

# Legal Political of Aceh Sustainable Spatial Reconstruction Based on Local Wisdom of Mukim Customary Legal Community

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## Abstract

Ideal construction and existing legal politics spatial planning based on local wisdom is implicitly stated in Article 18B clause (1) and (2), as well as regulations the national legislation and in particular Act No. 44 of 1999, Act No. 18 of 2001 in conjunction with Act No. 11 of 2006, which has special powers and special autonomy in Aceh. Law Ideology of Qanun Aceh No. 19 of 2013 on Spatial Planning Aceh province Years 2013-2033 (abbreviated Qanun RTRWA), is inseparable from the ideology of legal centralism based on national spatial planning systems that become directives, reference or guidance in the formulation and establishment of RTRW province, the setting of spatial hierarchical and formalistic. According to the fact, the problem formulation refers to whether the reconstruction of legal policy of sustainable spatial planning of Aceh based on local wisdom of the customary legal community of Mukim. This normative legal uses interpretative method. This study shows the legal policy of Qanun RTRWA based sustainable spatial planning neglect indigenous customary law community of Mukim, more oriented to economic interests by marginalizing the value system and interests of indigenous communities Mukim. Qanun RTRWA legal political reconstruction based on local wisdom of Mukim customary law community.

**Keywords:** Reconstruction, Legal policy, Spatial planning, Local wisdom, *Mukim* customary legal community

## 1. Introduction

Ideal conditions and political construction law existing based on local wisdom is implicitly stated in Article 18B clause (1) of the Constitution of the Republic of Indonesia 1945 which determines that "the State recognizes and respects the units of local government institutions special or privileged regulated by laws."

Furthermore, clause (2), recognize and respect the customary law communities, traditional rights and cultural identity. "The State recognizes and respects units of indigenous communities and their traditional rights as long as they live, and in accordance with the development and principles of the Unitary Republic of Indonesia stipulated in the Act". Subsequently found in the provisions of Article 28 clause (3) that "The cultural identity and the rights of traditional communities be respected in line with the times and civilization."

recognized to the extent consistent Article 3 of Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (State Gazette of 1960 Number 104, Additional State Gazette No. 2043), determines, "that the implementation of indigenous rights and similar rights owned by customary legal community is with the national interest and the country. Furthermore, Article 5 states that "the agrarian law that applies to the earth, water and air space is the common law, to the extent not contrary to the national interest and other legislation." Furthermore, under Article 63 clause (1) letter (t), Article 63 clause (2) letters n, and Article 63 clause (3) letter k Law Number 32 Year 2009 on the Protection and Management of the Environment (State Gazette Year 2007 Number 68, Additional State Gazette No. 5059). Article 63 clause (1) letter (t) determine, "in the protection and management of environment, government duty and authority to establish policies regarding the procedures for the recognition of customary law communities, local knowledge, and the rights of indigenous people related to environmental protection and management life. "Article 63 clause (2) letter n, and Article 63 clause (3) letter k determine, "in the protection and management of environment, Government and Local Government duty and authority to establish and implement policies regarding the procedures for the recognition of customary law communities, local knowledge, and community customary law related to the protection and management of the environment."

Law No. 26 of 2007 on Spatial planning (State Gazette of 2007 Number 68, Additional State Gazette No. 4725), not specifically regulating local wisdom, but the mere mention of the term "public participation" in Article 60, 61, and 65 clause (1). Whereas Article 5 of Government Regulation No. 68 Year 2010 on Forms and Procedures for Public Role in Spatial Planning (State Gazette of 2010 Number 118, Additional to State Gazette No. 5160), determined: "the role of society in the spatial plan performed on stage: a. spatial planning; b. utilization of space; and c. control space utilization, "hereafter referred in Article 6 and 8.

Article 61 clause (1) of Law Number 27 Year 2007 on the Management of Coastal Areas and Small Islands (State Gazette Year 2007 Number 84, Additional State Gazette No. 4739), specifying, "The Government recognize, respect and protect the rights Indigenous People, Traditional communities and Local Wisdom on Coastal Areas and Small Islands which has been used for generations. In clause (2), "Recognition of the rights of

indigenous peoples, traditional communities and Indigenous referred to in clause (1) used as a reference in the Management of Coastal Areas and Small Islands which sustainable."

Article 2 clause (9) of Law Number 32 Year 2004 regarding Regional Government (State Gazette of 2004 No. 125, Additional to State Gazette No. 4437) reaffirmed the recognition of customary law community, Article 2 Clause (9) provides that, "the state recognizes and respects units of indigenous communities and their traditional rights all still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia." but was replaced by Act No. 23 of 2014 (State Gazette of 2014 No. 244, Additional to State Gazette No. 5587) juncto with Law No. 9 of 2015 concerning the Second Amendment to Law Number 23 Year 2014 on Regional Government (State Gazette Year 2015 Number 58, Additional State Gazette No. 5679), removing the formulation as contained in Article 2 clause (9), in the *General explanation* mentioned: "In order to provide a broader space toward regions to organize and take care of the lives of its citizens in shaping policy Central Government should pay attention to local wisdom and vice versa for Regions when shaping policy in the form of legislation or policies should also pay attention to national interests. Thus creating a balance between national interests and synergic still considering the conditions, peculiarities, and local wisdom in governance as a whole."

