RECONSTRUCTION OF POLITICAL LAW ON VILLAGE ACT IN ACCORDANCE WITH JUSTICE

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ABSTRACT

The purpose of this research is to examine and analyze the legal political Problems of Law No. 6 of 2014 About the village, to reconstruct Politics, Law and policy for The equity in village under the laws. The study found Problems of legal politics in Law No. 6 of 2014 About the village is with the uniform implementation of the village administration contrary to the purpose of the state as defined in the preamble NRI 1945 that the state “to protect the people of Indonesia and the country of Indonesia”, uniformity in the implementation of the village administration is also a denial of the concept of autonomy native village and contrary to Article 18B (2) Constitution NRI 1945 that “the state recognizes and respects units of indigenous and tribal peoples and their traditional rights long as they were alive and in accordance with the development of society and the principle of the Homeland “Reconstruction politics of law Act No. 6 of 2014 About the village that is just as well for the sake of legal certainty, which has a tradition and culture that is older than the state of Indonesia, villagers should be given its own authority to regulate itself including village elections as set of article 31 to article 39 of Law No. 6 2014.

INTRODUCTION

The existence of the village as a whole legal community gives a deep understanding that the institution of the village not only as a mere administrative entities but also the legal entity that should be cherished, privileged, conserved and protected in the structure of government in Indonesia. This is then contained in the 1945 Constitution article 18 B of paragraph (2) which states: “The State recognizes and respects units of indigenous and tribal peoples and their traditional rights long as they were alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, regulated by law “. Based on the article 18 B of paragraph (2) of the 1945 Constitution the village interpreted not only as a traditional law community unit, but also as an administrative hierarchy of the lowest in the Homeland.

The term of government and the government itself in society in general to mean the same, where the two words are spoken interchangeably (government or government). The second mention a word or term that refers to the ruler or official. Starting from the President to the village chief, meaning that all the person holding it is called the government or the government, but the people who work in government or government environment called the government (ian).1

According Berutu Efendi,2 governance having sense in a broad sense and narrow. Government in its broadest sense means the entire functions of the state such as legislative, executive, and judicial. While the government in the narrow sense include executives only. In other literature Montesquieu defines governance in the broadest sense includes: the establishment of the law (la-puissance legislative); implementation (la-puissance executive); and justice (la-puissance de juger). Montesquieu's teachings known as the doctrine of division of state power is popularly called the "triad politics".3

So since the 1998 reform,4 which one is the regional autonomy demands broadly, it has been a shift in the dynamics of government in Indonesia, especially on the village. If before the reform is centralized to a decentralized then after the reform. The regional autonomy which means it is the presence of local government discretion (discretionary power) to govern itself on the basis of innovation, creativity, and actively engage communities in developing regions.5 However, the freedom and independence in local autonomy does not mean independence escape from the Republic of Indonesia (Republic of Indonesia), but the freedom and independence that remain in state bond of unity.

Most of the villages in Indonesia still have specific characteristics, such as: society is still a legal public entity; kinship is still very strong; customary law become the main reference in social life; in particular the level of customary law beyond the states law; and traditional institutions still exist and function optimally.

As a consequence of the recognition of indigenous villages, then there is a very clear separation, both within the authority and institutionally. Indigenous villages actually plays as indigenous villages that organizes all the functions of social, cultural, and economic, minus the functions of government. The function of government is pulled to the district level. Regent could just put some district staff to provide services in the traditional village, when the distance from the village to the district are not easy to reach.

4 1998 reform marked by the fall of Soeharto on May 21, 1998 which has been in power for about 32 years from 1966 to 1998. As the demands for reform include: the 1945 amendments; law enforcement indiscriminately; remove the dual function of the armed forces; early election; and presidential term limits.
5 Widaja, HA W in Edie Toet Hedranto, 2009, Unitary State, Decentralization and Federalism Graha ilmu, Yogyakarta, p.64.
From the aspect of authority, indigenous villages format provides space for the village to re-run the original powers that have been owned for long period from past. It is actually an attempt to open more respect for local knowledge. This is important because although all villages (de jure) in the territory of the Republic of Indonesia, but the base of cultural thinking and behavior is not the same. Authenticity associated with existence in villages that existed before the country's independence, so that in fact every village there actually have genuine authority, the authority gets recognized also but not means given. Then systematically towards uniformity village is a denial of the reality of pluralism and diversity that exist in Indonesia.

