



**ESTABLISHMENT OF QANUN GAMPONG DURIAN KAWAN,  
SELATAN ACEH: ACCORDANCE OF PRINCIPLES AND  
PROCEDURE DIFFERENCES**

**PEMBENTUKAN QANUN GAMPONG DURIAN KAWAN, ACEH  
SELATAN: KESESUAIAN ASAS DAN PENYIMPANGAN PROSEDUR**

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**ABSTRACT**

Qanun Gampong Durian Kawan, South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) is one of the reusam codification efforts which usually regulates people's behavior regarding habits carried out by the community in an unwritten form. However, what should be suspected is whether the gampong qanun has gone through the applicable legislative process. The main problem in this study is how the process of forming the Qanun Gampong Durian Kawan is and how the suitability of the process of forming the Qanun is reviewed with the South Aceh Regent Regulation Number 77 of 2017. The methodology in this research uses a qualitative research type with a descriptive approach. The results show that the process of forming Qanun Gampong Durian Kawan, South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) through 4 stages, namely first, pre-design phase by collecting community aspirations, second, design phase through deliberation with various levels of society, third, the stipulation phase, namely ratifying the qanun based on the results of deliberation decisions and fourth, the promulgation phase, namely signing by the keuchik. Judging by the guidelines for the formation of gampong legal products in South Aceh, in principle, they are appropriate because they use the principle of deliberation, but from a systematic and technical perspective there

are still many that are not in accordance with South Aceh Regent Regulation Number 77 of 2017.

**Keywords : Qanun Gampong; Local Regulation; Formation; Aceh Selatan**

### **ABSTRAK**

*Qanun Gampong Durian Kawan Kabupaten Aceh Selatan Nomor: 05 Tahun 2018 Tentang Pengelolaan dan Pemanfaatan Sumber Daya Alam (Adat Pemeliharaan Hutan Dan Air) merupakan salah satu usaha kodifikasi reusam yang biasanya mengatur tingkah laku masyarakat tentang kebiasaan-kebiasan yang dilakukan oleh masyarakat dalam bentuk tidak tertulis. Namun patut dicurigai adalah apakah qanun gampong tersebut telah melalui proses legislasi yang berlaku. Pokok permasalahan dalam penelitian ini adalah bagaimana proses pembentukan Qanun Gampong Durian Kawan dan Bagaimana kesesuaian proses pembentukan Qanun tersebut ditinjau dengan Peraturan Bupati Aceh Selatan Nomor 77 Tahun 2017. Metodologi dalam peneltian ini menggunakan jenis penelitian kualitatif dengan pendekatan deskriptif. Hasil penelitian menunjukkan bahwa proses pembentukan Qanun Gampong Durian Kawan Kabupaten Aceh Selatan Nomor: 05 Tahun 2018 Tentang Pengelolaan Dan Pemanfaatan Sumber Daya Alam (Adat Pemeliharaan Hutan Dan Air) melalui 4 tahapan yaitu pertama, fase pra rancangan dengan mengumpulkan aspirasi masyarakat, kedua, fase perancangan melalui musyawarah dengan berbagai lapisan masyarakat, ketiga, fase penetapan yaitu mengesahkan qanun berdasarkan hasil keputusan musyawarah dan keempat, fase pengundangan yaitu penandatanganan oleh keuchik. Ditinjau dengan pedoman pembentukan produk hukum gampong yang ada di Aceh Selatan secara prinsip telah sesuai karena menggunakan prinsip musyawarah, namun dari sistematis dan tekhnis masih banyak yang belum sesuai dengan Peraturan Bupati Aceh Selatan Nomor 77 Tahun 2017.*

**Kata Kunci : Qanun Gampong, Peraturan Daerah, Pembentukan, Aceh Selatan**

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## **I. INTRODUCTION**

Gampong institutions can be likened to villages in other parts of Indonesia. Gampong is a customary area, where there are Keuchik, Tuha Peut, and Teungku or Imum Meunasah officials. Each of these devices has its own function, associated as a combination of “yah” and “mi” from the Acehnese people. So it can be further said that the gampong contains the idea of a system of division of labor between men and women.<sup>1</sup> Spatially during the Aceh Sultanate, a gampong was a collection of dwellings with one meunasah (or

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<sup>1</sup> Kamaliah and Munawiah (2017). “Partisipasi Perempuan Sebagai Anggota Tuha Peut Gampong Dan Kesejahteraan Masyarakat Di Kecamatan Meureudu,” *Gender Equality* 3, no. 1: 45–60, <http://www.jurnal.ar-raniry.ac.id/index.php/equality/article/view/1947/1451>.

surau). Generally, a gampong consists of several jurong (hallway), a tumpok or collection of houses, and an ujung (or tip of the gampong).<sup>2</sup>

Gampong or other names are legal community units that have the lowest government organization directly under the mukim or other names occupying certain areas, led by Keuchik or other names and have the right to carry out their own household affairs. Therefore the Gampong Government needs to have a government structure in which there are also Gampong community institutions, One of which is Tuha Peut Gampong, as referred to by Gampong Government, is the administration of Government carried out by the Gampong Government and Tuha Peut Gampong.<sup>3</sup>

Since the enactment of Law Number 44 of 1999 concerning the Implementation of the Privileges of the Province of the Special Region of Aceh, the state has provided an opportunity to develop a government structure according to customary provisions in Acehnese society. Among the Acehnese themselves, the term Qanun is mandated as a rule of law or a name for customary activities that have become part of the community and contain sharia rules that have adapted to become the customs of a community. Basically, the existence of Qanun in the Legislation System in Indonesia is a form of government recognition of the legal reality in the regions.<sup>4</sup>

Gampong Durian Kawan is one of the gampongs located in the Peace settlement, East Kluet District, South Aceh Regency, which is 5 kilometers from the center of the District. Gampong Durian Kawan consists of 5 (five) Hamlets namely Puntti Hamlet, Mesjid Hamlet, Sawah Hamlet, Tanah Munggu Hamlet and Rabah Rambung Hamlet which based on the administrative records of the village have a total population of 1,825 people from 458 Families/KK, consisting of 850 people. men and 975 women, the number of members of Tuha Peut and its chairman is 9 (nine) people.

