

# VILLAGE ADMINISTRATION IN INDONESIA: THE UNCONSTITUTIONAL LOWEST ADMINISTRATION

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## Abstract

Since Indonesia's independence village governance arrangements have not completed. Heretofore the position of village administration still outside of the government system. Village is still positioned as a community that dominated of State and given the task of governance like the village in the Dutch colonial era under the IGO 1906. Chapter VI of the 1945 Constitution Indonesian (UUD 1945) Article 18, 18 A and 18 B arranged regional government consists of ordinary local government and asymmetric/ extra ordinary local government. Asymmetric/ extra ordinary local government consists of three forms: 1) Specific local government (Article 18 B, paragraph 1); 2) Special local government (Article 18 B, paragraph 1), and 3) traditional communities along with their traditional customary rights (article 18 B paragraph 2). The village administration is more appropriate in the setting article 18 B paragraph 2: traditional communities along with their traditional customary rights. To evaluate whether the village is currently under arrangements entered in Article 18 B paragraph 2 do a research in Wilalung Village, Demak, Central Java. Data obtained through observation, in-depth interviews, focus group discussions and literature study. This study found that the Village is currently not a village as governed by Article 18 paragraph 2 of the Constitution of 1945. This Village administration in Indonesia is not a formal unit because the State only gives the duties and obligations to it without giving its rights as a state institution. This is the continuation of colonial Dutch government politics under IGO 1906. Therefore, the village must be reconstructed and be placed as part of a formal local government.

### Keyword:

Extraordinary of local government, the homogeneity of societies with customary law, *InlandscheGemeenteOrdonnantie* 1906 (IGO 1906), the reconstruction of the village administration.

In the Indonesian Constitution (UUD) of 1945, it regulates that local government consists of provincial and regency/city government. In article 18 B, thus, orders extraordinary/ asymmetric government as well: 1) specific local government; 2) special local government; and 3) traditional communities along with their traditional customary rights. Law Number 32/2004 manages on provincial government, regency/city government and village administration. Specifically, village administration is within local government of regency/city administration.

Henceforth, the structure of local government comprises of province, regency/city and village. The position of village, however, has ambiguous: among government and society institutions. If seen from the task conducted, it can be attributed as government agent because of conducting governmental duty. Contrastingly, if seen from the status of its executor and budget, it is society institution since the executor is not public servant, excluding village secretary and its operational budget is also not derived from State treasury.

Therefore, the constitution umbrella concerning of the existence of village administration refers to article 18 B section (2) of the UUD 1945. This article, nonetheless, does not regulate village. In the article 18 B section(2) sets traditional communities along with their traditional customary rights. Government interprets that traditional communities along with their traditional customary rights is village itself. Further, the description of law expert regarding traditional communities along with their traditional customary rights is not identic with recent condition of village. The work rose in this research is aimed to elucidate the status of Village from the Indonesian Constitution of 1945.

Ter Haar (2011 in Sudiyat, 2010), Van Vollenhoven (in Sudiyat, 2010), and Asshiddiqi (2006)'s statement is used to analyze the data. Ter Haar stated that unity of people has completely sacred materials, visible kinship and similar hereditary linkage of united members coming from similar ancestor, implementing any necessary thing for the subject of law and those who take within the law traffic. Asshiddiqi pointed out those traditional communities along with their traditional customary rights refers to definition of organic society i.e. arranged in the frame of organizational by bounding each other in order to achieve common goal. Aside of it, the statement of Court of Constitution also is used to firm this analysis.

## **FINDING**

Nurcholis (2012) reported that Village of Wilalung is one of village administrations in District of Gajah, Regency of Demak, Central Java. It locates approximately 20 km of capital city of Regency of Demak. The area is 287 ha. In addition, its population reaches 2.965 people. Most of its living is farmer.

