

The Islamic Law within the Indonesian Legal System (A Case Study of Islamic Sharia Law in Aceh)

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Abstract

After the peaceful agreement signed by the Indonesian government with the government of Aceh, special autonomy was granted for Aceh and provided additional space for the two governments to improve the relations. Islamic law was fully effected after the assignment of Law No. 22 of 1999 concerning Regional Autonomy and amended by Law No. 11 of 2006 concerning the Law of the Government of Aceh, which provides a legal basis for the Privileges and Application of Islamic Law in Aceh. This research aims at analyzing the history and current existence of Islamic law in Indonesia and its contradiction with human rights. As an effort to enforce Sharia law, the regional government, besides pouring it into regional regulations or what is called Qanun, also forms

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institutions tasked with ensuring the proper implementation of Islamic Sharia law in Aceh. The research used normative legal research with a statute approach. The data are taken from secondary data. The results found that there were no human rights violations in applying Islamic law in Aceh.

Keywords: Aceh, Special Autonomy, Islamic Law, Separatism, Human Rights.

Abstrak

Setelah kesepakatan damai terjadi antara pemerintah pusat dengan pemerintah Aceh, otonomi khusus kemudian diberikan kepada Aceh yang memberikan ruang tambahan bagi kedua pemerintah untuk memperbaiki hubungan. Hukum Islam berlaku penuh setelah ditetapkan Undang-Undang Nomor 22 Tahun 1999 tentang Otonomi Daerah dan diubah dengan Undang-Undang Nomor 11 Tahun 2006 tentang Undang-Undang Pemerintahan Aceh yang memberikan landasan hukum Keistimewaan dan Penerapan Syariat Islam di Aceh. Penelitian ini bertujuan untuk menganalisis sejarah dan arus keberadaan hukum Islam di Aceh dan kontradiksinya dengan hak asasi manusia. Sebagai upaya penegakan syariat, pemerintah daerah selain menuangkannya ke dalam peraturan daerah atau yang disebut qanun, juga membentuk lembaga yang bertugas menjamin terselenggaranya syariat Islam dengan baik di Aceh. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan undang-undang. Data diambil dari data sekunder. Hasil penelitian menemukan fakta bahwa tidak ada pelanggaran HAM dalam penerapan syariat Islam di Aceh.

Kata Kunci: Aceh, Otonomi Khusus, Hukum Islam, Gerakan Separatis, HAM.

Introduction

Aceh¹ is an integral part of the Republic of Indonesia. In 2005, a Memorandum of Understanding (MOU) was signed to indicate the military conflict in Aceh effectively ceased. The MOU then gave fairly wide special autonomous for Aceh as the only area

¹ The reason why the author chose Aceh as the research object is because Aceh is one of a province in Indonesia granted special autonomy by the government. Only Aceh province applied the Islamic sharia law in giving the punishment. As it's different from other provinces in Indonesia, Aceh has been granted as the Special Autonomy region. The long period of rebel cases in Aceh happened as the demanded of Acehnese people to build Aceh as Islamic State.

implement the Islamic Sharia law.²

Over the last decades ago, the state of Indonesia has been gradually transformed from centralized into decentralized system and launched national reform (*reformasi*). The new system assumed more democratized, especially after the fall of the Soeharto regime, which had endured for more than thirty years. Efforts to achieve this democratization, through the Constitutional amendments held in face pressure in favor of decentralization, devolution of power and accommodation of demands ethnic nationalist groups in East Timor, Aceh and Papua.³

Furthermore, Indonesia adopted two laws that promised the tools for widespread devolution of powers especially to any regions in Indonesia territory. Namely, Law No. 22 of 1999 on Regional Autonomy (*Undang-Undang Otonomi Daerah*) and Law No. 23 of 1999 on Fiscal Balance between Central and Regional Government (*Undang-Undang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah*) which became the pioneer of the implementation of regional autonomy in Indonesia due to the political and economic reason.⁴

Historically, the rebellion that occurred in Aceh actually began in 1953-1962 started by *Darul Islam-Tentara Islam Indonesia* (House of Islam/DI-TII). DI rebellion was never meant to seek a separate from Indonesia, and the goal was only to change the state form into the Islamic State of Indonesia.⁵ Then the rebellion also occurred around 1976-2005 when *Gerakan Aceh Merdeka* (GAM, Free Aceh Movement) which dedicated to Acehnese independence partly in response to the state's repressive action.⁶

A new phase began when both the Indonesian government and GAM dealt to end the conflict through peace agreement and formally

² Hurst Hannum, "The Road to Autonomy in Aceh", in *American Society of International Law Proceedings*, April 9-12, 2008.

