

Vilage Authority

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**VILLAGE AUTHORITY BASED ON INDIGENOUS RIGHT AND
LOCAL SCALE AUTHORITY:
IMPLICATIONS OF LAW NO. 6/2014 TOWARD VILLAGE AUTHORITY**

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Abstract

Law No 6/2014 constructs village (*Desa*) authority into four forms in which the most important forms are indigenous or original village authority and village based local authority. This form includes authorities in village government functions, village development management and village social empowerment. State legal construction is in practice already implemented by village government. This research is therefore design to provide a bridge between state construction and village society construction in regard to these village authorities. This research occupies qualitative type by using *emic* method and interviews with key informants as well as focused group discussion (FGD). Locations of research are in two villages, namely Pekuncen and Lerep.

Research results show that there is different conditions in implementing village authorities between Pekuncen and Lerep Villages. In Pekuncen Village, there is good synergy between indigenous rights and formal village authorities. This may happen since the people of Pekuncen village are coming from the same tribe, namely *Bonokeling*. In Pekuncen village, indigenous or original village authorities are embedded with the formal village authority functions so that it has difficulty to distinguish between the two authorities. However, Pekuncen village could not be mentioned as indigenous village (*Desa adat*) because the government process has already implemented village law and regulation. Lerep Village is having deferent picture. Lerep is village that very fast in responding to the modernization and development of village authorities since there is a high demand for public services and developments. Lerep is very closed to the capital city of Semarang Regency, Ungaran, but this village is still formed as a village, not a city. The village life still takes place in Lerep as early formed in the government village system.

This research concludes that village authorities could not be implemented in the same way with local government decentralization. This is because village original or indigenous rights have already came firstly prior to local government decentralization or autonomy. Importantly, indigenous or original village construction should be integrated in state construction (by law) in order to effectively operate village governance. The principal of law recognition is pivotal to be implemented, namely the central and local governments recognize the village original or indigenous village authorities in order to guarantee the village government management will be conducted well. This conclusion or research findings contribute to the science of government, particularly in the importance of authority integration between indigenous and the formal authorities by law.

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**Keywords: village governance, village authority, village original rights, village government functions,
village based local authority.**

PREFACE

Indonesia has its own governmental structure, with the lowest being *Desa* (henceforth called village) or *Kelurahan* (urban community). A village has its own autonomy in its governance, while an urban community only serves as an administrative entity for the *Kabupaten* (Regency) or *Kota* (City). In quantitative numbers, there are about 73,000 villages and 8,000 urban communities nowadays. These numbers show that sociologically and politically a village has a powerful position, with its place being the closest with the society.

In the history of village arrangement, there are only three specific laws about it, and they are the Law No. 19/1965 on Village Township (*Desapraja*), Law No. 5/1979 on Village Governance (*Pemerintahan Desa*), and lastly Law No. 6/2014. The law construction on Law No. 6/2014 contains a new matter, in which this law about villages reflects the spirit and appreciation towards the village, which was acknowledged to have been existed since before The Unitary State of the Indonesian Republic (*Negara Kesatuan Republik Indonesia*) was formed, while giving the acknowledgement and assurance towards the existence to the unity of the law society and the unity of traditional law society along with their traditional laws.

To support the autonomic governance, a village has its rights in

which the law application about villages always undergoes changes. In Law No. 5/1979 on Village Governance, for instance, the rights of a village adhere to the rights, authority, and duty of the Head of Village (*Kepala Desa*). (Law No. 5/1979, Article 10) included the authority of village households, of village governance, and of general governance. Law No. 6/2014 on Village constructed the authority of village on Article 18, including the authority in village governance, the implementation of Village Development, the development of Village Society, and the empowerment of village society based on the social initiative, rights to their origin, and the local village custom. In Article 19, the Authority of a Village includes: (a) the authority based on rights to their origin; (b) local authority in village-scale; (c) authority ordered by the Government, Provincial Government, or Regency/City Government; and (d) other authorities ordered by the Government, Provincial Government, or Regency/City Government based on the stipulation of the official law. In this research, the two former authorities will be examined in detail as the basis of village autonomy, while the two others will not be studied, considering those authorities were given by the government.

