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# Jurnal Dinamika Hukum

Vol. 23 Issue 1, January 2023

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: 10.20884/1.jdh.2023.23.1.2420

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## The Failure in the Coincidence of Indigenism and Nationalism in the Recognition of Indigenous Villages

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### Abstract

This article aims to analyse the challenges of legal functionality as an instrument for transforming indigenous villages from 'traditional' to 'modern.' This is a post-new-order historical impetus for the coincidence of indigenous and nationalism as a sign of the resurgence of indigenous peoples. In the context of the legal function for social change, the Village Law creates a large gap between traditional and modern villages. This paper is based on the research with the paradigm of law in context and can be categorized as socio-legal research, which perceives law from an interdisciplinary perspective. The results indicate that under the umbrella of the Village Law, the existing legal frameworks fail to achieve the regulatory objectives. Indigenous people's diverse and complex structure throughout Indonesia appears to be less considered. Thus, the laws do not sufficiently stimulate change through the modern indigenous village model.

**Keywords:** indigenous village; legal function; indigenism; indigenous people; nationalism.

### Abstrak

Artikel ini bertujuan untuk menganalisis tantangan fungsi hukum sebagai instrumen untuk mentransformasi desa adat dari 'tradisional' menjadi 'modern'. Hal ini merupakan dorongan historis pasca orde baru atas bertemunya adat dan nasionalisme sebagai tanda kebangkitan masyarakat adat. Dalam konteks fungsi hukum untuk perubahan sosial, UU Desa menciptakan jurang pemisah yang besar antara desa tradisional dan modern. Tulisan ini didasarkan pada penelitian dengan paradigma hukum dalam konteks dan dapat dikategorikan sebagai penelitian sosio-legal, yang melihat hukum dari perspektif interdisipliner. Hasil penelitian menunjukkan bahwa di bawah payung UU Desa, kerangka hukum yang ada gagal mencapai tujuan pengaturan. Struktur masyarakat adat yang beragam dan kompleks di seluruh Indonesia tampaknya kurang dipertimbangkan. Dengan demikian, undang-undang tersebut tidak cukup merangsang perubahan melalui model desa adat modern.

**Kata kunci:** desa adat; fungsi hukum; indigenisme; masyarakat adat; nasionalisme.

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## Introduction

The restoration policy of indigenous people units is pursued under the transformation of indigenous villages through the instrument of Village Law (Law No. 6 of 2014 concerning Villages). Indigenous villages describe a space for the life of indigenous people together with all of their rights. However, historically, they experienced deprivation and lack of respect for their culture and social identity, traditions, and institutions as an implication of nationalism ideology development

(the formation of nation-states). The narrative that expresses historical distrust and hatred boils down to centuries of colonialism, neocolonialism, and postcolonialism, which destroyed native civilizations (Gil, 2005). The practices of nationalism in Indonesia experienced a period of recognition of indigenous people and villages without autonomy until the birth of the Reform Era in 1999.

Globalization, which incurred a challenge for nationalism, eventually gave way to the resurgence of indigenous people, often referred to as the ideology of indigenism. The idea of indigenism gained ground in Indonesia after the fall of the

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New Order government. This ideology demands various forms of selfdetermination and autonomy within the framework of a nation-state (Davidson et al., 2010). The influence of indigeneity is powerful in Indonesia, as seen in the reemergence of demand for respecting the rights of indigenous people, who had been pressurized under the New Order. This is a new form of nationalism based not on the establishment of nation-states. Instead, it is based on the transformation of the mono-national status claimed by the existing states into the mediators of indigenous-settler nation-to-nation relations (Oksanen, 2020).

Legal recognition for the indigenous people during the reform era was in accommodating their interests in various laws and regulations concerning land and natural resources. The restoration policy continued well until 2014 by facilitating the establishment of indigenous villages based on legal recognition. Modernization efforts through the mechanism of state recognition of indigenous villages give rise to the issue of ideological transformation from 'traditional indigenous villages' to 'modern indigenous villages,' as depicted by the Village Law. Such issue arises from the gap between the modern indigenous village model and the distinctive and diverse social structure. This condition shows that the establishment of modern indigenous villages fails to achieve its purpose due to the law needing to be fixed.

The law cannot always fulfill its social function. Thus, it does not significantly serve the purpose of benefiting society. Law dysfunction occurs when its social function is not successfully materialized in a formal and informal group structure. The analysis of law function relates to the theory of "law and inequality." The concept of inequality relates to the treatment of certain social classes intertwined therein, concerning race and ethnicity (Barkan, 2016), including the state's treatment of indigenous people. Therefore, the coincidence between indigenism and nationalism in the structure of indigenous villages as modern government administration entities signifies equal treatment and inequality between indigenous villages, indigenous peoples, and other types of government administration applying modern governance, such as Village Law-based 'village.'