Article 1, number 6, Article 4 (3), Article 67 (1), (2), (3) of Law Number 41 Year 1999 on Forestry (State Gazette of 1999 Number 167, Additional to State Gazette No. 3888) related to the area governance of indigenous communities, with the Constitutional Court Decision No. 45/PUU-X / 2012 has been a substantial change to the articles of pasai referred, in particular Article 1, item 6, where the word "State" in Article 1 clause 6 has been revoked. Thus the formulation of the definition of customary forest to forest located in the area of indigenous peoples. Article 4 clause (3) determine, "Mastery of the state forest by taking into account the rights of indigenous people, the whole truth is still there and acknowledged, and not contrary to the national interest." The amendment raises juridical implications, namely: (a). The existence of indigenous forests is no longer a state forest, but which is independent indigenous forests belonging to indigenous peoples. (b). Each state forest located in the area of indigenous communities into indigenous forest switch status, and the customary law community freely and responsibly can interact with the existing forest area surrounding the survival and life.

Article 2 (1) of Law Number 44 Year 1999 on Implementation Features Special Province of Aceh (State Gazette 1999 No. 172, Additional to State Gazette No. 3893) provides that, "The area is given the authority to develop and manage privileges owned." Article 6 sets, "Regions can assign different policies in an effort to empower/preservation and development of indigenous and traditional institutions in the region that *inspired and in accordance with Islamic law*". While Article 7, "Regions can form the traditional institutions and recognize existing traditional institutions in accordance with the position of each Province, District/City, District, Housing, and Urban Village/Village or *Gampong*".

Article 141, clause (1) of Law Number 11 Year 2006 concerning Aceh Government (State Gazette Year 2006 Number 62, Additional State Gazette No. 4633) provides that, "Planning the development of Aceh/regency/city formulated comprehensively as a part of national development planning system within the framework of the Unitary State of the Republic of Indonesia with notice to: a. *the values of Islam*; b. *socio-cultural*; c. a sustainable and environment; d. justice and equality; and e. requirements. "in clause (3) is determined, "People are right to be involved to provide verbal or written feedback on development planning Aceh and district/city through aspiration from below". Furthermore, in Article 142, clause (2) is determined, "Planning, determination, and utilization of spatial Aceh based on the features and peculiarities of Aceh and intertwined with national spatial and spatial districts/cities."

Compared with *Qanun RTRWA* adopted at the Plenary Session of the House of Representatives Aceh (DPRA) dated December 27, 2013 and enacted on March 3, 2014 (Aceh Gazette II No. 2014, Supplement No. 62 Aceh) is fundamentally at odds with the laws and regulations are higher (Walhi Aceh, 2014). The process of formation of *Qanun RTRWA* ignore togetherness and partnership, because the non-involvement of customary community (*Mukim*), the Governmental Organization (LSM) are concerned about the environment and forests as well as vulnerable groups. Furthermore, *Qanun RTRWA* there is no one article provisions regulating the management area as a region *Mukim* spatial origin of the rights of indigenous communities *Mukim* in the province of Aceh. Though the legal existence of indigenous communities and their traditional rights have been recognized and confirmed in legislation. Understanding *Mukim* under Article 1 clause 4 of Nanggroe Aceh Darussalam Province *Qanun* No. 4 Year 2003 on *Mukim* Government is the legal community unit which consists of a combination of several *Gampong* that have certain boundaries and own property, located directly under the Head led by *Imeum Mukim*. Although Aceh has special autonomy, but the structure and pattern of *Qanun RTRWA* space in a hierarchical manner, uniform, formal and non-specific in comparison with other regions in Indonesia. In contrast to spatial Bali Province, as can be noted in the Bali Provincial Regulation No. 16 Year 2009 on Spatial Planning Bali Province from 2009 to 2029, although not special autonomy region, but have specific setting.

In line with the background, **the problem statement** in this research covers: how does legal political of Aceh sustainable spatial reconstruction based on local wisdom of *Mukim* customary legal community?

## 2. Research Method

This research is normative law study. This study focuses more on *statute approach*, *conceptual approach*, *philosophical approach* and *historical approach*. The legal materials are collected, treated and analyzed qualitatively using interpretation technique by giving interpretation toward the provision texts.

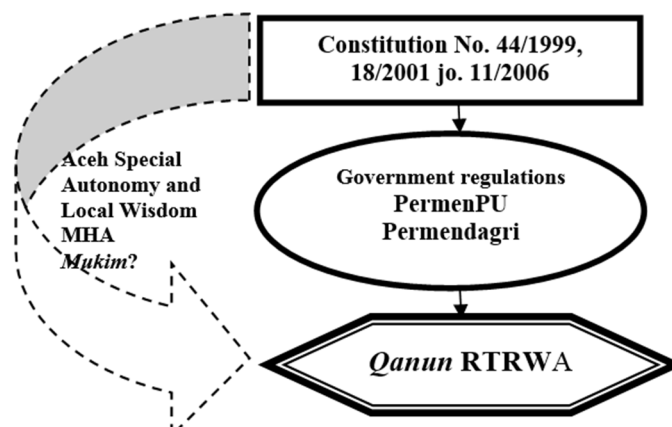
## 3. Discussion

### 3.1. Directions and Transformation of Political Law RTRWA *Qanun* Based Local Wisdom of *Mukim* Customary legal community

Direction and political transformation law of *Qanun* in Aceh No. 19 of 2013 on Spatial Planning Aceh province Years 2013-2033 (Aceh Gazette, 2014 Number 1, Additional Aceh No. 62, hereinafter called *Qanun* RTRWA), can be studied from the legal ideology, thinking and the growing debate in the discussion of the draft of *Qanun* (Raqa) RTRWA. Ideology law *Qanun* Spatial Plan Aceh (RTRWA), is inseparable from the ideology of legal centralism is based on a system of national spatial planning that become directives, reference or guidance in the formulation and establishment of RTRW provinces, therefore, the setting of spatial hierarchical and formalistic, Article 18 clause (1) of the Law on Spatial Planning determines, adoption of the draft provincial regulations on the provincial spatial plans and detailed spatial plan must first be approved by the substance of the Minister. Clause (3) Provisions on the charge, guidelines and procedures for the preparation of the provincial spatial plan referred to in clause (1) and the preparation of spatial plans regency/city referred to in clause (2) shall be regulated by the Regulation of the Minister.

