

# Village Laws Dilemma: What Can the Village of Indonesia Do?

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## ABSTRACT

The enactment of Law Number 6 of 2014 concerning Villages (Village Law) has a significant impact on changing the position of the village from just the administrative area under the district to the entity that has the right to regulate and manage self-government affairs. Based on the initiative of the local community. Village problems that arise must be balanced with the implementation of principles that are the reference as contained in the explanation of article 24 letter d of the Village Law. One of them is in the principle of openness, namely the right of the community to obtain information that is true, honest and non-discriminatory about the administration of the Village Government. By continuing to pay attention to the provisions of the legislation. This study aims to conduct a study and formulate transparency that can be used by villages in the implementation of village governance. The research method used is a normative research method. with a statute approach. The results of the study show that efforts to empower the village community are one manifestation of accountability from the village administration to the policies and decisions that have been taken.

**Keywords:** *village, information openness, community empowerment*

## 1. INTRODUCTION

The dialectic of the historical authority of the development of village government in the constitution began with the enactment of Law Number 6 of 2014 concerning Villages. Juridically this has a direct effect on village authority, both authority originating from original rights and authority derived from local village authority.

Speaking of authority there is a fundamental difference between village autonomy and regional autonomy, so that in practice these two things also cannot be equated. For example, the regency is a decentralization implementer whose job is to carry out central authority. Whereas the village also has authority which originated from original rights not from the central government. In short, village autonomy existed long before the republic was established. In practice, village autonomy derived from original rights is reflected in the privileges obtained by the village head and local village administrator. The social status in question can be passed down from the village head and the village administrator to his descendants. So that its position is attached to a person.

Reconstruction of the design of village authority is needed as part of the solution, which tries to accommodate two constructions of village authority, where village authority that has been included in the "container" constructed in Law

Number 6 of 2014 concerning Villages, but in implementing the central government must respect authority and rights of village origin.

In the modern era, the state as an organization of power is understood as the result of the formation of society through a process of social agreement between citizens. The existence of the state becomes a common need to protect and fulfill the rights of individual citizens and to maintain orderly social life together. These needs in the social agreement process are manifested into national ideals or goals that are to be achieved as well as being the glue between various components of the nation. To achieve these goals or objectives, it is also agreed upon the basics of organization and organization of the state. The agreement is the pillar of the constitution as stated by William G. Andrew that there are three elements of agreement in the constitution, namely (1) regarding the common goals and values in national life (the general goals of society or general acceptance of the same philosophy of government); (2) concerning the basic rules as the basis for administering the state and government (the basis of government); and (3) concerning institutions and procedures for state administration (the form of institutions and procedures).[1] So that the state formed and organized can run to achieve national goals or ideals, a state organization consisting of various state institutions is formed, which is usually divided into legislative, executive and judicial branches of power. However, at present the state organization has experienced

very rapid development. In accordance with the demands of the development of the implementation of state affairs and services to the community, institutions in developing country organizations are such that in terms of numbers, and in terms of the types of authority they have. To handle General Election affairs, for example, according to the process of democratization can no longer be left to the government, but must be held by a commission that is permanent, national, and independent. The General Election Commission as the organizer of the General Election cannot be called an executive, legislative or judicial body.

Every state institution has certain powers which are intended so that the state can fulfill the tasks that are the reason for its formation, as well as to realize national goals. In a computerized system, a state organization can be compared to hardware (hardware) that works to run the wheels of state organization.

To guarantee the power possessed by each state organizer will be carried out in accordance with the reasons for granting the power itself and preventing the abuse of power from occurring, the granting and administering of that power must be based on law. This is the meaning of the rule of law principles both in the context of *rechtsstaats* and the rule of law. Law becomes software (soft ware) that directs, limits, and controls the administration of the state.

Theoretically, there are three legal objectives, namely justice, certainty, and expediency. Justice can be said to be the primary goal which is universal. Justice is the glue of the order of civilized social life. The law was created so that every individual member of the public and state administrators do something that is necessary to maintain social ties and achieve common life goals or vice versa so as not to take actions that can damage the order of justice. If the ordered action is not carried out or a prohibition is violated, the social order will be disrupted because of the damage to justice. To restore orderly social life, justice must be upheld. Every violation will get sanctions according to the level of violation itself.

Justice is indeed an abstract conception. However, the concept of justice implies the protection of rights, equality and position before the law, and the principle of proportionality between individual interests and social interests. The abstract nature of justice is because justice cannot always be born of rationality, but is also determined by the social atmosphere that is influenced by other values and norms in society. Therefore justice also has a dynamic nature which sometimes cannot be contained in positive law.

Legal certainty as one of the objectives of the law can be said as part of efforts to realize justice. The real form of legal certainty is the implementation or law enforcement of an action regardless of who is doing it. With the existence of legal certainty, everyone can estimate what will be experienced if they take certain legal actions. Certainty is

needed to realize the principle of equality before the law without discrimination.

However, between justice and legal certainty friction can occur. Legal certainty that requires equality before the law is certainly more likely to require a static law. What is said by the rule of law must be implemented for all cases that occur. Not so with justice which has a dynamic nature so the application of the law must always look at the context of the event and the society in which the event took place.

On the other hand, the law can also be used to obtain or achieve certain benefits in life in a state and state. In addition to upholding justice, the law can be used as an instrument that directs the behavior of citizens and the implementation of state administration to achieve certain conditions as a common goal. The law functions as a tool of social engineering. In the context of national law, law must certainly be beneficial for the achievement of national goals, namely protecting the entire nation and the whole spilled Indonesian blood, promoting public welfare, educating the nation's life, and realizing world order based on independence, lasting peace, and social justice.

