



The urgency to reconstruction the law of concerning villages in obligations of village heads to resolve disputes and misdemeanors

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ABSTRACT

The rural population is the basic capital of national development, which belongs to the people and nation of Indonesia. Villages have developed in various forms as part of the government structure and must be empowered to be strong, advanced and democratic so that they are able to carry out governance. In accordance with the mandate of the Law on Villages, the Village Head has the obligation to resolve disputes within the Village community. So far, the position of the village head in resolving conflicts is not clear, especially when minor crimes occur within the village community. This writing aims to examine how the urgency of the reconstruction of the Law on Villages in the obligation of the Village Head to Resolve Disputes and Misdemeanors. The research method used in the framework of this research is normative legal research method. The results of the study show that solving a problem that occurs in the village by placing the Village Head as a peace judge is a form of discretion/executive policy in order to realize public services for the community so that it is better to carry out a reconstruction of 26 paragraph (4) of Law No. 6 of 2014 concerning Villages.

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1. INTRODUCTION

Villages or other names existed even before the Unitary State of the Republic of Indonesia was formed and proclaimed. The early history of the formation of villages begins with the formation of community groups due to human nature as social beings who have the same natural urge or interest from external dangers. (Andriyani, 2022). When was the beginning of the formation of the village until now it is difficult to know with certainty. The term village has developed under another name since the enactment of regional autonomy.

Referring to the concept of a Pancasila legal state which aims to create social justice for all its people, in addition to the need for mutual cooperation from its people with the concept of Participatory Democracy (Nainggolan, 2018), then the Government as an organ/body directly responsible for carrying out its duties and functions based on the mandate of the constitution runs the government.

In line with the provisions in Law Number 6 of 2014 concerning Villages which emphasizes the function of the village head as a dispute resolution. Article 26 (1) states: "The Village Head is in charge of administering Village Administration, carrying out Village Development, Village community development, and Village community empowerment". Furthermore, Article 26 (4) letter

k. states: In carrying out the tasks referred to in paragraph (1), the Village Head is obliged to: resolve community disputes in the Village;"

In order to optimize the obligation of the village head to resolve community disputes, the provisions of Article 28 of Law Number 6 of 2014 concerning Villages state that: Village heads who do not carry out the obligations referred to in Article 26 paragraph (4) and Article 27 are subject to administrative sanctions in the form of verbal warnings and/or written warnings. In the event that the administrative sanction as referred to in paragraph (1) is not carried out, a temporary dismissal is carried out and can be continued with dismissal.

Community disputes as the norm in the provisions of Article 26 paragraph (4) letter k are interpreted as a difference of opinion, conflict of opinion in society, difference or conflict of opinion cannot be said to be a criminal event if it does not fulfill the elements of a crime as regulated in the provisions of the law. However, it is more appropriate to use it in resolving civil disputes. In practice in the field, for villages that have territory and communities, the occurrence of disputes is a normal thing that cannot be avoided as long as there is interaction between humans.

In addition to the provisions of the law, the obligation of the village head to resolve disputes is Government Regulation no. 72 of 2005 in Article 15 paragraph (1) states that the village head is "obliged" to reconcile community disputes in the village, so the role of the village head is very important in maintaining and fostering community peace.

In addition to resolving community disputes, the village head also deals with and resolves minor criminal cases such as defamation, persecution, and even cases of domestic violence. This is done by the village head as part of his responsibilities and role as caliph in the village. The village head's actions in resolving cases of minor crimes and even crimes of domestic violence as complaint offenses that carry a heavier criminal penalty do not have a clear basis for authority in the law on villages.

Peaceful conflict resolution is very important to put forward in order to maintain social harmony in people's lives, and not cause emotional wounds that leave long-lasting grudges (Arpin & Haritsa, 2018). This peaceful and amicable settlement, the point is an apology from the party who made a mistake to the aggrieved party and the aggrieved party is willing to accept an apology and is also willing to forgive the party who made a mistake (Rahayu & Mayastuti, 2016).