One of the qanuns issued by Gampong Durian Kawan is Gampong Durian Kawan Qanun, South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs). The Qanun was issued as an integrated effort to preserve the function of natural resources which includes policies for structuring, developing, maintaining, recovering, supervising and controlling the use of natural resources within the territory of Gampong Durian Kawan.

The Qanun is of course the result of the agreement of various parties who have the authority to form legal products. Based on an interview that the author conducted on September 28, 2020 with village officials and other community leaders in Gampong Durian Kawan, East Kluet District, South Aceh Regency, said that in the formation of Qanun Durian Kawan Gampong South Aceh

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<sup>2</sup> Irine Hiraswari Gayatri (2007). *Dinamika Kelembagaan Desa : Gampong Era Otonomi Aceh* (Jakarta: LIPI Press; Sanusi M. Syarif, *Gampong Dan Mukim Di Aceh Menuju Rekonstruksi Pasca Tsunami* (Bogor: Pustaka Salatin, 2008).

<sup>3</sup> Qanun Aceh Nomor 5 Tahun 2003 Tentang Pemerintahan Gampong.

<sup>4</sup> Al Yasa' Abubakar M. Daud Yoesoef (2004). "Qanun Sebagai Peraturan Pelaksanaan Otonomi Khusus Di Provinsi Nanggroe Aceh Darussalam," *Jurnal Legislasi Indonesia* 1, no. 3: 15-30.

Regency Number: 05 of 2018 concerning Resource Management and Utilization Nature (Forest and Water Maintenance Customs), preceded by a deliberation process between the village apparatus and various community leaders.

The results of the deliberation are then made into articles by following the format of existing qanuns in general. Even the Qanun does not make South Aceh's Perbup Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Legal Products a consideration in forming gampong legal products. In addition, academic texts were never done in forming the qanun because the qanun was born only from a deliberation process. While the rules for making qanuns must of course go through legal legislative processes, aiming that the qanuns that are enacted can answer the problems of the needs of people's lives, not on the contrary only add to the bureaucratic process that is getting longer and ineffective.

What is suspect is whether the gampong qanun has gone through the applicable legislative process so that it can produce a good statutory regulation. In the legislative process, a regulation is usually preceded by an academic text.<sup>5</sup> Academic papers are an early indicator to determine a good rule. So far, the preparation of academic texts has not been found in the process of producing a gampong qanun. Of course, Tuha Peut has responsibility for the process of preparing the academic manuscript. Academic Papers are the results of research or legal studies and other research results on a particular problem that can be scientifically justified regarding the regulation of the problem in a Draft Regional Regulation as a solution to the problems and legal needs of the community.

Regarding how to guide the process of drafting gampong qanuns in South Aceh, the South Aceh Government has issued South Aceh Regent Regulation Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Legal Products. The regulation explains that there are several processes that must be followed by the gampong government in preparing a legal product. In that context, this article seeks to unravel the suitability of the formation of the Gampong Durian Kawan Qanun of South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources with South Aceh Regent Regulation Number 77 of 2017. The aim is to ensure that the formation of these regulations does not deviate or violate principles contained in the higher legal basis.

Based on the above background, this article seeks to answer two problem formulations: first, how is the process of forming the Qanun Gampong Durian Kawan, South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs)?; second, how is the suitability of the process of forming the Gampong Durian Kawan Qanun of South Aceh Regency Number: 05 of 2018 concerning the

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<sup>5</sup> Bakillani Bakillani, Mukhlis Mukhlis, and Yusrizal Yusrizal, (2022). "Keberadaan Naskah Akademik Dalam Pembentukan Qanun Aceh," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 10, no. 1 : 1-25, <https://doi.org/10.29103/SJP.V10I1.7932>; Muhsin, "Fungsi Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangang," *Jurnal Das Sollen* 5, no. 1 (June 29, 2021), <https://doi.org/10.32520/DAS-SOLLEN.V5I1.1644>.

Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) in terms of the South Aceh Regent's Regulation Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Legal Products?

## **II. METHOD**

The research was carried out normatively, namely by reviewing various laws and regulations related to the formation of laws and regulations, especially regulations for the formation of qanuns in South Aceh. In addition, the research was conducted with a conceptual approach to find answers related to problems. The data analysis in this study uses descriptive qualitative, which is intended so that researchers are able to construct a legal norm perspective on the object of research. Meanwhile, a qualitative descriptive analysis approach is carried out by selecting the data obtained using the approach to legislation.<sup>6</sup>

## **III. ANALYSIS AND DISCUSSION**

### **a. Establishment of Gampong Qanun in South Aceh District**

Gampong Qanun is a statutory regulation made by Tuha Peuet and Keuchik. Keuchik Regulations are statutory regulations set by the Keuchik which are regulating in the context of implementing the Gampong Regulations and higher laws and regulations. The Keuchik decision is a decision made by the Keuchik which is stipulating in the context of implementing the Gampong Rules and the Keuchik Regulations.

In forming a gampong qanun, it must be based on the principle of establishing regulations. Good legislation includes: a) clarity of purpose; b) appropriate institutions or forming organs; c) compatibility between the type and material of the load; d) implementation; e) usability and usability; f) clarity of formulation; g) openness; and h) keterlibatan publik.<sup>7</sup>

The formation of the gampong qanun may not conflict with the: a) Islamic Shari'ah; b) 1945 Constitution of the Republic of Indonesia; c) Helsinki MoU dated 15 August 2005; d) Aceh Governance Laws and Regulations. Other laws and regulations that are under the authority of the Government; e) Acehnese customs; f) public interest; g) natural sustainability; and h) between qanun.