From the institutional aspect, custom tailored Institutional village with traditional values of the indigenous peoples concerned are still valid in the traditional village communities concerned. Maluku provincial government since 2005, under the leadership of Maluku Governor Karel Albert Ralahalu, already planning to change the terms and structure of village government in accordance with the culture and customs. The term village will be renamed the country, while the village head designation will again use the designation of kings ".

Furthermore, the village government structure should be changed and returned to the customs administration, such as the head soa who heads a large family consisting of several clans and marinyo or transmitter or messenger decree from the king to the people. The changes are expected to provide cultural strengthening, endurance, and local institutions. In addition, the return of the term head of the village king is also expected to increase the prestige and charisma of government leaders at the village level.

The decision is to be taken because the local community has been able to conclude that during the village council simply viewed as a product of a political process that reflects the results of the relationship between the village and the government which is an example of state intervention in the institutional form of the village. Through these interventions create a new order of governance of foreign real village for the community.

This model makes the agency more villages as a tool of state control rather than as a place of the rural communities with various dimensions. The agency is massive, and therefore can be found in many places with the model, the characters and the same shape.

RESEARCH METHODS

The method used in this research is normative. According to Sri Sumarwani, normative research is the study of the principles of the law, legal systematics, the level of synchronization of law, legal history and comparative law.6 Normative method according Wignyosoebroto, Soetandyo called doctrinal methods, and there is also a call dogmatic method. This method is called so because this method relies on rules that require compliance can be enforced by using state power (normative).7

According Sudarto, juridical normative research method in its broadest sense is a legal study to not only see the relation into a mere peangkat norm, but rather look to the importance of the social benefits of the establishment of norms (law). Juridical methods in the narrow sense that works with the system sense dogmatic and assumptions that mere formal, very difficult to solve the problem and organize society.8

Soerjono Soekanto and Sri Mamudji present understanding of normative legal research, which is also called library legal research, are: "The legal research was done by researching library materials or mere secondary data". This notion is focused on the materials used in the research. The materials investigated in the normative legal research is library materials or secondary data. Library materials is a material derived from primary sources and secondary sources. Material derived from primary sources include: books, work, research reports, technical reports, periodicals, dissertations, theses and patents. Material derived from secondary sources include: abstracts, index, bibliography, publishing government and other reference materials.

In essence, examine and analyze normative research on legal norms that have been established. This is a descriptive study, literally by Sumadi Suryabrata descriptive research is research that intends to make description about the situations or events.9 Perspektif shaped, as this study aims to get advice on what to do to solve certain problems.10

The main data sources in normative legal research is literature data. Law material is anything that can be used or required for the purpose of analyzing the applicable laws.11 Primary law materials, which are legally binding material in the form of legislation. Secondary Legal material which is legal materials that explain the primary legal materials, such as: books; Journals; magazines; articles of media; and And various other writings. Tertiary Laws material which is legal materials that provide instructions and an explanation of the primary and secondary legal materials, such as: English-Indonesian dictionary; and Indonesian dictionary.

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7 Bernard Arief Sidharta, Normative Legal Research: Analysis of philosophical research and Dogmatikal, in edt Sulistyowati Irianto and Shidarta, 2011, the Constellation Legal Research Methods and Reflection, Yayasan Pustaka Obor Indonesia, Jakarta. p.143.
10 Sri Sumarwani, op.cit., p.12
Technical analysis of the data in this study is qualitative analysis. Qualitative analysis is used to assess the primary legal materials and secondary legal materials using inductive logic thinking.

RESULTS AND DISCUSSION

Political Problems of Law Act No. 6 of 2014 About the village

Mahfud MD in his book Politics Indonesian law means that the law or legal political policy-making and implementation process includes the law that shows the nature and direction of law established and enforced. So if it is connected with the legal history of the village administration, it can be said that the political existence of the law is as the direction and purpose of the enactment of the village administration to the year adjusted for the change of government that occurred in Indonesia. The village, according to Law No. 5 of 1979 is a region occupied by a number of people as the unity of the community including community unit that has the lowest administration organization directly under the district and the right to conduct his own household in the bonds of the Republic of Indonesia.

Almost the same as understanding the formulation of villages as stipulated in Law No. 5 of 1979, meaning the village set out in Article 1 point 12 of Law No. 32 of 2004 on Regional Government, which modification in laws number 23 of 2014, the village is a unit of community had the territorial boundaries of the authority to control and manage the interests of the local community, based on the origin and local customs that recognized and respected in the governance system of the Republic of Indonesia.

