential Decree. So that the BPN Regional Office has not yet turned into a BPA. Even though legally (*de jure*) this has happened (has changed), but in reality (*de facto*) this has not changed, because it has not been followed up by the Head of BPN.

The Head of BPN's non-follow up on this issue seems to have a political element, but we don't know what the political element was. What is clear is that the central government has its own plans that we ourselves do not know about. Perhaps there is also something the central government has concerns about the Aceh Government, if all land issues are handed over to the Aceh Government. In fact, this concern should not occur, because the principle of the NKRI is not that each region has its own power and has nothing to do with the Central Government. On the other hand, even though each region is given the power to manage its own household affairs, it is still within a framework (frame) of the NKRI.

According to Professor of Constitutional Law Prof. Dr. Faisal A. Rani, S.H., M.Hum., that because *de jure* the BPN Regional Office has changed to become a BPA, where the BPN Regional Office no longer has the authority to manage land issues in Aceh, but in fact this has not been implemented. Thus, legally it can be said that all products produced (decisions of State Administrative Officers) do not have the force of effect, because the BPN Regional Office does not have the authority for that anymore. In other words, it can be said that the products produced by the BPN Regional Office are not valid or null and void. For example, certificates of land rights, where certificates issued by the Regional Office of BPN do not have validity, are invalid and null and void.¹⁶

Thus, it is clear that the authority status of the Government of Aceh in the area of land affairs is still carried out by the Central Government, namely the Kanwil BPN in Aceh. The Aceh Government (BPA) does not yet have authority, because the Head of the Central BPN has not implemented Presidential Decree No. 23 of 2015. So that the authority exercised by the BPN Regional Office in Aceh

¹⁶ Faisal A.Rani, Presented at the Seminar on Student Thesis Proposals for the Notary Masters Study Program, Faculty of Law, Syiah Kuala University, Banda Aceh, December 12, 2022.

is an authority that is contrary to law, so that the products produced by the Aceh BPN Regional Office are null and void.

Conclusion

Implementation of the Duties and Authorities in the land sector granted to the Government of Aceh and regency/municipalities based on the UU-PA cannot be fully implemented due to the absence of government regulations governing the distribution of functions of the central government and regional governments. The slow transfer of institutional status, staffing, assets and documents that should have been carried out no later than a year after Presidential Decree No. 23 of 2015 was passed and the absence of a special transfer team that should have been appointed no later than a month after Presidential Decree No. 23 of 2015 was passed. Joint discussions between the Central Government and the Aceh Government in the land sector have reached an impasse because the central government tends to be unwilling to relinquish the tasks and authorities that have been carried out by the central government to the Aceh government.

Thus, it is hoped that the Aceh People's Representative Council (DPRA) together with the Governor must immediately accelerate the process of ratifying the Aceh Qanun Draft on Aceh Land Affairs as a strong legal umbrella for the Aceh Land Office, because with the ratification of the Qanun it can become a legal foundation for the Aceh Land Office in carrying out its duties. and responsibilities.

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