

The Mechanism of Appointment and Dismissal of Aceh Reintegration Agency's Chairman

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Abstract: Article 10 paragraph (1) of Act Number 11 Year 2006 concerning Aceh Government states "The Aceh Government and district/city government can establish institutions, agencies and/or commissions according to this law with the approval of the Provincial and/or District/City House of Representative except those which are under the authority of the government". The establishment of institution as mandated by the Law on Aceh Government has given birth to special institutions which are regulated through qanun, including the Aceh Qanun Number 6 of 2015 concerning the Aceh Reintegration Agency (BRA). Furthermore, Article 44 paragraph (1) Aceh Qanun Number 6 of 2015 states that the BRA Chairperson is appointed and dismissed by the Governor on the written proposal of the Head of the Aceh Transition Committee's (KPA) Central. This article finds no norms that regulate the mechanism for appointment and dismissal of the BRA Chairman, which involves the term of office, in terms of how to appoint and dismiss the chairperson as a public official who leads regional institutions outside the executive power.

Keywords: regulation, authority, government institution

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I. INTRODUCTION

Article 18B paragraph (1) of the Indonesian Constitution stipulates that the state acknowledges and respects law-regulated special local government units. In the paragraph (2) it is affirmed that the state recognizes and respects units of customary law-based community along with its respective traditional rights as long as it still exists and in accordance with the society's development and maturation and principle of the unitary state of Republic of Indonesia as stipulated in the Constitution.

The provision of Article 18B paragraph (1) has an implication towards the implementation of governance within the regional context; some provinces apply special autonomy (Otsus) such as Special Capital Region of Jakarta as regulated in Act Number 13 2007, Special Region of Yogyakarta based on Act Number 13 2012, Papua is special through Act Number 21 2001. While Aceh, despite being a special region based on Undang Number 18 2001 on Special Autonomy for Special Region of Aceh Province as Nanggroe Aceh Darussalam Province, has been revoked and its status is asserted as invalid through the Act Number 11 2006 on Aceh Government, however is still a special region based on Act Number 44 1999 on Effectuation of Special Province of Special Region of Aceh.

The Government of Indonesia and particularly Aceh Government is responsible to the realization of lasting peace, which in this regard is through Qanun Aceh Number 6 2015 on Aceh Reintegration Agency (BRA) as instructed by Act Number 11 2006 on Aceh Government (UUPA). Article 10 paragraph (1) of UUPA states that the Aceh Government and the governments of district//city may establish institution, agency, and/or commission with approval of Aceh or District/City House of Representative (DPRK or DPRA) unless those under the authority of Government. Paragraph (2) specifies further provision regarding the establishment of institution, agency, and/or commission as stated on paragraph (1) regulated by the Qanun. Article 11 paragraph (1) of UUPA states that in implementing specific policy, the Aceh Government may establish an agency or office.

Article 44 paragraph (1) of Aceh Qanun Number 6 year of 2015 states that the Chairman of BRA is appointed and dismissed by Governor on written proposal from the Head of Aceh's Transition Committee's (KPA) Central. In the article, however, there is no norm regulating the mechanism of appointment and dismissal of BRA chairman, concerning on the term of office, in what situation and how the appointment and dismissal as public official who administers regional institution outside the executive power.

The proposal for appointment and dismissal of BRA chairman by KPA within short time range, as stipulated in Governor Decision Number 821.29/293/2016 dated on 9 May 2016 on Appointment of Aceh Reintegration Agency's Personnel, appointed Bukhari, SE, MM as BRA Chairman. Afterwards, Governor Decision Number 821.29/354/2017 which is dated on 27 March 2017 on the Appointment and Dismissal of Aceh Reintegration Agency's Chairman appointed Fakhurrizi Yusuf, SE, M.Si. Later on, the KPA through letter number: 018/KPA/VII/2017 which is dated o 20 July 2017 proposed to Governor of Aceh to replace BRA Chairman.¹

The proposal for appointment and dismissal without any strictly regulated mechanism within Qanun as is Qanun regulating on Aceh Customary Assembly (MajelisAdat Aceh), WaliNanggroe Institution and Aceh Independence Commission resulted in KPA's use of authority in proposing the dismissal of BRA Chairman can be executed in anytime, which has an impact in the program and activities implementation of BRA itself. The hindered program implementation would lead to the failure of government program, so that the goal of BRA's establishment to carry out the reintegration and peace preservation for the realization of justice and prosperity in Aceh would not be achieved.