Laws no. 6 of 2014 on the village of deciphering the village and the traditional village or called by another name, hereinafter referred to as the village is the unity of the legal community who have boundaries that are authorized to regulate and manage the affairs of government, the interests of the local community by community initiatives, the right of the origin, and/or customary rights recognized and respected in the governance system of the Republic of Indonesia. While Taliziduhu Ndraha defines the village as a unit of the lowest administration organization, has certain boundaries, directly under the sub-district, and is a legal public entity entitled to organize the household.

Indonesian Law no. 6 In 2014 the village differentiate into villages and indigenous villages. Thus, in the village governance should note the difference between the two. Definition of villages located in major Indonesian dictionary, namely the unity of the territory inhabited by a number of families who have their own system of government (headed by a village chief). It might also be interpreted the way (behavior and so on) that has become a habit. It might also be interpreted manifestation of the idea of culture consisting of cultural values, norms, laws, and rules associated with one and another into a system. So it can be formulated understanding of indigenous villages are territorial unity which has its own system of government, which has specific rules that have been held for generations.

To Understanding indigenous villages as stipulated in Law No. 6 2014 is a traditional law community unit which historically have boundaries and cultural identities are formed on the basis of territorial and authorized to regulate and manage the interests of rural communities based on the right of the origin.

The basic principle of the construction of the Act No. 6 of 2014 is combines the functions of a self-governing community and local self-government. Self-governing community that is running the village governance authorities, based on the right of the origin and the local authority village. While the local self-government is the authority assigned by the government, provincial government, or local government district / city. Also other powers assigned by the government, provincial government, or local government district / city in accordance with the provisions of the legislation.

Basically, the village and the traditional village perform the same task. The difference is only in the exercise of their origin, especially concerning social preservation of indigenous villages, setting up and maintenance of indigenous territories, indigenous peace trial, the maintenance of peace and order for indigenous and tribal peoples, as well as government regulation is based on the original order.

Customary law community unit formed based on three basic principles, namely genealogy, territorial and joint-territorial genealogy. As stipulated in Law No. 6 In 2014 the traditional law community unit which is a combination of genealogy and territorial. Implementation of customary law community unit that has been there and lived in the territory of the Republic of Indonesia, such as huta / Hurrians in North Sumatra village in Aceh, Nagari in Minangkabau, village and clan in South Sumatra, tiuh or pekon in Lampung, Pakraman / customs in Bali, the country in Maluku and so on.

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17 ibid.
1. The formation of the Village Governance System In Indonesia

Now there has been a shifted paradigm in the political life and state administration in Indonesia, from the authoritarian system to a democratic system, and from a centralized system to an autonomous system. The paradigm change is certainly an impact on the legal systems and has been an emphasis on legal products are more aligned to the interests of the authorities rather than the interests of the people, and the laws which emphasizes the dominance of the interests of the central government rather than the interests of local government.\(^\text{18}\)

Governance paradigm change from centralization to decentralization system causes the opening of space for the region to manage and organize the household according to their respective characteristics. On that basis, the areas can takes a policy administration system reform in accordance with the socio-cultural conditions and aspirations of the people in the area.

As an Constitutionally concept, it measures and covered by 1945 Constitution, it can be read in Article 18B of the 1945 Constitution (in Article 18B of the 1945 Constitution made clear that the state recognizes and respects the local government units that are special or extraordinary). The recognition and respect of all the units of indigenous people and their traditional rights are still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia.

Noting the 1945 Constitution, particularly in parts of the explanation chapter by chapter, conduct into Chapter VI, Article 18, it included recognition of the State of the existence of village autonomy with the right of its origin. In part explanation of the territorial State mentioned that in Indonesia there are approximately 250 zelbstbesturende landschappen and volksgemeenschappen, such as villages in Java and Bali, Nagari in Minangkabau, village and clan in Palembang and so on. The regions that have the original arrangement, and can therefore be considered as a special area. The Republic of Indonesia have to respect the position of the special areas and all state regulations regarding these areas will be considering the rights of the origins of the area.\(^\text{19}\)

The village administration is closely linked to the existence of indigenous people in Indonesia, which is a necessity uncontested case. Van Vollenhoven in his research had stated that the indigenous communities who live in Indonesia, take along time since hundreds of years before the arrival of the Dutch, already have and live within its own legal system. The legal system of the indigenous people known as customary law.\(^\text{20}\)

Efforts to strengthen the village always had a lot of problems, obstacles and dilemmas. It is caused by several factors, among which are unproductive roles of village institutions in welcoming the changes. Some of the reforms and the reorganization of the spirit and the old rules to the new rules to the spirit and not completely smooth coexistence. Internally Village Government yet to find his true spirit decentralization village, where the village is an autonomous region of the Government over the top so the village was able to take initiation, creation and innovation in accordance with the spirit of the existing autonomous changes.

