



Legal Study on Village Government Authority in Village Assets Management

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ABSTRACT

This study aims to analyze legals on village government authority in village assets management. The study was conducted at Tateli and Kanonang village, Minahasa Regency by legal research. The Empirical Legal Research method was used directly on informants in Minahasa Regency. The study finds that: (1) The authority of the village government in managing assets as a source of original village income is opaque. (2) The village decentralization system has not yet reached financial decentralization. (3) Village autonomy and autonomy of financial sector remains difficult to realize in Indonesia.

Keywords: Management, Minahasa, System, Village Assets Management, Village Government Authority

INTRODUCTION

Village government is as essential as the regional government in organizing the decentralization of government. Wirjosoegito (2004) provides the definition: "Decentralization is the transfer of authority by higher public bodies to lower public bodies to be independent and based on self-interest considerations make regulatory and governance decisions, and the structure of authority that comes from that." Law No. 6 of 2014 has emphasized the nature of village governance. Villages have both original and traditional rights. The Regional Government must prioritize good governance, in accordance with Law No. 28 of 1999 concerning Government Administration, free from corruption, collusion and nepotism. The law accentuates that the general principles of state administration are legal certainty, good state administration, public interest, openness, proportionality, professionalism, accountability. It is a source of reference in efforts to realize good village governance (good local governance) for the management of village assets. Mahfud, (1999) stated the dimensions of philosophy, formulation and implementation of decentralization with broad autonomy oriented to the realization and implementation of democracy.

The sovereignty of the village community to manage village assets is an implementation of decentralization, either original assets, or other assets obtained from the results of village operations. The authority in implementing village governance includes the authority to make village regulations (*zelfwetgeving*) and the administration of village governance (*zelfbestuur*) with decentralization. Obviously, the delegation or transfer of authority from the government to the village government is a principle in the unitary state (Gadjong, 2004). Granting some authority (power) to the regions, including villages, in the management of assets is based on the right of



autonomy (a unitary state with a decentralized system). However, at the final stage, the highest power remains in the hands of the central government. Thus, the authority inherent in the regions does not signify that the regional government's sovereignty since the highest supervision and power remain in the hands of the central government. The relationship between the central and the region, in which a unitary state is centralized, is the central government forms regions, and gives a portion of its authority to the regions.

The basic problem in the management of village assets is the debatable meaning of the principle of village decentralization. It arises from the perspective in articulating a position which side of decentralization in the regional government's implementation. The meaning of the principle of decentralization can be classified in several ways, including: (1) the transfer of authority of power; (2) the delegation of power and authority, (3) the division, spread, dispersal, and granting of power and authority and (4) the division and formation of regional government. Decentralization is distinguished in four ways. These are (1) the authority to take decisions is delegated from an administration/government official to another; (2) the handover official has a wider work environment than the entrusted official with such authority; (3) an official who handover authority cannot give an order to an official who has been entrusted with that authority, regarding the decision making or the content of the decision; and (4) the official who gives up the authority cannot make his/her decision as a substitute for the decision that has been taken, cannot be aside his/her own choice in replacement of the decision that authority has been entrusted to another person and cannot be apart from the official who has entrusted the authority from the place. The handover, delegation, and spread of authority automatically create the authority of the village government in the implementation of governance in the village, which is preceded by the division of regional government in the framework of the autonomous region (Hoessein, 2000). The main problem is how the authority of the village government manage assets according to the decentralization and village autonomy system.

RESEARCH METHODS

This research is a legal study, for the science of law has a special character (*a sui generis discipline*). The nature of legal study is always focused on rules, which is to analyze the laws and regulations through a legislative approach, then village financial management is examined. This study makes use of the Empirical Legal Research method, conducted directly on informants in Minahasa Regency. After the gathering of legal materials, the most important stage in this research is to analyze the legal materials and information obtained. It was carried out in four stages following normative legal procedures such as identification rules, comparison rules synchronization, and conclusion drawing.

