



Judicial Review of *Al-Qur'an* Reading Test for Candidates for Members of the Parliament

If things go as expected, beginning from the second week of September 2008, a number of candidates of the Aceh Provincial Parliament (DPRA) and the district/city parliaments (DPRK) in Aceh Province will undergo *Al-Qur'an* reading test as part of their selection process. This is a requirement that is stipulated in *Qanun* (Regional Regulation) No. 3 year 2008 on Local Political Parties. The *Al-Qur'an* reading test will only be applicable to legislative candidates from local political parties. A question arises whether the test will be applicable also to candidates from national parties.

The following paper will try to assess and elaborate the obligation to go through the *Al-Qur'an* reading test for legislative candidates as stipulated in *Qanun* No. 3 year 2008 and to look at the authority of the Department of Home Affairs to amend the *qanun*.

Since its formulation in the DPRA, the draft *Qanun* on Local Political Parties has stirred up much controversy. Some insisted that the draft *qanun* could only regulate issues related to local parties, as was reflected in its name: *Qanun on Local Political Parties*. On the contrary, others insist that the name of the *qanun* should not limit its interpretation. Although the name is *Qanun on Local Political Parties*, the latter believe that the DPRA had the mandate to also set-up criteria for candidates for members of the parliament from the national parties, particularly as their nomination was for the local parliaments.

With this difference of opinion, two articles were added to the *Qanun* on Local Political Parties that stipulated the nomination mechanism for legislative candidates from local and national parties.

The procedure to become candidates for members of the parliament from local parties is stipulated in Chapter IV Article 13 of *Qanun* No. 3 year 2008 that states:

Candidates for Members of the DPRA and DPRK in Aceh Province from Local Political Parties have to meet the following requirements:

- a. Indonesian citizens who have reached the age of 21 (twenty one) or more;*
- b. Have faith in the One Almighty God and are devoted in practicing the teachings of their faith;*
- c. Capable of implementing the Islamic Law (Syariat Islam) in a holistic way and able to read the *Al-Qur'an* for those who embrace the Islam faith;*
- d. Residing within the Aceh Province;*

Meanwhile, the procedure for candidates from national parties is stipulated in Chapter IX Article 36 of *Qanun* No. 3 year 2008 as following:

*The clause related to the requirement on the capability to practice the teachings of one's faith and to implement the Islamic Law in a holistic way and to read the *Al-**



Qur'an for those who embrace the Islam faith as mentioned in Article 13 paragraph (1) letter b and letter c is also applicable for candidates for members of the DPRA and DPRK who come from national political parties.

The present paper will not discuss in details the controversy which surfaced in the DPRA during the discussion of the draft *qanun*. What is clear is that the DPRA has enacted a *qanun* that was then named as Qanun No. 3 year 2008 on Local Political Parties.

In compliance with the prevailing procedure, the draft *qanun* was sent to Jakarta for approval by the Department of Home Affairs. It is a standard legislation procedure that every *qanun* or local regulation (*Peraturan Daerah/Perda*) produced by local legislatures should be approved by the Department of Home Affairs before its enactment and enforced in the community. This is stipulated in the National Law No. 32 year 2004 on Local Government. Article 145 paragraph (2) and (3) of the Law state that the Central Government, in this case the Department of Home Affairs, reserves the rights to annul a local regulation: *first*, if it is in opposition to the interests of the general public and/or the higher legislation, and *second*, the decision of the annulment should be legalised through a presidential regulation (*Peraturan Presiden/Perpres*) at the latest 60 days from the acceptance of the aforementioned Local Regulation.

Based on this legislation, the Department of Home Affairs conducted a review of *Qanun* No. 3 year 2008. The Central Government saw a controversy in Article 36 of the draft *qanun*. The National Government was of the view that *Qanun* No. 3 year 2008 should not regulate legislative candidates nominated by national parties, although they were nominated for the DPRA and DPRK. This was confirmed by Mr. Mawardi Ismail, S.H, M.Hum., a lecturer at the Faculty of Law of Syah Kuala University. "When we're talking about *qanun*, it is clear that it should only regulate local candidates," he maintained.

Clauses that rule legislative candidates nominated by national political parties have been stipulated in National Law No. 10 year 2008 on General Elections. Chapter VII Article 50 specifies the criteria for the nomination of candidates for the national parliament, provincial parliaments and district/city parliaments. Article 50 of Law No. 10 year 2008 stipulates:

Candidates for the national parliament, provincial parliaments and district/city parliaments have to meet the following requirements:

- a. Indonesian citizens who have reached the age of 21 (twenty one) or more;*
- b. Have faith in the One Almighty God;*
- c. Residing within the Unitary State of the Republic of Indonesia;*
- d. Proficient in speaking, reading and writing in the Indonesian language;*
- e. Have background education or at least having completed Senior High School (Sekolah Menengah Atas/SMA), Islamic School equivalent to Senior High School (Madrasah Aliyah/MA), Vocational High School (Sekolah Menengah*



