

The Legal Policy of Spatial Planning Qanun Aceh Number 19 Year 2013 Based on Local Wisdom of Mukim Customary Legal Community

T. Nazaruddin^{1*} Rachmad Safa'at² Moh. Fadli² I Nyoman Nurjaya³

1. Faculty of Law, Brawijaya University, Malang, Indonesia and Faculty of Law, Malikussaleh University, Aceh, Indonesia

2. Postgraduate Program of Law Faculty, Brawijaya University, Malang

3. Professor of Anthropology of Law, Brawijaya University, Malang

Abstract

The legal policy of spatial planning Aceh area (called RTRWA shorten from *Rencana Tata Ruang Wilayah Aceh*) is related to legal ideology of centralism which is based on national spatial system. Furthermore, legal political ideology of Qanun (Islamic regulation) establishment of RTRWA can be investigated based on long term development of Aceh (called RPJP shorten from Rencana Pembangunan Jangka Panjang) year 2005-2025, the written record of Aceh RTRW work-team in Banda Aceh on 3rd of April 2007 about academic script of Aceh RTRW year 2010, the eleventh meeting of special committee, year 2010 between Aceh Representative Council (called DPRA shorten from Dewan Perwakilan rakyat) and Walhi (Indonesian living environmental forum) of Aceh, RDPU (shorten from public hearing session), Qanun design year 2011, the discussion result of the second special committee year 2012 Aceh Representative Council, Qanun design of Aceh, Raqan (shorten for Qanun design) RTRWA 2010, and Qanun RTRWA 2013. This study analyses on how legal politics of spatial planning of Aceh, Qanun Number 19 Year 2013 which is based on local wisdom of customary legal community of *Mukim* (Acehnese resident institution) in Aceh.

Keywords: legal policy, spatial planning, qanun aceh, local wisdom, *mukim*

1. Introduction

The discussion of legal ideology of the Qanun of Spatial planning in Aceh (RTRWA) cannot be separated from legal ideology of centralism which is based on national spatial planning system as guideline and reference on formulation and formation of provincial spatial planning (code no. 26, year 2007, Chapter 22, Verse (1) that determines that the formulation of spatial planning of provincial territory is according to: a. national spatial planning; b. spatial reference; and c. long term territorial development. Article 18 verse 1 determines that the decision of provincial regulation design of provincial area about spatial planning and the detail of spatial planning has to get admissible substance of ministry. Furthermore, Verse (3) states that the determination of content, guideline, and the management of provincial/city territory of spatial planning arrangement as mentioned on Verse (1) and the arrangement of provincial area of spatial planning on verse (2) accordingly, is arranged based on ministry regulations. The guidelines and the arrangement concerned is based on the ministry of public work regulation. The guideline and the arrangement is based on code no. 15/PRT/M/2009 about the arrangement guideline of provincial spatial planning. Thus, the regulation of spatial planning is hierarchical and formal. According to Imam Koeswahyono, the political law on the implementation of spatial planning in Indonesia, either in provincial level or in district level is centralistic for decades (concentrated on executive party by ignoring the role of legislative party and community), elite party, rationale (extremely uphold rational and deductive assumption, and scientific procedures), determinative (the effort to unify the model and program on behalf of efficiency), (Koeswahyono, 2012, p.104).

The formulation of Article 18, Verse (2), the 1945 constitution decides that, "provincial government, district, and city, have to manage governmental affair based on the autonomic regulation and the assistant duty". On verse (4), it is determined that "Governor, Regent, and Mayor are the governmental chief in provincial level, district level, and selected democratic city. Furthermore, on article 18 verse (5) in Indonesian Code, it firmly confirms, "Territorial government governs the autonomy as a whole except the governmental matters that is determined by constitutional code that has to be handled by central government."

Based on governmental regulation no. 15 year 2010 about the implementation of spatial planning, article 4 verse (2) determines that:

"The arrangement of spatial matter by provincial government as stated in article 3 includes the arrangement and the establishment of:

- a. spatial planning of provincial area, spatial planning of provincial strategic area, and the guidelines of provincial zone system determined by provincial regulation; and
- b. the determination of permit, the establishment of incentive and disincentive matters, administrative sanction, and the guideline on the implementation of spatial planning determined by governor's regulation."

Spatial planning constitution, article 18, verse (1), the determination of formulation of provincial regulation on provincial spatial planning, the detail plan of spatial planning has to be authorized by ministry in advance. Verse (2), the determination of formulation of district/capital regulation of spatial planning and the spatial planning detail plan has to be recommended by the governor at first place before being authorized by ministry. Verse (3), the regulation content, guideline, the procedural arrangement of provincial spatial arrangement as stated on verse (1) and the arrangement of district or capital spatial planning as stated on verse (2) is regulated by Ministry's regulation.

According to the regulation of minister of public work affair No. 15/PRT/M/2009, the arrangement guideline of provincial spatial planning, in order to give comprehensive understanding on provincial RTRW role on spatial planning system and national development planning system for stakeholder, the role of provincial RTRW is shown on chartone as followed:

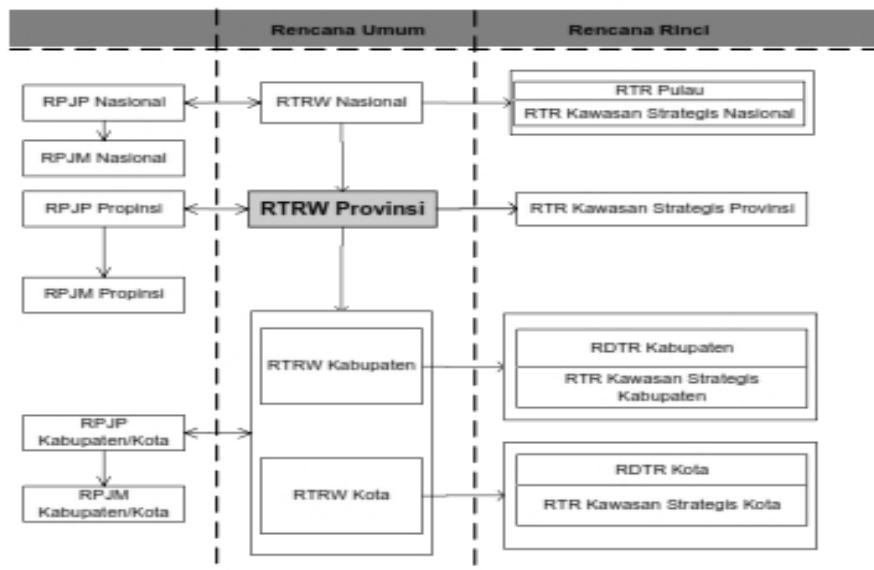


Figure 1. The Role of Provincial Spatial Planning (RTRW) on spatial planning system and national development planning system

Source: Ministry of public work affair (called PU shorten from pekerjaan umum No.15/PRT/M/2009).

Furthermore, the authority of provincial government (including Aceh province which has applied specific autonomy) on spatial planning, is arranged in article 10 UUPR (shorten for Acehnese local constitution). On this occasion, the local government consisting of governor, regent or mayor, and local official as local governmental executor (article 1 verse 30, governmental regulation, number 26 year 2008 about national spatial planning).

Basically, the authority of provincial government on spatial matter is equal to the authority of central government, but the differences are found on the scope and the hierarchy. The detail description of the authority is mentioned in article 10, UUPR as followed:

- (1) The authority of provincial government on spatial implementation includes:
 - a. Regulation, training, and supervision on the spatial implementation of provincial area, district/city, and the spatial implementation on strategic area of province, and district/city;
 - b. The implementation of provincial spatial planning;
 - c. The implementation of spatial of provincial strategic area; and
 - d. The cooperation on spatial area among provinces and the facilitation of the cooperation among the districts/cities.
- (2) The authority of provincial government on the implementation of spatial provincial area as mentioned on article (1) point b include:
 - a. The spatial planning of provincial area;
 - b. The utilization of provincial space;
 - c. Controlling the space utilization of provincial area.
- (3) On the strategic area of spatial planning in verse (1) point c, the provincial government implement:
 - a. Determination of provincial strategic area;
 - b. Spatial planning of provincial strategic area;
 - c. The use of strategic provincial area; and
 - d. Controlling the utilization of provincial strategic area.
- (4) The implementation of space utilization and the controlling of provincial strategic area as mentioned on verse (5) point c and d, is conducted by district/city government by assistant tasks.

(5) On the implementation of provincial spatial area, *provincial government can arrange the implementation guideline* on spatial matters in province level and district/ city level.

