

The Implementation of Chaos Theory of Law on The Village Government System in Indonesia

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ABSTRACT

Legal pluralism in Indonesian villages colors and influences the development of national law. The existence of local laws has long influenced the village government system and its diversity. This has an impact on the legal system in village government in the archipelago. This research investigated the application of chaos theory of law in the village government system in Indonesia when legal positivism dominated the village government system. This research used the normative juridical method sourced from secondary data sources such as a review of related literature, articles, and applicable laws and regulations. The results of the research indicate that the village government in Indonesia, with its various characteristics, enforces legal positivism, as evidenced by the centralization of regulations through Law No. 6 Year 2014 concerning Village Regulation. These laws and regulations shackle village servants to be more productive in developing their territory. Central and local government intervention on village governments makes them more apathetic in village development. Given the diversity of the village government system, it is only natural for the government to apply the chaos theory of law to the legal development of the village government system. This is consistent with the village development concept of establishing a legal system based on local laws, which has been implemented in villages throughout the archipelago.

Keywords: *Chaos theory of law, Village government, Law positivism*

1. INTRODUCTION

Indonesia is a country founded on the rule of law (rechtsstaat), rather than solely on the interests of power (machtsstaat). According to article 1 paragraph 3 of the Constitution of the Republic of Indonesia, "the State of Indonesia is a state of law." The legal state of Indonesia is based on Pancasila and the 1945 Constitution. This demonstrates that the formation of laws and regulations in all fields, including social, national, and state fields, as well as government, must be based on the rule of law. Furthermore, as a legal state based on Pancasila's ideology and the 1945 Constitution, every process of forming laws and regulations in the Republic of Indonesia must be based on Pancasila as the nation's ideology and the source of all legal sources, as well as guided by the 1945 Constitution and the basic law in statutory regulations [1].

In general, the legal state has three main objectives: 1) legal state must protect society from anarchy and chaos; 2) the legal state always provides opportunities for people to plan their affairs based on rational

considerations so that they know the legal consequences of all the activities they will engage in, and 3) the legal state must also protect the public from any form of arbitrariness. Furthermore, the legal state includes the following elements: (1) the existence of various types of regulations, standards, or regulatory points that serve as an illuminator of citizens at large so that they can easily carry out their various affairs, and citizens of the community can also understand existing regulations and comply with them; (2) the effectiveness of current law; (3) the existence of legal stability; and (4) the existence of the supremacy of legal jurisprudence [2].

In Indonesia, the phenomenon of positivist law enforcement cannot be denied. The law, with all of its regulations, must be followed, even if it means sacrificing the good and bad qualities of its object. The Indonesian nation, on the other hand, is a country with its own characteristics and diverse conditions. As a country in the eastern hemisphere, Indonesia has always prioritized morals and ethics toward the application of existing rules. Furthermore, the concept of diversity is

incorporated into the Unitary State of the Republic of Indonesia.

In terms of the requirements for the birth of a rule, morality can be defined as a set of moral rules used to distinguish between good and bad, as well as what is appropriate and is not appropriate for the ruler of the law. This ethic must become a rule for police officers, both in carrying out their duties and abilities as officers in enforcing the rules and in their daily routines as citizens. The existence of legal demands based on ethics and morals will result in public activities that are based on justice and legal understanding [3].

Ethics is the basis of every science in various dimensions of human life. In this case, the ethics of public understanding in the biomedical field is also considered. Ethics and morality are the basis for experts to make decisions and policies, not just based on their expertise. Ethics is based on moral considerations that are reflective in nature, namely a justification model based on theoretical reasoning, ethical principles, and concrete moral judgments. The ethical approach is usually more relativistic, religious, or pragmatic by looking at various experiences in wisdom [4].

In law enforcement, judges must have ethics, independence, and transparency when serving as law enforcers in a judicial institution. This will increase public trust in the judiciary and maintain transparency and accountability. However, authorities/regimes may attempt to regulate the decision-making process of judges on occasion. Furthermore, along with the retirement of the current judges, a rule must be enacted to ensure that they are always disciplined and not easily swayed by the authorities. As a result, it is critical to have an official regulation against former judges that is always based on ethics and morality after they have served [5].