According to the authors, the provision of cargo, guidelines and procedures for the preparation of spatial plans provinces as stipulated by the Regulation of the Minister, has limited formulators and molders *Qanun* RTRWA in accommodating the spatial or management area customary legal community *Mukim* in Aceh, to waive consideration of specificity and privileges under the provisions of Law Number 44 Year 1999 concerning Aceh and privileges Act No. 18 of 2001 on Special Autonomy for Nanggroe Aceh Darussalam Province, boosted by Law Number 11 Year 2006 concerning the Government of Aceh. The limitations referred to the formulation of *Qanun* RTRWA should not deviate from the provisions stipulated by the Regulation of the Minister is hierarchical and formalistic.

Under Article 14 of Law Number 12 Year 2011 on the Establishment of Legislation, the substance of the Regional Regulation is the whole substance of the framework of the implementation of regional autonomy and duty of assistance and to *accommodate special conditions regions* (italics from author) as well as a further elaboration with higher Regulation legislation. Legislation related to the position, which is placed at the bottom of the hierarchy of legislation, both in the MPR Decree No. III/MPR/2000 as well as in Law No. 10 Year 2004 on the Establishment of Legislation, both Bagir Manan and Laica Marzuki disagreed. Laica Marzuki assume that we are fooled. The correct place for the Regional Regulation (Perda) is under the Act. Opinions Laica Marzuki and Bagir Manan, stated in the Public Hearing (RDPU) Changes related to the plan of Law No. 10 of 2004, in Meeting Room of the House of Representatives Legislation Council, Jakarta, in February 2010 (Fadli, 2011). In line with the opinion of Laica Marzuki, the authors analyze that position *Qanun* RTRWA under and subject to government regulation (PP), Ministry of Public Works (PermenPU) No. 15/PRT/M/2009 on Guidelines for Preparation of Spatial Plan Province and evaluation by the Ministry of the Interior (Home Affairs) of the *Qanun* RTRWA was passed, *interrupting* the delegation of authority that comes from Act No. 44 of 1999, Act No. 18 of 2001 and Act No. 11 of 2006. As can be seen in figure 1 below scheme.



Source: Analysis Writer

Figure 1. Position of Government and Regulation Denouncing the authority of the Aceh Special Autonomy

Provisions in the statute of special autonomy, according Supardan Modeong, *should legally negate the intervention of the central government to intervene* in the management of household affairs broadly covering areas of governance, development, and social engineering (social). It is characterized by the impossibility of government regulation or decree regarding matters of special autonomy in Aceh province. All matters of regional autonomy in the province that is the implementation of the provisions of Law No. 18 of 2001 directly regulated by the province of Aceh with the rules instrument called *Qanun* (Modeong, 2003).

However, based on the statutory provisions, *Qanun* RTRWA, including ordinary *Qanun* formation mechanism and supervision at a regional regulation in another province. Article 235 clause (1) of Law No. 11 of 2006 specifies that the supervision of the government for *Qanun* carried out in accordance with the legislation. Legislation is meant here is Act No. 32 of 2004 on Regional Government (in particular Article 185 and 189) jo. Article 400 of Law No. 23 of 2014, Government Regulation No. 28 Year 2008 on Procedures for Evaluation Ranperda on Spatial Planning Region, and Regulation No. 1 Year 2014 on the Establishment of Regional Legal Products.

Article 189 of Law Number 32 Year 2004 jo. Article 400 of Law No. 23 of 2014, the adoption of the draft laws relating to local taxes, levies, and the spatial regions into law, apply Article 185 and Article 186, the provisions ..., and for the regional spatial coordinated with the minister dialed with the layout. Furthermore, Article 185 of the Act governs the necessity of evaluation draft Regional Regulation on the Budget Opinion and Expenditure (Perda APBD) by the Minister of Internal Affairs (in this case also to draft *Qanun* Spatial) and their obligation to the Governor and the Regional Representatives Council (DPRD) to make improvements draft legislation / *Qanun* based on the evaluation Affairs Minister. If the results of these evaluations are not followed up by the governor and the Parliament, the Minister of the Interior to cancel the regulation. Such provision also further elaborated in Regulation No. 1 Year 2014 on the Establishment of Regional Legal Products.

Meanwhile, the legal political formation RTRWA *Qanun* can be traced from the discussions in the Public Hearings (public hearings) between the Special Committee DPRA XI with Regent/Mayor and SKPD Aceh in 2010 in Medan and 2011 in Banda Aceh, Meetings In 2010 the Special Committee XI WALHI Aceh provincial parliament to discuss draft *Qanun* Aceh Spatial Plan 2010-2030, dated October 21, 2010, in Banda Aceh and Report Results Discussion Special Committee II In 2012 the House of Representatives of Aceh *Qanun* Aceh Draft Spatial Plan Aceh 2013 – 2033 (DPRA, 2016), presented in the provincial parliament plenary session on December 24, 2013 is very important to explain the law underlying political conditions and rnempengaruhi decision makers or spatial policy Aceh.

Existing political condition RTRWA *Qanun* law is very determined and influenced by the views and conceptions of spatial orientation and used as a reference in the decision making. This discussion, outlining explanation and debate about the underlying spatial politics RTRWA law. The process of discussion and debate within the Public Hearings (public hearings) between the committee XI DPRA with Regent/Mayor and SKPD Aceh in 2010 in Medan and 2011 in Banda Aceh, discovered a fact of demands by officials in general to the reduction of protected forest areas to meet the needs of residential, agriculture and mining, as well as the impact of the regional division subdistrict /district. While the discussion of local knowledge-based sustainable spatial philosophy of Islamic values and customs (adat law community management area *Mukim*) not mentioned, despite the fact sociological, historical and cultural very supportive.

