

Historical-Juridical Interpretation of Article 26 Paragraph (4) Letter D of Law Number 6 of 2014 concerning Villages: Study of the Position of the Village Head as Enforcer of Legislation

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ABSTRACT

According to the provisions of Article 26 Paragraph (4) letter d of Law No. 6 of 2014 concerning Villages, the village head has a role as enforcer of laws and regulations. This term is indeed somewhat blurred, moreover the rearm enforcer here seems to place the position of the Village Head as well as law enforcement in general. This study aims to explain normative-conceptually the meaning an enforcer of these laws and regulations. This is normative research with a historical approach, the normative understanding here is not an such of legislation but also in value through its historical side as a *volkgeist*. The results showed that the village head had a very important role and position in village life in the era of the Dutch East Indies Colonial Government can no longer be doubted that it as fact. Then, based on the provisions of these regulations, the position of the village as enforcer of laws and regulations must be distinguished from law enforcers in general. The legislation here if interpreted based on Law No. 12 of 2011, the authority of the village head will be too wide, thus the laws and regulations here can be interpreted as limited to those that are under the authority of the village head, such as village regulations.

Keywords: *Village Head; Authority; Enforcement of Laws and Regulations*

1. INTRODUCTION

A village is a legal community unit with territorial boundaries that is authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or rights, as stated in the first paragraph of Article 1 of Law Number 6 of 2014 Concerning Villages. This definition of a village can be found in Article 1 of that law. The political structure that operates under the Unitary State of the Republic of Indonesia is acknowledged and respected. Seeing the contents of these provisions, it is clear that in carrying out village household affairs, guidance to village communities, development of village areas, and carrying out economic development in the village must be carried out properly by the village government itself.

The population of the village is currently increasing, and as a result, the government of the village is under

increasing pressure to put in place systems that are flexible enough to meet the requirements of the expanding village community. The village apparatus is a subsystem in the administration of government that has the authority to regulate and manage its own village territory in an appropriate manner. This allows the village to then follow the development of the government, which is one of its duties in the course of carrying out its other responsibilities.

In Article 1 point 5 of the Minister of Home Affairs Regulation Number 84 of 2015 concerning the Organizational Structure and Work Procedure of the Village Government, the term "Village Head" is defined as a village government official who possesses the authority, duties, and obligations to organize his village household and carry out the duties of the central government and the government in the area. The regulation was concerning the organizational structure and work procedure of the village government. As the

person who holds the highest authority in the village, the village head is responsible for ensuring that his or her leadership is carried out in accordance with the principle of the rule of law. As a result, every action that the village head takes must be consistent with the legal reality that is currently in place. According to Article 25 of the Village Law, the village head is the village government. The village government is tasked with the administration of the Village Government, the implementation of Village Development, the development of Village communities, and the empowerment of Village communities (Article 26 of the Village Law).

In Law Number 6 of 2014 Concerning Villages, Article 26 paragraph (4) letter d states that the Village Head is required to obey and enforce laws and regulations. This provides insight into the position held by the Village Head as well as the responsibilities that go along with it. The phrase "enforcing laws and regulations" is intriguing in this context because the village head is required to not only be the administrator of the government but also "as if" at the same time carrying out a judicial or judicial function. This means that the term "enforcing laws and regulations" has a double meaning.

In the search for laws and regulations, terminology or what is meant by law enforcement are not found, but the term law enforcement is widely found in the law, as we can find in the following articles:

- 1) Article 5 paragraph (1) of Law Number 18 of 2003 concerning Advocates and their explanation which reads: "What is meant by "advocates with the status of law enforcers" are advocates as one of the instruments in the judicial process that has an equal position with other law enforcers in upholding law and justice". In addition to the phrase law enforcement as in the Law on Advocates, there are also other terms that still have a relationship with the term law enforcement, which can be found in separate regulations, namely in;
- 2) Article 2 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, which reads: "The function of the police is one of the functions of the State government in the fields of maintenance, security and public order, law enforcement, protection, shelter, and service to the community. "
- 3) Article 3 point 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which reads: "The prosecutor is a functional official who is authorized by law to act as a public prosecutor and implementer of court decisions who have obtained permanent legal force and authority. otherwise under the law". Prosecutors are law enforcers who serve as public prosecutors, or legal scholars usually call them state lawyers.