Furthermore, judges must have integrity, as stated in the judge's code of ethics. According to the code of ethics, judges must always follow moral principles when carrying out their duties. To perform their duties, judges must avoid or adjudicate cases involving a conflict of interest. Furthermore, they limit their communication with advocates/lawyers as well as litigating parties. This includes making bargaining decisions, delaying execution, or appointing a lawyer who violates applicable regulations. As a result, it is necessary to socialize the code of ethics to judge and to make a declaration of integrity to them in the form of actual implementation, rather than just in documents [6].

A good law is a manifestation of a country's ideology as well as the government's concern for and attachment to its citizens. The law can side with the people and always adheres to the principles of justice based on the

state constitution, specifically the 1945 Constitution. The principle of legal equality must always be upheld where the law applies not only to citizens but also to officials and the government in carrying out their policies in state administration [7].

The fact that the Indonesian people are diverse has been known for a long time. Religions and beliefs, ethnicity, race, class, language, and tradition have all existed since the time of our forefathers. Similarly, the order of social life has been passed down from ancient times. Everything happens naturally, from generation to generation, without any engineering. It is also obvious in the current legal system, diversity, and pluralism. The Indonesian legal system is a reality that has existed and evolved for a long time. This has made the government and members of the DPR, both the DPR at the center and DPRD at the regional level as well as law enforcers, discard centralistic legal ideas by ignoring the existing diversity. Therefore, political will is the prerequisite in the formation and development of existing legal pluralism. Legal products produced by regulators must be able to implement concepts related to existing legal pluralism [8].

As previously stated, the various components that comprise the legal state in Indonesia are values derived from the entire process of the formation of the Indonesian state, as well as the philosophical foundation and ideals of the rule of law in Indonesia. The last paragraph of the Preamble of the 1945 Constitution contains the overall purpose of the state and the philosophy of life for the Indonesian people. The 1945 Constitution's preamble has a very high abstraction value, so we can only draw from various forms of elements that are very basic for the direction of the development of Indonesia as a legal state.

The Indonesian legal system influences the village government system throughout the archipelago, all of which are interconnected. The state is attempting to regulate villages throughout the archipelago through the Law of the Republic of Indonesia No. 6 of 2014. Furthermore, this law was born as a result of the spirit in implementing the mandate of the state constitution, namely Article 18B paragraph (2) regarding the regulation of customary law communities, where the composition of the government is aligned with the provisions of Article 18 paragraph (2). (7). Furthermore, this legislation emphasizes that village governance, development, community development, and community empowerment must be based on *Pancasila*, the 1945 Republic of Indonesia Constitution, the Unitary State of the Republic of Indonesia, and *Bhinneka Tunggal Ika* (translated as Unity in Diversity).

The existence of an order/mandate from the constitution on the birth of Law No. 6 of 2014 is one form or characteristic of the enactment of legal positivism in the Indonesian state, particularly those related to villages. Furthermore, the existence of this law demonstrates that the government consistently carries out orders from the 1945 Constitution's article 18B paragraph 2, which states: "The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law".

The establishment of this village regulation has ramifications for the village government in particular. This is demonstrated by the village government's inability to manage and regulate its own household. The number of regulations issued by the government, both at the central, provincial, and regional levels, relating to village issues shows superior intervention against subordinates. The village government must be able to carry out various types of regulations prescribed by the authorities above. In fact, each village in the archipelago has its own style and uniqueness that has existed and continues to exist in its area.

Moreover, there are many deficiencies in the government's regulations, particularly in terms of transparency, policy legitimacy, and social efficiency. As a result, one approach that can be used is the Integrative RegMap (IRR) model, which entails mapping village regulations by aligning various village regulations both horizontally and vertically. This has an impact on the development of priority regulations for villages based on the Regulatory Impact Assessment (RIA), which goes through six stages: 1) problem formulation; 2) goal identification; 3) alternative actions; 4) cost-benefit analysis; 5) action selection, and 6) implementation strategy. It is hoped that by using this model, better policies can be created through the issuance of local-level regulations [9].

