

LEGAL ISSUES BEHIND VILLAGE AUTONOMY AND VILLAGE HEAD ROLE IN VILLAGE GOVERNMENTS

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Abstract: The village government is currently given lots of new authority and funding from both the central and regional governments. Such things aim to increase the progress of development and prosperity of village communities. Unfortunately, this does not necessarily make the village governments run according to existing laws. Worse, they do not necessarily make progress. Concerning the prosperity of villagers, since the enactment of Law Number 22 of 1999, major changes have happened to villages. They are no longer areas that are directly supervised by the regional government or merely administrative areas. But the village has transformed into an independent and separate autonomous force with the peculiarities of self-government. This paper uses the normative juridical research method. Results show that the lengthy tenure of village heads impacts the democratization process in the regions. It will result in the stagnation of development progress in the villages. These conditions certainly resulted in negative speculations about the consequences arising from violations of justice to the possibility of many legal violations.

Keywords: Law; Democracy; Autonomy; Village Head; Local Government.

INTRODUCTION

Human thoughts or conceptions are products of the era. They were born and developed in historical situations under various influences. The human thoughts or conceptions concerning the rule of law developed according to the different eras. As stated by Plato, *nomoi*, which means good state administration is based on good legal arrangements (Azahary & Ridwan, 2006). A rule of law is a country that stands above the law (Asnawi, 2013). It guarantees justice to its citizens. Justice is a requirement for creating welfare for its citizens (Hayat, 2015; Pahlevi, 2019). It is the basis of a state that adheres to good governance (Kusnardi, 1998).

To achieve good governance, the central government must have a good relationship with local governments (Mahmud, 2013; Monteiro, 2018). Although local or city governments use the principle of decentralization, the central and local governments are inseparable as they are a parable to parents and their children.

The central government cannot directly visit and manage the regions/cities. For this reason, the central government grants the most extensive authority possible to regional governments. This is called regional autonomy. Likewise, regional/city governments cannot directly visit and manage the lowest level of government, namely the village (Fatih, 2022). Concerning villages, the regional/municipal governments have granted the lowest levels of government the authority to regulate and run the village administration. This is called village autonomy (Esfandiari & Al-Fatih, 2020).

The Republic of Indonesia's 1945 Constitution, Chapter VI concerning the regional Government, Article 18 clause (2) states that, "Provincial, regency, and municipal regional governments regulate and manage their own government affairs according to the principle of

autonomy and co-administration" (Azahary, 1995). This regulation aims to immediately achieve the welfare of the community through improvement, service, empowerment, and community participation (Isransyah, 2021).

Since the enactment of Law Number 22 of 1999, villages are no longer administrative areas. They are no longer a subordinate or an element of regional implementation. But villages become special and independent regions, even those that are located in regencies (Widjaja, 2014). In acknowledging the existence of village autonomy and authority or in implementing the recognition of village authorities, it must be understood that the village autonomy is the core of the Unitary State of the Republic of Indonesia. The village autonomy has existed since the establishment of the village (Abustan, 2022), so village autonomy is not a part of regional autonomy (Syafudin & Na'a, 2010). In other words, village autonomy and regional autonomy are two separate and distinct things.

RESEARCH METHOD

This study used the normative juridical research method. This research method is a type of legal research methodology that relies on analyzing relevant and applicable laws and regulations to evaluate legal issues that are the focus of the research (Ansari & Negara, 2023). In this method, the law is a set of rules and doctrines adopted in a group or society (Dimiyati & Wardiono, 2004). The law has the legitimacy to ensure order and security, as well as fulfil the sense of justice in that society. This research is a descriptive-analytical type. It was conducted by analyzing legal materials from library research which are part of secondary legal materials.

RESULTS AND DISCUSSION

Law Number 32 of 2004 concerning Regional Governments defines a village as follows: "A village or what can be called other names, hereinafter referred to as a village, is a legal community unit with territorial boundaries that are authorized to regulate and manage the interests of the local community, based on local origins and customs that are recognized and respected in the Unitary State of the Republic of Indonesia's system of Government."

