

Government Law in the Implementation of Village Development in Wonokerto

R.Y. Gembong Rahmadi¹, Gregorius Sahdan², Mohamad Firdaus³, John Monday Etebom⁴

¹ Sekolah Tinggi Pembangunan Masyarakat Desa APMD, Indonesia
Author's email : gembongrahmadi64@gmail.com

² Sekolah Tinggi Pembangunan Masyarakat Desa APMD, Indonesia
Author's email : gorissahdan@gmail.com

³ Sekolah Tinggi Pembangunan Masyarakat Desa APMD, Indonesia
Author's email : mohamadfirdauz11@gmail.com

⁴ Department of Political Science University of Alabama, United States of America
Author's email : jmetebom@oauife.edu.ng

ABSTRACT

This study discusses the contradiction between Village Law Number 6 of 2014, which states that villages have the authority to regulate and take care of their own households. However, the regulation clashes with its derivative regulation, namely Permendes Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment. The contradiction occurs in a clause of the Village Law, namely Village Regulation based on: recognition; subsidiary; Diversity; Togetherness; mutual cooperation; Family; deliberation; democracy; Independence; participation; Equality; Empowerment; and sustainability. The principles of recognition, democracy and independence then clash with the Ministerial Regulation which regulates the policy direction of: Village Development and Village Community Empowerment policy direction; Village Development; Village Community Empowerment; and monitoring, evaluation, supervision, and coaching. This research uses the Theory of Utility, Utility is always associated with Jeremy Benthamdan's theory of utilitarianism and Hans Kelsen's Grundnorm theory. The purpose of the law must meet three aspects, namely Justice, Certainty, and Utility. The research method in this study uses an exploratory qualitative method with the type of case study research. The location of this research was carried out in Wonokerto Village, Kapanewon Turi, Sleman Regency, Special Region of Yogyakarta. The results of this study show that Constructing interests, pragmatism, and formality are often the basis for making a policy. This also happened in the making of Permendes No. 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment. The existence of contradictions between one rule and another is a domino effect on the making of government policies under it, even at the village level. Formality policies such as the existence of an application, instead of providing benefits to the village community, actually make it difficult for the community. Villages are increasingly exclusive and the top-down policy is also the impact of the authority of the village which is castrated by the rules under the Village Law.

Keywords: government law, village development, wonokerto, bureaucratic reform.

ABSTRAK

Penelitian ini membahas tentang adanya kontradiksi antara Undang-Undang Desa Nomor 6 Tahun 2014, yang menyatakan bahwa desa memiliki kewenangan untuk mengatur dan mengurus rumah tangganya sendiri. Tetapi peraturan tersebut berbenturan dengan peraturan turunannya yakni Permendes Nomor 21 Tahun 2020 tentang Pedoman Umum Pembangunan Desa dan Pemberdayaan Masyarakat Desa. Kontradiksi tersebut terjadi didalam sebuah klausul Undang-Undang Desa yakni Pengaturan Desa berasaskan: rekognisi; subsidiaritas; keberagaman; kebersamaan; kegotongroyongan; kekeluargaan; musyawarah; demokrasi; kemandirian; partisipasi; kesetaraan; pemberdayaan; dan keberlanjutan. Asas Rekognisi, demokrasi dan kemandirian kemudian berbenturan dengan Peraturan Menteri yang mengatur mengenai: arah kebijakan Pembangunan Desa dan Pemberdayaan Masyarakat Desa; Pembangunan Desa; Pemberdayaan Masyarakat Desa; dan pemantauan, evaluasi, pengawasan, dan pembinaan. Penelitian ini menggunakan Teori Kemanfaatan, Kemanfaatan selalu dikaitkan dengan teori utilitarianisme milik Jeremy Bentham dan teori Grundnorm dari Hans Kelsen. Tujuan hukum harus memenuhi tiga aspek, yaitu Keadilan, Kepastian, dan Kemanfaatan. Metode penelitian dalam penelitian ini menggunakan metode kualitatif eksploratif dengan jenis penelitian studi kasus. Lokasi penelitian ini dilakukan di Kalurahan Wonokerto, Kapanewon Turi, Kabupaten Sleman, Daerah Istimewa Yogyakarta. Hasil dari penelitian ini bahwa Konstestasi kepentingan, pragmatisme, dan formalitas seringkali menjadi dasar dalam pembuatan sebuah kebijakan. Hal tersebut juga terjadi dalam pembuatan Permendes No.21 Tahun 2020 tentang Pedoman Umum Pembangunan Desa dan Pemberdayaan Masyarakat Desa. Adanya pertentangan-pertentangan antara satu aturan dan aturan yang lain menjadi efek domino terhadap pembuatan kebijakan pemerintahan dibawahnya, bahkan sampai di tingkat desa. Kebijakan-kebijakan formalitas seperi adanya Aplikasi alih-alih memberikan manfaat ke masyarakat desa, justru mempersulit masyarakatnya. Desa semakin eksklusif dan membuat kebijakan topdown juga dampak adanya kewenangan desa yang di kebiri oleh aturan-aturan dibawah UU Desa.