The rules of engagement regarding the village authority based on the rights of their origin and local authority in village-scale are contained in the Government Regulation No. 43/2015 on Villages. In

Article 34, it is mentioned that the village authority based on the rights of origin at least consists of: (a) the organizational system of the traditional society; (b) the development of institutional society; (c) the development of the traditional institution and law; (d) the management of land as the treasury of the village; and (e) the development of the roles of village society. Meanwhile, the local authority in village-scale at least consists of: (a) the development of mooring buoy; (b) the management of village market; (c) the management of public bathing place; (d) the management of irrigation network; e. the management of living areas for village society; (f) the development of social health and the management of integrated health services (Indonesian: *Pos Pelayanan Terpadu* or *Posyandu*); (g) the development of art and learning studio; (h) the management of village library and reading parks; (i). the management of village water retention system (Indonesian: *embung desa*); (j) the management of drinking water in village-scale; and (k) the making of inter-village roads to farming areas.

Those laws are then implemented further through Regulation of Village Development, Disadvantaged Regions and Transmigration Minister (Peraturan Menteri Desa, Pembangunan Daerah Tertinggal, dan Transmigrasi) No. 1/2015 on Manual for Village Authority based on the Right of Origin and the Local Village-

scaled Authority (Pedoman Kewenangan Desa berdasarkan Hak Asal Usul dan Kewenangan Lokal Berskala Desa), where in Article 2 is mentioned that the range of the authority based on the right of origin of the village comprises of: (a) the organizational system of village forces; (b) the organizational system of traditional society; (c) the development of social institutions; (d) the development of traditional institution and laws; (e) the management of land as the treasury of the village; (f) the management of village lands or the land properties of the village with local naming; (g) the management of *bengkak* lands; (h) the management of *pecatu* lands; (i) the management of *titisara* lands; and (j) the development of societal roles of the village.

The criteria of local authority in village-scales are as followed: (a) the authority which gives priority towards the social services and development activities; (b) the authority covering the arrangement and internal activities in the area and the social activities of the village with internal impacts towards said village; (c) the authority concerning the daily needs and necessities of village society; (d) the activities that has been operated by the village based on the initiative of said village; (e) the activity programs of the government, provincial government, and regency/city government along with third parties given and managed by the village; and (f) local authorities in village-scale

which has been arranged in the regulation of law regarding the authority distribution between the government, provincial government, and regency/city government. Local authorities in village-scale regarding village governance includes: (a) the determination and confirmation for the village borders; (b) the development of the administration and information system in the village; (c) the development of village layout and social map; (d) the logging and classification of the man-power in the village; (e) the logging of residents working in farming and non-farming sectors; (f) the logging of residents based on the number of working-age, working forces, job-seeker, and the participation level of the working forces; (g) the logging of working residents above 15 years old based on the working field, type of work, and work status; (h) the logging of residents working abroad; (i) the determination of the governmental organization of the village; (j) the forming of Village Consultative Body (*Badan Permusyawaratan Desa*); (k) the determination of village forces.

Based on those constructions, a question came along whether the authorities implemented by villages could be contained in Law No. 6/2014 on Villages. The answer to that question will be the focus of this study.

VILLAGE AUTHORITY BASED ON THE RIGHTS OF ORIGIN AND LOCAL AUTHORITIES IN VILLAGE-SCALE

Tracing the the origin of village authority based on the rights of origin could be traced to the formation of a village. A village could be understood as an area of law unity where a society established its own governance resides. (Kartohadikoesoemo, 1965:3) Further it was mentioned that the power of a village does not only contain the limited meaning of a government (*bestuur*), but also contains the broad meaning of the word (*regering*), because a village also has power upon: the court, legislative, police force, and defense forces. (Kartohadikoesoemo, 1965:135). In fact, based on the tradition the village residents have the right to choose their own Chief and deputize him if his deeds do not satisfy them. (Tjptoherijanti, 1983:18). Thus, village autonomy has existed since the formation of the village itself. Village Autonomy is based on customs, encompassing the physical and mental living of the Village residents, and is not given by the government. (Surianingrat, 1980: 14) A Village Autonomy is the autonomy of the community or local residents in organizing themselves. A Village Autonomy is mirrored also in Pekuncen Village and Lerep Village, the two locations of this research.

