

Comparative Study of Qanuns and Regional Regulations: Exploring the Distinctive Features of Aceh

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Abstract

This research examines the comparison between Qanuns and Regional Regulations (Perda) in the context of Aceh, with a focus on the uniqueness possessed by Aceh as an autonomous region. Qanuns, as the term for provincial regulations in Aceh, are formed through a collaborative process between the Governor and the Aceh Regional Representative Council (DPRA) within the framework of the Regional Legislation Program (Prolega). Aceh is recognized as having a special status based on Law Number 11 of 2006 concerning the Governance of Aceh (UUPA), which grants the right and authority to independently manage government affairs, as a result of the Helsinki MoU. This research also identifies an exception to the obligation to include an Academic Manuscript in the formation of Qanuns, which is a mandate from a higher regulation, to avoid conflicts. However, challenges in the implementation of Qanuns arise due to constraints in the guidance and supervision by the government, which creates injustice for Aceh. The research methodology combines empirical and normative approaches, involving interviews and field observations to analyze the differences and specifications between Qanuns and Perdas, as well as their implications for regional governance. The research found that Qanuns in Aceh have a different formation process compared to Regional Regulations (Perdas) in other provinces, with the specifics regulated in the Law on the Governance of Aceh (UUPA). There is an exception to the obligation of an Academic Manuscript for Qanuns, which is a direct mandate from a higher regulation. Despite being granted special autonomy, challenges in the implementation of Qanuns arise due to constraints in the guidance and supervision by the central government.

Keywords: Comparison, Qanuns, Regional Regulation, Aceh.

Indonesia is a unitary state whose sovereignty is exercised by the Government (Dwi Nurhayati, 2019; Mudjahid Zein et al., 2022). To maintain the balance between the Government and Regional Governments, the principle of decentralization is applied, which is packaged in the framework of regional autonomy (Yuhandra et al., 2021). Regional autonomy is understood as the rights, authorities, and obligations of autonomous regions to regulate and manage their own government affairs and the interests of the local community within the Unitary State of the Republic of Indonesia (NKRI) system. Several provinces in Indonesia are also granted non-uniform authority compared to other provinces,

based on their specialties and uniqueness, which is referred to as asymmetric decentralization (Iskandar et al., 2022; Sulaiman, 2023).

One of the provinces in Indonesia that has been granted the authority to implement asymmetric decentralization is Aceh (Din & Abubakar, 2021). The history shows that the granting of Aceh's specialties has gone through a long process, which was concluded with the signing of the Helsinki Memorandum of Understanding (MoU) between the Free Aceh Movement (GAM) and the Government. The MoU stipulates that GAM agrees not to demand the separation of Aceh from the Unitary State of the Republic of Indonesia (NKRI), and the Government agrees to grant authority to Aceh in the form of specialties that were previously stipulated in Law 44 of 1999 on the Implementation of the Specialties of the Special Region of Aceh Province (Law 44 of 1999) and will be followed up with the establishment of the Law on the Implementation of the Aceh Government, namely Law Number 11 of 2006 on the Aceh Government (UUPA) (Budiono et al., 2022; Din & Abubakar, 2021; Rani et al., 2020a).

Through Law 44 of 1999 and the Law on the Governance of Aceh (UUPA), the Aceh province is granted the authority to implement specialties that are not uniform with other provinces in Indonesia. However, in the implementation of these granted special authorities, it turns out that implementing regulations, one of which is in the form of Qanun, are still needed (Anggriani, 2011; Fan, 2019).

Problems then arise when the Qanuns intended to implement Aceh's specialties cannot be effectively implemented due to constraints in the stages of guidance and supervision by the Central Government. This condition occurs because the existing laws and regulations grant the Central Government broad authority in the guidance and supervision of Qanuns, and the laws and regulations do not regulate the limitation or differentiation of the procedures for guiding and supervising Qanuns between those implementing Aceh's specialties and those implementing other laws and regulations. As a result, both Qanuns implementing Aceh's specialties and Qanuns implementing other laws and regulations will go through the same stages of guidance and supervision by the Central Government.

