

Ius Constituendum of Regulating Institutional Village-Government System

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ABSTRACT--Indonesia ordinary government-village was not born from 'decentralization-womb', as that of government-village is State-Corporatism. The legal position of that of ordinary government-village is a 'Quasy-Government'. The problem is, How is the future regulating of government-village institutions in Indonesia local-government legal system? This study was prescriptively normative, using the concept of MPFAAC analysis (Meaning-Positioning-Functioning-Authorizing-Actuating-Controlling) supported by; Authority-Theory; The concept of Harmony in law and Local-Government Concepts to answer the research question. The results of this study indicated that the *ius-constituendum* of village government must be able to overcome the 'ambiguity' of the village pseudo-government system which is contra-productive. Village government institutions must be placed as autonomous local-government institutions based on the principle of symmetrical or asymmetrical decentralization. Village government institutionalization is not supposed to be positioned as *niet rechtstreek bestuurd gebied*, as mandated by MPR (Indonesian People's Assembly) Decree No. IV / 2000.

Keywords: MPFAAC, Quasy-Government, *ius-constituendum*

I. INTRODUCTION

The analysis of *ius constituendum* of village-government institutional regulatings cannot be separated from the whole meaning of the village-government formulation on the village decrees,[1] all of which stipulate that the village is an autonomous regional government entity that has the right to run its own household. There are three points of problematic view in the study of *ius-constituendum* of the village-regulating regulating, namely: the sociological-view, juridical-view and theoretical-view.[2]

The sociological-view, the problem lies within the village people themselves. The juridical-view, the legal problems relate with the perspective of legal-substance, legal-structure, and legal-culture. The theoretical-view, it relates with whether there is an error in the structure of the village-government institutional design, that might be ineffective and/or inefficient in its implementation. Therefore, the analysis of *ius constituendum* of village-government institutional regulatings is inevitably related with the factors of good governance principles.

II. RESEARCH METHOD

This research was normological with a conceptual-approach and a statute-approach in responding the research question. This study perspective was prescriptive utilizing MPFAAC (Meaning-Positioning-Functioning-Authorizing-Actuating-Controlling) analysis model.[3] The law materials utilized were primary and secondary legislation to do with the Law 6/2014 regarding Village. To develop the *ius constituendum*, the existing problems were scrutinized, which was using a legal materials review and opinions of legal scholars.

III. FINDINGS AND DISCUSION

3.1. The Problem of Meaning on Arranging Institutional Village-Government

The meaning of village-government institutions is a place of the autonomous united social-legal community that has the original authority to manage its society and territory. The village-government of Indonesia is formed by the state and placed it as 'Quasy-Government'.[4] This 'Quasy-Government' creates legal disharmonies (with Law 5/2014 on ASN and Law 17/2003 on Management of State Finances) and counter-productive to good-governance principles. The state through Law 6/2014 had established the principles of recognition and subsidiarity for village-government autonomy, however it is placed outside the principle of local-government decentralization.[5] This deviates the local-government system.

Ius-constituendum of the village-government institutional model means it must be refined by following the principles of local-government system according to the social structure of Indonesian society.[6] There are 4 models of government that have been offered, namely:[7] 1). the model of a self-governing community system, 2). the local-state government system, 3) the local-self government system.

3.1. The Problem of Positioning on Arranging Institutional Village-Government

Positioning issues which allows changes in the institutional-village status, it make the logical regulatory norm and the public administration theory on chaos.[8] It is because the characteristic of the default-village is *gemeinschaft* while the administrative-village is *gesellschaft*. [9] It is not recklessly exchangeable. There are 5 possible institutional models of village-government, such as:[10] Village-Administrative model, Hybrid-Village model, Desapraja model or Local-Self Government Level-

III, Customary-Village model, Coexistence-Village (e.g. Baduy Village).[11]

3.2. *The Problem of Functioning on Arranging Institutional Village Government*

Functioning is defined as the usefulness of a thing. Regulating of functions for Formal-Village and Adat-Village in the future must be made right, because the existing regulation that intervenes in the function of Adat Villages as a bureaucratic institution is to violate the existence of Indigenous Villages themselves.[12] Law harmonization is needed to be carried out, if not then Law 6/2014 is only relevant for regulating the function of Indigenous Villages (Articles 96 to 111 of Law 6/2014).[13]

Article 12 of Law 6/2014 is juridical error, it is because the Kelurahan should not have been turned into a village, whereas the Kelurahan is a deconcentration model (Law 5/1974 Jo Law 5/1979 Jo. Law 23/2014). Kelurahan could not be changed into a village, more over to Adat-Village, but the village could be changed into a Kelurahan.