Regarding with the utilization of provincial strategic area, the explanation of article 10 verse (4) UUPR states, "The authority of provincial government on the space utilization and the controlling the use of provincial strategic area includes the aspect related to *strategic value* which is the based on the determination of strategic area. District/city government still has authority on the implementation aspect that is not related to strategic value which is the foundation on determination of strategic area", does not eliminate the district/city authority as previous mentioned, as far as concerned the strategic value is maintained in district/city area and does not become the foundation on determination of provincial strategic area. The notion is applicable for provincial area in relation with national strategic area. This basic notion is applicable on provincial level as well as in relation with national strategic area.

On spatial matters, the public spatial planning (RUTR shorten from Rencana Umum Tata Ruang) is based on administrative area according to the substance of structural planning spatial pattern. Moreover, spatial planning detail (RRTR shorten from Rencana Perinci Tata Ruang) is arranged based on the strategic value or area/area activity which the content covers the determination of addressed block and sub-block. RRTR is the operation of RUTR and as the foundation of the determination of zone regulation. Zone regulation is the regulation that arranges about the requirements of space utilization and the the controlling determination so that the controlling regulation of spatial utilization can be conducted based on RUTR and RRTR.

Regarding with the existence of spatial matters, Herman Islamet, mentions that " Spatial pattern on increasing land utilization comprises of: (a); the *realisation of public demand and need that is integrated in public life, and* (b) having functions as the aspiration and manifestation of policy (local governmental policy) about the development and the management of living environment." (Hermanislamet, p.4-5).

Based on study of national legal training team (BPHN shorten from Tim Badan Pembinaan Hukum Nasional) on law enforcement of spatial area in relation with autonomous area framework, the management of many types of natural resource need coordinated and integrated implementation with other natural resources on developmental pattern progressively by developing eco-friendly spatial area which prioritizes on society interest, and creates the harmonic environment based on national perspective and national security defence. The latest report of national legal training team on autonomous area framework states that society has essential role on spatial utilization process meaning that:

1. Locating the governmental role as facilitator on spatial use process.
2. Respecting the society right and local wisdom and social cultural differences;
3. Open-minded by respecting the ethics;
4. Keeping attention on technological development and keeping professional (Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia R.I., 2014, p.70).

Meanwhile, on a national political law review, according to Mukthie Fadjar, it is not yet sufficient to study merely on the official legal texts but it has to take into account about the non-legal factors on the research.

It means that basically, legal formation is not autonomous. It is mainly influenced by ideological vision of its authors, national politics, economics, society, culture, and religion of people. Therefore, that law is created is not positioned on non-value space or vacuum.

Based on assumption mentioned above, law is a product of an ideology so that ideology will strongly determines legal characteristic. The study intends to focus on ideology as influence variable and law as influenced variable (Putro, 2013, p.216).

In order to understand the ideology in influencing political law in term of spatial planning of Aceh (RTRWA) Qanun No.19 year 2013, beside the influence of ideology of national law which is legal centralism, we will enable to investigate the ideology of national law which has characteristics of law centralism. We are also able to investigate the ideology of local law (Acehnese province) based on the formulation of Qanun RTRWA chronologically.

2. Research Method

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

3. Discussion

3.1. Legal ideology of Qanun formulation of spatial planning in Aceh Area

RTRW Aceh in the first year 1993, was arranged 1990 and ratified year 1995 (local regulation Number 9 year 1995 about RTRWP of special autonomy of Aceh). In 2006 it is arranged by facilitating rehabilitation and construction institution (BRR shorten from Badan Rehabilitasi dan Rekonstruksi) NAD-Nias which has not yet been regulated in qanun, because of the new constitutional formulation Number 26 Year 2007 about spatial

planning and Governmental regulation Number 26 Year 2008 about national spatial planning. The discussion progress was conducted from 2009 to 2010 and finally Draft of Qanun RTRW Aceh was formulated (by harmonic process in Irwandi Yusuf's years as Acehese Governor), however, the final Qanun of RTRW was not finalized and it is adjusted based on constitution Number 26 Year 2007 and local regulation (shorten PP) Number 26 Year 2008. On 27 of December 2013, it was ratified by Acehese Council Representative (DPRA) to be Qanun RTRWA year 2013-2033.

The ideology of political law of Qanun RTRW formulation in Aceh can be observed based on long term developmental plan of Aceh (RPJP shorten from Rencana Pembangunan Jangka Panjang Aceh) year 2005-2025, the record of team-work of RTRW Aceh, in Banda Aceh, dated 3 April 2007, academic formulation draft of RTRW Aceh year 2010, public hearing session (RDPU) Qanun design 2010, the special committee meeting (Pansus XI) year 2010 between DPRA and Walhi Aceh, public hearing session (RDPU) Qanun design 2011, report outcome of special committee discussion II year 2012, Acehese representative council, Qanun Design of Aceh, Qanun design (Raqaan) RTRW Aceh 2010, and Qanun RTRW Aceh 2013.

3.1.1. Long term development plan of Aceh (RPJP) Year 2005-2025

Based on background of Qanun Aceh No. 9 Year 2012 about the long term development plan of Aceh, year (RPJP) 2012-2032 (the journey of Aceh Year 2012 No. 9, additional journey of Aceh Year 2012 No. 9) stated that RPJP Aceh Year 2005-2025 is a document of macro plan and has goal for next twenty years that includes aim and purpose, general profile of Aceh condition, strategic issues, vision and mission, the policy and the regulation implementation of long term development of Aceh, which is as a guideline in arranging for long term development plan of Aceh, which then is applied as a guideline for document arrangement of mid-term development plan (RPJM shorten from Rencana Pembangunan Jangka Menengah Aceh Aceh) for the next five years.

RPJP of Aceh year 2005–2025 is basic principles of progressive development in order to reform the implementation of developmental vision which intends to civilize Acehese community based on Sharia Law. It aims to assist undeveloped areas in Indonesia by using all natural resources, good governance, dignity, which is based on reciprocal and harmonic cooperation among all stakeholders in Acehese province.

It is based on chapter II, general description of Acehese condition, point 2.2. Sharia law and the implementation of Sharia Law. The implementation of Sharia Law is based on constitution of Republic Indonesia No 44 Year 1999 about special implementation of Acehese Province and the constitution of Republic Indonesia Number 18 Year 2001 about special Autonomy of province of Aceh as special area. Since the official application of Sharia Law in Aceh, some official instruments have been provided such as the establishment of some institutions/ official body and the implementation of qanun itself.

In relation with the implementation of Islamic Sharia Law, it is stated that the role of Islamic priest in governmental body of Aceh is strategic and crucial. MPU body (The Islamic priest concession council) as the representative of Islamic priests and Islamic scholar of Aceh is equal as Acehese governmental counterpart and Acehese representative council (DPRA). MPU is an independent body which functions to give its contribution regarding to local policy including governmental policy, development, and society as well as economic issues based on Islamic regulation. The concession stated by Islamic body is a reference in making governmental decision of Aceh.

Furthermore, point angka 2.2.2. Socio-culture, is stated that, the atmosphere of Acehese society life is based on Islamic Sharia Law, which is described in a probe (*Hadih Maja*), *Hukom ngoen Adat Lagee Zat Ngoen Sifeut*, which mean that Sharia and tradition is a unity and are bound each other on Acehese social life. The implementation of Islamic sharia in Aceh province is not a new issue since it has been established prior to Indonesian independence, during the Sultanate era in Aceh, sharia law has been practiced in Acehese social life.

Moreover, the management of natural resource is a part of Acehese culture. It is described in some culture which has been rooted in Acehese economic life such as *Panglima Laot* which arranges marine resources, *Panglima Uteun* which tackle the forest area, *Keujruen Blang* which arranges the irrigation and agricultural issues as well as local wisdom and so forth.

The vision and mission of Acehese development year 2005 – 2025 states that based on current condition in Acehese scenario on the next 20 years by taking account on basic capital of Acehese community, the vision of Acehese development years 2005-2025 is “Aceh is in Islamic spirit, developed, peace and prosperous.”

