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Number 3 Of 2021 With Government Regulations Number  
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## **Abstract**

The synchronization of North Aceh Regent Regulation Number 3 of 2021 with Government Regulation Number 11 of 2019 is motivated by the deduction of fixed income for Gampong devices in North Aceh Regency in 2021 which is considered contrary to the Government Regulation, and brings this matter to two main problems, namely, how is the synchronization between the North Aceh regent's regulations and the PP in question. And what are the implications caused by this regulation of the Regent of North Aceh. This research uses normative legal research methods by combining the approach of legislation, conceptual approach, and analytical approach. The legal materials used consist of primary, secondary, and tertiary legal materials. The adjustment of the fixed income of the Gampong device is textually indeed contrary, because it violates the Government Regulation above. However, contextually there are several juridical foundations that authorize regional heads to make budget readjustments in regional financial management, including in terms of fixed income for Gampong devices. The mistaken regulation of the Regent of North Aceh was due to forgetting the juridical basis related to the authority to readjust the financial budget in its consideration, thus causing this regent's regulation to be defective. This state of legal defects may have implications for the cancellation of the regent's regulation in its entirety. Even so, the change in the fixed income of the Gampong device caused by this regent's regulation is still valid, because in this regent's regulation is attached the principle of presumption of validity (*persumtion iustae causa*). The establishment of future laws and regulations, especially in North Aceh Regency, is important to emphasize more in the stage of harmonization of the draft laws and regulations in a more comprehensive manner, even directly involving all public elements that have the potential to come into contact with the regulations to be formed. Moreover, regulations of an administrative nature such as the regent's own regulations. Because in the prevalence of antinomy between norms it is more often problematic in derivative regulations, especially administrative ones.

## **Keywords**

Synchronization, Regent Regulations, Government Regulations

## **A. Introduction**

The polemic of cutting the fixed income of the Gampong device in North Aceh Regency due to the enactment of North Aceh Regent Regulation Number 3 of 2021 concerning Procedures for Allocating Gampong Fund Allocation in North Aceh District for fiscal year 2021 brought the problem of legal certainty of fixed income in dependence. Which at first this fixed income was a mandate from Law No. 6 of 2004 concerning Villages. Based on Article 66 paragraphs (1) and (2) of the Village Law, it mandates that

village heads and village officials obtain a fixed income every month and which is sourced from the State Budget (APBN) as a balance fund received by the Regency/City as stipulated in the APBK. Further provisions regarding fixed income are then regulated in Government Regulation Number 11 of 2019 concerning the Second Amendment to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages.

The fixed income of the Gampong device is sourced from the Gampong Fund Allocation (ADG) which is a fund derived from the Equalization Fund received by the district in the District Budget after deducting the Special Allocation Fund. And then budgeted into the Gampong Revenue and Expenditure Budget. The fixed income arrangement of the Gampong device based on the PP is classified into the fixed income of the Village Head, Village Secretary, and Village Apparatus. The composition of the fixed income based on Article 81 paragraph (2) of PP No. 11 of 2019 is ordered to be given with the provisions, to the village head in the amount of Rp.2,426,640.00 (two million four hundred twenty-six thousand six hundred and forty rupiah), for the village secretary given in the amount of Rp.2,224,420.00 (two million two hundred twenty-four thousand four hundred twenty rupiah), and to the Gampong device with a nominal value of Rp.2,022,200.00 (two million twenty-two thousand two hundred rupiah).

Based on this PP, then further technical arrangements related to the implementation of the realization of fixed income are delegated to the regent's regulations. In this regard, then in early January 2021 the North Aceh Regency Government applied this to the North Aceh Regent Regulation No. 3 of 2021, which with this regulation then occurred the readjustment of the fixed income which by a number of parties was considered contrary to PP No. 11 of 20119 (Masriadi, 2021). The provisions for the permanent income of the village head, Gampong devices, and *Tuha Peut allowance, Imum Meunasah* honorarium based on Article 8 paragraphs (2) to (7) and Article 10 paragraphs (1) and (2) of the North Aceh Regent Regulation No. 3 of 2021 are:

- (1) The provision of Geuchik fixed income as referred to in paragraph (1) letter a is given monthly in the amount of Rp. 2. 426. 640,- (two million four hundred and twenty-six thousand rupiah six hundred and forty rupiah) for 12 (twelve months)
- (2) Provision of Fixed Income for Gampong Device as referred to in paragraph (1) point b with rician as follows:
  - a. Keurani Gampong Non PNS;
  - b. Keurani Cut General Affairs and Planning;
  - c. Keurani Cut Financial Affairs;
  - d. Head of Government and Community Affairs Section;
  - e. Head of Development and Empowerment Section; and
  - f. Ulee Jurong.
- (3) The provision of Fixed Income for Gampong Equipment as referred to in paragraph (3) letter a is given monthly in the amount of Rp. 600,000,- (six hundred thousand rupiah) for 12 (twelve) months or from the date of appointment.