There are several stages of the process that must be passed in the preparation of the gampiong qanun. The goal is that the qanun can become a good statutory regulation. The stages include: planning, drafting, discussing,

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<sup>6</sup> Yulianto Fajar, Abdul Mukti; Ahmad (2018). *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2015); Sulaiman Sulaiman, "Paradigma Dalam Penelitian Hukum," *Kanun Jurnal Ilmu Hukum* 20, no. 2: 255-72, <https://doi.org/10.24815/KANUN.V20I2.10076>.

<sup>7</sup> Zahlul Pasha. (2019). "Menilai Kesesuaian Qanun Komisi Kebenaran Dan Rekonsiliasi Aceh Dengan Asas-Asas Pembentukan Peraturan Perundang-Undangan," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam* 11, no. 2: 184-209, <https://doi.org/10.32505/jurisprudensi.v11i2.1042>; Delfi Suganda Dosen STAI Alwashliyah Banda Aceh, "Pancasila Dan Syari'at Islam Sebagai Asas Pembentukan Qanun Di Aceh," *Jurnal Ilmiah Peuradeun* 2, no. 01 (2014).

determining and disseminating. The process and guidelines for drafting gampong qanuns in South Aceh Regency have been stated in the South Aceh Regent Regulation Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Legal Products, namely:

1) Planning

The drafting of the gampong qanun is determined by the Keuchik and Tuha Peut Gampong in the Gampong Government Work Plan. In addition, community institutions, traditional institutions and other gampong institutions in the gampong can provide input to the Gampong Government and/or Tuha Peut Gampong in the context of preparing the draft gampong qanun..

2) Compilation

There are two parties that can draft a gampong qanun, namely Keuchik and Tuha Peut. The drafting of the gampong qanun by the Keuchik must be initiated by the Gampong Government. Furthermore, the person in charge of preparing the draft gampong qanun initiated by the Gampong Government is the Keuchik and coordinated by the Gampong Secretary. Then the draft gampong qanun that has been drafted must be published to the village community and can be consulted with the local sub-district head for input. The input from the gampong community and the sub-district head is used by the gampong government to follow up the process of drafting the gampong qanun. Furthermore, the draft gampong qanun that has been consulted must be submitted by the Keuchik to Tuha Peut Gampong for discussion and mutual agreement.

In addition to Keuchik, Tuha Peut can also prepare gampong qanuns except for gampong qanuns relating to the draft gampong qanun concerning the Village Medium-Term Development Plan; Draft gampong Qanun on Gampong Government Work Plan, Draft gampong Qanun on APBG; Draft gampong Qanun on Accountability Report on the Realization of APBG Implementation.

Furthermore, the draft gampong qanun was proposed by members of Tuha Peut Gampong to the Tuha Peut Gampong leadership to be determined as the draft qanun gampong initiative of Tuha Peut Gampong. The draft qanun gampong that has been prepared must be consulted with the community who are consulted with the sub-district head for the gampong to get input. The draft qanun gampong that is consulted prioritizes the community or community groups that are directly related to the substance of the material being regulated. Finally, the draft gampong qanun must be submitted by the Tuha Peut Gampong leadership to the Keuchik for discussion and mutual agreement..

3) Discussion

Tuha Peut Gampong is obligated to discuss the Draft Gampong Qanun no later than 7 (seven) working days after receiving the letter of approval from the Keuchik. Tuha Peut Gampong invited Keuchik to

discuss and agree on the draft gampong qanun. Keuchik conveyed the Gampong Government's explanation of the draft gampong qanun that had been submitted or submitted at the Tuha Peut Gampong plenary meeting to start the deliberation to discuss the draft gampong qanun. In the event that the draft gampong qanun is submitted at the initiative of Tuha Peut Gampong, then Tuha Peut Gampong shall provide an explanation of the draft gampong qanun that has been proposed or submitted at the Tuha Peut Gampong plenary meeting to initiate deliberation to discuss the revised draft gampong qanun initiative by Tuha Peut Gampong. In the event that there is a draft gampong qanun initiated by the Gampong Government and a proposed Tuha Peut Gampong initiative regarding the same matter to be discussed at the same time of discussion, the draft gampong qanun and the Tuha Peut Gampong qanun shall take precedence, while the draft gampong qanun for Keuchik is used as a material for comparison.

Discussion of the draft gampong Qanun must use deliberation with other apparatus and together with the community. The Tuha Peut Gampong meeting in the discussion of the draft gampong qanun is chaired by the Tuha Peut Gampong Leader. The Tuha Peut Gampong Deliberation in the discussion of the draft gampong qanun is declared valid and attended by at least 2/3 (two thirds) of the total members of Tuha Peut Gampong. Furthermore, decision making in the discussion of the draft gampong qanun is carried out by means of deliberation to reach consensus.

The results of the Tuha Peut Gampong deliberation are determined by the Tuha Peut Gampong Decree and are attached with the minutes of the deliberations made by the Tuha Peut Gampong Secretary. The mutual agreement between Tuha Peut Gampong and Keuchik in the discussion of the draft gampong qanun is stated in the Minutes of the Collective Agreement signed jointly by the leaders of Tuha Peut Gampong and Keuchik. The procedure for discussing the draft gampong qanun by Tuha Peut Gampong is regulated by the Tuha Peut Gampong Rules of Procedure or otherwise regulated by Tuha Peut Gampong. The draft gampong qanun that has not been discussed can be withdrawn by the proposer, but the draft gampong qanun that has been discussed cannot be withdrawn, except by mutual agreement of the Gampong Government and Tuha Peut Gampong.