Kata kunci: hukum pemerintah, pembangunan desa, Wonokerto, reformasi birokrasi.

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INTRODUCTION

This study departs from the problem that government law is always contradictory. Contradictions occur between higher regulations and lower regulations, for example in Village Law Number 6 of 2014, villages have the authority to regulate and take care of their own households. However, this regulation clashes with derivative regulations such as Permendes Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment which castrates the authority of villages, especially in village development. This Permendes should support the strengthening of village authority, one of which is delegative authority accompanied by a fee, but in the Permendes the cost is charged to the village. Lower laws and regulations must not contradict the laws and regulations above them (*delegated regulations* or derivative regulations, which are lower in rank than *primary regulations*).

This research uses Jeremy Bentham's Theory of Utility and Hans Kelsen's Grundnorm theory. The use of these theories is to be used as an analytical knife of the problem to be studied. The theory of usefulness will be used to analyze whether the programs contained in the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment have benefits for village communities. This research uses an explanatory qualitative method with a case study technique in Wonokerto Village, Kapenewon Turi, Sleman Regency, Special Region of Yogyakarta.

Data was collected by observation, in-depth interviews and document collection. Our findings in this study are; (1) there is a contradiction between the village law and Permendes No. 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment which castrates the authority of the village, especially in village development. This Permendes should support the strengthening of village authority, one of which is delegative authority accompanied by a fee, but in the Permendes the cost is charged to the village. The implication of this contradiction is that the village government budget is allocated a lot to finance ministry programs such as the SDG's program, Stunting, Poverty-Free Village, including the use of the village budget to finance the Kampung KB program; (2) cross-sectoral ministry programs that are contrary to the principles of recognition and subsidiarity cause the Village Deliberations to not run that adopt program proposals from the community.

In Wonokerto Village, for example, the MusDes forum became a forum for mobilizing supravillage government programs, no longer a participatory and delegative forum; (3) Villages become very bureaucratic and administrative due to the many applications forced by the supravillage to be carried out by the village. In Wonokerto Village, for example, there are various applications and the most famous ones are the Sidewo and Siparto applications which, according to village officials and village communities, the presence of these applications is not beneficial to the village community. In addition to the fact that the people of Wonokerto village, who are mostly farmers and do not understand the application, also because the socialization of the use of this application to the village community is considered unimportant and not beneficial to the community. Village communities are also limited in accessing the Siparto and Sidewo applications.