- (4) The provision of Fixed Income for Gampong Equipment as referred to in paragraph (3) letter b to letter f is each given monthly in the amount of Rp. 450,000 (four hundred and fifty thousand rupiah) for 12 (twelve) months.
- (5) The provision of Tuha Peut Gampong Allowance as referred to in paragraph (1) point c is given for 12 (twelve) months with the following rician:
  - a. Chairman Tuha Peut's allowance is given per month in the amount of Rp. 600.000,- (six hundred thousand rupiah);
  - b. Vice Chairman Tuha Peut's allowance is given per month in the amount of Rp. 325,000,- (three hundred and twenty-five thousand rupiah);
  - c. Tunjangan Tuha Peut members are given per month in the amount of Rp. 260.000,- (two hundred and sixty thousand rupiah).
- (6) The provision of honorarium for Computer Staff/Operators as referred to in paragraph (1) letter d is given per month in the amount of Rp. 300,000,- (three hundred thousand rupiah) for 12 (twelve) months.

As for the honorarium of Imum Meunasah based on Article 10 paragraphs (1) and (2) per Regent of North Aceh, it contains a provision that the use of ADG in the field of gampong community empowerment is aimed at providing the *Imum Meunasah honorarium*. The honorarium was awarded in the amount of Rp. 600. 000,- (six hundred thousand rupiah) for each month within twelve months. If you look at the two instruments, there is indeed a significant difference. And when contextualized with the spirit of PP No. 11 of 20119 as *delegans*, the disparity in fixed income arrangements is certainly quite opposite.

As the consideration behind the determination of fixed income according to the consideration of PP No. 11 of 20119 is to improve the performance and quality of services for the implementation of village government, it is necessary to consider the welfare of village heads, village secretaries, and other village officials through adjustments to the fixed income of village heads, village secretaries, and other village officials. In the same direction in the perspective of the hierarchy theory of legislation as initiated by Hans Kelsen in the concept of *stufenbhautheory* in which legal norms have a tiered and multi-layered nature in their hierarchical arrangement. This means that the superior norm rests on *the* superior norm, as well as the *superior* norm itu leans on the norm that is much superior above it until it reaches the highest point of *groundnorm* (Maria Farida Indrati Soeprapto, 2007: 41).

Likewise, Law No. 12 of 2011 concerning the Establishment of Laws and Regulations was last amended by Law No. 13 of 2022 where in Article 7 paragraph (1) it seats PP at the fourth degree under the law. Which means that as it is known the position of this PP is much higher than that of the regent himself, so of course this lower regulation should not conflict with the praturan above it. However, specifically with regard to the disparity in norms between the North Aceh Regent Regulation referred to and PP No. 11 of 2019, the North Aceh district government has its own reasons for this.

Based on his statement, the obligation for the district government to allocate ADG amounting to ten percent of the total General Allocation Fund after deducting the Special Allocation Fund has been fulfilled. There are also certain other circumstances that do not

allow the fulfillment of the fixed income mandate of the Gampong device based on the PP, where in 2021 the central government does not provide funding incentives for the fulfillment of fixed income as stipulated by PP No. 11 of 2019 so that the kabupaten government cannot provide this. Moreover, due to the impact of the Minister of Finance Regulation Number 17 / PMK.07 / 2021 which requires the realization of budgets to reach more than billions to cover the shortcomings of DAU and DAK and the reduction of DAU is also reduced ADG transfer obligations ten percent from DAU (Fakhruradi, 2021). Which with these conditions then has an impact on cutting all honorariums within the North Aceh Regency (Andree Prayuda, 2021).

This situation can be understood as an unusual situation where it is motivated by the *Covid-19* pandemic which forces the state to act outside the normal boundaries usually in various fields of state administration. And that, of course, in certain contexts is part of emergency law. With regard to the context of *Covid-19*, various state policies can also have a justification, especially those affected by the pandemic which can be understood as part of the civil emergency. As jimly Asshiddiqie argues (Jimly Asshiddiqie, 2007: 306-307) that the civil emergency can be factored into one of the causes by animal causes with the most minimum danger. So that's what insinuates this problem into legal uncertainty.