Non-formal law evolves in conjunction with the advancement of human civilization. If people believe that regulation is fixed and permanent, the regulation will continue to exist. On the other hand, if society believes that a regulation is not permanent, they will demand that existing regulations be changed to meet the needs of the general public. Non-formal legal changes in society can take place at any time without the need for a legal political process (legal policy). Therefore, non-formal law tends to be more accommodating in the event of a shift in community members. In contrast to non-formal rules, laws that

apply in a formal juridical context (laws and regulations) are less adaptable to societal changes. Indeed, changes in people's lives are always dynamic, whereas various laws and regulations are more static. It is said to be static because laws and regulations cannot change in response to societal changes. Changing the law necessitates a lengthy political process. Even existing laws and regulations will be difficult to change unless the government deems it necessary. Because of this reliance on legal policies, laws and regulations are inflexible in the face of changes in human civilization [10].

Besides, with the state regulating village institutions through the Village Law and the task of carrying out government affairs, the village government should become a formal government institution. However, the village administration is not carried out by state bureaucratic officials, and their employment status remains unclear, whether as honorary, PPPK (Government Employees with Work Agreements), or civil servants. Similarly, in carrying out its duties and obligations, the village government, as the administrator of government in rural areas, continues to carry out tasks in accordance with regulations issued by the government at a higher level [11].

Research and studies on the application of chaos theory of law are deemed crucial considering that legal pluralism has always colored the lives of Indonesian. It is also important to investigate the extent to which the application of the law will have implications for the development of national laws by the government. The development of national law that puts forward morality and ethics based on the concept of Chaos theory needs to get more attention from experts and researchers on the applicable law. Therefore, determining how to apply the concept of chaos theory of law in the village government system is a problem that can be solved.

2. RESEARCH METHOD

This research employed a juridical-normative research method based on the application of chaos theory, which was accompanied by a material-based analysis that underpinned the discourse and was then applied to the Indonesian village governance system. Data were gathered through a review of primary, secondary, and tertiary legal materials. The descriptive-analytical method was used, with a description of the village governance system in several relevant legal theories, in order to obtain the concept of a legal theory approach that is in accordance with the conditions and realities of villages in Indonesia in the context of diversity and pluralism.

3. RESULTS AND DISCUSSION

3.1. *The Construction of Law Concerning Villages*

It is unavoidable that changes in village development and rural areas are inextricably linked to the role of village government. The village government, as the organizer of activities in the countryside, has a significant role in government administration. The success or failure of a rural area is in the hands of village bureaucrats. The village government is the driving force behind village development, which serves as the foundation for the continuation of national development.

At the present, village bureaucrats refer to the government's laws and regulations, specifically Law No. 6 of 2014 Concerning Villages, when administering village government. The legislation was spawned by a mandate from Article 18B paragraph (2) of the 1945 Constitution. As a result, the Law on Villages is a statutory regulation that is governed by the state constitution. And it is not surprising that the Law on Villages requires the authorities to make other implementing regulations, namely through a government regulation (PP) and so on to implement the PP, the authorities under it make a further rule, either through the Permendesa PDTT or the Minister of Home Affairs Regulation (Permendagri). Similarly, to implement ministerial-level regulations, local regulations are created at both levels I (provincial) and level II (district).

The Law on Villages requires villages (inferior) to submit and obey the demands of the ruler/government (superior). The superior determines what is permitted and the superior power compels others to obey it. Superiors have the ability to enforce laws in a way that frightens and directs the behavior of others in the desired direction. One of the characteristics of the application of legal positivism in order is the existence of orders from authorities through written rules. In other words, the implementation of rule positivism takes place with the existence of the Law on Villages against villages in Indonesia.

Over the centuries, each village in the archipelago has had its own legal system based on customary law. Law was still in effect in each village during the early days of independence. However, the occurrence of the doctrine of law and development in the Western world, along with the urgency of the original law of the community in the village, has an impact on the development of law in Indonesia. As a result, the

development of law in the direction of modernity frequently pushes the nation's original law to the margins. Legal positivization occurs frequently to override long-standing local rules. The development of national law must be able to incorporate the concept of western law without abandoning village norms [12].

Today, in this age of globalization, customary law is still alive and its existence is acknowledged. Although the customary law is unwritten and uncodified, the values it contains are still accepted by the Indonesian people. Furthermore, the existence of indigenous peoples in the archipelago's villages has been recognized by the government through laws and regulations. The consistency of traditional rules in Indonesian rural communities demonstrates this. One of the characteristics of customary law is the existence of a collegial relationship between citizens. They always base their decisions in life on values, morals, and ethics [13].