Based on the background issue, the writer will examine the following problems:

1. Has the regulation on the mechanism of appointment and dismissal of Aceh Reintegration Agency's Chairman as regulated in Qanun been in accordance to the principles of good governance?
2. What is the rationale behind the matter of BRA Chairman not regulated in the Qanun?

The objective of this research is to examine and understand the regulation on BRA Chairman's appointment and dismissal mechanism in accordance with the principles of good governance as well as to describe the rationale behind the term of service period of BRA Chairman being not regulated in the Qanun. It is expected that the result of this research can benefit in the following way: firstly, theoretically it can contribute to the study of law and state administration, through providing a better understanding for fellow students and academician. Secondly, the writer hopes that practically this research can provide an input to the development of state administration law, particularly in Aceh.

II. RESEARCH METHODOLOGY

The type of research used in this study is normative laws study (*juridis normative*), a research that focuses on examining the norms implementation of positive laws.² Normative laws research is also known as doctrinal laws, as this research is conducted and focused only on written rules or other legal materials. It is also considered as a library research as it more inclines to refer to secondary source materials, hence it is also the opposite of empirical study.³ This methodology makes it possible to understand problem within juridical framework, both from the legislation and legal theory interpretation. Approach is used by firstly examining principles in legislation relevant to the case through reviewing the laws from normative aspect.⁴

Library materials are used as data sources.⁵ The collection method is conducted by gathering and examining legislations, books, journals, official documents, court ruling, and previous researches related to the case issue. Secondary data is collected from various legal materials, as follow:

1. Primary legal material, which is a legal or library material that has binding power. Dta from primary legal material will be obtained through examining legislations.⁶ These legislations are:
 - a. Act Number 11 2006 On Aceh Government.
 - b. Act Number 23 2014 On Local Government
 - c. Qanun Aceh Number 6 2015 on Aceh Reintegration Agency
 - d. Qanun Aceh Number 3 2004 on Formation, Organization Structure, and Working Procedure of the Aceh Customary Assembly
 - e. Qanun Aceh Number 9 2013 on Amendment of Qanun Number 8 2012 on WaliNanggroe
 - f. Qanun Aceh Number 6 2016 on Elections in Aceh.
2. Secondary legal material, which is legal material that provides explanation over primary material in the form of unofficial document. It is from researches of experts and thesis.
3. Tertiary legal material, which is legal material that provides guide and instruction as well as explanation on primary and secondary legal materials. It is collected from Indonesian dictionary and legal dictionary.⁷

¹<http://modusaceh.co/news/kpa-pusat-minta-irwandi-yusuf-gantiketuabra/index.html>.

² Johnny Ibrahim, *Teori&MetodePenelitianHukumNormatif*, Bayumedia, Malang, 2012, p. 295.

³ Bambang Waluyo, *PenelitianHukumdalamPraktek*, SinarGrafika, Jakarta, 2010, p. 13.

⁴ SoerjonoSoekanto, *PengantarPenelitianHukum*, UI Press, Jakarta, 2008, p. 11.

⁵ Zainuddin Ali, *MetodePenelitianHukum*, CetakanKelima, SinarGrafika, 2014, p. 23

⁶ Peter Mahmud Marzuki, *PenelitianHukum: EdisiRevisi*, Cetakan 8, KencanaPrenada Media Group, Jakarta, 2013., pp. 182-187.

Data processing is essentially to systemize written legal materials in order to simplify the analysis and constructing process.⁸ Data analysis is the important and determining next step, as analysis itself is a systematically consistent process of breakdown towards certain aspects of discussed problem.^{9,10} In this stage the writer sorts the collected data. Thus, analysis has a close link to problem approaches. In accordance with normative juridical approach of this research which emphasizes on secondary data (primary, secondary and tertiary legal materials), hence the data collected is to be analysed qualitatively.