## **B. Research Methods**

In this study, based on the upfront picture, two main problems can be drawn, namely how to synchronize the north Aceh Regent Regulation No. 3 of 2021 with PP No. 11 of 2019. And also the implications of the regent's regulation. Based on its type, this research uses normative juridical methods that look at legal problems in a normative and theoretical framework.

This research uses several approach techniques which include, first, the *ststute approach*, namely making the legislation an instrument of study of the problem of the research object. Second, the *conceptual* approach is an approach that supports the ideas of doctrines that develop in law (Muhaimin, 2020: 56 & 57). And third, using an analytical approach (*analytical* approach) which is an approach by analyzing or studying conceptually on a meaning contained in the details of laws and regulations, as well as its application to practice and also judges' decisions (Joenaidi Effendi and Johnny Ibrahim, 2016: 138).

The data that is the basis of research in this *research* refers to three types of legal materials consisting of primary legal materials, skunder legal materials, and tertiary legal materials. There are two main theoretical foundations that are the main theoretical basis of this study. Where the concept is, first is the synchronization and harmonization of laws and regulations, the two things are essentially the same, namely initiating adjustments or alignment to laws and regulations both vertically and horizontally. It's just that the synchronization oriented towards positive regulations that have been promulgated is being harmonized more tendentious to draft regulations or those that are still in the formation stage. And the second is the theory of legislation.

## C. Results of Research And Discussion

### 1. Position of North Aceh Regent Regulation No. 3 of 2021

Government legal instruments can basically be classified into the form of *decisions* (*beshickking*) and regulations (*regelling*) (Soeprapto, 2007: 182). With regard to the regent's regulations in this case it is certainly part of the *regelling* whose contents can take the form of abstract general or concrete general. Regent Regulation as a Regency Head Regulation is seen in terms of its function as an implementing regulation of Regional Regulations (Perda), as stated by Maria Farida Indrati Soeprapto that there are two groups of legal norms, namely implementing regulations (*verordnung*) and autonomous regulations (*Autonome Satzung*) (Sylvia Aryani, 2017: 161). Like other laws and regulations, the regent's regulations are also inseparable from various associations, including regarding the position in the hierarchical structure of laws and regulations.

The position of regent regulation seen in the hierarchy paradigm certainly cannot be separated from the *stufentheory* initiated by Hans Kelsen and the grouping of norms proposed by Hans Nawiasky. In the *stufentheory* concept Hans Kelsen argues that legal norms are tiered and multi-layered in a hierarchy until they reach the highest point that is the basic norm (Hans Kelsen, 1945: 113). On this view, a review can be put forward as follows. First, that since each norm is tiered and multi-layered, it is certain that the lower norm will rest on it. With regard to the Regulation of the Regent of North Aceh Number 3 of 2021, the backrest is Government Regulation Number 11 of 2019.

Second, the nature of the authority granted by the PP to the Regent Regulation is a delegation with the status as an implementing regulation. Delegation itself is represented from a higher to a lower law with an arbitrary period of time as long as the delegation is still in place (Soeprapto, 2007: 56). On this basis, of course, it has logical consequences that the North Aceh Regent Regulation No. 3 of 2021 is directly related to PP Number 11 of 2019 which thus and in this context should be subject to the PP in question.

However, this reasoning, if interpreted inductively, has the consequence that other regent regulations can also be interpreted as equals. And on this it is not possible to seat the regent's regulations directly under the government regulations that overstep the local regulations. It is good to add a theoretical perspective from Hans Nawiasky regarding the level of legal norms in a state (*die Stufenordnung der Rechtsnormen*) which divides four classifications of legal norms in the state (I Gede Pantja Astawa, 2008: 38). Judging from this theory, the position of the regent's regulation which has the status of an implementing regulation will be the lowest position in the norm group of the Nawiasky theory. As stated earlier, the four levels of norms referred to are (Mukhlis Taib, 2017: 79) :

1. Fundamental norms of the state
2. Basic rules/basic rules of the country
3. Formal legislation
4. Implementing rules and autonomous rules.

The implementing regulation group itself is still quite *general* in nature where the implementing regulation is initiated for all regulations formed based on delegation of authority (Soeprapto, 2007: 55). So that under such circumstances it is still difficult to sit the position of the regent's regulations concretely. Regulatively, the position of the

regent's regulations is stated in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 15 of 2019 which includes the regent's regulations as one of the laws and regulations.