Settlement peacefully to guarantee and restore to its original state is a form of settlement using the Restorative Justice route (Hasan & Mustajab, 2022). The concept of Restorative Justice in the settlement of cases by the Village Head is the main choice by prioritizing approaches to kinship, customs, culture and deliberations with the litigants.

The problem that arises from the explanation above is a juridical problem where in the provisions of Law Number 6 of 2014 concerning Villages and in Government Regulation Number 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages, it does not explain at all about the type of case/ disputes, mechanisms, forms, products of decisions and legal implications of village head dispute resolution. It is not clear whether the village head acts as a "village judge" or as a mediator as in alternative dispute resolution (ADR) (Putra & Hidayat, 2022).

Juridical problems can be resolved by clarifying the boundaries of the types of cases/disputes, mechanisms, forms, products of decisions and legal implications of dispute resolution by the village head through the reconstruction of the provisions of Article 26 of Law Number 6 of 2014 concerning Villages in order to strengthen the position of the village head as a judge of peace in village.

If the village head's actions are not regulated in handling and resolving minor criminal cases, it creates uncertainty and cannot provide legal protection to the village head for his actions. At the moment settlement of community disputes by the Village Head can only be categorized as a discretion from him in the framework of public services for his community members. It is this discretion that creates incomplete norms in the provisions of Article 26 of Law Number 6 of 2014 concerning Villages.

Based on the fact that most village communities have always used the Village Head as a place to complain and ask for justice, related to the settlement of cases that occur between fellow villagers, both civil cases and criminal cases. Research on the role of the Village Head in resolving

disputes has been conducted. According to research by (BAHRUM, 2020). The difference with this writing is that the writing of this article is more specific about the construction of norms in the Village Law so that the Village Head resolves not only administrative cases but also other cases such as minor criminal cases.

Justice is a very important element in law enforcement wherever it is located, the community is very interested in law enforcement or law enforcement, justice must always be considered. The point is in carrying out law enforcement must be done fairly. Based on the description above, this writing aims to examine the urgency of the reconstruction of Article 26 paragraph (4) of the Law on Villages in Obligations of Village Heads to Resolve Disputes and Misdemeanors.

2. RESEARCH METHOD

The research in this paper uses the method of a normative legal study. This means that normative legal research basically analyzes law, legal principles, legal rules, legal systems, and various juridical concepts. (Benuf & Azhar, 2020). The problem approach is (case approach) which in this case studies the application of legal norms or rules. The case approach is a type of approach in normative legal research where prospective researchers try to build legal arguments in the perspective of concrete cases that occur in the field. (Salehuddin, 2022). The data needed in this writing is secondary data as the main data and primary data as supporting data. Legal materials, namely data obtained from literature studies from archives, library materials consisting of legally binding materials, namely: the 1945 Constitution, Law Number 6 of 2014 concerning Villages, Government Regulation in Lieu of Law No. 2/2022 concerning Job Creation Then in the form of empirical data, legal journals, scientific journals, newspapers, the internet.

This research was investigated using literature (secondary material) or library law research, which generally discusses: research on legal principles, research on legal systematics, research on synchronization of Sociology and legal criminology on technology in the era of disruption. Sources that assist the author in selecting this method namely: The primary source of law is the binding material for the problem to be studied. For example the 1945 Constitution, laws, government regulations, Pancasila, jurisprudence and others. Secondary legal sources are data materials that explain primary data legal materials. Examples are bills, research results, scholarly scientific works, etc. Tertiary sources of law are data materials that provide information about primary and secondary rules. Examples are legal language dictionaries, encyclopedias, magazines, mass media and the internet.

The data collected in this study used a statutory research approach and a case approach, the analytical technique used to process legal material was legal hermeneutics. Legal hermeneutics is also known as a way of materializing the legal material itself as a form of effort to obtain clarity from something that is being discussed.

