

Duty Of Village Head As Mediator In Solving Hah Dispute Concerning Villagers Land

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Abstract

Village government implementation was done by village head while on the other hand village head carry the duty as mediator. View used in Indonesia was power distribution view in which power did not lies in one person. Type of dispute among villagers was highly vary. There was increase in court cases regarding right for land from 2014 – 2015, mediation process in courtroom is still less than maximum. Method used in this study was normative legal (*legal research*) with *philosophical*, concept, cases, historical and *statute approaches*. Theory and concepts used in this dissertation, along with legal aim theory, justice theory, authority theory, and dispute solving theory. Results and discussion: Duty of Village Head as Mediator, philosophically shows aim of Republic of Indonesia in introduction of paragraph IV UUD NRI of 1945, to create eternal peace, to juridically maintain peace and order of village society and to theoretically conclude dispute and restoring peace.

Keywords: Village head, Dispute solving, Village society

1. Introduction

Village head title is a political title thus there should be separation between government implementation and dispute solving. View adopted by Indonesian regarding power distribution has create contradiction in village government implementation. Furthermore, village head was carrying a duty from statute to act as mediator and also as implementor of village government. Critique toward prevalent village head role was found in Village Academic Document suggested as follow:

“People of the village, who has long lived in pragmatism and conservatism, has already felt satisfied with the appearance of village head who speak fluently in each and every ceremonial, who popular and friendly toward his people, who like to visit them, who sacrifice money from his own pocket for the general interest, who promise the development of physical facilities and others. People seems to have limited space and capacity for voice and exite the village’s structural condition filled with elite bias. Public accountability was an important issue for the democracy of village government. Empirically, accountability was not much importance for a village head. When village head plays its social function well, he would tend to ignore accountability in front of the people. He did not need to answer the responsibility of the program, the activities and the financial affairs, although the latter often grow into serious problem. The process of state intervention to the village and village integration to the state has made village head become more sensitive toward administrative accountability toward supra-village government than political accountability in its constituent basis” (Direktorat Pemerintahan Desa dan Kelurahan Direktorat Jendral Pemberdayaan Masyarakat dan Desa Departemen dalam Negeri, 2007).”

Dispute solving domain lies in judicial power. Judicial power in a country with *rechtsstaat* concept was one of the important elements. Therefore, freedom and independence of judicial power was fully warranted by the state. There was no one, including ruler, who could interfere with the freedom and independence of judicial power. This should be confirmed so that implementor of judicial power was able to conduct its task and responsibility, particularly in order to create legal pilars (M. Syamsudin in Janpatar Simamora, 2014) Indonesian people actually carry its own value in its daily life, which is deliberation (*musyawarah*). Reality in solving dispute, people seems to have lost its comprehension and implementation of deliberation value. People tend to grow to solve disputes using violence and law charges.(Rahadi Wasi Bintoro, 2016) Disputes in here was meaning dispute in rights over land with its reason that land is one of the important factors in human life.

“First reason, Land was highly needed by the people for its settlement, as the field for their occupation, and

for other needs. In traditional society, there was close relation across human or the people. As the unity with the land there was sort of 'magical religious' relation between both of them. **Second reason**, for the life of village farmers and city folks, land was one of the dominant needs factor. Nowadays, human needs for the land was significantly felt due to population growth and rapid economy activity (Muchamad Munir, 1996)."

Based on this background, formulation in this paper was what are village head's duty as mediator to solve disputes concerning rights over land of the villager.

2. Objectives

Aims of this study was to describe, to analyze and to discover duty of village head as mediator in solving disputes concerning rights over land of villagers

3. Methods

This research using normative legal method with several approaches, such as historical, concept, statute and philosophical approaches. Analysis of legal material was done in prescription manner, using deductive-inductive reasoning toward blurring norm using legal interpretation

4. Results And Discussion

4.1 Philosophical aspect

philosophical consideration concerning why village always become an interesting topic to discuss were because village is the seed of Indonesia and also that village existed first. Therefore, village should be used as the basic and parts of later administration. Village with older public administration, should become the key point in implementation of government, development and society affairs (Direktorat Pemerintahan Desa dan Kelurahan Direktorat Jendral Pemberdayaan Masyarakat dan Desa Departemen dalam Negeri Jakarta, 2007). Philosophy view was divided into 3 parts, ontology, epistemology and axiology. According to Koento Wibisono Siswomihardjo, knowledge philosophy should be directed toward components that acts as pillars for knowledge existence, which are ontology, epistemology and axiology (Siswomihardjo et al., 2012).