Data analysis is done by determining the content and meaning of rule of laws used as sources to solve the analysed case. It is conducted through deductive method, which is a way of thinking in extracting the conclusion from something generally is correctly proven, whereby the conclusion is presented for certain specific matter.¹¹ As a research that produces descriptive data both written and verbal, the library and field study is analysed qualitatively.

III. RESULT AND DISCUSSION

The BRA was founded as an initiative of central government through President Instruction Number 15 2005. The Governor of Aceh (then Nanggroe Aceh Darussalam) followed it up by issuing a decision on the establishment of that body on 2 May 2006. Despite of its realization being under the responsibility of the Governor, the central government was the one that provided the funding to support all of BRA's activities.¹²

Based on the Decision of Aceh House of Representative (DPRA) Number 17/PMP/DPRA/2015 dated on 18 June 2015 on the appointment of DPRA Legislation Body as the discussant of Aceh's Qanun Design regarding Aceh's Peace Strengthening Agency (BP2A), the Legislation Body had discussed it with team from Aceh Government which comprised of Legal Bureau of the Regional Secretariat, Organization Bureau of the Regional Secretariat, governance Bureau of the Regional Secretariat, Directorate General of National Unity and Politics agency and Aceh's Social Department, BP2A, as well as functional Aceh Region of Ministry of Law and Human Rights in accordance with the step of discussion process.¹³

"The peace that has been enjoyed by the people of Aceh today needs to be continuously preserved and enhanced through efforts that maintain and strengthen peace. The efforts have indeed been and are being carried out by the Government through a body established with a Governor Regulation, namely the Aceh Peace Strengthening Agency, but it is recognized that the rules in the form of Governor Regulation are not sufficient to carry out relatively heavy and serious tasks, so that the existence of the Aceh Peace Strengthening Agency must set forth in a set of rules in the form of Qanun, namely the Aceh Qanun concerning the Aceh Reintegration Agency".¹⁴

In general, it has been recognized that conflict resolution efforts with an integrated approach, absolute necessary, the use of conventional criminal law and with the old pattern is considered unable to solve the problem completely. Therefore, a restorative justice approach must be carried out. This approach involves all parties and empowers all social institutions within the community, including traditional institutions.¹⁵ Thus, it needs a handling effort is needed through an Aceh Reintegration Agency, so that the peace that has been felt by the people of Aceh is no longer disturbed by the sense of justice negligence, as a result of the prolonged Aceh conflict.

Henceforth, the Aceh Reintegration Agency needs to be regulated in the form of a Qanun so that peace strengthening process can be carried out in a synergic and comprehensive manner, as it requires the involvement of government institutions, facilities and infrastructure as well as some relatively large funds. Philosophically,

⁷Zainuddin Ali, *Op. Cit.*, pp. 23-24

⁸Soerjono Soekanto, *Op. Cit.*, pp. 251-252.

⁹Zainuddin Ali, *Op. Cit.*, hlm. 23-24. Lihat Juga Burhan Ashshofa, *Metode Penelitian Hukum*, Rineka Cipta, Jakarta, 2010. p. 56.

¹⁰Tim Penyusun Revisi Buku Panduan Penulisan Tesis Program Studi Magister Ilmu Hukum (S2) Program Pascasarjana Unsyiah, Universitas Syiah Kuala, Banda Aceh, 2012, p. 14.

¹¹Sedarmayanti dan Syarifuddin Hidayat, *Metodologi Penelitian*, Mandar Maju. Bandung. 2002, p. 23.

¹²World Bank, *GAM Reintegration Needs Assessment Enhancing Peace through Community level Development Programming*, The World Bank March 2006, p. 3

¹³<http://portalsatu.com/read/politik/ini-laporan-lengkap-banleg-dpra-tentang-rancangan-qanun-bra-2704>, accessed on 12 January 2019.

¹⁴Irmansyah D Guci, *Badan Legislasi Dewan Perwakilan Rakyat Aceh (Kabar Aceh Untuk Dunia)*, Portal Satu, <https://bra.acehprov.go.id/>, accessed on 2 January 2019.

