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### POLICY TO DEVELOP INDEPENDENT VILLAGE GOVERNMENT IN REGIONAL AUTONOMY DESIGN IN INDONESIA

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#### 10. STRACT

This research is a normative legal research, which is a type of research that refers to the legal norms contained in statutory regulations. The approach method uses a normative juridical approach, to study statutory regulations, namely Law no. 6 of 2014 concerning villages in order to answer problems related to the independence of the village. The method collecting data is through literature study and documentation. Furthermore, the data were analyzed using a qualitative descriptive method.

The results of the study concluded that the substantive provisions of Law no. 6/2014 shows that normatively, villages are increasingly given the opportunity to be autonomous. The opportunity for greater village autonomy, including in terms of strengthening institutional capacity, gives hope for the realization of village independence in the future. Meanwhile, the policies that need to be developed to create an independent village government in the design of regional autonomy include (1) need for greater recognition and autonomy at the village level, (2) regulations must be in favor of the village, (3) the structure and functions of village government institutions are formulated by paying attention to the interests and independence of the village, (4) village stakeholders need to be active / creative in empowering village potential, (5) political and administrative decentralization needs to be adjusted to the demands and needs of the village.

#### INTRODUCTION

Indonesia is a unitary state in the form of a republic (Article 1 paragraph (1) of the 1945 Constitution and adheres to the principle of decentralization in administering government by providing opportunities and flexibility to regions to carry out regional autonomy. Therefore, Article 18 of the 1945 Constitution, among others, states that the division of Indonesian regions into large and small regions with the form and structure of government is stipulated by law. In this explanation, it is stated, among

other things, that "because Indonesia is an *eenheidsstaat*, Indonesia will not have regions in its environment that are in nature of *staat* as well. Indonesia will be divided into provinces and provincial areas will be further divided into smaller regions. In areas that are autonomous or administrative, everything will be stipulated by law. (HAW, Widjaya, 2014:1).

A village as the lowest governmental organization and is the closest to the community is the destination for all government affairs that are above it, the village government must have adequate authority. Therefore, village autonomy is absolutely necessary considering that historically a village is the forerunner of the formation of a political and governmental society. In Indonesia, long before this state was formed, social structures such as villages, indigenous peoples and so on had become social institutions that had very important positions. Village is an autonomous social institution with its own traditions, customs and laws as well as relatively independent. This is shown, among other things, by the high level of diversity making the village perhaps the most concrete form of the nation.

In line with the presence of the modern state, the independence and capacity of rural communities have begun to develop. This condition is very strong seen in the New Order government which based on Law No. 5 of 1979 carried out centralization, bureaucratization and uniformity of village government, regardless of the plurality of indigenous peoples and indigenous governments. This law carries out a national uniformity which is further reflected in almost all central government policies related to villages.

The process of political reform and replacement of government that took place in 1998 was followed by the issuance of Law no. 22 of 1999 regarding regional government, which revokes Law no. 5 of 1979 concerning village and village administration. In Law no. 22 of 1999 CHAPTER XI Articles 93 -111 concerning the implementation of village governance and Government Regulation Number 76 of 2001 concerning general guidelines for regulating villages emphasizing the principles of democracy, community participation, equity and justice as well as paying attention to regional potential and diversity. Village authority includes existing authority based on the rights of origin of the village. The authority which is not implemented by the prevailing laws and regulations by the region and the government as well as the co-administration task of the government, provincial government and / or district government. (HAW, Widjaya, 2014: 6)

So far, the implementation of autonomy at the village level has not been clear, especially in relation to the position of the village and the expected impact of decentralization. In recognition of genuine autonomy, the village has the right to regulate and manage its own household based on local origins and customs and is not the authority that the superior government has left to the village. Two principles in regulating the village create ambivalence in placing the position and authority of the village. The unclear position of the village means that before the village has a strong foundation to lead to achieving the ideals of an independent, democratic, and prosperous village. So, it can be concluded that the implementation of decentralization in fact has not had an impact as the positive values contained in the concept of decentralization, namely the realization of village progress and welfare (Didik G Suharto, 2016: 12).