³ Bertrand J, "Indonesia quasi-federalist approach: Accommodation amid strong integrationist tendencies", in *International Journal of Constitutional Law*, Vol. 5, No. 4, (2007).

⁴ Gary F. Bell, "The New Indonesian Laws Relating to Regional Autonomy: Good Intentions, Confusing Law", in *Asian-Pacific Law and Policy Journal*, Vol. 2 No.1, Feb 2001.

⁵ Michael L. Ross, "Resources and Rebellion in Aceh, Indonesia. Editors Paul Colliers and Nicholas Sambanis, *Understanding Civil War Evidence and Analysis*", 2nd Volume, Washington DC, Europe, Central Asia, and other Regions, World Bank, available at <https://openknowledge.worldbank.org/handle/10986/7438>, accessed on December 22, 2021 at 3 pm.

⁶ Bayu Satria Utama, "Asymmetric Decentralization in Aceh: Institutionalization of Conflict of Interest by Elites GAM", in *Jurnal Politik*, Vol. 5, No. 1, (August 2019), 12.

signed in August 2005.⁷ The granting of Special Autonomy for the Province of Aceh aims to expand the authority to the regions to regulate and manage their own governance including economic resources. With this expansion of authority, the role of political leadership in the regions and regional communities can be more effective.

The political approach included the formulation of special autonomy legislation by Law No. 44 of 1999 on Special Status of Province of Aceh Special Autonomous Region (*Penyelenggaraan Keistimewaan Propinsi Daerah Istimewa Aceh*), which recognized Aceh's uniqueness by allowing the province the right to organize and manage its own religious, *adat* (customary law) and educational affairs.⁸ Furthermore, Law No. 18 of 2001 concerning the Implementation of Special Autonomy for the Province of Nanggroe Aceh Darussalam (*Otonomi Khusus Bagi Propinsi Daerah Istimewa Aceh Sebagai Provinsi Nanggroe Aceh Darussalam*), before finally being amended by Law No. 11 of 2006 concerning Aceh Government (*Undang-Undang Pemerintah Aceh/UUPA*). The establishment of Law No. 11 of 2006 was a transformation of the MoU approved by the Free Aceh Movement (GAM) with government representatives in Helsinki.⁹

The main purpose of this paper aside to analyze the history of the implementation of Islamic law. Moreover, the paper tries to find a respons to the issue of the violation of human rights.

Acehnese Rebellion and the Effort of Implementing Islamic Law in Indonesia

During the new order periods, Indonesia was the most centralistic country in the world under the authoritarian General President Soeharto. Afterward, in 1999 Indonesia began to be more effective to implement decentralization. Which by means, the transfer of Indonesian government power to local governments, also a means to encourage democratic participation and prevent concentration efforts by any person or institution. Therefore, the Aceh regional government, through special autonomy granted by the government to carry out the

⁷ Bertrand J, *Autonomy and Nationalist Demands in Southeast Asia*-Political Autonomy and Divided Societies Palgrave Macmillan, US. (2012), 214.

⁸ Law No. 44 of 1999 Article 3 (2) available at <https://www.dpr.go.id/jdih/index/id/445>, Accessed on December 23, 2021, at 7 pm.

⁹ Zaki 'Ulya, "Refleksi Memorandum of Understanding (MoU) Helsinki Dalam Kaitan Makna Otonomi Khusus Di Aceh", in *Jurnal Konstitusi*, Vol. 11, No. 2, (2014), 371-392.

role of sharia.¹⁰

During the Soekarno regime, in 1959, Aceh was the first region to be granted the right as a special autonomous region in the name of religion, customary law (*adat*), culture and education. The special autonomy or privileges granted to Aceh is based on Law No. 44 of 1999, which recognizes the “Special Status of Aceh Special Autonomous Region Province” in the fields of religion, education, and customary law, and Law No. 18 of 2001 on Special Autonomy for Aceh gives broader self-government powers to provinces in the field of religion, government, economy, security, and defense. In June 2001, as a package of regional autonomy, the Indonesian government would allow Aceh to retain 70% of the province’s revenues and elements of Islamic legal institutions.¹¹