¹⁵Husni Jalil, *Eksistensi Otonomi Khusus Provinsi Nanggroe Aceh Darussalam Dalam Negara Kesatuan RI Berdasarkan UUD 1945*, C.V. Utomo, Bandung, 2005, p. 19

this Qanun is intended to create a sense of justice, as mandated by Pancasila as the philosophical basis of the Republic of Indonesia.¹⁶

Article 1 number 12 Qanun Number 6 of 2015 concerning on the Aceh Reintegration Agency states that "The Chairman of the Aceh Reintegration Agency, hereinafter referred to as the Chairman, is the Chairman of the BRA." Furthermore, in Article 18 it is stated:

The Chairman of BRA is in charge of leading and coordinating the implementation of Aceh Peace Strengthening agenda, programs and activities which include mainstreaming peace within Aceh's sustainable development, implementing economic or socio-cultural improvements and mediating agricultural lands and employment for former Free Aceh Movement (GAM) forces, political prisoners who obtained amnesty, and communities affected by the conflict.

In Article 44 paragraph (1) Qanun Number 6 of 2015 concerning on the Aceh Reintegration Agency is stated "The Chairman of BRA is appointed and dismissed by the Governor on the written proposal of the Chairperson of the Aceh Transition Committee's (KPA) Central". Then Article 46 paragraph (1) states "The Chairman of BRA as referred to in Article 44 paragraph (1) may be appointed from the Regional/Central Civil Servants or Non-Civil Servants".

Considering the large number of work units that have duties and functions related to the Aceh Reintegration Agency, the capacity development of good governance's general principles in terms of institutional dimensions can be aimed at strengthening coordination and collaboration among these units. Efforts can be made through establishing regulation on the clarity of tasks and functions among these units, and how they can work synergistically.¹⁷ This regulation can be stated through the Aceh Governor's Regulation on the Agency. In which also contains the institutionalisation and guidelines of Aceh Reintegration Agency's management.

Regarding the changing of the BRA chairman, history wrote that since the enactment of Aceh Qanun Number 6 of 2015 concerning on the Aceh Reintegration Agency, the Aceh government has made several changes to the chairman in carrying out the mandate of Aceh Qanun Number 6 of 2015 concerning on BRA, which mandates the government responsible to complete the reintegration program in Aceh.¹⁸

As explained earlier, the proposal to appoint and dismiss the BRA chairman by the Aceh Transition Commission within a short span of time, which is stated in the Decree of the Governor of Aceh Number 821.29 / 293/2016 dated 9 May 2016 concerning on the Appointment of Personnel of the Aceh Reintegration Agency, appointed Bukhari, SE, MM. as Chairman of the BRA. Later on, the Governor's Decree Number 821.29 / 354/2017 dated 27 March 2017 concerning on the Appointment and Dismissal of the Chairman of the Aceh Reintegration Agency appointed Fakhurrizi Yusuf, SE, M.Sc. Then the Aceh Transition Committee, through letter Number: 018 / KPA / VII / 2017 dated 20 July 2017, proposed to the Governor of Aceh to replace the BRA chairman again.¹⁹

Regarding the mechanism for the appointment and dismissal of the BRA chairman, Kamaruddin Abubakar/Abu Razak (Deputy Chair of the Aceh Transition Committee), said the following:²⁰

The existence of the Aceh Transition Committee is to recommend the appointment and dismissal of the BRA chairman because the establishment of the BRA Qanun was to carry out and complete tasks related to the impact of Aceh conflict including former GAM militant, political prisoners and victims of conflict. KPA (Aceh Transition Committee) is a GAM's changing form organization due to the signing of peace agreement between the Government of Indonesia and GAM.

Thus, it is as appropriate that the role of the KPA to recommend the BRA chairman to ensure that the person to be appointed by the Governor will actually carry out the function as stipulated in the Qanun. Regarding the arrangement of the chairman's term of office in the Qanun, it is considered a flaw, which

¹⁶Thung Ju Lan dkk, *Penyelesaian Konflik di Aceh Aceh dalam Proses Rekonstruksi Rekonsiliasi*, Riset Kompetitif LIPI, Jakarta, 2005, p. 15.

¹⁷According to the results of the public inventory of the law carried out in 5 national mass media: Kompas, Republika, Suara Pembaruan, Media Indonesia and Jakarta Post. From 2005 to 2011 carried out by the LP3ES Documentation Center, there have been 231 opinions recorded about the law and uncertainty regarding various legal issues including the resolution of social conflicts.

