



## Comparison of Authority of Village Government Before and After the Implementation of Law Number 6 of 2014 Concerning Village

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### Abstract

The village, or what is called by another name, existed before Indonesian independence. Regulations regarding villages are regulated in several laws and regulations. The purpose of this research is to analyze and find a comparison of the authority of village administration before and after the implementation of Law no. 6 of 2014. Research methods, types of normative legal research, with philosophical approaches, statutory approaches, conceptual approaches, and historical approaches, using primary, secondary and tertiary legal materials. The obtained legal materials are processed and analyzed prescriptive normatively. In conclusion, the comparison of village government authority before the implementation of Law No. 6 of 2014 places the village authority in two roles, namely the authority to manage its own household, and the role as the lowest government under the sub-district head, and the uniformity of villages throughout the territory of the Republic of Indonesia, before the implementation of the Law No.6 of 2014, the authority of the village government remains with the district/city government, so that the authority of the village government is always in a truncated and amputated position.

**Keywords:** Comparative authority; Village government; Law no. 6 of 2014.



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### 1. Introduction

Authority is the most important part that cannot be resolved and is inherent in the administration of the village government. Article 7 of the Inlandsch Gemeente Ordonnantie (IGO) (Bayu, 1980) states that village households only approve physical matters such as the work and maintenance of village public works involving roads, bridges, airways, houses, land, fields, markets and air storage. After Negotiations on Villages Formulation of Local Regulations: Legislation Number of Regulations regarding Villages, namely Law No. 22 of 1948 concerning the Principal of Regional Government, Law No. 1 of 1957 concerning the Principles of Regional Government, Law No. 18 of 1965 concerning the Principles of Regional Government, Law No. 19 of 1965 concerning the Praja Village as a Transitional Form to Accelerate the Establishment of Level III Regions in the Entire Territory of the Republic of Indonesia.

In law No. 5 of 1979 concerning Village Government, village authority is not regulated in a separate article but is attached to the rights, authorities, and obligations of the Village Head.<sup>1</sup> This is regulated in Article 99 of Law No. 22 of 1999 concerning Regional Government, where village authority covers: (a) existing authority based on the village's original right; (b) authority which by the applicable laws and regulations has not yet been exercised by the Region and the Government; and (c) co-administration from the Government, Provincial Government, and/or Regency Government.

In Law No. 32 of 2004,<sup>2</sup> governmental affairs which are under the authority of the village include (1) existing governmental affairs based on the village's original right, (2) governmental affairs which are the authority of the regency/city which are devolved to the village, (3) co-administration tasks from the Government, Provincial government, and/or district/city government and finally (4) other governmental affairs which, by law and regulation, are handed over to villages. Co-administering tasks from the Government, Provincial Government, and/or

<sup>1</sup> Law Number 5 of 1979 Article 10 states that: "The village head exercises the rights, authority, and obligations of the head of the village administration, namely organizing his household and is the main organizer and responsible in the fields of government, development, and society in the context of administering village's government affairs, public government affairs including fostering peace and order following applicable laws and regulations and fostering and developing the spirit of community cooperation as the main art of village government implementation".

<sup>2</sup> Law Number 32 of 2004 concerning Regional Government.

Regency/City Government to villages are accompanied by financing, facilities, and infrastructure, as well as human resources.

UU no. 6 of 2014 concerning Villages constructing village authority<sup>3</sup> is as follows: authority in the field of village governance, implementation of village development, village community development, and empowerment of village communities based on community initiatives, origin rights, and village customs.

Based on this background, the problem can be formulated as follows: how is the comparison of the authority to administer the Village Government before and after the implementation of Law No. 6 of 2014 concerning Villages.

## 2. Methods and Research

Research methods, normative legal research types with philosophical approaches, statutory approaches, conceptual approaches, and historical approaches, using primary, secondary and tertiary legal materials. Legal materials obtained were processed and analyzed prescriptive normatively.