The national goal above, of course, must also be the objective of the administration of government because in essence the organization of the state governing government is formed to achieve the intended purpose. The national goals are translated into the functions, authority and programs of each government organization. Thus the legal goals and objectives of government go hand in hand. The law becomes the software that directs the achievement of national goals, while the government drives that goal to be achieved.

Previous research conducted by Nyimas Latifah Letty Aziz on village autonomy and the effectiveness of village funds identified the issue of channeling and using village funds and the weak human resources of the village administration. Besides that there is also a minimal active participation of the village community.[2]

Other research that also raises village issues is the institutional model of village governance reviewed by Arif Zainudin. The study focused on meeting the basic needs of its people at the village level government. So as an element of government that serves the community. So that the Village Government has affairs that are assigned to the government, such as governance, village community empowerment, community welfare and environmental order. In the end, this paper looks at the form of village government organization that must at least represent the affairs of the village government. The problem in this study is how the form of village government organizations after Law No. 6 of 2014 concerning Villages were applied.[3]

The two related studies have not discussed 1) how is the synergy that can be done in the disclosure of public information in the village with the implementation of Law Number 6 of 2014 on Villages? 2) What mechanisms can

be pursued in maximizing the role of village government in terms of public services?

## 2. RESEARCH METHOD

This research was conducted using legal materials with a doctrinal (normative) legal approach. The analysis uses normative analysis by reconstructing the authority of village autonomy derived from original rights compared to village authority derived from Law Number 6 of 2014 concerning Villages. The purpose of this research is to find out how the state provides legal protection as the implementation of protection guaranteed by the constitution. The nature of this research is descriptive. To be able to answer the problem formulation, the statute approach is used. Based on the source, the type of data used is secondary data which includes legislation, books, articles and scientific journals and dictionaries. To get comprehensive results there are also primary legal materials, secondary legal materials and tertiary legal materials. The primary legal material used is a written document in the form of Law Number 6 of 2014 concerning Villages.[4]

## 3. RESULTS AND ANALYSIS

### A. Village Relations with Indigenous Peoples

Regulations concerning the existence and rights of indigenous and tribal peoples in Indonesia are contained in the 1945 Constitution, laws and other laws and regulations. This shows the existence and rights of indigenous and tribal peoples have been accepted in the applicable law in Indonesia. Within a period of 15 years from 1999 to 2014 there were at least sixteen laws governing the existence and rights of indigenous and tribal peoples.

Law No. 6 of 2014 concerning Villages is the only law that does not require cumulative criteria for indigenous peoples to become adat villages. This means that the Village Law only requires that the regional criteria as a mandatory criteria be added with one or several of the other four criteria, namely (a) the people whose citizens have a shared feeling in the group; (b) customary government institutions; (c) assets and / or custom objects; and / or (d) customary law norms.

The construction combines the function of self-governing community with local self-government, it is hoped that the customary community unity which has been part of the village area, will be arranged in such a way as a Desa and Desa Adat which basically carry out almost the same tasks. Whereas the difference is only in the implementation of origins, especially concerning the social preservation of Customary Villages, arrangement and management of

customary territories, customary peace sessions, maintenance of rules and order for customary law communities, and arrangements for implementing governance based on original arrangement.

Meanwhile, the criteria for indigenous and tribal peoples as stipulated in the Forestry Law, the Plantation Act, and the Environmental Protection and Management Act formulate cumulative criteria. This means that the existence of a customary law community will only be recognized if it meets all the predetermined criteria. One of the main differences between the criteria of indigenous and tribal peoples in the Forestry Law and other laws is the criterion of "still collecting forest products in the surrounding forest area to meet the needs of daily life." This criterion presupposes that the indigenous and tribal peoples recognized in forestry context are those who are still in direct contact with forests and forest resources to meet their daily needs. However, this provision has not yet explained in detail what is meant by "meeting daily needs", whether that means people who obtain income for their economic needs from the forest, or also include benefits that are indirectly obtained from the forest or include benefits that are indirectly directly obtained by the community from the existence of forests such as water supply, clean air and other benefits.

Unity of customary law communities that are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia are the centers of independent community life. In these customary law community units there are known traditional institutions that have grown and developed in social life. In its existence, customary law communities have customary law territories and rights to assets within these customary law territories and have the right and authority to regulate, manage and resolve various problems in the life of rural communities relating to customary and customary law in force.

### B. Requirements for Consideration of Good Village Regulations

The basic considerations of the need to establish legal regulations at the village level are all implied and included in the considerations to weigh and determine. In the weighing considerations contain a brief description of the main ideas that are the background of the reasons for making legal regulations in the village.

The basics of the need for regulation include a sociological, philosophical, physiological, political, ecological and juridical basis. Juridical basis contains the legal basis for making local or village legal regulations. Juridical foundation in each legal regulation at the regional level contains a formal legal basis, namely the authority to make

regional legal regulations based on the provisions in Law Number 32 of 2004 with amendments to Law Number 12 of 2008 concerning Regional Government.

Formation of the area and the legal basis of the material depends on the type of legal regulations in the area and in the village such as user fees, then contains the laws in the field of regional taxes and levies, namely the legal basis that has a direct bearing on the material to be regulated as the principle of clear objectives can also be contained specifically in the regulatory material in a separate chapter. Conditions for consideration Good village regulations can at least accommodate the following conditions, including, involving groups in the village, especially marginal groups and women so there is no dominance of interests in the village elite.[5] Beside that does not conflict with the provisions of customary law and religious law. A gradual process from the smallest community level to the village level. Budget posts are mutually agreed through consensus agreement. Budget posts are based on the needs (not) of the villagers. Based on the potential and prospects for village development.

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