

The Implication of Recognition Principle in the Administration of Village Governance

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The Implication of Recognition Principle in the Administration of Village Governance

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Abstract

This study aims to analyze the implications of the existence of the principle of recognition to the administration of village governance. The method used is normative method with juridical, and doctrinal approaches. The principle of recognition brings the existence of the village to play an independent role in the administration of village governance and the affairs of the village while increasing the participation of the village community in realizing good governance. This principle of recognition is also an alternative in exploring the origin of the village in question, especially for villages that are beginning to forget their origins. Notwithstanding, basically the principle of recognition is recognizable as long as it is still alive and applies in the village concerned.

Keywords: Existence; Recognition Principles; Village Government

1. INTRODUCTION

Crown land governments, the main organs of self-government by regional groups within the empire, capitalized on this opportunity, as did members of the psychiatric profession who were based in the regions (Topp, 2007). Dysregulation of autonomic control often develops with advancing age, favoring a chronic state of heightened sympathetic outflow with arasympathetic withdrawal. However, the mechanisms of this age related autonomic impairment are not known (Wood, Badv, Speechley, & Shoemaker, 2017). The positive effect of autonomy on product innovation is highest for innovations that are new to the subsidiary and lowest for product innovations new to the world (Beugelsdijk & Jindra, 2018). The struggle for the country's true sovereignty goes hand-in-hand with a less-apparent struggle for university's autonomy (Osipian, 2017). Exercising autonomy implies assuming responsibility (Maier, 2014).

Village autonomy has again become a topic of conversation from various perspectives in Indonesia since the enactment of Law Number 6 of 2014 concerning villages (hereinafter referred to as the Village Law). This is also followed by various strategic steps prepared by the government, one of which is through a national development plan to develop the

village. The expected development is not just the physical development, but the economic development, the quality of life, and the quality and competence of the community. Given the large number of sectors that need to be repaired and improved in rural areas, the budget allocation is also quite large.

As a form of village development effectiveness, the existence of autonomy rights for villages is also recognized. Based on this autonomy, the village has the authority to regulate and manage the household affairs of the village. Additionally, based on the Village Law, village autonomy stipulated in the Law has its own uniqueness. When looking at Article 1 number 1, there is a phrase "origin rights" which is also used as the basis for the implementation of village autonomy. Recognition of origins (recognition) rights is actually a mandate of the Constitution, namely in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that:

(2) The State recognizes and respects customary law community units along with their traditional rights insofar as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.

However, the recognition of this origin rights is limited in that it is only directed at rights that are still alive and does not conflict with the principles of the Unitary State of the Republic of Indonesia (*NKRI*). Aspects included in the recognition of these origin rights are such as institutions, community organizations, village treasury land, or agreements in the community. Nevertheless, the village can still explore its potential according to its characteristics.

If examined further, the implementation of the principle of recognition is apparently still not in accordance with the nature of the principle of the real recognition. Ideally when the principle of recognition has been confirmed in legislation, village independence must be reinforced. Villages should not be intervened with policies that actually inhibit its independence, both by the government and other non-governmental parties. This is because the principle of recognition is the main pillar of village autonomy (Syafrudin & Na'a, 2010).

The existence of this recognition principle should be able to become a bridge to accelerate village development, especially in relation to the implementation of village governance. This origin right should also be able to become a foundation for the village to explore historical perspectives, or good value local wisdom, so that it can be adopted in the context of village governance administration. For this reason, in the study, further information on the implications of the existence of the principle of recognition for the administration of village governance is examined.

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2. METHOD

This study uses a normative juridical study design. It means that this study is conducted by examining library material or secondary data that is legal in nature. There are two approaches used, namely statute approach and doctrinal approach.

3. DISCUSSION

Dynamics of the Arrangement of Village Governance Administration in Indonesia (Early Period of Independence to the Beginning of Reformation in 2001)

The implementation of village governance in Indonesia is inseparable to the existence of village autonomy. This is because the village autonomy is the basis of village administration. The journey of

the existence of village autonomy to be recognized as it is today under Law No. 6 of 2014 naturally experiences a long and ups and downs process. Polemic is always emerges coloring the struggle for village autonomy, both from a political, juridical, or sociological aspect. The village, from the beginning or even before independence, has been seen as an entity capable of contributing to building national civilization and development. However, the potential of the village is not balanced with good regulations, so the village is always in a position of tugging (Soemitro, 1983). This obviously results in the growth of villages that tend to be static. Moreover, the stigma that the village and its people are the region and the people who are left behind is still inherent until now; cause a gap between the village community and the city. In fact, villages give a big contribution in national economic development (Refi, Wahyuni ., & Falahi, 2014).