Referring to the theory of *maqasid al-syari'ah*, predefined primary and general purpose law that must be maintained, namely: 1. Keeping the faith (*hifdz Ad-Din*); 2. Keeping the soul (*Hifdz An-nafs*); 3. Maintaining reasonable (*Hifdz Al-'aql*); 4. Keep your treasures (*Hifdz Al-Mal*); 5. Maintain descent (*Hifdz An-Nasl*), (Jauhar, 2009). Furthermore, to anticipate the development of related global ecological threats, added 6. *hifdzul bi'ah* (environmental conservation). Preserving the ecology, a requirement to protect the five objectives of the Shari'ah. Thus, all the behaviors that lead to the destruction of the environment to convey the same life-threatening act, mind, wealth, nasab, and religion (Al-Qardhawi, 2001). Policies that lead to the exploitation of natural resources and reduce or decrease the quality of the environment is a policy that is contrary to the purpose of shari'ah above.

Public Hearing (RDPU) Draft *Qanun* of Aceh Spatial Plan 2010-2030 XI IN 2010 a special committee of the Board of Representatives Aceh Regent/Mayor/DPRK 8 (eight) districts/cities, dated October 14, 2010, in Medan. Through that hearing the author cites several statements that are relevant to the focus of the research study (Al-Qardhawi, 2001). Associated with the structure of space and special areas, the Chairman of the committee-XI provincial parliament declared the establishment of the Institute of *Wali Nanggroe* with the establishment of *Wali Nanggroe Pendapa* this will be a special area will be. According to the authors, with included the formulation of the institution of *Wali Nanggroe* (*Wali Nanggroe* institution is an institution of traditional leadership as a unifying community and the preservation of indigenous life and culture Article 1 clause 17 of Law Number 11 Year 2006 concerning the Government of Aceh). *Pendapa Wali Nanggroe* as a special area in the *Qanun* RTRWA should be supported by the inclusion of *Mukim* institutions and *Mukim* management area as the right of origin that has existed since the time of the kingdom of Aceh long before the birth of Wali Nanggroe post Helsinki MoU in 2005.

Based on the theory of *legal pluralism*, there are several types. The *first type*, called a relative pluralism,

pluralism, weak or state legal pluralism refers to the legal construction in which the rules of the dominant law gives space, implicit or explicit, for another kind of law, for example, customary law or religious law. The state law endorse and recognize the existence of other laws and put the state legal system. The *second type*, called the strong pluralism or descriptive (Griffiths) or pluralism (Woodman), legal pluralism refers to a situation in which two or more legal systems coexist, with each of the basic legitimacy and validity (Rahardjo, 1979). Abandonment RTRWA *Qanun* law politics to local wisdom *Mukim* customary law, according to the author, can be categorized in the *first type*, called a relative pluralism, pluralism weak.

Furthermore, the opinion of experts of the Special Committee XI which states, in principle, the conception of the juridical birth of the draft *Qanun* RTRWA is the authority of Aceh through the MoU and the birth of the Law on the Government of Aceh, the Aceh has the authority characteristically Aceh, despite being within the framework of NKRI but no specificity in accordance with BAL. Similarly, at the opening of the Meeting Public Hearing (RDPU) Draft *Qanun* About Spatial Plan 2010-2030 Aceh XI IN 2010 a special committee of the Board of Representatives Aceh Regent/Mayor and DPRK entire Aceh, dated January 6, 2011, in Banda Aceh, the Chairman Special Committee said that the Law on Governing Aceh (UUPA) as *lex specialis* and the Constitution as the foundation of the state, then the discussion about RTRWA should be more dominant by UUPA. However, the fact *Qanun* RTRWA formulated does not reflect or accommodate local wisdom spatial *Mukim* sustainable customary legal community as a form characteristic of Aceh mandated UUPA.

In 2010 the committee meeting XI WALHI Aceh provincial parliament to discuss draft *Qanun* Aceh Spatial Plan 2010-2030, dated October 21, 2010, in Banda Aceh. Through the meeting, the author cites several statements that are relevant to the focus of the research study. The meeting is attended by several Non Governmental Organization (LSM), including from the Indonesian Forum for Environment (WALHI), Flora Fauna International (FFI), the Institute Pena, Transparency International Indonesia, Clump Bamboo, the World Wide Fund (WWF), and the Agency Ecosystem Management Leuser) (BPKEL), *Uno Itam*, and the *Green Aceh* Institute, have provided input regarding the *Green* Aceh program and *Mukim* local wisdom spatial, but did not receive a positive response in the formulation of *Qanun* RTRWA. As said by representatives of institutions *Uno Itam*, that draft *Ragan* RTRWA *untouched indigenous peoples* or the *Mukim* and natural resources management problems are less in favor of the people of Aceh.

