



Analysis of the Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016 concerning Regency Government Equity Participation Southwest Aceh at Bank Aceh Company

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Abstract

Within the framework of the Unitary State of the Republic of Indonesia (NKRI) regional governments are divided into provincial areas and district/city areas. Each region is autonomous and is given the responsibility to manage, serve, and prosper its citizens, so that each region seeks to increase its income. One of them is sharing the results of regional wealth management which is separated, such as regional capital participation in the Bank Aceh Company (PT. Bank Aceh) by the Southwest Aceh Regency Government as stipulated in the Qanun of Southwest Aceh Regency Number 12 of 2016 concerning Equity Participation of the Southwest Aceh Regency Government in PT. Bank Aceh. The Qanun will be amended, because the Aceh Barat Daya District Government intends to increase its capital participation in PT. Aceh Bank. So it is necessary to conduct a study in the preparation of the Academic Paper on the Draft Qanun of the Amendment. Based on the results of the study, it is known that the Southwest Aceh District Government intends to increase its capital participation in PT. Bank Aceh in the amount of IDR 10,000,000,000,- again in 2022 to 2027, based on the development of PT. Bank Aceh, performance achievements, assets owned and profits obtained by PT. Aceh Bank.

Keywords: *Qanun; Equity Capital; Southwest Aceh District*

Introduction

Regional autonomy is one of the tangible manifestations of the implementation of the principle of decentralization in the administration of government which was launched by the Central Government. This is an answer to people's demands for a division of power from the central government to local governments, which is essentially an application of the concept of the area division of power theory as a vertical division of state power. In this case, government power is defined as total capacity, where government power can be divided in the center of government and between regions in different ways.¹ However, for Indonesia, it remains within the framework of the Unitary State of the Republic of Indonesia (NKRI). This is in accordance with the regional government being divided into provincial regions and provincial regions being further divided into regencies/municipalities. According to Article

¹<http://lib.lemhannas.go.id/public/media/catalog/0010-121500000010519/swf/4770/files/basic-html/page3.html>

18 of the 1945 Constitution which stipulates the division of power between the central government and regencies/municipalities, each province, district and city has its own autonomous regional government.

Each autonomous region is given the responsibility to manage, serve, and prosper its citizens,² so that regional efforts to increase their income are the main thing to do. Various efforts can be made by the Regional Government in order to increase its Original Regional Revenue which will be used to carry out development in order to carry out its responsibilities.³

Thus, the Regional Government in carrying out Government Affairs which are included in its authority, the region must have its own financial sources so that the region can provide services and welfare to its people. In Article 285 of Law Number 23 of 2014 concerning Regional Government, it is regulated regarding sources of regional income, namely: Regional Original Revenue (PAD) such as the result of separated regional wealth management and other legitimate income. The purpose of the results of the management of regional assets which are separated in the Elucidation of Article 285 of Law Number 23 of 2014 is stated as part of the profits of Regional Owned Enterprises (BUMD) and the results of cooperation with third parties.

These provisions open up opportunities for Regional Governments to make capital participation in regional companies, namely by taking part of regional assets whose management is separated from those carried out by regional governments and then obtaining profits from the investment.

According to Article 286 of Law Number 23 of 2014, in conducting regional capital participation, it is necessary to stipulate a Regional Regulation (in Aceh Province known as Qanun) as the basis for capital participation, so that every capital investment made by the Regional Government to any regional company needs to be regulated with Regional Regulations (Qanun). The regional company referred to is known as the Regional Owned Enterprise (BUMD).

Actually, "BUMD plays a very important role in realizing the welfare and prosperity of a region, namely by contributing to PAD revenue in the form of dividends or taxes (local taxes). In increasing PAD, actually one of the answers that can be answered is to increase the role/contribution of the BUMD itself. On a macro level, the role of BUMDs in the regional economy can be measured through the contribution of added value to Gross Regional Domestic Product (GRDP) and its ability to absorb labor".⁴

The act of capital participation by regional governments to regional companies which was previously preceded by the formation of Regional Regulations (Qanun) is a form of regional government efforts to fulfill the objectives of autonomous regions, namely increasing regional development in order to create a prosperous and advanced society. Likewise, the capital participation of the Southwest Aceh Regency Government in a PT. Bank Aceh, of course, is also regulated by a Qanun namely Southwest Aceh Regency Qanun Number 12 of 2016 concerning the Southwest Aceh Regency Government's Capital Participation in a PT. Bank Aceh.