Nationalism and the nation-state were new models of social organization in the 19th century. The identification of nationalists with natural ties, homeland, ancient culture, and eternal boundaries of general history conceals the relationship of nationalism with modernity. On the other hand, indigenism is a similar global movement that has gained momentum over the past few decades. The movement has a more minor scale and is more fragile and less turbulent than the upheavals of the nationalists over the past two centuries. Nonetheless, it can influence the state's

practice in managing its affairs and even configuring the partisanship of nationalism and state sovereignty. Internationally speaking, 'indigenous people' became a new term referring to primordial identities, traditional nations with lasting connections to a way of life that has survived since ages ago. The widespread acceptance of this indigenism innovation is an achievement paving the way for indigenous people's resurgence.

Conceptually, international legal documents use the term 'indigenous people' for '*desa adat*', as seen in the basic conventions of the ILO (International Labour Organization) and the Convention Concerning Indigenous and Tribal People in Independent Countries. The World Bank later adopted this term in implementing development funding projects in several countries, especially in third-world countries, such as Latin America, Africa, and Asia Pacific (Muazzin, 2014). In the literary field, the term 'indigenous community' is also used (David-Chaves & Gavin, 2018). In Indonesia, the term 'indigenous people' or 'indigenous community' is constitutionally substituted with the term '*masyarakat hukum adat*' '(customary law community unit)', as stated in the 1945 Constitution of the Republic of Indonesia (Indonesian Constitution). The term is equivalent to *rechtsgemeenschappen*, which was first used in Ter Har's book *Beginzelen en Stelsel van Hat Adat Recht* (Subardi, 2013). Researchers made diverse definitions of indigenous people. 'Indigenous' has a similar meaning to the word 'native,' which is older but is currently considered impolite considering its primitive meaning and all the negative implications associated with it (Stewart, 2018). It may also be conceptualized as the 'original.' When used in the context of indigenous people, it is often associated with the idea of the marginalized (Tamma & Duile, 2020).

Franke Wilmer defines 'indigenous' in the broadest sense as people:

1. With tradition-based cultures;
2. Who were politically autonomous before colonization;
3. Who, in the aftermath of colonization and/or decolonization, continue to struggle for the preservation of their cultural integrity, economic selfreliance, and political independence by resisting the assimilationist policies of nation-states (Corntassel, 2003).

Such all-embracing definition complicates ascertaining whether or not indigenous people differ in terms of their cultural worldview and objectives from other minority groups worldwide. Furthermore, it is associated with colonization. In a more recent article co-authored with Gerard R. Alfred, Wilmer revised the ambiguities in his earlier definition:

1. they descended from the natives of the geographical area that continued to be occupied; therefore, they are also natives;
2. they want to live by following their ever-evolving cultural traditions;
3. they currently have no control over their political fate and, consequently, often submit themselves to policies arising from cultural hegemony imposed initially by external forces (Corntassel, 2003).

Jawahir Thontowi asserts that indigenous people share collective feelings in a group and live in the same place due to genealogical or geological factors. In addition to social institutions, customary leadership, and customary judicial system, they have customary law governing the rights and obligations of material and immaterial goods (Thontowi, 2015). Despite their traditional solid characteristics, their maintained social system – economic, legal, political, and cultural – will inevitably

change due to the development of the social environment surrounding them. Indigenous peoples live in a social environment sociologically known as indigenous villages with various designations according to local concepts and traditions.

Indigenous villages are essentially the identity of indigenous people's governance to which the aspects of geographic homelands are attached, including the symbols of traditional identity, belief systems, economy, law, and even politics. Indigenous villages in Indonesia have a long history from colonial times until postreform times. The assertion of indigenous villages' position has an ideal framework in the Indonesian constitutional system, as explicitly set out in Article 18 of the country's Constitution (before the amendment), described as follows, "Within the territory of Indonesia, there are approximately 250 *zelfbesturende landeppen and volksgetneenschappen*. These areas have original arrangements and can therefore be considered unique. This sentence stresses that the state recognizes and respects the existence of indigenous villages that are different from administrative villages (official villages).

Historically, the transfer of power from the Old Order to the New Order changed the policy of village diversity and even tended to reduce the village structure within the framework of the Unitary State of the Republic of Indonesia (NKRI). Under Law No. 5 of 1979 concerning Village Administration, village uniformization has been carried out to the administrative village model, which is not an autonomous village or an indigenous village. After the fall of liberal democracy in 1959, the custom was viewed as an ideology of dominance rather than protection. Meanwhile, fundamental customary rights and customary institutions at the local level are deliberately weakened by national legislation (Davidson et al., 2010). Likewise, with its second Amendment, the Indonesian Constitution omits the term 'Village.' Article 18, paragraph 1 of the 1945 Constitution specifies that "the Unified State of the Republic of Indonesia is divided into provincial areas and such provincial areas are divided into regencies and cities, each of which has a regional government regulated by the laws." This article suggests villages are not part of the local and central government relationship. Instead, they are only a part of the local government subdivision. This condition is the result of nationalism as a universal model.

Article 18B paragraph (1) of the 1945 Constitution defines a village as an indigenous people unit recognized and respected by the state. However, the Village Law has only recently specified the definition of Village, which becomes the basic rule to implement village autonomy. The Law aims at the resurgence of indigenous people and indigenous villages. The Law also specifies the format of indigenous villages considered relevant to the restoration context while putting villages as the subjects of bottom-up administration and development.