4.2 Ontology aspect

knowledge ontology covers the essence of knowledge, the essence of truth and reality, truth and reality mention here concerning the truth in solving disputes among villagers through village head. Village head is the implementor of village government's administration for villagers affairs, also village head acts as mediator to solve dispute among villagers. **Epistemology**, epistemologically, solving dispute among villagers was by using institution within the village itself, either those old institution or new institution to peacefully solve any dispute among villagers. **Axiology aspect**, questioning whether the duty of village head as mediator has already in accordance with legal objective given that village head has two roles, as implementor of village government and as mediator. As the miniature of Indonesia, village has become the closest political arena for relationship between the people and those in power (village apparatus) whereas village apparatus was also part of the state bureaucracy who has state duty, by running bureaucracy in village level, implementing development programmes, delivering administrative service toward the people (Direktorat Pemerintahan Desa dan Kelurahan Direktorat Jendral Pemberdayaan Masyarakat dan Desa Departemen dalam Negeri Jakarta, 2007). Further, the existence of village far before Indonesian independence was in accordance with statement of HAW. Widjaja quoted by Ateng Syafrudin and Suprin Na.a as follows:

"Historically, village is the candidate to form political society and government in Indonesia far before this state was form, social structure of village type, custom society and others has become the important social institutions. Village is the autonomy institution with tradition, custom and its own legal law also relatively independent. This was shown by high degree of variety which made village become the most concrete nation's form (Syafrudin & Na,a, 2010)."

A village head was not allowed to be in charge of other position, so that he could direct and give all his effort for the course of village government, to improve prosperity of villagers. Village head did not only act as a head, but also a leader. He should know and lead to obtain success in his tasks (Surianingrat, 1985). Up to date, mechanism of solving dispute through mediation still lives among the people, and it can be said as tradition in

solving disputes, which generally mediated by village head, small village head or even religious figures (Siswomihardjo et al., 2012). The duty of village head as mediator was in line with the decision and statute and also author's observation as follows:

4.2.1 Returning the Situation to Its Former State

Context of dispute solving to be obtained from all parties was to return the situation to its former state or become peaceful. However, in its current development, all parties involved even in legal dispute in courtroom would tend to refuse redeliberation for a win-win solution.

4.2.2 Maintain Quiet and Order of Village Community

Requirement to maintain quiet and order of village community was mention in article 26 clause (2) letter f Statute No 6 of 2014. It means that one of the objective for village head was the duty to solve dispute among villagers for the quiet and order of village community. Though in village statute there was no mentioning the direct objective of village head to solve dispute of villagers.

4.2.3 Preserve Safety, Quiet and Order of Village Community

Requirement in Article 26 clause (4) letter c Statute No 6 of 2014, this article suggest that village head in conducting his duty was compulsory to "preserve quiet and order of village community". People in Indonesia was living in cluster to realize a safe, quiet and orderly life, with physical and mental prosperity and contain the consequence to realize social justice for all Indonesian people.

4.2.4 Creating Peace in Village Community

Introduction of UUD 1945 as *staat fundamental Norm* in the Republic of Indonesia, particularly in paragraph IV has causal organic relation with articles in UUD 1945, thus articles in UUD 1945 should conceptually and evidently realized the meaning of paragraph IV in introduction of UUD 1945 (Arfa'I, 2015). The objective of Republic of Indonesia was stated in the sentence "and then to form an Indonesian Government that: (Salam, 1996). a) protect all Indonesian people and its descendants, b) and to advance general prosperity, c) educate the lives of the nation, d) and to participate in implementing global order based on independence, eternal peace and social justice. Therefore, village head in fulfilling his duty should refers to the objective of Republic of Indonesia, to conduct global order by, one of its elements, eternal peace.

4.3 Juridical Aspect

The legal foundation of village government, legal foundation of agraria legal system, and dispute solving for this legal foundations would be elaborated to discover the appropriate legal system with Indonesian context.