Almost all the resident of Pekuncen Village – most of it is a part of Kecamatan Jatilawang, Kabupaten Banyumas – is a descendant of *Bonokeling*. *Bonokeling* is a community submitting to *Kejawen* beliefs, living in their traditional living complex called *Kongsan*. As the followers of *Kejawen*, *Bonokeling* society has many rituals, such as *Unggah-Unggahan*, *Perlon Turunan*, *Perlon Rikat*, *Sedekah Bumi*, and *Kupatan Senin Paing*. Heart of the matter is that those rituals serve as a purpose to honor their descendants, which is *Bonokeling*. The rest are migrant residents generally devout Islamist (*Islam Taat*) or *Santri*.

The two communities execute different social functions and culture, including executing institutions. For example, the institution handling socio-cultural functions in *Bonokeling* community is called *Kayim*, while for *Santri* community is called *Kyai*. *Kayim* is a term given traditionally to someone, to whom a specific social function adheres to him, and until now this has been going on well.

Since the village chief and guardian (*pamong desa*) are also descendants of the *Bonokeling* Community, the two structures (the village executive body and *Bonokeling* community) are close-knit, resulting in reinforcing each other. The tradition done by *Bonokeling* community indirectly supports the governance of Pekuncen Village, not only social, culture, and

tourism sector, but also farming, social prosperity, social empowerment, education, and security.

There is a harmonious relationship between the *Bonokeling* community with the executive body. The existence of *Bonokeling* community has always been an important part of the governance, proven in the supports given to the *Bonokeling* community, and never limited, by the village government. The existence of *Kuncen* (the door-keeper of the community) is respected by the government, in the same manner as the *Bonokeling* community also respects the *Lurah* (the village chief) with the term *Kyai Lurah*. The *Lurah* also has an important role in ritual activities of the *Bonokeling* community, especially during fasting months.

Generally, there is no inter-citizen dispute, whether it was between *Bonokeling* community and the devout Islamists. Thus the validity of the traditional laws in *Bonokeling* community is directly proportional with the state law – in one side they are loyal to the traditional law of the community, and in the other they respect the village government as the state representative by respecting the *Kyai Lurah*.

The traditional chief (*Kuncen*, *Bedogol*) does not give administration service. If a member of the *Bonokeling* community needs an administration service, they process it in *balai dusun*

(village government office). Carefully examining what has been happening in Pekuncen Village, there are a few important notes regarding the implementation of village authority, be it the rights of origin or the village authority as the result of state policy change towards the village or the expansion of village authority as the result of given assignment (from the Center Government, Provincial Government, and Regency Government) to said village. In Pekuncen Village, the rights of origin are interrelated with the existence of *Bonokeling* community, which is the pioneer of Pekuncen Village. Considering more than 90% of Pekuncen residents are descendants of *Bonokeling*, which is the follower of *Islam Blangkon/Kejawen*, hence the village rights of origin also come from all the activities (social, economy, cultural, politic, et cetera) of said *Bonokeling* community. With the change of state policy about villages, the validity of Law No. 5/1979 on Village Governance has changed the function of village governance, from being more socio-cultural-economy nuanced to a more political approach in which the village government execute the governmental functions as the continuation of the above government (Central, Province, and Regency). This is also related with the social culture of the society that has always been *sendika dawuh* (ready to execute any order) to whatever the state

orders. Nevertheless, to this day, Pekuncen Village has not lost its socio-cultural-economy identity by taking hold of their traditions in general governance. There is a synergy between custom institutions created by the society with the formal institution by the village government, because both came from the source, the *Bonokeling* community. Thus, it is hard to sever the rights of origin with the extension of village authority because the rights of origin have dwelled in all the governmental functions of Pekuncen Village. Nevertheless, Pekuncen Village is not a traditional village, because its governmental arrangement has adopted the village government as it is arranged in the laws about villages.