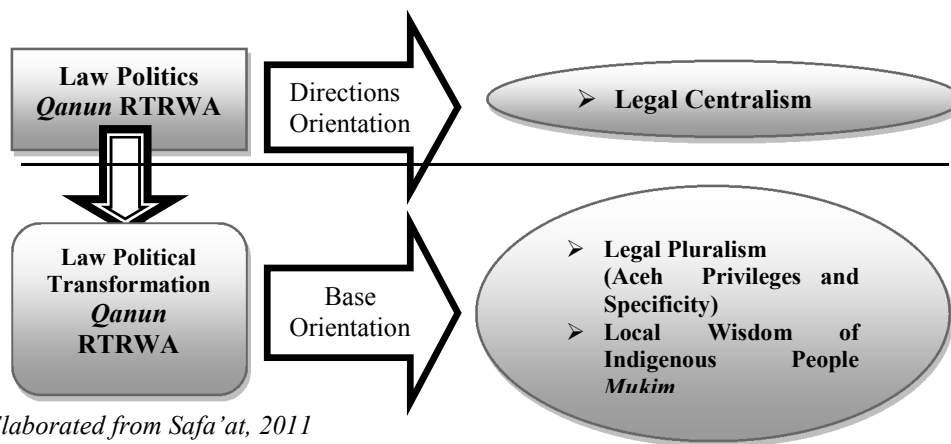
Then in the Public Hearing (RDPU) Draft *Qanun* About Spatial Plan 2010-2030 Aceh XI IN 2010 a special committee of the Board of Representatives Aceh Regent/Mayor and DPRK entire Aceh, dated January 6, 2011, in Banda Aceh. Attended one *Imeum Mukim* in Pidie district stating other by-laws to be connected with the communal land owned by *Mukim*, but in this RTRWA no rights of indigenous peoples. Question *Imeum Mukim* not get a response from the participants RDPU consisting of Regent / Mayor and DPRK entire Aceh, but the response from the elements BKPRD Aceh said, related to the spatial arrangement of Aceh recognition stipulated in the Law on Governing Aceh (UUPA), but not there are no rules technically, because it is still within the framework of NKRI, there are rules governing the technical thereon. This is about technical and not the authority (DPRA, 2016).

Related to the formation of *Qanun*, Supardan Modeong said any designer or *Qanun* Local Regulation in implementing drafting should pay attention to the following matters (Modeong, 2003): 1. Establishment of Regional Regulation or *Qanun* should refer to the theoretical foundation and the principles of law relevant. 2. Formation of Regional Regulation or *Qanun* based on other than procedural correctness, also based on substantial truth that contains the righteousness, justice and decency. 3. Formation of Regional Regulation or *Qanun* must be conducive to the formation of a populist law and effective. 4. Establishment of Regional Regulation or *Qanun* should be pro on the establishment of the Indonesian community in the area of modern and civilized.

Discussion The results of the report of the Special Committee II In 2012 the House of Representatives of Aceh Draft *Qanun* Aceh Aceh Spatial Plan 2013- 2033 (DPRA, 2016), presented in the provincial parliament plenary session on December 24, 2013 in the discussion of the draft *Qanun* RTRWA many problems facing the committee II. At first the executive proposes the addition of 1 million hectares of forest (This proposal was submitted by the Government of Aceh at the time the governor had, related to policy support program "Aceh Green Vision" in the context of sustainable development and anticipate the impact of environmental destruction in Aceh, as stated in the Long Term Development Plan Aceh (RJPA) 2005-2025, *author*), the proposal was rejected by a majority of the Regent/Mayor in Aceh. The process to find the optimal area for the district/city, has gone through a formal proposal by the Governor of Aceh Aceh Government to the Ministry of Forestry in Jakarta and discussed through an integrated team.

The process of discussion forum space pattern is already underway in the Ministry of Forestry Planning Agency. The results of these discussions into annex II in *Qanun* RTRWA that the spatial pattern of Aceh. Annex II concerning the spatial pattern is also supported by Article safety in *Qanun* RTRWA that the transitional provisions of Article 91 "If there is a change related to the broad and function of the area of Aceh Forest as stipulated in the *Qanun*, guided by the Ministry of Forestry Republic of Indonesia on the Designation of Forest Area and Aquatic Aceh".

Further study that explains the need for change (transformation) RTRWA *Qanun* law politics based on local wisdom *Mukim* customary law communities. Facing this reality, the legal political RTRWA *Qanun* it is time to transform or change the direction of a more pro-oriented and based on the spatial continuity and the interests of indigenous communities in Aceh *Mukim*. As for the direction and political transformation of spatial law *Qanun* RTRWA sustainable community based on *Mukim* local wisdom schematically customary law can be seen in Figure 2. The following:



Source: Elaborated from Safa'at, 2011

Figure 2. Direction and Political Transformation Sustainable Spatial Planning Law *Qanun* RTRWA Based Local Wisdom of *Mukim* Customary legal community

### 3.2. Comparison of Local Regulation Plan Bali Provincial Spatial

Spatial Bali Province as may be considered in the Provincial Regulation Bali Number 16 Year 2009 on Spatial Planning Bali Province from 2009 to 2029, although it was not an area of special autonomy, but setting it lacks specificity. (The transformation of the philosophical value of *Tri Hita Karana* in the Provincial Regulation on Spatial Planning Bali Province 2009-2029 led to the rule of law is to have differences with the local regulations on spatial plans in other provinces, Purwanto, 2012). Preamble weigh flatly stated, "based on Balinese culture imbued with Hinduism in accordance with the philosophy of *Tri Hita Karana*." Not only formulate the General Provisions of Article 1, but also the Body Regulation formulate and regulate the *Region Saint, Region Holy Place, Bhisama Purity Pura, Sad Kertih, Tri Mandala, Cathus Patha, Pakraman Village, and Palembang Pakraman Village*.

*Tri Hita Karana* as philosophical values and spirit of the nation (*volkgeist*) community Balinese customary law embodied in customs. In regard to the relationship between man and God then "manifested as a necessity in every yard, hamlets, villages, and Subak to establish places of worship"(Dherana, 1995). Similarly, in connection with the relationship between humans, the "realization of it in the form of a sense of kinship, mutual respect and Gotong royongan, ups and downs, and mutual help, unity among residents In the relationship between man and his environment "there is a desire to preserve the continuity of natural environment.." Transformation element values balance and harmonious relationship between man and God, based on Article 44 clause (1) is reflected in the efforts to make the protection of the sacred area and the area of the holy place.