3.1.2. The record of team-work of spatial planing of Aceh

Basically, since the team-work (called Pokja shorten from kelompok kerja) is established, spatial planning of Aceh (RTRW), prior the establishment of constitution No.11 year 2006 about Acehese government, (Province of Aceh then named “Aceh”), based on constitution No 18 year 2001 about specific autonomy for Aceh province as special area, the notion of formulation of RTRW Aceh considers the special and specific position of Aceh by including the values as well as the Islamic concept and Acehese tradition. According to team-work record (Pokja) RTRW in Banda Aceh, dated 3rd of April 2007, it was formulated as followed: in relation with technical preparation of Qanun formulation about RTRW of Aceh, the discussion about the substance of

academic draft and draft of Qanun held in Banda Aceh, from 2-3 April 2007. The discussion was focused on four aspects; natural resource and environmental conservation, economic territorial aspect, infrastructure, and constitutional aspects. The discussion records of the four aspects are as follows:

1. *The conservation of Environmental and natural resource*
 - a. The arrangement of PRTRWP of Aceh has to focus on vision and mission of Acehese province.
 - b. The explanation of current condition is basic principle of arrangement.
 - c. The additional definition on the terms is needed.
 - d. Coastal area is protective area, however it is possible to be exploited in strict limitation as long as it is safe as protective area.
 - e. The territorial management culturally has to be strengthened and revised.
 - f. In developing area, the potency and provincial policy of neighbour country has to be concerned.
 - g. The arrangement of natural reserouce has to be done carefully for long terms by concerning of social ecology sustainable.
 - h. The arrangement of river stream area (called DAS) prioritizes on the savety of river stream area and is managed by autonomous body of Aceh in coordination with costumary institution.
 - i. In developmental phase, the district prioritizes on its finest factors.
 - j. The pattern of Acehese province development is prioritized on west-south area, central area, and east-south area.
 - k. The centre of developmental area (called PKN shorten from Pusat pengembangan wilayah) is considered to include Blangpidie (Abdya), Krueng Raya (Aceh Besar), and Langsa (Aceh Timur).
 - i. The developmental area with tourism potency has to focus on islamic ecology tourism.
2. *Economic area*
 - 1) Has to be underlined on the solution of any current issues that happen in Aceh such as:
 - a. The high rate of poverty population.
 - b. The hight rate of unworking people.
 - c. Economic issues and the developmental issues amongst areas in Aceh are still in big concerns.
 - d. Economic structure of Aceh is still vulnerable due to weak foundation.
 - e. High reliability of Acehese economics toward North Sumatera.
 - 2) The solution of any issue in economic sector is conducted by determining the priority of economic development according to basic sector which has orientation on economic delovelment of rural community.
 - 3) The development of Acehenese economic sector has to concern in conserving cultural value, natural and environmental reseources, that has to be sustainable in all sectors.
3. *Constitutions*
 - 1) Islamic values and cultural values have to be principles in deciding the spatial planning policy either on planning or on controlling;
 - 2) Required essential role of MPU (The Islamic priest concession council), Acehese cultural institution (MAA) on spatial process which is part of the coordination body of spatial planning area; the coordination body of local spatial planning (called BKPRD shorten from Badan Koordinasi Penataan Ruang Daerah);
 - 3) The requirement of recommendation from customary institutions (*Panglima Laot, Keujereun Blang, Petua Glee/Uteun* and so fort) in the authorized areas (customary institutions are functional institutions under *Mukim* authority, writer).
 - 4) The need of special space of *meunasah* (according to Indonesian dictionary (KBBI), *meunasah* is general places in villages (*Gampong*, writer) as place for worship, religious education, discussion spot and so forth in Aceh (the explanation added by writer) on every public space;
 - 5) Every public space has to concern on women and elderly need;
 - 6) On certain cases, the solution is based on cultural values such as to change the family cemetery to cemetery of *Gampong*;
 - 7) The need to strengthen coordination among provincial government, Acehese Council representative, MPU, and MAA in term of spatial planning;
 - 8) The required independent institution which has authority to supervise in spatial utilization.
 - 9) The required institution reformation to expedite the investment process in line with spatial matters;
 - 10) It has to have high rank officer that specially tackles the investment and spatial matters.
 - 11) Non-bureaucratic procedures in terms of investment matters, thus the investment application can be decided immediately;
4. *Infrastructure*
 - 1) The issues are followed:
 - a. Economic discrepancy among east – west – central areas.

- b. Poor regional access to the whole of Provincial area of Aceh
 - c. Economic orientation to the south (Medan).
 - d. Economic reliability to oil gas sector.
- 2) To strengthen the function of PKN in Banda Aceh-Sabang as the main point of Aceh province. Meanwhile, the development of PKN can be reviewed based on the potency and developmental progress.
 - 3) Sabang as free trade zone has been determined in constitution No. 11/2006 that is developed as the *outlet* international sea in Aceh province.
 - 4) Basically, the infrastructure development will be conducted based on spatial structure either that has been determined or is being developed. The structure and the pattern of space utilization may be altered thus the infrastructure development will be based on the progressive change. It is included the infrastructure development of West area of Aceh that will be based on scenario of spatial structure.
 - 5) Road infrastructure is development as primary route are from Aceh – Sigli – Bireun –Lhokseumawe – Langsa - Kuala Simpang, and Banda Aceh – Janto – Tangse – Geumpang – Takengon - Blangkejeren – Kutacane to boundary of North Sumatera, and the west route: Banda Aceh – Calang - Meulaboh – Blangpidie – Tapaktuan – Subulussalam – Singkil. The other route will be determined based on the spatial structure that has been decided/determined.

3.1.3. Academic Draft of Qanun RTRWA year 2010

Furthermore, the political law of Qanun RTRWA can be observed in Academic draft of Qanun RTRWA year 2010, that is formulated as followed: on point 1.2.6, one of spatial strategic in Aceh area, number 1, is the eco-friendly development with concept called *Aceh Green*. The aim of *Aceh green* concept in developmental program in Aceh has to maintain the sustainable environment and natural resources. Consequently, it has to be based on natural resource management that is wholly addressed for young and future generation of Aceh, and the outcome of development will contribute to Acehnese community. According to concept of *Aceh Green*, the guideline for spatial pattern has to be ideal as followed:

- Central part of land area functions as protective and conservative area;
- The edge area, function as cultural domain area;
- Sea area functions as both conservative/protective area and cultural function.

Consequently, central area is forest, either protected forest or natural conservation and productive forest. In 2007, it was declared “*moratorium logging*” to terminate illegal logging. The declaration is designed as consequence of deforestation issues that cause natural disaster including: flood, landslide, conflict with wild animal. There are three main components as reference as mentioned followed:

- The evaluation of administrative procedure of Land utilization (*redesign*);
- The improvement of *reforestation*;
- Preventing deforestation (reduction *deforestasi*).

According to *Aceh Green* concept, the forest conservation of Aceh will become the essential storage of global carbon market in relation with *carbon trade mechanism*. For the arrangement of sea area, it has to be concerned on the integration between economic benefit (fishery and tourism) and ecosystem conservation in sea area.

The spatial vision and mission in Aceh area: to rely on current situation in Aceh, the issue of natural potency thus the spatial guideline of Aceh for the next twenty years (20) are: “the achievement of strength community of Aceh, dignity, prosperity, and justice by conducting integrated spatial program harmonically and progressively”. Mental Strength: is typical identity of Acehnese people characterized by defence power, undefeatable, and powerful in handling the challenge years by years. *Dignity is condition of Acehnese people which is characterized by heroic spirit, smart, rule abiding, cooperative and innovative that is based on genuine application of Islamic sharia law respectively*. The actualization of Sharia law is by implementing the decided regulation based of *UUPA* (Acehnese constitutions) along with other constitutions, good governance, transparency, free of corruption, collusion, and nepotism, and the enforcement of human right and law supremacy, *re-implementing and re-strengthening the Islamic culture of Aceh*. *Islamic* and re-application of Islamic values in life of Acehnese community. *Prosperity* is the achievement in economic development based on the principles of local potency and being competitive, the optimizing geopolitical strength and natural resources in Aceh, increasing the development index of human resources and the ability in adapting the up-to-date science and technology. Justice is the developmental achievement with dignity and sustainable, being proportional and progressive based on the basic principle and positive contribution for Acehnese community. Being integrated: it is adapting the process of the differences in society based on economic, social, cultural, and physical factors so that ideal spatial structure is attained. It is meaningful as the adaptation process among the different elements among social, economic, cultural, and physical factors, thus the united and aligned spatial objective of Aceh is attained. Being in *Harmony*: it is a sustainable and ideal condition to be achieved in Acehnese society. Continuity: it is spatial implementation based on the consideration of environmental, social, and economic

aspects to guarantee the sustainable of living environment, safety, ability, prosperity, and the qualified living standard from generation to generation.