¹⁸Kamaruddin Abubakar/Abu Razak (Vice Chairman of Aceh Transition Committee), *Interview on Wednesday*, 5 December 2018 at 12.15 Western Indonesia Time

¹⁹<http://modusaceh.co/news/kpa-pusat-minta-irwandi-yusuf-gantiketuabra/index.html>. diakses 21 Januari 2019

²⁰Kamaruddin Abubakar/Abu Razak (Vice Chairman of Aceh Transition Committee), *Interview on Wednesday*, 5 December 2018 at 12.15 Western Indonesia Time

consequently becomes the reason why a chairperson cannot carry out BRA's program activities effectively since at any time he/she can be dismissed.²¹

According to Brigadier General. Amiruddin, chairman of the Communication and Coordination Forum (FKK), there should have been placed in BRA personnel a person who understands government administration and state's financial administration. The limited human resources has had a broad impact on the programs preparation, performance and work ethic, organizational technical operations and substantive implementation of reintegration and reconciliation programs. As a result, much of the data compiled by BRA is invalid and programs are neither consistent nor on target. To create a credible BRA, a number of resource persons suggested immediate restructuring of the people at BRA and form an institution tasked with evaluating or controlling the BRA.²²

In addition, the Article 44 paragraph (1) Qanun Number 6 Year 2015 states that "The Chairperson of the BRA is appointed and dismissed by the Governor on the written proposal of the Chairperson of the Aceh Transition Committee's central (KPA)", followed by paragraph (4) "The Chair of BRA's learning unit district/city level is appointed and dismissed by the Governor on the recommendation of the regent/mayor on a written proposal by the Chairperson of the regional KPA".

According to Polem Muda, Chairman of Children of the Nation's Communication Forum (Forkab) Central Board, "The provisions of the article have given KPA a broad scope to recommend in writing the replacement of the provincial and district/city BRA leaders to the governor and regent/mayor. This is an unlawful and unconstitutional action against the laws and regulations, including the general principles of good governance relating to the implementation of government administration". If the article remains to be upheld, it seems that there is an attempt to put the interests of KPA chairman within the BRA.²³

In Paragraph (2) of Article 10 of Act Number 30 Year 2014 concerning on Government Administration describes the scope of the general principles of good governance (AAUPB) that applies in government administration. In Article 10 paragraph (2) of Law Number 30 Year 2014 it is stated that:

The General Principles of Good Governance include the principle of benefit, meaning that benefits must be considered in a balanced manner between:

- 1) The interests of one individual with another individual's;
- 2) Individual interests with the community's;
- 3) Interest of citizens and foreign communities';
- 4) The interests of one community group and the interests of other community groups;
- 5) Government interests with Citizen's;
- 6) The interests of the present generation and the interests of future generations;
- 7) The interests of humans and their ecosystems; and
- 8) Interest of men and women.

According to AtengSyarifudin in his professor's inaugural speech, it was stated that the assessment of the good and bad of governance is ethical, while the assessment in terms of fairness and justice is often discussed in the study of Administrative Law.²⁴ The field that brings together the two perspectives on the administration of government is the general principles of good governance. This thinking is in line with the opinion of Wiarda in discussing the existence and history of the development of the AAUPB, who states as follows:²⁵

The general principles of good governance are ethical tendencies which becomes the basis of our State Administration Law, both written and unwritten, including the practice of government, and it can be known that the principles can be partially derived from law and practice, while for the most part evidently (clear and tangible) urges us.

Considering the statement above, there are several characteristics that can be found with the position of AAUPB for government administration both at the central and regional levels. AAUPB can be regarded as an ethical value that lives and develops within the scope of Administrative Law, acting as a guideline for government officials or State Administration Officials in carrying out their functions.