After a few years, the privileges promised by the government were only symbolic. The Acehnese are not satisfied because the Indonesian government has not realized this privilege. There are several factors that cause the dissatisfaction of Acehnese Muslims to the point of conflict with the Indonesian government. First, there is a strong perception of the exploitation of Aceh’s natural resources by the Indonesian government, as well as the government’s neglect of the fair distribution of Aceh’s natural resources. Second, the disagreement on immigration policies by the Indonesian government is seen as an attempt by the government to change the culture, society, and economy of Aceh. Third, the rejection of Acehnese Muslims against Indonesia’s secular ideology which is contrary to Islamic ideology. Lastly, the military presence in Aceh is considered very repressive and cruel. Therefore, after the proclamation of Indonesian independence in August 1945, Aceh was claimed as the center of resistance against the Indonesian government in Jakarta.

These were signs of the rise of a new separatist movement in 1976 known as the Free Aceh Movement (GAM), founded under the name of the Aceh-Sumatra National Liberation Front (ASNLF) on December 4, 1976.¹² GAM was formed as a separatist movement aimed

¹⁰ Mark E. Cammack and R. Michael Feener, “The Islamic Legal System in Indonesia”, *Pacific Rim Law and Policy Journal*, Volume 21 (1), 2012.

¹¹ Amber Dufseth, “Law Politics Indonesia 1999: Rights Association In Aceh and Papua”, in *Journal Law - Policy Circumference Pacific*, Volume 11, No. 3, June 2002.

¹² Sara Ibrahim et al. *AI Updates Law International*, Summary Rights Asasi Human No.2 31, Season Cold, 2004.

at liberating Aceh from the Indonesian government.¹³ GAM's role in the Aceh conflict has three distinct phases. First, between 1976 and 1979, GAM spread independence propaganda. Second, the uprising began with the return of 100 GAM personnel who were trained in Libya in 1989. Third, it began with the start of the Reformation era in Indonesia in 1998. The GAM movement is getting bigger and getting better funding than before.¹⁴

The Indonesian government and GAM entered into a peace agreement in Helsinki, Finland (hereinafter referred to as the Helsinki Peace Agreement) on August 25, 2005. The peace agreement was attended and witnessed by Finland's former president Martti Ahtisaar, also marks the end of Southeast Asia's bloody armed conflict that happened for about 30-year.¹⁵

The Existence of Islamic Criminal Law in Aceh

During the first year of Indonesian independence after 1945 the Acehnese *ulama*, controlled for the political existence in the local government. The implementation of religious life is embodied in the form of Islamic law (sharia law) which is carried out in its entirety (*kaffah*). It covers the political, legal, economic, education, health, socio-cultural dimensions.

The Acehnese policy on the implementation of Islamic Law strengthened by the enactment of Law No. 44 of 1999 as a legal basis for recognizing the "Special Status of Aceh Special Region Province" which includes religion, education and customary law (*adat*). Furthermore, the enactment of Law No. 18 of 2001 became the main principle that expands the power of self-government in various fields including religion and provincial laws. Finally, the last amendment of Law No. 11 of 2006 provides a strong legitimate premise for the use of Islamic criminal law. For instance, the Sharia Courts in Aceh covers broad powers (competence) in contrast to the "Religious Courts" as implemented in other regions. Likewise, the Aceh

¹³ Chalk, P., Separatism and Southeast Asia: The Islamic Factor in Southern Thailand, Mindanao, and Aceh, *Studies in Conflict & Terrorism*, 24 (4), 2001, 241-269, 255.

¹⁴ Anthony L. Smith, "Aceh: Democratic Times, Authoritarian Solutions", in *New Zealand Journal of Asian Studies*, Vol. 4, No. 2, (December, 2002), 68-89.