3. RESULTS AND DISCUSSIONS

Since The village head is the leader in a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, local community interests based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the system of government of the Unitary State of the Republic of Indonesia (Sugiman, 2018). The implementation of village government which is run by the village head as a person who is given a mandate by law is carried out based on the principles of: legal certainty, orderly administration of government, orderly public interest, openness, proportionality, professionalism, accountability, effectiveness and efficiency, local culture, diversity, and participatory.

In carrying out his duties as the village head, the village head has the obligation to resolve disputes in the village. The obligation to resolve disputes has a very basic purpose, that is, apart from being given the authority as stated in Article 19 of Law Number 6 of 2014 concerning Villages, the village head also has the responsibility of being a village judge. Another very important job of a village head is as a person who is trusted by the community, as a person who is able to resolve and at the same time reconcile members of his community who are experiencing divisions,

disputes and is also seen as capable of resolving criminal cases whose type of crime is a misdemeanor, a crime classed as a complaint offense.

The provisions of Article 26 paragraph (4) in letter k emphasize that the village head has an obligation to resolve disputes that occur in the community. The Law on Villages has undergone several substance changes in Law Number 11 of 2020 concerning Job Creation. Some time ago, in order to improve the Job Creation Law in implementing the Constitutional Court's decision, President Jokowi issued Government Regulation in of Law Number 2 of 2022. Government Regulation in lieu of Law No.2/2022 concerning Job Creation does not change Article 26 paragraph (4), so it can be concluded that The provisions of Article 26 paragraph (4) have not changed.

The obligation to resolve disputes in the midst of society when associated with the position of a judge generally has a different view, judges generally have the authority to resolve cases submitted to them while maintaining and basing them on the provisions of positive law that apply, while the position of a judge is pinned on Apart from being guided by different positive legal provisions, the village head is of course the village head in carrying out the task of resolving disputes which places more emphasis on achieving peace between the two parties.

As a person who is trusted by the community, the village head in carrying out his obligations to resolve disputes must be able to bring about justice between the two parties. The village head as a leader is considered fair by the community if he can maintain harmony in interactions in a dispute resolution process. According to the authors, the provisions governing the obligation of the village head to resolve disputes are based on the historical development of the village. During the colonial era, the village government was considered an important area, during the colonial era, rural areas were part of the existence of an indigenous judiciary in Java and Madura, or autonomous regional courts outside Java and Madura. (Alamsyah, 2011).

The competence of village judges is regulated in such a way as to prevent the possibility of jurisdictional disputes arising with governor judges or religious judges. Because judging from the function of judges, according to Ter Har, they are as follows: "Eerst en voornaamste oogmerk van de beroepsrechter, die zoekt naar regelen van gewoonterecht, waarmede hij zijn uitspraak in het hun voorgelegde geschil zal kunnen motiveren is, moet althans zijn: het vinden van concrete beslissingen in vroegere gevallen" which if unable to make a decision regarding an existing case, the judge will do so with consideration of the principles and the applicable customary law system as explained below: "Kent de rechter geen vroegere beslissingen in gevallen met gelijke relevante feiten of bleken die beslissingen niet houdbaar, and moet hij niettemin een beslissing nemen, welke naar zijn besteweten als rechtsbeslissing en dus als rechtsregel te gelden heeft in het milieu, waarin hij rechtspreekt. Om die beslissing te vinden moet hij zich doordringen van het rechtsstelsel in zijn geheel, moet hij de sociale werkelijkheid kennen de eisen der menselijkheid" (Nainggolan, 2018).

The influence of customary law on any settlement of disputes in the village is the main factor of the legal norm which only confirms that the village head has the obligation to resolve disputes in the village. (RAHAWARIN, 2018) In addition, the position of criminal law at the time when laws and regulations and government regulations governing the obligation to resolve disputes was limited to discretion. In civil law known as Alternative Dispute Resolution (ADR) or alternative dispute resolution is an effort to resolve disputes outside of litigation (non-litigation). In ADR/APS there are several forms of dispute resolution, among others (Winarta, 2022): consultation, negotiation, mediation, conciliation, arbitration, good offices, mini trials, summary jury trials, rent a judge, and med arb.