The draft gampong Qanun that has been mutually agreed upon is submitted by the Tuha Peut Gampong Leader to the Keuchik to be designated as a gampong Qanun no later than 7 (seven) days as from the date of the signing of the collective agreement. The draft gampong qanun must be determined by the Keuchik by signing at the latest 15 (fifteen) days from the receipt of the draft gampong qanun from the Tuha Peut Gampong leadership, except for the draft gampong qanun which requires evaluation from the Regent or an appointed official.

4) Determination

The draft gampong qanun which has been signed by the Keuchik is then submitted to the Gampong Secretary for promulgation in the Gampong Gazette. However, if the Keuchik does not sign the draft gampong qanun or has passed the maximum time limit for signing the draft gampong qanun, then the draft gampong qanun must be promulgated by the Gampong Secretary in the Gampong Gazette and legally becomes a gampong Qanun.

Furthermore, the Numbering and Promulgation of the Gampong Qanun which has been signed by the Keuchik which is given a number in the form of a round serial number and year of manufacture by the Gampong Secretary. The Gampong Qanun is declared to be effective and has binding legal force from the date of promulgation in the Gampong Gazette by the Gampong Secretary.

5) Dissemination

The dissemination of the gampong qanun is carried out by the Gampong Government and Tuha Peut Gampong since the stipulation of the plan for the preparation of the draft gampong Qanun, the promulgation of the gampong Qanun. Furthermore, the dissemination is carried out to provide information and to obtain input from the community and stakeholders.

**b. The Process of Formation of Qanun Gampong Durian Kawan South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs)**

Socio-economically, Gampong Durian Kawan, East Kluet District, South Aceh Regency is mostly related to natural resources (forest and water), the village apparatus together with the community have formed the Qanun Gampong Durian Kawan, South Aceh Regency Number: 05 of 2018 concerning Resource Management and Utilization Natural Resources (Forest and Water Maintenance Customs).

The purpose of this qanun is to maintain the sustainability and use of natural resources in order to maintain the survival of the people living in and around forest areas. This means that the existence of the qanun regulates how to use nature but does not have a negative impact on the community. Of course, it is very important to maintain the sustainability of the lives of the people of Gampong Durian Kawan. In addition, the qanun aims to restore the sovereignty of indigenous peoples over the management of natural resources in accordance with the principles of sustainability owned by the local community. Through this qanun, the people of Gampong Durian Kawan protect nature by adopting customs that have legal force.<sup>8</sup>

A legal product is said to be able to lead to a legal order that is in accordance with what is the purpose of the legal product if the material of the legal product is in line with what is aspired to. Likewise with the qanun, the material of the

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<sup>8</sup> Wawancara Dengan Hamka (2021). Keuchik Gampong Durian Kawan Periode 2013-2019.



qanun must be in accordance with what is the purpose of the establishment of the qanun.

Sociologically, as for the consideration that the qanun was formed because of the implementation of special autonomy for the Aceh Province, it is necessary to regulate the management and utilization of natural resources owned by each Gampong, especially Gampong Durian to get their own management rights. Where Gampong Durian Kawan has enormous natural potential. With the enactment of the special autonomy, it is necessary to realign the duties, functions and authorities of the Gampong government, especially in terms of managing and utilizing their natural resources (Forest and Water Preserving Customs) by re-applying local wisdom that has existed since ancient times.

In addition, this qanun was born because of a strong desire from every level of the Gampong Durian Kawan community to preserve nature and maintain the survival of the community, in utilizing these natural resources, so that they can protect themselves and even force certain parties who want to destroy nature to do so. may be subject to punishment as will be regulated in the Qanun.<sup>9</sup>

The initiation of the formation of this qanun is the result of cooperation from various parties, including international non-governmental organizations such as Biodiversity Conservation and Climate Protection in the Gunung Leuser Ecosystem (BCCPGLE), which is a grant collaboration between the German Government and the Government of the Republic of Indonesia or BCCPGLE-KFW Aceh..<sup>10</sup>

The BCCPGLE program or Biodiversity Conservation and Climate Protection in the Leuser Ecosystem in Durian Kawan Village is funded by the German Government in collaboration with the Indonesian Government. KfW (Kreditanstalt für Wiederaufbau) itself is a German Development Bank that provides funds for the preservation of natural resources and forests, especially those in the Leuser Ecosystem Area (KEL) in the Aceh region. The German Development Bank has long had a high commitment to preserving natural resources and forests for the welfare of the people.

The establishment of the Gampong Traditional Forest Area in Durian Kawan in 2017 was the result of collaboration between the Aceh government, especially Durian Kawan Village with the BCCPGLE-KfW field facilitator.<sup>11</sup> The beginning of the formation of the Gampong Traditional Forest occurred because in the Durian Kawan area there was a Mountain Forest or often called "Kenyan Mountain" by the local community, coupled with the great desire of the local community to protect and preserve the natural resources and forests in the area.

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<sup>9</sup> Wawancara Dengan Sudirman, Ketua Tuha Peut Gampong Durian Kawan Tanggal 29 Juni 2021.

<sup>10</sup> Wawancara Dengan Syahrizal, Sekretaris Gampong Durian Kawa, Tanggal 30 Juni 2021.

<sup>11</sup> Rio Rizki Pratama, Agus Purwoko, and Rujiman (2021). "The Effect of Participatory Rural Appraisal (PRA) in BCCPGLE Activities on the Community Welfare in Batu Itam Village, Aceh Selatan Regency, Nanggroe Aceh Darussalam Province," *Journal of Environmental and Development Studies (JEDS)* 2, no. 2, <https://talenta.usu.ac.id/jeds/article/view/6613/4444>.

The community's desire was strengthened by the establishment of the Gampong Qanun on Gampong Customary Forests which was ratified some time ago.

Qanun gampong which contains a number of regulations regarding procedures for utilizing and maintaining natural resources that exist in the community of Gampong Durian Kawan. It is hoped that in the future, the Qanun can be implemented properly, both by the Gampong government itself and the Durian Kawan community.