Meanwhile, if a Regency Qanun is to be amended, the amendment is also carried out with a Regency Qanun, this is in accordance with the provisions of Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation. Thus, changes to the Qanun of Southwest Aceh Regency Number 12 of 2016 must also be made with the Qanun of Southwest Aceh Regency. This is understandable, because the legal force of a statutory regulation according to Article 7 paragraph (2) of

² Kabir, Pelayanan Publik Dalam Kerangka Otonomi Daerah, Proseding Seminar Nasional Multi Disiplin & Call for Paper Unisbank (Sendi U) Ke-2 Tahun 2016 Kajian Multi Disiplin Ilmu dalam Pengembangan IPTEKS Untuk Mewujudkan Pembangunan Nasional Semesta Berencana (PNSB) Sebagai Upaya Meningkatkan Daya Saing Global, p. 709.

³ Syafril Basri, Optimalisasi Penerimaan Daerah Di Dalam Peningkatan Kemampuan Keuangan Daerah Kota Pekanbaru, p. 1, <https://je.ejournal.unri.ac.id/index.php/JE/article/download/795/788>.

⁴ Purwadi, IR., *Penelitian tentang Strategi Pengembangan BUMD Non Perbankan dalam Meningkatkan Pendapatan Asli Daerah*. (Surabaya: Balitbang Daerah Provinsi Jawa Timur, 2002), hlm. 3.

Law Number 12 of 2011 is in accordance with the hierarchy of laws and regulations, so that changes to the Qanun of Southwest Aceh Regency Number 12 of 2016 will have legal force. in accordance with the Regency Qanun itself.

Changing Qanun is not an easy job, because it demands perfection (both systematically, language order, use of terms and most importantly the content of the material to be regulated), to create harmonization and synchronization with higher laws and regulations, and according to the needs and development of society.⁵ In addition, it must also be in accordance with the values contained in Pancasila, because Pancasila is the source of all sources of law in Indonesia where Pancasila is the ideology for the Indonesian nation.⁶

Based on the description above, it is necessary to conduct a study in the preparation of the academic text of the Draft Qanun of Southwest Aceh Regency concerning Amendments to the Qanun of Southwest Aceh Regency Number 12 of 2016 concerning Equity Participation by the Southwest Aceh Regency Government in PT.Bank Aceh. The formulation of the problem: (1) What is the theoretical basis and empirical practice for the birth of the Draft Qanun Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016; and (2) What is the philosophical, sociological, and juridical basis for the birth of the Draft Qanun Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016?

Research Method

Research in the context of preparing the Academic Manuscript of Draft Qanun Amendments to Qanun of Southwest Aceh Regency Number 12 Year 2016 was carried out through normative juridical research and carried out systematically through the following steps:

- 1.Literature review in order to examine a number of literatures related to the Capital Investment of the Aceh Barat Daya Regency Government in PT. Aceh Bank.
- 2.Collecting and reviewing the prevailing laws and regulations both at the central and regional levels relating to the Capital Investment of the Aceh Barat Daya Regency Government in PT. Aceh Bank.
- 3.The study of library materials and laws and regulations as mentioned above, in order to obtain a philosophical, sociological and juridical basis.
- 4.Collecting initial data or field data, in order to get an overview and input on the importance of the Draft Qanun Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016.
- 5.Discussion of the Academic Manuscript Drafting Team on the Draft Qanun Amendments to the Qanun of Southwest Aceh Regency Number 12 of 2016.
- 6.Identification of synchronization and harmonization of provisions in laws and regulations that have relevance to the Draft Qanun Amendment to Qanun of Southwest Aceh Regency Number 12 of 2016.
- 7.Academic discussion with the Academic Manuscript Preparation Team of the Draft Qanun Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016.
- 8.Preparation of the Academic Paper of the Draft Qanun Amendment to the Qanun of Southwest Aceh Regency Number 12 of 2016.

⁵ Muhammad Isa, Efendi, Suhaimi, Pelibatan Perancang Peraturan Kanwil Kemenkumham Aceh Dalam Pembentukan Qanun Kabupaten, *Kanun Jurnal Ilmu Hukum*, Vol.22(1), April 2020, p.74.

⁶ Enzus Tinianus, et.al., 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.

Results and Discussion

A Study on the Principles of Drafting a Draft Qanun regarding Additional Capital Participation of the Southwest Aceh Regency Government in PT. Aceh Bank According to Article 5 of Law Number 12 of 2011 in principle all laws and regulations should be prepared taking into account the principles of the formation of laws and regulations, namely:

1. "Clarity of purpose;
2. The appropriate forming institution or official;
3. The suitability of the type, hierarchy, and content of the material;
4. Can be implemented;
5. Usability and effectiveness;
6. Clarity of formulation; and
7. Openness."