Spatial area in Aceh aims to achieve ideal utilization of spatial program and structure and spatial pattern in order to attain progressive development and to prevent the excess exploitation of natural resources so that it will be leaded to the environmental utilization service and rejuvenated natural resources. Based on the consideration of characteristic area of Aceh including its specificity, potency, issues, and prospect, it is formulated spatial objectives in Aceh as followed:

- a. To provide protection and to assure the development in Aceh is based on progressive natural resource utilization in order to achieve sustainable, productive and innovative prosperity in Aceh which is based on the value of life principle and cultural wisdom of Aceh;
- b. To function strategic area that support Aceh province as main gate to Sumatera Island;
- c. To achieve the integrated utilization of land, sea, air territories of Aceh including geothermal sector;
- d. To achieve the ideal development between area and activity in Aceh;
- e. To achieve spatial objective at boundaries, coastal areas, small islands, essential island, and remote areas continuously;
- f. To lower the risks of natural disasters; and
- g. To utilize the potency of environmental service in order to enhance the progressive economic acceleration.

The policy and spatial strategy in Aceh area include the spatial developmental structure and spatial developmental pattern in Aceh comprising:

1. The improvement function and access of service to activity centres in Aceh areas;
2. The improvement of inward and outward access of Aceh area either on national or international level; and
3. The improvement of quality and service access of transportation, electric power, information and communication, water resource management and water consumption, as well as adaption and mitigation of natural disaster in whole area of Aceh.

Based on the policy of future spatial structural development, it is determined that spatial strategic development of areas in Aceh is to improve the function and access service in activity centres in Aceh areas including:

1. To develop and enhance the infrastructure service at central activities;
2. To develop the function or new activity at central services that will improve quality service in order to encourage the development of the serviced area;
3. To maintain and improve the reliability among activity centres; and
4. To encourage the urban area and developmental area to be more competitive and effective in term of developing the surrounding areas.

The strategy of spatial infrastructure development is to improve the inward and outward access of Aceh areas, either in national or international level including:

1. To develop the areas of Banda Aceh, Aceh Besar, Sabang, Aceh Utara, Lhokseumawe, Takengon, Langsa, Meulaboh, Blangpidie and Singkil as main gate to Sumatera Island, in relation with economics, culture, education, tourism, transportation, *Information Technology Center* and Aceh digital;
2. To develop integrated economic development area (called KAPET shorten from Mengembangkan Kawasan Pengembangan Ekonomi Terpadu) Banda Aceh Darussalam, as well as free trade area and free trade harbour of Sabang, so that it will be altered as the main gate to Sumatera island in economic relation in international level; and
3. To develop the capacity and intensity of activity centres which organize the trade activity, service, industry and tourism in local, national, and international level by completing supporting infrastructure.

The strategy of spatial development in improving the access and quality of transportation service, energy, information, water resource management and water consumption, as well as mitigation and adaptation of natural disasters in whole areas of Aceh including:

1. To improve the facility of integrated transportation network(land, sea, and air space) in local, national, or international level;
2. To improve electric power network optimally and to guarantee the power supply for strategic factors as well as to actualize the integrated electric power supply system optimally and to guarantee the power supply for some sectors;
3. To increasing telecommunication network system effectively in order to create competitive atmosphere in whole area of Aceh;
4. To improve and to actualize the integrated infrastructure system of water supply and water consumption in order to improve the quality and service access based on minimum service standard; and to develop infrastructure network to support the mitigation and adaption to natural disaster.

The policy and strategy of spatial pattern development of Aceh area include:

1. The policy and strategy of the development of protective area; and

2. The policy and strategy of the development of cultivation area.

The policy and strategy of the development of protective areas in Aceh including:

1. The maintenance and the increasing quality of protective area;
2. The maintenance of environmental conservation in order to increase the quality of environmental service; and
3. The prevention of negative effect of human activity which damages the protective areas.

The developmental strategy of protective areas include: the developmental strategy of protective area to maintain and to increase the quality of protective areas including:

1. To maintain and to increase the function of protective area which deteriorate the protective function in order to maintain the balance of ecosystem area;
2. To increase the quality of forest area which function as protective area which are protective forest and conservative forest area; and
3. To strengthen the status of protective area that is considered essential and strategic by community.

The developmental strategy of protective area aims to conserve living environment in order to strengthen the quality of environmental service including:

1. To determine the protective function in land, sea, air areas including the earth; and;
2. To improve the efficient management of particular protective areas by mutual environment mechanism in order to improve the community prosperity of community who provides environmental service.

The developmental strategy of protective area is preventive effort from human damaging activities which will harm the protective area as followed:

1. To manage natural resource with less up to date to guarantee the wise;
2. To manage natural resource which is the most recent one is to guarantee to the provision continuously;
3. To control the activities within protective areas that is not based on protective function.
4. To eliminate venerable natural risk development of cultivation area;
5. To improve the role of community including local wisdom and customary law in managing protective area and;
6. To improve the community prosperity around protective area.

The policy and strategy of developmental area in whole Aceh in term of cultivation area are:

1. The utilization of cultivation zone effectively, efficiently, and continuously;
2. The improvement of integration and relation of cultural activities; and
3. The progressive control of cultivation activity in order to prevent the excess of environmental management.

The strategy of the development of cultivation area includes the developmental strategy of cultivation area by utilizing the cultivation area effectively, efficiently, and continuously including:

1. To improve the productivity of cultivation area of agricultural area intensively, and diversification of agriculture sector based on technological development, land condition and agro-climate;
2. To limit the change of land agricultural function for other functions; and
3. To utilize the cultivation area of non-agricultural land based on area characterization.

The strategy of cultivation area development in order to increase the integration and relation among cultivation areas including:

1. To develop the finest cultivation areas as well as supporting infrastructure based on valid standard in synergic way to encourage economic development;
2. To realize the improvement of developmental areas and integrated service which is multi-function in one area and among areas;
3. To develop the cultivation area on integrated agriculture in order to support food security;
4. To develop boundary area, rural areas, coastal areas, small island, and crucial and potential islands in order to increase competitive situation; and
5. To develop marine resource management which has significant economic values in sea area of Aceh.

The developmental strategy of cultivation area is to control cultivation activity so that it will not harm the environment including:

1. To limit the development of cultivation activity that will endanger the environment;
2. To implement the development based on natural disaster mitigation on venerable areas which are part of cultivation areas;
3. To develop the urban area by enhancing skyscraper building which has commercial purpose in order to use the space maximally and the provision of open space; and
4. To control the development of construction area in urban area in order to increase the infrastructure service as well as to optimize the function of *Gampong* and its surrounded areas (Academic draft of Qanun of spatial area Aceh, year 2010).

3.1.4. Public hearing session (RDPU) of Qanun Formulation 2010

The public hearing session (RDPU) of Qanun Formulation is about Qanun spatial planning in Aceh area year 2010-2030 special community (PANSUS) XI year 2010, representative council of Aceh. Aceh with

regent/mayor/representative council of district area 8 (DPRK eight) district/city, dated 14 October 2010, in Medan. According to RDPU, the writer quotes some statements which are relevant to this study (source: Library Data of Acehese representative council (DPRA), retrieved 30 January 2016).

In relation with spatial structure and specific area, Jufri Hasanuddin (the head of special committee (Pansus-XI), states that: “We have to conserve our *indatu* (the ancestor) history (writer) if we cannot create the new one. Nowadays, Aceh has established the institution named *Wali Nanggroe, Pendopo Wali Nanggroe* that will become the special area. We build specific tourism area but we have to maintain and respect Islamic Sharia Law. For instance in Kute, Bali, it is annually the local financial income is extraordinary about 2 Triliuns,” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh with regent/mayor /representative council of district area 8 (DPRK 8) district/city, dated 14 October 2010, in Medan, p. 4).

Furthermore, in relation with the executive advice to add protective forest area, Jufri Hasanuddin states that: “ In relation with additional protective forest in Aceh, the advice comes from Acehese people, even the headquarter authority was surprised when Acehese government enquires additional protective forest. We will clarify about this case, we have great expectation from our leader about spatial case. The forest ministry has approved spatial planning, and it becomes our motivation. The additional area of other utilization (called APL shorten for Penambahan Area Penggunaan Lain) on Qanun formulation is from our suggestion, afterward, we hand over the reviewed draft however there is no response from executive party.” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh with regent/mayor/representative council of district area 8 (DPRK 8) district/city, dated 14 October 2010, in Medan, p. 7).