Village administration of Wilalung is held by Head of Village and Agency of Village Consultative (BPD). Head of Village and its apparatus is the executive, while BPD is policy maker and deliberation institution. Village administration includes Head and apparatus of

village. The apparatus of village consists of village secretary and affair staffs: 1) staff of government affair; 2) staff of development affair; 3) staff of people welfare affair; and 4) staff of public affair. Meanwhile, other village apparatus is staffs of region care-taker: *bekel* and two staffs of technical affair: 1) *Kepetengan/Jogoboyo*, managing local security and 2) *Ulu-ulu*, managing local irrigation. Thus, the structure of Agency of Village Consultative comprises of Head, Secretary, and member (7 people).

The income of village administrator, except village secretary, derives from village communal land, known as *sawahbengkok*. *Sawahbengkok* is the existing rice field since village established. In the initial establishment of Village of Wilalung, a land opened up by its founders is divided into four parts: 1) a land aimed for household income, the *norowito* land; 2) a land aimed for salary of village employees, the *bengkok* land; and 3) a land aimed for development of village, *bandadesal* land; and 4) a land aimed for shelter and additional income, the *yasani* land. The *bengkok*, *norowito*, and *bandadesal* are communal land that is mutual land and cannot be personal right. Therefore, these both kinds of land, the *bengkok* and *norowito*, cannot be traded. In addition, the *yasani* land is property right of personal so that it can be traded. Mainly for village secretary, he or she is public servant, thus he or she can receive salary from state.

Village administration of Wilalung is funded by Village Development Expenditure Budget (APBDes). APBDes is made by Head of Village along with BPD. The 2010 APBDes was Rp896.491.635,- (Eight hundred Ninety six million and four hundred ninety one thousand and six hundred thirty five rupiah). Hence, this APBDes was derived from:

a. Revenue	Rp. 893.649.000,-
b. Payment income	<u>Rp. 2.842.635,-</u>
	Rp. 896.491.635,-

Particularly, the APBDes was utilized for direct expenditure comprising Team/Board's honorarium, recruitment of employee of non-village apparatus (guard of village hall, village's *ulama*, SKD and PKD), village's material spending, office service, concretization, southern dam, capital of mutual assistance of RT07/04, land covering of Wilalung reservoir, development of mosque, and building up Kindergarten. While, the indirect expenditure was spent for employee recruitment/fixed income, retirement/award, grant, social aid, financial assistance in order to assist ritual ceremony of *Apitan*.

The cycle of administration management in Village of Wilalungis started from direct election of Head of Village. The nominee chosen with the largest vote is stated as head of village by Regent of Demak. In the same or separated time, in Village of Wilalungis formed as well Agency of Village Consultative (BPD). Then, the members of BPD come from heads of Neighborhood Ward (RW), and public figures. Both Head of Village and BPD are two institutions running village administration. Head of Village and his apparatus are executive institutions, while BPD is policy maker and supervisor.

Moreover, Head of Village and BPD arrange such a policy drafted in Regulation of Village. Regulation of Village set includes Restructuration of *bengkokland* for vacant village apparatus and *bandadesa*; financial position of Head of Village and Village Apparatus; Calculation of the 2009 Village Income and Expenditure Budget; Implementation Result of Auction on *bondodesaland* of The 2010/2011 Planting Season; the 2010 Village Income and Expenditure Budget (APBDes); Mid-term Plan of Village Development (RPJMDesa); Amendment of the 2010APBDes. Regulation of Village that is ground base in conducting administration and development of current year is Regulation of Village regarding APBDes.

To implement the Regulation of Village, Head of Village arranges Decree of Head of Village. Following are Decrees made by Head of Village, as follows:

1. Decree of Head of Village regarding Inaugurating Village Treasurer of Wilalung;
2. Decree of Head of Village regarding Declaring Administration Officer of Village Property of the 2010 Budgeting Year;
3. Decree of Head of Village regarding the 2010 Annual Work Program of Village;
4. Decree of Head of Village regarding Forming Auction Board of *BandaDesa* Land of the 2010/2011 Planting Season;
5. Decree of Head of Village regarding Forming TPK and KPMD and the 2010 *PNPM Mandiri Pedesaan* Program;
6. Decree of Head of Village regarding Responsibility Report of Head of Village of Wilalung of the 2009 Budgeting Year;
7. Decree of Head of Village regarding Forming Manager of Activity Operational (PJOK), Manager of Activity Administration (PJAK) for the 2010 Sampling Village;