The principle mentioned above is closely related to the strength of the enactment of a statutory regulation that is formed, because compliance with the principle will make the regulations that are drawn up to be good. How are the seven principles related in the draft Qanun concerning Additional Capital Participation of the Southwest Aceh Regency Government in PT. Bank Aceh, can be seen based on the table below:

Table 1. The Relation of the Draft Qanun with the Principles of Formation of Legislation

Number	Legislation Principle	Relation to the Draft Qanun concerning Additional Capital Participation of the Southwest Aceh Regency Government in PT. Bank Aceh
1.	Clarity of Purpose. That every Formation of Legislation must have a clear goal to be achieved,	That the clarity of purpose in the Draft Qanun is to increase the PAD of Southwest Aceh Regency, through dividends at PT. bank Aceh, so that later it can improve the regional economy, and prosper the people of Southwest Aceh Regency.
2.	The principle of "institutional accuracy or forming officials," that every formation of laws and regulations must be made by the institution or official authorized to do so.	This draft Qanun will clearly be formed by its constituent organs, namely the DPRK of Southwest Aceh Regency and the Southwest Aceh Regency Government, each of which is carried out by the Special Committee for DPRK, while for the Regional Government it is carried out by officials appointed/assigned by the Regional Head.
3.	The principle of "conformity between types, hierarchies, and content material," that each Formation of Legislations must pay attention to the right and appropriate content, especially with the types and	Regulations related to the addition of capital participation are in principle standardized so that this Raqan is a follow-up that must be prepared by the Regional Government of Southwest Aceh Regency as the legal basis for increasing the capital participation of the Southwest

	hierarchies of Legislative Regulations.	Aceh Regency Government in PT. Aceh Bank.
4.	The principle of "can be implemented," that every Establishment of Legislation must take into account the effectiveness of said Legislation in society, both philosophically, sociologically, and juridically.	This Raqan will provide certainty to the additional capital participation of the Southwest Aceh Regency Government in PT. Bank Aceh, because it is expected to be a potential increase in PAD so that it can improve people's welfare.
5.	The principle of "usefulness," that every statutory regulation made because of the regulation is really needed and beneficial for the community, nation and state.	This Raqan is needed in order to increase the capital participation of the Southwest Aceh Regency Government in PT. Bank Aceh which was originally IDR 10,000,000,000 until 2021, was added by another IDR 10,000,000,000 starting from 2022 to 2027 (for 5 years). This is intended to increase dividends for the Southwest Aceh District Government.
6.	The principle of "clarity of formulation," that technically every statutory regulation must meet several requirements such as the terms or choice of words used, systematics, and legal language that is clear and easy to understand, so as not to cause multiple interpretations in its application.	That the formulation of this Raqan is very clear because the Ministry has published a Guidebook for the Evaluation of Draft Regional Regulations (Qanun), in addition to Law Number 12 of 2011 concerning the Establishment of Legislations, guidelines for what materials should be included. in the Raperda/Raqan.
7.	The principle of "openness," that the stages of the formation of laws and regulations starting from planning, drafting, discussing, stipulating or ratifying, and enacting are open or transparent.	As a step in the preparation of the Qanun, the mechanism from planning to ratification, promulgation is a process that must be passed and carried out as well as possible so that when it becomes a Qanun no society will be harmed. The application of this principle applies to the apparatus that carries out the task of drafting the Qanun policy.

Table 1 above shows that the principle of the formation of laws and regulations as referred to in Article 5 of Law Number 12 of 2011 has a close relationship with the Draft Qanun concerning Additional Capital Participation of the Southwest Aceh Regency Government in PT. Aceh Bank.

Empirical Study and Implications for Additional Equity Participation for PT. Bank Aceh

One of the tangible manifestations of regional development efforts in order to create a prosperous and advanced society carried out by the Southwest Aceh Regency Government is the investment of the Southwest Aceh Regency Government's capital in a Bank Aceh Limited Liability Company. The equity participation is Qanun of Southwest Aceh Regency Number 12 of 2016 concerning Capital Participation of the Southwest Aceh Regency Government in Bank Aceh Limited Liability Companies. As for the capital of the Southwest Aceh Regency Government which has been placed in PT. Bank Aceh is Rp. 10,000,000,000 (ten billion rupiah) until 2021. From the issued capital until 2021, a dividend of Rp. 15,404,240,429,- (fifteen billion four hundred four million two hundred forty thousand four hundred and twenty-nine rupiah). So that in a period of about 5 (five) years the Southwest Aceh District Government has earned a profit of Rp. 5,404,240,429,- (five billion four hundred four million two hundred forty thousand four hundred and twenty-nine rupiah). This profit is of course the Regional Original Income (PAD) of Southwest Aceh Regency.