In accordance with Law Number 12 of 2011 concerning on the Establishment of Legislation, what is meant by regional regulation is the legislation established by the Regional House of Representative with the

²¹ *Ibid*

²² Iskandar Zulkarnaen, et.al. "Rekonsiliasidan Reintegrasi Aceh; Studi Kasus Aceh Timur", *Seumike, Journal of Aceh Studies* Vol.4. No.1 feb.2009, p. 61

²³ *Ibid*

²⁴ Ridwan HR, *Hukum Administrasi Negara*, Rajawali Pers, Jakarta, 2008, p. 247

²⁵ Nomensen Sinamo, *Hukum Administrasi Negara*. Jala Permata Aksara, Jakarta, 2010. p. 142

consent of the Regional Head.²⁶ Furthermore, in the Qanun Number 3 of 2007 concerning on the Procedure for the Establishment of the Qanun, the Aceh Qanun is a statutory regulation similar to provincial regulations that regulates government administration and the life of Acehnese people.²⁷ Qanun content material includes: (a) arrangements regarding the administration of Aceh governance; (b) arrangements concerning matters relating to special regional conditions and Aceh's special authority; (c) arrangement regarding the implementation of co-administration tasks; and (d) further elaboration of laws and regulations.²⁸

Establishment of Regional Regulations that aim to carry out government affairs, which regional authorities, Regional Heads and DPRA as makers of Regional Regulations which become the legal basis for holding regional autonomy, are in accordance with the conditions and aspirations of the people and the distinctiveness of each respective region. Therefore, the enactment of Regional Regulations in this case the Aceh's Qanun Number 6 of 2015 concerning BRA as part of the legislation system refers to the rules for drafting qanun and should not conflict with public interest. The material contains of Provincial Regulations and district/city regulations are for implementing regional autonomy and co-administration tasks and fulfilling specific regional requirements and/or further elaboration of higher legislation.²⁹

Regarding the drafting of the BRA law, the stages stipulated in Law Number 12 of 2011 have been passed by the legislators (Qanun), the writer has investigated the script of Qanun draft of the Aceh Reintegration Agency and there are no findings on the stipulation of BRA Chairman's term of service. The Head of Legislation in the Legal Bureau of the Aceh Regional Secretariat explained that the origin of the BRA Qanun came from the Governor's proposal; at its planning stage, as stated in the academic nomenclature, the name was Aceh Peace Strengthening Agency (BP2A) but after going through discussions with legislative body it changed into the Aceh Reintegration Agency. It was recognized that this Qanun had no regulation regarding the term of office of the chairperson, which was different from other Qanun which is for the establishment of other institutions.³⁰

The absence of norm related to the term of office is due to the lack of harmonization during the Qanun preparation stage. As stipulated in Article 58 paragraph (2) which states that the harmonization, rounding, and consolidation of the conception of Regional Regulations Draft originating from the Governor are coordinated by law firm and can include vertical agencies from the ministry that oversees government affairs in legal field.

Harmonization must be carried out systemically from the very beginning since the preparation of the Academic Script (NA), preparation of the Regional Legislation Program (Prolegda) until the preparation of the Qanun Draft. The planning aspect is one of the important factors, therefore, regulation arrangements must begin with planning. Arranged accordingly, integrated and systematic, equipped with the right means and methods, and standards that bind all institutions that produce legislation.³¹ The National Legal Guidance Body (BPHN) provides an understanding of legal harmonization, which is a scientific activity towards the process of harmonizing written law that refers to both philosophical, sociological and juridical values.³²

Harmonization of the legislation formation is aimed at actualizing the functions of legislation, in this case the Aceh Qanun, optimally. Therefore, the norms that will be contained in a regulation already existed in the academic text obtained based on the research results including studies from a philosophical, juridical, politics and sociological aspect so that it will have a good quality.

As an organization formed after the signing of the Peace Agreement that can register or not register to Government Agencies, T. Nasruddin explained that KPA has not yet registered in the Aceh National and Political Unity Agency, as there is no obligation for an organization to register to government agencies. This refers to the Constitutional Court Decision on judicial review of Law Number 17 of 2013 concerning Community Organizations Number 82 / PUU-XI / 2013 dated on 23 December 2014 and Decision Number 3 / PUU-XII / 2014 dated on 23 December 2014 that in principle mass organizations can be registered in every government agency and local government but can also be unregistered. For unregistered mass organizations that do not receive services from the government and regional governments, the government and regional governments cannot designate these organizations as prohibited organizations and cannot prohibit the activities

²⁶Article 1 number 7 and number 8 of Act Number 12 of 2011 concerning on Establishment of Legislation

²⁷Article 1 number 14 Qanun number 3 of 2007

²⁸Article 5 paragraph (1) Qanun number 3 of 2007

²⁹Article 14 of Law Number 12 Year 2011 concerning on Establishment of Legislation.

