

# TRANSFORMATION OF ADAT VILLAGE POST ENACTMENT OF LAW NO. 6 YEAR 2014 ON VILLAGE: A GOVERNANCE PERSPECTIVE (STUDY IN KARO REGENCY)<sup>Ω</sup>

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## Abstract

*The determination of an adat community become adat village results in implementing one function, governmental function. It is the adat village governance that will fulfill a village authority based on the rights of origin. This research aims to identify the development and transformation of the adat village governance in Karo Regency. This is an empirical law research with a qualitative analysis. Data is collected from both literature study and field study by carrying out an observation and comprehensive interviews. The result shows that management and implementation of adat village governance are done in accordance with rights of origin and adat law. Aside from a Village Head, a TurpuK (adat Head) is also recognized. According to agreed regulations, a Village Head must also be a TurpuK. It means the TurpuK must have a surname of Simanjorang or Munthe which is regarded as a descendant of the village (huta) founder. In carrying out its governance, the Village Head must involve the TurpuK. This regulation has been applied prior to the ratification of Article Number 6 Year 2014 on Villages till present.*

*Keywords: adat village, governance, transformation*

## Abstrak

Penetapan masyarakat adat menjadi desa adat menyebabkan ada satu fungsi yang harus dilaksanakan yaitu fungsi pemerintahan. Pemerintahan desa adat inilah yang akan menjalankan kewenangan desa yang berdasarkan hak asal usul. Tujuan penelitian ini untuk mengidentifikasi perkembangan serta transformasi tata kelola pemerintahan desa adat di Kabupaten Karo. Penelitian ini merupakan penelitian hukum empiris dengan analisis kualitatif. Data dikumpulkan melalui studi pustaka dan studi lapangan dengan melakukan observasi dan wawancara mendalam. Hasil penelitian menunjukkan pengaturan dan penyelenggaraan pemerintahan desa dilaksanakan sesuai dengan hak asal usul dan hukum adat. Selain Kepala Desa dikenal juga adanya TurpuK (Kepala Adat). Menurut aturan yang disepakati bersama Kepala Desa juga haruslah seorang TurpuK. TurpuK yang dimaksud haruslah bermarga Simanjorang atau Munthe yang dianggap keturunan pembuka huta. Dalam menjalankan pemerintahannya Kepala Desa selalu melibatkan TurpuK. Ketentuan ini sudah berlaku sebelum disahkannya Undang-undang Nomor 6 Tahun 2014 Tentang Desa sampai sekarang.

Kata kunci: desa adat, tata kelola pemerintahan, transformasi

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## Introduction

Article 6 Law Number 6 Year 2014 on village states that: Village consists of village and *adat* village. The designation of village or *adat* village in paragraph (1) conforms with the applicable name in the area. In its explanation, it

mentions that this condition is used to prevent overlapping region and authority as well as institutional duplication between village and *adat* village in one area. For the overlapping incident, the decision of the type shall be made in line with this Law stipulation. It shows that the unity of *adat* law community must be separated and cannot be put together.

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<sup>Ω</sup> In accordance with Research Contract of TALENTA University of North Sumatera Fiscal Year 2017 No: 5338/UN5.1.R/PPM/ 2017 on May 22<sup>nd</sup> 2017 Fundamental Research

Village or other similar names has commonly accepted characteristics in Indonesia. Meanwhile, adat village or other similar names has different characteristics with village in general especially due to the strong influence of tradition on local government, natural resources management, and social cultures.<sup>1</sup> Village and *adat* law is inseparable. Understanding a village means understanding its adat law which lives within village community and is preserved as part of their life.

Basically, adat village is a legacy in form of local community governance organization which is maintained for generations. The legacy is still recognized and maintained by the leader and community of adat village in order to develop prosperity and local social identity. Adat village has more dominant origin rights than village. Adat village is a unit of adat law community which historically has region and cultural identity boundaries based on territorial basis. The territorial basis is authorized to arrange and handle village community's interest according to the origin rights.

