

Recognitional Authority in the Implementation of Village Legal Protection of Implementing Village Government in Strengthening the Existence of Indigenous People in Rural Area in Sumbawa Regency and West Sumbawa Regency

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Abstract

The purpose of this paper is to find out the legal protection of village governance in strengthening the existence of the community in rural areas in Sumbawa Regency and West Sumbawa Regency. This research is a doctrinal legal research by examining legal materials from the literature to obtain secondary legal materials derived from books, articles, research results, as well as statutory regulations, as well as expert opinions related to the implementation of legal protection in the administration of government village. The solution offered is that with legal protection for the administration of village governance, there is legal certainty from the village government in providing recognition and protection to indigenous peoples in rural areas of Sumbawa Regency and West Sumbawa Regency.

Keywords: Recognition authority, Indigenous Peoples, Rural areas.

1. Introduction

Political, economic and legal reforms that occurred in Indonesia in 1998, greatly affected local government administrators and village governments in Indonesia, this is proven by the existence of Law Number 22 of 1999 and Law Number 32 of 2004 which are organic laws the provisions of article 18 of the 1945 Constitution of the Republic of Indonesia.

The two laws as mentioned above have not given full authority to the village to carry out the autonomy of village administration so that it can provide recognition to the indigenous peoples in their village. After the Reformation, the People's Consultative Assembly of the Republic of Indonesia issued a decree Number V/MPR/2000 concerning the implementation of Regional Autonomy, one of the recommendation points is that in line with the spirit of decentralization, democracy and equality of central and regional relations, initial pioneering efforts are needed to carry out fundamental revisions to the Law Number 22 of 1999 concerning Regional Government ("Social Justice for the Economic Rights on Traditional Knowledge in Medicinal Plants of Customary Law Communities," 2020). At the same time, the People's Consultative Assembly of the Republic of Indonesia through its session in 2000 changed the provisions of Chapter VI Article 18 of the 1945 Constitution of the Republic of Indonesia into Article 18A and Article 18B.

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that the state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia. The provisions of Article 18B paragraph (1) are then regulated in two laws, namely Law 22 of 1999 and Law Number 32 of 2004 concerning Regional Government.

According to Ni'matul Huda (Huda, 2005), the customary law community unit seems to have found its identity as an entity that lives in society, because of the state's recognition of the existence of the customary law community unit buried during the New Order. Although the two laws have regulated customary law communities as an entity recognized by the state, they have not yet reached the village level because territorially indigenous peoples reside in the village. Legally, formally in the two laws, it is undeniable that the existence of indigenous peoples is regulated

firmly and straightforwardly, but the government's authority to provide recognition of the existence of indigenous peoples in the village has not been regulated, because the authority of the village government in both laws is part of district/city government authority.

In order for the village government to be broader in providing recognition to indigenous peoples through the administration of village governance, since 2014 a special law on villages is needed through Law number 6 of 2014 concerning villages. The village with all the attributes of its government is an arena that deals directly with the people (Nuraini et al., 2019). The village government is the center of local political power which is personified through the Village Head and his apparatus. Through the Village Law, the government and the people's representative council want to restore government power to provide recognition to indigenous peoples through the authority of origin and local authority on a village scale.

Through the authority of origin and local authority on a village scale, the village can provide recognition to indigenous peoples in the village, especially in Sumbawa and West Sumbawa districts within the province of West Nusa Tenggara. The fact that occurs in the field that the village government in the districts of Sumbawa and West Sumbawa has indigenous peoples who have not been able to provide recognition (recognition) to indigenous peoples because they are still hit by supra-village policies, namely the central government, provincial government and district government, so this research is important. This is done to provide input that Law Number 6 of 2014 concerning Villages provides space for the village government to provide recognition and protection to indigenous peoples because the constitutional basis for the formation of the law is Article 18B paragraph (2) of the Constitution of the Republic of Indonesia. 1945.

The problems to be solved in this paper are first, how is the Concept of Recognition in the implementation of Village Government. Second, how is the existence of indigenous peoples in Sumbawa Regency and West Sumbawa Regency.

2. Literature Review

2.1 Authority theory

Authority is often equated with power in regulating organizations both in private organizations and public organizations, which connects those who give orders and those who order (Kellstedt & Whitten, 2018). Power in the form of authority needs to be legalized as stated by Henc van Maarseven which is mentioned by "Blote mach" which is in line with Max Weber's opinion that there must be rationality built up in a binding legal system so that it becomes a rule that must be obeyed and strengthened by the state as an organization of power (World Bank, 2016). Power and authority are closely related to Montesquieu's trias politica theory which includes executive, legislative and judicial. Power related to authority is the ability to influence other parties to follow the will of the power holder or the state (Tegnan, 2015).

2.2 Legal Protection for Village government administrators

In carrying out government functions, what is called an apparatus is a person who works in the government or company while "state" means "the State" or an organ that runs the state, then the state apparatus is a person working for the government or the state (Sumitro et al., 2020). In line with this, Utrecht said that a position in the government was needed. Position is the personification of rights and obligations in the structure and function of government. Because the position is the personification of rights and obligations, in office there is representation (vertegenwoording) in carrying out legal subjects to run legal entities as officials.