The issuance of Law no. 32 of 2014 concerning Regional Government and Law no. 6 of 2014 concerning villages is sufficient to provide fresh air for the future of village

independence, however, this relatively new regulation still requires proof regarding its implementation and its impact on increasing village independence. The implementation of these regulations is closely related to stakeholders and the dimensions that come from actors in the field.

### Problem Formulation

Based on the above background, the following problems can be formulated:

1. Does the enactment of law no. 6 of 2014 able to bring the independence of village government?
2. What kind of policies need to be developed to create an independent village government in the design of Regional Autonomy?

### RESEARCH METHOD

This research is normative legal research, namely a research that disrupts legal norms contained in statutory regulations and court decisions and norms that live and develop in society (Zainudin Ali, 2014: 105). This study aims to understand the symptoms of the law under study by emphasizing understanding the specific problems concerning the independence of the village government.

This study uses a normative judicial approach, this approach is used to examine statutory regulations, namely Law no. 6 of 2014 concerning villages, to answer problems related to the independence of the village government. The data analysis used in this research is descriptive qualitative.

### RESEARCH RESULTS AND DISCUSSION

#### A. Independent Village Government Based on Law Number 6 of 2014.

In general, the substance of the law on villages provides opportunities as well as challenges for the progress, independence and improvement of the welfare of rural communities. In principle, the potential aspects that support the realization of these hopes are in Law Number 6 of 2014. Efforts to make changes and improve the village government system through Law Number 6 of 2014 are evident from the rationale of the law which states that:

“In implementing statutory regulations, regulations regarding villages so far have not been able to accommodate all the interests and needs of the village community, which up to now has numbered around 73,000 (seventy-three thousand) villages and around 8,000 (eight thousand) kelurahan. (Didik G Suharto, 2016: 255) In addition, the implementation of village regulations that have been in effect is no longer catching up with the development of the time, especially with regard to the position of indigenous peoples, democratization, diversity, community participation, and progress as well as equitable development have created gaps among regions, poverty, and socio-cultural problems that can disrupt the integrity of the Unitary State of the Republic of Indonesia. This law was drafted in the spirit of implementing the constitutional mandate, namely the regulation of customary law communities in accordance with the provisions of Article 18B paragraph (2) to be regulated in a government structure in accordance with the provisions of Article 18 paragraph (7)”.

It is further implicitly stated that, the purpose of stipulating Law Number 6 of 2014 is an elaboration on the provisions of the articles of the 1945 Constitution of the Republic of Indonesia, namely: (1) to provide recognition and respect for the existing villages with diversity before and after the formation of the Unitary State of the Republic of Indonesia; (2) provide clarity of status and legal certainty for villages in

the state system of the Republic of Indonesia in order to achieve justice for all Indonesians; (3) preserving and advancing the customs, traditions and culture of rural communities; (4) encourage initiatives, movements and participation of village communities for the development of village potential and assets for mutual welfare; (5) forming a professional, efficient and effective village government that are open and accountable; (6) improving public services for villagers in order to accelerate the realization of public welfare; (7) increasing the socio-cultural resilience of village communities in order to create village communities that are able to maintain social unity as part of national resilience; (8) realizing the economy of rural communities and overcoming gaps in national development; and (9) strengthening village communities as development subjects.

The purpose of enacting Law Number 6 of 2014 is in line with the principles of village regulation, namely covering:

1. recognition, namely recognition on the right of origin;
2. subsidiarity, namely the determination of local scale authority and local decision making for the benefit of the village community;
3. diversity, namely recognition and respect the value system prevailing in the village community, but still observing the shared value system in the life of the nation and state;
4. togetherness, namely the spirit to play an active role and cooperate with the principle of mutual respect between institutions at the village level and elements of village society in developing the village;
5. mutual cooperation, namely the habit of helping each other to build the village;
6. kinship, namely the habit of villagers as part of a large family unit of the village community;
7. deliberation, namely the process of making decisions concerning the interests of the village community through discussions with various interested parties;
8. democracy, namely the system of organizing village communities in a government system carried out by the village community or with the approval of the village community and the dignity and dignity of humans as creatures of God Almighty are recognized, organized, and guaranteed;
9. independence, namely a process carried out by the Village Government and the Village community to carry out an activity in order to fulfill their needs on their own terms;
10. participation, namely taking an active role in an activity;
11. equality, namely equality in position and role;
12. empowerment, namely efforts to improve the standard of living and welfare of rural communities through the establishment of policies, programs and activities in accordance with the essence of the problem and the priority needs of the village community; and sustainability, which is a process carried out in a coordinated, integrated, and sustainable manner in planning and implementing village development programs.
13. The principle of village regulation becomes "spirit" in every Article of Law Number 6 of 2014. The substance of the regulation should reflect the principle of



