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# The Natural Village Government It Self State Laws System In Indonesia

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**Abstract :** *This study aims to analyze and explain the nature of the village administration in the system of constitutional law in Indonesia. In addition, in order to analyze and explain the development of the system of village government in the constitutional legal system of Indonesia, as well as to explain and find a model village government in the constitutional legal system of Indonesia. The essence of the village administration in the system of constitutional law of the Republic of Indonesia is designed as the lowest government, with genuine autonomy that had been there before, but in the perspective of NKRI Constitution of 1945 did not specify their village autonomy, despite the existence of the village after the enactment of Law No. 6 of 2014 on the village of placing as government authorities set up and manage their own household. The development of the village administration in the constitutional system of the Republic of Indonesia in various laws and regulations that govern it has put the village administration in various ways, such as part of the district administration, and lastly by Law No. 6 of 2014 as governments organize and manage their own household. Good governance model village in the constitutional system of the Republic of Indonesia is to put the village government as a genuine autonomous region, and make it as the lowest administration in the structure of state government.*

**Keyword:** *Village Government, State Laws System.*

## Introduction

The Unitary State of the Republic of Indonesia is a rule of law (*rechtsstaat*), meaning not a state of power (*machtsstaat*) whose philosophical and normative concessions are intended to make the administration of State administration should be characterized as a welfare state, in which the government is more active in taking care and So that the welfare of the people can be improved.

Village Government is the front guard in order to fight for and realize the lofty ideals, because if the village empowered, prosperous and strong, then the Indonesian nation will become a strong nation, independent, prosperous, authoritative and automatically be calculated in the arena of nations in the world.

Some of the points of view that will be used in viewing the village from different perspectives are as follows:

1. Historical perspective, the village is an embryo for the formation of political and governmental society in Indonesia. Long before the independence of Indonesia, similar social entities such as villages or indigenous peoples, and the like have become very important social institutions. Different villages or other designations throughout Indonesia have been the basis of local livelihoods, which in fact have autonomy in managing governance, and governance of the population, local institutions and economic resources.
2. Juridical perspective, village governance is seen as the lowest government in Indonesia, or unity of a legal community with multiple identities and entities, which reside in a ruling society, or have the authority to establish self-government.
3. Economic perspective, the village is a community that has a distinctive production model, and is a raw materials and man power. Villages in various Provinces work as agrarian villages, showing new developments, namely the emergence of industrial areas or small industries in rural areas. In the villages the gotong royong system is still strong and healthy living as part of the essential customs, therefore they feel that they must act on mutual agreement when conducting economic activity.
4. The sociology perspective, the village is described as a form of community or community entity that resides in an area that knows each other. Their life style is relatively homogeneous, and much dependent on the

natural surroundings, has a simple nature with strong social ties and customs and traditions.<sup>1</sup>

The existence of the village viewed from a historical, juridical, economic and sociological perspective, is essentially a real, democratic, autonomous form of government with its own tradition of customs and laws, that are deeply entrenched and relatively independent of the interference of external entities. In fact, the often-referred village has original autonomy and is very strategic in various policies rather placed as "the object of power" rather than the "subject of power". Such a form of policy can be seen from the legislation governing the village so far, showing inconsistencies and inconsistencies between the constitution and its organic laws, both at the basic level, concept and hierarchy. In other words, the nature of the legislation governing the village administration has lost its philosophical, juridical and sociological legitimacy. This can be seen in the framework of constitutionalism, namely constitution-based government in which the conception is covered, that the structural power of the power of the authority of the State's authority in governing the government only to the sub-district level. It is increasingly asserting that the organ under the organizational structure of the kecamatan Can be considered as a community organ, and the village community can be called self-governing communities, and local authorities that are autonomous or have local authority.

The rationale for village management recognizes and respects diversity, participation, indigenous autonomy, democratization and community empowerment in the 1945 Constitution before and after the amendment, but in some laws governing village governance, it appears that the will of homogeneity, and even tends to kill democracy and Make village dependence on district or city government, provincial or central government.

In Article 18 of the 1945 Constitution and its explanation, as well as Article 18 B of the 1945 Constitution of the Republic of Indonesia, which shows the existence of State recognition of "village autonomy", as the right of origin which exist only in the village but at the level of legislation and regulation there is ambiguity of the concept of village autonomy And village settings, such as;

- 1) The inconsistency of applying non-hierarchical principles, ie one side of the law removes the government hierarchy by making the district not as a subordinate to the province, but in the village-village relationship the village actually places the subordinate of the district;
- 2) There is no clear distinction between autonomous regions as the principle of decentralization. This means that a governmental area can have two positions at once, namely as an autonomous region self-governing and as an administrative area that is a representation of the interests of central and local governments;
- 3) The mention that the village has original autonomy is only contained only in the explanatory section, not in the articles of the law.