Viewing from juridical-historical perspective, all laws and regulations governing the administration of village governance, from the beginning of independence until the beginning of the reform era in 2001, have experienced ups and downs. The first is Law Number 22 of 1948 concerning Regional Government (Law No. 22 of 1948). The law does not specifically regulate the village, but places it as a hierarchical part of the regional government. Based on the formulation as stated in Article 1 of Law No. 22 In 1948, the state establishes three levels of autonomous regions, namely provinces and districts which are large regions, and villages became small cities. However, the implementation of autonomous village governance has not been fully implemented. This is as confirmed in the explanation of number 31 Chapter XII concerning Village Areas Law No. 22 of 1948. Rural areas are still considered not broad enough to be able to organize autonomous government. There is still a need for guidance to be able to organize an autonomous government. As a result, the Law No. 22 In 1948 is still unable to run effectively to become the basis for the implementation of autonomous village government.

Secondly, it is the perspective of Law Number 1 of 1957 concerning the Principles of Regional Government. The law is actually created as a derivative form of the Provisional Constitution of 1950. The basic idea to be built into Law No. 1 of 1957 is while setting Level III Regions,

namely villages. Law no. 1 of 1957 also continues to direct the level III area to maintain the uniqueness of the village, so that the administration of the village governance still adhered to the inheritance (local wisdom) in the village. If the uniqueness is removed, or even uniformed, it can damage the order of village administration (UU, 1957). However, Law No. 1 of 1957 was not yet to be fully implemented, given the Presidential Decree of July 5, 1959, which reaffirmed the 1945 Constitution. No. 1 of 1977 is no longer in line with the 1945 Constitution.

Thirdly, the emergence of Law Number 19 of 1965 concerning *Desa Praja*, a legal community unit that has certain regional boundaries, has the right to manage their own households, choose the authorities, and has its own property, (Law No. 19 of 1965). There are three main objectives for establishing the law, including (Gie, 1982):

- a. To replace all legislation concerning villages that are feudal colonial in nature and obsolete;
- b. To create a national law that will guarantee a more dynamic and efficient rural system to participate in completing a democratic national revolution and universal national development;
- c. To arrange the unity of legal communities throughout Indonesia become *Desa Paraja* in order to accelerate the formation of level III regions.

Law no. 19 of 1965 indeed aims to direct to use the same terminology, namely *Desa Praja*. Structurally, those involved in the administration of village governance are at least among others: The Head of *Desa Praja*, the Consultative Body of the *Desa Praja*, Public Order Enforcers of *Desa Praja*, the Registrar of the *Desa Praja*, the Deputy of the District Government, and the National Advisory Board. They run a government based on autonomy rights. However, many parties actually want the Law No. 19 of 1965 shall had not be implemented, because it was considered to damage the uniqueness of the village. The government even had issued the Instruction of the Minister of Home Affairs Number 29 of 1966 which postponed the realization of the formation of the Paraja Village. This shows that the Law No. 19 of 1965 many experienced substantial defects.

Fourth, Law Number 5 of 1979

concerning Village Government (Law No. 5 of 1979), in lieu of Law No. 19 of 1965. Law No. 5 of 1979, it created a polemic about village uniformity. Village in this sense, as stated in Article 1 letter a, is only considered an administrative executor. As a result, the implementation of village government was not able to develop to develop the independence of village growth. The village becomes static and moves only based on instructions. Even worse, the uniqueness of the village is disappearing because it is not legally recognized. Even though Law No. 5 of 1979 alludes to village autonomy, it is only an ornament that does not apply sporadically. Hierarchically the existence of the village also becomes subject to the sub-district head. As claimed by Yando in (Gunawan, J., 2005), the implementation of village governance that is ideally based on the system of living together, has been replaced by a new system that is different from the characteristics of the village community. Furthermore Gonggong (Huda, 2015) declares that Act no. 5 of 1979 is actually declared constitutional, because it is contrary to Article 18 of the 1945 Constitution. Nevertheless, Law No. 5 of 1979 has succeeded in poisoning the administration of the village administration, and more or less still has an influence to date.