According to this Village Law, adat village has changed. By combining self-governing community and local self government functions, *adat* law community as part of the village is expected to be arranged into village and adat village. Village and adat village basically have similar duties. The differences lie on the origin rights implementation particularly about adat law social preservation, adat area management and arrangement, adat court, maintenance of peace and discipline of adat law community, and government implementation based on original structure.

Adat village has governmental or administrative function, village's financial and establishment. It also obtains facilities and guidelines from Regency government. In this position, village and adat village have the same treatment from the government. Consequently, adat village may change the management implementa-

tion of effective government, useful establishment, and empowerment of local community. The effort of community empowerment is by encouraging community to be independent and has the ability to make decision, initiative, and improve their own life.<sup>2</sup>

Adat village in Karo regency prior to the enactment of Village Law basically is an administrative village led by village head. By the stipulation of village law, it allows village which meets adat village elements and supporting evidences to transform into adat village. By the formation of adat village, the government system and implementation will be based on origin authority and tradition.

The government of adat village will conduct the authority such as arrangement and implementation of government based on original structure; arrangement and management of *ulayat* or adat area; preservation of social culture value of adat village; settlement of adat dispute based on the applicable adat law with human rights principle and mainly through *musyawarah* (deliberation); implementation of adat court based on regulations; maintenance of peace and discipline of adat village community based on the applicable adat law and its development according to social cultural condition in adat village community.<sup>3</sup>

Adat law community which has been determined as adat village must conduct local self government. Thus, there is absolute requirement which must be met.<sup>4</sup> Village community is structured in the context of regional government legal regime; meanwhile, adat community is constitutionally recognized as organized community in the units that carries rights and ob-

<sup>1</sup> Dasril Radjab, "Peluang Pembentukan Desa Adat Di Provinsi Jambi", *Jurnal Ilmu Hukum*, Vol. 5 No. 2, February-July 2015, p. 5.

<sup>2</sup> I Ketut Alit, "Pemberdayaan Masyarakat Dalam Peningkatan kualitas Lingkungan Permukiman Kumuh Di Propinsi Bali", *Jurnal Permukiman Natah*, Vol. 3 No. 1, February 2005, p. 39

<sup>3</sup> Admin Kedesaa, 15th of June, 2016, "*Pemerintahan Desa Adat*", available on: [http://kedesa.id/id\\_ID/wiki/lembaga-kemasyarakatan-lembaga-desadadan-ketentuan-kekhususan-desadadan-ketentuan-khusus-desadadan-pemerintahan-desadadad](http://kedesa.id/id_ID/wiki/lembaga-kemasyarakatan-lembaga-desadadan-ketentuan-kekhususan-desadadan-ketentuan-khusus-desadadan-pemerintahan-desadadad), accessed on 15th of May 2017.

<sup>4</sup> Sutrisno Purwohadi Mulyono, "Sinergitas Penyelenggaraan Pemerintahan Desa Pasca Pemberlakuan UU No. 6 Tahun 2014 Tentang Desa", *Jurnal Masalah-Masalah Hukum*, Vol. 43, No. 3, July 2014, p. 439.

ligations within legal traffic including adat rights as the legal unity.<sup>5</sup>

Social capital in form of community and mutual cooperation may become one of the financial efficiency forms as resources. Limited financial resource in adat village may be solved by village and adat village institutions for the development of the village. Saving attitude is one of attitudes which must be applied as well as appreciating time in working and achieving village's establishment goal.<sup>6</sup>

This research is conducted in Pangambatan Village, Merek Sub district, Karo Regency. This aims to discover the management of adat village government based on Village Law Number 6 Year 2014 and compared to the implementation on the research location. Therefore, it is used to know the conformity of adat village governance with good governance principle.

### Research Method

This research is an empirical law research. This research aims to make sure that the implementation on law phenomenon *in concreto* is convenient or not with the law provisions. The data are collected through 2 methods which are literature review and field study in terms of observation and deep interview. It uses qualitative analysis in which the result will be analytically described.