The enactment of Law Number 32 Year 2004 regarding Regional Government, regarding the village is stipulated in Article 1 number 12 jo Law no. 23 Year 2014 Regarding Regional Government Article 1 point 43, that the village is a legal community Unity which has territorial boundaries that are authorized to regulate and administer government affairs, the interests of local communities, based on community initiatives, traditional origins and / or rights recognized And respected in the system of Government of the Unitary State of the Republic of Indonesia.

#### **Issue**

What is the nature of village administration in the Indonesian state administration system? and What is the model of village governance in the Indonesian state administration system?

#### **Research methods**

*This type of research is normative research, a study of normative legal science who view the law as a set of norms. The approach used is a normative juridical approach (dogmatic), namely by assessing the legal provisions of local government and village administration*

#### **Discussion**

##### **A. The Nature of Village Government in Indonesia**

Constitutionally, the form of the State of Indonesia is a unitary state as defined in Article 1 paragraph (1) of the 1945 Constitution of the Republic of Indonesia that the State of Indonesia is a unitary state in the form of a republic. This assertion, indicates that the founding fathers and mothers have deliberately chosen the form of a unitary state (eenheidstaat, unitary state), not a federal state, and not a confederate state. This consideration is strongly based on the empirical

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<sup>1</sup> Didik Sukrono. Politik Hukum Pemerintahan Desa Indonesia, Fakultas Hukum Universitas Brawijaya Malang, 2009, p. 1-2.

condition of the Indonesian nation that is monolithically reflected in the attitude of gotong royong and so on.<sup>2</sup>

According to Bagir Manan that at least in recognition of the diversity (pluralita) of village autonomy, it should appear in 2 (two) terms, first of all, the village administration should not use the village name. It is permissible to use names according to custom, such as, *dusun*, *marga*, *nagari*, *meunasah*, *gampong*, *negori*,<sup>3</sup> and secondly, recognition of native autonomy.

Historically the existence of the village shows that before the above existing governance existed, the village had first existed. Therefore, the village should be the basis and part of the governance arrangements thereafter. Villages that have older governance, should also be the spearhead in every administration of government affairs, development and society.<sup>4</sup>

Furthermore, the building of village law is the foundation for the Indonesian state, meaning that the nation and state are actually located in the village. For that purpose, village arrangements in both type and hierarchical legislation will determine the reach, and determine the reversal of villages that have implications for the governance above them; And Third, the Law on village governance is an instrument to build a new village life that is self-reliant, democratic and prosperous. The independence in question is not the solitude of the village in living itself, but related to the dimension of justice that is in the context of the relationship between the village with supradesa (central and regional). Village independence means strong local capacity and initiative in village ideas, wills, and willingness based on local wisdom, communalism and social capital. While democracy is a value and a system that provides a framework of village governance. Conceptually, democracy contains a number of basic principles of representation, transparency, accountability, responsiveness and participation, which further becomes the basis for policy management, village planning, village financial management and public services. Welfare includes two major components, namely the provision of basic services (food, shelter, education and health) and the development of village economics based on local potential.

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<sup>2</sup> Compare also with, Robert Chambers, Rural Development Start From Back, Translate, Pepes Sudradjat, LP3ES, Jakarta, 1987, p. 106-107.

<sup>3</sup> Bagir Manan, Menyongsong Fajar Otonomi Daerah, Pusat Studi Hukum FH-UII, Yogyakarta, 2001, Hlm. 161-162

<sup>4</sup> Compare also with, Kingsbury, Benedict Krisch, Nico Stewart, Richard B, The Emergence of Global Administrative Law, Journal, Law and Contemporary Problems, 2005, Vol. 68, Issue. 3, p.15

Village welfare can be realized through self-reliance and democracy in the village. Decentralization allows the allocation of resources to the village, and democracy allows the management of village resources to side with the village people.

At the substantive level, the governance of the village government should lead to and contain the dimensions of national objectives and joints, namely: (1) national law must contain and constitute the instrument of realizing the general welfare and social justice for all the people of Indonesia; (2) national law shall contain and constitute the instrument of realizing a democratic and independent Indonesian society; (3) national law must contain and constitute a state organizing instrument based on law and constitution, which contains not only various forms of limitation of power but also reflects the certainty of law, justice and truth.