The 1945 Constitution of the Republic of Indonesia, abbreviated as the 1945 Constitution, has emphasized that Indonesia recognizes the existence of customary law as part of the legal system in Indonesia. As a legal form that lives, grows and maintains its existence in the community, it places that the form of dispute resolution uses customary laws and instruments that exist in the customary territory. Settlement of disputes by producing peace is the most essential goal of law. Peace that comes from an agreement shows the existence of legal certainty and legal equality. Based on that, the core function of the Village Head is to apply the law as a means to control and reform the people in his village.

The dispute that is often used by the village head in every dispute resolution in the village is mediation, namely a settlement assisted by a neutral/impartial third party (mediator). (Hamidi & Latif, 2021). The role of the mediator is as an intermediary (passive) who provides assistance in the form of alternative dispute resolutions to be determined by the disputing parties themselves. (Graduates & Ismail, 2019). In Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Courts, mediation is defined as a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator. The role of the mediator helps the parties seek various possibilities for dispute resolution by not breaking or imposing views or judgments on issues during the mediation process. (Rofiqi & Mulyani, 2022).

The mediation process carried out by the village head does not always end in peace between the two parties. The village head as a mediator invites both parties to be able to pursue peace, meaning that the object in dispute is trying to find common ground and be acceptable to both parties. In practice in the field it was found that the village head was not only faced with community problems related to violations of rights and obligations, but the village head also often faced problems between the people in his village related to a criminal act.

The actions of the village head in dealing with community complaints regarding a criminal act were not immediately responded to and resolved in the village. Criminal acts which are minor crimes such as defamation, domestic violence which constitute complaint offenses are often resolved by the village head. This proves that the village head's actions really help the community, law enforcers to solve every problem that occurs in the community. The creation of peace in society is actually an essential legal goal that can be achieved through legal certainty and legal equality.

The act of bringing perpetrators and victims together by the village head was very effective in resolving criminal acts committed by the community. With a family approach and what was carried out by the village head led to peace for both parties (Meidianto & STK, 2021). This action will be different if the village head is faced with complaints about violations of civil rights from the community, for example regarding disputes about land boundaries, ownership rights, inheritance rights which culminate in the village head's action to oblige the parties to bring evidence related to the object of the dispute.

The village head's actions in resolving disputes and resolving criminal complaints in general do not understand the provisions of Article 26 paragraph (4) letter k which limits space for the village head on the obligation to resolve disputes. The understanding of the provisions of Article 26 paragraph (4) has not been properly understood by the village head, especially with regard to the limitations of obligations in resolving community complaints. The actions taken by the village head, according to the author, are very risky to the position of a village head. The following are the consequences of the village head's actions in resolving complaints of criminal acts by the community, which are direct and indirect consequences.

Immediate effect

The direct consequence referred to by the author is that the village head's actions resolve any complaints of a crime by the community, namely: The village head can be sued by the parties, if it results in a decision, then the decision can be canceled

Indirect consequences

The indirect effect referred to by the author is a situation that is indirectly felt by the village head when the action to resolve a complaint of a crime by the community is still carried out, the indirect consequences are: The village head has a psychological burden in making decisions, the reluctance of the village head to resolve the matter

However, the shape of the Village Head who acts as a peace judge for the community is a means to make a law that regulates the rights and obligations of legal subjects so that each of them carries out their obligations properly and obtains their rights fairly. Besides that, the law also functions as an instrument of protection for the legal subject itself (Permadi, 2016). In fact, conflict or dispute is normal and unavoidable as long as there is interaction between humans (Prabawati, 2019). In an anthropological perspective, conflict is a social phenomenon that cannot be separated from human life, even more so in a multi-cultural society. (Rahayu & Mayastuti, 2016). It is

something that cannot be avoided in life together. Manifest conflicts or disputes have various forms, for example conflicts between individuals, between families, between groups and so on. Technically speaking, there are two options for community members in resolving disputes, namely through judicial (litigation) by state courts and through non-judicial (non-litigation) ways by third parties (mediators). (Liber Sonata et al., 2022).