The regent regulation in Article 8 paragraph (1) is not hierarchically grouped, but is still recognized for its existence and has binding legal force as long as it is formed on the basis of a higher statutory order or based on the authority as referred to in paragraph (2) of it. In this case, there is also a lack of concrete position regarding the position. For this reason, it should be combined with Jimly Asshiddiqie's view of the hierarchy of state institutions that issue it to see the position of the regent's regulations.

Jimly Asshiddiqie distinguishes state institutions in the perspective of hierarchy and function by basing on : (i) hierarchical criteria of normative source forms that determine their authority and (ii) based on the quality of their functions that are primary or supporting in the system of state power (Jimly Asshiddiqie, 2006: 105). The classification of state institutions is classified into three layers, namely in the first layer occupied by state higher institutions, the second layer can be called state institutions only, and the third layer is regional institutions. Thus the position of the Regent in this classification belongs to the third tier (Asshiddiqie, 2006: 105-109). Specifically regarding the third layer institutions are as follows (Asshiddiqie, 2006: 109) :

1. Provincial Governments
2. Governor
3. Provincial Legislature
4. District Government
5. Regent
6. District DRD
7. Faerah City Government
8. Mayor
9. City Legislature

If synchronized with Article 8 paragraphs (1) and (2) of Law No. 12 of 2011 *juncto* Law No. 15 of 2019, the North Aceh Regent Regulation Number 3 of 2021 as an implementing agreement on the basis of delegation (*veroundnung*) of a Government Regulation will be domiciled under the Regional Regulation or Qanun of North Aceh Regency even though its formation is a delegation from the PP. In line with other opinions that confirm that the Regent's Regulation is similar in characteristics to the Ministerial Regulation which is the implementation of delegation from other laws and regulations above it, except that its position is under the District Regulation (Zaka Firman Aditya and M. Reza Winata, 2018: 95).

## **2. Synchronization Model of North Aceh Regent Regulation Number 3 of 2021 with Government Regulation Number 11 of 2019**

North Aceh Regent Regulation Number 3 of 2021 which is justified in contrast to Government Regulation Number 11 of 2019 can be studied both by vertical synchronization and horizontal synchronization. Before that, it is necessary to see first about the gampong device because it has significant competence in this regard. Where the

fixed income as referred to in Article 81 paragraph (2) of PP No. 11 of 2019 is only addressed to the Village Head, Secretary, and other Village Officials. Especially for North Aceh Regency, the term gampong device is expressed in Qanun North Aceh Number 4 of 2009 concerning the Gampong Government. In Article 1 number (3) of the Qanun, it is stipulated that those included in the gampong government are *Geusyiek* (village head), *Keurani* gampong (village secretary), and other gampong devices.

The meaning of the Gampong device is then further mentioned in Article 29 paragraph (3) of the Qanun which includes the gampong secretariat and regional elements. In contrast to Regent Regulation No. 13 of 2019 concerning Guidelines for the Organization and Work Procedures of the Gampong Government in North Aceh Regency which in Article 1 number (11) states, the Gampong Device is an auxiliary element of *Geuchik* in organizing gampong government activities consisting of *keurani gampong*, *keurani cut*, section head and *ulee jurong*.

In line with the North Aceh Regent Regulation Number 3 of 2021 which also includes the Section Head as an element of the gampong device. Thus the difference is that the two North Aceh Regent Regulations include Section Heads as part of the Gampong apparatus element, while North Aceh Qanun No. 4 of 2009 is not the case. Furthermore, the structure of the Gampong device is also regulated in PP No. 47 of 2015 concerning Amendments to PP Number 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs No. 39 of 2015 concerning the Organizational Structure and Working Procedures of Village Government.

Based on these two regulations, the Village apparatus (gampong) is divided into three elements, namely the Village secretariat, regional executives, and Technical implementers. The Technical Executive itself based on the PP is divided into the head of the Government, Welfare, and Services section. And in the Regulation of the Minister of Home Affairs, the head of the welfare and service section can be combined into one element only.