GOVERNMENT LAW PERSPECTIVE

In understanding the concept of government law, it cannot be separated from their respective concepts, namely government science and legal science. In some literature, it is explained that the Science of Government includes:

- Government science is a science that studies the symptoms of government
- Government science is the science that studies the government in carrying out its duties
- Government science studies, analyzes and observes all the actions of the government in carrying out its duties.
- Government science seeks to gain an understanding of the origin and form of government power, the division and exercise of government power.
- Government science studies all kinds of government efforts in order to achieve the goals that have been set to create prosperity and happiness for the community.
(Bayu Suryaningrat)

In the development of the government, it can be traced from the conditions of an equal, multi-layered and layered society, namely:

1. Equal Society (*samenlevingen en gelijkheid*) In a very primitive society, such as a hunter society there is a permanent need for leaders. Food production, education, heredity, division of labor, demand leaders. One human being is more active, faster, and more intelligent than the other if he is able and given the opportunity to lead his group. Leadership is limited and quickly disappears or there is a change of leadership based on the ability that a person has.
2. Tiered societies (*samenlevingen met rangorde*) Men who are ambitious and energetic and in some societies women who can produce more than they consume themselves can take advantage of the excess production to gain and maintain influence and power over their group of citizens. Thus, the number of leadership positions began to be limited or limited. Not all talented people can achieve a position as a leader. Through kinship, descent and marriage, the position as a leader is established and continued by the followers of the community group.
3. Layered society (*gelaagde samenlevingen*) In a layered society, not only has a leadership position been established, so the opportunity to get the most basic needs of life is not equal and equal for all citizens of the community. Certain groups break themselves up or are forced to do so. They must be content with and in a safer position and must be willing to be governed and served.

Meanwhile, Law explains that law must meet three aspects, namely Justice, Certainty, and Utility. The justice in question is an effort to create an orderly and all-encompassing condition without discrimination. Certainty means that every agenda carried out by anyone and anytime gets legal certainty regulated through norms. And the benefits are that there are benefits that are created or a benefit that makes things better.

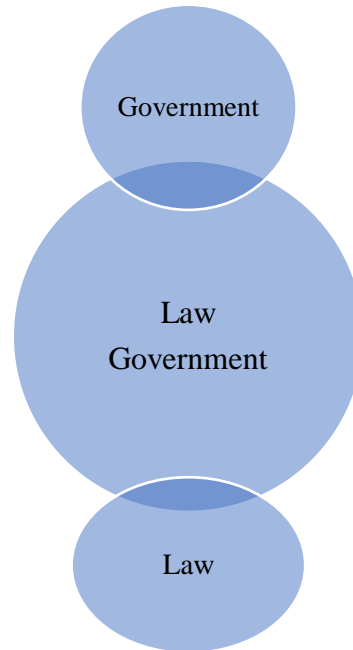


Figure 1. Law and Government

Figure 1. the law from the perspective of the government, it means that government activities in the formation of laws and regulations must be able to bring benefits and welfare to the community. Therefore, the restriction in the formation of laws and regulations is that it must bring benefits and welfare, not those that bring consequences that are contrary to benefits, certainty and justice. The government has the authority to form a rule that is believed to be a virtue for all, so it is necessary to ensure that the government authority must prioritize the common good.

The essence of the state is an organization of power, created by a group of people, this organization has an authority that can impose its will on all people covered by the organization to maintain the interests and organize the prosperity of its citizens. Thus, the ideal of human beings to have a state from the past to the present is the achievement of the interests of the people (people's sovereignty) in the law (constitution), so as to achieve a just and prosperous life (Muhammad Irham: 2016).

The state is an organization that must carry out the goals it aspires to. In order to achieve this, a government was formed. Abdul Kadir stated that in general, the government can be defined as an organization that has the power to make and implement laws and regulations in a certain area. The government is an organization that has:

- 1) The ruling authority of a political unit;
- 2) The power that governs a political society;
- 3) Apparatus which is a government body that functions and exercises power;
- 4) The power to make laws and regulations, to handle disputes and discuss administrative decisions with a monopoly on legitimate power. (Abdul Kadir:2018).