4.3.1 Dispute Solving through Village Head

The Constitution of 1945 (before revision) suggest in Article 18 that there was people unity concerning custom law. Article 18 regulate the existence of large and small region. Article 18 display the provision: "Distribution of regions in Indonesia in large and small areas, with its government constitution was determined by statutes, providing and considering deliberation value of national government system and original rights of privilege regions." Village was included as small areas with original rights and privilege in nature. In explanation it was confirmed that: "Indonesian region would be divided into provinces and provinces would be divided to smaller regions". This means that smaller regions would cover regency/municipal and village, or at least statute should also provide proper position for village that existed long before the Republic and villages in colonial era has also been independently managed (Yando Zakaria in Direktorat Pemerintahan Desa dan Kelurahan Direktorat Jendral Pemberdayaan Masyarakat dan Desa Departemen dalam Negeri, 2007).

Regarding reconciliation outside of courtroom, as regulated in special RO (Reglement op de Rechtletterlijke Organisatie) article 3.a clause (1) RO suggest : "If, according to the custom law, particular civil cases was under the authority of village reconciliation judges, then this state would be maintained." Meaning of this reconciliation contain the explanation that to propose a case before the village's reconciliation judges would be voluntary in nature and thus was not a delegated authority to call a case. This reconciliation existed to decide cases and restore village's peace (Amriani, 2011). Mediation arrangement in the village was regulated under **Statute No 6 of 2014**, in article 26 clause (4) letter k, "village head has the duty to solve villager's dispute". This provision was supported by Village Minister Regulation, Development of Backward Regions and Transmigration of Republic of Indonesia No 1 of 2015. Article 13 letter c local authority in village scale for village community as meant in Article 7 letter c covers: maintain peace, handle conflict and conduct mediation in the village; along with this provision village head acts as mediator to preserve peace in the village.

4.3.2 Dispute Solving in Agraria Law

Agraria law is the law with custom law as its main resources. Agraria law was regulated in Statute No 5 of 1960 concerning basic and main regulation for agraria. This statute adopt custom law and this provision can be found in article 5 of Statute No 5 of 1960, that: Agraria Law applies to the earth, water and space are customary law, provided that they do not conflict with national and state interests, based on national unity, with Indonesian socialism and with the rules established in this Act and with other laws and regulations all matters relating with elements that depend on religious law (Harsono, 2008).

According to Boedi Harsono, enactment of custom law as the complementary of written National Land Law was the meaning and provision of article 5 that, *national land law is the custom law*. This statement shows the function of custom law as the main source of development of National Land Law. Explanation from Boedi Harsono regarding provision in article 5 UUPA has given a meaning of custom law as the main law source for National land law, whereas if a problem was not complete than custom law was enacted (Harsono, 2008).

Custom law as the basic of national agraria law formation has faced certain problems, which related with pluralism nature of custom law, whereas each custom community has its own custom law, in which there was difference among them. Therefore, its commonalities was sought by formulating principles/conceptions of law institution or its legal system (Santoso in Susylawati, 2009). Religious element and this conception was shown by the statement that Earth, water, Indonesian air space, carry nature's gift which contain God blessings for Indonesian people (Pide, 2015). Role of village government in Agraria law displayed in explanation of Article 55 Statute No 6 of 1960, third part: "Change in village's government constitution should be done to ensure best implementation in the change of agraria law according to the statute. Village government will be the implementer of a very important role". This explanation shows that the involvement of village government in changing agraria law, in order to direct the regulation of agraria law for villagers. Explanation in Main Statute of Agraria shows that the objective of Main Statute of Agraria is: a) Finding the foundation for the preparation of national agrarian law, which is an instrument to bring prosperity, happiness and justice to the people and people, especially the peasants, within the framework of a just and prosperous society; b) Laying the foundation for unity and simplicity in land law; and c) Laying the foundation to provide legal certainty of land rights for the people as a whole. national agrarian law which is a tool for bringing prosperity, happiness and justice. Agraria law was meant to bring prosperity, and justice to be realized at the end of dispute regarding agraria law (Harsono, 2008)..

