

Village Existence in the Constitutional Framework: Orientation and Formulation in the Perspective of Integrative Law

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Submission date: 21-May-2025 04:33AM (UTC+0700)

Submission ID: 2680917587

File name: tation_and_Formulation_in_the_Perspective_of_Integrative_Law.pdf (428.62K)

Word count: 5908

Character count: 32598

Village Existence in the Constitutional Framework: Orientation and Formulation in the Perspective of Integrative Law

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Articles Info

Received: 2023-08-12

Revised: 2024-01-21

Accepted: 2024-03-28

Keywords:

Integrative Law;
Constitution; Village
Administration.

Abstract

According to the provisions of the constitution, the village government does not actually have adequate arrangements as can be seen from the fact that the term village or something similar to it has not been accommodated in the Indonesian constitution. Orientation of village government arrangements in the constitution and efforts to formulate village government arrangements in the constitution with an integrative legal perspective. Normative legal research with a concept and statutory approach. The orientation of village arrangements in the constitution is intended to reinforce and facilitate democracy and local village leadership which is the style and identity of each village based on traditional rights and rights of origin. The formulation of integrative law so that the substance of the village government can obtain a strong legal position in the constitution, which can be done by conducting hearings or polling the aspirations of the community, efforts are needed to revise the Village Law with a pluralistic character, which means facilitating various types of village government that already exist.

I. Introduction

Village government in the provisions of the constitution actually does not have adequate arrangements. This can be seen from the lack of accommodation of the term village or things that can be likened to it in the Indonesian constitution. The lack of regulation of the substance of village government in constitutional provisions, especially after the amendment of the 1945 NRI Constitution, is a form of discrimination considering that in the explanation of the 1945 NRI Constitution before the amendment, it was explained that there were local institutions such as villages, clans, huta, and similar institutions that must be maintained within the framework of the Unitary State of the Republic of Indonesia.(Hamdani and Fauzia 2022)

Village government in the context of positive law has actually been facilitated in Law No. 6 of 2014 concerning Villages (Village Law) which provides general arrangements along with the principles of village government and its existence. Although it already has a foundation in the Village Law, the lack of regulation of the substance of village government in the 1945 NRI Constitution also raises problems regarding the derivative authority of village government such as forming Village Regulations (Perdes), conducting cooperation between villages, to various other legal acts that are difficult to see and refer to in a constitutional perspective.(Aniqotul Ummah, Siti Maryam 2022) The lack of regulation of the substance of village government and its existence in the constitution creates a legal vacuum in the form of principles and derivations of village government authority which should be regulated in the constitution in general.

Problems related to the lack of regulation of the substance of village government in the constitution also lead to misconceptions that village government is considered as a derivative or part of local government. This is based on the provisions of Article 18 paragraph (1) of the 1945 NRI Constitution which only confirms that within the framework of the Unitary State of the Republic of Indonesia in addition to the central government there are also regional governments that exist at the Provincial and Regency / City levels. The arrangement specifically implies that village government is a derivation of local government.(Rahmawati et al. 2023) Problems regarding village government that have not been regulated in the constitution are the focus of this study which prioritizes legal issues, namely the orientation of village government arrangements in the constitution and efforts to formulate village government arrangements in the constitution.

Previous research discussing village government in the perspective of constitutional law has been carried out by several previous researchers, such as: (i) a study conducted by Luthfy (2021) which discusses the unclear position of village regulations in the constitutional system.(Luthfy 2021) The results of Luthfy's research

(2021) suggest the need to affirm the existence of village regulations in the constitutional system. Another study was conducted by (ii) Yani (2022) who discussed the need to regulate and reconstruct village head elections. (Yani 2022) Yani (2022) explained the need to include village head elections as part of the general election regime to optimize and maximize the democratization process in village head elections. Another research was also conducted by Sihombing (2023) with a focus on the problematic aspects of changing the status of villages to customary villages. (Sihombing 2023) Sihombing's recommendation (2023) in his research formulates that special arrangements are needed regarding changing the status of villages to customary villages so as to facilitate the existence of customary villages in Indonesia.

Referring to the three previous studies above, this study with a focus on aspects of the orientation of village government arrangements in the constitution and efforts to formulate village government arrangements in the constitution, especially by referring to an integrative legal perspective is an original research because it has not been specifically discussed in the three previous studies.

2. Research Method

This research is a type of normative legal research which is research with the character of studying legal science internally and dogmatically. (Purwati 2020) This is because the legal issue in this study is a legal issue that can be examined normatively, namely discussing the legal vacuum of village government arrangements in the constitution. The primary legal materials in this study are: the 1945 NRI Constitution and the Village Law. Secondary legal materials are proceedings, books, journal articles, and online websites relevant to legal issues. Non-legal material is a dictionary of languages. The approach used is a conceptual and legislative approach.