The essence of utilitarian thinking about utility and happiness according to Bentham and Mill is based on two beliefs: First, that human institutions should promote the welfare of citizens. Second, the welfare of all citizens (from the lowest to the highest) should be taken into account in every assessment of the institution. These two criteria determine whether the socio-political order created by man is fair or not. (Indra Rahmatullah: 2021). Bentham argued that human life consists of "displeasure and pleasure". The purpose of human life is to achieve happiness (*the greatest happiness*), so that human beings in their lives always try in every way to achieve that happiness. In achieving this happiness, the state through its policies regulates that in achieving this happiness it is always based on the applicable norms.

Furthermore, Bentham's opinion on the purpose of law as quoted by Achmad Ali, states that the purpose of law is to realize *the greatest happiness of the greatest number* (the greatest happiness for many people), according to Bentham the existence of the state and law solely for the sake of the true benefit, namely the happiness of the majority of the people.

The state must be able to create and improve the welfare of its citizens, so that it can reduce the suffering of the community. The forms of suffering of the community include poverty, misery, unemployment and so on. Efforts to achieve welfare that aim to achieve happiness can be manifested in the form of regulations or policies that really aim at achieving benefits, justice and certainty.

Policies made by the government must be able to reflect a sense of justice in society, meaning that the policy must be able to bring changes that lead to better conditions. Through changes that produce a better situation, the policies made by the government can be felt by the community.

In making policies in the form of legal regulations, the government must always adhere to the rules that govern the procedures for the formation of laws and regulations. This is to ensure certainty, usefulness and justice, so that these legal products can further encourage the improvement and ideals to be pursued, namely a just and prosperous society.

Hans Kelsen with his teachings on the *Stufenbau Theorie* as quoted by Achmad Ali, stated that the rule of law as a whole is derived from the basic norms at the top of the pyramid, and the further down the more diverse and diffused it is. The basic norm at the top is abstract and the lower it goes, the more concrete it is. (Achmad Ali:2009).

Hans Kelsen (Positivists), the law is understood as follows (Achmad Ali: 2009):

- a. A law is a set of commandments,
- b. Created by the supreme ruler,
- c. Aimed at community members,
- d. Local laws (within the jurisdiction of the country of manufacture),
- e. The law must be separated from morality,
- f. There is always an external available for law breakers.

The formation of laws and regulations in the Republic of Indonesia refers to the theory of levels and layers, thus forming a hierarchy. This can be seen in the formation of legal regulations, as stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. In Law Number 12 of 2011, the level theory is contained in Article 7 paragraph (1) which regulates the types, hierarchy of laws and regulations consisting of:

- a. the Constitution of the Republic of Indonesia in 1945;
- b. Decree of the People's Consultative Assembly;
- c. Government Laws/Regulations in lieu of Laws;
- d. Government Regulations
- e. Presidential Regulation;
- f. Provincial Regulations; and
- g. Regency/City Regional Regulations.

Meanwhile, paragraph (2) regulates the legal force of Laws and Regulations in accordance with the hierarchy as stipulated in paragraph (1).

The formation of laws and regulations must not be contradictory or disharmonized either horizontally or vertically. When there is a conflict or disharmony between laws and regulations and the regulations that are above them (the higher one), then the higher regulation overrides the lower regulation.

The legal principle related to this problem is the principle of *Lex Superior Derogate Legi Inferiori*. This principle states that the lower (inferior) regulation must be in sync (must not contradict) with the higher (superior) regulation. If this happens, then the higher regulation will override the lower regulation. This principle applies to laws and regulations that are conflicting (asynchronous) between lower regulations and higher regulations. Furthermore, that the new regulation will override the old regulation (*lex posterior derogate legi priori*). In the case of a special regulation, the regulation will override the general regulation (*lex speciali legi generali*).

These laws and regulations are a political product which is then the basis for the government to carry out government activities in order to create legal order and prosperity. As a state of law, all activities of government apparatus and all community activities must be based on agreed rules, namely positive law.