1 regulation which is the basis of the articles as a whole.

equality, namely equality in position and role; empowerment, namely efforts to improve the standard of living and welfare of rural communities through the establishment of policies, programs and activities in accordance with the essence of the problem and the priority needs of the village community; and sustainability, which is a process carried out in a coordinated, integrated, and sustainable manner in planning and implementing village development programs.

The principle of village regulation becomes “spirit” in every Article of Law Number 6 of 2014. The substance of the regulation should reflect the principle of regulation which is the basis of the articles as a whole.

This is related to strengthening the existence of the village, namely a matter of village authority. Article 18 states that Village Authority includes authority in the field of Village Administration, Village Development, Village community development, and Village community empowerment based on community initiatives, rights of origin, and Village customs. Subsequently, it was clarified in Article 19 that village authority includes: (a) authority based on rights of origin; (b) Village-scale local authorities; (c) authorities assigned by the Government, Provincial Government, or Regency / City Regional Government; and (d) other authorities assigned by the Government, Provincial Government, or Regency / City Government in accordance with the provisions of statutory regulations.

“Original rights” are rights that are still living inheritance and village initiatives or village community initiatives in accordance with the development of community life, including customary community organization systems, institutions and customary law, village treasury lands and agreements in the life of village communities. Meanwhile, “local authority with a village scale” is the authority to regulate and manage the interests of the village community that have been carried out by the village or are able and effective to be carried out by the village or that have emerged due to village developments and village community initiatives, including boat moorings, village markets, public bathing places, irrigation channels, environmental sanitation, integrated service posts, art and learning studios and village libraries, village reservoirs and village roads.

Another provision which is a form of strengthening the existence of the village is the recognition on the existence of customary villages. Villages consist of villages and traditional villages (article 6 paragraph (1)). He explained, in principle, traditional villages are a legacy of local community governance organizations that are maintained from generation to generation which are still recognized and fought for by village leaders and communities so that they can function to develop welfare and local socio-cultural identity. The customary village has the right of origin which is more dominant than the right of origin of the usu village since the customary village was born as an indigenous community that exists in the community. A customary village is a customary law community unit that has historically had territorial boundaries and a cultural identity formed on the basis of territoriality which has the authority to regulate and manage the interests of village communities based on their rights of origin. The recognition and attention to the existence of this customary village is evidenced by the special regulation regarding traditional villages in Law Number 6 of 2014.

Second, clarity of the rights and obligations of villages and village communities. Still related to recognition on the existence of villages, Law Number 6 of 2014 also explicitly provides signs to protect villages and village communities. The details of the

rights and obligations are listed in articles 67 and 68. It states that the village has the right: (a) to regulate and manage community interests based on the rights of origin, customs, and socio-cultural values of the Village community; (b) determine and manage Village institutions; and (c) get a source of income. Meanwhile, the village obligations include: (a) protecting and maintaining the unity, integrity and harmony of the Village community in the framework of national harmony and the integrity of the Unitary State of the Republic of Indonesia; (b) improving the quality of life of the Village community; (c) developing a democratic life; (d) develop rural community empowerment; and (e) provide and improve services to the Village community.

Whereas the rights of the village community are: (a) requesting and obtaining information from the Village Government as well as supervising the activities of implementing Village Government, implementing Village Development, fostering Village community development, and empowering Village communities; (b) obtain equal and fair services; (c) conveying aspirations, suggestions, and opinions responsibly regarding the activities of implementing Village Government, implementing Village Development, fostering Village community, and empowering Village community; (d) selecting, being elected, and / or stipulated as: Village Head, Village apparatus, members of the Village Consultative Body, or members of Village community organizations. (e) receive protection and protection from disturbances of peace and order in the village.