In this case, according to Soetardjo Kartohadikoesoemo, that the village is a native indigenous institution that has the right to regulate its own household based on customary law.<sup>5</sup>

In its original form, village autonomy (the right to regulate own households under customary law) is characterized by the following characteristics:

- 1) The village government consists of village heads assisted by village officials. The village head is elected by the Morokaki Council, a formative team composed of elders, religious experts, and adat experts who are judged to have wisdom. This Morokaki Council chose the village chief for a lifetime. Pamong village is the assistant village head who has the task in accordance with its function. Village officials are elected by the village head with the approval of the Morokaki Council;
- 2) Who holds the highest authority in the village is a village meeting / village assemblage;
- 3) Institutions and institutions are developed according to the needs of the rill faced by the village community concerned with a grounding in the concepts of kebatinan that surround it and the real practice and its problems;
- 4) Communal land becomes a very important social institution that functions to regulate, control and supervise the behavior of members of the legal community within a village territory concerned;
- 5) Fall mountain (Gugur Gunung), compulsory labor, and together become institutions that serve as a means of justification and simultaneously as a preserver of village autonomy system;

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<sup>5</sup> Soetardjo Kartohadikoesoemo, Desa, Balai Pustaka, Jakarta, 1984, p. 182

The content of village autonomy includes, defense from threats of wild animals or disturbances from outside areas, Security and order / police, Justice; Public works, Religious ceremonies, and Agriculture / fisheries / farm / forestry. As an autonomous legal community (adat), the village is a legal subject. An autonomous village is a village that is subject to law, meaning it can take legal action. The legal actions that can be done include, make decisions or make rules that may bind entire villagers or certain parties to the extent that it concerns the household, running a village government. Choosing a village head, Own property of wealth alone, own land and digging, and establishing own financial resources.

Initially, the village's households were very large, since the village was first formed on the initiative of the population groups, either based on genealogical or territorial or mixed to form a legal community entity relatively free from outside forces. The autonomy rights are governed by customary law. Powers and duties that are not only concerned with worldly interests, but also spiritual interests; Not only with respect to the interests of government (state), but also with regard to the interests of the individual population.

According Widjaya, that historically the village is the forerunner to the formation of political society, and government in Indonesia long before the nation state was formed. The social structure of a kind of village, the community exist and so on has become a social institution that has a very important position. The village is an autonomous institution with its own traditions, customs and laws and is relatively independent.<sup>6</sup>

Arrangement of the village, having a historical journey with the stipulation of several regulations on the village, namely Law Number 22 Year 1948 on the Principles of Regional Government, Law No. 1 of 1957 on the Principles of Regional Government, Law No. 18 of 1965 on the Principles of Regional Government, Law Number 19 Year 1965 on Praja Village, Law Number 5 Year 1974 on the Principles of Government in the Region, Law Number 5 Year 1979 on Village Government, Law Number 22 Year 1999 regarding Regional Government, Law Number 32 Year 2004 On Regional Government, and finally Law No. 23 of 2014 on Regional Government.

In the implementation of the regulation on the village, it has not been able to accommodate all the interests and needs of the village community. In addition, the implementation of village regulations that have been applied is no longer appropriate with

the development of the times, especially among others concerning the position of customary law community, democratization, diversity, community participation, and progress and equity of development, resulting in disparities between regions, poverty and social problems Culture that can disrupt the integrity of NKRI. Therefore, the enactment of Law No. 6 of 2014 on the Village, which was drafted with the spirit of the implementation of the mandate of the constitution, namely the customary law community arrangement in accordance with the provisions of Article 18B paragraph (2) to be regulated in the composition of government in accordance with the provisions of Article 18 paragraph (7).

With the construction combining the functions of self governing community with local self-government is expected to unity of customary law community which has been part of the village area, arranged in such a way as the Village and the Village Adat. Villages have generally accepted characteristics for all of Indonesia, whereas Desa Adat has distinct characteristics from the village in general, mainly due to the strong influence of adat on local governance systems, the management of local resources, and the socio-cultural life of village communities.

Indigenous village, is in principle an inheritance of local government organization that is maintained by the hereditary who is still recognized and championed by the leaders and communities of Adat Village, in order to function to develop the welfare and social identity of the local culture. Customary Village is a unity of customary law community that historically has territorial borders And cultural identity formed on the territorial basis authorized to regulate and manage the interests of the village community based on the origin.