### Result and Discussion

#### Management of Adat Village Government Based on Law Number 6 Year 2014

Ratification of Law Number 6 Year 2014 emerges optimism related to state recognition of sovereignty, culture, and village origin. Besides, there are several policy mechanisms and regulations which try to present economical, social, and political independence for village. Establishment can be identified as intended social change. The vision can be called as model or es-

tablishment effect. It needs to be realized that village position is really strategic to establish a state since village is the spearhead of problem identification. Moreover, community needs and realization of state's goal take place in village level.<sup>7</sup>

Actualized principles in village arrangement context involve: principle of recognition; subsidiarity; diversity; togetherness; mutual cooperation; family; deliberation; democracy; independence; participation; equality; empowerment; and sustainability.<sup>8</sup> Recognition form of state towards village can be seen from the recognition of diversity principle in several regions (recognition principle). Meanwhile, concrete respect of state towards village is the direct allocation for village (subsidiarity principle). The use of those two principles is preceded by constitution recognition on village's diversity and limitation in general. At least it becomes the concrete foundation in further village arrangement in respective regional level.<sup>9</sup> In arrangement interest, adat village uses adat law to arrange and manage the community and its region.

Village law also has arranged adat village provision on Chapter XIII which started from Article 96 until Article 111. Overall, this adat village chapter has 16 articles and 26 paragraphs which are divided into four topics: adat village arrangement, authority, governance, and regulation.

Village government is closely related to the existence of indigenous law communities in Indonesia which is an indisputable necessity.<sup>10</sup> In terms of governance, the Village Law has been regulated it in Article 107 namely: The regulation and administration of adat village governance is carried out in accordance with origin rights and adat law applied in adat villages which are still in effect and in accordance with

<sup>5</sup> Mashuri Maschab, 1992, *Pemerintahan Desa di Indonesia*, Yogyakarta: Pusat Studi Sosial Universitas Gajah Mada, p. 33.

<sup>6</sup> Agus Pribadiono, "Lembaga Desa Adat dalam Pembangunan Desa Menurut UU No. 6 Tahun 2014: antara Kemandirian dan Subordinasi Pengaturan", *Jurnal Lex Jurnalica*, Vol. 13 No. 1, April 2016, p. 17.

<sup>7</sup> Fajar Sidik, "Menggali Potensi Lokal Mewujudkan Kemandirian Desa", *Jurnal Kebijakan & Administrasi Publik (JKAP)*, Vol. 19 No. 2, November 2015, p. 116

<sup>8</sup> Sutrisno Purwohadi Mulyono, *op.cit.*, p. 440.

<sup>9</sup> Bayu Suryaningrat, 1976, *Pemerintahan dan Administrasi Desa*, Bandung: Mekar Jaya, p. 29

<sup>10</sup> Muhammad A. Rauf, "Politik Hukum Pembentukan Desa Adat Dalam Sistem Pemerintahan Di Indonesia", *Jurnal De Lega Lata*, Vol. 1 No. 2, July-December 2016. p. 414.

the development of the community and not contradictory with the principle of organizing adat village government in the principles of Republic of Indonesia. The substance of the implementation of adat village governance in this regulation includes the regulation of the organizational structure and work procedures of the adat village administration, the duties, authorities, rights and obligations of the adat village administration and the term of the adat village head.

In relation to the adat village governance structure, the Village Law provides freedom to the adat village community to determine the government structure that is in accordance with the village adat law. The Village Law respects *adat* law which forms the village which allows the village to the community to arrange its own governmental organizational structure. The freedom granted by this Law still has a corridor, as long as conforms with the principles of the administration of the adat village administration and Republic of Indonesia.