## 3. Research and Discussion

### 3.1. Concept Theory of Authority in Government Administration

Power is often equated with authority, and power is often exchanged with the term authority, and vice versa. Even authority is often equated with authority. Power usually takes the form of a relationship in the sense that "there is one party that rules and the other party is ruled" (the rule and the ruled) (Miriam, 1998).

Based on the above understanding, there can be a power that is not related to law. Power that is not related to law by Henc van Maarseven is referred to as a "blote match" (Suwoto, 1990), whereas power related to law by Max Weber is referred to as rational or legal authority, that is, authority that is based on a legal system is understood as a recognized principle and obeyed by the people and even strengthened by the State (Gunawan, 1990).

In public law, authority is related to power. Power has the same meaning as authority because the power held by the Executive, Legislative, and Judiciary is formal power. Power is an essential element of a State in the process of governing government in addition to other elements, namely: a) law; b) authority (authority); c) justice; d) honesty; e) conservation policy; and f) virtue (Rusadi, 1998)

Ateng Syafrudin believes there is a difference between the notion of authority and authority (Ateng, 2000). In legal terms, the definition of authority is the ability given by statutory regulations to have legal consequences (Indroharto, 1994). Understanding of authority according to H.D. Stout is: Bevoegheid wet right worden omscreven als het geheel van bestuurechtelijke bevoegdheden door publiekrechtelijke rechtssubjecten in het bestuurechtelijke rechtsverkeer. (authority can be explained as a whole of the rules relating to the acquisition and use of government authority by public law subjects in public law) (Stout, 2004). Authority (authority) has a different meaning from authority (competence). Authority is a formal power that comes from the law, while authority is a specification of authority, meaning whoever (legal subject) is given authority by law, then he is authorized to do something that is within that authority. Authority must be based on existing legal provisions (constitution) so that the authority is valid. Thus, officials (organs) in issuing decisions are supported by the source of authority. Stroink explained that the source of authority can be obtained for officials or organs (institutions) of government by way of attribution, delegation, and mandate. The authority of an organ (institution) of the government is an authority that is strengthened by positive law to regulate and maintain it. Without authority, a right juridical decision cannot be issued (Stroink dalam Abdul Rasyid Thalib, 2006).

### 3.2. Comparison of the Authority to Administer the Village Government Before and After the Implementation of Law No. 6 of 2014 Concerning Villages

Since the beginning of the independence period, village governance arrangements are regulated in several laws, namely: several village regulations have been established, namely Law no. 22 of 1948 concerning the Principles of Regional Government, Law No.1 of 1957 concerning the Principles of Regional Government, Law No. 18 of 1965 concerning the Principles of Regional Government, Law No. 19 of 1965 concerning Praja Village as a Transitional Form to Accelerate the Establishment of Level III Regions in All Regions of the Republic of Indonesia, whereas during the New Order the village administration was regulated in Law No.5 of 1974 regarding Government Principles in Regions, Law No. 5 of 1979 concerning Village Government. In the early days of reforms, village governance was regulated through Law no. 22 of 1999 concerning Regional Government, and finally with Law No. 32 of 2004 concerning Regional Government, then the latest regulation on villages is regulated in Law No. 6 of 2014 concerning Villages.

If we do a comparison of several laws governing the authority of the village government, we can see the following:

1. Law No. 22 of 1948 concerning the Principles of Regional Government. The village arrangement refers to Muh Yamin's thoughts. Where the village is placed as a foot government, as Yamin thought, with the

<sup>3</sup>Law Number 6 of 2014 concerning Villages Article 18 states that village authorities include: (a) existing authorities based on the village's original right; (b) authority which by the applicable laws and regulations has not yet been exercised by the Region and the Government; and (c) co-administration from the Government, Provincial Government, and/or Regency Government. Article 19 states that village authority a. authority based on original rights; b. village-scale local authority; c. authority assigned by the Government, Provincial Government, or Regency / City Government; and D. other authorities assigned by the Government, Provincial Government, or Regency / City Government following statutory provisions.

middle government as a district (Hamid, 2011). The village was made an autonomous region (local self-government), not maintained as a legal community unit that had the right to manage the household (self-governing community) as in the colonial era. Villages are drawn into the system of government, not allowed to remain outside the system of government as happened in colonial times.