The implementation of the Central Government's guidance and supervision that hinders the implementation of Aceh's specialties through the establishment of Qanuns becomes an unjust condition for Aceh (Al Yasa' Abubakar & Daud Yoesoef, n.d.; Vellinda, 2017). This is because the implementation of these Qanuns is an authority that has long been fought for, promised, and granted by the Central Government to Aceh through the Helsinki Memorandum of Understanding (MoU), Law 44 of 1999, and the UUPA.

Realizing the effective implementation of Aceh's specialties through the establishment of Qanuns requires a reconstruction of the procedures for the Central Government's guidance and supervision of Qanuns (Antariksa, 2017). This can be achieved by applying a separation of the procedures for the Central Government's guidance and supervision of Qanuns between those implementing Aceh's specialties and those implementing other laws and regulations.

Such a reconstruction would ensure that the implementation of Aceh's specialties through Qanuns is not hindered by the same guidance and supervision procedures applied to Qanuns that implement other laws and regulations. This would be a more just and appropriate approach, given the unique status and authorities granted to Aceh through the legal and political agreements that led to the UUPA.

Research Methods

Both empirical juridical and normative approaches are used in this research. Normative legal research utilizes secondary data from books or other sources, as well as primary legal sources such as laws and regulations, and secondary legal sources such as research results and books discussing the

findings. In the normative approach, the research will focus on the analysis of the legal basis, hierarchy of regulations, as well as the regulations related to Qanun in Aceh and Regional Regulations (Peraturan Daerah) in other regions in Indonesia.

This is done through literature study and in-depth review of the applicable laws and regulations, such as Law Number 11 of 2006 concerning the Aceh Government, Government Regulation Number 32 of 2004 concerning Guidelines for the Preparation of Regional Regulations, and other relevant regulations. In addition, empirical legal studies are also conducted to examine how the normative legal requirements are applied or enforced in certain legal situations that arise in the community. This empirical approach will include an analysis of the process of formation, scope, and supervision of Qanun and Regional Regulations.

The collection of empirical data is carried out through interviews with stakeholders, such as local government officials, legislative members, academics, and legal practitioners. In addition, field observations are also conducted to understand the reality of the implementation of Qanun and Regional Regulations in the community.

Through a combination of normative and empirical juridical approaches, this research is expected to produce a comprehensive analysis of the differences and specificities between Qanun in Aceh and Regional Regulations in other regions in Indonesia. This will provide a deep understanding of the implications of these differences for the implementation of regional governance, particularly in Aceh.

Results and Discussion

Differences in the Terminology of Qanun and Regional Regulations (Perda)

In the hierarchy of laws and regulations in Indonesia, there is a difference in the terminology used between Qanun and Regional Regulations (Perda). In general, provincial-level regulations are referred to as Perda, which are legal regulations formed by the Regional House of Representatives (DPRD) with the approval of the Governor. However, specifically in the Aceh Province, provincial-level regulations are referred to as Qanun Aceh (Siregar, 2008). Qanun Aceh is a type of provincial Perda that regulates the administration and community life in Aceh. The use of the term Qanun Aceh is based on Law Number 11 of 2006 concerning the Aceh Government (UUPA), which grants special status to Aceh in forming regional regulations. In addition to the difference in terminology, there are also differences in the planning process for the formation of Qanun and Perda. In Aceh, the planning for the formation of Qanun is called the Regional Legislation Program (Prolega), while in other provinces outside of Aceh, the planning for the formation of Perda is called the Regional Regulation Formation Program (Propemperda).

Furthermore, there are differences in the terminology used for the bodies or supporting elements in the DPRD that are responsible for the formation of Qanun and Perda. In Aceh, the responsible body is called the Legislative Body of the Aceh DPRD (Banleg DPRA). These differences in terminology are inseparable from the history and specificity of Aceh. The use of the term "legislation" essentially refers to the process of lawmaking in order to create positive law, including laws and regulations.