Next for solving land-related cases was regulated in Regulation of Agraria Minister and Planology/Head of National Land Office Republic of Indonesia No 11 of 2016 concerning Solving Land-related Cases. This regulation has given opportunities for parties to solve or settling dispute by mediation with the aid of mediator. Mediation participant consist of: a. Processing team, b. Ministry officials, Regional office of National Land Office and/or any Land Office, c. Mediator from ministry, regional office of National Land Office and/or any Land Office, d. stakeholders, and/or e. Expert related with issue at hand, Legal Bureau and Community Relation, Ministry of ATR/BPN from Advocate Section and Legal Documentation and Conflict, related institution and community's elemen, community social/custom/religious figures or any agraria and planology observer or actuator and other elements, if needed.

4.3.3 Duty of Village Head as Mediator

The success of mediation was decreasing according to the report from Case Track Information System (SIPP) MA. It was quite shocking that temporary data for national mediation success in 2017 at SIPP MA was only about 4,14%. This number was the joint number of mediation success for general court and religious court. Success percentage of 4,14% was based on real data displayed in the menu of mediation report of SIPP MA. This data source was drawn from local SIPP of each courtroom in Indonesia (Ahmad, 2017). Our challenge, particularly legal people in Indonesia, lies in documenting conflict solving pattern among traditional people and experimentally developed dispute solving pattern as the product of Indonesia (Nugroho, 2016). Village court is the original legal institution own by almost all villages in Indonesia. In principle, village court would only implement education law based on the principle that law existed not to be breach but to be respected and obeyed. Those who infringe the law would feel some sort of mental remorse (gomeodsbeswaar). Therefore, we should never infringe the law (Nurcholis, 2011).

Village in the concept of Statute No 6 of 2014, village was given authority to regulate and manage government affairs, local people interest based on people's initiative, origin rights and/or traditional rights that was acknowledged and respected in the system of Republic of Indonesia. Authority in origin rights and local

authority in village level was explicated in Regulation of Village Minister, Development of Backward regions, and Transmigration of Republic of Indonesia No 1 of 2015. Local authority in village level would include, article 13 a) maintain safety, order and quiet in the region and among villagers, b) cultivate peaceful life of villagers, c) maintain peace, handle conflict and conduct mediation in the village, d) preserve and develop working together (gotong royong) in the village. Along with the guidance of village's regulation the village was given authority according to origin rights in humaniora discipline, and also authority do maintain peace, handle conflict and conduct mediation in the village; village head and its supporting staff acts as 'village judges' and for cases regarding customary law, he also acts as "customary head" who solve each cases quietly and peacefully (Hadikusuma, 2003).

Authority discussed here was authority based on origin rights and carry the meaning as a living inheritance and village initiative and villager's initiative according to the changing era (Peraturan Menteri Desa, Pembangunan Daerah Tertinggal, Dan Transmigrasi Republik Indonesia Nomor 1 Tahun 2015). Attribution authority was conceptualized through state power distribution by the Constitution. From the discussion above it can be concluded that authority of village head was based on the prevail statute and also based on origin rights or customary law that grow and developed among the people since before the formation of Unitary State of Republic of Indonesia.

From the description above there should be recommendation regarding the duties of Village Head in solving dispute among villagers. Additional recommendation was article 28 clause (3) Statute No 6 of 2014 "Duty of village head in solving villager's dispute should follow the tradition in the village or regulated by local regulation with considering other statutes and higher statutes". Additional article in Regulation of Agraria Minister and Planology/Head of National Land Office of Republic of Indonesia No 11 of 2016 concerning Settlement of Land Case by provision of article 39 clause (1) letter (c) which state as follow, mediator from the ministry, regional office of BPN and/or any Land Office. Its recommendation was "Mediator from Ministry, Regional office of BPN, Land Office and Mediator from the village or Village's Reconciliation Judges".

5. Conclusion

The duty of village head as the mediator in solving dispute among villagers, philosophically, village head has the duty to create eternal peace as mentioned in the objectives of Republic of Indonesia in paragraph IV of introduction of the Constitution 1945, whereas one of the objectives of this Republic was to create eternal peace. Juridically, village head was obliged to maintain and preserve the quiet and order of the village. Theoretically, village head has the objective to solve disputes of villagers thus restore the peaceful life by strengthened the culture of deliberation (musyawarah), cultivating the value of working together (gotong royong), and thus decreasing case files in the courtroom.

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