³⁰M. Junaini, SH, MH (Head of Legislation Department), *Interview* on Tuesday 29 January 2019 at 8:30 Western Indonesia Time

³¹Soegiyono, *Kajian Pentingnya Harmonisasi Pembentukan Peraturan PerActan*, Pusat Pengkajiandan Informasi Kedirgantaraan Lembaga Penerbangandan Antariksa Nasional, 2013, p.7

³²*Ibid*, p.7

of these organizations as long as they do not carry out activities that disturb security, public order and violate the law.³³

In the event that the BRA chairperson's term of service is not regulated and the rules regarding its mechanism and reasons for dismissal and appointment in the Qanun, officials or state administrative bodies have used the authority without having to be fully bound by the laws and regulations.³⁴ In addition, officials or state administration bodies have ignored the General Principles of Good Governance (AAUPB) or General Principles of Proper Government Administration (AAUPPL), including the principle of legal certainty, equality principle, principle of balance, principle of prohibiting overlapping authority, the principle of good conduct, and the principle of arbitrary prohibition.

Deviations from AAUPB or AAUPPL by legislators constitute the use of free authority from the government (*vrijebevoegdheid*) which is often called *FreiesErmessen*.³⁵ The principle of legality states that every act of state administration must have a legal basis, while discretion (*freiesermessen*) is freedom to act.³⁶ *FreiesErmessen* is used as an alternative to fill in the weaknesses in the application of the principle of legality (*wetmatigheid van bestuur*). For countries that are welfare state, the principle of legality alone is not enough to be able to play a thorough role in serving the interests of society, which is growing rapidly in line with the development of science and technology.³⁷

IV. CONCLUSION

The establishment of the Aceh Reintegration Agency through Qanun Number 6 of 2015 aims to continue the implementation of government reintegration carried out by the Government through Aceh Government against former Free Aceh Movement forces and political prisoners who obtain amnesty, as well as conflict-affected communities and peace strengthening. As a body formed immediately after the peace agreement was signed, the Aceh Reintegration Agency (BRA) was faced with a number of major agendas. In a relatively fast period, the BRA was required to carry out large works at great risk. Such conditions should be overcome by the recruitment of qualified human resources. However, after the establishment of Aceh Qanun Number 6 of 2015 concerning the Aceh Reintegration Agency the regulation on the term of office of BRA Chairmen is absent, hence The Aceh Transition Committee (KPA) may recommend the Governor from time to time for the change of BRA Chairman. Proposal for appointment and dismissal without going through a mechanism that is explicitly regulated in Qanun Number 6 of 2015 concerning the Aceh Reintegration Agency, which in this case the official/administrative body of the state, has used the authority of discretion (*freiesermessen*).

The absence of a term of office/tenure of the BRA chairman has caused the implementation of duties and functions not to run optimally, in addition to the existence and authority of the Aceh Transition Commission (KPA) who can recommend the Chair of BRA to ensure that The Governor will truly carry out the functions as stipulated in the Aceh Qanun Number 6 of 2015 concerning the Aceh Reintegration Agency which mandates the government's responsibility to complete the reintegration program in Aceh in developing good governance capacity in terms of institutional dimensions which is aimed at strengthening coordination and collaboration between units. Efforts are made through the establishment of regulations that regulate the clarity of duties and functions at the Aceh Reintegration Agency and its existing units and how they can work in synergy.

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³³Secretary of Aceh National and Political Unity Agency, *Interview on Thursday 6 December 2018*

³⁴Tarmizi Deputy II of BRA, *interview on Monday 14 January 2019 at 10.30 Western Indonesia Time*

³⁵Ridwan HR, *Op.Cit.*, p. 169

³⁶SF. Marbun and Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 2001, p.46

³⁷Ridwan HR, *Op.Cit.*, p. 171

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