- 4) Article 27 paragraph (1) of Law No. 14 of 1970 concerning the Basic Provisions of Judicial Power as amended by Law No. 48 of 2009 concerning Judicial Power states "Judges as Law and Justice Enforcers are obliged to judge, follow, and understand the legal values that live in society".

Based on the sound of the articles contained in some of the laws above, it is clear that law enforcers in Indonesia, as already mentioned above, are advocates, police, prosecutors and judges as stated in the law. The difference between law enforcers and law enforcers only lies in their main task, if law enforcers are obliged to enforce the law as fairly as possible, while for law enforcement is someone who implements the law like people who do not violate a law then it can be said to be implementing the law. This is what is interesting, then what is the position of the village head as an enforcer of statutory regulations which incidentally is also law.

2. METHOD

In this paper, we use the type of descriptive research which is a method that seeks to describe the object or subject to be studied objectively, the goal is to describe the facts systematically. In a descriptive study, it will produce in-depth, broad and detailed findings, this is because descriptive research is not only conducted on the problem but also on other variables related to the problem. Descriptive research products will produce structured, systematic, and controlled research because the researcher starts with a clear subject and conducts the research on a sample of the subject to get an accurate picture. In addition, this research also uses normative research methods, or library law research because this research is only aimed at written regulations or other legal materials, which are dominated by secondary legal materials found in libraries.

3. RESULT AND DISCUSSION

3.1. Village Concept

The history of the village is a long history for Indonesia and even the archipelago, the word village itself has a philosophical-spiritual meaning in the Indonesian nation. Since time immemorial, the village has existed and has become one of the community associations that have a sense of collectivity and an independent system. Even Kalasan village in the Prambanan Temple area is a very old name, where Kalasan Village is a gift from Rakai Panangkaran as a Perdikan Village, which is a village specifically intended for places of worship [1]. One of the kingdoms that became the originator of this village system was the Sriwijaya kingdom. At the time of the Sriwijaya kingdom, the basics of the village system had emerged at that time, in the administrative system of the Sriwijaya

kingdom the central government was called Kedatuan, while local government obtained by conquering a certain area was called Perdatuan or Perdatavan which was then headed by a Datu with the title Nigalaraku [2].

The village is a legal community unit that has territorial boundaries and is authorized to regulate and manage the interests of the local community. This is based on the rights of origin and local customs that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. In addition, the village is a legal community unit that has the authority to regulate and manage the interests of the local community. The village government is in charge of regulating and managing the village's household affairs, and the village itself possesses all of the rights and power necessary to do so. The village government is made up of the village head and other officials from the village. Each of these individuals plays an important part in the day-to-

day operations of the village government. The Village Government is distinct from the village government in the sense that the Village Head and Village Apparatus, in addition to the Village Consultative Body (BPD), have authority based on statutory regulations, specifically Law Number 6 of 2014 Concerning Villages. The Village Government also includes the Village Consultative Body (BPD).

Understanding the village in Indonesia in general, the village can be said to be the smallest area unit managed by certain community groups formally and independently and the community dwells in it with previously mutually agreed rules or laws, with the aim of creating peace, happiness and mutual prosperity that are mutually beneficial. considered as a shared right and responsibility of the community group. Roucek and Warren distinguish the characteristics of the village with the city in the following comparison as seen in Table 1.