Furthermore, the opinion of Iskandar A. Gani (the expert of Pansus XI) mentions that: “basically, the jurisdiction concept of the establishment of formulation of Qanun RTRW is the authority of Acehese government according to MoU Helsinki and basic establishment of constitution of Acehese government. Thus, based on the authority given to us, there are some issues regarding to the authority of Aceh based on Acehese characters. The headquarter has to acknowledge that Aceh is part of Republic of Indonesia, however, we Acehese government have specification based on constitutions of local regulation called UUPA.” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh with regent/mayor/representative council of district area 8 (DPRK 8 (eight) district/city, dated 14 October 2010, in Medan, p. 10).

3.1.5. Meeting of Pansus XI Year 2010 between DPRA and Walhi of Aceh

The meeting of Pansus XI year 2010 DPRA with Walhi of Aceh discusses about the formulation of Qanun of spatial planning, Aceh area 2010-2030, dated 21 October 2010, in Banda Aceh. According to the meeting mentioned above, the writer quotes some relevant questions which focus on this research (source: Library Data of representative council), retrieved 30 Januari 2016)

Jufri Hasanuddin (the head of Pansus XI 2010) stated that: “ One of conditions to formulate a qanun, and consequently, there is should be the meeting and discussion in togetherness. Today, we make the meeting to finalize raqan of RTRW draft that we are discussing about.” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh Walhi, dated 14 October 2010, in Banda Aceh, p. 1).

T. M. Zulfikar (representative of Walhi) states that: “The meeting is our effort to get along each other. Moreover, what we have done and what the responsibility that we have is to improve prosperity of Acehese community. This is our mission. Walhi comprises of some non-profit organizations (NGO), including Walhi, and world wild life, FFI (Flora Fauna Internasional), Lembaga Pena, Transparansi Internasional Indonesia, Rumpun Bambu, WWF, and BPKEL, *Uno Itam*, and Institute of *Green Aceh*. We would like to offer suggestion that the draft we receipt from executive party is not fully acceptable. Spatial issue concerns many aspects. The issue of *green* province is our goal.” (The record meeting of Pansus XI year 2010, representative council of Aceh with Walhi discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 1).

Furthermore, Jufri Hasanuddin (the head of Pansus XI 2010) mentions that: “We try to adapt the draft which is handed by executive party to us. We intend to functions RTRW based on its genuine function, in other word, we accept the *Aceh green* plan but it must have balance concept between human and other living creatures. If we move for instance in national level, the concept of *Aceh green* and protection is too wide that human will have no idea where they have to live.

We try to respond it proportionally. The protective concept of Aceh in the future is Aceh community itself. When we held hearing session in Medan, the concept we established is synergic with technical issue and 7 regents/mayors that we invited in Medan, appreciated and encourage on spatial issue. Furthermore, there is the responsibility in constitution 1945, local regulation (UUPA) and MoU Helsinki, to establish the qualified Qanun ” (The record meeting of Pansus XI year 2010, representative council of Aceh Rakyat Aceh with

environmental institution of Indonesia (Walhi) discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 1).

T. Mursalin JP (representative of Walhi) postulates that: “it is not only forest as part of Aceh, but also sea area. There are continuity of development has no significant limitation on cultivation and protection. There are some suggestion as followed:

1. The area with variety wild life is determined as protective area.
2. The level of slope above 40% is decided as forest in order to prevent from landslide.
3. Peat-land of forest area, equal or more than three metres is determined as protective area, the size is not accounted.
4. The issues of *Mukim* diaspora.
5. The need of determination of green area.
6. The community has to be notified regarding with vulnerable area from natural disaster.

According to soil structure and condition, the area which is vulnerable from flood and landslide is forest area. (The record meeting of Pansus meeting XI year 2010, representative council of Aceh Rakyat Aceh with Walhi discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 3).

Efendi (the representative of *Uno Itam*) mentions that: “In *rajan* draft according to our reading references, it does not focus on customary law society or *Mukim*. The issue in managing natural resources nowadays is less benefit for community of Aceh. Based on Article 39 point b, the local protection, I suggest that it should be included the river stream area (DAS) in Aceh Jaya, Krueng Sabe. Article 47 mining area, point a, what is the meaning the activity of mining do not harm the environment? Since it is difficult to open mining without damaging the environment. I challenge the representative council member, land reform what is the percentage of the land possessed by community? Who does possess for the rest of the land? Every Acehnese people has right to possess the two hectares of the lands.” (The record meeting of Pansus meeting XI year 2010, representative council of Aceh (Walhi) discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 3).

Agus Halim Wardana (the representative of *Rumpun Bambu Indonesia* foundation) states that “We have studied about spatial issues of Aceh year 2005 because of the establishment of reconstruction and rehabilitation body (called BRR shorten from Badan Rehabilitasi dan Rekonstruksi) Aceh-Nias. The space provision has guaranteed the right of *Mukim* and the marginalized group in Aceh. We have a lot of resources to develop Aceh area including *Mukim* area, the arrangement of *Mukim* area, and the customary institution which is characterized by agriculture and fishery. Customary law and *Mukim* issues are not mentioned in qanun, but it is mentioned in *wali nanggroe*. According to the draft of Qanun RTRWA, it does not reflect about Aceh. The vision has to be clear that it has to be based on law and culture so that it reflects the characteristic of Aceh. The policy has to guarantee the right and redevelop the cultural system for instance, land utilization as well as national recognition for *Mukim*.” (The record meeting of Pansus meeting XI year 2010, representative council of Aceh with Walhi discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 3).

Furthermore, Jufri Hasanuddin (the head of Pansus XI 2010) states that: “According to *rajan* draft, we do not describe more detail because it has been stated on *qanun wali nanggroe*. We have to try to manage mining issue because mining sector has been controlled by foreign party, the mining operation has to prevent environmental damages, and it has to be our main concern.”

(The record meeting of Pansus meeting XI year 2010, representative council of Aceh with Walhi discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 4).

Adi Usman Musa (the representative of *Green Aceh* Institution) mentioned that, “I have read The latest draft that imply the disappointment of additional protective forest about 16.000 hectares. Second, spatial issue at least will create economic and environmental justice for instant, strategic area and new area in Aceh Tengah. The significant of arrangement right of community on *Mukim*. The establishment of Qanun *Mukim* in provincial level on UUPA is not mentioned.” (The record meeting of Pansus meeting XI year 2010, representative council of Aceh with Walhi discussing about Qanun formulation about spatial planning of Aceh area, year 2010-2030, dated 21 October 2010, in Banda Aceh, p. 4).

3.1.6. Public Hearing Session (RDPU) of Qanun Formulation Year 2011

Public hearing session (RDPU) of Qanun formulation about spatial planning in Aceh area 2010-2030 PANSUS XI year 2010 Acehnese representative council with regent/mayor of Aceh districts, dated 6 January 2011, in Banda Aceh. On RDPU, the writer quotes some statements which are relevant with objective of the research (source: Library Data of representative council of Aceh), retrieved 30 Januari 2016).

On the opening of RDPU by vice of DPRA (Amir Helmi), it is mentioned that, “Today is very essential day to have suggestion in order to improve our qanun. Qanun aims to arrange spatial matters in Aceh and to

guarantee the development and environment in Aceh area. By qanun, we can make Aceh to be special area, so that it will increase economic values for Aceh area” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh districts with Walhi, dated 6 January 2011, in Banda Aceh, p.1).

Jufri Hasanuddin (The head of Pansus) mentioned that: “Institution of Acehese Government (UUPA) as *lex specialis* and institutions as national foundation thus we do not focus on national constitution but on UUPA” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh districts with Walhi, dated 6 January 2011, in Banda Aceh, p. 3).

Abdul Hadi Zakaria (one of member of *Imeum Mukim* in Pidie district) states that: “we thank you for the invitation, we hope that same event will be conducted in the future. In relation with qanun, if the disappointment of Aceh community toward the policy of central government from stakeholder in Jakarta, it is because of inappropriate attention about the case. On other qanuns, there is the relation with customary land that is possessed by *Mukim*, in RTRW, I do not find the regulation about the right of customary community. Article 57, about customary forest is not yet included. Furthermore, regarding to article 8 about the objective of RTRW, it is mentioned that it should be fair and equal. In constitution of Acehese government, it is mentioned that RTRW has to be aligned with the need of Acehese community thus it should be adjusted with UUPA. Concerning about rice field issue, I suggest the arrangement of special panel. If the function of rice field is shifted thus the number of rice field will be decrease in the next couple years. What is the solution for this issue? Why the customary right is not mentioned in RTRW?” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council of Aceh districts with Walhi, dated 6 January 2011, in Banda Aceh, p. 11).