3. Results And Discussion

A. The Orientation of Village Arrangements in the Constitution: What Does It Look Like?

Village government is actually the smallest government within the framework of the Unitary State of the Republic of Indonesia. As the smallest government, village government is a government that is originally and genuinely a "genuine" government established by the community based on aspects of existing local wisdom. (Akmal and Lestari 2022) This is when compared to the central and regional governments, the

village government is a government whose susbtansi comes from the characteristics of the surrounding community. The term village is actually a general term that denotes a small group of people who run a certain political system in an integrated manner.(Rifan and Rahmawati 2021) This also confirms that the term village is not a unilateral "nomenclature" that must be used by all the smallest institutions in society. The term village as the smallest institution is actually commonly used by the people of Java, Madura, and Bali.(Yuza 2019) Outside the three regions, people use different terms or nomenclature such as nagari, gampong, huta, kampung, and various other terms. Although it has different terms, substantively both village and similar terms can be classified as the smallest government system in society led by certain people or institutions and has distinctive local wisdom as its identity.

Referring to the authentic definition formulated by Article 1 number 1 of the Village Law, the term village or other similar terms has four main characteristics, namely: first, it is a unity of legal society. Village is a unity of society, law means that the village is a unity of society where there are laws that apply and are obeyed by the community. The laws that apply to rural communities must be broadly understood, not just a positive legal system as it applies in a country. Laws that apply in a broad sense in rural communities include unwritten laws that originate from social norms in the community or customary law norms that are unwritten in nature but recognized for their validity by the community.(Prasetio et al. 2021) In addition to unwritten laws, in village communities there are also written positive laws commonly referred to as Village Regulations and technical regulations under them. The existence of Village Regulations shows that in rural communities also apply positive legal provisions and hierarchies as applicable in central and regional governments.(Prasetio 2022) Referring to the first condition that the village is a unity of legal society, this written and unwritten legal norm also emphasizes that in reality there are villages in Indonesia along with other terms similar to villages are a unity of legal society.

Secondly, the village has a certain territorial boundary. Related to this, the division of areas and their boundaries for one village against another village is intended to reinforce the effectiveness of the enforceability of a village regulation or policy that only applies exclusively in its area.(Disantara 2021) Even if you have the same social, ethnic, or cultural community, if it is not a unified village area, still a law or policy in the village cannot be applied in other village areas.(Romadhon et al. 2018)

Third, the village in its formation was initiated by the basic right of proposal or traditional rights. Regarding the term right of origin, when referring to positive legal provisions, namely the Village Law, there is no official definition of the term right of origin. Even so, implicitly, in the explanation of the Village Law, the right of origin is interpreted as a right that arises based on the historical, cultural, and political context of a village.(Pratiwi and Istinah 2022) The basic right of proposal affirms the existence of a village before the establishment of the State of Indonesia to remain recognized and facilitated to carry out its local peculiarities and characteristics as an implementation of the basic right of proposal. Traditional rights are actually more on certain aspects of culture, customs, and traditions that exist and are owned by each village to be implemented, facilitated, and empowered as part of the framework of the Unitary State system of the Republic of Indonesia.(Rohman, Dwi Istinah, and Widayati 2021)

Fourth, villages must be based on the framework of the Unitary State of the Republic of Indonesia so that the establishment of village government and certain peculiarities owned is not the establishment of a state within the state, but is a form of accommodation of various interests and local characteristics of village government.(Rahmaddhani and Prasetyoningsih 2023) Referring to the four characteristics of village government as stipulated in the Village Law above, it can be concluded that village government has two characteristics, namely traditional characteristics and integrative characteristics as a unit with the government system of the Republic of Indonesia. Traditional characteristics are related to the facilitation and implementation of the basic rights of the proposal and traditional rights of the community while the integrative characteristics emphasize that village governments are part of a series of national leadership systems that include central, regional, and national governments.(Kridasakti et al. 2022)

Based on the four characteristics of the village as stipulated in the Village Law above, Ni'matul Huda added that the village is actually a "miniature" of the national legal and political system at the grassroots level.(Huda 2015) This is based on three arguments, namely: first, as in national and regional leadership, villages also have a local leadership system that is usually led by the Village Head. The term Village Head is not an absolute term because the mention can be adjusted to the local istilah that applies and is developed in the community. The Village Head who is then assisted by the village apparatus has the substantive authority to protect the community, regulate

the community through certain regulations that have been passed, and improve the welfare of the community through various programs and policies that have been set by each village.(Abiyoso et al. 2020) This also confirms that the Village Head and his apparatus are "executive institutions" as well as the President and ministers in the government