On the other hand, the village community has the obligation: (a) to develop themselves and maintain the Village environment; (b) encourage the creation of good Village Administration activities, Village Development implementation, Village community development, and good Village community empowerment; (c) encourage the creation of a safe, comfortable and serene situation in the Village; (d) maintaining and developing the values of deliberation, consensus, kinship, and mutual cooperation in the Village; and (e) participate in various activities in the Village. With the clarity of rights and obligations, it is expected that there will be protection on the sovereignty of the community (village).

Third. There is great concern in terms of community participation. Law Number 6 of 2014 emphasizes the interests of the community in accessing government or development processes, for example, in village development planning where village communities must be involved (Article 80 paragraph (1)). Village development is carried out by the village government by involving all village communities in a spirit of mutual cooperation (Article 81 paragraph (2)). The village community has the right to obtain information about the planning and implementation of village development. Village communities have the right to monitor the implementation of village development (article 82 paragraph (1) and (2)). Law Number 56 of 2014 Article also mandates village deliberations, which are deliberative forums that are attended by the Village Consultative Body, village government and elements of village society to deliberate on strategic matters of village planning, village planning, village cooperation, investment plans that enter the village, assistance to Village BUM, (addition and release of village assets). Village deliberations are of important part in the village government system because the results of village meetings are used as the basis for the Village Consultative Body and the village government to determine village government policies.

Fourth, attention to village sovereignty. The law shows that the sovereignty of the people built is part of building village sovereignty. A number of provisions in Law Number 6 of 2014 imply the spirit of upholding village sovereignty. Several new

things include provisions regarding the use of local wisdom and village natural resources in village development; Village-scale local development is carried out by village development and the implementation of sectoral programs that enter the village is informed to the village government to be integrated with village development (article 80 paragraph (3) paragraph (4), and paragraph (5)).

Likewise, in the development of rural areas carried out by the supradesa government and third parties, it is obligatory to utilize the potential of natural resources and human resources and involve the village government and village communities. The implementation of rural area development which is local in scale must be submitted to the village / or cooperation between villages (article 85 paragraph (2) and paragraph (3)). The problem of village sovereignty is also evident in the management of village assets and management of village property assets, which in principle are affirmed as belonging to the village and carried out to improve the welfare and standard of living of the village community and increase village income.

Fifth, strengthen the independence of the village. Economic (administrative) independence and political independence have been strengthened in several parts in Law Number 6 of 2014. In terms of economic (administrative) independence, efforts to strengthen village financing capacity can be seen from the widening of access to funding resources. The village law concretely states that village opinion comes from: (a) Village original income consists of business results, proceeds from assets, self-help and participation, mutual cooperation, and other Village original income; (b). The allocation of the State Budget (APBN) is determined 10% (ten percent) from and outside the regional transfer funds (top) in stages; (c) part of the proceeds from regional taxes and retribution of the Regency / City at least 10% (ten percent) of the regional taxes and levies (d) the allocation of Village funds which is part of the balancing funds received by the Regency / Municipality is at least 10% (ten percent) of the balanced funds received by regencies / municipalities in the provincial regional expenditure budget after deducting the special allocation funds (e) financial assistance from the provincial Regional Revenue and Expenditure Budget and regency / municipal regional expenditure budget; (f) non-binding grants and donations from third parties; and (g) other legal village income. Opportunities to empower the village can be made more possible through empowerment of Village-Owned Enterprises (BUMD) (Articles 87 to 90) and cooperation with other villages and / or cooperation with third parties (articles 91 to 93).