The previous formulation and development of the Gampong Qanun which discussed how to manage the village's customary forest was successfully disseminated to the community and has received approval from all relevant parties. The final Qanun is handed over to the government of Gampong Durian Kawan to be implemented according to the regulations in the Qanun. The handover of the Qanun was carried out by officers from the Biodiversity Conservation and Climate Protection in the Gunung Leuser Ecosystem (BCCPGLE) which is a grant collaboration between the German Government and the Government of the Republic of Indonesia or BCCPGLE-KFW Aceh.

The Qanun Gampong Durian Kawan, South Aceh district Number: 05 of 2018 concerning the Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) consists of 13 chapters and 35 articles. In general, the content of the qanun contains the authority of gampongs in natural resource management, procedures for managing natural resources, utilization of natural resources, gampong customary forest areas, gampong hamlet garden areas, blang (rice field) areas, channel and river areas, mechanisms for protection of natural resources, forms of gampong contribution, provisions for sanctions for violating those stipulated in the Qanun, methods of resolving disputes over natural resources, and participation and role of the community. From the material aspect, the qanun is very comprehensive because it regulates everything related to the forest and its management in detail.<sup>12</sup>

The process of drafting Qanun Gampong Durian Kawan, South Aceh district Number: 05 of 2018 concerning the Management and Utilization of Natural Resources (Forest and Water Maintenance Customs), was carried out in deliberation between the Village Apparatus, Tuha Peut and Community Leaders.<sup>13</sup> The mechanism for drafting the qanun is by gathering all levels of society to discuss and classify forest types, namely HPH Forest, HPT Forest and Production and Non-Production Customary Forests, then formulate a qanun. The time for the implementation of the drafting of the qanun was determined by the Keuchik and Tuha Peut and announced through the pulpit of the mosque when they wanted to perform Friday prayers, because on Friday all the people gathered to perform Friday prayers, so that information about the time of

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<sup>12</sup> Qanun Gampong Durian Kawan Kabupaten Aceh Selatan Nomor: 05 Tahun 2018 Tentang Pengelolaan Dan Pemanfaatan Sumber Daya Alam (Adat Pemeliharaan Hutan Dan Air).

<sup>13</sup> Sulaiman et al. (2021), "Pembangunan Hukum Qanun Gampong Di Kabupaten Aceh Besar," *Jurnal Geuthèë: Penelitian Multidisiplin* 04, no. 02: 1–23.

preparation can be conveyed to the entire community. As for the place, it is done at the Gampong Durian Kawan hall.<sup>14</sup>

Prior to the deliberation process between the gampong apparatus, Tuha Peut and community leaders, the gampong apparatus had prepared a draft of the qanun and distributed it to all participants present. Not all materials contained in the draft qanun are discussed during deliberation, but only some materials are urgent and directly related to the daily activities of the community. For example, regarding sanctions and violations, what objects can be taken in the forest, the licensing process if you want to cut wood and so on. This is because the time they have is short while the material from the draft qanun is very much.

The draft gampong qanun is published before it is finalized by being pasted in various places to ask for input from the community, after which it is inserted into the village sheet. After being included in the village sheet, it is then consulted with the sub-district head and regional muspika which aims to ensure that the qanun does not conflict with other regulations..

The process of designing gampong qanuns with deliberation and consensus sees and is guided by the interests of the community, so that it involves all levels of society. Furthermore, the process of determining the gampong qanun, after being drafted, is determined in the process of revising. After being revised, it is then promulgated through the village sheet.

Dissemination of the expansion of the qanun through announcements to the public after Friday prayers, in addition to being posted on bulletin boards and in public places such as coffee shops. In addition, the dissemination of the qanun by sending it to all customary and legal institutions as well as youth.<sup>15</sup>

From all the processes described above, it can be concluded that there are 4 (four) stages in the process of drafting the Qanun Gampong Durian Kawan, South Aceh district Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs), namely:

- a) The pre-drafted qanun, previously determined by the qanun to be discussed, is first informed to the public at large. Not all of these announcements took place optimally. Because the people who know the information, not all of them participate in these important meetings. The presence of the community is very important as a form of the community's right to provide input in the context of preparing and/or discussing the draft gampong qanun.
- b) The design phase, starting with the submission of the draft qanun by Keuchik to Tuha Peut for joint discussion. In many processes, not all Tuha Peut participate optimally. Besides that, not many people follow either.

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<sup>14</sup> “Wawancara Dengan Mardhatillah (2021), Sekretaris Tuha Peut Gampong Durian Kawan, Tanggal 28 Juni 2021..

<sup>15</sup> Wawancara Dengan Istarli, Anggota Tuha Peut Gampong Durian Kawan, Tanggal 1 Juli 2021.

- c) In the stipulation phase, the gampong qanun is determined by the Keuchik, whose draft has been jointly approved by the Keuchik and Tuha Peut and the community.
- d) d) The promulgation phase, when the qanun has been ratified, followed by the signing by the Keuchik. Then it is stored in the Keuchik office as an archive and disseminated by posting it on bulletin boards and other public places.

The preparation of the Gampong Durian Kawan Qanun of South Aceh Regency Number: 05 of 2018 is still very limited. There are several reasons behind this, namely the lack of understanding of village officials and the community regarding the process of drafting a good and correct qanun. Village officials and the community think that in the process of drafting the qanun the most important thing is the result of a mutual agreement that is carried out by deliberation. Whereas in the process of drafting a legal product, it must go through a legislative process that is in accordance with the laws and regulations so that the legal product is used as a legal basis.

In addition, the ignorance of village officials and the community regarding the existence of regulations that have been set by the South Aceh Regent, as a guide for gampongs in forming legal products, causes the process of drafting qanuns to be equated with the process of resolving customary problems, where the most important thing is that the results are carried out by deliberation.