2. Law No. 1 of 1957 concerning the Principles of Regional Government.

The existence of villages in Law No. 1 of 1957 contained in Article 2 Paragraph (1) which specifies that:

"The territory of the Republic of Indonesia is divided into large and small regions, which have the right to manage their households, and which constitute a maximum of 3 (three) levels from top to bottom as follows: a). Level I regions, including the Municipality of Jakarta Raya, b). Level II regions, including municipalities, and c). Level III regions. Paragraph (2) Swapraja Regions according to the importance and development of society today, can be designated as Special Region level I, II or III or Swatantra Region level I, II or III, which has the right to manage their households".

UU no. 1 of 1957 regulates the Formation of the Third Level Autonomous Region which must continue to pay attention to the existence of a legal community that already exists and is still maintained. The village is made into the third level region as an autonomous region, not as a customary law community unit, which is recognized by the State.

3. Law No. 19 of 1965 concerning the Praja Village. This law is intended as a transitional form to accelerate the realization of Level III regions throughout the territory of the Republic of Indonesia. The main purpose to be achieved with Law No. 19 of 1965 was to provide a reasonable place and position for legal community units. UU no. 19 of 1965 is not intended as a permanent village regulation Act, but only as a transitional law. The formation of the third level begins with the formation of Praja village. The village will be converted into a Level III Region. In the end if, the formation of third-level regions can be formed, then Law No. 18 of 1965 concerning Praja Village is no longer valid (Hamid, 2011). UU no. 19 of 1965 could not be carried out because of a change of regime, namely the Old Order regime fell and was replaced by the New Order regime.

4. Law No. 5 of 1979 concerning Village Government. In Article 1 letter (a), it is stated:

"The village is an area occupied by several residents as a community unit, including a legal community unit that has the lowest government organization directly under the head of sub-district and has the right to run its household".

Based on the understanding of the village, the village plays two roles, namely as a legal society that organizes its household affairs (self-governing community), and the role as the lowest government institution under the sub-district (local state government). UU no. 5 of 1979 explicitly stated that the policy on villages was directed at uniforming the form and composition of village governance with a national style. UU no. 5 of 1979 also does not recognize genuine village autonomy as existing autonomy in the form of government institutions as well as culture and customs. UU no. 5 of 1979 placed the village as an administrative area because the village was placed under the administrative area of the district.

5. Law No. 22 of 1999 concerning Regional Government, This law has a basic spirit, namely giving recognition to the diversity and uniqueness of the village as an adat village. The village is no longer the lowest form of government under the head of sub-district, but rather as a legal community unit that has the right to regulate and manage the interests of the local community following the village's original rights. Related to the position of the village, according to Article 1 letter (o), it is stated:

"A village or what is referred to by another name, hereinafter referred to as Village, is a legal community unit that has the authority to regulate and manage the interests of the local community based on local origins and customs that are recognized in the National Government system and are in the Sub-District Area".

Based on these provisions the existence of the village government is in the district/city regional government, thus the village is part of the district/city. After the amendment to the 1945 Constitution including Article 18, the existence of Law No. 22 of 1999 replaced by Law No. 32 of 2004 concerning Regional Government. UU no. 32 of 2004 concerning Regional Government clearly and firmly contains the substance of the recognition and respect for the Village (Sadu, 2007). Article 1 number 12 states that a village or what is referred to by another name, hereinafter referred to as a village, is a legal community unit that has territorial boundaries authorized to regulate and manage the interests of the local community, based on recognized local customs and customs and respected in the system of Government of the Unitary Republic of Indonesia. Article 200 paragraph (1) of Law No. 22 of 1999 concerning Regional Government, which states that:

"In the district/city regional government a village government is formed consisting of the village government and the village consultative body". In lieu of Law No. 22 of 1999 concerning regional government was then replaced by Law no. 32 of 2004 concerning Regional Government continues to place the village government as part of the Regency/city government. Even the substance of Law No. 32 of 2004 concerning the Regional Government is closer to village regulation as regulated in Law No. 5 of 1979 concerning Village Government which is only administrative in nature the authority of the delegation granted by the Regency/city.