The village head as the appointed official in running the village government will carry out government functions based on the attribution authority given by law to carry out origin authority and village-scale local authority to provide recognition and protection to indigenous peoples in their villages. In carrying out the functions of village government, it is regulated in Article 18 paragraph (2) as the basis for the promulgation of Law Number 6 of 2014 concerning Villages, stating: The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with developments (Kusnadi, 2015). society and the principles of the unitary state of the Republic of Indonesia as regulated by law. In this article there is absolutely no mention of the village or village administration, it only mentions customary law community units and traditional rights. Based on this explanation, village government administrators have the basis of legal protection as officials in carrying out government functions.

2.3 Indigenous Peoples

According to Van Vollenhoven, indigenous peoples are legal alliances that live regularly with an orderly arrangement that has authority and inheritance, both tangible in the form of land and buildings and intangible in the form of the institutions and values of life that they guide (Siswanto et al., 2017). Furthermore, Ter Haar sees indigenous peoples as people who are united physically and physically who have a living space that is integrated with nature and their environment which has inheritance, lives regularly, has territory, and is in charge of regulating the social institutions of these indigenous peoples (Ivanskiy, 2021).

3. Method

The research carried out is library research which is carried out with the aim of obtaining secondary data originating from materials or materials in the form of books, articles, research results, and laws and regulations, as well as expert opinions related to authority, legal protection of village administration to strengthen the existence of indigenous peoples in Sumbawa Regency and West Sumbawa Regency.

3.1 Research Materials

For this research, the materials used are in the form of documents in the form of books, articles, research results, and laws and regulations, as well as expert opinions related to legal protection in the administration of village governance to strengthen the existence of indigenous peoples.

3.2 Data Collection Method

Collecting data by conducting a literature study of books, articles, research results, and laws and regulations, as well as expert opinions related to legal protection in the administration of village governance to strengthen the existence of indigenous peoples.

3.3 The Path of Research

First, an analysis of the regulation of indigenous peoples is carried out before the enactment of the Village Law by looking for existing references to existing laws and regulations, books, articles, and research results that already exist (Mu'adi et al., 2020). Furthermore, the legal protection in the administration of village government is analyzed to strengthen the existence of indigenous peoples. And after that, it is continued by analyzing the implications of village government policies that have indigenous peoples in the region.

3.4 Result Analysis

The data related to this legal research were analyzed descriptively qualitatively, namely by conducting an analysis which basically returned to three aspects, namely classifying, comparing, and connecting. In other words, the researcher does not only aim to reveal the truth, but must understand the truth (Bogdan, R. C & Biklen, 2003; N.K. Denzin, 2017; Tamsah et al., 2020). The data that has been collected from library research will then be analyzed qualitatively to answer the research problems proposed.

4. Results and Discussion

4.1 Legal Protection of Village Administration

Legal protection is closely related to the implementation of a legal state that has a legal system which includes legal certainty, protection of human rights as well as the existence of rules or rules and apparatus that carry out organized functions that will enforce the rule of law in an implementation. The normative implementation of the rule of law is the foundation of legal certainty to create security and order in society.

The state of law is not a state that only carries out the provisions of the rules and norms that exist in laws and regulations but a state of law that uses a welfare state approach where the state intervenes in social affairs as stated in the state's goal of implementing and protecting the entire nation. and the people, carry out development in all fields, promote education to achieve the degree of intelligence of the citizens and participate in creating world peace for the sake of justice and the welfare of mankind.

Based on the conception of the rule of law adopted in the Indonesian state, which is not only formal legal, adheres to legal positivism, but rather the law must be able to become a means of community renewal through the welfare state

approach, so that related to legal protection, village government has been carried out by issuing several laws. Laws, namely: Law Number 22 of 1948 concerning Principles of Regional Government, Law Number 1 of 1957 concerning Principles of Regional Government, Law Number 18 of 1965 concerning Principles of Regional Government, Law Number 19 of 1965 concerning Praja Villages as a Transitional Form to Accelerate the Establishment of Level III Regions throughout the Republic of Indonesia, Law Number 5 of 1974 concerning Principles of Government in the Regions, Law Number 5 of 1975 concerning Village Administration, Law Number 22 of 1999 concerning Regional Government, Law Number 32 Year 2004 concerning Regional Government and most recently Law Number 6 of 2014 concerning Villages.