According to Widjaja and Law Number 32 of 2004 above, it is very clear that a village is a self-community, i.e., a community that manages itself. Considering that villages have the authority to manage and regulate the communities' interests under the local conditions and social culture, villages have a very strategic position. Due to the villages' genuine autonomy, balanced attention to the implementation of regional autonomy is required (Rudiarta et al., 2020). This is because strong village autonomy will significantly influence the realization of regional Autonomy (Amalia & Syawie, 2016; Widjaja, 2014).

Soetardjo argued that a village is an indigenous institution that has the right to manage its own affairs based on customary law. Villages must apply the principles of autonomous governance, which is known as village autonomy (Fitriana et al., 2021). Village autonomy is the village's right to manage its own household based on its customary laws. Villages are characterized as having a village government consisting of a village head who is assisted by village officials (Huda, 2015; Sumeru, 2016).

Village officials are assistants to the village head. They have duties according to their functions. High-ranking officials or the so-called village heads are elected by their own citizens

without any intervention. This position is held for two to three years (Gaffar, 2012). If incumbent village heads failed in the next election, it means that they must return to becoming an ordinary community member (Nurcholis, 2011).

A village is a legal community unit with an original structure based on its special original rights (Ash-shidiqqi & Wibisono, 2018; Putu Sarga, 2021). In this case, villages manifest the elements of diversity, participation, original autonomy, democratization, and community empowerment (Juliantara, 2000; Mahfud MD, 2003). Based on the original rights of the concerning village, the village head has the authority to resolve cases of dispute among its residents (Kuhon, n.d.; Mushofa, 2016).

Historically, the village is the forerunner to the formation of the political society and government in Indonesia long before the formation of the state (Dilahur, 1994, p. 105). Along with the existence of a modern state, the independence and ability of village communities began to decrease. This was seen in the New Order era which centralized, bureaucratized, and uniformed the village administration, following Law number 5 of 1979, regardless of the progress and prosperity of the village communities (Natakusuma, 2015; Sulistiyani & Rosidah, 2009).

After the fall of the New Order era, the issue of change reverberated in various directions. This issue turned out to have quite an impact on changes in a number of legislative products related to villages (Ardilah et al., 2014).

Pressure from various parties has led to the emergence of a tendency that post-Reformation, laws and regulations on villages aimed to reduce the village heads' great power (Kusmanto, 2007).

The mainstreaming of decentralization and democratization discourses at that time resulted in the legislation's populist nuances. The state's intervention towards the government under it was carried out by uniforming the village government structure. This results in a process of power centralization, by placing village heads as single local-level rulers (E. Fahmi, 2002).

This is exacerbated by the fact that all members of the village legislative body are appointed by the village head, as opposed to the community. Thus, their abilities are not always adequate. In the end, doubts arose on whether or not the aspirations or opinions of the people can be channeled into Village Decrees.

After the New Order government regime stepped down, the amount of power the village head had, among other things, was trimmed through post-reformation laws and regulations. The laws that concern this are Law No. 22/1999, Law No. 32/2004, and Law No. 6/2014. Efforts to reduce the power of the village head in question included confirming the village heads' term limits. This does not mean that the previous laws and regulations did not regulate the ruling tenure of the village heads. Provisions regarding how long a person can serve as a village head have actually been regulated in legislation. However, in practice, this provision is often violated (Wibowo, 2013a).

Article 94 of Law Number 22 of 1999 stipulates that the form of village administration consists of village administration, village representative bodies and village officials (village secretary, village treasurer, section heads, and sub-village heads). In the reformation era, the central government added village officials such as the village government, village secretary, and the village representative body. In addition, the central government added that there was an allocation of village funds and village-owned enterprises (Nurcholis, 2011).

The village government is inseparable from the existence of the village head and its close relationship with the village representative body. This relationship is crucial to establish village

regulations. The village head can immediately formulate the village regulations with his own village representative body without exception. The village head is responsible to the people through the village representative body (Kusmanto, 2013; Wijayanto, 2014). Then, the village head reports the implementation of his duties to the regent (Latianingsih, 2019).