RESEARCH METHODS

This study uses an exploratory qualitative method with a case study research type. The location of this research was carried out in Wonokerto Village, Kapanewon Turi, Sleman Regency, Special Region of Yogyakarta. Data were collected by observation, in-depth interviews and document collection. The informants in this study were determined using purposive techniques consisting of (1) the Kalurahan Government; (2) the Regional Consultative Body; (3) Village planning stakeholders (community leaders, youth leaders, women leaders and regional representatives) of Wonokerto Village. Data analysis is carried out using *the content analysis method*, which will analyze according to the mapping of the content room that has been obtained and verify it to get a *conclusion*.

RESULTS AND DISCUSSION

Wonokerto Village or Kalurahan which is located in Kapanewon Turi, Sleman Regency is located at the foot of Mount Merapi is a village that is a tourist destination for tourists who come from Yogyakarta City and its surroundings. Wonokerto is famous for its salak production and recently received an award by the Regency as an innovative village because it is a best practice in the management of village information systems. The information available is quite complete for the village community itself or for the public, both from demographic, geographical, social, economic, and political aspects. The development of Pulesari village tourism and salak agriculture has made Wonokerto a village that is obliged to serve its community in terms of public services, and not only focus

on one aspect only. In relation to the topic of Government Law, it cannot be separated from the essence of the existence of the village. After the birth of Village Law Number 6 of 2014 concerning Villages, the existence of villages has undergone a substantial change. Villages whose authority was previously not recognized, after the passage of Law Number 6 of 2014 concerning Villages, the authority of villages has become clearer, namely in the arena of recognition and authority of subsidiarity. The village as a legal community unit, its existence is recognized. Village authority is not given by the central government as well as local governments. This can be known from the General Explanation of Law Number 6 of 2014 concerning Villages, namely that Villages are Villages and Customary Villages or what is called by other names, hereinafter referred to as Villages, is a legal community unit that has territorial boundaries that have the authority to regulate and manage government affairs, the interests of the local community based on community initiatives, rights of origin and/or traditional rights that are recognized and respected in the government system of the Unitary State Republic of Indonesia. Recognition and respect for the village need to be done because the village already existed with its diversity before and after the formation of the unity of the Republic of Indonesia.

Article 18 of Law Number 6 of 2014 concerning Villages, regulates the authority of villages. The authority of the village includes authority in the field of village government implementation, implementation of village development, development of village community, and empowerment of village communities. However, the authority of the village as regulated in Law Number 6 of 2014 concerning Villages often clashes with the regulations under it, thus creating a gap in its implementation practice.

Law Number 6 of 2014 concerning Villages and its derivative regulations, namely the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment, is expected to be able to create something, justice, usefulness and a certainty in carrying out development in villages that are actually contradictory and there is no synchronization so that there is a gap in its implementation which is far away from justice, usefulness and certainty. These gaps and inconsistencies are seen in Article 18 and Article 22 paragraph (2) which regulate village authority with Article 5 and Article 18 paragraph (1) of the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment.

Article 18 of Law Number 6 of 2014 is very clear about the authority of the village, one of which is the authority on the implementation of village development, so that in terms of village development it is the domain or authority of the village concerned. Furthermore, in Article 5 of the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment, it regulates about:

- a. Village development policy direction and village community empowerment;
- b. Village Development;
- c. Village Community Development; and
- d. Monitoring, evaluation, supervision and coaching.

The norms regulated in Article 5 of the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment are contrary to the norms contained in Article 18. The government in this case is the minister in charge of village affairs can carry out its programs but must pay attention to the authority of the village so that the mandate of the constitution Article 18 paragraph (2) of the State Constitution The Republic of Indonesia in 1945 can be realized. Furthermore, other gaps and inconsistencies can be seen in Article 22 paragraph (2) of Law Number 6 of 2014 concerning Villages with Article 18 paragraph (1) of the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment. The gap contained in the article is about financing. Article 22 paragraph (2) of Law Number 6 of 2014 concerning Villages stipulates that assignments from the government and/or Regional Governments to villages in terms of the implementation of village government, the implementation of village development, village community development, and village community empowerment must be accompanied by costs. On the other hand, the rules in article 18 paragraph (1) of the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment, stipulate that the initial stage of Village Data Collection is funded with village funds.