Furthermore, the thoughts of legal experts cannot be separated from the reality of Indonesian legal culture as a whole. As a result, their thinking is not only normative – doctrinal but also related to their responsive analysis and sociological reflection on legal concepts [14]. This means that legal development should be directed towards the reality of the social conditions of society in Indonesia. The law is not only oriented towards right and wrong by prioritizing the truth of logic. However, it must also be able to present morals and ethics that prioritize feelings, including the conditions of the social reality of society.

Legal positivism exists because there is a belief that law does not originate with the Creator of the universe or nature, but rather with humans and their ability to formulate legal provisions, the sources of which can be derived from societal values. A rule is created to bind the community because there is a social contract and humans themselves desire it. In positivism, law and morals are strictly separated. In the positivist perspective, there is no law except by order of the ruler even the legalist positivist school assumes that norms are identical with law [15].

H.L.A Hart is one of the thinkers who adheres to positivism. He explained that the rules must be real, and therefore, there must be a party who writes the rules. Meanwhile, the meaning of "who wrote it" refers to the understanding that a rule must be issued by a person who has the authority to publish and write it as a legal subject. Meanwhile, the authorized institution is the state. State institutions are distinguished by the presence of state symbols and attributes, such as state sovereignty. On this basis, the state has the authority to enact and enforce a regulation known as positive law.

Then H.L.A. Hart contended that: 1) the rule must have an order, and 2) there is no necessary connection between law and morals, or law can be distinguished from the law that should be created [16].

This differs from the viewpoint of Hans Kelsen, another positivist figure, who argued that law deals with form rather than content. As a result, justice as a legal content exists outside of the law. The law may be applied unfairly, but the rules remain the rules because they are issued by the ruler. Furthermore, Kelsen described that the law is a necessity that regulates human behavior as a thinking creature and that the problem, in this case, is not how the law should be, but what the law is. Although the law is a *sollen* category, what is used is positive law (*ius constitutum*), not the aspired law (*ius constituentum*).

In addition, Hans Kelsen sparked the birth of the Stufenbau theory, which holds that the legal system is like a rung of a ladder system with tiered rules, with the lowest legal norms (inferior) referring to higher legal norms (superior). Furthermore, the highest (superior) legal norms, such as the constitution, must follow the most fundamental legal norms (*grundnorm*). The legal system is depicted as a pyramid, with the *grundnorm* (basic norm) at the top and is abstract. The regulations that follow, on the other hand, implement the preceding regulations to make them more concrete. The law is valid if it is drafted by an authorized institution or authority and is based on higher standards. As a result, the law is dynamic (nomodynamic), because it is formed and abolished by the authorized institution [17].

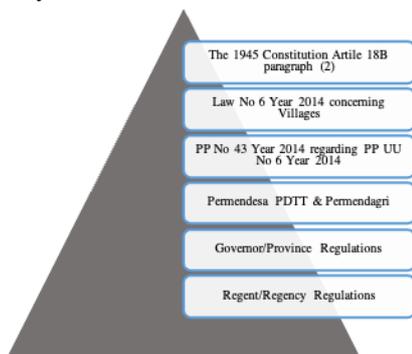


Figure 1. The legal system

The existence of this hierarchy shows that the Village Law concept employs the tiered hierarchy theory in its implementation. This is consistent with the Stufenbau theory advanced by Hans Kelsen. Legal rules that are located below / inferior are the implementers of superior rules, such as Government Regulation No. 43 of 2014, which is a form of implementation of the existence of Law No. 6 of 2014. Similarly, Law No. 6 of

2014 is a mandate from Article 18B of the 1945 Constitution (2).

In a spatial context, the relationship between one norm and another is known as the relationship between super and subordinate. The norms that govern the creation of other norms are superior, while the norms that are created are inferior. The legal system, particularly as the personification of the state, is a hierarchy with different levels, rather than a system of norms that are coordinated with one another. The structure of norm unity is based on the fact that the creation of lower norms is based on the higher norms. The creation of higher norms is the main reason for the validity of the entire legal system that forms a unity [18].