6. Law No. 6 of 2014 concerning Villages. In Article 1 number (1), it is stated:

"Village is a village and a customary village or what is referred to by another name, hereinafter referred to as Village, is a legal community unit that has the authority to manage and manage government affairs, the interests of the local community based on community initiatives, rights of origin, and / or rights traditionally recognized and respected in the system of government of the Unitary Republic of Indonesia".

Based on this definition, a village is understood to consist of a village and a traditional village that carries out two functions, namely the function of government (local self-government) and taking care of the affairs of the local

community following the origin rights and traditional rights (self-governing community). The status of the village is reflected in Article 2 and Article 5 of the law, as follows:

"Implementation of Village Government, implementation of Village Development, Village Community Development, and Empowerment of Village Communities based on Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia, and Unity in Diversity". Then in Article 5, it is stated that: "The village is domiciled in the Regency / City area". The village is administratively located under the Regency / City Government (local self-government). This can be seen from the position of the Village in the Regency / City area in the State government system as referred to in Article 18 paragraph (1) of the 1945 Constitution, where based on the provisions of Article 18 paragraph (1) of the 1945 Constitution it is stated that the Unitary State of the Republic of Indonesia is only divided into two autonomous regional government, namely provincial regional government and Provincial regional government, are divided into Regency / City regional governments. Therefore, a village domiciled in a Regency / City cannot be interpreted as a level III autonomous region or a type of government that is separate from the Regency / City regional government, because based on the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) Article 18 paragraph (1) that Indonesia is only divided into two levels of regional government, namely the Province and Regency / City. For this reason, villages located in regencies/cities will automatically be under the scope of regency/city governments. The administrative position of the village government under the regency/city government (local self-government) does not eliminate the rights and authority of the village as a customary law community unit to take care of community affairs following the origins and customs of the living (self-governing community). Therefore, in Law No. 6 of 2014 concerning Villages, also regulates the authority of community affairs following the origin and customs of the living (self-governing community).

Based on the explanation above, it is known that all laws governing the existence of village administration which refer to the Constitution of the Republic of Indonesia Article 18 paragraph (1) both before and after the amendment, the authority received by the village government is the authority of the delegation from supra village government superiors government both from the central government, provincial governments and district / city governments so that in the administration of government in regulating and managing the interests of the people in the region cannot be separated from government authority on the boss. The authority granted to the village government still seems to be pretending to be purely artificial.

#### 4. Conclusion

Comparison of village government authority in the early independence of the village government authority was in the supra village government as in the Dutch colonial arrangement (IGOB), the implementation of Law No.1 Year 1957 placed the authority of the government as a level III autonomous region that still paid attention to the existence of an existing legal community and was maintained. The implementation of Law No. 19 of 1965 on Praja village is a Transitional Law that places the village's authority to accelerate the implementation of third-level autonomous regions. The implementation of Law no. 5 of 1979 concerning Village Government, places the village authority in two roles, namely the authority to manage its household, and the role as the lowest government under the head of sub-district. This law uniformities villages in all regions of the Republic of Indonesia. The implementation of Law No.22 of 1999 concerning the Regional Government places the authority of the village government no longer as the lowest government under the head of sub-district but as a legal community unit that has the right to regulate and manage the interests of the community. Law 32/2004 concerning Regional Government places the authority of the government as the organizer under the regency/city government. This law is more inclined to place the authority of the village government as stipulated in Law No.5 of 1979 concerning the Village Government. The implementation of Law No.6 of 2014, as a new era of village regulation compared to the previous law, village regulation including its authority remains with the district/city government, so that the authority of the village government is always in a truncated and amputated position.

#### Suggestion

An amendment to the 1945 Constitution of the Republic of Indonesia needs to be made by including a specific article on the arrangement of the Implementation of the Village Administration.

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