#### **a. Vertical Sync**

The disparity in the fixed income regulation of the Gampong device between PP No. 11 of 2019 and the North Aceh Regent Regulation No. 3 of 2021 is good to be seen into two synchronized perspectives, namely in a textual and contextual perspective. Textually, based on Article 81 paragraph (2) of PP No. 11 of 2019, it contains norms that state: The Regent/mayor determines the amount of fixed income of the Village Head, Village secretary, and other Village officials, provided that:

- a) The amount of fixed income of the village head is at least Rp. 2,426,640.00 (two million four hundred and two to six thousand six hundred and forty rupiah) equivalent to 120% (serratus twenty per hundred) of the basic salary of civil servants of room II / a;
- b) The amount of fixed income of the Village secretary is at least RP 2,224,420.00 (two million two hundred twenty-four thousand four hundred and twenty rupiah) equivalent to 110% (serratus ten hundredths) of the basic salary of civil servants of room II / a; and



- c) The amount of fixed income for other village equipment is at least Rp. 2. 022,200.00 (two million twenty-two thousand two hundred rupiah) is equivalent to 100% (one hundred hundredths) of the basic salary of civil servants of room II/a.

There is a content of the phrase "provisions" listed at the end of the formulation of the norm above which needs to be given attention to serious. Referring to grammatical interpretation, based on the Big Dictionary of Indonesian (KBBI, 2016) the word "provision" indicates the nature of certainty, that is, something that is certain or that has been determined; statute.

So that in this case means that the arrangement of the composition as stated in the norm is final or inviolable, except when done with a level or higher regulation. Meanwhile, the arrangements set forth based on the North Aceh Regent Regulation No. 3 of 2021 are actually contrary to this even though the regent's regulations are actually derivative regulations of the PP. Article 8 paragraphs (4) and (5) of the North Aceh Regent Regulation No. 3 of 2021 as previously referred to contains a fixed income arrangement for Gampong devices of Rp.600,000,- (six hundred thousand rupiah) for the Secretary of Gampong (non-PNS) and Rp.450,000,- (four hundred and fifty thousand rupiah) for *Keurani Cut*, Section Head, and *Ulee Jurong*.

Even though the reason for the North Aceh Regency Government to rationalize the budget as stated in the regent's regulation is due to the angaran deficit and the urgency of *Covid-19* (Fakhruradi, 2021). However, in terms of the theory of legislation in this case, the disparity of the norm is basically a misalignment. For as it is well known that the existence of the *inferior* must not be in accordance with superior regulations. In addition, in the PP there is also Article 81 paragraph (3) which states: In the event that the ADD is insufficient to fund the minimum fixed income of the Village Head, Village Secretary, and other Village officials as referred to in paragraph (2) can be fulfilled from source 1ain in the Village Budget other than the Village Fund.

In certain links this article is likely to occur multiple interpretations for the violation of Article 81 paragraph (2) previously, but the provisions in paragraph (3) are essentially an alternative to the insufficiency of the budget for the fulfillment of fixed income that has been allocated under Article 81 paragraph (2) of the PP.

Where the regent's regulation still contains the composition of fixed income in accordance with the mandate of Article 81 paragraph (2) of the PP, and if the implementation is later insufficient to meet the nominal referred to, then Article 81 paragraph (3) will function. That is as a way to fulfill the fixed income (*dropping*) from other sources. The reason is that in Article 81 paragraph (3) there is a sentence (piece) that states: .... as referred to in paragraph (2) can be fulfilled from other sources in the Village Budget other than Dana Desa.

The sentence fragment contains a re-referencing gesture to the previous paragraph (2) regarding the nominal fixed income itself. So that the meaning of the insufficiency of fixed income in Article 81 (3) of the PP is insufficient nominal stated in the PP, not about insufficient budget for the allocation of fixed income.

In other words, it does not mean that Article 81 paragraph (3) justifies the regent's regulation to reduce the composition of the fixed income, but if later the allocation made to this matter in its statement is insufficient, it can be that the insufficiency can be met

from other sources outside of the ADG by budgeting in the Gampong Revenue and Expenditure Budget. Apart from the textual picture, it is also necessary to be seen in a broader perspective, namely contextually.

Contextually, this problem needs to be seen first from the Government Regulation in Lieu of Law (Perpu) No. 1 of 2020 which has been determined to be Law No. 2 of 2020. This perpu itself was formed against the background of the influence of the *Covid-19* pandemic and its impact on various aspects including the national economic system and the state financial system. Based on Article 3 paragraph (1) of this Perpu stipulates that: In the context of implementing policies in the field of regional finance as referred to in Article 1 paragraph (4), local governments are given the authority to prioritize the use of budget allocations for certain activities (*refocusing*), changes in allocations, and the use of regional budgets. And in the explanation of the article, it is also stated that the *refocusing* authority is also included in terms of making changes to the budget allocation of the anatarprogram. Adhering to Article 3 paragraph (1) of the Perpu, it is explicitly clear that there is special authority given to local governments in the field of regional financial policies both for *refocusing*, changing allocations, and using regional budgets.