In the implementation, it shows that in regions there is a typical relationship between the application of adat law and the administration of village governance. With the many variations in the application of adat law in the governmental system, dualism of local leadership emerged which in turn could result in ineffectiveness of village government.<sup>11</sup>

The village head/adat village or other name is the head of the adat village/village government who leads the village administration. The village head/adat village plays an important role in his position as an arm of the state that is close to the community and as a community leader. Villages besides having original authority recognition such as: the authority to manage local resources (village cash land, *bengkok* land, *ulayat* land, *adat* forest), the authority to make and carry out local adat law, must also have decentralized authority which is the

authority mandated from the top government.<sup>12</sup> Filling in the position and tenure of adat village head apply adat law provisions for a lifetime and in accordance with the development of society and also the principles of Republic of Indonesia as stipulated in the regency/city regulations based on Government Regulations.<sup>13</sup>

Adat village head position is filled based on the provisions applied to adat villages. In case of position vacancy for adat village head, the Regency/City Regional Government can designate an official from the adat village community concerned. Furthermore, the Village Law stipulates that the adat village government organize consultative functions and adat village consultation in accordance with the original structure of the adat village or newly formed correspond with the initiative of the adat village community.<sup>14</sup> In the administration of adat village government, the adat village head (another name) is assisted by the adat village consultative institution formed in accordance with the adat and adat law of the community concerned. In this case, the adat village administration is not only in the adat village head but also assisted by adat consultative institution. The institutional structure, filling positions, and tenure of adat village heads based on adat law are stipulated in provincial regulations.<sup>15</sup>

If a village transforms into an adat village, the village's wealth is transferred to the status of a adat village. Provisions on villages also apply to adat villages as long as it is not stipulated in the special provisions on adat villages. Starting from here, the mechanism for establishing adat village regulations refers to the mechanism for establishing village regulations. However, it must be kept in mind that the provisions regarding adat village regulations is only applied to adat village. Hence, in adat village, the adat village regulations can be applied

<sup>11</sup> Sutrisno Purwohadi Mulyono, "Kebijakan Sinoptik Penerapan Hukum Adat dalam Penyelenggaraan Pemerintahan Desa", *Jurnal Yustisia*, Vol. 3 No. 2, May - August 2014. p. 68 - 76.

<sup>12</sup> Utang Suwaryo, "Mengembalikan Otonomi Untuk Desa", *Jurnal Ilmu Pemerintahan*, Vol. 2 No. 1, November 2011, p. 6.

<sup>13</sup> Explanation on Law Number 6 Year 2014 Concerning Village.

<sup>14</sup> Article 108 Law Number 6 Year 2014 Concerning Village

<sup>15</sup> Article 109 Law Number 6 Year 2014 Concerning The Village.

as long as it is not contradictory with legal regulations. As a legal product, the adat village regulation is recognized and respected by the state and the procedure for its formation is the same as the establishment of village regulations.

This Village Law also regulates adat village regulations. The adat village regulation is adapted to adat law and customs norms which applies in the adat village as long as it does not conflict with the provisions of the legislation. Provisions concerning adat village regulations only apply to adat village.

Arrangement and administration of adat village administration are implemented in accordance with the rights of origin and the prevailing adat law in accordance with the development of the community and it is not contradictory with the principle of implementation of *adat* village government in principle of Republic of Indonesia. Adat village government organizes consultative functions and adat village consultations in accordance with the original structure of the adat village or newly formed in accordance with the initiative of the adat village community. Based on such legal construction, it is clear that adat village head has a strategic position as organizer of village government. However, when it comes to implement village, the authority the village head and BPD have the same position.

#### **Adat Village Governance in Karo Regency**

This research is carried out in Karo Regency particularly Pangambaten Village in Merek District. Pangambaten Village was originally a wilderness established as a village by Merga Munthe with his wife, Simanjorang. It is called "Pangambaten" because in the Dutch colonial era, this village was used to block the arrival of Dutch troops. Pangambaten Village itself consists of 3 hamlets, namely: Hamlet of Huta Sanggar, Hamlet of Huta Beringin, and Hamlet of Aek Hotang.

The governance of Pangambaten village is unique. In this village there is a village head or referred to as *turpuk*. Because Simantek Kuta (founder of the village) Pangambaten Village is a Simanjorang village with his wife Beru Mun-

the, the *Turpuk* must be either Simanjorang or Munthe, or else, they cannot be *Turpuk*. According to residents, the current *turpuk* is the 7th descendant of *simantek kuta* generation.