In terms of political independence, encouragement is mainly through the provisions concerning the organs of village administration. The village government structure is returned to the sovereignty of the local people regarding the provisions of the accountability of the village head, apart from being obliged to: submit a report on the implementation of the village government at the end of each fiscal year and term of office to the regent / mayor; provide a written statement of government administration to the Village Consultative Body at the end of each year, budget, also provide and / or disseminate written government administration information to the village community at the end of the fiscal year. With regard to the appointment of village officials, village officials (village secretariat; regional executors and technical implementers) are appointed by the village head after consultation with the sub district head on behalf of the regent / mayor (article 49 paragraph (2)), who in carrying out their duties and authorities is responsible to the village head (article 49 paragraph (3)). If the Village Consultative Body (BPD) in the era of Law Number 23 Year 32 Year 2004 functions to determine the village head joint regulations, accommodate and channel the



aspirations of the community, then in Law Number 6 of 2014 the BPD has three functions besides plus supervising the performance of the village head. Another reason is the mechanism for selecting members of the Village Consultative Body. If in the previous law, BPD members were representatives of the residents of the village concerned who were determined by means of deliberation, in Law Number 6 of 2014 BPD members were representatives of the village population based on regional representation whose filling was done democratically. The meaning of "conducted democratically" is that it can be processed through a direct election process and through a representative deliberation process. Another interesting provision, the draft Village Regulation must be consulted with the village community. And the village community has the right to provide input on the draft of Village Regulation (article 69 paragraph (9) and paragraph (10)).

Observing the substance on the contents of Law Number 6 Year 2014, it can be seen that normatively, villages are increasingly given the opportunity to be autonomous. The increasing opportunity for village autonomy, including in terms of strengthening institutional capacity, provides new hope for the realization of village independence in the future. The hopes and challenges in Law Number 6 of 2014 require hard work and commitment from the stakeholders, including the supradesa government, to implement and make it happen. Without that, the new hope from Law Number 6 of 2014 will not carry any meaningful meaning for village independence.

## **B. Policies that need to be developed to create independent village government in the design of regional autonomy**

### **1. Regional autonomy**

The goal of regional autonomy has not been achieved because regional autonomy in Indonesia has so far stopped only at district / city governments. The implication of autonomy that stops in the regions (regencies / cities) is the marginalization of village interests. The village does not have a strong position and adequate resources. Therefore, decentralization should go to the village level. If so far, the authority or village affairs are only related to the principle of deconcentrating and assistance tasks, it is necessary to have greater authority or affairs based on decentralization in the village. Concretely, villages need to be given greater autonomy.

### **2. The direction of regional autonomy**

The characteristics of post-reform regional autonomy, namely freedom of responsibility, decentralization, semi-hierarchy, local democracy model, diversity, a balance of power, and participatory patience, should be further improved. In addition, what is no less important is implementing the decentralization principle consistently down to the village level. There needs to be a shared awareness that the position of the village must be strengthened and empowered to be independent. Providing greater recognition and autonomy to villages is considered important. In terms of authority, the principles of subsidiarity, externality, accountability and efficiency need to be carried out consistently to the village level that the transfer of village authority must be followed by adequate equipment, personnel and funding.

### **3. Local government**

In principle, the implementation of regional autonomy must always be oriented towards improving the welfare of the community by always paying attention to the interests and aspirations that grow in society and must ensure harmonious relations among regions, as well as between regions and the government. Regardless of whether the village is a sub-system of the district government or a self-governing system, the

most important thing is that there is a need for greater decentralization (autonomy) to the village. Ideally, the role of the supradesa government in the implementation of village governance does not eliminate the village "sovereignty". The type and weight of the role of the supradesa government in the implementation of village governance shows the extent of the level of village decentralization (independence). Supervision and guidance of supradesa government is still needed as a means of improving and encouraging village independence.

#### 4. Village Administration

The great authority held by district / city governments in the era of regional autonomy often backfires villages. With the authority of the district / city government, it is disrupting the village. Therefore, the position of the village needs to be clarified and strengthened. The principles of regulating village governance, namely diversity, participation, genuine autonomy, democratization and community empowerment, should be applied consequently. There needs to be adequate local capacity and opportunities or opportunities for villages to be independent.

#### 5. Structure and Function Design

The organizational structure is influenced by factors of size, environment, tasks or goals, and organizational strategy. The institutional development approach is seen from the institutional variables (leadership, doctrine, programs, resources, internal structure) and related variables (enabling, functional, normative, and dispersed). Based on the institutional development approach, studies on village governance are grouped into two variables or groups that are important to guide institutional development activities. Namely institutional variables which are basically related to the organization itself, and related variables which are mainly related to external relations. The group of institutional variables, namely: leadership, doctrine, resource programs, and internal structure, in the context of village government administration, there is one variable (aspect) that can serve as an umbrella for institutional development, namely the political aspect. From the political aspect, it will produce products in the form of regulations (laws and regulations). This regulatory issue is important for villages, because village government is part of the formal structure (organization) of the state. Competent stakeholders in regulatory matters need to have sensitivity and commitment to encourage village independence. In terms of institutional structures, village government structures should be designed to be more functional, adaptive and simple without neglecting the function of public services and community empowerment.