Fifth, Law Number 22 of 1999 concerning Regional Government (Law No. 22 of 1999) *juncto* Government Regulation Number 76 of 2001 concerning General Guidelines for Regulations concerning Villages (Government Regulation No. 76 of 2001). The two rules seemed to provide a few offers that directed the implementation of village governance as a whole according to the principle of autonomy. Slowly the origin rights as the basis for the implementation of autonomous village government also begins to be inserted (Article 1 number 12, 2001). Based on Law No. 22 of 1999, the implementation of village governance is a subsystem of the government system, so that the village has the authority to regulate and manage the interests of its people. The village head is responsible to the Village Representative Body and submits the report on the implementation of the task to the Regent. In the village, community organizations that are village government partners can also be formed.

Looking at the dynamics that occur, it cannot be separated from aspects of interest. Villages that are supposed to be able to develop and make a major

contribution to national development are actually hampered. This also shows that the implementation of village government, ideally, still has to hold on to traditional values (local wisdom), because that value actually strengthens the existence of the village. If the village only carries out administrative functions, no one can develop. The implementation of village government does not only involve elements of the village government, but also primarily involves the community as a whole.

Implications of Recognition Principle Based on Law No. 6 of 2014 concerning Villages

The dynamics of the regulation of the implementation of village governance has shown that a centralized state can actually hamper national growth. This is evidenced by regulations specifically set up on village governance that did not work as expected. As a result, diversity from the community has become seriously neglected, both in the process of planning, implementing and evaluating development. This situation gave rise to a reformation reaction in 1998 which triggered the change of a centralized system to become decentralized.

To further strengthen the position of the early village government, the regulations have been accommodated in the Regional Government Law, so that Law Number 6 of 2014 concerning Village (Village Law) is launched. It is this Village Law which then becomes the basis for the arrangement of the new village administration. The emergence of the Village Law in general is intended to provide legal protection, legal certainty, and empower rural communities. Considering the complex development of the village, the village is not only understood as an administrative or residential area, but also an entity or character of a community.

In Article 1 number 1 of Village Law states:

"Village shall be village and traditional village or as referred to by other names, hereinafter referred to as Village, shall be a unit of community that has boundaries with the authority to regulate and manage the affairs of government, interests of the local communities based on the community's initiatives, right of origin, and/or traditional rights recognized and respected in the system of government of the Republic of Indonesia."

Furthermore, in Article 1 number 2 of

Village Law, it is confirmed that "Village Administration shall be the implementation of government affairs and public interests in the governance system of the Republic of Indonesia."

The principle of recognition, as one of the principles in the arrangement of village administration as stipulated in Article 3 of the Village Law, is the recognition of the rights of the origin of the village concerned. The application of this principle is based on the mandate of article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, where "The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law." From a philosophical point of view, the laying of the principle of recognition, given the formation of the Unitary Republic of Indonesia ("NKRI"), is preceded by villages scattered throughout the territory of the Republic of Indonesia, and therefore the state also has an obligation to respect the existence of the origin of the village. It can be analogized that the village is one of the founding fathers for the formation of the Unitary State of the Republic of Indonesia.

The implementation of this recognition principle has its own influence on the implementation of village governance. The principle of recognition is considered more strategic in implementing village governance. This is because in general the principle of recognition provides freedom to the village while at the same time making it more independent to initiate mainly the formation of village legal products, the establishment of village social institutions, the acquisition of village income, and the participation of village communities in the creation of village autonomy. The village has more legitimacy in running its government, with established legal bases.