Ideologically, attempts have been made to eliminate the suffering and pressure imposed on indigenous people during colonial times and the New Order under the recognition policy in the form of these indigenous villages. The idealism of restoring the rights of origin (the rights to the environment, access to ancestral land, cultural heritage, and indigenous identity) eliminates the separation between indigenous villages and the state in the interplay of the Republic of Indonesia. In the post-reform period, hierarchical-structural ties to the state are necessary. However, the demand for an autonomous territory is sought to be submitted, signifying the subsidiarity policy.

One of the highlights of the Village Law is the distinction between 'village' and 'indigenous village,' even though the latter is part of the general definition of a village. Village's characteristics are generally applicable across Indonesia. Meanwhile, indigenous villages' characteristics are different from villages in general, mainly due to the strong influence of customs on its local government system, local resource management, and the socio-cultural life of villagers. Village and indigenous village conduct similar duties. The difference between them lies only in the exercise of the rights of the origin, especially regarding the social preservation of indigenous villages, the regulation and management of indigenous territories, indigenous peace councils, the maintenance of peace and order for indigenous people, and the regulation of administration implementation based on the original arrangement.

Indigenous villages have various unique classifications that villages do not have. Village Law also specifies indigenous villages as part of a self-autonomous administration, similar to a village (administrative village). The indigenous village needs to meet certain conditions to represent its characteristics. This is asserted in the Elucidation of the Village Law that the indigenous people unit designated as an indigenous village conducts government functions (local self-government). The modern indigenous village model requires the existence of territories with explicit boundaries, administration, and other instruments, even other institutions, such as assets and indigenous structures.

The arrangement of autonomy for indigenous villages is related to the political dimension. In addition, it implicitly provides space for integration with globalization to open up opportunities for creating new institutions in the indigenous people related to economic, social, cultural, and legal dimensions. This is important due to the inevitable liberalization, characterized by the desire for foreign and domestic investment in the territory of indigenous villages. Indigenous villages are encouraged to have the ability to independently conduct their governmental functions to face national and global dynamics. This arrangement implies the initiative for social changes of indigenous people as an implication of the establishment of modern indigenous villages with autonomy and restoration of political, social, cultural, and economic rights – rights to natural resources – and legal rights.

An essential part of Village Law enactment concerns the identity of indigenous villages that cannot always be compromised with the proposed model. The Regulation of the Minister of Home Affairs Number 1 of 2017 on Village Arrangement, which, among other things, directs the realization of indigenous village establishment, has yet to be effective, as happened in Bali Province. Village laws and regulations must be more functional in distinguishing indigenous and administrative villages. The concept of indigenous villages according to laws and regulations on the village is a paradox for indigenous people, thus the continuously problematic presence of indigenous villages. They remain in the traditional sense and identity without any legal reference or legitimacy. This condition is dilemmatic for indigenous people because they can only have their rights when the indigenous village is recognized and legalized.

### **Research Problems**

First, why does the Village Law suffer from dysfunction for coinciding indigenous and nationalism? second, how do indigenous peoples exercise their rights to the environment, cultural and social identity, traditions, and institutions

without state recognition? and, third, what social changes are experienced by indigenous peoples in indigenous villages without legal legitimacy?

## Research Methods

This research is socio-legal research as an interdisciplinary alternative. 'Socio' in socio-legal studies does not refer to sociology or the social sciences. Instead, it represents the interface with the context where the law exists (Travers & Max, 2005). As a qualitative study, the analysis units cover the individuals, officers, rules, and policies, while focusing on the following matters: (1) the meaning, including the thick description rather than the measurement of specific variables and quantifiable phenomena; (2) the depth and detail, as well as the sensitivity to context rather than generalization; (3) the impact of the values of the researcher and others on the course of the analysis, rather than the possibility of value-free inquiry.

The data analysis was conducted qualitatively using the ethnographic perspective. The researcher observed how indigenous people define the situation they face concerning establishing indigenous villages as regulated by the Village Law. This includes an analysis of the context in which indigenous people define the law in establishing indigenous villages under the Village Law.

## Discussion

### 1. Dysfunction of the Village Law in the Coincidence of Indigenism and Nationalism

Conceptually, the recognition of indigenous people's existence, on the one hand, and indigenous village, on the other hand, suggests the coincidence of indigenism and nationalism. Indigenism is an ideology pioneered by countries in the continents, such as America, Australia, and Scandinavia. In the last century, European settlers and their descendants conquered and replaced the pre-existing 'native' population (Davidson et al., 2010). Indigenism is defined as "a social movement with a strategic focus outside the state as actively as possible to enable rights over the state: (Ramos, 2005). The term 'indigenous people' then evolved further: not only as a legal category and analytical concept but also as an expression of identity, manifestations to be used proudly to express significant and personal matters about the collective attachment of the users (Neizen, 2003).