The election system is done democratically in which the candidates for *Turpuk* are chosen by the villagers. The elected *Turpuk* serves for 5 (five) years in a term of office. The elected *Turpuk* does not have a fixed salary. However, according to the residents being *Turpuk* and trusted by the villagers are such an honor despite the absence of salary.

The communal characteristics of the community is also seen at the time of the adat feast, both marriage and death. Even without being invited, the villagers will come and provide assistance. The help of villagers can be in form of cooking or cleaning the place after the party is over. Another uniqueness is the language used in this village. Villagers speak fluent Karo, Simalungun, and Toba. These three languages are alternately used daily by the community. The language used is called *Sipitu Huta*.

*Turpuk* has a role in the village government system. The role of *Turpuk* is seen in the village affairs, for example at an adat party, *Turpuk's* advice is more trusted than the village head's advice. Public cemetery are also controlled by *Turpuk*. The villagers will ask for advice on resolving the problems that arise in private law to *Turpuk*.

In addition to *Turpuk* in Pangambaten Village, there is also a Village Chief who takes care of the village administration as the extension of the Regency government. The village head in Pangambaten Village is dominated by *Turpuk*. In this case, *Turpuk* concurrently serves as the village head. The selected *Turpuk* will collaborate with his father to carry out his duties. According to residents, they still adhere to adat the rules that only either Simanjorang or Munthe is allowed in becoming the village heads in Pangambaten Village.

Related to communal land, Pangambaten Village has 2 types of adat land. *First*, the adat land is in the form of *merga* land, the land controlled by per *merga*, for example, there is land owned by *merga* Simanjorang, also there is a

land owned by merga Munthe, and others. *The second* is *ulayat* land of indigenous people of Pangambaten Village owned by the indigenous people of Pangambaten Village, Gajah Bobok. Gajah Bobok was originally a buffalo grazing land known as Siparnabolon /Sihobit. But now, it has been planted with pine trees and managed by the community as a tourist attraction. This land changed its name to Gajah Bobok because tourists visiting the place see the shape of this *ulayat* land resembling sleeping elephants, so it is called Gajah Bobok. Until now, many local tourists come to Gajah Bobok to enjoy the natural beauty and camp there.

Local communities or indigenous people have historically developed their own local management systems for their environment and natural resources. The local level management system or adat management system is generally based on adat practices, traditions, customs, and knowledge which are local wisdom with special conditions in accordance with adat rules.<sup>16</sup>

This adat land management system divides the villagers in 3 hamlets into 8 groups each of which consists of 10 people. Each of these groups takes turn in guarding the adat land of Gajah Bobok. Tourists visiting Gajah Bobok will be charged. This fee will be collected by each group while on duty to preserve Elephant Bobok. The collected money will be paid in the amount of Rp 500,000 (five hundred thousand rupiahs) per group deposited in the village, while the remainder belongs to the group.<sup>17</sup>

Regulations regarding the income from Gajah Bobok money are made based on village meetings. The results from village meetings were made in the form of announcements signed by the adat head and village head. One of the adat rules that is still being implemented by the community is that if a citizen dies and is buried in his own land, the family must pay 1 (one) can

of rice (or money equivalent to that). Whereas if the deceased person is buried in a public cemetery, then he must pay ½ can of rice (or money equivalent to that). The money or rice received will be entered into the adat cash and will be used for the villagers' meal.

F.D. Hollenmann constructed 4 (four) general characteristics of indigenous people, namely religious, communal, concrete and cash. These characteristics describe that indigenous peoples have the assumption that each individual, community member is an integral part of society as a whole. It is believed that individual interests must be appropriately adjusted to the communal interests because no individual is separated from society.

Based on the description above, Pangambaten Village fulfills the criteria to be converted into a adat village in terms of the communal nature of its people, wealth assets managed for the common interest and the recognition and respect for the adat head where the village head must come from adat leaders.

#### **Implementation of Original Authority Associated with the Principles of Good Governance**

The role of the village government in implementing Good Governance is the implementation of the duties, functions, authorities, rights and obligations of the village government in terms of planning, implementing development in the village, especially those relating to village governance.