The village is based on the principles of recognition and subsidiarity, not on the principle of decentralization. The authority of the village no longer follows the scheme of delegation or partial delegation of authority from the district/city, but with the scheme of recognition (recognition) and subsidiarity over the interests of the local community, directly from the Village Law. Under this scheme there are two main types of village authority:

- a. The authority of origin recognized by the state: managing assets (natural resources, communal land, and village cash land) within the village jurisdiction, forming a village government structure by accommodating the original structure, resolving disputes in a traditional manner and preserving local customs and culture.
- b. Attribute authority regulates and takes care of the interests of the local community (village): village development planning and spatial planning, forms village government structures and organizations, organizes Village Chief elections, forms Village Representative Body/Village Consultative Body, manages APBDes (Village Income and Expenditure Budget), forming community institutions, developing BUMDes (Village-Owned Enterprises), and others.

Reviewed further, it can be seen from several aspects. First is in terms of socio-cultural. From this dimension, the principle of recognition of village governance has positive implications, such as social, political and cultural recognition of village communities. Through this policy, a community entity that has a long history of cohesiveness and greatness, then gained recognition in the form of re-realization of the area in Indonesian government administration, namely as an autonomous region. This recognition is considered to be able to make a positive contribution to community satisfaction. Thus, regional support for national government will be created and become a resolution of conflicts between groups or groups in society.

The village community can actively participate in the administration of the government to realize good governance. The principle of cognition can change the paradigm of the passive society of the government, becoming more active. The form of participation is among others in making decisions, implementing, receiving benefits and evaluating. The participation is also in line with that stipulated in Article 68 of the Village Law, which is part of the rights and obligations of the village community, wherein the village community generally has the right to supervise the administration of village government, serve as the village apparatus, and is obliged to encourage and maintain the value of consultation, kinship and mutual cooperation in the administration of village governance. Of course, this participation

can lead to closeness between village communities and the government, both at the village, district/city level, and can be even higher in the provincial and central regions. Plus, it can also enhance democratic values adopted by the Indonesian state.

However, the policy of establishing this village government in the process can also trigger conflict (horizontal) between communities. The pro and contra attitude towards the establishment of an independent village government will create disputes with the Regional Government of the City/Regency in the transfer of assets and the determination of boundaries, which certainly has implications for tensions between communities in various layers of regional government.

Second, the effectiveness of village services can be more assured given the institutional structure of village governance. Village leaders will be more independent in determining village service delivery. Increasingly strong position, authority and village finance will certainly lead to village services that are more popular in the community. Service infrastructure will also increase. The legitimacy of cooperating with other parties can also improve services in the village, as stated in Articles 91 to 93 of the Village Law.

Thirdly, economic development of the village: through the possibility of establishing Village-Owned Enterprises ("BUMDes"), as stipulated in Article 87 to Article 90 of the Village Law, improving the economic welfare of rural communities will be more secure. Moreover, the establishment of BUMDes is carried out through a collective agreement in a meeting in the village, which is then stated in village regulations as its legitimacy. The village will have full control over the BUMDes that has been formed, where the results of the BUMDes are intended for the development of the village in question. On the other hand, the existence of BUMDes is also able to build the productivity level of the village community, especially for those who have not had regular jobs so far. The existence of BUMDes also maximizes village potential by the village community so that it is not always monopolized by the existence of private companies or foreign companies.

In addition, the opportunity to collaborate with other villages or third parties, as confirmed in Article 91 to Article 93 of the Village Law, can further improve

the existence of the village, especially in relation to village economic development. BUMDes that has been formed can also be developed by collaborating with other parties.

It is necessary to understand that basically the existence of this recognition principle is not solely for building villages with the widest possible autonomy as well as formal autonomy in the regency/city administration. The autonomy of the village in question is autonomy of recognition (origin), which means autonomy that has been owned for a long time and has become a custom inherent in the village community concerned (Destifani, 2013). Therefore, the implementation of the recognition principle is an attempt to remind the village of its origin, on the other hand it also gives freedom to the village to regulate the affairs of the village while still adhering to the positive legal norms that exist. Thus, the principle of recognition is a balance in the implementation of village governance.

4. CONCLUSION

The existence of the principle of recognition is a representation of the mandate of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This recognition principle brings the existence of the village to play an independent role primarily to regulate the affairs of the village, including increasing the community participation in realizing good governance. On the other hand, the principle of recognition is also an alternative in exploring the origin of the village in question, especially for villages that are beginning to forget their origins. But basically the principle of recognition is recognized as long as it is still alive and applies in the village concerned.

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