Differ from Pekuncen Village, Lerep Village has different village authorities. Lerep Village is located in West Ungaran, Semarang Regency, near the city. According to the history of Javanese village existence, the villages in Semarang Regency belong to the region of *Keraton Surakarta*, which gives the power of village management with a specific traditional concept. *Titisara* land, for instance, is given by the Keraton as a living area for the needy with no land ownership. *Pangonan* land is a right given to the residents with no land ownership but have the skills to develop livestock. *Sengkeran* land is a right given to the residents to plant specific food substance, which is the primary need of the society,

as a part of food security and independence of the village. *Norowito* land is given to residents willing to manage the public means and infrastructure such as the graveyard, mosque, and roads. The *lurah* and *sak palungguhane* (village forces) get the *palungguh* land or *bengkok* as a royal award for their duty. *Bengkok blandong*, used to extract woods for village events such as *merti dusun*, *bersih desa*, and all village activities. Thus, every village basically has *bondo Desa*, now given meaning as a part of the rights of origin of the village.

In this case the village independence of village autonomy was set since the kingdom era. A *lurah* always has to be able the strength and weakness of the village, so he could develop the village resources in an optimal fashion. Since around 1942 the registry of *bondo deso* noting all the *palungguh* lands for *lurah* and village guardian (*pamong desa*, i.e. *kamituwo*, *bekel*, etc.) has been published and renewed in the 1960s. Said notes become the basis of the rights of origin of a village. Hence, it is clear that *bengkok* (as the source of economy) is basically embedded to the social status of *lurah* and all the village guardians (*Carik*, *Jogoboyo*, *Ulu-ulu*, *Modin*, *Bekel*, etc.) This is the paramount importance of the rights of origin a village, where the reward for social status is equivalent to the economic award.

The governance in Lerep Village is identical to the authority of village chief, since traditionally attached in his status the functions that must be ran as a leader and society protector simultaneously. In Lerep Village, the chief has authorities to: (a) leading the local government operations based on policies formulated together with BPD (Village Consultative Council); (b) putting forward proposal for village regulations; (c) determining village regulations after receiving approval from BPD; (d) formulating and putting forward proposal for village regulations on APB (Village Income and Budget) to be discussed and passed by BPD; (e) guiding the people of his village; (f) guiding the village's economy; (g) coordinating the village development based on participatory approaches; (h) representing his village inside and outside of court and being able to appoint lawyers to represent him in accordance with the law; and (i) authorizing other regulations as specified by the law. A chief of village also has responsibilities to: (a) firmly believing and customarily performing Pancasila, abiding with the Constitution of Republic of Indonesia; (b) improving his people's wealth; (c) preserving order and stability; (d) maintaining cooperation; (e) performing good governance that is free from corruption, collusion, and nepotism; (f) building relations with all government's partners; (g) implementing all constitutions; (h) practicing a good

administration; (i) taking responsibility on financial and budget management; (j) performing all matters that are his authority; (k) conducting conflict management; (l) expanding his people sources of income; (m) guiding and preserving socio-cultural values and traditions;(n) improving his people and institutions potential; (o) improving natural resources and protecting the environment. Chief of village's authorities and responsibilities as such are delegated to his staffs who are secretary of village (*Carik*), chief of sub-village (*Bekef*), deputy chief of people's affairs, deputy chief of financial affairs, deputy chief of general affairs, deputy chief of administration, deputy chief of development, deputy chief of people's welfare (*Modin*), and security (*Jogoboyo*).

There are also local scale authorities, both in Pekuncen Village and Lerep Village that are similar to one another. Both chiefs of villages execute their authorities on particular subjects which is an implementation of Law No. 32/2004 on Regional Governance, especially Article 14, which is then followed by ² Government Regulation No. 38/2007 on Distribution of Governmental Affairs between Government, Provincial and District Government. In those villages, there are at least 13 subjects: education, health, general affairs, housings, spatial ³ planning, development planning, environment, lands, population and civil

registration, women empowerment and child protection, family planning and welfare, social, labors, cooperative and small-middle enterprise, investment, culture and tourism, youth affairs and sports, nation's unity and domestic political affairs, civil society empowerment, archival records, communication and information, agriculture and food security. Surely the authorities based on those subjects are within specific boundaries according to each village's capacity respectively. It is difficult to separate between authorities emanated from the indigeneous rights of villages and local scale authorities, because those functions are intertwined.