Because the equity participation has expired until 2021, the Aceh Barat Daya District Government intends to increase its equity participation in PT. Bank Aceh in the amount of IDR 10,000,000,000 again in 2022 to 2027. For this reason, it is necessary to amend the Qanun of Southwest Aceh Regency Number 12 of 2016, so that the additional capital participation can be realized immediately and the dividends (profits) expected by the Regency Government Southwest Aceh can be realized.

The addition of capital participation is certainly done with full consideration, not done arbitrarily. The considerations are related to the performance achievement of PT. Bank Aceh itself. PT. Bank Aceh has increased from year to year. This is proven almost every year Bank Aceh gets an award, because its performance is getting better. Several awards received by Bank Aceh, among others:

1. In 2017 Bank Aceh won the "Indonesia Good Corporate Governance (GCG) Award 2017" because its Performance Management is getting better.⁷
2. In 2018 won the "Infobank Award 2018" with the Highest Predicate "Very Good" for Financial Performance Throughout 2017. This was obtained from 115 Commercial Banks in Indonesia.⁸
3. In 2018 won an Award from Bank Indonesia as a Member of the Best Banking Focus Group III for the Banda Aceh Banking Level.⁹
4. In 2018 Bank Aceh won 5 (five) "KARIM AWARD 2018" Awards.¹⁰
5. In 2019 received the Padmamitra Award 2019. This was obtained because of the Commitment and Consistency in the Distribution of CSR in Aceh Province.¹¹
6. In 2019, he received a national appreciation, namely the National Tempo Financial Award 2019 for the category of Sharia Commercial Bank, with the title The Best Financial Performance of Bank Aceh.¹²
7. In 2019 won the Republika Syariah Award (ASR) for Book 2 Islamic Commercial Bank Category.¹³
8. In 2019 won the "TOP BUMD AWARD 2019", with the assessment of the Best Performing Islamic Bank 2019.¹⁴

⁷ <https://www.bankaceh.co.id/?p=2500>

⁸ <https://www.bankaceh.co.id/?p=3221>

⁹ <https://www.bankaceh.co.id/?p=3241>

¹⁰ <https://www.bankaceh.co.id/?p=2889>

¹¹ <https://www.pupuk-indonesia.com/holding/pupuk-iskandar-muda/berita/pt-pim-terima-padmamitra-award-aceh-2019-dari-pemerintah-aceh>

¹² <https://www.bankaceh.co.id/?p=4059>

¹³ <https://www.republika.co.id/berita/q180xo423/daftar-penerima-anugerah-syariah-republika-asr-2019>

¹⁴ <https://www.bankaceh.co.id/?cat=10#:~:text=Bank%20Aceh%20Syariah%20Raih%20%E2%80%9CTOP%20BUMD%202019%E2%80%9D&text=Tranformasi%20dan%20perubahan%20atmosfir%20bisnis,Bank%20Syariah%20Berkinerja%20Terbaik%202019%E2%80%9D>

¹⁴ <https://www.bankaceh.co.id/?cat=10#:~:text=Bank%20Aceh%20Syariah%20Raih%20%E2%80%9CTOP%20BUMD%202019%E2%80%9D&text=Tranformasi%20dan%20perubahan%20atmosfir%20bisnis,Bank%20Syariah%20Berkinerja%20Terbaik%202019%E2%80%9D>

9. In 2020, Bank Aceh Syariah Wins the 25th Infobank Award 2020. This was obtained for the performance score and received the title "Very Good" in the Core Capital Bank Category of Rp. 1 trillion to Rp. 5 trillion.¹⁵
10. In 2021 won the 2021 Infobank Digital Brand Awards, which is for the success of Bank Aceh Syariah in promoting digital products or services throughout 2020.¹⁶
11. In 2022 Bank Aceh again received the award as Indonesia Best Sharia Finance 2022 With Outstanding Business Segmentation Development Through Various Banking Products and Services.¹⁷
12. In 2022, it was awarded the 27th Infobank Award as the best bank based on the Core Capital Bank Group (KMBI) 1.¹⁸

Meanwhile, in the first half of 2021, Bank Aceh grew very well. Owned assets grew 13.5 percent from Rp 25 trillion in December 2020 to 27 trillion in June 2021. Financing grew to 8.54 percent, and third party funds (DPK) grew 19 percent. Likewise with profit and loss, also grew 21 percent more than the target of 500 billion. So far, it has only reached 220 billion rupiah, and in the next few months it will reach a profit of 280 billion rupiah.

