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Chronic Disease of State Corporatism in Indonesian Village Government

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Article	Abstract
<p>Keywords: Indonesian Village Government; Legitimacy; State Corporatism; the 1945 Constitution.</p> <p>Article History: Received: Sep 16, 2019; Reviewed: Jun 7, 2022; Accepted: Jul 20, 2022; Published: Jul 31, 2022.</p> <p>DOI: 10.28946/slrev.Vol6.Iss2.403.pp304-318</p>	<p>The institutional regulation of the Indonesian village government from the Dutch colonial era (1906) until the Reform Era has practically shown controversy of pros and cons. Through correct regulation, the village should be able to prosper. However, the applied regulation as a tool of social engineering during the inter-period has failed to bring the village to prosper. The legal gaps are whether the applied state-corporatism norms on Indonesia village regulation have met the principles of good local governance. This study aims to provide corrections to the heresy of legal construction of the village regulations. This legal method of study was a <i>nomological</i> type with a statute approach. The technical analysis used was content analysis. The results showed that the legality of the village government status, which is state-corporatism containing in norms of the provision of Number 1, Number 2, Number 7, Article 6 paragraph (1), Article 6 paragraph (1) of the Law 6/2014 is not synchronous vertically to the 1945 Constitution. The results of the legitimacy study also revealed that Articles 12, 19, 19 (b)(c)(d), 69 of Law 6/2014 concerning the Authority and Changes of the Status of Urban Villages (<i>Gesellschaft</i>) into Common-Village (<i>gemeinschaft</i>) implies horizontal disharmony to the Law 30/2014 concerning Government Administration. Therefore Law 6/2014 needs to be revoked and replaced with an organic law derived from Articles 18, 18A and 18B of the 1945 Indonesia Constitution.</p>

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INTRODUCTION

The status of the village government regulated by Law 6/2014 concerning Villages is considered illegitimate as a formal public institution based on the principle of decentralisation. The status of the Village Government raises constitutional issues because it is indicated to be

not in line with Article 18 B Paragraph (2) 1945 Indonesian Constitution. As a result, it creates legal complications both horizontally and vertically.

During the Dutch East Indies occupation, the village was regulated by Article 71 *Regelings Reglement (RR) 1854*.¹ This article only recognises the existence of the indigenous people community (*Inlandsche Gemeenten*) to regulate themselves according to their customs. The following colonial legal policy was that the Dutch Government arranged the Village in Java-Madura with the Law so-called *Inlandsche Gemeente Ordonnantie 1906 (IGO 1906)* and for the outer Java-Madura village with *Inlandsche Gemeente Ordonnantie Buitengewesten (IGOB) 1938*. In this arrangement, the village was called the Indigenous Haminte Government. The village here was recognised as a 'legal entity of indigenous peoples that serves *tussenpersoon* (intermediaries) between the Government and the villagers. Schmitter mentions this model as state-corporatism.² The village was not included in the Dutch East Indies local government bureaucracy (*binnenlands bestuur corps*). It is an indirectly ordered (*indirect bestuur gebied*) bureaucratic mechanism. This means that the Government did not directly rule the villagers but ruled them through the intermediaries of the heads of the indigenous *haminte* Government.

During the Japanese times, through Osamu Seirei 27/1942, the term indigenous people *haminte* was replaced by the term Ku. In this arrangement, the status of the village did not change as *tussenpersoon* or state-corporatism. However, the hierarchical government relationship also remained the same outside the Dutch formal government bureaucratic system. Next, during Indonesia's independence time, the village by Law (*de jure*) was incorporated into the formal regional government system as an autonomous region through Law 22/1948, Law 1/1957, and Law 19/1965. However, village government position by-practice (*de-facto*) was still considered state corporatism as it was regulated by IGO 1906 in conjunction with IGOB 1938. Due to such, those three acts had never been implemented. In 1980, Law 5/1979 was issued in lieu of Law 19/1965. Under Law 5/1979, the village arrangement had returned to a state corporatism model with a similar and congruent organisational structure to Ku in the Japanese colonial era. The village government regulation model under Law 5/1979 has been continued until now under Law 22/1999, Law 32/2004, and Law 6/2014.