#### 6. Changes in Structure and Function

The design of institutional structures and functions deals with regulatory issues. This means that statutory regulations should be the focus of supradesa government intervention to restructure and function of village government institutions. Changes in provisions related to governance in the village can be divided into seven aspects: village government structure (elements), village heads, village secretaries, hamlet heads and heads of affairs, representative institutions, village regulations, village finances, as well as the financial position of village heads and village officials. . The structure and function of village government institutions in general need to be structured by taking into account local interests and independence. The structure and functions of village government institutions should be designed to accommodate the discretion or freedom of the village in planning, implementing, and evaluating household affairs. Ideally, the design of the structure and function of village government institutions should be left to the village as much as possible.

### **7. Influence factors**

Internal village governance or local capacity issues should be "intervened" by the supradesa government. In the short term, there needs to be an evaluation and encouragement from the supradesa government to accelerate the villages that are not independent. In the long term, it is important to prepare a roadmap for future village development. Stakeholders in the village are required to be active and creative in empowering local potential or assets. Participation in governance and development on all sides needs to be developed. Stakeholders in the village also need to demand greater development authority and resources for supradesa governance. There needs to be political support (pressure) from various parties to influence the policies of the supradesa government to be more friendly (pro) towards village independence.

### **8. Independent Village**

From the standpoint of administrative or economic independence, so far there has been a tendency to increase community independence on the one hand, and stagnation or decline in the independence of the village government on the other. The independence of the community is influenced by the potential of the community. Meanwhile, the potential of the community is largely determined by the socio-economic conditions of the community. From the point of view of political independence, the changes that occur are closely related and much influenced by the design of the prevailing laws and regulations. In addition to the design of laws and regulations, local potential also has a contribution to village political independence. These influencing factors essentially boils down to the existence of opportunities and how these opportunities are utilized for village independence. In addition to involving action and reactions between agencies and structures, there is one variable that determines the independence of the village, namely the supradesa variabel (top level government). External influencing factors can be influenced by supradesa variables. The supradesa factor can produce legal products (regulations), policies, and resources, all of which have the potential to affect the independence of the village. Thus, in order for village independence to be realized, these factors need to be considered and intervened by related parties.

### **CONCLUSION**

Independent village government based on Law no. 6 of 2014 By observing the substance of the contents of Law Number 6 Year 2014, that normatively, villages are increasingly given the opportunity to be autonomous. The greater opportunities for village autonomy, including in terms of strengthening institutional capacity, give hope for the realization of village independence in the future. The hopes and challenges in Law Number 6 of 2014 require hard work and commitment from the stakeholders, including the supradesa government, to implement and make it happen. Without that, the hope of Law Number 6 of 2014 will not bring meaning to the village's independence. Policies that are built to realize village governance that are established in the design of regional autonomy are 1) There is greater recognition and autonomy to lower-level governments by transferring greater authority and resources. 2) Regulations or policies that favor the village. Authority and resources meet village needs (administrative needs). 3) The structure and functions of village government institutions are drawn up by taking into account local interests and independence by responding to the needs of administrative decentralization and demands for political decentralization. 4) The structure and functions of village government institutions are designed to accommodate the discretion of the village. Independence from the side of administrative and political decentralization needs improvement in regulating and

increasing the capacity of village resources. 5) Village stakeholders who are active and creative in empowering the potential of local assets. 6) To achieve independence, political and administrative decentralization in accordance with local demands and needs. 7) Attention and improvement to the factors that influence the emergence of opportunities from above (engineering or autonomy) and how these opportunities are used for village independence.

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#### **Laws and Regulations**

- Law No. 6 of 2014 concerning the Village
- Law No. 23/2014 on Regional Government

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