Tuha Peut's role is also very minimal in the formation of the Qanun Gampong Durian Kawan. Tuha Peut is actually a gampong institution that almost resembles the role of the legislature at the gampong gampong level. The elements of Tuha Peut consist of the gampong community chosen by the gampong community itself by deliberation and consensus. If viewed from the function, it can be said that Tuha Peut is a village consultative institution, and its function is also a supervisory function, so that the function of Tuha Peut has similarities with the functions of legislative members. Tuha Peut has a supervisory function because it is part of the village legislature, so it is regulated in local regulations.

In the preparation of the Gampong Durian Kawan Qanun of South Aceh Regency Number: 05 of 2018, the role of Tuha Peut is very limited. This can be seen from the stages of the qanun still in draft until the process of determination, Tuha Peut is passive. This is because in the process of forming the qanun, an NGO was accompanied by NGOs so that several tasks and functions of Tuha Peut were carried out by the NGO, such as determining the contents of the draft qanun which included grouping forest types as an academic study in making the qanun. Whereas in terms of authority, those responsible for academic studies in drafting qanuns are the duties and functions of Tuha Peut.<sup>16</sup> In fact, the Keuchik Gampong Durian Kawan has set a team for drafting the gampong qanun, which

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<sup>16</sup> Wawancara dengan Efallizar, Ketua Pemuda Gampong Durian Kawan, tanggal 2 Juli 2021

consists of 9 people and consists of various levels of society, as shown in the following table:<sup>17</sup>

Table 4. The Drafting Team for Gampong Durian Qanun

<b>No.</b>	<b>Nama</b>	<b>Jabatan Pokok</b>	<b>Jabatan dalam Tim</b>
1	Drs. Sudirman	Head of Tuha Peut	Team Leader
2	Syahrizal	Village Secretary	Team Secretary
3	Mardhatillah	Secretary of God Peut	Team Member
4	Istarli	Member of Tuha Peut	Team Member
5	Darmawati	Female Character	Team Member
6	Hamdan, S.Pd	Religious leaders	Team Member
7	Ainun Amin	Public figure	Team Member
8	Rusaifuddin, S.Pd	Tuha Lapan	Team Member
9	Efallizar	Youth Leader	Team Member

In the decision letter of the Keuchik Gampong Durian Kawan, it is determined that the members of the gampong qanun formulation team appointed as in the table above, work to gather information, identify, design and produce data relating to systems, traditions, customs and other customs that considered good and in accordance with the socio-cultural values of the people in the Durian comrade village to be used as a decision or gampong regulation called the gampong qanun.

But in reality, the team that has been appointed is only a formality and not all tasks and functions are carried out as specified in the Keuchik decision letter above.<sup>18</sup> This team, which is chaired by Tuha Peut, should be able to formulate a gampong qanun in accordance with the applicable legislation mechanism so that the purpose of the formulation of the qanun can organize people's lives according to their needs and are practical and effective. Do not let the qanun that was issued only lengthen the bureaucratic process without paying attention to the substance that must be regulated.

Regarding the implementation of Tuha Peut's duties and functions, they are also involved in governance and village development. If there is a meeting they are always present and give their opinions to decide something. However, the implementation of their duties and functions in accordance with applicable regulations has not been carried out because they have just received training on

<sup>17</sup> Surat Keputusan *Keuchik* Gampong Durian Kawan Kecamatan Kluet Timur tentang tim penyusunan qanun gampong

<sup>18</sup> Mengenal peran Keuchik di Aceh lihat Armiwal and Suhaibah, "Peranan Keuchik Terhadap Kelancaran Administrasi Gampong Menurut Qanun Nomor 5 Tahun 2003 Tentang Pemerintah Gampong," *Jurnal Sains Riset* 9, no. 2 (December 15, 2019): 65–72, <https://doi.org/10.47647/JSR.V9I2.1116>; Andri Kurniawan, "Tugas Dan Fungsi Keuchik Tuha Peut Dalam Penyelenggaraan Pemerintahan Gampong Lampisang Kecamatan Peukan Bada Kabupaten Aceh Besar Berdasarkan Qanun Nomor 8 Tahun 2004 Tentang Pemerintahan Gampong," *Jurnal Dinamika Hukum* 10, no. 3 (October 15, 2010): 294–307, <https://doi.org/10.20884/1.JDH.2010.10.3.100>.

Tuha Peut so that their duties and functions are also only known and apparently different from the previous understanding which only provides opinions, input and advice as elders.

**c. Conformity of the Process of Formation of Qanun Gampong Durian Kawan South Aceh Regency Number: 05 of 2018 with South Aceh Regent Regulation Number 77 of 2017**

Good legislation is very much needed in the administration of government, both at the central and regional levels, even at the village level. The goal is to support government and development so that it will be more likely to achieve the goals of the state as mandated in the constitution. To be able to make good laws and regulations, it is necessary to have/have knowledge of laws and regulations, among others related to the form/type, content material to be regulated and how the material is set forth in legislation in a concise, clear and easy-to-understand manner and systematically so that the regulations are adhered to and can be implemented.

In forming laws and regulations, including local regulations, in relation to the application of norms, three foundations must be fulfilled, namely: the foundation is valid philosophically, the basis applies sociologically and the basis applies juridically.<sup>19</sup>

The philosophical basis is that the formulation or norms get justification (*rechtvaardiging*) when studied philosophically, or it can be said that legislation must reflect the value system of the community concerned. based on a higher law. The basis for sociological applicability (*sociologische grondslag*) is that laws and regulations must reflect the realities of life in society, including the tendencies and expectations of the people. Meanwhile, the basis for juridical applicability (*juridische grondslag*) is that a statutory regulation must meet the requirements for its formation and be based on a higher law.

In addition, what needs to be considered is the legal product that is formed so that it is clear about the legal basis for formation, its relation to other legal products, the authority to form and implement, rights and obligations, procedures, supervision and coordination as well as sanctions.