The institutional status of village government under Law 6/2014 legally and legitimately has been indicated to be ineffective and inefficient.³ This happens because the Village Government is not part of the formal government bureaucracy, does not hold transparent government affairs, is not equipped with public service agencies, and its financial resources are based on funding from the top Government in the project scheme.⁴ These legal and public administration issues have been studied from several perspectives, such as sociology, economy, agriculture, and anthropology. The results of the study suggested academic biases. Such biases have promoted ideological polarisation: Localist-Existentialism (socialism), Orientalist-

¹ Soetardjo Kartohadikoemo, *Village* (Jakarta: Balai Pustaka, 1984).

² Schmitter and Philippe C, "Still the Century of Corporatism?," *The Review of Politics* 36, no. 1 (1974).

³ Chanif Nurcholis and Sri Wahyu Kridasakti, "Reconstruction Of The Local Government Model Based On The Concept Of The Founding Fathers And The 1945 Constitution Juncto The 1945 Constitution Of The Republic Of Indonesia Towards Modern Local Government," *Yustisia Jurnal Hukum* 7, no. 3 (December 31, 2018): 534, <https://doi.org/10.20961/yustisia.v7i3.24610>.

⁴ Chanif Nurcholis.

Modernism (technocrats), and Structuralist-Radicalism toward regulating and managing the village.⁵ On the other hand, the administrative law perspective has tried to look at the village government institution case from its *ratio-legis* and its legal implication on legal ideals.

Most literature studies on village government institutions have been patterned on technocratic and socialist perspectives, which focuses on the “taken for granted” that village government institution is part of the local-state Government or local-government system with decentralisation principles, which is incorrect.⁶ The average studies on village government issues focused on the simple principle of its legal system but not on the issues of legal harmony in the context of the 1945 Indonesian Constitution. The studies of village government legislation have far skipped on the criteria and principles adequacy of the formation of Law 6/2014.⁷ The studies on village government issues did not give much attention to legal-historical perspectives, so they overlooked the regime legal politics to village government institution positioning.⁸ The standard studies of local Government had not provided practical benefits to knowing the illegitimacy in the practice of incorrect good local governance at the village level when it was formed, devolved and delegated to the context of the village government level⁹. The significant studies of legal harmony have not paid attention much to knowing the disharmony of Law 6/2014 vertically to 1945 Indonesia Constitution and horizontally to other laws.¹⁰ However, this study has focused more on the relatively comprehensive analysis of the legality and legitimacy of Law 6/2014 on the village from the perspective of state administrative law.¹¹ This study focuses on the context of village administrative law, historical Law and Law formation principles.

Based on the problem, the research questions are proposed as follows. Are the institutional arrangements norms of the Dinas Village regulated by RI Law 6/2014 has fulfilled the clear objective principle (*beginsel van duidelijke doelstelling*); the right organ principle (*beginsel van het juiste organs*); the implementable principle (*het beginsel van uitvoerbaarheid*); the principle of correct terminology and systematics (*het beginsel van duidelijke terminology en duidelijke systemetiek*); the principle of legal certainty (*beginsel van rechtszekerheids*); and the

⁵ DPD RI Komite I, *Kembali Ke Mandat: Hasil Pengawasan DPD RI Atas Pelaksanaan UU No. 5/2014 Tentang Desa*, 1st ed. (Jakarta: Komite I DPD RI, 2017).

⁶ Chanif Nurcholis, Sri Wahyu Krida Sakti, and Ace Sriati Rachman, “Village Administration in Indonesia: A Socio-Political Corporation Formed by State,” *Open Journal of Political Science* 09, no. 02 (2019): 383–404, <https://doi.org/10.4236/ojps.2019.92021>.

⁷ Muhammad Fadli, “Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat,” *Jurnal Legislasi Indonesia* 15, no. 1 (2018): 49–58, <https://doi.org/10.54629/jli.v15i1.12>.

⁸ Y M Darusman and B Wiyono, *Teori Dan Sejarah Perkembangan Hukum*, vol. 1, 2019; Wibowo T. Tunardy, “Mazhab Sejarah,” *Jurnal Hukum*, 2021.