The position of the Ministerial Regulation is as a *delegated regulation* or derivative regulation, lower in position than *the primary regulation* (Law). In accordance with its

lower position than the Law, the Ministerial Regulation is also lower in binding force than the Law. As a *delegated regulation*, the norms in the delegated regulation must not contradict *the primary regulation*. The position of the two laws and regulations can be seen by using the legal principle, namely the principle of *Lex superiori derogate lex inferiori*, which means that the higher level of laws and regulations overrides the lower laws and regulations.

This research uses the Theory of Utility, Utility is always associated with Jeremy Benthamdan's theory of utilitarianism and Hans Kelsen's Grundnorm theory. The purpose of the law must meet three aspects, namely Justice, Certainty, and Utility. These aspects are often considered as essential objectives that must exist in a legal product that will apply in society. Practical law practitioners and theoretical law practitioners compete to create legal products that meet these three aspects (Arief Sidharta: 2009). The use of these theories is to be used as an analytical knife of the problem to be studied. The theory of usefulness will be used to analyze whether the programs contained in the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment have benefits for village communities. Furthermore, the Grunnorm Theory will be used to analyze whether the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment is in harmony with the norms contained in Law Number 6 of 2014 concerning Villages.

Our findings in this study are; (1) there is a contradiction between the village law and Permendes No. 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment which castrates the authority of the village, especially in village development. This Permendes should support the strengthening of village authority, one of which is delegative authority accompanied by a fee, but in the Permendes the cost is charged to the village. The implication of this contradiction is that the village government budget is allocated a lot to finance ministry programs such as the SDG's program, Stunting, Poverty-Free Village, including the use of the village budget to finance the Kampung KB program; (2) cross-sectoral ministry programs that are contrary to the principles of recognition and subsidiarity cause the Village Deliberations to not run that adopt program proposals from the community. In Wonokerto Village, for example, the MusDes forum became a forum for mobilizing supravillage government programs, no longer a participatory and delegative forum; (3) Villages become very bureaucratic and

administrative due to the many applications forced by the supravillage to be carried out by the village. In Wonokerto Village, for example, there are various applications and the most famous ones are the Sidewo and Siparto applications which, according to village officials and village communities, the presence of these applications is not beneficial to the village community. In addition to the fact that the people of Wonokerto village, who are mostly farmers and do not understand the application, also because the socialization of the use of this application to the village community is considered unimportant and not beneficial to the community. Village communities are also limited in accessing the Siparto and Sidewo applications; (4) Villages become very exclusive, just like farmer groups that are exclusive to farmers who do not meet their production standards. Salak farmers who do not have large areas of land tend to be members of a farmer group will find it difficult. Independent salak farmers cannot access free fertilizer and so on, in contrast to farmers who have entered farmer groups with very rigid requirements; (5) The policies in the village are also getting more top-down, one of which is the policy made for the residents of Pulesari Tourism Village. The determination of houses for home stays, accommodation packages and other policies is determined by the management without prior consensus deliberation.

CONCLUSION

The perspective of government law that talks about government authority in making rules that have the principles of justice, usefulness and certainty needs to be presented at every level of government. Both the central government, local governments and village governments need to pay attention to government law as a strategic step in making a policy. Importance constructivism, pragmatism, and formality are often the basis for making a policy. This also happened in the making of Permendes No. 21 of 2020 concerning General Guidelines for Village Development and Village Community Empowerment. The existence of contradictions between one rule and another is a domino effect on the making of government policies under it, even at the village level. Formality policies such as the existence of an application, instead of providing benefits to the village community, actually make it difficult for the community. Villages are increasingly exclusive and the top-down policy is also the impact of the authority of the village which is castrated by the rules under the Village Law.

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