Second, the village in forming, running, and electing its leaders is carried out democratically with a direct election approach by the community in choosing the Village Head. Direct election of the community in electing the Village Head is one of the implementations at the village level to implement and run village democracy optimally.(Hasanul Bulqiyah, Sholeh Muadi 2019) The implementation of direct community elections in electing Village Heads can be likened to the election of the President or Regional Head Elections directly by the community. Third, the village as one of the local institutions with distinctive characteristics in the community needs space so that it can be more open in formulating laws and policies that will be applied to the village community. Sufficient space to formulate and implement laws and policies set by the village community is an optimal effort so that village government can become a responsive government and in accordance with the needs of the community.(Hariyati, Holidin, and Mulia 2021) This shows that villages have similarities with central and regional governments that have space to implement laws and policies in meeting the legal demands and needs of the community.

Of the three orientations that the village is part of the "miniature" government both at the central and regional levels, this also emphasizes that the village is the smallest leadership in the community whose orientation is to serve, organize, and empower the community. Regarding village regulation in the constitution, in general in the 1945 NRI Constitution there are no phrases or sentences that discuss directly about villages. The provisions relating to villages in the 1945 NRI Constitution are only attached to the substance of Articles 18, 18A, and 18B. Regarding the essence of village government, Article 18B paragraph (1) affirms the recognition of local government units. There is no further clarity on local government units except recognition of regions that have special privileges and autonomy such as Aceh, Papua, and Yogyakarta.(Dwiyanis and Wardhani 2019) Even so, if interpreted in grammatical and extensive interpretation, then local government units can have a broad meaning including the meaning of the existence of village governments that have a government

system based on local wisdom.

Grammatical interpretations of the meaning of "units" of local government can be interpreted as specific parts of local government which includes village government. In this context, referring to the grammatical interpretation of the term "units" of local government places village regulation as a derivation of regional autonomy. Similarly, there is also data on extensive interpretation of the meaning of local government Article 18B paragraph (1), which if expanded the meaning of local government includes village government. This also confirms that by referring to grammatical and extensive interpretations, the existence of village government is part of local government. Referring to the analysis of village government with reference to the grammatical and extensive interpretation above, there is actually a weakness when the substance of village government is not regulated in the constitution. There are three implications when the substance of village government is not regulated in the constitution, namely: first, by not being specifically regulated in the constitution, the constitutional position of village government is still weak. This even indirectly reduces the essential aspects of village government such as the pattern of leadership and local democracy typical of the village which inevitably all villages with various patterns and characteristics must refer to and base on the provisions of the Village Law.

This is in line with research from Wendra Yunaldi that nagari in West Sumatra which actually have "special village" characteristics must follow the characteristics of villages in the Village Law where the provisions of the Village Law are actually strongly influenced by village perspectives as applicable in Madura, Java, and Bali. Second, the non-regulation of the substance of village government in the constitution also has implications for the authority of villages in formulating Village Regulations which are actually the embodiment of the basic rights of proposals and traditional rights to be reduced to administrative efforts so that it seems that Village Regulations are a follow-up to Regional Regulations. The independence of Village Regulations to regulate the basic rights of proposals and traditional rights is actually important when the substance of village government is specifically regulated in the constitution.

Third, the lack of regulation of the substance of village government in the constitution has implications for the idea of village autonomy which cannot be optimally applied within the village. The idea of village autonomy is actually an idea that has also developed in response to regional autonomy. Village autonomy

is an idea to empower villages by orienting villages as independent local institutions that are competitive and can improve the community's economic level. Even so, with the substance of village government not yet regulated in the constitution, the idea of village autonomy can only be partially applied as well as village funds and the priority orientation of village development. Based on the results of the analysis above, the orientation of village regulation in the constitution is intended to reinforce and facilitate democracy and local village leadership which becomes the pattern and identity of each village based on traditional rights and rights of origin. In addition, village regulation in the constitution is also important to provide pluralism of village arrangements that aspire to the archipelago so that each village and other similar names in Indonesia can be facilitated. Village regulation efforts in the constitution are also expected to strengthen the position of Village Regulations in the national legislation system.