Both indigenism and nationalism are also associated with ethnicity and ethnic groups. Thus, in some political literature, as stated by Connor, nationalism is interchangeable with ethnonationalism. However, it is considered excessive (tautology) (Conversi, 2002). Several theories explain the concept of nationalism, one of which is the comprehensive theory stating that nationalism is:

- a. an explanation of the origin and evolution of the idea of nations in Western Europe and their spread throughout the world.
- b. a spatio-temporal explanation of the various structures, ideologies, and movements of nationalism in the modern period.
- c. an understanding of the collective feelings or sentiments about the national identity along with the accompanying elements of consciousness (Llobera, 1999).

Nationalism is best understood as a lenient and narrow ideology, which values membership in a state greater than that of other groups (that is, by gender, party, or socioeconomic group), explores differences from other states, seeks to preserve the nation, and gives preference to political representation by the nation for the nation.

The world organization of countries referred to as the United Nations, has created an endemic feeling that the world should be divided first and foremost into largely fictional countries (Bieber, 2018). In such concept of nationalism, smaller units, such as the indigenous people and indigenous villages, require the state to recognize their existence. Therefore, the preparation of traditional indigenous villages into modern ones indicates not only the influence and victory of indigenism but also confirms the state's position with its expression of the nationalism ideology.

The Village Law implies that the recognition of indigenous people and the establishment of indigenous villages are different things. The recognition of indigenous people does not determine the social, economic, political, or legal environment as the issuer of indigenous village identity. This is because recognition is based on legal procedures, not social practices and institutions. The state reformulates the definition of indigenous people and villages as a legal identity and their social character. The law-based recognition attempts to reinterpret the indigenous people and villages. Such interpretation originates from the state through the national laws, not from the indigenous people and villages. Based on that understanding, the state's recognition of customary institutions stated in various laws and regulations, especially on land and natural resources, is assumed to be from the era of indigenous resurgence, which oversimplifies its perspective. Reinterpretation through legal instruments can only be understood from the perspective of the state of law and democracy. The state of law upholds the rule of law above the supremacy of individual will, although conceptually, the requirements of the state of law are still contested. Thus, the reformulation of indigenous people and indigenous villages is to meet the requirements or ideals of the state of law.

When viewed from its role and function, conceptually, 'village' can be categorized into three types, namely: self-governing community, local selfgovernment, and the local state government (Yasin, 2015). The first type refers to the tribe (genealogical), and has territorial boundaries, native autonomy, and native administration structure/system according to the customary laws. It also communally supports its community. Second, an autonomous village in the sense of local self-government reflects the reduced influence of custom in the village. This village has autonomy and authority in planning, public services, and finance (through the Village Budget) and has a local democratic system. Third, an administrative village with clearly defined territorial boundaries is in a regency/municipality government subsystem. The autonomy of this village type is limited and unclear.

The indigenous village was originally a legacy of local government organization that has been maintained for generations and is still recognized and championed by the indigenous leader to develop local socio-cultural welfare and identity. Since its initiation, the indigenous village is originally an indigenous community. Hence it can be defined as an indigenous people unit. Historically, it has territorial boundaries and cultural identities established on a territorial basis. It also has the authority to regulate and manage the interests of its people based on its origin. Through legal recognition, the Village Law integrates indigenous villages as part of the state government. The Village Law also describes that the indigenous people unit is based on three basic principles, i.e., genealogy, territory, and/or a combination of both. The concept adopted in the Village Law is a combined one.

The arrangement subject contained in the Village Law is more detailed in a much narrow scope than that of the indigenous people, as referred to in Article 18B

of the 1945 Constitution because it emphasizes more on the villagers and special provisions on indigenous villages. The Village Law governs matters on Village, which consists of villages and indigenous villages (Article 6 paragraph (1), and governs indigenous villages separately in Chapter XIII. Article 96 of the Village Law states, “The Government, Provincial Local Government, and Regency/Municipality Local Government shall arrange the indigenous people unit and be designated as the Indigenous Village.” The elucidation of this provision asserts that the establishment of the indigenous people unit and the indigenous village existing today into indigenous villages should only be conducted once.

The studies of indigenous villages in Bali indicate that the Village Law creates tension, even the potential for horizontal conflicts between indigenous villages (*pakraman* villages) and *keperbekelan*. The tension is mainly caused by the Elucidation of Article 6 asserting that “For those already overlapping between Villages and Indigenous Villages in 1 (one) territory, one type of Village shall be selected following the provisions of this Law.” The provisions and Elucidation of Article 6 of the Village Law explicitly trigger a trade-off between (administrative) villages and indigenous villages. The occasionally symmetrical overlap between the administrative and indigenous villages occurs throughout Bali.

The number of indigenous villages in Bali is at least 1,488 (one thousand four hundred and eighty-eight), which are united in the *Pakraman* Village Council (*MDP*) forum. Meanwhile, there are 585 administrative villages (*keperbekelan*) and 89 sub-districts (Windia, 2017). The research discovered that none of the indigenous people units and traditional villages in Bali had been legally recognized or designated as indigenous villages. Ironically, the indigenous people units across the province have informally established indigenous villages using their format as traditional indigenous villages or *pakraman* villages. This establishment obscures the opportunity to establish modern indigenous villages unless the policy is amended.