The identification result of village authorities that has been and is being done in Pekuncen Village and Lerep Village produces some important notes. First, with the position of Lerep Village that is more adjacent to downtown Ungaran makes Lerep Village is faster to anticipate any social alterations compared to Pekuncen Village which geografic position is farther. Second, the result of quick alterations is Lerep Village's response must be more advanced since the demand for better service is increasing. It is because the burdens from district government concerning almost every aspect of governance trickle to this village. Meanwhile, Pekuncen Village shows a strong harmony between village governance and socio-cultural life of *Bonokeling* Community that is well-known

for its Javanese traditions. Third, both Pekuncen Village and Lerep Village experience quite fast alterations, however, the soul of those two villages embedded within indigenous rights and other authorities being ran as consequences of State's policy shifting on Villages do not change their autonomy. Pekuncen Village, even when having a strong socio-cultural traditions, still could not be called as Desa Adat (traditional village governance), because its governance is based upon State regulations instead of traditional regulations. In another words, its socio-cultural activities are still submissive to State laws which are being represented by the existing village government.

The following explanations will break down the authorities of villages based on indigenous rights and local scale authorities, taking two villages' constructed authorities, villages' construction, and State's construction as complementary for each other.

1. The authorities of villages based on Indigenous Rights

1.1 Subjects of authorities: Village governance, include:

- a. All functions traditionally embedded in the roles of chief of village (lurah) and his staffs (*Carik, Bekel, Bayan, Modin, Jogoboyo, etc.*);
- b. The structural organizations of village governance in accordance with village's traditional values;
- c. Village's lands management: *titisara* (a land where the profit that is functioned to finance village's programs), *pangonan* (functioned as an area for herding), *sengkerang* (a land where the profit is utilized to fund the treatment of special or historical objects), *norowito* (a land collectively owned by villagers as a compensation for their services), *palungguh/bengkok* (a land ran and managed by villagers, could be sold only when they all approve);
- d. Electing a chief of village and determining village staffs.

1.2. Subjects of authorities: Village Development, include:

- a. Rembug Desa (Village Consultation): the highest consultative meeting in a village as a platform to decide substantial matters in regard with people's interests, for example, activities planning and crowdfunding for the sake of village development;
- b. Village-owned assets management.

1.3. Subjects of authorities: Society Empowerment, include:

- a. A chief of village as a judge for peaceful conflict resolution;
- b. Expanding social assets: mutual trust building, cooperation for common goals, gotong royong (collaboration), etc.;
- c. Preserving local cultural and traditional values, and local wisdom concerning all aspects of civil society;
- d. Augmenting social and civil institutions.

1.4. Subjects of authorities: Community Empowerment, include:

- a. Strengthening people's economy;
- b. Managing village assets;
- c. Managing village sources.

2. Local scale authorities

2.1. Subjects of authorities: Village Governance, include:

- a. Population and Civil Registration: registration, data service, and issuing a cover note for population and civil registration;
- b. Labors: collecting and recording data on population based on employment, facilitating young people to participate in business management and production workshops;

- c. Archival Matters: keeping and managing archives, especially important documents concerning decision making process in the village, development planning, development implementation, possession of village asset, etc.;
- d. Lands and Spatial Planning: records on lands use and village regulations enactments on spatial use.

2.2. Subjects of authorities: Village Development, include:

- a. development planning: *Musyawahar Rencana Pembangunan Desa* (Village Consultation on Development Planning), formulating RKPDes (Village Government Work Plan), formulating RPJMDes (Mid Term Plan on Village Development), formulating LKPD (Village Government Work Reports), formulating LKPJ (Performance and Accountability Reports);
- b. Education: data records on *Angka Partisipasi Kasar* (Gross Enrollment Rate) and *Angka Partisipasi Murni* (Net Enrollment Rate) of *Pendidikan Anak Usia Dini* (Early Childhood Education), Kindergarten, Elementary School/*Madrasah*, Middle School, and High School/Vocational High School;