B. Organizational Leadership Model from a VUCA Perspective

The lack of village government in the constitution, especially during the amendment of the 1945 NRI Constitution in 1999-2002, actually caused its own problems. This is because the 1945 Constitution before the amendment in its explanation had discussed the substance of village government which had an orientation towards local government. In the explanation of the 1945 Constitution before the amendment, especially regarding the explanation of Article 18, especially in Roman II, it was affirmed about the distinctive characteristics of local government such as villages in Java, nagari in Minangkabau (West Sumatra), hamlets and clans in Palembang and the like, which substantively stated that the explanation of the 1945 Constitution before the amendment had mentioned the orientation of village government arrangements in the constitution.(Siradjuddin et al. 2021) One of the historical arguments for the inclusion of village government in the constitution is because village government with local characteristics actually existed in the community even before Indonesian independence was proclaimed.

Even though the village government arrangement was contained in the explanation of the 1945 Constitution before the amendment, it had actually emphasized that initially the founding leaders (leaders and founders of the nation) had mandated the need for guaranteed arrangements for the village government system to continue to exist and be part of the nation's cultural treasures. Even so, there were

amendments to the 1945 Constitution which was later formulated into the 1945 NRI Constitution with several orientations of changes such as the removal of the explanatory part of the Basic Law so that in the 1945 NRI Constitution the results of the amendment did not contain an explanation section of the Basic Law. The abolition of the explanatory part of the Basic Law on the one hand is a positive thing because it is common for a constitution to be formulated without any explanation.(Asshidique 2007) The negative aspect of the abolition of the explanation section of the Basic Law is that it makes the explanation of the previous Constitution in which there are regulations regarding village government unregulated. It can also be concluded that in the 1945 Constitution before the amendment the provisions regarding village government were regulated in a limited way in the explanation of the 1945 Constitution before the amendment while after the amendment in the 1945 NRI Constitution it was not regulated regarding village government.

The non-regulation of the substance of village government in the amended 1945 NRI Constitution can be seen in at least two aspects, namely: first, it can be understood that the non-regulation of the substance of village government in the amended 1945 NRI Constitution is due to the drafter of the amended 1945 NRI Constitution fully confident in the provisions of Articles 18, 18A, to 18B of the 1945 NRI Constitution in facilitating the substance of village government. This belief is supported by the orientation of the substance of the constitution which is only general and abstract, so that more technical matters can be regulated in the laws and regulations below. On another aspect, the non-regulation of the substance of village government in the amended 1945 NRI Constitution can be suspected due to the negligence of the framers of the amended 1945 NRI Constitution. It can also be understood that the focus of the formulation of the amended 1945 NRI Constitution is to meet reform demands such as: the formulation of the substance of regional autonomy, strengthening the institution of judicial power, as well as affirmation of human rights.(Presetio and Widodo 2022) Referring to two aspects why the substance of village government is not regulated in the 1945 NRI Constitution, the results of the amendment are actually unfortunate because after all, with the regulations in the 1945 NRI Constitution, it can strengthen the position of village government in the Indonesian constitutional system.

The non-regulation of the substance of village government in the 1945 NRI Constitution also creates problems if the substance of village government is not

regulated because substantively Articles 18, 18A, to 18B of the 1945 NRI Constitution have facilitated the substance of village government. However, on the other hand, Article 18B paragraph (2) of the 1945 NRI Constitution has actually affirmed the substance of the unity of customary law communities that needs to be guaranteed and protected by the state. The regulation of the unity of customary law communities in Article 18B paragraph (2) of the 1945 NRI Constitution raises more question marks; if the substance of the unity of customary law communities is regulated why is the substance regarding villages not regulated in the 1945 NRI Constitution? From this orientation, it can be implied that the framers of the amended 1945 NRI Constitution have forgotten or neglected to formulate the substance of village government in the 1945 NRI Constitution.

The negligence of the framers of the 1945 NRI Constitution as a result of the amendment in including the substance of village government in the 1945 NRI Constitution is not only a textual problem, but has implications for the legal position of village government which is considered weak and does not even have firm constitutional "lines". For example, in Article 6 paragraph (1) of the Village Law, it is affirmed that the existence of customary villages as another part of the village with more special characteristics because the village is based on dominant customary values. The constitutional question against the formulation of Article 6 paragraph (1) of the Village Law above is whether the provision of customary villages is part of the arrangement of the unity of customary law communities as affirmed in Article 18B paragraph (2) of the 1945 NRI Constitution or whether customary villages are a special part (species) of villages in general. This further causes constitutional problems in the community if in the community there is a unity of customary law communities who then establish customary villages, causing problems related to guaranteeing constitutional rights, whether it is part of the constitutional guarantee of the unity of customary law communities or is it a guarantee of the existence of village government with traditional rights and rights of origin? The confusion occurred because the substance of village government had not been regulated in the amended 1945 NRI Constitution.