Another source of the gap is Article 97 of the Village Law, which specifically governs the establishment of Indigenous Villages along with the qualifying requirements. Article 97 of the Village Law provides that:

- (1) The designation of Indigenous Village as referred to in Article 96 shall meet the following requirements:
  - a. the indigenous people unit and its traditional rights still exist: the territorial, genealogical, and functional one;
  - b. the indigenous people unit and its traditional rights are viewed according to the advancement of the society; and
  - c. the indigenous people unit and its traditional rights are deemed to be appropriate with the principles of *NKRI*.
- (2) The indigenous people unit and its existing traditional rights still as referred to in paragraph (1) point a shall have a territory and meet at least one or more of the following elements:
  - a. a community whose residents have collective feelings in the group;
  - b. customary governance institutions;
  - c. assets and/or customary objects; and/or
  - d. a set of customary law norms.



- (3) The indigenous people unit and its traditional rights, as referred to in paragraph (1) point b, are considered appropriate with the advancement of the society when:
- a. their existence has been recognized under the applicable laws as a reflection of the development of values considered ideal in today's society, either general laws or sectoral laws; and
  - b. the substance of these traditional rights is recognized and respected by the residents of the community concerned and the wider community and is not in conflict with human rights.

Article 30 of Government Regulation No. 43 of 2014 on the Implementing Regulations of Law No. 6 of 2014 on Villages (Government Regulations on Villages) govern matters related to the mechanism of indigenous village designation. Article 30, paragraph (1) of the Government Regulation on Villages specifies that the designation of indigenous villages shall be conducted in several mechanisms. First, the identification of existing villages. Second, the assessment of existing villages that can be designated as indigenous villages. Furthermore, Article 30 paragraph (2) of Government Regulation concerning Villages provides that the identification and review, as referred to in paragraph (1), shall be performed by the provincial government and the regency/municipality government together with the customary council or other similar institutions (Fakrullah, 2014).

Article 31, paragraph (1) of Government Regulation concerning Villages states that the Regent/mayor shall designate a qualified indigenous village based on the results of identification and review as referred to in Article 30 of Government Regulation concerning Villages. Article 31, paragraph (2) of Government Regulation on Villages specifies that the designation of indigenous villages, as referred to in paragraph (1), shall be outlined in the draft regional regulations. Article 31 paragraph (3) of Government Regulation on Villages asserts that the draft of regional regulations, as referred to in paragraph (2), that have been jointly approved in the plenary meeting of the regency/municipality regional house of representatives shall be submitted to the governor for the registration number and to the Minister for the village code. Article 31, paragraph (4) of Government Regulation on Villages specifies that the draft of regional regulations that have obtained the registration number and the village code shall be enacted as regional regulations, as referred to in paragraph (3).

The Village Law and the Government Regulation on Villages rely on legal processes and procedures for state recognition of the existence of indigenous villages. Although the presence of indigenous people units has been marked with customary order, leadership, territory, and assets, it does not automatically grant legitimacy to indigenous villages. Thus, the indigenous people cannot claim the complex procedures and legal mechanisms for the recognition of indigenous villages unilaterally. This legal and formal recognition under the Village Law and Government Regulation concerning Villages creates a gap between the state's interests and those of indigenous people. The absence of legitimacy of indigenous villages becomes directly proportional to the lack of strengthening of indigenous people, which indicates the dysfunction of the law.

The dysfunction of the law is the opposite of the functioning of the law. The law works when it can be applied in a particular community (Funk, 1972). As for the dysfunction of the law, it means: (1) it may create and perpetuate inequality; (2) reflect the moral values of influential social groups; (3) complicated matters more

than it ease them (Barkan, 2016). The dysfunctional category may be expanded to include the legal incapacity to facilitate the interests of the community so as not to achieve the anticipated changes. The main issue is the neglect of inequality of character among indigenous peoples across Indonesia. Based on research on traditional villages in Bali, indigenous villages are only related to religious affairs or systems, especially Dharma Hinduism. Meanwhile, under the Village Law, the modern indigenous village shall include the governmental function as the concept of the village in general (administrative village). *Pakraman* village in Bali cannot be forced to metamorphose into modern traditional villages, thus breaking out of the limits of Dharma Hindu arrangements.

Based on Nopa's conception, the purpose of the law as a legal system is embodied in a series of functions, namely: (a) the function of institutionalization or formalization of socio-political organizations; (b) the function of preserving, protecting, and safeguarding the fundamental values of society; (c) management functions; and (d) the regulation function. Such functions position the state to regulate the living conditions of society by coercion (Bujdoiu, 2015). The effort to legally formalize the indigenous villages and indigenous people in Bali is proven to be a failure due to becoming more than just legal or non-legal issues as indigenous villages, but on the subject of inability to adapt to the village administration system in the context of a modern state. The Village Law warrants that the fundamental values of indigenous people are preserved, protected, and maintained based on the following function. According to Nopa, in the case of Bali, is facing the function of conditional institutionalization. Therefore, the main issue is the government's inability to offer practical alternatives in indigenous village governance other than simply managing religious practices.