Historically and culturally, Indonesian people, especially in rural areas, have been accustomed to using local wisdom-based local institutions in resolving disputes. Phrases such as winning without singing, *ana rembug di rembug*, pillars of *agawe santoso*, *siro yo ingsun-ingsun yo siro*, or *ngalah dhuwur wekasane* and so on, are local wisdom values in resolving disputes in Javanese rural communities in general. (Asmorojati & Yuli, 2020).

The role of a village head is very important in resolving disputes in village communities. Historically, during the Dutch East Indies era, there was a village court. Through Stb. 1935, 1935, Number 102 inserted Article 3a into the *Rechterlijke Organisatie* (RO) which briefly states that it still recognizes the authority of judges from small legal communities (village) to examine customary cases under their authority, to adjudicate on an independent basis. Custom without imposing (criminal) punishment. The authority of these judges does not reduce the authority of the parties to submit their case to the judge's decision at any time. With the insertion of this article, then the position of the village court is recognized. In fact, during the Dutch colonial administration, there were two forms of justice for indigenous people,

In line with the provisions in Law Number 6 of 2014 concerning Villages which emphasizes the function of the village head as a dispute resolution. Article 26 (1) states: "The Village Head is in charge of administering Village Government, carrying out Village Development, Village community development, and Village community empowerment". Furthermore, Article 26 (4) letter k. states: In carrying out the tasks referred to in paragraph (1), the Village Head is obliged to: resolve community disputes in the Village;" In order to emphasize the function of the village head as a dispute resolution, Article 28 threatens through sanctions, as emphasized:

Village heads who do not carry out the obligations referred to in Article 26 paragraph (4) and Article 27 are subject to administrative sanctions in the form of verbal warnings and/or written warnings.

In the event that the administrative sanction as referred to in paragraph (1) is not carried out, a temporary dismissal is carried out and can be followed up with dismissal.

The provisions of Law Number 6 of 2014 concerning Villages and in Government Regulation Number 43 of 2014 concerning Regulations for the Implementation of Law Number 6 of 2014 concerning Villages, do not explain at all the types of cases/disputes, mechanisms, forms, products of decisions or legal implications from village head dispute resolution. It is unclear whether the village head acts as a "village judge" or as a mediator as in alternative dispute resolution (ADR). The function of the village head as a dispute resolution is very strategic in supporting the operation of the state judiciary in Indonesia, moreover ipso facto this country is undergoing changes and shifting from *gemeinschaft* (community) to *gesellschaft* (association). In order to strengthen community values, the function of the village head as a local wisdom-based dispute resolution which has been confirmed by Law Number 6 of 2014 concerning Villages must be utilized to the fullest extent possible as an endeavor to expand access to justice for community members. This must include not only civil disputes but the function of the village head must be able to accommodate criminal cases on the scale of minor crimes by constructing Article 26 paragraph 4 of the 2014 Village Law.

The function of the village head as a dispute resolution is basically a mediation that takes the form of social network mediators and authoritative mediators. Historically, this function has long been known as a village court judge (Praka, Putra, & Hidayat, 2022). The function of the village head as the settlement of disputes as stipulated in Article 26 (4) letter k of Law Number 6 of 2014 concerning Villages is inseparable from the historical fact that in the past at the village and customary law community levels there were known village courts and or customary courts. Even though Article 6 paragraph (1) PERMA Number 01 of 2008 states that it is the District Court Judge who can become a mediator while other parties, namely people who are determined by the parties

themselves to act as mediators but must first have a certificate as a mediator, this does not apply if the mediation process occurs outside the court as was done by the village head.