3.3. *The Problem of Authorizing on Arranging Institutional Village Government*

Authorizing or called "bevoegdheid" is defined as the authority to permit, authorize, approve, or justify[14] or give orders in the field of public administration.[15] The authority possessed by the village-government is the 'Attributive' authority that was not born from the principle of decentralization. The issue of "village-scale local authority" is of much irrelevance to the fact of the average village exists to date. Most villages do not have such a complex local-scale authority capacity. The formulation of the village granted authority causes new problems in governance, so that it must be re-regulated rigidly about what types of authority delegated to the village.

3.4. *The Problem of Actuating (Tasking-Activating) on Arranging Institutional Village-Government*

Actuating is defined as moving or carrying out something[16] or carrying out tasks, obligations, jobs[17] including the Tasking and Activating the jobs.[18] The problem is that Article 78 through Article 86 of Law 6/2014 places Tasking and Activating job program is a set components of autonomous activities with complete organizational functions and qualified personel. The patron-client culture of the village-government apparatus is not based on values and the technocratic system of modern organizations. Likewise, the mindset of the orientation of the village apparatus as an object of change is now subject to change. The weak competence of the village-apparatus in carrying out government functions is exacerbated by the status of Quasy-Governance',[19] or *state-corporatism*. [20] Therefore in the future the status of village-government institutions must be placed in a symmetrical or asymmetrical formal local-self government system.

3.5. *The Problem of Cotrolling on Arranging Institutional Village-Government*

The concept of Controlling means to control rather than supervise, including corrective actions for deviations in the implementation of activities.[21] Since the issuance of Law 6/2014, the state must control the negative

implications of the legal policy of allocating village funds from the 10% APBN plus 10%[22] more from the APBD.[23] Corruption is a major issue in villages controlling system. Village Controlling System (Internal and External) indicated not responsive to the symptoms of irregularities. Internal oversight by superiors to subordinates (built-in control) is weak, external supervision of check-balances is also weak.[24] The local government practically only has an Inspectorate in controlling and supervising.[25] The problem with this aspect of supervision is that it does not have a responsive legal platform governing preventive and/or repressive control. Therefore in the future it is necessary to build a responsive legal platform that underlies the village Controlling system.[26]

IV. CONCLUSION

The *Ius Constituendum* of institutional regulating for village governance, are:

Meaning of village as an autonomous local-government must be interpreted through the principles of local-self government system and good governance, so that the village is no longer placed outside the regional government system.[27]

Positioning of village-government in the construction of the founding fathers means it must be included in the autonomous local-government system. The village-government typology has to be made into at least three types (Adat-Village, Adminstrative-Village, Autonomous-symmetrical/asymmetrical Village).[28]

The function regulating that intervenes in the Adat Village as a bureaucratic institution is to violate the existence of the Adat Village itself. The institutional functions of village governance must be redesigned and put back in the context of symmetrical-asymmetrical decentralization.

Village-scale local authority bestowed on village-government is of far irrelevance to the facts of the village capacity. Therefore, the authority delegated to the village must be rigid about the types of authority delegated which has to be based on the village capicity.

The form of actuating of the village activity program is a serious problem in changing the mindset of the village apparatus. There fore the work design for village officials must consider local-wisdom values in designing Tasking-Actuating work accountability.

The controlling does not have a responsive legal platform, so that healthy checks and balances workability find hard to happen. There fore it is necessary to build a responsive legal platform through the village's internal and external oversight functions.

This study still leaves juridical and theoretical issues. Further in-depth studies are still needed, that focuse on the problems of regulating and managing BUMDes and from the juridical perspective of the state treasury issues and the state finances law.

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