Regulation of the substance of village government in the 1945 NRI Constitution needs to be done, especially when viewed from an integrative legal perspective. Integrative law is a legal idea put forward by Romli Atmasasmita with his orientation

in the form of bureaucratic and social engineering.(Atmasasmita 2012) Bureaucratic and social engineering is the main credo in understanding the idea of integrative law that places bureaucracy and government apparatus as the "spearhead" in efforts to reform national law. Romli Atmasasmita also added that the idea of integrative law is actually a development of legal theory and development from Mochtar Kusumaatmadja and progressive legal ideas from Satjipto Rahardjo. The aspect of community renewal through positive legal formulation is an important aspect taken from the legal theory and development of Mochtar Kusumaatmadja while how legal efforts to meet and facilitate community development is an aspect taken from the progressive legal ideas of Satjipto Rahardjo.

The idea of integrative law in relation to the substance of village government that has not been regulated in the 1945 NRI Constitution actually refers to three aspects, namely: legal responsiveness in meeting the legal needs of the community, the urgency of regulation through positive law as a means of legal reform, and the role of bureaucracy to support legal reform in the community. In the aspect of legal responsiveness in meeting the legal needs of the community, it can be seen that the substance of village government has not been regulated in the 1945 NRI Constitution in fact it has not met the demands of the legal needs of the community. This is because with the unregulated substance of village government in the constitution, the substance of village government depends entirely on the legal political agreement applicable in the Village Law which can be changed at will from the DPR and the government. The unclear constitutional position of the village government system in the constitution will become clearer and firmer if it is specifically regulated in the 1945 NRI Constitution.

In the aspect of the urgency of regulation through positive law as a means of legal reform, it can be seen that efforts to regulate the substance of village government in the 1945 NRI Constitution through another amendment (fifth amendment) are often expressed. however, the problem is that the fifth amendment which only aims to regulate the substance of village government in the 1945 NRI Constitution is feared to be a means to change some constitutional provisions that are not substantive but more politically tendencied, such as the term of office of the President, election provisions, to other efforts to revive the substance of the Jakarta Charter which has always become a discourse when there is an attempt at the fifth amendment. With the various risks

that exist, the urgency of regulating through positive law as a means of legal reform does not actually have to be done through the fifth amendment, but can be done by revising the Village Law or even by asking the Constitutional Court to provide a constitutional opinion through a judicial review process of the Village Law. In the aspect of the role of bureaucracy to support legal reform in the community, efforts to reinforce the legal position of village government in the constitution are to involve the role of village government bureaucracy such as the Village Head or by other names and their ranks. Various types of village governments in Indonesia also need to be highlighted to emphasize that the nature of village government is pluralistic, so that the Village Law should be present to facilitate the existing village government system and not regulate all village governments in Indonesia uniformly.

Based on the results of the analysis above, the formulation of integrative law so that the substance of village government can get a strong legal position in the constitution can be done by conducting hearings or polls of community aspirations regarding juridical constraints related to the unregulated substance of village government in the constitution. In addition, efforts are needed to revise the Village Law with a pluralistic character which means facilitating various types of village governments that already exist and develop in the community as well as conducting judicial review of the provisions of the Village Law so that the Constitutional Court interprets Article 18B of the 1945 NRI Constitution that the existence of villages is also recognized in the constitution which is in line with state recognition of the unity of customary law communities. In addition, the role of the village government bureaucracy at the local level and its ranks is important to preserve and show the existence of village government independence which needs to get a stronger position in the constitution.

4. Conclusion

The orientation of village regulation in the constitution is intended to reinforce and facilitate democracy and local village leadership which becomes the pattern and identity of each village based on traditional rights and rights of origin. In addition, village regulation in the constitution is also important to provide pluralism of village arrangements that aspire to the archipelago so that each village and other similar names in Indonesia can be facilitated. Village

regulation efforts in the constitution are also expected to strengthen the position of Village Regulations in the national legislation system. The formulation of integrative law so that the substance of village government can get a strong legal position in the constitution can be done by conducting hearings or polls of community aspirations regarding juridical constraints related to the unregulated substance of village government in the constitution, efforts are needed to revise the Village Law with a pluralistic character, which means facilitating various types of village governments that already exist and develop in the community as well as conducting judicial review of the provisions of the Village Law so that the Constitutional Court interprets Article 18B of the 1945 NRI Constitution that the existence of villages is also recognized in the constitution which is in line with state recognition of the unity of customary law communities. In addition, the role of the village government bureaucracy at the local level and its ranks is important to preserve and show the existence of village government independence which needs to get a stronger position in the constitution.

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