Table 1. Village Government Table from the New Order Until now

Period	Village regulation	Substance	Country Relations with Villages
New Order (1967-1997)	Law Number 5 of 1974 concerning the Principles of Regional Government.	The orientation is the formation of a central government that works in the regions (the local state government), centralized.	The village as an extension of the central government.
	Law Number 5 of 1979 concerning Village Administration	The structure and names of the Villages are made uniform in Indonesia. Villages are no autonomous	•The village as an extension of the central government. The village is under the sub-district head.
Reformation Era (1998-Now)	Law Number 22 of 1999 concerning Regional Government.	Recognition of village diversity and uniqueness as self-governing community.	• The government gives wider authority to villages. • The village is no longer under the sub-district head.
	Law Number 32 of 2004 concerning Regional Government.	The rights, powers and obligations of autonomous regions to regulate and manage their own government affairs and public interests local.	The village is located in the Regency / City area.
	Government Regulation Number 72 of 2005 concerning Villages	Village rights, powers and obligations.	The village is a part of the government structure above it.
	Law Number 6 of 2014 concerning Villages	Recognition rights, subsidies and other powers	Village autonomy based on the right of recognition & subsidiarity in the homeland of the Republic of Indonesia.

Source: Processed data

Some of the laws governing village government have the following objectives:

1. Giving recognition and respect for diversity and diversity after Indonesia's independence.
2. Provide legal certainty regarding villages within the framework of the unitary state of the Republic of Indonesia to create justice and prosperity.

3. Preserving the customs and traditions as well as the diverse culture of the Indonesian people.
4. Improving the efficiency and effectiveness of village government
5. Improving public services to accelerate general welfare
6. Increase national resilience for the Indonesian people.

4.2 Existence of Indigenous Peoples in Sumbawa Regency and West Sumbawa Regency

Sumbawa Regency and West Sumbawa Regency have villages that have indigenous peoples. Indigenous communities in Sumbawa district consist of the Cek Bocek indigenous people in Lawin village, Ropang district, the Bakalewang Kanar indigenous people in Labuan Badas village, Labuan Badas district, the Pusu indigenous people in Tepal village, Batulan district, and the Pekasa indigenous people in Jamu village, Lunyuk district, the Ponto Ai Padeng indigenous community in Mamak village, Lopok sub-district, the Rebu Payung indigenous community in Sepayung Village, Pelampang District and the Payung Jolo Indigenous Community in Dete village, Lape district. Meanwhile, the indigenous peoples in West Sumbawa Regency are the indigenous people of Pedukuan Talonang and the Indigenous Peoples of Koeng Tatar who are in the village of Talonang Baru, Sekongkang District.

Table 2. Construction of the Recognition of Indigenous Peoples in the Constitution

Rule	Approach	Substance	Responsibility
Article 18 B paragraph (2) of the 1945 Constitution Republic of Indonesia	Governments	1. Indigenous peoples' units 2. Traditional rights of indigenous peoples with following conditions a. As long as it's still alive b. In accordance with the development of society c. In accordance with the principles of the Republic of Indonesia d. Regulated in law	The state recognizes and respects, furthermore regulated in law.
Article 28 I paragraph (3) of the 1945 Constitution Republic of Indonesia	Human right	1. Cultural identity 2. Traditional community rights With requirements in line with the times and civilizations.	State respects
Article 32 paragraph (1) and (2) of the 1945 Constitution Republic of Indonesia	Cultural	1. The right to develop cultural values 2. Local languages	The state respects and guarantees .

Indigenous peoples as mentioned above meet the criteria as indigenous peoples as stated in the state constitution Article 18B paragraph (2) and Article 28i of the 1945 Constitution of the Republic of Indonesia (Sam et al., 2019; Sumitro et al., 2020). Indigenous peoples have existed before the existence of the state. However, with the establishment of the state as an organization of power and along with the change in the regime of state power as mentioned in the introduction to this article, it has not received legal recognition in state law. With the enactment of Law Number 6 of 2014 concerning Villages whose constitutional basis for its formation is Article 18B paragraph (2), the administration of village government has the authority to strengthen the existence of indigenous peoples through medium-term village development planning for 6 years in accordance with the term of office of the Village head, as well as short-term planning for a period of one year contained in the work plan of the village government which is accumulated in the village income and expenditure budget. In addition, according to the mandate of Article 69 of Law Number 6 of 2014 concerning villages, villages can make village regulations (Sautet, 2020).

To give recognition to indigenous peoples in their territory, the village government can make village regulations regarding the recognition and protection of indigenous peoples in their territory as has been done by the village head of Lawin, Ropang District in order to give recognition to the indigenous people of Cek Bocek, the Head of Sepayung Village (Leonardo et al., 2020). in order to give recognition and protection to the indigenous people of Rebu Payung. Besides there are villages that have given recognition and protection to indigenous peoples, other villages in Sumbawa Regency and West Sumbawa Regency have not had the courage because there is pressure from the supra-village government which has not yet given recognition through regulations at the district and provincial levels. . Whether or not there is recognition from the levels of government, both central and regional, but indigenous peoples are recognized by the state constitution and de facto still live and develop along with the times.

5. Conclusion

From the discussion, conclusions can be drawn: Legal protection for village government is very closely related to the conception and theory of the rule of law, especially the welfare state. That the existence of indigenous peoples in Sumbawa Regency and Sumbawa Regency with the authority possessed by the village government can provide recognition and protection to indigenous peoples based on the authority of origin and local authority on a village scale.

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