Furthermore, based on the Regulation of the Minister of Home Affairs (Permendagri) of the Republic of Indonesia Number 39 of 2020 concerning the Priority of Using Budget Allocations for Certain Activities, Changes in Allocations, and the Use of Regional Revenue and Expenditure Budgets then reaffirming the authority of Regional Governments in terms of establishing regional financial policies as in the previous Perpu, be it *refocusing*, changes in allocation, and the use of APBD (adjustments) aimed at handling *Covid-19* and facing threats that endanger the regional economy, as referred to in Article 2 paragraph (1) of this Permendagri. Furthermore, in the editorial of Article 2 paragraph (2) of the Permendagri, it explicitly confirms that:

Regional financial policy as referred to in paragraph (1), to prioritize the use of budget allocations for certain activities (*refocusing*), changes in allocations, and the use of regional budgets.

This allocation adjustment policy can be carried out both on regional income, expenditure, and financing as referred to in Article 3 paragraphs (1) and (2) thereof. In other words, adjustments to the allocation can be made to the Regional (District) Revenue and Expenditure Budget. So that the correlation with fixed income as previously referred to is because the fixed income referred to is part of the Regional Revenue and Expenditure Budget, the local government (Regent) legally has the authority to make budget adjustments to the fixed income of the Gampong device.

Apart from the Regulation of the Minister of Home Affairs, there is also PP No. 12 of 2019 concerning Regional Financial Management regarding this financial adjustment policy based on Article 4 paragraph (2) letter e also stipulates that the Regional Head as the holder of power in regional financial management can take certain actions in urgent circumstances related to Regional Financial Management that are urgently needed by the Regions and/or the community. There is no specific explanation of the urgent circumstances, but *in abstracto* this can be interpreted as a compelling precarious nature. By adhering to Jimly Asshiddiqie's opinion, this can be correlated to a civil emergency (Asshiddiqie, 2007: 66-67).

In his perspective, this civil emergency can be related to various administrative issues of government or with administrative tasks that are internal to the government. If certain government functions cannot be performed effectively according to their purpose, except in a manner that is forced to violate laws and regulations, while the regulation in question is unlikely to be changed within the time available, it can also give rise to a state of emergency but only limited to a civil emergency (Asshiddiqie, 2007: 3017). Likewise, S.E. Finner et al formulated that these emergencies can occur due to internal or *innerary non-notch* causes (Asshiddiqie, 2007: 63, and S.E. Finner, Vernan Bogdanor, *et.al*, 1995: 34).

Thus, contextually the issue of withholding of fixed income of the Gampong device is in principle several legal instruments that provide the basis of authority as stated. Also included in this is as part of the framework of emergency constitutional law. However, it is just that in the North Aceh Regent Regulation No. 3 of 2021 regarding the cut in fixed income, it does not include its juridical basis that gives this authority. In comparison, it is precisely in the juridical basis of the same regent regulation in 2022 that PP No. 12 of 2019 has been included as the juridical basis of the authority. In fact, this juridical foundation is a substantive aspect in the formation of laws and regulations, where formally the juridical foundation becomes the basis for the authority for certain agencies to make certain regulations. And materially became the basis for organizing certain things (Taib, 2017: 34).

### **b. Horizontal Sync**

With the enhanced juridical basis of the regional head's authority to make budget adjustments in the North Aceh Regent Regulation No. 3 of 2022 as previously stated, this is the basis for the validity of the Gampong device fixed income reduction action in North Aceh Regency in 2022. Previously with regard to this there were three legal instruments of the same level that can be compared. North Aceh Regent Regulation No. 4 of 2020 also regulates the same regarding this, it's just that it differs in several ways. First, the regent's regulation contains a fixed income provision for gampong devices that are larger in composition. Based on Article 8 paragraph (4) of this regent's regulation, a fixed income for non-civil servants is given a fixed income of Rp. 2.224.420,- while for other Gampong devices it is given in the amount of Rp. 1.000.000,- for each related Gampong device.

This provision is certainly inversely proportional to the relevant North Aceh Regent Regulation No. 3 of 2021 which regulates it with a lower nominal. however, when compared to PP No. 11 of 2019, both of them still did not reach the set figure except for *Geuchik's* fixed income. In addition to the fixed income, the regent's regulation in 2020 also stipulated the allocation of ADG for the needs of the ta'lim assembly and the banning of orphans/orphans while in the 2021 tahaun it was meant that these two things had been annulled from the relevant North Aceh Regent Regulation No. 3 of 2021. In this regard, although there were protests over the elimination of the aid (Sirajul Munir, 2021), this is not necessarily the case.