Alternatives that may be chosen include merging with the regency/municipality government in implementing indigenous village administration affairs if it is impossible to cooperate with administrative villages. Without a practical alternative, the coercive regulatory function creates legal ineffectiveness. History has expressed a feeling of injustice by the state towards indigenous people. Apart from such a wide diversity in Indigenous communities around the world, all Indigenous People have one thing in common – they all share a history of injustice (Hymowitz et al., 2003). In this case, the state is deemed to be intolerant of all the inequalities arising from indigenous people and traditional indigenous villages that have no desire to meet the Village Law requirements. The failure of the policy of transforming traditional indigenous villages into modern indigenous villages points to the inability of the state to mediate the unique character of traditional indigenous villages with the goals of the Village Law so that they can transform into modern indigenous villages. This indicates that the coincidence of indigenism and nationalism through the Village Law seems rhetorical because the legal policy has not changed anything against traditional indigenous villages.

## **2. Fulfillment of Interests without Legitimacy**

In the general elucidation of the Village Law, two principles are urgent for increasing the independence of indigenous villages: the principle of 'recognition' and the principle of 'subsidiarity.' Recognition gave birth to the recognition of cultural diversity. At the same time, subsidiarity is related to the relationship

between the state and indigenous villages so that the state no longer controls it entirely. However, it views indigenous villages as capable of caring for themselves. The principles of recognition and subsidiarity have changed the approach of state control over indigenous villages and positioned them as subjects.

Concerning indigenous villages, there are at least three essential elements of implementing recognition, namely discretion, immunity, and capacity building of indigenous villages. The three elements are one unit that allows indigenous villages to build independence (Eko, 2014). The principle of subsidiarity indicates the existing restrictions on the powers of central authority (higher government) and, at the same time, provides space to the organization below to make decisions and exercise authority independently (Follesdal, 1998). There are at least three reasons why the principle of subsidiarity must be implemented in indigenous villages. First, the local affairs or local community interests on a local scale are better handled by indigenous villages, which are certainly closest to indigenous peoples. Second, the state has assigned some authority of a local nature to indigenous villages. Third, there is no interference from the central government in implementing local authority. However, it only provides support and assistance to strengthen indigenous villages as subjects of development.

The combination of the principles of recognition and subsidiarity contained in the Village Law leads to the importance of positioning indigenous villages as a hybrid organization between self-governing communities and local selfgovernment so that indigenous villages appear double-faced, namely government and community, or in the form of community government or community-based government. In addition, the Village Law also provides an opportunity for indigenous villages to restore their lost identity due to the uniformity in the government system and to develop based on their communities' potentials and needs (Adisasmita, 2006).

The autonomy model of indigenous villages is seen from the authority of indigenous villages regulated in the Village Law. The authority of indigenous villages in this Village Law includes the existing authority based on the rights of origin and village-scale local authority recognized by the regency. The autonomy of indigenous villages means more than just the issue of traditional rights and natural resource management. It also means the allocation of power. Based on the growing needs of indigenous peoples, indigenous villages are granted the authority or right to regulate and manage their indigenous village households. For this reason, Article 19 of the Village Law warrants that: The Village Authority includes:

- a. authority based on the rights of origin;
- b. village-scale local authorities;
- c. authority granted by the Central Government, Provincial Government, or Regency/Municipality Government; and
- d. other authorities granted by the Central Government, Provincial Government, or Regency/Municipality Government in accordance with the provisions of laws and regulations.

Especially for authority based on the origin, Article 103 of the Village Law specifies that:

The authorities of Indigenous Villages based on the rights of origin as referred to in Article 19 point a include:

- a. the administrative regulation and implementation based on the original arrangement;
- b. the regulation and management of ulayat (communal land) or traditional territory;
- c. the preservation of socio-cultural values of the indigenous village;
- d. the settlement of customary disputes under the applicable customary law in the indigenous village within an area in line with human rights principles by prioritizing deliberative settlement;
- e. the execution of peace hearings for indigenous village courts in accordance with the provisions of laws and regulations;
- f. the maintenance of peace and order of the indigenous village community under the applicable customary law in the indigenous village; and
- g. the development of customary law life in accordance with the sociocultural conditions of the indigenous village community.

The implementation of recognition of the diversity of indigenous village autonomy shall have two implications. First, the indigenous villages' administration does not necessarily use the word *desa* (village) in their names.

Instead, they are allowed to use names based on their customs, such as *negeri* (Ambon), *dusun*, *nagari* (Minangkabau), *gampong* (Aceh), *kampung adat* (Jayapura), etc. Second, there is recognition of authentic autonomy, allowing the indigenous villages to have independent authority.