Yacob, the representative of spatial planning coordination of Aceh area (called BKPRD shorten from Badan Koordinasi Penataan Ruang Daerah Aceh) states that: “Spatial matter is about contribution of secure environment, convenience, and economic growth. In relation with Acehese regulation, it is regulated in UUPA, even technically, the regulation does not exist because Aceh is still part of Country of Republic of Indonesia, hence there is technical regulation which arrange that matters. This issue is still being proposed, and DPRA may change it. It is about technical matters and not an authority. It has been taken into account based on constitution (UU) and local regulation (PP). If it is consistent, we have to stick on applying UUPA. It can be applied for arranging of protective forest. protected forest which its Qanun is regulated for forest criteria but does not include *Mukim* area. For criteria, if it is not yet arranged in Qanun, it is regulated in annexes” (The record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 representative council with Regent /mayor and all city representative council of Aceh (DPRK), dated 6 January 2011, in Banda Aceh, p. 13).

The writer quotes some statements mentioned above from the record of hearing session (RDPU) of Qanun formulation about spatial planning of Aceh area year 2010-2030 PANSUS XI year 2010 Acehese representative, which is revealed as mentioned earlier by vice-chief DPRA that qanun is oriented on Acehese spatial planning that guarantees development and environment as well as the formation of Aceh area as *special area*, so that it will incline the economic values for Aceh area.

However, the interesting notion comes from the head of Pansus. According to him, the Acehese governmental constitution (called UUPA shorten from Undang-Undang Pemerintahan Aceh) should not be totally correlated with the national constitution as national legal constitution. This opinion indicates the enthusiasm to encourage and postulate the formation of Qanun RTRW of Aceh which is *lex specialist* and consistent with the regulation stated in UUPA that the planning, determination, utilization of spatial area of Aceh is based on the speciality and specificity of Aceh (Constitution No. 11 Year 2006 about Acehese Government (UUPA), Article 141 Verse (1), (3) determined: Verse (1): "Developmental Planning of Aceh/District/City is arranged comprehensively as part of national developmental planning system in framework of Republic of Indonesia by considering: a. Islamic Value; b. Social and cultural factors; c. Continuity and environment; d. Justice and equity; and e. needs." Verse (3): "Community has right to deliver its notion verbally or in written about the arrangement of Developmental planning of district/city of Aceh based on Acehese people aspiration ". Article 142 Verse (2) determined: "Determination and utilization of spatial planning of Aceh is based on the speciality and specificity of Aceh and are correlated between national and district/sub-district spatial planning.

The only element of customary legal community that is invited and attends the meeting is Abdul Hadi Zakaria (one of *Imeum Mukim* in Pidie district). He enquiries on why in other qanuns (he means the qanun about governmental *Mukim* and qanun of Customary institution in Aceh, writer) states about the formulation of “*tanah ulayat*” possessed by *Mukim*, however in formulation of Qanun RTRW of Aceh, it is not mentioned even one Verse about the formulation of spatial planning “managing area” as the right of customary legal community of *Mukim* and Customary legal community network of Aceh (called JKMA shorten from Jaringan Komunitas Masyarakat Adat Aceh) or Non-governmental organizations (called LSM shorten from Lembaga Swadaya

Masyarakat) in Aceh that states spatial issue of *Mukim*, writer).

The inquiry of *Imeum Mukim* was not responded by the participants of RDPU meeting that were attended by Regent/Mayor and the head of local council representative of Aceh except the response came from the element of BKPRD, Aceh, who confessed that in term of regulation of spatial planning of Aceh, it is arranged in regulation of UUPA, however, there is no regulation technically since Aceh is part of Indonesian country which has arranged it technically. This issue correlated with technical and matter is not about the authority issue, which has been taken into account based on the constitutions (called UU) and Governmental regulation (called PP). In term of consistency, we have to apply the regulation of UUPA. In term of protective area utilization, Qanun RTRW of Aceh does not arrange the characteristic of forest for *Mukim* area.

3.1.7. *The report of discussion results of Special committee II Year 2012 Acehnese Council Representative of Formulation of Qanun RTRWA 2013*

The report of discussion results of Special committee II Year 2012 Acehnese Representative Council of Formulation of Qanun RTRWA 2013 – 2033 (Source: Data of Library of Acehnese Representative Council (DPRA), retrieved 30 January 2016), is delivered in plenary session of DPRA on 24th December 2013 and clarify that: “The discussion of Raqan RTRWA previously was conducted by Pansus XI Year 2010 acknowledged Ir. Jufri Hasanuddin, MM, however because of some constraints, this Qanun has not been yet finished on determined time, and Pansus II Year 2012 was commended to proceed the discussion of the subjected Qanun. In discussion of formulation of the qanun RTRWA, it was found many issued faced by Pansus II. Initially, the executive body suggested the additional land about one million hectare for forest area (the notion was proposed by governor of Aceh during Irwandi Yusuf’s year, in correlation with the supported program policy “Aceh Green Vision” in term of long term progressive development and to anticipate the effect of environmental damage in Aceh, as stated in long term developmental plan (RJPA) Year 2005-2025, writer). The notion was refused by the majority of Regent/Mayor in Aceh thus the Pansus XI Year 2010 had to find out the better solution and finally the additional land for one million hectare for forest was denied. For the first two years, the discussion will be focused more intensively about the cold cases of forest area because forest area proposed by Government before Irwandi Yusuf’ year was very large even there is the resident areas that should be altered into forest. Therefore, the community who has settled in particular area has to move out. Furthermore, Pansus II Year 2012 as sequel pansus from Pansus XI, was conducted by Governmental team directed Zaini Abdullah along with districts/cities’ authorities in order to find out the best solution for districts/cities. The process should be proposed officially by Governor of Aceh which is addressed to the forest ministry of Republic of Indonesia and to be discussed with special integrated team.

The discussion process of mapping of spatial pattern has been proceeded and conducted by planology institution, Forestry Ministry. The outcomes of discussion become appendix II in RTRWA that mentioned about the spatial pattern in Aceh area. The Appendix about spatial pattern is also supported by secure article in Qanun RTRW based on the transitional provision, Verse 19 “If the changes happen in relation with the width and function of forest area of Aceh as arranged in this Qanun, it should be accordance with the decision of Forest Ministry of Republic of Indonesia regarding the appointment of forest area and Acehnese Marine area”. Furthermore, in term of land adjuration made by reintegration body of Aceh in order to be managed by the community, and after long discussion, it was agreed that will be no new additional forest but will be given in form of community forest plantation development program (called HTR shorten from program pengembangan Hutan Tanaman Rakyat) and community forest (called HKm shorten from Hutan Kemasyarakatan). The right of ownership for the land will not be issued to the community otherwise the community will be able to utilize the land.” (the record of the discussion outcomes of special community (Pansus) II Year 2012 Acehnese Representative Council, the formulation of Qanun Aceh of spatial planning of Aceh area 2013 - 2033, delivered in plenary session of Acehnese Representative Council (DPRA) on 24th December 2013, p. 3-7).

3.1.8. *Qanun Formulation (Raqan) RTRWA 2010*

Qanun Formulation (Raqan) RTRWA 2010 was in sufficient and less comprehensive compared with Qanun RTRWA. However, some Articles related with the special consideration and speciality and specificity of Aceh as stated in the 1945 Constitution Number 44 Year 1999 and Number 11 Year 2006, and local wisdom of customary legal community, is revealed in some articles as follows:

In Chapter I, general determination of Article 1, is not stated about the definition of *Mukim*, however in Article 1, point 13, was stated the environmental service centre shorten PPL (shorten from Pusat Pelayanan Lingkungan) that functions to deliver the service for *Mukim* level or some *Gampong* (villages). Furthermore, in Article 5 concerning about the aim of spatial matter of Aceh area is to realize Islamic, productive, fair, equitable, continuous, and developed spatial planning of Aceh. The determination of Article 15, Act (7) about service area centre (called PPK shorten from Pusat Pelayanan Kawasan) as mentioned in Article 13 Verse (1) and determined as follows:

- a. Service centre functions as governmental, economic, and social activity centres that serves in some sub-districts level or some *Mukim* and/or *Gampong*;

b. Transportation service centre serves sub-district level or *Mukim* and/or *Gampong*.

Environmental service centre (PPL) as stated in Article 13 Verse (1) is determined based on the criteria as follows :

- a. Service centre functions as governmental, economic, and social activity in *Mukim* or sub-district level;
- b. Transportation service centre serves in *Mukim* or some *Gampongs*.

Based on the analysis of Raqan RTRWA, it is found that Raqan RTRWA has not yet accommodated the local wisdom of customary legal community in a whole, except for the formulation and the statement of Islamic spatial vision of Aceh and environmental service centre (PPL). It was not formulated the local wisdom of Customary legal community in spatial formulation in term of customary legal community area in particular.