#### 3.2.1. Protection of the Holy Region

In Article 1 point 40 is determined, that the sacred area is a "region purified by Hindus as the region of mountains, hills, lakes, springs, Campuhan, the sea and the beach." Pursuant to Article 44 clause (1) letter a, Region Bible is "the local protected areas. "in clause (2) of that article, it was determined that the" sacred area as referred to in clause (1) letter a, include: a. mountain sacred area; b. lake sacred area; c. campuhan sacred area; d. shore sacred area; e. sea sacred area, and; f. water springs sacred area."

#### 3.2.2. Protection of Holy Places Region

In Article 1 point 41 determined that the area is a sacred place "in the area around the temple that needs to be maintained within a certain radius corresponding sanctity temple status as set out in *Purity Bhisama Hindu Dharma Indonesia Pura Parisadha Centre* (PHDIP) Year 1994" in Article 1 number 64 is determined that *Bhisama Pura chastity* is "religious norms set by *Sabha Pandita* PHDI Centre, as practice guidelines Hindu teachings about the sanctity of the temple area that has not been fully described in the scriptures."

The element values balance and harmonious relationship between man and God, especially the holy places transformed in Article 44 clause (1) letter b, which specifies that "neighborhood shrine is a protected area local."In the elucidation of Article 44 clause (9) is determined that this sanctuary is a place of holy/sacred buildings in Bali called "temple or heaven tangible building sacred as a place adored *Ida Sang Hyang Widhi Wasa*, consisting

of *Kahyangan Tiga*, *Dang Kahyangan*, *Kahyangan Jagat*, *Sad Kahyangan* and another temples."

Meanwhile, with the *Tri Hita Karana* transform into the RTRW Bali Province Law on Local Governing shows that the political law on Local Governing RTRW Bali Province is responsive to the cultural/traditional Balinese inspired by the values of Hinduism as a form of legal pluralism.

#### 4. Sustainable Spatial Reconstruction of Aceh Province Based Local Wisdom of *Mukim* Customary legal community

To find new construction on legal politics spatial based sustainable indigenous *Mukim* customary legal community used the *theory of democracy* to the typology of law responsive by Philippe Nonet & Selznick. By basing on the *responsive legal theory*, the author believes, should the establishment of *Qanun* RTRWA oriented to serve the needs and interests of the people of Aceh in general, including traditional law community *Mukim* in particular. According to the legal theory responsive, the law can not be separated from the culture, history and a time where we are (*law is not separate from the culture, history and time in the which it exists*). Every historical development and social in Aceh, must be balanced with the development of legal products *Qanun* RTRWA, because any social change would basically affect the development of the law (Rahardjo, 2004). Furthermore, subscribes to the *theory of legal pluralism*, the author holds that for future *Qanun* RTRWA need to be reconstructed to the concept of legal pluralism is more emphasis on interaction and co-existence of the state legal system, legal religion (Islam) and customary law (to accommodate local wisdom spatial *Mukim* sustainable customary law community) that affect the operation of norms, processes and institutions of law and spatial planning policies in Aceh society (Results elaboration of the concept Nurjaya, 2006).

By using the *theory Maqasid al-Syari'ah*, etymologically, *maqasid al-syari'ah* is the purpose of the law (Asmawi, 2010). In conjunction with the *Qanun* RTRWA, duly gave usefulness or goodness and justice for the people of *Mukim* customary law. Things that are required or needed by society *Mukim* customary law is an effort with regard to the six objectives of Islamic law is to save the religion, life, intellect, lineage, property, and the environment (ecology). Yusuf Al-Qardhawi added 1 point so *maqasid al-shariah* by ash-Syatibi turned into 6 points that *hifdzul bi'ah* (environmental conservation). Preserving the ecology, according to him is the demand to protect the five objectives of the *Shari'ah*. Thus, any behavior that leads to destruction of the environment to convey the same life-threatening act, mind, wealth, *nasab*, and religion (Al-Qardhawi, 2001).

Political law based spatial customary legal communities *Mukim* review of aspects of the history of its formation, are relevant to the *theory Receptio in complexu*, as it is said van den Berg that in defending the validity of the Islamic law in the Islamic society is actually based on the principles of law to follow the religion professed by someone, the people of Aceh in general and customary legal community *Mukim* especially since Islam first came to Aceh converted to Islam had been received (meresepsi) Islamic law as a whole (*kaffah*/totality) practices in all aspects of life. This implies that what diresepsi is not only certain parts of Islamic law, but as a whole (Syahrizal, 2004).

In Aceh society *the concept of local wisdom* has long been known the existence of customary legal community *Mukim*. "The recognition of the existence of customary rights *Mukim* regulated in Aceh *Qanun* No. 4 of 2003 on the *Mukim* Government. Article 18 determines, "Hidden wealth *Mukim* is a wealth of existing or subsequently ruled *Mukim*, such as forests, soil, river, estuary, lake, ocean, mountains, swamps, marshes, and others to be customary *Mukim* not contrary to regulations legislation in force"(Anonymous, 2004). Local knowledge of indigenous communities in the *Mukim* of sustainable spatial planning, as previously described, has a management area or a distinctive spatial Aceh and has been there since the time of the kingdom of Aceh. Political RTRWA *Qanun* law, with consideration of privileges and specificity of Aceh in spatial planning based on Islamic values and local wisdom of indigenous Aceh, should accommodate local knowledge-based sustainable spatial indigenous of *Mukim* customary legal community.

The concept of *ecological sustainability*, as introduced by Ame Naess, very *urgent* applied to save the current environment. According to him, after 10 years of sustainable development paradigm is accepted as a political agenda of global development, many environmental experts began to realize that sustainable development paradigm is a failure on the side of the fighters of the environment. The paradigm of ecological sustainability requires a fundamental change in national policy that gives priority to the preservation of life forms on this planet, in order to achieve ecological sustainability (Wolfgang Sachs in Keraf, 2002).