The village government, which is the lowest level of government in Indonesia's constitutional system, is in charge of enforcing the law on villages. Due to the existence of legal positivism, villages are always dependent on the government above them, including in terms of policymaking. Villages are not given the freedom to manage their own household, even though villages in the archipelago are heterogeneous with various characteristics and existing diversity. Furthermore, the village existed prior to the establishment of this country.

In general, the Village Law's construction is based on Hans Kelsen's legal theory. The existence of this construction causes the village government to rely on all policies imposed by the government through the regulations it publishes. Besides, the village government remains the subject of existing laws and regulations, as well as the existence of government intervention in villages throughout the archipelago. As a result, it is feared that village independence, which is the primary goal of enacting the Law on Villages, will not function optimally. Furthermore, government intervention against village government is becoming more visible in Indonesia as a result of the politicization of villages by the government or authorities.

3.2. Chaos Theory on Village Government

The village was formed initially due to the presence of genealogical ties (descendants), namely village communities that exist in the same area due to kinship relationships and from the same lineage. Furthermore, the village was founded based on ethnic/ethnic similarity. Primarily, all community members who live in rural areas are fiercely loyal to their respective tribes in the area in which they live. Rural communities have been taught about their environment's culture and traditions since childhood. Each village in the

archipelago has its own distinct characteristics. The customs and habits that exist in rural areas are evidence of the development of these characteristics. Geographical conditions, local culture, community structure, and rural communities' ways of thinking all have an impact on their life [19].

Similarly, the village government system has its own characteristics depending on regional conditions. The village administration in Celapar Village, Kebumen Regency, Central Java Province, for example, is led by a village head called *Lurah* and assisted by fifteen village officials, called "*perabot desa*". Each division is represented by a "*Congkok*" (village head's deputy), a "*Carik*" (village writer), a "*Kamituwa*" (village treasurer), a "*Kaum*" (religious employee), a "*Jagabaga*" (village police), and a "*Kebayan*" (messenger). The village head (*Lurah*) and village officials are not paid by the government, but rather from "*siti crook*" (village treasury land). In terms of income, community members' contributions/donations, commonly denoted as "*palagara*," become their primary source of income, namely annual rice donations and money from village community activities [20].

The diversity in villages makes village government relations, both with community members and with other government institutions, have their own dynamics. The relationship or communication pattern of the village government becomes more dynamic due to the diverse nature of the village community which results in separate relationships. As a result, each village has its own relationship based on the developing customs. Village government also has its own style and variety.

This has influenced the development of regulations for the villages in the archipelago. The diversity of values developed in rural communities influences irregularities in the legal system of villages in Indonesia. Values that have grown and lived are impossible to change and are made symmetrical from village to village. It should, however, be founded on principles that existed long before this country existed. For example, the naming of village officials in West Java cannot be equated with villages in Central Java or other areas. Likewise for other issues, such as village officials' income systems, community empowerment models in village development, village officials' duties and functions, and other village-related issues.

Irregularity and uncertainty in rural communities are caused by societal relationships that are based on power dynamics. This power dynamic is unseen in formal relationships in society. The emergence of power accounts for the gap between formal and real relationships. And it is that leads to societal deviations [21]. Village communities typically have their own

strengths, whether in the form of social status, wealth, intellectual property, or ancestry. They build relationships with one another by utilizing various aspects of their strengths. The existing rules become disorganized or chaos occurs as a result of the influence of these forces.

According to Charles Sampford's chaos theory, the law is not a building or a structure with logical-rational order in reality. To deal with such a complex reality, the legal world must be viewed not only as an orderly world but also as an irregular (chaos) situation. Law is subject to the centripetal forces of rulers who create organized institutions, but at the same time is subject to centrifugal forces that create conflict and disorder. This can be seen in one of Sampford's arguments, which states: "it is only by turning to theories of legal and social disorder that it is possible to explain the phenomena and fulfill the functions claimed for legal system theory" [22].

Referring to the chaos theory of law, the existence of social interactions carried out by individuals in society causes society to take the form of a building full of chaos and confusion. Society is a place where many interactions occur between people who do not share the same power, resulting in a relationship based on the power of relationships. As a result, the order that emerges from the interaction is "a-symmetrical." Sampford referred to this situation as a "social *melée*," which is a fluid social condition.