- c. Health: records on Life Expectancy Rate, Neonatal Mortality Rate, Maternal Mortality Rate, Infants Mortality Rate, Child Malnutrition Percentage, Ratio on Center(s) for Pre- and Postnatal Health Care and Information for Women and Children per infant, Ration on Community Health Centers, Health Clinic, disease treatment coverage (TBC, DBD), health service coverage (social security). Sending health workers as delegations to workshops, advancing facilities in Village Health Clinic, augmenting management by forming Forum on Village Health, preparing stand-by ambulances, blood donor (records on blood types of people who are ready to be donors anytime), information on family planning, infant health, maternal health, elderly people health, toilet program, clean water provision;
- d. General Affairs: records on numbers, length, condition: roads, bridges, irrigation channels and networks, dams, clear water provision;
- e. Housings: impoverished family housings and environment rehabilitation;
- f. Agriculture and food security;
- g. Environment: infiltration wells construction, tree planting, clean

the river movement, waste management.

2.3. Subjects of Authorities: Community Empowerment, include:

- a. Nation's unity and domestic political affairs: security facilities provision (security office), *Petugas Linmas Desa* (Village Protection Officers), conducting special approach in places where there is social vulnerability
- b. Communication and information
- c. Youth Affairs and Sports: supporting youth in Karang Taruna (a platform for young people) in activities like decision making, artistry, tourism, and sports
- d. Culture and tourism: preserving and expanding local culture and art

2.4 Subjects of Authorities: Community Empowerment, include:

- a. Women empowerment and child protection: PKK (Family Welfare Movement), Dasa Wisma (a group of housewives from ten adjacent houses), and units that take care of women empowerment and child protection
- b. Family planning and welfare: records on active participants of KB (Family Planning)
- c. Social: collector and distributor of zakat and shodaqoh (equivalent to a charity), impoverished family

houses rehabilitation, and charity for elderly people who do not have family or relatives, records on quantitative and qualitative data on PMKS (Victims of Social Welfare Problems)

- d. Cooperative and UKM (Small-Middle Business Enterprises): records on UKM, facilitating UKM owners to improve skills on production and management, giving access to UKM to market, inviting buyers, conducting cooperation with other parties to increase the products quality and marketing.

CONCLUSION

The result of this study shows some note-worthy findings. First, authority is an important element as a right owned by a village to manage its own affairs. From this understanding, it is clear that discussing authority is not merely paying attention to authorities and functions that are attached with chief of village and his staffs, but also reaching to people as an entity.

Second, normatively, with two main principles of recognition and subsidiarity, Law of Village has a fundamental spirit of change, which is different from principles of decentralization and residuality that until today are still strongly implemented within village where it is deemed only as a part of a district. Such design could be

operationalized as long as government (national, provincial, and district) is compliant to principles of: recognition, subsidiarity, variety, participatory, equality, empowerment, and sustainability. Principle of recognition means whatever the result of identification of village authority, whether it is from indigenous rights or local scale authority, it must be recognized by State.

Third, observation towards the authority shows that village could not have the same treatment like regency area. Regency is prepared as an actor of decentralization that bears some responsibilities given by national government. Therefore, the organization of its governance is also designed to fulfill exactly those responsibilities. Village is different because it has authority originated from indigenous authority, not given by national government as a part of decentralization, also known as residual authority. Thus, village autonomy is different from regional autonomy. Village autonomy has existed long before this republic is formed, and even though being re-designed for numerous times through national policy on Village, but village autonomy still exists in the form of indigenous rights embedded in the social status of a chief of village and his staffs, whatever its name, and it is also shown by the people's behaviour that upholds their socio-cultural lives.

Forth, although the indigeneous rights exists, however, we must admit that there is economic structural shifting of contemporary village that is closer to industrial than agricultural. This results in the change of village affairs and authority, from agricultural sector to non-agricultural sector. Village authority or affairs that is known as indigenous rights also experience some changes.

Fifth, the proposed design that is included existing village authority into a platform constructed in Law of Village, however with the spirit to comply with principles where government (national and regional) recognizes any current authority implemented by village.

Sixth, if national government is willing to be consistent with two principles in the law, recognition and subsidiarity, thus a ministerial regulation rigidly controls about local authority is deemed unnecessary. Just give time limit to each village to identify its authority then district government (through district regulation) offers a recognition to the existing village authority.

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Vilage Authority

ORIGINALITY REPORT

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