Based on the explanation in the previous section, it can be illustrated that normatively, the mechanism for drafting gampong qanuns still requires a regent's regulation based on the regulation of the minister of home affairs and/or governor's regulation. In this case, especially in the preparation of gampong gampongs in South Aceh, the regulation already exists, namely the South Aceh Regent Regulation Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Legal Products.

Gampong legal products according to the Regent's Regulation are legal products in the form of regulations which include: gampong qanuns, Keuchik regulations, joint Keuchik regulations, Tuha Peut regulations and forms of decisions including Keuchik decisions and Tuha Peut decisions. Meanwhile, the

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<sup>19</sup> Made Pantja Astawa and Suprin Na'a, *Dinamika Hukum Dan Ilmu Perundang-Undangan Di Indonesia* (Bandung: Alumni, 2008).

definition of gampong qanun is the rules, instructions, customs promulgated by the local Keuchik after obtaining approval from Tuha Peut. So, every qanun that is formed in every gampong in the South Aceh Region must follow the provisions contained in the South Aceh Regent's Regulation Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Legal Products.

There are five stages that must be passed in the formation of gampong qanuns in South Aceh. These five stages are indicators for determining whether a gampong qanun has passed the legal legislation process so that it can be said to be a valid and binding qanun. The five stages consist of: planning, namely the preparation of the draft gampong qanun set by the Keuchik and Tuha Peut Gampong in the Gampong Government Work Plan. In addition, community institutions, customary institutions and other Gampong institutions in the Gampong can provide input to the Gampong Government and or Tuha Peut Gampong in the context of preparing the Draft Gampong Qanun.

The next stage is the preparation stage, where there are two parties who can draft a gampong qanun, namely Keuchik and Tuha Peut. The drafting of the gampong qanun by the Keuchik must be initiated by the Gampong Government. Furthermore, the person in charge of preparing the Draft Gampong Qanun initiated by the Durian Kawan Gampong Government is Keuchik and coordinated by the Durian Kawan Gampong Secretary. Then the draft Gampong Qanun that has been compiled must be published to the people of Gampong Durian Kawan and can be consulted with the local Camat for input. Input from the community and the sub-district head is used by the Durian Kawan Gampong Government to follow up the process of drafting the gampong Qanun. Furthermore, the draft gampong Qanun that has been consulted must be submitted by the Keuchik to Tuha Peut Gampong for discussion and mutual agreement.

Then the discussion stage, namely Tuha Peut Gampong is obliged to discuss the Draft Gampong Qanun no later than seven working days after the letter of approval from the Keuchik is received. Tuha Peut Gampong invited Keuchik to discuss and agree on the draft gampong qanun. Keuchik conveyed the Gampong Government's explanation of the draft gampong qanun that had been submitted or submitted at the Tuha Peut Gampong plenary meeting to start the deliberation to discuss the draft gampong qanun. After the draft qanun is discussed, the next step is the determination, namely the draft gampong qanun must be promulgated by the Gampong Secretary in the Gampong Gazette and is valid as a gampong Qanun.

The last stage is dissemination, which is carried out by the Gampong Government and Tuha Peut Gampong since the stipulation of the plan for the preparation of the Draft Gampong Qanun, the Promulgation of the Gampong Qanun. Furthermore, the dissemination is carried out to provide information and to get input from the community and stakeholders.<sup>20</sup>

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<sup>20</sup> Peraturan Bupati Aceh Selatan Nomor 77 Tahun 2017 tentang Pedoman Pembentukan Qanun Gampong Kabupaten Aceh Selatan.

Regarding the suitability of the process of forming Qanun Gampong Durian Kawan, South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) according to South Aceh Regent Regulation Number 77 of 2017 can be detailed as follows:

- a) The planning stage, in the process of drafting the Gampong Durian Kawan Qanun, the planning process is carried out by gathering all levels of society to discuss and classify forest types, namely HPH Forest, HPT Forest and Production and Non-Production Customary Forests, then the formulation of a qanun is made. The drafting of the qanun was also accompanied by Non-Governmental Organizations (NGOs). However, in the Regent's Regulation it is regulated that the drafting of the gampong qanun is determined by the Keuchik and Tuha Peut Gampong in the Gampong Government Work Plan. In addition, community institutions, customary institutions and other Gampong institutions in the Gampong can provide input to the Gampong Government and or Tuha Peut Gampong in the context of preparing the Draft Gampong Qanun. In this planning stage, it is in accordance with what is stipulated in the South Aceh Regent Regulation Number 77 of 2017
- b) Stages of preparation, The process of drafting the gampong qanun Durian Kawan is carried out by deliberation and consensus to see and be guided by the interests of the community, so that it involves all levels of society. After receiving input from various parties, Keuchik drafted the qanun. In the South Aceh Regent Regulation Number 77 of 2017 it is explained that there are two parties that can draft a gampong qanun namely Keuchik and Tuha Peut. Furthermore, the draft gampong qanun that has been consulted must be submitted by the Keuchik to Tuha Peut Gampong for discussion and mutual agreement. It can be seen that the stages of drafting the qanun are generally in accordance with the guidelines for the formation of legal products, but the stages that are carried out are not systematic, where all stages of the preparation of the qanun are carried out at once during the joint deliberation process with other community leaders.
- c) Stages of discussion, in the process of discussing the qanun gampong Durian Kawan carried out by deliberation, where information about the place and time was announced through the mosque pulpit after Friday prayers. Meanwhile, in the South Aceh Regent Regulation Number 77 of 2017 it is explained that the discussion stage, namely Tuha Peut Gampong, is obliged to discuss the Draft Gampong Qanun no later than 7 (seven) working days after the letter of approval from the Keuchik is received. Tuha Peut Gampong invited Keuchik to discuss and agree on the draft gampong qanun. So that the discussion process carried out in the formation of the Durian Kawan gampong qanun did not technically follow the South Aceh Regent's Regulation