Charles Sampford developed the Chaos Theory of Law, in his book entitled "Disorder of Law: A Critic of Legal Theory" (1989). According to Satjipto Rahardjo, the Chaos theory, also known as "non-systematic theory" or "mechanistic theory in law," provides a different perspective and rejects the idea of inherent regularity in law, which is firmly held by positivists. Sampford's mindset is a rejection of the existence of a systemic legal system theory in which order is always found and occurs in a particular society [23].

The essence of Charles Sampford's Chaos theory can be summarized as follows:

- a. Rules are more "*melee*" and not in the form of an orderly and logical-rational structure, which means that a rule always has a fluid or flexible, spontaneous, dynamic, and unsystematic nature;
- b. Individual relationships, with their various complexities, tend to be asymmetrical and form a certain rule;
- c. On the one hand, the law is always subject to the orders of the ruler as the holder of the centripetal power that creates an organized institution, but on the other hand, it is also subject to the citizens of the community as the

holder of the centrifugal power that creates chaos;

- d. The existence of a scheme written officially and explicitly in a statutory regulation will not change the nature of a community's closeness; and
- e. Behind the prevalent legal positivism, the nature of citizen interaction has meaning and is more meaningful than a clause in a rule.

Because of the existence of irregularities in village governance in Indonesia, the chaos theory of law is a method of finding answers to several legal theories that have been developed for village governance. The diversity, plurality, and pluralism of villages in the archipelago are the philosophical foundations to strengthen *Pancasila* as the ideological foundation in the development of laws that apply to residents of rural communities, particularly village governments. There will be order at some point in a rural area with all of the legal irregularities that apply. This is consistent with the idea of developing the chaos theory of law. Chaos theory, on the other hand, is a form of rejection of pure legal theory and Hans Kelsen's tiered theory.

Furthermore, through Law Number 6 of 2014 concerning Villages, it is expected to be able to encourage the implementation of more advanced and developing village development. The village government is autonomous and has real and independent government authority, which means that nothing is dependent on the regional government. A statutory regulation describes the position of village government in dealing with the dynamics of the development of village government and national legal politics. Furthermore, village independence provides flexibility for village governments to be more independent, innovative, and creative in carrying out development for their regions by not relying on the government.

4. CONCLUSIONS

The rule of law in Indonesia is currently characterized by legal positivism toward laws and regulations based on Hans Kelsen's tiered legal theory (Stufenbauw theory). This also applies to the village government, as a result of the passage of Law No. 6 of 2014. The existence of the Stufenbauw theory reduces the village government's independence because the government continues to intervene and exert pressure through various regulatory policies that must be carried out in accordance with the core of the tiered theory, namely the existence of superior and inferior rules.

Referring to the approach in the concept of legal theory, chaos theory of law needs to be implemented as

the antithesis of Stufenbauw's theory to Indonesian Law No. 6 of 2014 concerning Villages. This is based on thinking that is consistent with Charles Sampford's Chaos theory, which states that from chaos or disorder, there will be order. Similarly, the villages in the archipelago with varying styles of village governance appear asymmetrical and irregular in comparison to one another. Diversity and pluralism have become a strength for the Indonesian nation to advance villages on the outskirts and inland following *Pancasila* ideology.

AUTHORS' CONTRIBUTIONS

Hadis Turmudi : Conceived and designed the experiments; Performed the experiments; Analyzed and interpreted the data; Wrote the paper.

Kelik Wardiono : Conceived and designed the experiments; Analyzed and interpreted the data; Contributed reagents, materials, analysis tools or data; Wrote the paper.

Harun : Performed the Experiment; Analyzed and interpreted the data; Wrote the paper.

Khudzaifah Dimiyati : Performed the experiments; Analyzed and interpreted the data; Contributed reagents, materials, analysis tools or data; Wrote the paper.

ACKNOWLEDGMENT

The researchers would like to express their sincere gratitude to Universitas Muhammadiyah Surakarta for allowing them to conduct this research. We also would like to extend our thanks to the Head of the Doctoral Program in Law for providing us with the opportunity to produce this scientific paper and publish it in an International Journal, which will benefit the development of legal thought in the future.

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