RESULTS AND DISCUSSION

3.1 The Authority of the Village Government in Managing Village Assets

In the concept of Village Decentralization, all rights and authorities that generate income, expenditure, should have been handed over to the village government. Law No. 6 of 2014 confirms that villages have their income sources consisting of: (1) Village original income; (2) Revenue share of regional taxes and levies of regency/city areas; (3) Part of the central and regional financial balance funds received by the Regency/City; (4) Budget allocation from the State Expenditure Budget (APBN); (5)



Financial assistance from the Provincial Village Expenditure Budget (APBD) and Regency/City Village Expenditure Budget (APBD); and (6) Grants and non-binding donations from third parties. Law No. 6 of 2014 gives financial management authority to village governments. This is based on considerations for village development in accordance with the *NAWA CITA* (Nine Priorities of Village Development) program. Law No. 6 of 2014 defines the similarity between the definitive and traditional villages, in which the Village Government apparatus's ability of financial management differs (Gayatri, 2007). The state highly regards the position of these special regions and all state regulations concerning the origin rights of the region. Therefore, the issuance of Law No. 6 of 2014 is a form of recognition and guarantee of the sustainability of villages within the territory of the Unitary Republic of Indonesia. One of the substances regulated in Law No. 6 of 2014 is village financial management. Article 1 number 10 of Law no. 6 of 2014 provides a definition of Village finance as all rights and obligations that can be valued in money and everything in the form of money and goods related to the implementation of village rights and obligations. In practice, the administration of the village position is chained up in the bureaucratic hierarchy of the national government system. As a result, villages are part of the state structure, which negates the original autonomy of the village (Ibid, pg. 2.).

Exploitation of the village brings up to a passive community psyche, dependency and a tendency for the degradation of position and authority. The dependence on higher autonomous regions appeared prominent and even tended to reach its low point (Zinibar,). Wasistiono (2006) illustrated the position and existence of the village to the phrase "The strength of the iron chain is in the weakest link". Almost all aspects show how weak the position and existence of villages in the constellation of government. With a closer look, the one who purely comes in direct touch with the community is the village government.

3.2 The Consequences of Village Decentralization in Asset Management

Village decentralization should be complemented with autonomous authority in the management of assets which have not been realized yet. Decentralization allows village officials to carry out rigid village financial management in accordance with the Laws and Regulations governing financial management. Any offence against these laws and regulation carries a number of juridical implications. The reform of the implementation of village governance is essentially a reversal of the political paradigm, in which the democratization process during the New Order proceeded from above, and then reversed through a process that departed from the village. In this new paradigm, the village is an autonomous legal entity and has the right and authority to manage its own household (Busrizalti, 2013). Based on Law No. 6 of 2014 concerning Village Government, the Village is no longer an administrative level, no longer a subordinate of the Region, except an independent community with the right to speak on their own behalf and not determined top down.

Village, which has been regarded as extras and objects, currently act as executants (Siswanto, 2008). How about the management of assets? Does the village government independently organize? Law No. 28 of 2009 Article 1 paragraph (10) stated that Regional Tax, hereinafter referred to as Tax, is a mandatory contribution to regions owed by individuals or compelling entities based on the law by not getting a direct reward and used for regional needs for the amount of prosperity of the people. This clearly defines the regional tax as the mandatory contribution to the region, with no direct reward, used for regional needs and the prosperity of the people.



Compared to the village government and regional government, there is an imbalance within the village government. Regional governments get the rights to manage regional taxes since, according to the concept of a unitary state, the Regional Government is part of the Central Government. Article 18 paragraphs (1) and (3) of the 1945 Constitution of the Republic of Indonesia confirms that the Unitary State of the Republic of Indonesia is divided into provincial regions; provincial regions are divided into regencies and cities, each of province, regency and city, has a regional government, as regulated by law.