Basically, concerning their obligations and authorities, village heads must comply with existing laws and regulations. The task of a village head is very heavy. For this reason, the village head does not work alone. But rather, he obtains assistance from the village officials.

The village head leadership is basically about how to coordinate all the interests of the village community in every decision-making (Numan, 2013). Leadership is generally the ability of a person to influence other people they lead to follow their lead (Widjaja, 2014)

To implement all the affairs of the village, there needs to be cooperation between the village head of the surrounding community. This is because the village does not only belong to the village head, but it also belongs to all villagers (Syafudin & Na'a, 2010).

To develop the village, the village head has the right to submit or propose ideas regarding the village development in order to improve the welfare and life standard of the village community. Such ideas are also useful to reduce poverty in the village. For this reason, the village head needs to develop village advice and infrastructure. In village development, some stages need to be considered, namely the planning, implementation, and monitoring stages (Devi Deswimar, 2014). If the village head neglects his duties as well as his obligations to lead and manage the village, the village head has the right to be dismissed based on the decision of the mayor/regent as he failed to routinely carry out his duties or was permanently absent for 6 months.

A leader's role is crucial in maintaining the performance of the government she runs, especially concerning the government in the area that she leads. For example, the village head is expected to create changes which are expected by the community, including changes in the sectors of development and natural resources (Kartono, 2002; Marwansyah, 2012).

In carrying out her duties as the village head, she must pay attention to the obligations and prohibitions stipulated in Law No. 6 of 2014 concerning Villages. It is very clear that Law No. 6 of 2014 explained the term of office or period; rights and obligations; and the conditions for dismissing the village head (Mona, 2015). Specifically, regarding the position or period of the village head, the village head has a maximum of three terms to lead. She cannot stay in office for more than three terms (Sedarmayanti, 2012).

Lately, many parties have put forward a review of Village Heads' term of office, ranging from ministers, academics, practitioners, and even the village heads themselves (Wibowo, 2013b). They began to bring ideas on the urgency of increasing the length of the Village Heads' term of office. In fact, based on the applicable provisions, a Village Head can possibly serve for 6 (six) years for 1 (one) term of office. Then, he may be re-elected for a second and third term. In a sense, if the Village Head is re-elected by the local village community, he can serve for 18 (eighteen) years. This is certainly a very long span beyond regional heads' and presidents' terms of office. Plus, there are discourses on increasing the term of office with the reason of creating sustainable village development. This adds a note on how the Village Heads' term of office will be very, very long.

This too long term of office makes the village situation stagnant where no dynamic conditions occur if the term of office of the village head is too long. It is enough for the village

head to adopt a populist policy that is man-made but not significant to advance his village (Huntington, 1995). Another factor is the authoritarian condition which is feared to occur considering that the village head has long and significant power which results in the death of democracy at the village level (Ardana, 2009; I. Fahmi, 2014).

The length of term of office demanded by the village head is suspected of having the content of returning the spent campaign funds to become the village head. Expired campaign funds will require a return on capital originating from village financial sources which are the right of the village head legally and fairly. This financial right will not be enough to return campaign costs if the term of office is not extended, unless the village head commits corruption which risks going to jail

CONCLUSION

In principle, the Village is a government unit that has direct contact with the community. The community's life, journey, and activities are inseparable from a government unit called the village. The village affects the people's lives, starting from birth, marriage, completeness of population administration, social affairs, celebrations, to death. The village, in this case, is embodied by the Village Head as the leader of the government unit. The progress of a village is largely determined by the managerial leadership of the village head. This is because the village head can shift the village administration's organizational apparatus, including the village consultative body, village community organizations, and village officials.

The long office term of village heads will impact the democratization process in the regions. This condition may cause negative speculations on what events may occur during this long period, such as the violations of justice and laws. Another possibility was resulted in creation of the dynastic leadership at the village levels. This could result in the end of creativity and progressiveness of the village leaders.

The long office term in the context of leadership brought bad example on national levels because many mayors and regent or even president sought another chance to make additional time for their office term with the reason why the head of village have long term office.

ACKNOWLEDGMENTS

The authors would like to thank Universitas Muhammadiyah Surakarta.

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