Indigenous villages as people who have a genuine arrangements are longstanding and very existence needs to be maintained and preserved. Settings indigenous and tribal peoples in accordance with the provisions of Article 18B paragraph (2) to be managed within the government structure in accordance with the provisions of Article 18 paragraph (7) of the 1945 Constitution, but the authority of customary law community unit on regulating customary rights refer to the provisions of the legislation sectoral in strong related.

Pursuant to Article 1 paragraph 1 of Law No. 6 of 2014 on the village, defined that the village is (the village and the traditional village or called by any other name hereinafter called village) is a unit society under the law that has boundaries that are authorized to regulate and administer governmental affairs, interests local community based community initiatives, the right of the origin and / or customary rights recognized and respected in the governance system of the Republic of Indonesia.

Overall basic things related to the construct of the village administration, would have implications on the lives of villagers, but we realize that the life of the village are in many problems of village governance, economic life, and limited human resources, and although the life of the village has a problem, it turns out village life still has one advantage, that is the tradition of rural communities as well as social and political culture into social capital (social capital) to cope with the problems and interests of the village domination in society.

The state of the village administration today is a legacy of the old legislation has ever had to organize the village, the IGO prevailing in Java and Madura. The legislation does not regulate uniformly village administration and less encourage people to grow toward a dynamic progress.\(^\text{21}\)


Implementation of arrangements regarding the village can not accommodate all the interests and needs of rural communities, which until now numbered about 73,000 (seventy three thousand) villages and about 8,000 (eight thousand) villages. In addition, the implementation of village setting for this force is no longer appropriate to the times, especially among others concerning the position of indigenous and tribal peoples, democratization, diversity, community participation, as well as progress and equitable development, causing the gap between regions, poverty, and social and cultural issues which can interfere with the integrity of the Unitary Republic of Indonesia.

2. village on Indonesian constitutional structure and Legal perspective

The village administration, in the reign of the Dutch East Indies, was recognized as an entity which is based on customs, even judges in the village was officially recognized in 1935. When Indonesia gained independence, the village government given a constitutional basis in its implementation, which is provided for in Article 18B of the 1945 Constitution which provides that "the division of regions in Indonesia over a large area and small, with the shape and structure of government established by law, by looking at and remembering basic deliberations in the system of government, and the rights of its origins in the areas that are special "explanations 1945 further explains that" in territori Indonesia there are approximately 250 zelfbesturende landschappen and volksgemeenschappen, such as villages in Java and Bali, nagari in Minangkabau, village and clan in Palembang and all. The Republic of Indonesia has respect the position of the special areas and all state regulations regarding these areas will be considering the rights of the origins of the area."

Definition of zelfbesturende landschappen are autonomous regions, the territory controlled by the king who recognize the authority and sovereignty of the Dutch government through political agreement (verklaring). While such an explanation is given only volksgemeenschappen villages in Java and Bali, Nagari in Minangkabau, village and clan in Palembang, huta and Hurrians in Medan and so on.

At the beginning of independence, the position of the village, besides set out in Article 18 UUD 1945, the position of the next village is specifically regulated in Law No. 1 Year 1945 on a regulation concerning the Status of the National Committee of the Regions, which recognizes the authority of autonomous village for example on tax collection vehicles. At that time there was a concern that was pioneered by Supomo that the new government structure will replace the village government structures which still alive, so it needs to be given protection and time to learn (inventory) to mention the existence of rural communities (indigenous). Indonesian Laws no. 1 Year 1945 on Regional Autonomy is the first decentralization legislation and put the village as well as the location of the bottom autonomous public entity entitled to the household own government.

Furthermore, the Act No. 22 Year 1948 on Regional Government, organized on the shape and composition as well as the powers and duties of village government as an autonomous region entitled to regulate and manage their own government. In Act No. 19 Year 1965 on Desapraja, stipulated that desapraja is certain unit of community boundaries of the region, has the right manage his own household, choose the ruler, and having its own property. If you pay attention to these two laws, at the beginning of the independence of the founders actually already granting autonomy to villages to organize and manage the household of his village, villagers themselves manage the assets and other rights that are inherent.