Law Number 33 of 2004 concerning financial balance between Central and Regional Governments emphasizes the authority of the Regional Government to manage finances as the rights of regions. One of the regional authorities in financial management is Regional Tax. Regional Tax as a decentralized authority of the Regional Government aimed to improve their ability to regulate and manage their own households in accordance with the principles of Regional Autonomy.

The position of the village government in managing village assets is not clearly regulated as the provincial, regency, city are. In Regional Tax Management, Local Governments must be guided according to good governance standard. Law No. 23 of 2014 Article 58 confirms that the implementation of regional government is steered by the general principles of state administration consisting of the principles of legal certainty, good administration, public interest, openness, proportionality, professionalism, accountability, efficiency, effectiveness, and justice.

Village assets management must highlight good governance, in accordance with Law No. 28 of 1999 concerning Government Administration, free from corruption, collusion and nepotism. This emphasizes that the general principles of state administration are legal certainty, good administration, public interest, openness, proportionality, professionalism, and accountability. It is a source of reference in efforts to realize good village governance (good local governance) for the management of regional autonomy tax. Mahfud (1999), stated the dimensions of philosophy, formulation and implementation of decentralization with broad autonomy oriented towards; first the realization and implementation of democracy; secondly, the realization of national independence and developing the sensitivity of regional independence; third, attuning the region to prepare political schooling for the community; fourth, providing a channel for regional aspirations and participation; and fifth, building government efficiency and effectiveness.

Regional autonomy gives Village Government the freedom in creating "local self-government" instead of "local state government" (Smith, 1967). What role do the Village Government occupy if they posit the same as the regional government in implementing Regional Autonomy? Even though there is a replacement of the Law, the basic principles as the rationale for regulating villages remain the same, namely: (1) diversity, villages may adapt to the origin and the socio-cultural conditions of the local community; (2) participation, the administration of government and village development should enable the active role of the community to participate in, and is responsible for the development of coexisting fellow villagers; (3) original autonomy, the authority of the village government in regulating and managing local communities is based on the origin rights and socio-cultural values, in the perspective of village administration; (4) democracy, the implementation and the executor of development should accommodate



the community aspirations articulated and aggregated through the Village Council (BPD), and Community Institutions as Village Government Partners; (5) community empowerment, the implementation and development of the village are aimed at improving community living standard and welfare through the establishment of policies, programs and activities in accordance with the essence of the problem and the priority needs of the community (Sadu & Tahir, 2007).

Village regulations are further elaboration of higher laws and regulations by taking into account the socio-cultural conditions of the local village community. Village Representative (BPD), which has changed its name to Village Council (BPD), functions to set village regulations with the village head, accommodate, and channel the community aspirations. Thus, Village Council (BPD) as an institution originating from the village community, in addition to the connecting bridge between the village head and the village community, must also carry out its main function as cultural decentralization, which is granting rights to small groups in society (minorities) to organize their culture jointly (Sanit, 1985). Furthermore, Hadjon (1993) argued decentralization implies that the authority to regulate and manage government affairs is carried out not only by the central government but also by lower government units, both territorial and functional units. The lower government units are entrusted and allowed to regulate as well as to manage their own government affairs. Thus, it implies recognition of the determinants of government policy towards the potential and capability of the region by involving representatives of the people in the region by organizing government and development, training them to use their rights and obligations of a democratic society in a balanced way. The Village Government, in principle, exists to uphold the law and the authority to provide protection to the villagers. Law no. 6 of 2014 Village and customary village or what is referred to by another name, hereinafter referred to as Village, is a legal community unit that has territorial boundaries authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, original rights, and / or traditional rights recognized and respected in the system of government of the Unitary Republic of Indonesia ". The village is not subordinate to the sub-district. For the reason that the sub-district is part of the district/city apparatus, the village is not part of the regional apparatus. Unlike the urban village, the village has the right to regulate its territory more broadly. However, in its development, a village status can be changed to become an urban village.