8. Decree of Head of Village regarding Forming Manager, Vice-Manager, Manager of Activity Operational (PJOK), Manager of Activity Administration (PJAK), Society Group (Pokmas), Fund Allocation Aid of Village of the 2010 Budgeting Year;
9. Decree of Head of Village regarding Forming the 2010 Mother and Baby Care Movement (GSIB) in Village of Wilalung;
10. Decree of Head of Village regarding Inaugurating Secretariat of Election Board (PPS).

According to Regulation of Village and Decree of Head of Village stated above, hence, Head of Village performs administration and development activity. These activities conducted in Village of Wilalung comprise as:

1. Providing service of any letter the people required: citizen card (KTP), Family Registers (KK), Letter of Work / Driving License (SIM) / Police Department / Domicile / Marriage, certificate of land ownership, witness of transaction and so forth;
2. Counseling and briefing to village apparatus;
3. Making monthly report on population development: birth, death, outgoing and incoming;
4. Conducting 24 village administration books;
5. Implementing crowdedly rat eradication in each rice field;
6. Actuating mutual assistance of concretization at *kampong* road;
7. Building up road, mosque, Kindergarten, TK Alquran, primary school, Islam School (MI), bridge, mutual assistance, *talud*, and irrigation system;
8. Conducting counseling of planned family (KB);
9. Performing water distribution along with manager of Dharma Tirta Tri Mulyo;
10. Implementing monthly routine meeting of PKK Cooperation;
11. Conducting balancing and additional food provision toward children below three year and immunization;
12. Creating secure and peace situation to the people.

In the end of budgeting year, Head of Village of Wilalung makes responsibility report of implementing village administration. This report consists of general administration implementation and financial management. The implementation general administration includes population, agriculture, education, PKK and Integrated Health Center (Posyandu), and Social order and security. Meanwhile, the implementation of village administration consists of village

administration, village development and social. The financial management, hence, ranges income budget, routine expenditure, development and final accounting.

The responsibility report is conveyed to Regent via Head of District. Aside of conveying to Regent, Head of Village has to convey Responsibility Remark toward BPD. The distinguish of Responsibility Report conveyed to Regent and Responsibility Remark submitted to BPD is that Responsibility Report of Regent is measured from the accountability, while for BPD it is information only. Further, Head of Village also conveys responsibility information to the people issued in information board or other media. The report to the people is information only, and not accountability one.

## **DISCUSSION**

Village administration is managed in Law Number 32/2004 on Local Government. Article 1 number 12 defines,

Village or any other term of it, further is called as village, is traditional communities along with their traditional customary rights having authorized territory limits to manage and regulate local interest, based on local origin and custom admitted and honored within governmental system of United State of Republic of Indonesia.

Above definition refers to Article 18 B section (2) of UUD 1945 regarding the State acknowledgment and honor toward traditional communities along with their traditional customary rights. Asshidiqqi(2006) defined that traditional community along with their traditional customary rights aims to the term of organic society running its function via its own administration organization as an instrument of communal. According to Sudiyat (2010: 142), Village in term of traditional communities along with their traditional customary rights is,

A social unity based on territorial united of whose organization is based on living tradition within the people's life and it has a respectful administration agency of central affair in its overall territory.

TerHaar (in Sudiyat, 2010: 140) explained that tribal common law declares their self within people's chief and its relatives in which mortal process drafts any decisions in the meeting as crystallization of social reality. Those decisions are supported by the alliance members and crafted in its social system. It is used to maintain the law prevailed and settle down any dispute.

Van Vollenhoven (in Sudiyat, 2010: 139) highlighted that tribal common law is,

Any social unity that has authority in the formation, implementation, and counseling of law. In the meantime, what is stated as tribal common law in his review on Common Law

of Java-Central is that “a self-formed society” (Bumiputera company limited, Bumiputra association, Bumiputra Christian organization).