Both Qanun and Perda are regional legal products formed through the legislative process at the provincial level. According to Article 56 paragraph (2) of Law No. 12 of 2011 as amended by Law 13 of 2022, there is a choice of "and/or" between explanations or information and academic manuscripts, but Article 56 paragraph (3) of Law No. 12 of 2011 as amended by Law 13 of 2022, only confirms 3 (three) categories of qanun accompanied by information, this condition often leads to different interpretations, namely whether the information contains the main ideas and content material.

Table 1 Comparison of Academic Manuscript Exceptions for Regional Regulations (Perda) and Qanun

UU P3		Procedure for the Formation of Qanun (TCPQ)	
Article 56, Paragraphs (2) and (3)	Explanation:	Article 12, Paragraph (6)	Explanation
The draft regional regulation (Perda) must be accompanied by an explanation or information and/or an Academic Manuscript. For draft regulations concerning the Regional Revenue and Expenditure Budget (APBD), the revocation of a regional regulation, or amendments to a regional regulation that only change certain materials, the draft must be accompanied by an explanation containing the main ideas and the regulated content.	A regional regulation (Perda) may be accompanied by an Academic Manuscript and/or an explanation or information (one or both can be chosen). For a Perda related to the Regional Revenue and Expenditure Budget (APBD), the revocation of a Perda, or amendments that only involve minor changes, an Academic Manuscript is not required.	Exceptions to the requirement for an Academic Manuscript when drafting a Qanun include the Regional Revenue and Expenditure Budget (APBD), mandates from higher-level legislation, the revocation of a Qanun, or amendments to a Qanun.	All Qanuns must be accompanied by an Academic Manuscript, except for Qanuns related to the Regional Revenue and Expenditure Budget (APBD), mandates from higher-level legislation, the revocation of a Qanun, or amendments to a Qanun.

Source: Modified from the Law on P3 and the Procedure for the Formation of Qanun (TCPQ).

Based on national regulations, laws do not mandate that every regional regulation (Perda) or Qanun must be supported by an Academic Manuscript (Naskah Akademik, NA) as the basis for its formulation. Outside of Aceh, the NA can be substituted with sufficient explanation or information within the regulation itself. However, in the Province of Aceh, there is a specific exception concerning the obligation to prepare an Academic Manuscript. According to the Aceh Governance Law (UUPA), a Qanun draft that is a direct mandate from higher-level legislation does not require an Academic Manuscript as its basis. This exception is made to avoid potential conflicts between the findings of the Academic Manuscript and the directives of higher-level legislation (Tobroni, 2021).

If higher legislation mandates the Aceh Government to establish a specific Qanun, but the Academic Manuscript concludes that the Qanun is unnecessary or unbeneficial, this would create a problem. It is important to emphasize that the exemption from the requirement to prepare an Academic Manuscript applies only to

Qanuns that are direct (delegative/delegation) mandates from higher-level legislation, not to Qanuns of an attributive nature. Under national regulations, exemptions from the requirement to prepare an Academic Manuscript can be granted for all regional regulations or Qanuns, provided there is sufficient explanation or information.

Review Team for Qanun Drafts

The drafting of a Qanun is carried out with mutual approval between the Governor and the Aceh Regional People's Representative Council (DPRA). In conducting joint discussions, the Governor may form a Review Team for the Qanun Draft to represent the Governor in discussions with the DPRA. However, the delegation structure of the Qanun Draft Review Team differs from that of the Qanun Draft Discussion Team, also known as the Qanun Draft Assistance Team. The establishment of the Review Team for Regional Regulation Drafts is governed by Article 66 of the Minister of Home Affairs Regulation (Permendagri) on PPHD, while the Qanun Draft Assistance Team is regulated by Article 16 of the Qanun. The

composition of these teams can be seen in the following table2:

Table 2: Comparison of Membership between the Qanun Draft Review Team and the Regional Regulation Draft Review Team