The next stage, the New Order government issued Law No. 5 of 1979 on Village Government. When this law is enacted, the village is less freedom to organize, process and manage their own household. This law is very much getting criticism from experts, but they can not do much because the New Order regime to implement a semi-military leadership, including the enactment of a legislation. The position of the village is also mitigated through the legislation, this is done with other sources of income taken the village and the village customary rights. Not only that, this law also perform unification of forms and arrangements of the village with a way to unsupport and eliminate many elements of local democracy. In this regard, HAW.

When enacted Law No. 22 Year 1999 on Regional Government, had raised awareness of the government to restore the position of the village as mandated in Article 18 of the 1945 Constitution In this Act, the village no longer as administrative areas, even no longer be subordinate or implementing elements of the area, but it has been an area special and independent nature which are in the district, so that each villager has the right to speak on their own interests corresponding socio-cultural conditions of living environment of the community. Under Law No. 22, 1999, the real regional autonomy based on the autonomy of the village, so the success or failure of local autonomy is very influential and dependent on the success of village autonomy. If the village autonomy is successful, it will work as well the implementation of regional autonomy at the level of the district / city.

Indonesian Laws no. 23 of 2014 on Regional Government, contains rules on the village in a special chapter, which basically stated the village administration was formed in the local government district / city. The village administration consists of the village head and village. on Regional Government, acknowledges the autonomy possessed a village or with another name, say so, given that spearhead the implementation of the empowerment of the people are at the village level, because of the nature of

23 See Explanation 1945.
24 See explanation of 1945.
25 Explanation of Law 1 In 1945 the B section c.
28 Ibid.
autonomy d, in addition to democratization and decentralization also contains a mission of empowerment to improve well-being.29

Hanif Nurcholis states, under Law No. 5 of 1979, Law No. 22, 1999, and No. 32 of 2004, the status of the village administration is semi-formal institutions were given the task of higher levels of government to take care of government affairs at the village level. The village is referred to as semi-formal institutions because the state established by law and funded by the state. But the village head and the device is not official government or civil servant referred to Law No. 5 of 2014 on State Civil Employee.30

Based on the understanding of the village as stipulated in Law No. 32 In 2004, and also brand new laws no 23 of 2014 (year 2014) the village is located in a very strategic position compared to the previous product legislation, as the autonomy which is owned by the village recognized. Indonesian laws in local government was a first chapter which leading to democratization in the countryside. It can be seen from the letter a. Laws no. 32 of 2004 which says that in the framework of the regional administration in accordance with the mandate of the Constitution NRI In 1945, local governments, which regulate and manage their own affairs according to the principle of autonomy and duty of assistance, directed to accelerate the realization of public welfare through the improvement, service, empowerment and role and the community, as well as increased competitiveness of the region with regard to principles of democracy, equality, justice,

Law No. 4 of 2014 on the village making in order to correct (problem solving) the law and the village administration at the level of conceptualization in juridical aspect, but whether the legislation recently had actually fix the problematic on law of government existing village or even with the change in governance arrangement, and also village government will add to the problems that exist because of the changes to the village governance definitely cause impact on the change in the status, powers, duties, functions, organization, finance and so on. The impact is not only positive for growth and development at the village level, but also gave rise to a conflict in relation to the position of village administration with the government on it, management and financial accountability of village and village governance itself.

RECONSTRUCTION OF POLITICAL LAW ON VILLAGE ACT IN ACCORDANCE WITH JUSTICE

The village administration is the forerunner to the formation of political society and government in the state of life in Indonesia, because the structure of village government already has its own governance structure that is independent, although still in a very simple form. It can be seen from the already existence of the management structure of the village, the mechanism of the management of village fund, better known by the village treasury, their possessions village either in the form of movable property and immovable property (land rural or indigenous lands) recognized hereditary be wealth village.

Rights and wealth of the village that can be managed entirely by the village administration, in accordance with the needs of local villagers, the way it is managed also customize the model or style of the local village leadership, so that between one village to another village may be different. This is called the original autonomy of the village. Known genuine autonomy in the practice of organizing the village because the village government before the enactment of Law No. 5 In 1979, the high level of diversity among rural villages with each other.

The diversity of the start of the structure of governance of the village, traditional costumary law prevailing in the village, setting relationships among villagers, setting association flunky girl, setting the marriage custom, setting the division of inheritance, the arrangement of bloodlines in the family (there are matrilineal and patrilineal), setting associated with traditional ceremonies, the regulations related to forest management and others.