The description of Court of Constitution (2007), a summary of TerHaar’ term (2011), what was meant by traditional communities along with their traditional customary rights as regulated in Article 18 B section (2) was,

Traditional communities along with their traditional customary rights is ordered groups that are constant with self-government having material and immaterial things, characterizing with:

- a. Existing of ordered groups;
- b. Settling down in certain area;
- c. Having self-government;
- d. Possessing material and immaterial things.

Village of Wilalungis held based on several formal regulations: Law, Government Regulation, Regulation of Minister of State Affairs, and Local Regulation. The implementation of its administration and development is according to Government Regulation Number 72/2005 regarding Village, Regulation of Interior Ministry, and Local Regulation. Government represented by Regent of Demak legalizes Head of Village, village apparatus, and member of agency of village consultative (BPD). Administration program and activity of Wilalungin order to serve public service, plan management and development, and responsibility report are based on the Government’s implementation and technical guidance.

In the account of Sudiyat, TerHaar, Van Vollenhoven, and Court of Constitution, the characteristic of Village of Wilalung does not include in the unity of tribal communal law. Its administration organization is formed by Government and not based on living tradition within the people’s life as well as has a respectful administration agency of central affair in its overall territory. Law conducted as a ground base in implementing administration activity is formal law arranged by the people’s chiefs and its relatives in which mortal process drafts any decisions in the meeting as crystallization of social reality. The authority possessed is not an authority that is formed, implemented and counseled by own society, but it is given by state. Moreover, Village of has not had custom resources, either material or immaterial.

Two indicators still exist in Village of Wilalung, as the unity of tribal common law, are, 1) the society has kinship linkage based on similar ancestor, and 2) conducting mutual assistance (*gotongroyong*). Genealogy element, yet, is not strongly sufficient to put this village into the category of unity of tribal common law. Nevertheless, *gotongroyong* is not functional within the

administration. This sort of activity is to deal with public interest. Such as eradicating crowdedly rats in the rice, it is mass mobilization rather than custom functional activity. In addition, voluntarily *gotongroyong* to solve joint issue and humanity, i.e. building mosque, Islam school, house, marriage and castrated as well as baby-birth ceremony is the social domain. None stated above is the custom characteristics of village as mentioned previously by Soetardjo (1984).

Besides, according to the Indonesian Constitution of 1945 honored and recognized by State, it is the traditional communities along with their traditional customary rights fulfilling three terms: 1) living; 2) in accordance with social development; and 3) not against with the principles of Unitary State of Republic of Indonesia. The living and dismissed the traditional communities along with their traditional customary rights explained by Asshiddiqi (2006: 77-80) were as follows. First, it has original society, and the tradition is still practiced, as well as there is sufficient record of the tradition. Second, it has original society, and the tradition is still practiced, but there is no record of the tradition. Third, it has original society, the tradition is not practiced, yet there is sufficient record or written note of the tradition where in certain time it can be practiced again. Fourth, it has original society, yet the tradition is not practiced and there is no sufficient record of the tradition. Fifth, it has mixed society, the tradition is vanished as well, and there is no record of the tradition, excluding orally legends. Sixth, it has mixed society, the tradition is vanished from daily life, yet there is sufficient record of the tradition and it can be revived anytime. Seventh, it has mixed society, but the tradition is still practiced and there is sufficient record of the tradition. Eighth, it has mixed society, the tradition is still practiced, yet there is no record of the tradition.

Grounded on those eight categories above, the traditional communities along with their traditional customary rights can be divided into three groups: 1) the totally vanished

traditional communities along with their traditional customary rights; 2) the in-existing traditional communities along with their traditional customary rights in practice but it is not totally vanished so that it can be revived, if fertilized; and 3) the living traditional communities along with their traditional customary rights. The fourth, fifth and seventh category of the traditional communities along with their traditional customary rights include in the totally vanished (Asshiddiqi, 2006: 79-80).