No	Qanun	Local regulations	Description
1.	The Governor may form an Assistance Team for Qanun Draft Review.	The Governor forms a team for the review of provincial Perda drafts in the Provincial Regional People's Representative Council (DPRD).	In the formation of a Qanun, the Governor has the option to form a review team, using the word "may," whereas in the formation of a Perda, the Governor is required to form a team.
2.	The Assistance Team consists of: a. The Aceh Secretary (Sekda) or an official appointed by the Governor as Chair; b. The Head of the Bureau responsible for legislation as Secretary; c. Representatives from SKPA (Work Units) or relevant agencies as members; d. Representatives from MPU (Ulema Consultative Assembly) as members; e. Experts and academics with expertise relevant to the Qanun as members; and f. Representatives from community components directly affected by the Qanun draft as members.	The team is chaired by the provincial Secretary or an official appointed by the Governor.	In the formation of a Qanun, the legislation explicitly specifies several team members, while in the formation of a Perda, it only mentions the Secretary or another appointed official, with other members included as needed.

Based on the table above, it can be seen that in the formation of qanuns (local regulations), the Governor is required to involve the Regional Secretary, the Head of the Legal Bureau of the Aceh Secretariat, and elements of the Aceh Ulema Consultative Council, expert elements and academic elements, as well as elements of the directly affected community components. This is different from the formation of regional regulations (perda), where the team mentioned to be involved in the formation of the draft perda is the Regional Secretary, while other elements are involved as needed. The involvement of the Aceh Ulema Consultative Council as the

discussion team for the draft qanun is a form of Aceh's specificity, so that the draft qanun prepared by the Governor and the Aceh Regional Representative Council (DPRA) does not conflict and aims to support the implementation of Islamic law in Aceh.

Content of the Draft Qanun

The limitations in regulating the content of regional regulations continue to undergo changes and shifts in order to obtain the best pattern in the administration of Regional Government. The changes in the authority in regulating the content of regional regulations can be seen in the following table:

Table 3 Development of Changes in the Authority of Regional Regulation Content

No	Legal Basis	Content
1	1945 Constitution	- Implementing autonomy and co-administration tasks.
2	MPR Decree No. III/2000	-Implementing higher-level laws. - Accommodating specific regional conditions.
3	Law No. 22/1999	-Administering regional autonomy. - Further elaboration of higher-level legislation.
4	Law No. 10/2004	- Administering regional autonomy and co-administration tasks. -Further elaboration of higher-level regulations. - Accommodating specific regional conditions.
5	Law No. 32/2004	-Implementing autonomy and co-administration tasks. -Further elaboration of higher-level regulations. - Considering the unique characteristics of each region.
6	Law No. 12/2011	- Administering regional autonomy and co-administration tasks. -Further elaboration of higher-level legislation. - Accommodating specific regional conditions.
7	Law No. 23/2014	- Administering regional autonomy and co-administration tasks. -Further elaboration of higher-level regulations. - Regulating local content that does not conflict with higher laws.

Based on the description above, it can be understood that the formation of regional regulations (perda) or qanuns (local regulations) was initially only aimed at implementing regional autonomy and co-administration tasks. However, based on the latest Regional Government Law, the authority to establish perda/qanun is not only to carry out regional

autonomy and co-administration tasks, but also to serve as further elaboration of higher regulations and regulate local content (Ahyar et al., 2021). The substantial differentiation of the types of laws and regulations is not only based on the form, requirements, and method of their formation, but also on the content or material contained in them.

"The higher the position of a law and regulation, the more abstract and fundamental the content material. Conversely, the lower the position of a law and regulation, the more concrete the content material." The content material in perda has been regulated through laws and regulations, which aims to limit the regulatory authority of a legal product. The content material of perda includes: a. implementation of regional autonomy and co-administration tasks; b. accommodating the special conditions of the region; c. containing local content material; and/or d. further elaboration of higher laws and regulations. The content material that can be regulated in qanuns has a different specificity compared to the content material that can be regulated in perda (Soedirman, 2024).

The content material of qanuns includes: a. regulations on the administration of the Aceh Government; b. regulations on matters related to the special conditions of Aceh and the special authorities of Aceh that are of a special nature; c. regulations on the implementation of co-administration tasks; and d. further elaboration of laws and regulations. Based on the provisions of Article 1 number 24 of the Qanun on Transparency, Consistency, Participation and Quality (TCPQ), the content material of qanuns also includes all content material in the context of the administration of the Aceh Government in accordance with the Helsinki MoU and the Aceh Governance Law. The comparison of the content material of qanuns and perda can be seen in the following table.