The village head carrying out the task of resolving disputes is an authority that originates from attribution based on Law Number 6 of 2014 concerning Villages. The consequence is that a village head does not have to have a mediator certification to be able to carry out his duties as a dispute resolution. Sociologically, in many other customary law communities, the existence of customary justice ipso facto still plays a major role as a self-regulating mechanism or often referred to as a community justice system that works informally but autonomously. This institution, through its mechanisms, functions as a resolution, and/or as a restorer of an orderly situation in general.

The advantage that the village head has as a dispute resolution function will be very significant in reducing the flow of cases to the state court which is now overloaded. Many civil disputes and customary criminal cases, "flip-flops" cases, or complaint offenses will be more effectively and efficiently resolved by informal justice (customary justice) which is expected to provide restorative justice. In comparison, in several countries the function of the village head as a dispute resolution has been strengthened through politics recognition law and state statutory instruments.

The Government of Papua New Guinea established a Community Justice Liaison Unit (CJLU) as the official governance body of the Law and Justice Sector, with the aim of increasing compatibility and consistency between formal and informal systems and increasing the capacity of justice actors outside the state. In western Samoa, the village head or Fono has the responsibility to formulate applicable laws in the community, resolve disputes through customary meetings and decide on the form of sanctions to be implemented. Until now the Fono institution still exists in West Samoa and is recognized in a law called the Village Fono Act, 1990.

In the Philippines, the Barangay Justice System (BJS) is a mandatory conciliation and mediation program at the barangay, indigenous community or village level, implemented in 42,000 barangays. Philippine law limits Katarungang Pambarangay's powers as a customary court only to handle minor criminal cases. In addition, when referring to Bangladesh, the existence of village heads in the Shalish institution is very effective in resolving disputes in the community, both civil and criminal law, so a number of efforts to reform this institution have been carried out by various parties, including the Madaripur Legal Aid Association (MLAA).

Weaknesses in the provisions governing the obligations of village heads in Law No. 6 of 2014 concerning villages lie in which part of the legal scientific domain (criminal, civil, administrative) is the most appropriate to discuss this discussion considering that as fellow members of public law, Both Criminal Law and HAN have the same principles, including the principle of legality. This principle forms the basis of society and the government to take legal action.

The expansion that occurs between the two as an effort to adapt to the development of society, of course, also has an impact on one another and if this is not discussed in depth then a gray area will emerge between the two. This is due, in part, to the privileges of criminal law, the rules of which are found in other parts of the law, and the sanctions can be applied in almost all branches of law. The presence of this gray area is also due to the wide coverage of HAN, the boundaries of which have not yet been determined. The determination of these limits can actually be discussed in depth, and then set forth in writing as a legal reference itself.

Based on that, in social life which is full of a sense of kinship and brotherhood, where there is a very close relationship and a sense of unity and helping each other in all matters based on deliberation to reach a consensus. Based on this, every dispute conflict that occurs can be resolved by deliberation, not supposed to reach court. As villagers who have a sense of harmony and brotherhood, the settlement of disputes can be carried out in a peaceful manner.

4. CONCLUSION

Settlement of a legal issue that occurs in rural communities does not have to be resolved conventionally (through court) and can be resolved through consensus deliberation. Based on this, every dispute conflict that occurs can be resolved by deliberation, not supposed to reach court. As

villagers who have a sense of harmony and brotherhood, the settlement of disputes can be carried out in a peaceful manner.

The reconstruction of the legal substance, namely the provisions of Article 26 paragraph (4) of law No. 6 of 2014 concerning Villages, is something that is very urgent to do, the reason is none other than to provide legal certainty to the village head in carrying out his obligations to his community. The provisions of Article 26 currently do not accommodate the legal basis for the actions of the village head in resolving every complaint of a criminal act committed by the community. Article 26 paragraph (4) in letter k only emphasizes that the village head has the obligation to resolve community disputes in the village which according to the author of the article is only intended for the field of civil law. Therefore, in order to provide protection for the actions of the village head, it is very possible to reconstruct the legal norms of Article 26 of the law on villages.

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