¹⁵ Sumanto Al Qurtuby, "Interethnic Violence, Separatism and Political Reconciliation in Turkey and Indonesia", in *India Quartely: A Journal of International Affairs*, Vol. 71, No. 2, (2015), 126-145.

police and prosecutors have the authority to investigate and prosecute *jinayah* cases to the sharia court (article 39 of Law No. 16 of 2004 on the Indonesian Prosecutor's Law).

In the case of this legal institution, the authority of sharia courts in Aceh is to examine, present, decide and resolve cases ¹⁶ of *ahwâl Syahksiyah* (family law), *muamalah* (civil law) and *jinayah* (criminal law) which is based on Islamic law (Article 128 UUPA). Since 2001 a few *Qanun* concerning executions of Islamic Sharia has been given, among others are *Qanun* Number 11 of 2002 on the Use of Islamic Sharia identified with *Aqîdah*, *Ibadah*, *Syi'ar Islâm*, *Qanun* No. 12 of 2003 on *Khamar* (alcoholic drink), *Qanun* No. 13 of 2003 on *Maisir* (gambling), and *Qanun* No. 14 of 2003 on *Khalwat* (unlawful contact or relationship between unmarried couples in private places), *Qanun* No. 7 of 2004 on *Zakat* Management.

However, *Aceh's qanun* related to sharia has power and is different from *qanun* related to governance or with local regulations in general. In the case of *jinayah* (criminal), *Aceh qanun* is exempted from the determination of the threat of imprisonment for six months and/or fined IDR 50,000,000, - as well as efforts to cancel *Aceh qanun* which has *jinayah* substance that cannot be canceled through the Presidential Decree but must go through a judicial review mechanism in the Supreme Court. On the basis of that specificity, the Acehnese *qanun* has the authority to regulate the whip of *jinayah* actors.

Attempts to consistently implement Islamic criminal law punishment (as dictated by sharia law) have been tried but failed. In 2009, the *Draft Qanun Aceh on jinayah* was endorsed by the Aceh Regional Leadership Council (DPRD Aceh). This *Qanun* represents almost all errors classified as *jinayah*, including provisions on "stoning" for *zina* (adultery). Then, *Qanun* has been under criticism from the Indonesian government, NGO activists, and academics, as well as Aceh's own government, which has denied signing the draft. The strongest argument behind the rejection is the fact that *stoning* someone to death is considered a cruel, inhuman, degrading punishment and therefore contrary to human rights and higher laws in Indonesia.

¹⁶ As indicated by Section 128 (3) of the Arab Law No. 11 of 2006, sharia courts in Aceh have the ability to accept, examine, try, decide, and resolve cases that spread *ahwâl al-shahksiyah* (legal family), *muamalah* (private law), and *jinayah* (criminal law) in light Islamic Sharia. Si Bantu sah Arrangement of Alludes to *Qanun* (Section 128 Paragraph 4 of Law No.11 arab 2006).

At a time when the application of Islamic law was being debated, Polished Islamic penal law in Aceh depended on several rules, while at the national level and in various regions, Islamic criminal law could not be legalized.¹⁷ Islamic law is considered by the constitutional court to be one of the different sources of law (especially the sources of material law), and not as the main source of law in Indonesia.

In addition, community groups and organizations, believe it is against human rights. While, after the reform era and at the beginning of new decentralization, there are many objectives that encouraged the law on local government (Law No. 22 of 1999 and Law No. 32 of 2004). The law states that a region or district has the ability to create “Regional Regulations” (regional or local legal guidelines) that require explicit wishes in a particular area or region.¹⁸ Furthermore, the concern of criminal law dualism in Aceh province between the Indonesian Penal Code in general and the Acehnesse Penal Law which as well as legislate into Qanun as the implication of the opportunity to implement Islamic Sharia on the other hand.

Despite the fact of Indonesian criminal law is dualism, it does not conflict with the current legal system. In fact, in ACEH, all legal provisions of the Criminal Code continue to apply. Even though, the existence of *Qanun* more preferred provision for Aceh as the consequence of the widest autonomy to implement Islamic Sharia. The placement of these two laws as opposed to will certainly sharpen the dualism meaning of the Criminal Code and also the criminal provisions stipulated in *Qanun* in Aceh. It can even lead to the vagueness of the principles of legal certainty and legal justice. Of the many debates that exist, it raises questions in the community, whether in the Unitary State of the Republic of Indonesia a community is justified in carrying out its religious laws such as Islam.