Table 1 Comparison of Village and City Characteristics

No.	Village Characteristics	City Characteristics
1	The weight of responsibility that falls on the primary group	The magnitude of the role of the secondary group
2	Geographical factors that play a role in establishing the foundation upon which groups and associations are founded.	Anonymity is a characteristic of people's lives
3	Homogeneous	Heterogeneous
4	Relationships are closer and more long-lasting than ever before.	High social mobility
5	a lack of upward social mobility	Depends on specialization
6	The family's function as an economic unit is emphasized more than ever before.	The relationship between people with one another is based on interests rather than regionalism
7	a larger percentage of the population comprised of children	More institutions or facilities are available to obtain goods and services
8	Does not significantly alter the surrounding environment.	Change the environment more

3.2. Village Head

According to Regulation Number 4 of 2016 issued by the Minister of Home Affairs, the village head is the Head of the Village Government. In this role, the village head is responsible for overseeing the implementation of the Village Government, acting as an extension of the State's arm that is located in close proximity to the community, and serving as the leader of the community. The village head is the leader and sole ruler of the village government system. He is responsible for managing the affairs of the village government based on his position and authority, as well as the responsibilities that are expressly outlined in the laws and regulations that are in effect. It is the responsibility of the village head to carry out legitimate village government in addition to the development of the village, the development of the village community, and the ability to empower village communities for the purpose of realizing a better and more developed village.

The village government is the lowest level government administrator who has the authority to regulate the interests of the local community in its territory. According to Kartohadikoesomoe, in the era of colonialism there were 3 (three) forms of village leadership: a) government leadership was in the hands of the village head; b) the leadership of the government is in the hands of a council; and c) the leadership of the government is in two people (usually a village with a maritime geography) where one is in charge of land affairs while the other is maritime affairs [3]. From this, it can be seen that the forms and functions of village leadership have basically varied since the colonial era. In the colonial era, one of the most important regulations was the emergence of Stb. 1819 No. 13 where the village community can choose its own village head. This was later clarified by the emergence of Article 171 of the Dutch East Indies Constitutional Law of 1854 which basically allowed the community to choose their village head, the right to manage the household and enforce village rules (including criminal within certain limits)

and the protection of village rights [3]. The term 'choose' itself then reaps various arguments, whether here the village head must be elected directly, as is the current election pattern, or chosen based on deliberation. However, apart from that, a form of democratization has emerged and is preserved in the villages since ancient times. That is, if culturally understood, democracy itself is part of the culture of the village community itself.

The Dutch East Indies government at that time gave a very important role to the figure of the village head, namely as law enforcement within the scope of the village area. The law enforcer in this case is the sole judge of the village court, this is in accordance with what is stated in the *Rechtlijk Organisatie (RO)*. In the *Rechtlijk Organisatie* it stated that previously this village court was legally recognized by the Dutch East Indies government with the addition of Article 3a *Rechtlijk Organisatie (RO)* where this village court was chaired by a single judge, the single judge was the village head [4].

Formally, village peace judges received legal recognition through *Staatsblad 1935 Number 102*. The *Staatsblad* was then reaffirmed in Article 3a paragraphs (1), (2), and (3) *Reglement op de Rechtelijke Organisatie en Het Beleid der Justitie (RO)* (Regulation on Composition of Courts and Court Policy). Article 3a paragraphs (1), (2) and (3) of the *Rechtelijke Organisatie* [5, p. 37] reads:

- a. Cases whose examination according to customary law are under the authority of judges from small legal communities (village judges) are still left to them;
- b. What is stipulated in paragraph (1) shall in no way reduce the authority of the parties to submit their case to the decision of the judge as referred to in Article 1, Article 2, and Article 3;
- c. The judges referred to in the first paragraph will not judge according to their customary law.

In an effort to create a better and more advanced village, the village government, which is the smallest government bureaucratic entity, has a crucial role in providing public services. In supporting the implementation of development and also public services at the village level, of course the village government requires human resources who have certain skills and abilities [6]. In addition to being assisted by human resources who have the skills and abilities, the village government, especially the village head, has the authority granted by law and has been stated in Law Number 6 of 2014 concerning Villages.

Villages must also prepare development plans in accordance with their authority with reference to district development plans. The planning process at the village level is compiled through a village development planning deliberation forum (*musrenbangdes*) as an inseparable part of regional and national planning. As in Article 79 of Law No. 6 of 2014 concerning villages states that village

development planning is one source of input in district/city development planning [7, p. 74].