Such arrangements (native village autonomy) is broken once, when the government imposed a new order era Law 5 of 1979 on Village Government, which in weighing points c, stipulates that “governments in the region as far as possible uniform”. As a result, not only the names of all villages in Indonesia to be lost because of the mention of the village is equated with the mention of the village in Java, but also the original order and the holding of the original village and customs inherent in it throughout Indonesia also lost, because -uniform concept based- regulations and implementations with structure and villages in Java.

When the 1998 reforms, a lot of demands which require a change in the state administration, one of them in the field of governance of the village, it is accommodated by the replacement of the Law number 5 of 1979 concerning the Government of the village by some experts considered to have made the erosion of indigenous cultural values of rural communities in the original order, which is the nation's wealth.

This idea is not without reason, it can be seen from the provisions of Law number 5 of 1979 weighing the letter c on Village Government which provides that "governments in the region as far as possible uniform". As a result of setting Thereby, almost all villages in Indonesia lost its original form, but only certain villages such as villages in Bali, which is still sticking with the original government village. This can occur because when the law No. 5 of 1979 was enacted, the Balinese authorities pursue policies that separate the indigenous village to village government formation by dividing the village into a traditional village and village offices (village or village administrative offices established by Law / village government formation).

UU no. 6 of 2014 concerning this village, instead of repairing the damage arising as a result of uniformity as stipulated in Law

No. 5 In 1979, even more aggravating the damage with a structured and massive regulate all matters relating to the administrative villages. Though true problems related to the village is not merely a question of mere administrative. Backwardness and underdevelopment in the village is not solely due to limitation on economic and financial factors, but much more complex.

The evidence suggests that the village is the most affluent areas in Indonesia, because the pockets of the greatest natural resources in Indonesia are in the village, not in big cities especially in a capital city. Realizing that that case, it is no exaggeration to say that the arrangements associated with the village as stipulated in Law No. 6 In 2014 no more than efforts by certain parties to exploit the country through legal means through norms such a manner stipulated in the Act, which seem set when The real is a hegemony (to dominate or master), killing indigenous villagers so that the rights of indigenous peoples by itself can be pulled out slowly but surely.

The logic is when a law was enacted, the law applies equally in all regions of Indonesia. Except for the laws that apply, such as the Law on the Province of Aceh and Papua. The rest of each law issued enforced uniformly throughout Indonesia. Included with Law No. 6 of 2014 on the village. This means that the law also applies to all villages in Indonesia. Enforcement of such a government is trying to homogenize pluralism. This is challenge to the Law No. 5 of 1979 on Village Government in the preamble to weigh which expressly says that in accordance with the nature of the Homeland, the local government position as far as possible be uniform. The difference lies only in the Act explicitly (firmly) set their uniformity, while Law No. 6 of 2014 on the village set implicitly (vague) but in essence this law calls for the unification of all villages in Indonesia.

Indonesian Laws no. 6 of 2014 concerning this village only interpret and simplify administrative affairs of village affairs as mere (whereas the needs of rural communities is not only the needs of the administration), not all the issues related to the village can be solved by simplifying the administration of the village. Because not all problems faced by rural communities can be solved with money and administration. The village community is a unique community, which has a special relationship with nature and the surrounding environment, thus meaning and arrangements regarding law and order in rural community’s different perspective with the meaning and setting the state wide perspective.

Government objective will set out in the preamble NRI Year 1945 is to protect the entire Indonesian nation and the entire homeland of Indonesia, it means that the government must protect and guarantee the existence of the diversity that exists in the village and not to simplify matters by way of uniformity of the village administration.

Uniformity in addition is contrary to the purpose of the state to protect the entire Indonesian nation and the entire country of Indonesia is also contrary to Article 18B paragraph (1) Constitution NRI Year 1945 which provides that the state recognize and respect the units of local government that the special or privileged regulated by statute. And Article 18B (2) Constitution NRI Year 1945 which provides that the state shall recognize and respect the unity of indigenous and tribal peoples and their traditional rights as long as they were alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia, which is regulated by law.

Indonesia is a unitary state/republic, the government implemented and decentralized it, which can be traced from Article 18 of the Constitution NRI of 1945. In this regard, Philippus M. Hadjon said that decentralization must take into consideration social and cultural diversity and the presence of government units such original village, clan, Huta, Hurrians, and so on, before the founding of the Republic of Indonesia has been living as an autonomous government based on customary laws. Bayu Surianingrat then added that on the basis of recognition is then that the term autonomy native villages, the village has authority to regulate and manage their own domestic affairs which is the origin of the rights derived from customs and attached since the formation of the village.