The spirit of Law no. 23 of 2014 put the position of the village under the coherent and concurrent districts with the other breath in Law no. 6 Year 2014 on the Village, which in fact recognizes and respects the original authority derived from the right of origin. Recognition of the authority of this origin, Law no. 6 The year 2014 embraces the principle of recognition (recognition). The consequence of the recognition of the original authority is that the Village has the right to regulate and manage its own household based on its own governing community and is not an authority which is given by the superior government in the Village.

## **B. Village Governance Model in Indonesian State System**

To determine the system of village governance in the Indonesian constitutional legal system in accordance with the principles of legal policy, the understanding of village conditions is very urgent, because among others: First,

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<sup>6</sup>Widjaya, Otonomi Desa Merupakan Otonomi Yang Asli, Bulat dan Utuh, PT. RajaGrafindo Persada, Jakarta, 2010, p. 4

sociologically diverse villages throughout Indonesia since the first is a livelihood basis of people who have autonomy in managing the governance and governance of the population, local institutions and economic resources. The same effort to create a just and prosperous society, as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia, should begin with the development paradigm from the bottom (village), since the majority of the Indonesian population with all its problems are in the village. Development that tends to be oriented towards urban growth and bias, causing the urbanization of villagers to the city, and causing poverty and backwardness in the village; Secondly, all local communities in Indonesia have strong local wisdom that contains the "spirit" of sufficiency, balance and sustainability in managing natural resources and the population. Therefore, the idea of governing the village administration in the future is intended to improve the social, and village politics. The village autonomy wants to restore the livelihoods of rural communities, and to strengthen the village as a strong and independent community. Third, the governance arrangement is intended to respond to the globalization process, which is characterized by the process of information liberalization, economics, technology, culture, etc. This challenge requires stronger state institutions to deal with the rational division of duties and authorities between state and country (village). The basic principles that must be held in the division of duties and authorities, are the regions and villages can be placed as flexible compartments. In the state in realizing the welfare of society, and more fundamentally, is the survival ability of the State. Therefore, regional autonomy or village will weaken NKRI building or nation's survival ability.

Empirically villages in different parts of Indonesia show diversity. Regional differences bring consequences to differences in society, the order of life even in its government. Viewed from the regional approach, there are at least three categories of rural areas in Indonesia, namely (a) villages occupying highland or mountainous areas; (b) villages in coastal areas or major riverbanks; And (c) villages located in areas between mountains and coastal or terrestrial plains. In addition the village can be distinguished into: a) villages where the distance to the center of the crowd is very remote or remote. Even roads to access urban areas may not have been made; and b) villages that are relatively close to the center of the crowds that allow access to information and developments, the city can be known.

Villagers are groups of individuals who have an agreement to settle in a settled area and are a key element of village existence. Villagers from

the background of their inhabitants can be grouped into: (a) rural communities formed on the same social historicity, ie homogenous villagers because they have a strong kinship system; (b) villagers whose members come from different social backgrounds, so heterogeneous as it appears to transmigration villagers; (C) and mixed villagers, a mix of homogeneous village communities and heterogeneous migrants, forming a new and unique village community.

Furthermore, the form of village governance is differentiated into (a) the form of formal village governance; (b) informal village governance; And (c) non-formal governmental forms. Categorization can be done: from the perspective of village leadership that can be differentiated into: (a) charismatic village leadership; (b) administrative village leadership; And (c) mixed village leadership. It can even be categorized as a three-part government administration, namely: (a) traditional village governance administration; (b) modern administration of village administration; and (c) mixed village governance.

Based on the overall elements of the village consisting of elements of village territory, elements of village communities, elements of village life and village governance, the sub-element of village is basically a village unity. To that end, each sub element of the village that has the same character can be categorized in a village typology. Based on the analysis of the sub-elements of the village, there are three categories of characteristics of villages in Indonesia in terms of regional, community, village life and village government similarities in three village typologies: (a) the typology of the territorial village; (b) genealogical village typology; And (c) mixed village typologies.

## 1. Conclusion

The village administration in the constitutional system of the Republic of Indonesia is essentially the lowest government with original autonomy which already existed, but in the perspective of the 1945 Constitution of the Republic of Indonesia does not determine the existence of village autonomy, even after the enactment of Law no. 6 Year 2014 on the Village, which placed him as a government authorized to regulate and manage their own household.

2. The model of good village governance in the constitutional system of the Republic of Indonesia, is to place the village government as a region with original autonomy, and make it the lowest government in the structure of state government.

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