3.1.9. *Qanun Number 19 Year 2013 Spatial Planning of Aceh Area (RTRWA)*

Qanun RTRWA consists of more developed and comprehensive regulation compared with Raqan RTRWA. Some Articles in relation with special consideration of speciality and specificity of Aceh as mentioned in Constitution Number 44 Year 1999 and Number 11 Year 2006 and the local wisdom of customary legal community of *Mukim* that is stated: Qanun RTRWA included the term *Mukim* in Chapter I the General Determination Article, number 13, however in following Articles are not mentioned about *Mukim*. In addition, Article 2 Qanun RTRWA formulates about the Vision in order to actualize the dignity, prosperous, fair, harmonic, and strong community of Aceh based on integrated, harmonic, and progressive spatial planning of Aceh. ” the writer is concerned about the formulation of vision in Qanun RTRWA that has to include the vision...dignity based on the vision in Academic Text but the definition of word “dignity” does not exist, except mentioned “very clear”.

Furthermore in Article 3, it was formulated about the mission of RTRW of Aceh as follows:

To build the integrated and humanistic spatial structure and spatial pattern of Aceh area in consideration with the speciality and specificity of Aceh;

To adjust Acehnese community life either between urban community and villagers or between coastal communities and remote and island community;

To create the prosperous, dynamic, and equitable community of Aceh; and

To implement the development with good environmental knowledge and based on mitigation and calamity.

According to writer analysis, the mission is included by considering the speciality and specificity of Aceh in Qanun RTRWA that indicates a better formulation compared with Raqan RTRWA which does not include about the issue at any way, however the formulation is considered is not correlated with the following Articles thus it implies the formulation is only to fulfil the requirement of constitution Number 11 Year 2006 and Academic Script formally without focusing on the main substance intended.

Article 6 RTRW of Aceh is guided by:

The formulation of long term development plan of Aceh;

The formulation of mid-term development of Aceh;

The spatial utilization and controlling of spatial utilization based on permission, surveillance, and based on spatial order of Aceh;

The integrated actualization, correlation, and equity of development between districts/city and the sustainability among sectors in Aceh area;

The determination of function of spatial location in Aceh area for infestations and is adjusted based on ecological condition of Aceh which are vulnerable in term of calamity ;

Spatial planning of strategic area of Aceh; and

Spatial planning of district/city area in Aceh.

Moreover the determination of the objective of spatial planning in Aceh is mentioned in Article 8 Verse (2) point a as follows: to give the protection and guarantee the development by prioritizing the utilization of progressive natural resources in order to attain the prosperity of Acehnese people in equity, productive, and innovative way based on the ideology and local wisdom of Acehnese community; and therefore the role of community is determined in Article 12 Verse (4) point e. To enhance the role of community including the local wisdom of customary law in arranging the protective area;

The formulation of objective about the role of community in relation with ideology, local wisdom and customary law is mentioned generally without addressing *Mukim* in particular, which indicates less recognition of the existence and the right of *Mukim*. This reality provokes the inquiry of why customary legal community of *Mukim* that has been existed and acknowledged publicly by Acehnese community, particularly by governmental authority, is not recognised and placed appropriately in legal matters and spatial planning policy Aceh.

Spatial planning of Acehnese structure is determined in Article 14 (Verse 1) that consist of: a. The central activity centre; b. Transportation network system; c. Energy network system; d. Information and technology network system; e. Water supply network system; f. Water consumption network system; g. Fishing facility system; h. Waste facility system; i. Drainage system; and j. Wastewater facility system. Spatial pattern of Acehnese Area as determined in Article 11 Qanun RTRWA, “The policy and strategy of spatial planning

development of Aceh area as stated in Article 9 consist of: the policy and strategy of the development of protected area; and the policy and strategy of the development of cultivation area. Furthermore, in Article 12 (Verse 1), the policy of the development of protected area as mention in Article 11 point a, consist of: a. The preservation and the improvement of living environment in order to improve the quality of environmental service; and b. The prevention of negative effect from human activity which damages the protected area.”

Furthermore, Article 13 (Verse 1) determines, “the policy of the development of cultivation area as stated in Article 11, point b consist of: a the utilization of cultivation area effectively, efficiently, and continuously; b. The improvement of the integration and correlation between cultivation activities; and c. The controlling of the development of cultivation activity which does not exceed the environmental capacity.” In this chapter, the general explanation includes the constitution Number 11 Year 2006 about Acehne Government, which concerns of development planning of Aceh which is arranged comprehensively as part of national development planning system in framework of Republic of Indonesia by underlining: Islamic values, social culture, sustainability, and environmental objective, fairness, and equality, and needs. Spatial planning of Aceh (RTRWA) as spatial dimension of development planning of Aceh has to concern on the certain points. Islamic values have to be based on Islamic sharia law which establish strong Islamic culture in Aceh, which requires the formal implementation in all aspects of life of Acehne community. Socio-Culture of Acehne community, hence, will be dominated by Islamic values.

It is assumed that by including the Islamic values and socio-culture in General Explanation of Qanun RTRW of Aceh, is not formulated explicitly in the content of Qanun RTRW of Aceh related with the existence of *Mukim* as entity constitution and spatial area of specificity of Aceh area (Acehne specificity and) which indicates that the recognition and respect of Islamic values and local wisdom of spatial matter of customary legal community of *Mukim* is not assertive enough to show genuine recognition but pseudo recognition, (Nurjaya, 2011, p.385).

3.2. Legal Existing construction of Qanun RTRWA

The constitutions provide the foundation of speciality and specificity of Aceh which is mentioned in constitution 44 Year 1999 about the implementation of specificity of Acehne province and (the 1945 constitution of Republic of Indonesia No 18 Year 2001 about special autonomy of Acehne province which has been revoked and changed) with constitution Number 11 year 2006 about Acehne Government. The following discussion is about the reconstruction of existing political Qanun RTRWA based on constitution Number 44 Year 1999.

Based on authority theory, Abdul Rasyid mentioned that the authority of governmental institution is the authority attached to the authority that is based on positive law in order to arrange and sustain it. Without the authority, it is not allowed to issue a correct jurisdicitive decision (Thalib, 2006, p.219). In line with local autonomy, the implementation authority of spatial planning by Acehne Government consists of: 1) the arrangement activity; 2) coaching; 3) spatial surveillance, and implementation “based on area approach” with administrative boundary. In every sub-system, there is human resource and artificial resource based on variety activities of different spatial utilization level. If it is not arranged well, it will cause the inequality among areas and the termination of area utilization. Thus, there are subjects (central and local government) that have to be involved in spatial planning (national, provincial, and district/city level) hence, the clarification is needed about the authority of spatial planning (Wahid, 2014, p.111).

Furthermore, the constitution of speciality and specificity of Aceh is considered as legal responsive product meaning the law that is established from cultural, historical, and our existent at particular time zone. According to legal responsive theory, every historical and social development has to be adjusted with legal development because basically, any social change will influence the legal development (social movement effects the development of law) (Nonet and Selznick, 1977, p. 3., Friedman, 1978, p.168 in Angga, p. 52).

Based on local governmental theory in Indonesia, about centralization principle which establishes the local autonomy policy on the “submissive” authority for head of local government besides to introduce the decentralization principle by handing over the authority of (central) government to local subordinate officers in order to implement the local governmental duties which is the opportunity to against the centralization principle and co-administrative tasks. Co-administrative tasks are conducted by local government to implement (central) government tasks or the tasks of the head of local government (e.g. District/City to Province) (Kusnardi and Ibrahim, 1976, p. 126). Local principle arranges and manages the governmental affair independently based on autonomous principle and the assistance is defined as local government (Sesung, 2013, p.46). According to the 1945 constitution, Article 18, it confirms that local governmental system of Indonesia adopt autonomous principle or decentralization. Thus the system just adopts autonomous principle and co-administrative task but it is not concentration or decentralism principles. Both of principles actually are not actual principle but the process or the way of implementing something (Manan, 2005 p. 8).

According to special autonomous theory of Aceh based on the 1945 Constitution, Article 18 Verse (5), it is determined that local government runs the unlimited autonomy except the governmental affair which is

determined by 1945 Constitution as part of central governmental affair. Furthermore Central government the 1945 Constitution, Article 18A states that the Nation admits and respects the local governmental unity which is specific or special that is arranged by the Constitutions. Aceh is one of the provinces of Indonesia that has “autonomous status” (since the independence day of Indonesia, Aceh requires to be special treated area). This objective is strived by various crucial reasons. One of tangible reasons is the prosperity (Djojosoekarto, 2008, p.12).