Due to the dysfunction of the Village Law and the Government Regulations on Villages to establish modern indigenous villages, the role of the state remains problematic for this autonomy. Instead of autonomy, the absence of state recognition of indigenous villages as experienced by Bali, causing its economic capacity, political role, and legal position in the system of relations with the state to depend primarily on its efforts. Bali might not need to experience this if the local governments voluntarily strengthen indigenous peoples within the framework of traditional indigenous villages. The ability of local governments in various regions in Indonesia certainly cannot always be expected, as experienced by Bali, which has sufficient regional revenue and expenditure budgets (*APBD*) to assume an economic role in the sustainability and development of traditional indigenous villages. Inequality becomes a further problem for the survival of traditional indigenous villages without recognition and subsidiarity. Land and natural resources, for which indigenous peoples have rights, cannot be accessed by traditional indigenous villages (because of no recognition) to be utilized based on the principles of autonomy and subsidiarity. This condition might continue in Bali as long as the state law in offering a recognition model to indigenous villages does not consider regional conditions, relations between indigenous villages and administrative villages, as well as frictions and claims to control natural resources. The Village Law not only creates a trade-off between administrative and indigenous villages in determining the existence of villages, but it also does not touch on claims of control of natural resources, such as overlapping tenure systems.

### **3. Indigenous People and Social Change**

Law and social change reflect the constant interaction between behavior and regulation (Watts & Roberson, 2014). Thus, with its contained norms, the law is taken into account in any attempt to change social behavior. Norms are the key to

realizing the appropriate standards of behavior in any community. They are defined as behavioral patterns, provided that there is a belief that most people can adjust within the range of the norms' applicability, thus reflecting social expectations. Social norms determine the extent to which individuals are involved. The Law may be effective for social change because legal interventions can coordinate social behavior by creating new hope. New laws can change behavior, for example, by changing the rules of certain activities. Traffic rules may quickly achieve the desired outcomes because the drivers and other road users expect everyone else to abide by the rules. After all, it is in their best interest to do so. In terms of social norms, the success rate is meager due to the law's essential contingency. Success often depends on the following factors: "legitimacy, procedural fairness, the origins of the law and its enforcement." There are several prerequisites, including (a) Whether the law stems from a legitimate and recognized authority; (b) Whether the law is enforced from top to bottom, without an opportunity for citizens' views to be heard and considered by the authorities; (c) Whether the citizens trust the formal institutions, such as the legal system and the rule of law; (d) Whether the dissonance between the legal arrangements and social norms is still acceptable that it cannot deprive the legal credibility (Ocheje, 2018).

The failure to transform traditional *pakraman*, villages into modern indigenous villages indicates the contingency of legal norms, thus hindering the process of achieving the expected social change. Social change is a term used by sociologist, described as "*large scale transformation, such as industrialization and the shift from rural agrarian, feudal or traditional societies to modern, industrial societies, the emergence of capitalism, democratization, and most recently globalization*" (Anleu, 2010). Social change refers to the reshaping of the way every member of the community relates to each other concerning education, work, religion, and other basic human interaction (Watts & Roberson, 2014). The emphasis of social change is on the occurrence of significant alteration of the social structure, i.e., patterns of action and social interaction, including their consequences and manifestations, such as structures within the norms, values, symbols, and cultural products. Social change creates 3 (three) logical possibilities, namely:

- a. social change occurring in the social reality that cannot be accepted by the group mentality. In other words, no assimilation of the value system. For example, getting a loan in a community can be conducted by applying for more credit, but the prevailing system denies it;
- b. social change occurs within the value system, but is not transferred into the social reality. For example, a community has the right to vote, but its exercise is suppressed informally;
- c. social change occurs, either formally or informally, within the social structure of the group, and a process of constant interaction happens (Landheer, 1960).

The program to improve the legislation governing indigenous people, including indigenous villages, is intended to shift the paradigm viewing indigenous people as traditional groups who need to be modernized by the benchmark of urban people, or 'insisting' change in their socioeconomic patterns into the ruler's welfare standard. This is also in line with the spirit of the times transcending the understanding of linearity from the traditional to the modern one. Under this old notion, all indigenous people must have a modern design with changing lifestyles

and production methods into a single model that is easily controlled by the state (Fariqun, 2007).

The view that all societies can be engineered to change from traditional to modern way of life is gradually left behind. It has been replaced with the view that the community controls their change. As a result, they start to see themselves as a subject with distinct its history, civilization, and interests. This aligns with the postmodern paradigm, aiming to promote diversity where every subject can interact in a competitive social space. This perspective is supported by the politics of recognition that recognizes indigenous people as economic, legal, social, and political subjects whose existence and rights must be respected. This is also in line with the principle of self-determination, allowing the recognition of the diversity of indigenous village models.

The establishment of modern indigenous villages, although intended to provide indigenous people a space to organize their social systems autonomously, still leaves a paradox behind. This can be seen in the authority to run a government based on the village's origin, meaning that indigenous villages shall be able to maintain and preserve the long-lived customs and social order. However, they cannot escape the elementary changes as they are part of the *NKRI*. In other words, despite their autonomy, these indigenous villages can still control their activities by considering the national plan of progress and development through the development programs in such villages.