Table 4 Comparison of the Content Material of Perda and Qanuns

No	Regional Government Law and Law on Legislation Formation (UU P3)	Procedure for the Formation of Qanun (TCPQ)	Explanation
1	Accommodating special regional conditions and incorporating local content	Governance of Aceh	Qanun TCPQ explicitly states that the content of the qanun is for the governance of Aceh.
		The special conditions and special authority of Aceh that are unique	Qanun TCPQ explicitly states that the qanun can include content related to the special authority that is unique to Aceh.
3	Implementation of regional autonomy and co-administration tasks	Regulation on the implementation of co-administration tasks	The Regional Government Law and the Law on Legislation Formation (UU P3) explicitly state that regional regulations (perda) can include the implementation of regional autonomy and co-administration tasks.
4	Further elaboration of higher-level legislation	Further elaboration of laws and regulations	Qanun TCPQ provides a broader mandate, meaning that the content of the qanun not only elaborates on higher-level legislation (including Law No. 44 of 1999 and the Aceh Government Law) but also regulates the mandate of the laws and regulations. Therefore, the qanun can regulate content derived from the mandate of laws and regulations of equal status.
		. Implementation of Aceh governance in accordance with the Helsinki MoU	Qanun TCPQ mandates that the content of the qanun can also include the implementation of governance based on the Helsinki MoU

In general, the content material regulated in qanuns and regional regulations (perdas) is the same. However, the content material that can be regulated in qanuns is stated to be more specific and definitive, in that qanuns can contain content material that covers the special conditions of Aceh and Aceh's special authorities that are of a special nature, based on Law 44 of 1999 and the Aceh Special Autonomy Law (UUPA). It also needs to be emphasized that in the formation of regional regulations (perdas), content material can also be regulated to accommodate the special conditions of the region, even if the region in question does not have a special law, as not every region has a special law. By adhering to the principles of autonomy and co-administration, as well as the limitations on the content material

of regional regulations, the Regional Government can formulate regional regulations that are the needs of the region, even if they are not mandated by the higher laws and regulations. In regulating the content material of qanuns, it is necessary to have regulatory sanctions for parties who do not implement or carry out something that is prohibited. The types of sanctions that can be regulated in regional regulations/qanuns include criminal, civil, administrative, customary, and sanctions regulated in the higher laws and regulations. Specifically for Aceh Qanuns, there is an additional type of customary sanction that can be in the form of a return to the community to be subject to sanctions according to local customs, or to accommodate the types of sanctions that apply in the community and to be

outlined in the qanun (Delta & Pane, 2020; Salim, 2018).

Sanctions regulated in the higher laws and regulations can also be accommodated, but with the note that they should not exceed 6 months' imprisonment and/or a fine of Rp50 million, and can use the formulation "subject to sanctions according to the relevant law." For the content material of criminal provisions in regional

regulations/qanuns, the maximum criminal threat is 6 months' imprisonment and/or a fine of Rp50 million, except for qanuns regarding criminal law (jinayah). Based on the overall description above, a more detailed comparison between the sanctions that can be included in regional regulations and qanuns can be seen in the following table 5.

Table 5 Comparison of Types of Sanctions in Regional Regulations (Perda) and Qanun"

No	Perda Sanctions	Legal Basis	Qanun Sanctions	Legal Basis
1	Criminal Sanctions	Law on Legislation Formation (UU P3)	Criminal Sanctions	Law on Legislation Formation (UU P3)
2	Civil Sanctions	Law on Legislation Formation (UU P3)	Civil Sanctions	Law on Legislation Formation (UU P3)
3	Administrative Sanctions	Law on Legislation Formation (UU P3)	Administrative Sanctions	Law on Legislation Formation (UU P3)
			Traditional Sanctions (Adat)	Qanun TCPQ
			Sanctions stipulated in higher-level legislation	Qanun TCPQ
			Uqubat Hudud	Qanun Jinayat
			Uqubah Ta'zir	Qanun Jinayat