As a follow up of this, the government then formulate a basic policy related to the country as formulated in Article 18B paragraph (1) Constitution NRI Year 1945 which provides that the state recognize and respect the units of local government that the special or that are regulated by Constitution. Furthermore, Article 18B (2) NRI 1945 Constitution which stipulates that the state recognizes and respects units of indigenous and tribal peoples and their traditional rights long as they live, and in accordance with the development of society and the principles of the Homeland.

This regulation is actually an elaboration of the mandate of Article 18 UUD 1945, local governments are authorized to regulate and manage their own household. The local government is not only given the authority to enforce its own government, but also a recognition of the privilege for those areas that have a special status as a regional and specialized. In granting that authority Sugeng Istanto found lawmakers adopts that to be able to govern as well as possible areas of local government should be given the widest possible autonomy.

Autonomy widest in this case should remain understood in the concept of the Unitary Republic of Indonesia, so in terms of the division of authority, as a consequence of a unitary state, still have no powers certain in full remains a central authority, no

33 F. Sugeng Istanto, 1971 Some aspect of Central and Local Government Relations within the Unitary State of Indonesia, Karyaputra, Yogyakarta. p.28.
authority can be held jointly between the central government and local governments, and there was no authority under the authority of the autonomous regional government including the village administration.

Administratively, the village government is the smallest administrative unit in the structure of government in Indonesia. As the smallest administrative unit, meaning that the government is autonomous villages that clung to certain rights and responsibilities inherent with keotonomannya. Autonomy is then able to make local government do or not do certain policies that may differ from other villages.

So that every policy pursued by the village administration with other villagers can differ depending on local needs, without having to be uniform with other villages as stipulated in Law No. 6 of 2014 regulating structured in such a way from the arrangement of the village, the organization of village governance, the rights and obligations of the village and the villagers, village regulations, village finance and asset village, rural development and rural-owned village, cooperative villages, organizations village community and so forth.

Uniformity is structured as norms in Law No. 6 Year 2014 can eliminate the hallmark of the village and contrary to the purpose of the state as contained in the preamble of the Constitution, which provides that the state shall "protect the entire Indonesian nation and the entire Indonesian homeland" includes protecting diversity village governance. It is also contrary to Article 18B (2) NRI 1945 Constitution which stipulates that the state recognizes and respects units of indigenous and tribal peoples and their traditional rights as long as they live, and in accordance with the development of society and the principles of the Homeland.

In this connection Didik Sukriono said Rationale village setting that recognizes and appreciates diversity, participation, original autonomy, democratization and community empowerment set in 1945 before and after the change, but in some laws that govern the village it appears the desire to generalize (homogeneity) and even tends to kill democracy and dependence village in the district or city government, the provincial government or the central government (supra village).

Indonesian Laws no. 6 year 2014, also stipulates that the election of village heads regulation concept is equated with the local elections are selected simultaneously. This is one concrete example that the government wanted homogeneously settings (generalized) to every village in Indonesia.

When in fact the village is a reflection of the success of the state to maintain Indonesia’s -Unity, not the local government district / city nor the provincial government. Village is Indonesian origin exist and be recognized as a sovereign and independent state. Because when the Dutch first seats the power in the land of Indonesia, the Indonesian government has not been formed.

If the overall implementation westernized countries such as chains, then the village are the last link to the Indonesian people to achieve the Government objective as stated in the preamble to the Constitution. If the chain is not connected then it will be far from the Indonesian nations efforts to achieve the goals of the state. In this connection Sadu Wasistiono likened the position and existence of the village with the phrase "iron chain strength is at its weakest link", meant like system and the national government as a series of chain system from the central government, regions and villages, the village is the weakest link. Almost every aspect shows how weak the position and existence of the village in the constellation government. However, if observed, village is the final engagement with the community that will bring it to its final destination which has been outlined as a common goal.

The setting in a structured and uniform way that is stipulated in Law No. 6 Year 2014 will reduce the position of the village in the constellation of government, the village will be highly dependent on local government districts and the central government, because all the policies that will do the village should always wait for instructions from local government districts. This will turn off the creativity of the villagers, it is very much at odds with the original concept of the autonomy of the village, where the village government reserves the right to hold their own government and take care of their own interests and needs.

In this regard, Soetardjo said that by law, the village associated with rules governing the basis of the setting of community life and its place in the system of government, as a regional entity in which resides a powerful community (authorities) to hold self-government (organizing care of the household) to take care of the interests and their own community needs (autonomy).