- Kejuruan/SMK), Islamic Vocational High School (Madrasah Aliyah Kejuruan/MAK), or other forms of school equivalent to Senior High School;*
- f. Loyal to Pancasila as the basic principles of the state, the Republic of Indonesian Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945), and the ideals of the Proclamation of Independence on 17 August 1945;*
 - g. Have never been punished with imprisonment based on a definite legal verdict of the court for crimes punishable with 5 (five) or more years of imprisonment;*
 - h. Physically and spiritually healthy;*
 - i. Registered as eligible voters;*
 - j. Able to work full time;*
 - k. Have resigned from positions as civil servants, members of the Indonesian National Military, members of the Indonesian National Police, board members of state-owned enterprises and/or local state-owned enterprises, or other bodies that are funded from the state treasury, which have been legalized through definite resignation letters;*
 - l. Are willing to not practice as a public accountant, legal advocate/lawyer, notary, official that has a duty to issue land title (pejabat pembuat akta tanah/PPAT), and to not do work as suppliers of goods and service that have relation with the state's funds or other works that may have a conflict of interest with the duties, authorities, and rights as members of the national parliament, the provincial parliaments, and district/city parliaments as regulated by the law;*
 - m. Are willing to not hold dual offices as state officials, board members of state-owned enterprises and/or local state-owned enterprises, or other bodies that are funded from the state treasury;*
 - n. Are members of Political Parties that take part in the General Election;*
 - o. Nominated in only 1 (one) parliament; and*
 - p. Nominated in only 1 (one) voting area*

There is not a single point from all the above criteria that mentions that Moslem candidates for the legislature from the national parties need to undergo Al-Qur'an reading test as part of the selection. "That is why, from the very beginning, the Aceh Government has actually preferred to remove that particular clause," said Mr. Hamid Zein, the Head of the Bureau for Law and Public Relations of the Aceh Provincial Government.

In the hearings in front of the DPRA, Governor Irwandi Yusuf has several times stated that the clause should be removed, because there has been a higher law that regulates the nomination of candidates for the legislature from the national political parties. However, since the Aceh parliament still included it in the draft, finally the Article 36 remained in the *Qanun* enacted by the parliament. The objection from the Aceh Government has also been conveyed to the Department of Home Affairs, who also view that Article 36 of the *Qanun* on Local Political Parties violated the law. The article is considered as going against a higher-level law.



As has been mentioned above, local regulations that disagree with higher legislation can be annulled by the Government (Article 145 (2) Law No. 32/2004). The decision to annul such regulation will be legalised through a Presidential Regulation at a maximum of 60 days after the acceptance of the local regulation (Article 145 (3) Law No. 32/2004). In relation to Qanun No. 3 year 2008, the Department of Home Affairs has suggested that stipulations contained in Article 36 that require candidates for the legislature who come from the national parties to undertake an *Al-Qur'an* reading test be removed. The *Al-Qur'an* reading test should only be applicable to candidates from the local parties. The Aceh parliament, however, insisted on retaining the clause. Also, the Presidential Regulation to annul the local regulation has not been issued, so Qanun No. 3 year 2008 is still in effect, maintained Mr. Hamid Zein.

The policy of the National Government to amend local regulations has not been applied to Aceh only. Since 2001 up to May 2008, the Department of Home Affairs has annulled 1,651 local regulations from all over Indonesia. The local regulations annulled mostly related to investment policies that are not in-line with higher level regulations. Throughout 2008, the Department of Home Affairs has annulled 93 local regulations from North Sumatra, for instance. In addition to that, another 63 local regulations are recommended to be canceled by the Department of Finance for the same reason.

This suggests that parliaments in the regions should be particularly careful in formulating local regulations and that they should always take into consideration the higher level legislation. In other words, the DPRA can formulate any *qanuns* for the people of Aceh, provided that they do not oppose the higher level laws. The above-mentioned legal arguments should be sufficient in promoting understanding among the people on why the Department of Home Affairs recommended the cancellation of Article 36 in *Qanun* No. 3 year 2008. This does not mean that the National Government's doesn't respect the decision of the DPRA; instead, it only emphasizes that in formulating local regulations there is a number of stipulations that should be complied with.

If there is an opinion that the policy is discriminatory as it differentiates between the local and national political parties, it would be better if we leave the judgment to the public. The present column only discusses the background of the policy from the legal aspect. What is important is that the people could understand "the why and how" of the cancellation of the *Qanun*.

Such legal certainty may help the Aceh Independent Election Commission (*Komisi Independen Pemilu/KIP*) in performing their duties. They can thus start to arrange the *Al-Qur'an* reading test; who will serve as the examination committee, and how will the scoring standard be set-up. When the mechanism and procedure have been clearly established, it is certain that the scoring for the *Al-Qur'an* reading test will not create another controversy. May the election in Aceh Province be conducted in a smooth manner.