It is different from Constitution Number 11 Year 2006 relating to Acehese Government which does not mention firmly which the underlined issue of the autonomy is. The Constitution Number 18 Year 2001 firmly mentions that Aceh is special autonomy area. The speciality on the constitution Number 18 Year 2001 will be comprehended clearly if it is correlated with the constitution Number 44 Year 1999. Based on the constitution Number 18 Year 2001, it is stated that Acehese province is special autonomous area. The speciality is “specific authority” to organize religious, cultural, and educational affairs as well as the role of Islamic priest in determining local policy.

In relation with spatial planning by applying rational comprehensive paradigm, it causes territorialisation as the eviction strategy of residents spatially (Pramono, 2014, p.213-214). This is one of dispossessions through spatializing, because both of those have same perception as rationalization and totalizing) from a country. In Indonesia, the same process happened. Dutch Colonial established *Agrarisch Besluit 1870* which containing *domein verklaring* which stated that land without private possession evidence became stated property. After the constitution was abolished based on Regulations Number 5 Year 1960 about basic guidelines of agrarian principles, after seven years, the Regulations Number 5 Year 1967 about forestry basic regulation concept was re-implemented which states that “forest area and forest that grows on the land which not subjected to ownership” is authorized by the country. The government then makes survey of boundary of forest area possessed by the country by installing stakes as the outer borders and makes a map of forest boundary as part of recognition process of national forest. Furthermore the forest area is divided based on the function as productive forest, protected forest, and conservative forest as stated on the Forest Agreement Utilization (called TGHK shorten from Tata Guna Hutan Kesepakatan) issued in 1980s. National park particularly, zonation process procedure is more detailed by categorising core zone, jungle zone, and utilization zone. By the application of Regulations Number 41 Year 1999 about forestry department (recently known as Forestry Ministry) the Decree was issued that appointed the forest area (Country) per province which was attached on the map. The next process is the same as previous one. From this description, we comprehend that mapping technic is very crucial to validate the national territorial in order to control and explore the national region which requires the tool that can show the space that is limited by earth surface which contributes homogeny effect and thorough on the territory. On the other hand, the map ignores the existence of customary legal community area that has existed before the country was established. Besides, the mapping process also creates new matters.

The existence and role of customary legal community on the system and progressive natural resource management (in term of spatial matters based on local wisdom of customary legal community, writer), according to Rachmad Safa’at, it has not been concerned in term of developmental planning system and national natural resource utilization (Safa’at, 2011, p.278). The paradigm and developmental policy are based on capitalism ideology which refers to modern science which considers that “tradition is a problema” that hinders the development. In contrary, modern science is not extremely success to explain the complex ecology system. The complex ecology system is varying, either spatial or temporal and cause the generalization effort that has small scope particularly in giving the suggestion on perception in managing progressive natural resource. The scholars so far intend to simplify the complex ecology system. Consequently a series of problems happen in utilizing natural resources as well as damaging environment.

The policy of Acehese government that ignores the local wisdom has contributed negative effect to customary legal community of *Mukim* (Asnawi, 2017). One of those is related with the determination of productive forest area (Industrial plantation forest called/HTI shorten from Hutan Tanaman Industri/). The permission granting most of the time inflicts the customary legal community because the permitted land is still part of the managed area of customary legal community area. For instance on *Mukim Siem*, Aceh Besar Sub-district, some villages which has boundary directly to meadow of Meurabe area (meadow for domestic castle), when the industrial plantation land is opened, the meadow of *Meurabe* will be functioned as HTI area instead, which causes the community lose the managed area and gradually will create economic issue and vanish the community’s livelihood. Annually, Aceh loses about 23.124 hectare of land as given to various companies. As far as concerned, 312 companies possess vast land in Aceh, 146 companies among those possess ten types of mining business (Walhi, 2014).

4. Conclusion

Political law of Qanun RTRWA does not accommodate the continuous spatial issues based on local wisdom of customary legal community of *Mukim* since it is more oriented on business interest without considering the value

system and the interest of customary legal community of *Mukim*. The political construction of Qanun RTRWA existence, substantially is not consistence related to the conflict between norms and constitution mentioned above, particularly the constitution of speciality and specificity of Aceh. The spatial planning and rational comprehensive paradigm neglect spatial issue on customary legal community and *Mukim*.

References

- Angga, La Ode. (2015). *Pembangunan Hukum yang Mengakomodir Pluralisme di Indonesia*. (Online) Available: <http://www.aifis-digilib.org.pdf>, (March 13, 2015).
- Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia R.I. (2014). *Laporan Akhir Tim Pengkajian Hukum Tentang Penegakan Hukum Penataan Ruang Dalam Kerangka Otonomi Daerah*, Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia R.I.
- Djojosoekarto, Agung, et.al. (Eds.). (2008). *Kebijakan Otonomi Khusus Papua*. Jakarta: Kemitraan.
- Koeswahyono, Imam. (2012). *Hukum Penatagunaan Tanah dan Penataan Ruang di Indonesia, (Problematika antara Teks dan Konteks)*. Malang: UB Press.
- Komnas HAM. (2006). *Mewujudkan Hak Konstitusional Masyarakat Hukum Adat, Himpunan Dokumen Peringatan Hari Internasional Masyarakat Hukum Adat Sedunia, 9 Agustus 2006*. Jakarta: Komnas HAM Press.
- Kusnardi, Moh. dan Harmaily Ibrahim. (1976). *Pengantar Hukum Tata Negara Indonesia*. Jakarta: Pusat Studi HTN Fakultas Hukum Universitas Indonesia.
- Manan, Bagir. (2005). *Menyongsong Fajar Otonomi Daerah*. Cet. 4. Yogyakarta: Pusat Studi Hukum FH-UII.
- Nurjaya, I Nyoman. (2011). "Adat Community Lands Right as Defined Within the State Agrarian Law of Indonesia: Is it a Genuine or Pseudo-Legal Recognition?," *US-China Law Review*, Volume 8, Number 4, April 2011 (Serial Number 77).
- Pramono, Albertus Hadi. (2014). "Perlawanan atau Pendisiplinan? Sebuah refleksi Kritis atas Pemetaan Wilayah Adat," *Jurnal Wacana*, Nomor 33, Tahun XVI, 2014, hlm. 199-233.
- Putro, Widodo Dwi. (2013). "Politik Hukum di Indonesia dalam Perspektif Ideologi," dalam Hariyono et.al., *Membangun Negara Hukum yang Bermartabat*. Malang: Setara Press dan Universitas Widyagama.
- Rachman, Noer Fauzi. (2014). "Masyarakat hukum adat adalah Penyandang Hak, Subjek Hukum, dan Pemilik Wilayah Adatnya," *Jurnal Wacana*, Nomor 33, Tahun XVI, 2014, hlm. 199-233.
- Risalah Rapat Dengar Pendapat Umum (RDPU) Rancangan Qanun tentang Rencana Tata Ruang Wilayah Aceh tahun 2010-2030 PANSUS XI TAHUN 2010 Dewan Perwakilan Rakyat Aceh dengan Bupati/Walikota/DPRK 8 (delapan) kab/kota, tanggal 14 Oktober 2010, di Medan.
- Risalah Rapat Pertemuan Pansus XI Tahun 2010 DPRA dengan Walhi Aceh membahas tentang Rancangan Qanun Rencana Tata Ruang Wilayah Aceh 2010-2030, tanggal 21 Oktober 2010, di Banda Aceh.
- Risalah Rapat Dengar Pendapat Umum (RDPU) Rancangan Qanun Tentang Rencana Tata Ruang Wilayah Aceh 2010-2030 PANSUS XI TAHUN 2010 Dewan Perwakilan Rakyat Aceh dengan Bupati/Walikota dan DPRK Seluruh Aceh, tanggal 6 Januari 2011, di Banda Aceh, hlm. 11.
- Safa'at, Rachmad. (2011). *Advokasi dan Alternatif Penyelesaian Sengketa, Latar Belakang, Konsep dan Implementasi*. Malang: Surya Pena Gemilang.
- Sesung, Rusdianto. (2013). *Hukum Otonomi Daerah, Negara Kesatuan, Daerah Istimewa, dan Daerah Otonomi Khusus*. Bandung: PT. Refika Aditama.
- Thalib, Abdul Rasyid. (2006). *Wewenang Mahkamah Konstitusi dan Aplikasinya dalam Sistem Ketatanegaraan Republik Indonesia*. Bandung: Citra Aditya Bakti.