In Village of Wilalung, custom being practiced in the administration is direct election of head of village by people. This has been practiced since Dutch colonial era until nowadays. The custom position revived, thus, is *bekel*, *ulu-ulu*, and *kepetengan/jogoboyo* that were erased in previous regulations. *Bekel* is a staff who is responsible for public order of sub-village area. *Ulu-ulu* is a staff managing irrigation system of village. *Kepetengan/Jogoboyo* is a staff managing village security. The custom officer that cannot be revived is *modin*, and *kebayan*. *Modin* is a staff managing any issue of Islam meanwhile *kebayan* is a staff give information from Head of Village to people. Court of Village cannot be revived as well. Even, it has ever managed in Law Number 22/1999.

Above fact depicts that at first Village of Wilalung was the traditional communities along with their traditional customary rights of which is in line with the criteria mentioned by Sudiyat, TerHar, and Van Vallenhoven. However, in the development, Village of Wilalung is not the traditional communities along with their traditional customary rights anymore (vanished). It includes the fourth category that is it has original society, yet the tradition is not practiced and there is no sufficient record of the tradition. Although, there is a direct election of head of village and the revitalization of position, but the administration practice of Village of Wilalung is no longer based on common law. In the other hand, it is based on formal rule derived from Central and Local Government of Demak. The election management of head of village is not based on custom, but it is grounded on Law Number 32/2004, Government Regulation Number 72/2005, and Local Regulation of Regency of Demak.

As the first term, the living unity of tribal common law, is not fulfilled, then, the second term (in accordance with the social development) and the third (not against with the principles of Unitary State of Republic of Indonesia) are not required to prove, whether Village of Wilalung is the traditional communities along with their traditional customary rights or not, because the substance places on the first term. If Village of Wilalung cannot be placed as the unity of tribal common law, thus, in what category of organization that it can be placed in.

Factually, Village of Wilalung is the lowest unit of government administration. It can be called as administrative village since its organization is used as organization unit to conduct governmental administration. It can be seen from the organization structure and management of position appointment. The organization structure of Village of Wilalung is stated by Government.

Head of Village is chosen by people based on government regulation. Moreover, it has sacred resources as stated by TerHaar.

Based on above description, Village of Wilalung is unit of government bureaucracy. It is not the traditional communities along with their traditional customary rights as aimed in Article 18 B section (2). Consequently, Village of Wilalung conducts central government activity only according to state regulations. It does not conduct custom government based on common law formed by its own people.

## **CONCLUSION**

Village as regulated in Law Number Number 32/2004 is not the traditional communities along with their traditional customary rights as aimed in Article 18 B section (2) of the Indonesian Constitution of 1945. As viewed from its function and task, it is administration village in term of the lowest unit of government administration within regency/city administration, under district authority. Contrastingly, if viewed from the employment status of its apparatus and the budget, it is social institution mandated by state. Initially, village was the traditional communities along with their traditional customary rights, yet, in present day, it has vanished. The indicator, hence, is that it has original society, the custom is not practiced anymore, and there is no sufficient record concerning its common law. Therefore, if existing village viewed from the norm of the Indonesian Constitution of 1945, so, obviously, it is unconstitutional government unit.

Village requires restructuring as the order of the Indonesian Constitution of 1945. For this, the in-depth research regarding all villages in Indonesia has to be done. After analyzed, then, Village is classified into three groups: 1) as traditional communities along with their traditional customary rights; 2) as the traditional communities along with their traditional customary rights that the practice is no longer living, but it is not totally dismissed so that there is an opportunity to revive; 3) as the traditional communities along with their traditional customary rights that has totally vanished. For those villages including in the first group, Government admits and recognizes it. In addition, for those villages including in the second group, Government conducts counseling so that the non-living custom can be revived and, eventually, it is admitted and recognized. Then, for those villages including the third group, Government sets two policies:

1) urban characterized village turns as sub-district, and 2) rural characterized village is merged into local government custom based.

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