Based on theoretical and conceptual foundation, the authors formulate new construction spatial politics of law in Aceh. New construction is obtained by performing a search for *existing* construction and construction law political ideal of sustainable spatial planning based on local wisdom *Mukim* customary law communities. Base used for reconstruction is local wisdom and new construction formed through a dialectical process. Dialectic process to find a new construction law politics spatial sustainable based on local wisdom of indigenous *Mukim* can be explained through ragaan is supported by ragaan dialectic between legal politics spatial sustained based on the local knowledge base and existing (elaborated from Safa'at, 2011) as can be seen in Table 1 below.

Table 1. Comparative Political Dialogue *Qanun* RTRW Existing laws and Ideal

No.	Existing law RTRW political <i>Qanun</i>	No.	Ideal Political <i>Qanun</i> law RTRW
1	Basic: <ul style="list-style-type: none"> <li>• Article 18B Act of 1945.</li> <li>• Helsinki MoU August 15, 2005</li> <li>• Article 171 UUPA.</li> </ul>	1	Basic: <ul style="list-style-type: none"> <li>• Delegation of authority to the task of nation.</li> <li>• Article 18B clause (1), clause (2), and Article 28 clause (3) Constitution NRI 1945</li> </ul>
2	Subject: Government of Aceh, Aceh Community.	2	Subject: State (Government and the People) in a relationship of equals.
3	Purpose: <ul style="list-style-type: none"> <li>• Direct utilization of space in Aceh in a harmonious, balanced, integrated, sustainable and environmentally friendly as well as based on the principle philosophy of life and cultural wisdom of the people of Aceh in order to improve the welfare of an equitable society.</li> </ul>	3	Purpose: Fair and prosperous society.
4	Substance: <ol style="list-style-type: none"> <li>The term <i>Mukim</i> Chapter I General Provisions Article, item 13. Aceh Regional Spatial Structure Plan specified in Article 14 (clause 1), including: a. system activity center; b. transport network system; c. energy grid system; d. telecommunications and information network system; e. network system of water resources; f. drinking water network system; g. fishery facilities and infrastructure systems; h. waste facilities and infrastructure systems; i. facilities and systems drainage infrastructure; and j. system wastewater infrastructure.</li> <li>The pattern of the Aceh region of space as specified in policies and strategies for developing spatial patterns Aceh region include: policies and strategies for the development of protected areas; and policies and strategies for the development of cultivation area. Policy development of protected areas include: a. maintenance and improvement of the quality of protected areas; b. maintenance of environmental sustainability in order to improve the quality of environmental services; and c. the prevention of the negative impacts of human activities that can cause damage to a protected area. Policy development cultivation area, including: a cultivation area use it effectively, efficiently and sustainably; b. increase integration and linkages between farming activities; and c. control the development of aquaculture activities so as not to exceed the carrying capacity and environmental capacity.</li> </ol>	4	Substance: <ol style="list-style-type: none"> <li>State shall recognize and respect the units of local government that are specific or special.</li> <li>The State recognizes and respects units of indigenous communities and their traditional rights.</li> <li>State recognizes and respects all still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia.</li> <li>The cultural identity and traditional communities be respected in accordance with the times and civilization.</li> </ol>
5	Consequence: Governing of Aceh as a regulator in the field of spatial Aceh to realize the protection and guarantee of development by emphasizing the use of natural resources is sustainable and welfare of the people of Aceh in a fair, equitable, productive and innovative, berasaskan philosophy of life and cultural wisdom of the people of Aceh.	5	Consequence: State as a regulator in the field of local governance and customary law community unit in realizing the fulfillment of the rights of traditional and cultural identity of indigenous community unit.

Based on the demonstration illustration, can be formulated new construction RTRWA *Qanun* law politics based on local wisdom of indigenous communities *Mukim*.

Political reconstruction performed at the level of the basic law, the subject, purpose, substance and consequences. Images of the reconstruction, as can be seen in Table 2. below.



Table 2. New Construction Law Politics Based on RTRW *Qanun*  
 Local Wisdom of *Mukim* Customary legal community