Village authority is to:

- a. run existing government affairs based on the village's original rights,
- b. head governmental affairs which are the authority of regencies/cities handed over to village government, to directly improve community services.
- c. be assistance task from the central, provincial government, and district/city government.
- d. to undertake other government affairs handed over them.

Article 18 of Law No. 6 of 2014 mentions village authorities in administering village governance, implementing village development, fostering village community, and empowering village communities on the basis of community initiatives, origin rights and village customs. According to Widjaja (2003), village autonomy is genuine, integral and thorough. It is not a gift from the Government. Instead, the Government is obliged to respect the village original autonomy. As a legal community unit with an original arrangement based on privileges, the village may carry out legal actions (public and



civil law), possess wealth and properties, and be prosecuted and sued before the court (Widjaja, 2003).

C. Village Autonomy in the Management of Village Assets

The main problem in the regulation of village government in Indonesia is that village autonomy in the management and regulation of assets as a source of income. What is the form of autonomy given to village government as an autonomous region? Article 19 of Law Number 6 Year 2014 states "Assistance tasks from the government, provincial government, and or district/city government to villages, this is a form of autonomy. According to Manan (2001), autonomy is only one form of decentralization. The above understanding shows that the village, as an area with autonomy, on one side, has an internal authority/task to manage good government, in accordance with its role and function. On the other side, the village receives delegation and task handover from district/city, provincial, and central government.

How village autonomy is implemented in the decision-making process. In villages, there are two kinds of decisions, those with a social perspective, and those made by formal village institutions. The former bind the community voluntarily, without clear sanctions, while the latter are formed to perform functions of decision-making. Decisions with a social perspective are often found in the social life of rural communities, in which the decision-making process goes through a mutual agreement, where previously the reasons for the selection of alternatives are explained beforehand by village elders or those considered having certain authority. The latter are based on procedures mutually agreed upon, such as the process of the annual Village Development Deliberations (Musbangdes) at the village hall. The decision making process is carried out by the parties legally given the function, which is then called the Village Regulation (PERDA). The regulations are village-level legal products determined by the Village Head with the Village Council in the context of administering village government (PP No. 72, 2005, Article 55).

What are the community rights in village autonomy as a form of democracy and community sovereignty? The characteristics of village democracy, according to Hatta (1988), are: (1) meeting (in which people have a deliberation and consensus); (2) people's right to protest; and (3) cooperate dreams. He added that it could last a long time under Javanese rural feudalism because it was based on collective land ownership by the village community (Hatta, 1988). In villages, in which the democratic system is still strong and healthy living as part of essential customs, the basis is communal land ownership, where everyone feels that he must act on mutual agreement when conducting economic activities (Tjiptoherijanto,). Village autonomy should be balanced with autonomy in the financial sector in which the village government is given independence in the asset management. This remains unrealized in the village governance system since the Village Allocation Fund (ADD) system promotes village autonomy in the area of finance and asset management. The Village Allocation Fund (ADD) system is good. However it creates dependency rather than independence for the village government to manage assets as a source of village original income.

CONCLUSIONS

As a conclusion, the following areas need to be focused are:



1. The authority of the village government in managing assets as a source of original village income is not yet clearly regulated in Law Number 6 of 2014. This raises legal uncertainty in the system of village governance related to the financial authority.
2. The village decentralization system has not yet reached the financial decentralization. The reason is that the management of village government finances remain depending on the central government in the form of Village Allocation Fund (ADD). This independence is the weakness of the village decentralization system, particularly in areas of finance and asset management.
3. Both of village autonomy and financial sector autonomy are still difficult to realize in Indonesia since decentralization and village autonomy have not actually been implemented. The weakness lies in the fact that villages have always been the object not the subject of development, and they are continually dependent on the provincial and central government policies in the financial sector.

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