- Number 77 of 2017, where the one who should have held the discussion was Tuha Peut but in fact it was carried out by Keuchik.
- d) The determination stage, in the process of forming the Durian Kawan qanun, the stipulation is carried out by means of the gampong qanun draft being published prior to the finalization through bulletin boards and various places to request input from the community, after which it is only entered into the village sheet. After being included in the village sheet, it is then consulted with the sub-district head and regional muspika with the aim of ensuring that the qanun does not conflict with other regulations. At this stage of stipulation, something is different from what is stipulated in the South Aceh Regent Regulation Number 77 of 2017. Where consultations with the Camat and Muspika are carried out at the stage of drafting the qanun, but in the process of forming the qanun Durian Kawan is carried out after the qanun is enacted by the Keuchik and included in the village sheet. The qanun that has been set cannot be changed again.
- e) Dissemination stages, Spread the expansion of the qanun through announcements to the public after Friday prayers, in addition to being posted on bulletin boards and in public places such as coffee shops. In addition, the dissemination of the qanun by sending it to all customary and legal institutions as well as youth.

To facilitate the analysis of the suitability of the process of forming the Qanun Gampong Durian Kawan South Aceh Regency Number: 05 of 2018 with South Aceh Regent Regulation Number 77 of 2017 can be displayed in the following table:

Table 2. Conformity of the Establishment of the Durian Kawan Qanun with the South Aceh Regent's Regulation

No.	Stages	South Aceh Regent Regulation Number 77 of 2017 concerning Guidelines for the Establishment of Gampong Qanun Legal Products	Establishment of Qanun Gampong Durian Kawan South Aceh Regency Number 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs)
1	Planning	The drafting of the gampong qanun is determined by the Keuchik and Tuha	In the process of drafting the Gampong Durian Kawan Qanun, the planning process

	Peut Gampong in the Gampong Government Work Plan. In addition, community institutions, traditional institutions and other Gampong institutions in the Gampong can provide input to the Gampong Government and or Tuha Peut Gampong in the context of preparing the Draft Gampong Qanun.	was carried out by gathering all levels of society to discuss and classify forest types, namely HPH Forest, HPT Forest and Production and Non-Production Customary Forests, then a qanun was formulated. The drafting of the qanun was also accompanied by Non-Governmental Organizations (NGOs)
<b>2</b>	Compilation	There are two parties who can draft a gampong qanun, namely Keuchik and Tuha Peut. Furthermore, the draft gampong qanun that has been consulted must be submitted by the Keuchik to Tuha Peut Gampong for discussion and mutual agreement.
<b>3</b>	Discussion	<i>Tuha Peut Gampong is obligated to discuss the Draft Gampong Qanun no later than 7 (seven) working days after receiving the letter of approval from the Keuchik. Tuha Peut Gampong invites Keuchik to discuss and agree on the draft gampong qanun</i>
<b>4</b>	Determination	The draft gampong qanun which has
		The draft gampong qanun is published

	<p>been signed by the Keuchik is then submitted to the Gampong Secretary for promulgation in the Gampong Gazette. However, if the Keuchik does not sign the draft gampong qanun or has passed the maximum time limit for signing the draft gampong qanun, then the draft gampong qanun must be promulgated by the Gampong Secretary in the Gampong Gazette and legally becomes a gampong Qanun.</p>	<p>prior to the finalization through bulletin boards and various places to request input from the community, after which it is only inserted into the village sheet. After being included in the village sheet, it is then consulted with the sub-district head and regional muspika which aims to ensure that the qanun does not conflict with other regulations.</p>
<p><b>5</b> Dissemination</p>	<p>The dissemination of the gampong qanun is carried out by the Gampong Government and Tuha Peut Gampong since the stipulation of the plan for the preparation of the draft gampong Qanun, the promulgation of the gampong Qanun. Furthermore, the dissemination is carried out to provide information and to get input from the community and stakeholders</p>	<p>Dissemination of the expansion of the qanun through announcements to the public after Friday prayers, in addition to being posted on bulletin boards and in public places such as coffee shops.</p>

The table above shows that the establishment of the Gampong Durian Kawan Qanun of South Aceh Regency Number: 05 of 2018 concerning

Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) has been in accordance with existing guidelines, but technically from each stage of the preparation of the qanun This needs to be considered again by the Gampong Durian Kawan qanun formulation team. Although the Gampong Durian Kawan qanun was substantially formed based on the results of consultations with various parties, detailed procedures must still follow the guidelines for establishing legal products in South Aceh.

#### **IV. CONCLUSION**

Based on the description above, the following conclusions can be drawn: first, the process of Formation of Qanun Gampong Durian Kawan South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) through 4 (four) stages, namely: ( a) pre draft qanun, previously determined by the qanun to be discussed, first informed to the public at large, (b) the draft phase, starting with the submission of the draft qanun by Keuchik to Tuha Peut for discussion together. In many processes, not all Tuha Peut participate optimally. In addition, not many people followed the process of forming the Gampong Qanun, (c) the stipulation phase, the gampong qanun was determined by the Keuchik, whose draft was jointly approved by the Keuchik and Tuha Peut as well as the community, and (d) the promulgation phase, when the qanun was finalized. ratified, and continued with the signing by Keuchik. Then it is stored in the Keuchik office as an archive and distributed by posting it on bulletin boards and other public places. Second, in stages, the process of forming the Qanun Durian Kawan of South Aceh Regency Number: 05 of 2018 concerning Management and Utilization of Natural Resources (Forest and Water Maintenance Customs) according to South Aceh Regent Regulation Number 77 of 201 is appropriate, but technically there are still many processes Legislation that has not followed the guidelines for the formation of gampong legal products that have been set by the South Aceh Regent, such as in the consultation process with the District, should be carried out at the stage of drafting. However, in the process of forming the Gampong qanun Durian Kawan, consultations were actually carried out when the Gampong Qanun had been enacted/ promulgated by inserting it into the Gampong sheet.

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