The Village Head during the Dutch East Indies government had a very important role in the law enforcement process, both judicially and judicially. However, these rights were later abolished through the Emergency Law no. 1/1951 which essentially abolished many local judicial institutions, including the customary courts and village courts. This is further exacerbated by the emergence of Law no. 5/1979 concerning Village Administration, in which the process of stateization of the village was strengthened, where with the advent of the regulation confirmed the position of *desa* as subordinate to the center in the context of mere administration [3].

A village head as well as a traditional and religious leader has a role as a mediator called a village peace judge. This is in line with the statement expressed by Soepomo.

"The head of the people is in charge of maintaining legal life in the community, keeping the law running properly. The daily activities of the head cover all areas of the community. In fact, he and his assistants carry out all matters directly related to the administration of the partnership body, not only to maintain the household needs of the alliance such as village roads, village gawe, irrigation, village barns, land affairs controlled by village lordship rights, and so on, but the head of the people also intervenes in resolving matters of marriage, inheritance, caring for orphans, and so on, in short, there is no single field of social life in the fellowship body which is closed for the heads of the people to intervene when necessary to maintain peace, peace, balance physically and mentally, to enforce the law [8, p. 23]."

The statement from Soepomo above has a correlation with the substance of Article 3a of the *Rechterlijk Ordonantie* which states that village judges can make decisions according to customary law. In this case the village head as a judge can only make a decision in the form of something that can reconcile or make peace, which means in this case the village head as a judge cannot impose a decision in the form of punishment.

In general, this village court is in the form of a village meeting chaired by the village head. The role of the village head in the village court is as the sole judge who leads the trial/meeting. The village head in adjudicating a case carried out through the village court refers to the law that lives in the community or the customary law of each village. In giving decisions on the results of the village court, the village head must prioritize decisions that end in peace, apologies, restoring balance and others.

3.3. Analysis of Article 26 paragraph (4) letter d of Law no. 6 Year 2014.

According to historical research, the village head or customary village head as a village peace judge in upholding customary law, after giving a decision on the problems that occur and immediately carry out executions in accordance with the results of decisions previously decided in the village court. The execution was carried out independently or accompanied by village officials, community leaders or traditional stakeholders from the village. One example that can be raised is the customary case that occurred in South Sumatra called *meragang gawe*, a man holding a girl or widow's hand without the consent of the girl or widow is subject to sanctions in the form of a fine of 6 ringgits, 3 ringgit handed over to a girl or widow who feels wronged and makes a complaint as a ransom for her shame, then the remaining 3 ringgits is handed over as court money.

The case example above is a depiction in village courts/customary village courts where the village head as a village peace judge can decide cases using customary law, namely by giving a decision in the form of a fine, where the decision is executed immediately after the decision is decided.

Another example is when the community in a village has a problem that cannot be resolved jointly between the two people who have this problem, then another way is to use the role of the village head as a village peace judge where in this case the village head acts as a mediator judge, namely as a mediator judge. mediator from both parties who have problems and then in giving a decision on the problem the village head must decide with a conciliatory or peaceful decision.

The above are some examples of problems or cases that occurred in the village, where in these cases the village head plays an important role in efforts to enforce the law and in the process of trying it or in the field of justice. These cases are one example that the village head in carrying out law enforcement such as customary law or enforcing laws and regulations or national law is only within the scope of the village. In this case, it can then be concluded that enforcing the statutory regulations here is enforcing village regulations, where this village regulation is one of the statutory regulations.

The obligations of the Village Head as stated in Article 26 paragraph (4) letter d make the village head the enforcer of statutory regulations. The purpose of enforcing laws and regulations here is that the village head acts as a leader who helps enforce laws and regulations, which in this case the author has explained that according to the author's own opinion, what is meant by statutory regulations here are village regulations, of course, made by the author. the village head together with the Village Consultative Body (BPD).