Related to this view Ari Dwipayana declare the existence of the village seen from an economic perspective, sociological, juridical, political and historical, is essentially a form of government that is real, democratic, autonomous with traditions, customs and its own laws rooted, and relatively independent of “interference” entity the power of outside. Firmer Ari Dwipayana reminded that the renewal of the village must be done carefully. Things that should be considered are: first, the level of diversity of villages in the country is very high, secondly, the village is a form of “nation” the most concrete. At the village level that

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24 Terminological village as a social entity is very diverse, which is in accordance with the purpose and viewpoint to be used. village can be a concept without political meaning, but it can also mean a political position and at the same time the quality of the position before the party or other forces. See Sadu Wasistiono 2006. Prospects for Rural Development. The Institute for Local Government Management, Focus Media, Jakarta.


28 Soetardjo Kartohadikoeseno, 1984 Village, Balai Pustaka, Jakarta. p.16.

collective identity shaped society and reform governance basically risking our nationality.

Organize and uniform implementation of the village administration contrary to the purpose of the state as defined in the preamble NRI 1945 that the state “to protect the entire Indonesian nation and the entire homeland of Indonesia”, the uniform implementation of the village administration is also a denial of the concept of autonomy native village and contrary to Article 18B paragraph (2) NRI Constitution of 1945 that “the state recognizes and respects units of indigenous and tribal peoples and their traditional rights as long as they live, and in accordance with the development of society and the principles of the Homeland”.

Build a village does not have the uniform pattern of the village administration is the same for all villages in Indonesia. Let the village as it is rural, rural development should pay attention to the original composition of the local community, rural development should pay attention to local knowledge that life grows and develops in each country, without having to be uniform. Such is foreseen by the founders of the nation, all of which were summarized clearly and unequivocally in the preamble to the Constitution NRI 1945.

Construction of the above article has implications for government systems Traditional Village is part of the Governments of the village system. This is confirmed also in Article 6 paragraph (1) which states: “The village consists of the Village and the Village People”. Indigenous Village Government in question is the implementation of government affairs and interests of the local indigenous community in the governance system of the Republic of Indonesia. While the Government of the Village People is the Head of the Village People or called by another name Desa Adat assisted devices as part of administrators of the Village People.

In Article 107 to Article 109 with the following principles:

1) Arranging and conducting of Indigenous Village Government carried out in accordance with the origin of the rights and customary law in the Village People are still alive and in accordance with the development of society and not contrary to the principles in the Government of the Village People in the principle of the Unitary Republic of Indonesia.

2) Village People perform the functions of government deliberations and Indigenous Village Council in accordance with the original arrangement of the Village People or a newly formed community initiatives in accordance with the Village People.

3) Institutional arrangements, filling the positions, and the tenure of Chief of the Village People by customary law set out in provincial legislation.

That it thus against or not in accordance with the preamble of the legislation law no. 6 2014 that the village has the right origin and traditional right to regulate and manage the interests of the local community and contribute to realize the ideals of independence by the Constitution of the Republic of Indonesia Year 1945.

Therefore for the sake of legal certainty and for the sake of fairness village that has customs and culture that is older than the state of Indonesia, villagers should be given its own authority to regulate itself which no need approval or basic regulation of the province. Plus more that the position of the village is under the autonomous district / city is not below the provincial level, that such will create confusion in the system of government that exist in areas including villages.

Whereas under the Act of 1945, which the state recognizes and respects units of indigenous and tribal peoples implies along with their traditional rights, because the village had to independently manage his village that behave on customs and culture of each whereare set by the village itself, on the State’s case only perform recognition and determination of the village system in this case is when the city as the provisions of the law of regional autonomy, not provincial as Act 6 of 2014 concerning the village.

CONCLUSION

The uniformity in the implementation of the village administration is also a denial of the concept of autonomy native village and contrary to Article 18B (2) Constitution NRI 1945 that “the state recognizes and respects units of indigenous and tribal peoples and their traditional rights long as they were alive and in accordance with the development of society and the principle of the Homeland” Reconstruction politics of law Act No. 6 of 2014 About the village that is just as well for the sake of legal certainty, which has a tradition and culture that is older than the state of Indonesia, villagers should be given its own authority to regulate itself including village elections as set of article 31 to article 39 of Law No. 6 2014, the village itself should be given the authority to regulate itself including village elections as regulated article 31 to article 39 of Law No. 6 2014, the village itself should be given the authority to regulate itself including village elections as regulated article 31 to article 39 of Law No. 6 of 2014.

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