Because even though the funding is not included in the ADG by the regent's regulation, this can be met from other sources, namely from village funds. Although it is not explicitly stated, it can be included in the priority of using village funds in the context

of achieving inclusive Village SDGs as referred to in Article 6 paragraph (2) letter d of the Regulation of the Minister of Villages for Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia Number 13 of 2021. The priorities of village funds in the context of inclusive village development include strengthening religious values and local wisdom to form social piety in the village, as well as for basic service activities for marginalized and vulnerable groups.

Apart from this, specifically with regard to 2022 between Regent Regulation No. 3 of 2021 and Aceh Uatara Regent Regulation No. 3 of 2022, there is no significant difference in material. Both regulations contain the same fixed income for Gampong devices and still do not accommodate either the ta'lim assembly funds or the orphans' assistance. However, as stated at the beginning of various budget adjustment policies in the North Aceh Regent Regulation No. 3 of 2022, the material juridical basis has been included, namely PP No. 12 of 2019. However, there is another ambiguity over these two regulations, namely regarding the basis for their delegation in the consideration of weighing the regent's regulations. In the Regulation of the Regent of Aceh Uatra No. 3 of 2021, the basis for delegation refers to Article 96 paragraph (7) of PP No. 43 of 2015.

The problem is that it is true that the article on which it is based is Article 96 paragraph (7), but for PP it is PP No. 47 not number 43. Meanwhile, the year is correct for 2015, because paragraph (7) in the article is a form of amendment to the previous PP No. 43 so that the provisions of Article 96 paragraph (7) hanay are in PP No. 47 of 2015. Similarly, the North Aceh Regent Regulation No. 3 of 2022 which again refers to PP No. 43 of 2014. So that based on these considerations, it can be seen that there is a disobedience of the law, especially to the formal aspects in the formation of the regent's regulations.

### **3. Perspectives on Emergency Constitutional Law in Regional Financial Management**

The state of affairs is sometimes not always in normal situations as expected, certain moments the situation of the country can also turn into unusual situations or emergency situations. Therefore, it is important to distinguish or construct laws in a country into a legal regime when things are normal and a legal regime when countries are in an emergency situation. Among the various forms of emergencies, one of them is an emergency in terms of regional financial management, such as during the *Covid-19* pandemic where the escalation is very wide covering a national scale to the regions.

State of *emergency* law itself according to Jimly (Asshiddiqie, 2007: 7) is a state of danger that suddenly threatens public order, which requires the state to act in ways that are unusual according to the usual rule of law in normal circumstances. In addition, to enact this emergency law there are three essential elements that provide a logical basis for this, namely, first, the existence of a reasonable legal necessity; secondly, due to threatening danger factors; and third, in time or opportunity that proves to be very limited (Asshiddiqie, 2007: 66). Based on this, the state of the *Covid-19* pandemic has certainly entered the state of emergency, including the financial management side of the daerah. As a result of the establishment of several emergency regulations such as Perpu No. 1 of 2020, one of them.

In an emergency, the state ruler can carry out various emergency measures according to the needs of the emergency. The justification for this is based on abnormal circumstances (Jazim Hamidi, 2009: 211), which has its own system of legal and ethical norms called *appaddharmakle* which means a state of crisis or seasons of suffering (Siti Mawiyah, 2015: 279). Jimly himself complemented Venkat Iyer's opinion on government actions in an emergency, constructing three forms of emergency measures, which include:

- a. The transfer of the authority of a particular judicial institution to another or special judiciary established by an emergency ruler, or the transfer of the authority of a particular people's representative institution to an emergency ruler;
- b. Postponement of the entry into force or temporary cessation of certain civil rights and obligations during an emergency; and
- c. Establishment of regulations of an emergency nature that amend the provisions regarding civil rights and obligations between fellow subjects of civil law or with the subject of public law.

Furthermore, regulatively basically the regulation on this subject can be seen in several laws and regulations. First from Article 27 paragraph (4) and Article 28 paragraph (4) of Law No. 17 of 2003 concerning State Finance. Based on the two provisions of the article, it gives authority to either the central government or local governments in the event of an emergency including urgent circumstances, it is allowed to make expenditures for which there is no budget, and later it will be proposed in the draft changes to the state budget and/or submitted in the budget realization report for the central government and also proposed in the draft changes to the REGIONAL BUDGET and/or conveyed in the realization report. budget for local governments.