The Village Head in carrying out his obligations as enforcers of laws and regulations is an authority that comes from attribution based on Law Number 6 of 2014 concerning Villages. The consequences of this attribution make the Village Head as the enforcer of statutory regulations (village regulations) within the scope of the village.

Village regulations are statutory regulations established by the village head after being discussed and agreed with the Village Consultative Body (BPD). Village regulations are a type of legislation whose existence is recognized and has binding legal force, but cannot contain criminal sanctions.

Since the enactment of Law Number 12 of 2011 concerning the Establishment of Legislations, village regulations are not explicitly mentioned as one type and are included in the hierarchy of laws and regulations. This is a change from the previous situation, in which they were explicitly mentioned as another type. The position of village regulations, on the other hand, remains a statutory regulation. This is stated in Article 8 of Law Number 12 of 2011, which states:

- (1) Regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, a Minister, Agency, Institution, or Commission of the same level established by law or by the Government on the orders of the Act are examples of laws and regulations other than those referred to in Article 7 paragraph (1). These regulations are also examples of laws and regulations that are not referred to in paragraph (1).
- (2) The statutory regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by a higher statutory regulation or formed based on authority.

Thus, village regulations as regulations set by the village head are a type of legislation whose existence is recognized and has binding legal force.

Village regulations in terms of providing sanctions can only provide sanctions in the form of administrative sanctions, this is because village regulations cannot contain criminal sanctions. Maria Farida Indrati Soeprapto in her book entitled *Science of Legislation: The Process and Technique of Its Formation*, said that criminal provisions are provisions that are not absolute in laws and regulations, so that the formulation of criminal provisions depends on each legislation. However, the laws and regulations that can include criminal provisions are only laws and regional regulations [9, p. 99].

Based on this explanation, although village regulations are a type of legislation that are recognized

for their existence and have binding legal force, village regulations cannot contain criminal sanctions.

The Village Head as enforcer of statutory regulations as stated in Article 26 paragraph (4) letter d, can carry out this obligation, namely by enforcing village regulations without having to use law enforcement assistance such as the police in the enforcement process. This is because the village regulations do not contain criminal sanctions, and the obligations of the village head are also mentioned in Article 26 paragraph (4) letter k of Law Number 6 of 2014 concerning Villages which reads to resolve disputes in the village community, thus the village head must be able to enforce laws and regulations (village regulations) and resolve problems that occur or violations in the implementation of the village regulations that have been determined.

Seeing the condition of the village community, most of which are still underdeveloped in various fields including in the field of education and knowledge related to laws and regulations, the Village Head must be able to play a role as enforcer of laws and regulations which can comply with laws and regulations in general and can enforce village regulations made together with the Village Consultative Body.

Moving on from the description above, it can be concluded that the village head is the enforcer of statutory regulations which in this case is specific to village regulations and the sole ruler of the village who has obligations for what is his household affairs, also carries out assistance tasks from the government, government province, and/or district/city government.

4. CONCLUSION

Following is a summary of the findings that were arrived at following an examination of Article 26 paragraph four letter d of Law Number 6 of 2014 concerning Villages. The obligations of the village head are in accordance with the contents of the article mentioned in Article 26 paragraph (4) letter d to make the village head the enforcer of statutory regulations, specifically the village regulations themselves. These obligations are in accordance with the contents of the article. The author believes that the term "statutory regulations" should be understood to mean "village regulations." The attribution of authority that is based on the Village Law is what gives the village head the authority to enforce laws and regulations in the area that is considered to be part of the village. It is expected of the person in charge of the village who is responsible for

enforcing the laws and regulations that govern the village that they are able to see the condition of the community and ensure that it is in a state of peace and tranquility. If problems arise as a result of the implementation of these regulations, the person in charge of the village must be able to make decisions or properly solve these problems while still protecting the public interest, the peace, and the tranquility of the village.

RECOMMENDATION

Changes were made to Article 26 paragraph (4) letter d so as not to cause multiple interpretations and encourage certainty. The nomenclature of enforcing statutory regulations can be replaced with enforcing village regulations and laws that live in the community.

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