No.	Political Law RTRW <i>Qanun</i> Based on Local Wisdom <i>Mukim</i> of Indigenous People
1	Basic: <ul style="list-style-type: none"> <li>• Article 18B Act of 1945.</li> <li>• Helsinki Memorandum of Understanding August 15, 2005</li> <li>• Article 142 and 171 Law on Governing of Aceh (UUPA).</li> </ul>
2	Subject: Governing of Aceh, Aceh Society.
3	<i>Purpose, Article 8 Clause (2):</i> <ul style="list-style-type: none"> <li>• Direct utilization of space in Aceh in a harmonious, balanced, integrated, sustainable and environmentally friendly as well as based on the principle philosophy of life, added, derived from Islamic values and local wisdom of customary legal community of Aceh in order to improve the welfare of an equitable society.</li> </ul>
4	Substance: <ol style="list-style-type: none"> <li>a. <i>Chapter 1 General Provisions, Article 1, it should be added:</i> <ol style="list-style-type: none"> <li>1) The area of <i>Mukim</i> is a region that is administratively discharged dividing the district and sub-district with clear boundaries (limits of nature and limits of agreement).</li> <li>2) Manage <i>Mukim</i> Territory is the space within the existing <i>Mukim</i> and <i>Mukim</i> or later controlled by the authority of origin rights upon the inherent rights of <i>Mukim</i> governance.</li> <li>3) The origin is the authority and the rights attached to a single piece of the community since the community was established, such as: the right to determine his reign, forming customary to organize people and the environment, control and manage the environment for the benefit of its citizens, and held a kind of justice. (Refer to article 18 B Constitution 45)</li> <li>4) Right to Manage <i>Mukim Mukim</i> is the authority of institutions to organize, use and control of the use of space within the <i>Mukim</i>.</li> <li>5) Rights of Customary legal community is <i>Mukim Mukim</i> rights of customary legal community based on the right of origin to organize, manage, access, utilize, and decision-making on natural resources in the area of <i>Mukim</i>.</li> </ol> </li> <li>b. <i>Vision, Article 2</i>, The realization of the Acehese people need to be added, Islamic, strong, dignified, prosperous, and equitable through spatial Aceh integrated, harmonious and sustainable.</li> <li>c. <i>Policy and Strategy of Spatial Planning of Aceh, Article 9, added, including:</i> <ol style="list-style-type: none"> <li>1) Arrangement Structure of Space and Space Pattern Aceh obligated to respect, protect and fulfill the presence of Regional Governance <i>Mukim</i> as the origin of the rights of indigenous peoples.</li> <li>2) The area of <i>Mukim</i> governance as stipulated in <i>Article 9 clause (1)</i> above include: forests, fields, the river, estuary, lake, ocean, mountains, swamps, marshes, and other markets or other names under the provisions of the local indigenous.</li> <li>3) The origin of the customary legal community as referred to in <i>Article 9 clause (1)</i> above include:                             <ol style="list-style-type: none"> <li>a. Co-ownership rights (<i>communal property</i>), namely the right of citizens of <i>Mukim</i> to utilize and manage all the <i>Mukim</i> management area is not to be controlled and individually owned and can not be traded.</li> <li>b. The ownership of the resources in the <i>Mukim</i> region fully controlled and managed by the agency as well as property assets <i>Mukim Mukim</i> institutions.</li> <li>c. Rights management, in the form of structuring, planning, regulating the use, licensing and supervision of the management based on the principle of maintaining the <i>Mukim</i> territorial integrity and the benefit of <i>Mukim</i> society.</li> </ol> </li> <li>4) Setting the pattern and structure of space at the <i>Mukim</i> determined through <i>Mukim</i> community meetings.</li> <li>5) General Guidelines on Regional Governance in the <i>Mukim</i> of Space Structures and Patterns Space Aceh Governor governed by Regulation.</li> </ol> </li> <li>d. <i>Local Protection Region, Article 36 b, is added,</i> <ol style="list-style-type: none"> <li>1) Region <i>Mukim</i> Mosque within a specified radius.</li> <li>2) Regions Meurabe Padang (pastures) customary spread in Aceh.</li> </ol> </li> <li>e. <i>Tutorial Aceh region of space utilization control, Article 51, added, including directives to control land use management area Mukim, include:</i> <ol style="list-style-type: none"> <li>1) The management of conservation areas <i>Mukim</i> done by local <i>Mukim</i> customary provisions with regard to the status and functions of the principal;</li> <li>2) <i>Mukim</i> traditional institutions under the coordination of local <i>Mukim</i> Imeum supervising the implementation of the management of <i>Mukim</i> conservation areas;</li> <li>3) Traditional institutions <i>Mukim</i> referred to in Article 51 clause (2) is the traditional institutions in <i>Mukim</i> level in accordance with the regulations stipulated in Aceh <i>Qanun</i> No. 9 of 2008 concerning Indigenous Development Life and Customs and the <i>Qanun</i> Aceh No.10 of 2008 concerning Indigenous Institute;</li> </ol> </li> <li>f. <i>Permit Basic, Article 81, added, Clause (2)</i>, Permit utilization management area <i>Mukim</i> / <i>Mukim</i> communal property must be approved institutions and the <i>Mukim</i> Society through <i>Mukim</i> meetings.</li> <li>g. <i>Rights, Obligations, and the Role of Civil Society, Article 89, it should be added, clause (4):</i> <ol style="list-style-type: none"> <li>a. <i>Mukim</i> institutions are entitled to be involved in the consultation process, and or approvals in layout.</li> <li>b. Respect the rights of customary legal community in the consultation process and the <i>Mukim</i> or the approval process in the spatial plan.</li> </ol> </li> <li>h. <i>Institutional, Article 90, is added, clause (3) letter a</i>. Aceh Government and Regency / City Government is obliged to delegate authority to the <i>Mukim</i> and <i>Gampong</i> institutions in controlling the use of space in the <i>Mukim</i> and <i>Gampong</i>. <i>Letter b</i>, The delegation referred to in <i>clause (3) letter a</i> above, must be accompanied by financing.</li> </ol>
5	Consequence: <ul style="list-style-type: none"> <li>• Conduct a comprehensive reconstruction and fundamental to legal politics <i>Qanun</i> RTRWA to change the orientation of legal centralism and planning paradigm RTRW <i>rational comprehensive</i> be based on legal pluralism by privilege and exclusivity Aceh, offset by the <i>advocacy planning</i> and local wisdom of indigenous <i>Mukim</i> as an social asset (social capital) Aceh community.</li> <li>• Mapping Facilitate for the existence and customary community <i>Mukim</i> across Aceh.</li> </ul>

Note: The substance of the new construction law politics *Qanun* RTRWA some points sourced from Asnawi, Secretary of the Council of *Mukim* Pakat Duek, Aceh Besar district.

## 5. Conclusion

Political reconstruction or new construction law *Qanun* sustainable spatial RTRWA community-based indigenous customary law *Mukim* formulated by searching *existing* construction and construction law *Qanun* political ideal of sustainable spatial planning based on local wisdom RTRWA customary legal community *Mukim*. Generate legal political layout that accommodates the new sustainable and based on local wisdom *Mukim* customary law in Aceh

by embracing the paradigm of legal pluralism.

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