The assertion of the conflict of law above is explained as mandated by article 29 of the 1945 Constitution paragraph (2) in which the state guarantees the freedom of every citizen to embrace their respective religions and worship in accordance with their religion and beliefs. The word “guarantee” in Article 29 of the 1945 Constitution clearly means a necessity. That is, the State is obliged to make efforts

¹⁷ Puncak Santoso, “Implementation of Arab Islamic Criminal Law in Indonesia: Ta’zir Punishment as a solution?,” in *Law of IIUM Journal*, Vol. 19, No. 1, (2011). 147.

¹⁸ Habiburrahim, Rahmiati and. For, Language, Identity, and Ideology: Analyzing Discourse in Aceh Sharia Implementation Law *Indonesian Arabic Journal Applied Linguistics*, Vol. 9 No. 3, January 2020, 599-607.

so that every citizen adheres to religion and worships according to his religion and beliefs.

The activeness of the State here is to guarantee how the population can embrace and practice their religion. In the context of Islamic law in Aceh, the State not only plays a role in facilitating religious life but is also involved in designing legal formulations based on Islamic teachings through its legislative activities. The participation of the State in implementing Islamic law in Aceh is a constitutional obligation.¹⁹

Critical Response to Human Rights Perspectives on the Implementation of Islamic Sharia in Aceh

Human rights are rights that are outwardly inherent in the human being itself. This right is also obtained regardless of race, religion, ethnicity, culture, religion. As a right to law, human rights have a broader interpretation, such as not only as a natural or moral right, but includes the right to a law created by domestic authorities. It can be interpreted that human rights have the freedom to play a role in various fields and conditions.

Human rights are essentially respected by other human, governments, and the law. It is appropriate for the state of law to guarantee the protection of human rights as stated in the constitution or national law that has been formed. Basically, the state of law needs to put equality between each other before the law without exception. Law enforcement in order to realize true justice with regard to the protection of the human rights of every citizen. Furthermore, Law No. 39 of 1999 on Human Rights (HAM) covers all provisions of the laws and regulations. In the exercise of human rights itself, things are not always about rights, but also about obligations. Just as we are obliged to respect the human rights of others.²⁰

The system of government in Indonesia has discretion for local governments in the implementation of regional autonomy to improve protection for every regional citizen. After the reform era, regional autonomy has a broader meaning, some regions in Indonesia are given

¹⁹ Hasan Basri, the Position of Islamic Sharia in Aceh in the Indonesian Legal System, *Journal of Legal Code* No. 55 Th. XIII, Dec. 2011, 88.

²⁰ ListyaningsihDM Analysis Implementation Regulation Area Based Shariah In Province Inner Aceh Perspective Rights Asasi Human. Volume 3 Number 1. (2019). P-ISSN: 2549-0915. E-ISSN: 2549-0923.

special authority to manage and regulate their regions. This authority is granted based on the aspirations of the community itself. The Aceh government law of 2006, provided for the Aceh regional government the right to hold its own government based on its characteristics. The privilege of Aceh is regulated in Qanun which is guided by laws and regulations.

Many people criticize the existence of sharia in Aceh because it is considered sensitive and close to human rights violations. It can be said that local regulations in Aceh are considered discriminatory and refer to the neglect of some human rights for other Acehnese, such as: The existence of *Qanun* which prohibits (*khalwat*) unmarried couples from driving vehicles together. There is a ban on not being alone with non-mahram people. There is a *Qanun* that regulates the prohibition for women in straddling positions while riding a motorcycle. There is a *Qanun* that forbids men and women from sitting at the same table while in a coffee shop.²¹

Therefore, there are several issues that will also be classified as part of human rights violations in Aceh such as flogging for non-Muslims, issues of discrimination against women, and punishments that are targeting acts of torture or violence.

The most controversial issue in the implementation of the *Qanun Jinayah* in Aceh is the provision for the “*uqubat*” of the caning. There has been some reaction from the public about this whip’s “*uqubat*”. For example, rejecting the *Qanun jinayah* which still includes punishments that are considered to violate Human Rights and degrade human dignity, this group is usually represented by human rights activists.²² In fact, Indonesian Law mixed customs and religious Law that already existed beforehand in several specific regions. Furthermore, the implementation of *Qanun Jinayah* and *Uqubah* in Aceh was legally bound as its privileges granted by the Indonesian Government.