Based on the historical development of Bank Aceh, performance achievements, assets owned and profits obtained by Bank Aceh, it is appropriate that the Southwest Aceh District Government intends to increase its capital participation in PT. Bank Aceh in the amount of IDR 10,000,000,000 again in 2022 to 2027. Therefore, it is necessary to amend the Qanun of Southwest Aceh Regency Number 12 of 2016, so that the additional capital participation can be realized immediately.

The basic principle that forms the basis for the preparation of the Draft Qanun is related to the addition of the capital investment of the Southwest Aceh Regency Government in PT. Bank Aceh is as contained in Article 5 of Law Number 12 of 2011. Therefore, it is necessary to first identify the positive law (in the form of laws and regulations that are above regional regulations) relating to such equity participation. With this identification, it is hoped that full harmonization and synchronization efforts can be carried out on the draft Regency Qanun which is prepared with higher legislation, which regulates either directly or indirectly regarding equity participation in PT. Bank Aceh as one of the Regional Owned Enterprises (BUMD).

Based on the provisions of Article 331 paragraph (1) of Law Number 23 of 2014 as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, states that regions can establish business entities regionally owned (BUMD). Then Article 332 paragraph (1) states: Sources of BUMD Capital consist of: a. Regional capital participation; b. loan; c. grant; and D. other sources of capital. It can be concluded that local governments can invest in BUMD. Article 304 and Article 333 also explain that Regions can make capital participation in state-owned enterprises and/or BUMD and regional capital participation is stipulated by a Regional Regulation (Qanun).

Furthermore, with regard to the capital participation mentioned above, it is also explained in Article 78 of Government Regulation Number 12 of 2019 concerning Regional Financial Management, explaining that Regions can make capital participation in BUMD and/or state-owned enterprises provided that the said Regional Government capital participation can be implemented if the amount to be included in the relevant fiscal year has been stipulated in a regional regulation (qanun) regarding the investment of the region concerned.

¹⁵<https://aceh.antaranews.com/berita/167313/bank-aceh-syariah-raih-penghargaan-25th-infobank-award-2020>

¹⁶<https://fanews.id/bank-aceh-syariah-raih-infobank-digital-brand-awards-2021/>

¹⁷<https://www.bankaceh.co.id/?p=5087>

¹⁸<https://www.bankaceh.co.id/?p=5266>

The policy of the Southwest Aceh Regency Government in increasing its capital participation in PT. Sociologically, Bank Aceh is the right step and there is no need to doubt it, because in reality PT. Bank Aceh is one of the banks with good performance and has bright future prospects to develop into a large bank. This is proven by PT. Bank Aceh has succeeded in obtaining several awards both at the Regional and National Levels, as a bank with good performance. Especially when viewed in terms of the development and growth of PT. Bank Aceh amounted to 13.5 percent from Rp 25 trillion in December 2020 to 27 trillion in June 2021. Financing grew to 8.54 percent, and third party funds (DPK) grew 19 percent. Likewise with profit and loss, also grew 21 percent more than the target of 500 billion. So far, it has only reached 220 billion rupiah, and in the next few months it is expected to reach a profit of 280 billion rupiah.

The basic principle that forms the basis for the preparation of the Draft Qanun is related to the addition of the capital investment of the Southwest Aceh Regency Government in PT. Bank Aceh is as contained in Article 5 of Law Number 12 of 2011. Therefore, it is necessary to first identify the positive law (in the form of laws and regulations that are above regional regulations) relating to such equity participation. With this identification, it is hoped that full harmonization and synchronization efforts can be carried out on the draft Regency Qanun which is prepared with higher legislation, which regulates either directly or indirectly regarding equity participation in PT. Bank Aceh as one of the Regional Owned Enterprises (BUMD).

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Conclusion

Based on the studies and analyzes that have been carried out in this academic paper, it can be concluded that it is appropriate for the Southwest Aceh District Government to provide additional capital participation from the Southwest Aceh District Government in PT. Aceh Bank. For legal certainty and protection, of course, the capital investment must have a legal umbrella in the form of the Qanun of Southwest Aceh Regency. In this case, by making changes to the Qanun of Southwest Aceh Regency Number 12 of 2016 concerning Capital Participation of the Southwest Aceh Regency Government in PT. Bank Aceh.

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