Based on the table above, it can be understood that the qanun can also contain customary sanctions that aim to accommodate the customary sanctions and culture that have been living and developing in the Acehese community until now, and this is a form of the implementation of the privileges of Aceh in the field of customary administration. The regulation regarding the authority of the qanun to contain sanctions regulated in the higher laws and regulations aims to ensure that in the event of a violation, if it is not possible to impose sanctions within the limits of the authority regulated in the laws and regulations for the Aceh Government, the same sanctions as the higher laws and regulations can be applied, such as the limit on the authority to impose criminal

sanctions (other than jinayat) by the Aceh Government, which is only 6 (six) months and/or a maximum fine of Rp50,000,000.00 (fifty million rupiah) (Rani et al., 2020b). In the event that the intended sanction is deemed too low compared to the sanctions stipulated in the higher laws and regulations, the qanun can accommodate the sanctions in accordance with the higher laws and regulations by using the norm "subject to criminal sanctions as provided for in the laws and regulations in the field of...".

Elimination of the Specificity of Aceh's Qanun

It should be noted that previously there was 1 (one) other specificity that is no longer exclusive to Aceh, namely the cancellation mechanism between the qanun on the

implementation of Islamic Sharia and the qanun of Aceh that is not a qanun on the implementation of Islamic Sharia. The Qanun that regulates the implementation of Islamic Sharia can only be canceled through a material test by the Supreme Court, while the qanun that is not a qanun on the implementation of Islamic Sharia can be canceled by the Central Government (executive review), as stipulated in Article 235 paragraph (4) of the UUPA. Currently, the provisions of Article 235 paragraph (4) of the UUPA are no longer specifically applicable to the Qanun on the implementation of Islamic Sharia, as after the issuance of Constitutional Court Decision Number 137/PUU-XIII/2015 and Constitutional Court Decision Number 56/PUU-XIV/2016, which eliminated the authority of the Government and the Governor to cancel qanuns, all qanuns, whether they are qanuns on the implementation of Islamic Sharia or qanuns that are not on the implementation of Islamic Sharia, cannot be canceled by the Government but only through a material test in the Supreme Court or judicial review, which is the authority to test laws and regulations against laws, it can be said that the legal review effort is only limited to laws and regulations below the law (judicial review of regulation).

Conclusion

The conclusion from the comparative analysis of Qanun and Regional Regulations (Perda) in the context of Aceh shows that Qanun, which is the term for provincial regulations in Aceh, are formed through a process that involves the approval of the Governor and the Aceh Regional Representative Council (DPRA) with planning called the Regional Legislation

Program (Prolega). Aceh has a special status regulated in Law Number 11 of 2006 concerning the Aceh Government (UUPA), which grants the right and authority to independently manage government affairs, the result of a long process that ended with the signing of the Helsinki MoU.

In the formation of Qanun, there is an exception to the obligation to include an Academic Manuscript for Qanun which is a direct mandate from the higher regulations, in order to avoid conflicts. This exception is given to facilitate and accelerate the Qanun formation process, given that Aceh has specificities that must be accommodated in its regional regulations.

Although granted special authority, Aceh faces challenges in implementing Qanun due to constraints in guidance and supervision by the central government. This creates an unfair condition, where Aceh is required to be able to implement Qanun properly, but is not adequately supported by the government above it. This research uses an empirical and normative approach to analyze the differences and specificities between Qanun and Perda, as well as their implications for regional governance in Aceh. This research involved interviews with relevant stakeholders and field observations to gain a comprehensive understanding of the dynamics of Qanun formation and implementation. Overall, this comparative analysis shows that Qanun has unique characteristics as a regional legal product in Aceh, which are not possessed by Perda in other regions. Aceh's specificity is reflected in the formation process, content, and implementation challenges. This research highlights the need for increased coordination and support from the central government so that Aceh can effectively exercise its special authority through Qanun.

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