Moreover, referring to previous facts which classified as violations of human rights principles in Aceh is in accordance with the mandate of the constitution. That the constitution gives special autonomy to the Aceh region by applying sharia law. It is understood that the people of Aceh have high hopes that sharia will help them

²¹ Asma T. Udin, Religious Freedom Implications of Sharia Implementation in Aceh, Indonesia, *University of St. Thomas Law Journal*, Volume 7, Issue 3, 2010. 602-648.

²² Danial, *Qanun Jinayah Aceh dan Perlindungan HAM (kajian Yuridis-Fiosofis)*, *Jurnal al-Manahij, Jurnal Kajian Hukum Islam*, Vol. VI No. 1, 2021, 85.

in achieving peace and progress. Simultaneously, unhappiness arises with the ongoing sharia implementation process.

As a result, it was proposed that significant measures be taken to implement sharia fully so that it could be used for critical purpose issues affecting ordinary people on the street, as well as, More importantly, to combat injustice committed by elites and powerful sections of society. And according to the Qur'an, sharia as a whole is revealed to be a benefit, not only for Muslims, but for all mankind and, indeed, the entire universe. *Maqasid al-sharia*, or the primary purpose of sharia, has been defined by Muslim scholars as the protection of life, faith, reason, family, and possessions.²³

Intended to realize the justice, the rule of law, respect for human rights, the acceleration of economic development, the improvement of welfare and the advancement of society, in order to equalization and balance of progress with other provinces.

Conclusion

Special autonomy in Aceh is a bridge that connects cooperation between the Indonesian government and the Aceh government in an effort to build long-broken relations. The existence of UUPA as a legal basis for the implementation of special autonomy in Aceh has provided legal certainty for the people of Aceh to continue to maintain the unity and unity of the nation through nationalism under the Unitary State of the Republic of Indonesia. All the authority of the Aceh government, such as the establishment of local parties and the enactment of Islamic sharia in Aceh, opened a new page for the relationship between the two governments.

Furthermore, based on the analysis of the application of Islamic sharia in Aceh above, it can be concluded that the implementation and implementation of Islamic sharia in Aceh are still within the framework of Indonesia's national legal system. Thus the position of Islamic law in Aceh and the underlying laws and regulations are part of the national legal system of the Unitary State of the Republic of Indonesia. In terms of Aceh's specificity which includes religion, education and customary law, it was later refined through the establishment of UUPA 2006 as a result of an agreement between the Indonesian government and

²³ Siregar, HB, Islamic Law deep System National Law: Study Application Shari'ah in Aceh, Indonesia, Asian Journal of Comparative Law, 3, (2008), 26.

GAM after the Aceh tsunami disaster. This law also provides more room for the Aceh government to implement Islamic law “kaffah” comprehensively and perfectly.

Furthermore, the granting of special autonomy for Aceh Province is intended to realize justice, the enforcement of the rule of law, respect for human rights, the acceleration of economic development, the improvement of the welfare and progress of society, in the framework of equitable distribution and balance of progress with other provinces. []

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Dalam Kaitan Makna Otonomi Khusus Di Aceh, *Jurnal Konstitusi*, vol. 11, issue 2, 2014, pp. 371-392.

Legislations

Indonesian 1945 Constitution

Law No. 22 of 1999 on Regional Autonomy (*Undang-Undang Otonomi Daerah*)

Law No. 23 of 1999 on Fiscal Balance between Central and Regional Government (*Undang-Undang Perimbangan Keuangan antara Pemerintah Pusat dan Daerah*)

Law No. 44 of 1999 on Special Status of Province of Aceh Special Autonomous Region (*Penyelenggaraan Keistimewaan Propinsi Daerah Istimewa Aceh*)

Law No. 18 of 2001 concerning the Implementation of Special Autonomy for the Province of Nanggroe Aceh Darussalam (*Otonomi Khusus Bagi Propinsi Daerah Istimewa Aceh Sebagai Provinsi Nanggroe Aceh Darussalam*)

Law No. 11 of 2006 concerning Aceh Government (*Undang-Undang Pemerintah Aceh*)