Likewise, other related laws and regulations as previously stated both based on Pasal 3 paragraph (1) of Perpu No. 1 of 2020, based on the Regulation of the Minister of Home Affairs No. 39 of 2020, and based on Article 4 paragraph (2) letter e PP No. 12 of 2019 which in essence these regulations provide access for local governments to make adjustments in regional financial management for emergencies and urgent circumstances. Synchronized with Jimly's previous opinion, these two things seem linear or in line, where Jimly also suggests that one form of government action on emergencies is to form emergency regulations or change the rights and obligations of its legal subjects.

#### **4. Implications of the Establishment of North Aceh Regent Regulation No. 3 of 2021**

North Aceh Regent Regulation No. 3 of 2021 can legally be considered to contain formal defects because it does not include a juridical basis related to one of its authorities. However, with regard to its legal force, this regulation remains binding as long as certain changes are made to it, including in this case regarding the fixed income of Gampong devices. This is because in every law it is attached the principle of *presumption iustae causa*. This principle means that every action of the ruler must be considered right (*rechmatig*) until the annulment of either the product of the law or against the act itself (Harrys Pratama Teguh, 2018: 89).

Thus, of course, this regent's regulation will have consequences for everything he has regulated throughout his existence. In line with the principle of *presumption iustae causa*, automatically everything regulated by this regent's regulation, especially regarding the fixed income of the Gampong device, remains valid. Moreover, substantively the authority of the adjustment is actually justified as stated earlier, it's just that there are certain factors in the regent's regulations that are the problem. Then that with the cause of legal defects in this regent's regulation, it has an impact on the executive *review* by the Regent himself.

In addition, in addition to conducting *an executive review* because the regent's regulations are part of the laws and regulations, of course, it can also be tested (formil) to the Supreme Court. Or it can also be canceled directly by the Governor as a Representative of the central government as referred to by Article 251 paragraph (2) of Law No. 23 of 2014 concerning Regional Government. Although this article has been materially tested to the Constitutional Court, in its decision No. 137/PUU-XIII/2015, the court only invalidated as far as the district/city regional regulations and the objection mechanism were concerned, specifically against the regulations of the regional heads of the regencies/cities, the court judged that the regional head's regulations were formed by the regional heads themselves as *bestuur* units. in order to implement local regulations and mandatory government affairs as stipulated by the Local Government Law. And within the framework of the unitary state, the Central Government as the highest *unit* has the authority to cancel the regulation of the regional head itself, even though the regional head's regulation is included in the unit of legislation as referred to by Article 8 paragraph (2) of Law No. 12 of 2011. So of course, the Governor still has the authority to cancel the regent's regulations.

Apart from that, in its formation, laws and regulations are inseparable from the ties of Law No. 12 of 2011 including the principles of its formation. Based on Article 5 letter b of the Law, it states that one of the principles for the formation of good laws and regulations is the principle of proper institutional or forming officials. In the explanation of this article it is also stated that :

What is meant by "institutional principle or proper forming officer" is that every type of legislation must be made by a state agency or an authorized statutory law forming official. Such laws and regulations may be rescinded or null and void if they are made by a state agency or an unauthorized official.

According to these provisions, a law must be formed by a state institution or its authorized forming officer. If this is not the case then it is possible that the regulation may be overturned or null and void.

In this case, with regard to the establishment of the North Aceh Regent Regulation based on the previous description, its formation regarding the adjustment of fixed income for the Gampong device does not include the juridical basis of the relevant authority as a formal aspect. And within the framework of this formal aspect, this is a manifestation of the formation of regulations that are not based on their authority which thus of course violates Article 5 letter b of Law No. 12 of 2011 and has the consequence that the regulation can be canceled or null and void. Therefore, it is very important not to forget the formal aspects in the formation of these laws and regulations because this can provide

a fatal impact on the legislation. Likewise, other opinions express that the consequence of a formal defect of a law is the possibility of a complete cancellation of the regulation (Jorawati Simarmata, 2017: 40).

#### **D. Conclusion**

The adjustment of fixed income for the Gampong device as referred to in the North Aceh Regent Regulation Number 3 of 2021 textually does not appear to be a discrepancy with the related regulations in PP No. 11 of 2019. However, apart from that, textually there are juridical basics that give validity of the authority for the Regional Government or Regional Head to make budget adjustments in regional financial management including adjustments to the fixed income of the Gampong device, it's just that the North Aceh Regent Regulation No. 3 of 2021 does not include the juridical basis of the authority, so in the legal paradigm this can be considered a formal defect.

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