Principles of good governance include: *first*, accountability which is defined as an obligation to account for its performance; *second*, openness and transparency in the sense that the community cannot only access a policy but also play a role in the formulation process; *third*, compliance with the law, in the sense that all activities are based on the applicable legal rules and the rule of law is carried out fairly and consistently; and *fourth*, community participation in various general government and development activities.

The existence of Law Number 6 Year 2014 provides a huge recognition of village sovereign-

<sup>16</sup> Karidewi, M.P, Et.Al, "Desa Adat Tenganan Pegringsingan Dalam Pengelolaan Hutan Di Desa Tenganan, Kecamatan Manggis, Karangasem, Bali", *Majalah Geografi Indonesia*, March 2012, p. 26-45.

<sup>17</sup> Interview with Pangambaten Village Head, Mr. Jonius Si-manjorang on August 9<sup>th</sup> 2017

ty. Adat Village Authority is based on origin rights, specifically explained in Article 103 of the Village Law. The operation is clarified in Article 3 of The Regulation of The Ministry of Villages Underdeveloped Regions And Transmigration Number 1 year. 2015, coupled with the granting of authority over village financial management (based on Ministry of Home Affairs regulation Number 113 Year 2014) and the allocation of village funds (based on Government Regulation Number 43 Year 2010)<sup>18</sup> increasingly gives authority to the village to manage its assets.

Authority based on the rights of the origin of the adat village includes: *first*, structuring the organizational and institutional systems of indigenous peoples; *second*, *adat* law institutions; *third*, ownership of adat rights; *fourth*, management of adat village cash land; *fifth*, management of ulayat land; *sixth*, agreement of the adat village community life; *seventh*, filling in the position of the adat village head and village apparatus, the tenure of adat village head.<sup>19</sup> In implementing the authority, the origin of the management of communal land in Pangambat village has fulfilled the principle of openness and adherence to the law. It is proved by the existence of village regulations that are made at village meetings involving village communities.

Adat villages are principally the organizational governance legacies of local communities maintained in a descending way that is still recognized and championed by *adat* village leaders and communities to develop local welfare and social cultural identity. *Adat* villages have more dominant origin rights than the village's origin rights since the *adat* village was born as an indigenous community in the community. *Adat* village is a unity of *adat* law community that historically has territorial boundaries and cultural identities formed by a territorial basis

that has the authority to regulate and manage the interests of the village community based on the rights of origin. People are no longer seen as consumers but citizens who have political rights to be served.

### Conclusion

Arrangement and administration of *adat* village government is carried out in accordance with the rights of origin and adat law that apply in adat villages in accordance with the development of the community and do not conflict with the principle of the implementation of adat village government in the principle of Republic of Indonesia. The authority to administer adat village government is the village government, namely the adat village head assisted by the *adat* village apparatus, as an element of the administration of the adat village administration.

The Pangambatan Village governance is carried out based on the origin and adat law in force where the village administration is run by the Village Head who is also a *Turpuk*. *Ulayat* land management is based on village regulations made through village meetings.

*Adat* Village Authority is based on the origin rights, specifically explained in Article 103 of the Village Law. In implementing the authority, the origin of Pangambatan Village has fulfilled the principles of good governance, namely accountability, openness, adherence to the law and community participation in various activities.

### Suggestion

Through the discovery of Pangambatan village as a village that has fulfilled the criteria as a *adat* village in accordance with the Village Law, it is necessary to follow up with the Karo Regency government to change the status of Pangambatan village to become the first *adat* village in Karo Regency. The government must be responsive in changing the status of the village into *adat* village to preserve the people cultural values and customs.

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<sup>18</sup> Hesti Irna Rahmawati, "Analisis Kesiapan Desa dalam Implementasi Penerapan UU Nomor 6 Tahun 2014 tentang Desa (Studi Pada Delapan Desa Di Kabupaten Sleman)", *Prosiding The 2<sup>nd</sup> University Research Colloquium*, 2015, p. 305

<sup>19</sup> Article 3 Permendesa PDTT No. 1 Year. 2015 of Authority Guidance Based on Origin Rights and Local Authority in Village Scale

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