The elucidation of the Village Law states that modern customary indigenous villages have the functions of government, village finance, and village development. They also receive facilitation and stewardship from the regency/municipality government. Under this scheme, administrative and modern indigenous villages receive equal treatment from the central and local governments. Therefore, in the future, the village customs may change the formal status of the village and the governance of effective administration, the implementation of effective development, community development, and community empowerment in the region. On the one hand, this kind of provision will make it easier for indigenous villages to exercise their autonomy. However, on the other hand, it will impact the changes in their social system. The Balinese customary law – *Awig-Awig* – is now open to be paralleled with the national law as an effort of the Government of Bali Province to avoid any tension. Customary law as a social sub-system becomes open in its formation and enforcement.

The transformation of traditional indigenous villages into modern ones has several implications. First, the inclusion of traditional indigenous villages in the government structure will remove the independence and authenticity of traditional indigenous villages. Second, indigenous villages' magical, religious, and transcendental nature will turn into secular, profane, and open nature, closing the difference gap due to traditional indigenous villages' specificity. An example is in the salary system of indigenous village officials, which turned out to be ahistorical with the concept of past autonomy that is based on dedication instead of salary, indicating that this system has no philosophical and sociological rationale for the village as an autonomous entity. This system is based only on the reason of entitlement for the persons who are employed and have been appointed as village head, village secretary, and or village officials (Mulyanto, 2015).

As shown above, the enactment of various laws and regulations on villages governing indigenous villages is to validate their positions and disseminate a significant agenda to transform traditional indigenous villages into modern ones to survive in national and global dynamics. Indigenous people whose social environment has yet to be formally recognized as a modern indigenous village indicate that social change is not achieved. Bart Landheer's theory above implies that the changes occur only at the level of value but fail at the transfer of social reality. Thus, indigenous villages remain in their non-formal form. In addition, indigenous people may not obtain formal legal guarantees resulting from the establishment of indigenous villages.

Social change in indigenous people has significant consequences for the coincidence of indigenism and nationalism. Social change in the context of indigenous governance is a factor in the relation with other communities, including the international community. The rights to land and other natural resources, especially in strategic areas, are economically valuable and allow for improving the welfare and progress of indigenous peoples, in addition to national development. The Village Law requiring indigenous people to change rapidly through modern indigenous villages cannot be sustained, because the necessary changes are influencing the fundamental aspects of indigenous peoples' lives, such as the original system that did not expect to be changed.

Social change essentially generates the proper conditions for cooperative behavior. Indigenous peoples need the opportunity to adjust, as it is crucial to set a prominent example for other indigenous people to adjust. Indigenous people will follow good cooperative examples. They also have a fair external preference but do not want disadvantages, among other things. They tend to obey the law, but none want to be the last connoisseur of something that incurs a social cost. This is because they need to know that they are not alone in adjusting to the law (Cohen et al., 2007).

## Conclusion

Conceptually, the recognition of indigenous people's existence, on the one hand, and indigenous village, on the other hand, suggests the coincidence of indigenism and nationalism. In such concept of nationalism, smaller units, such as the indigenous people and indigenous villages, require the state to recognize their existence. Therefore, the preparation of traditional indigenous villages into modern ones indicates not only the influence and victory of indigenism but also confirms the state's position with its expression of the nationalism ideology. Based on that understanding, the state's recognition of customary institutions stated in various laws and regulations, especially on land and natural resources, is assumed to be from the era of indigenous resurgence, which oversimplifies its perspective.

The Village Law governs matters on Village, which consists of villages and indigenous villages Article 6 paragraph, and governs indigenous villages separately in Chapter XIII. Article 96 of the Village Law states, «The Government, Provincial Local Government, and Regency/Municipality Local Government shall arrange the indigenous people unit and be designated as the Indigenous Village. The elucidation of this provision asserts that the establishment of the indigenous people unit and the indigenous village existing today into indigenous villages should only be conducted once. Article 31, paragraph of Government Regulation concerning Villages states that the Regent/mayor shall designate a qualified indigenous village

based on the results of identification and review as referred to in Article 30 of Government Regulation concerning Villages.

Article 31, paragraph of Government Regulation on Villages specifies that the designation of indigenous villages, as referred to in paragraph, shall be outlined in the draft regional regulations. Article 31 paragraph of Government Regulation on Villages asserts that the draft of regional regulations, as referred to in paragraph, that have been jointly approved in the plenary meeting of the regency/municipality regional house of representatives shall be submitted to the governor for the registration number and to the Minister for the village code.

### Suggestion

Laws and government regulations on villages have affirmed the possibility of recognizing indigenous people through transforming traditional indigenous villages into modern ones. This recognition and transformation is an agenda of coincidence of indigenism and nationalism. The incapability of the Village Law to capture the diversity and uniqueness of indigenous peoples and traditional indigenous villages has resulted in the dysfunction of the law. The method diversity to organize indigenous people units has failed to be reduced in the modern indigenous village model based on the Village Law and its implementing regulations. Persisting the traditional village format, as in *pakraman* villages in Bali, will result in the deadlock of a formal relationship between the villages and the state. Hence, the villages must seek the facilitation of their interests by themselves. Finally, social change as the goal of Village Law through the transformation into the structure of modern indigenous villages has become insignificant in the economic, legal, social, and political contexts.

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