⁹ Lukman Santoso Az, “Hukum Pemerintahan Daerah,” 2015, https://www.researchgate.net/publication/328304969_Hukum_Pemerintahan_Daerah; MY Tiyas Tinov and Tito Handoko, “Penguatan Kelembagaan Desa Dalam Mewujudkan Otonomi Di Desa-Desa Pesisir Studi Di Desa Sokop Kecamatan Rangsang Pesisir Kabupaten Kepulauan Meranti,” *Jurnal Ilmu Pemerintahan Nakhoda* 15, no. 26 (December 1, 2016): 98–111, <https://doi.org/10.35967/jipn.v15i26.3849>.

¹⁰ Nurcholis, “Undang. Nomor 6 Tahun 2014 Tentang Desa Dilihat Dari Pasal 18 B Ayat 2 Uud 1945.”

¹¹ Ferry Irawan Febriansyah, “Konsep Pembentukan Peraturan Perundang-Undangan Di Indonesia,” *Perspektif* 21, no. 3 (2016): 220, <https://doi.org/10.30742/perspektif.v21i3.586>; Soegiyono, “Pentingnya Harmonisasi Dalam Pembentukan Peraturan Perundang-Undangan,” *Kajian Kebijakan Dan Hukum Kedirgantaraan*, 2020, 1–21, <https://doi.org/10.30536/9786023181339.1>.

principle of implementability in accordance with individual abilities (*het beginsel van de individuele rechtsbedeling*).

The general objective of this study is to map the adequacy of the elements of legality and legitimacy on the ruling (*rechtregel* and *wetregel*) of the status of village government institutions so that it can be utilised to improve the correctness of the village law arrangement in the future. The specific objective of the study is to answer whether the norms for regulating the institutional status of the Village Office regulated by Law 6/2014 have fulfilled the parameters of legality and legitimacy according to the principles of establishing legislation. This study is considered necessary because until now, the regulation of the status of village government institutions has been indicated to be disharmonious among the laws that implicate inefficient and ineffective to village development.¹²

RESEARCH METHODS

This study used a normative legal methodology using three major approaches. Those are the Statute, the Conceptual and the Historical Approach, which were proportionally integrated into their analysis. This legalism methodology employs a study of organic legal documents as the primary legal material related to the institutional status of the Village Government. Likewise, the secondary legal materials include academic texts, draft laws, various scientific articles in journals related to village government institutions, related paperwork, study reports, and research on the village government's institutional and legal structure. The tertiary legal material in the form of a list of indexes of Constitutional Court decisions and legal dictionaries were also utilised as a reference for verification and standard nomenclature regarding the norms arrangement of village government institutions.

To answer the research question, this study has reconstructed the legal history of Village Government institutions since IS-1738, IGO 1906, IGOB 1938, Law 22/1948, Law 1/1957, Law 19/1965, Law 5/1979, Law 22 / 1999, Law 32/2004, and Law 6/2014. Based on the legal-history construction, an evaluation of the legal-structure status of the village government institution was also carried out until the legal-substance regulation norms according to Law 6/201.¹³

ANALYSIS AND DISCUSSIONS

Legality and Legitimacy of the Village Government

The basic concept used as an instrument of analysis of the status of village government institutions is Law 6/2014, covering the concepts of legality and legitimacy,¹⁴ Regional Autonomy Theory,¹⁵ Authority Theory,¹⁶ and Legislative Theory.¹⁷ The nomenclature of

¹² Sri Wahyu Kridasakti, Sudarsono, and Chanif Nurcholis, "Analysis of M-P-F-A-A-C (Meaning - Positioning - Functioning - Authorising - Actuating - Controlling) on the Village Government Institutional Arrangement," *Yustisia* 8, no. 3 (2018): 400–420, <https://jurnal.uns.ac.id/yustisia/article/view/34665>.

¹³ Friedman L. M, *Teori Dan Filsafat Hukum: Telaah Kritis Atasi Teori-Teori Hukum (Susunan I)*, Judul Asli *Legal Theory*, Cetakan ke (Jakarta, PT Raja Grafindo Persada, 1993).

¹⁴ Schmitt Carl, Hans Kelsen, and Hermann Heller, *Legality & Legitimacy* (Paper-Work Collection. Without a publisher, 1974).

¹⁵ Bhenyamin Hoessein, *Perubahan Model, Pola, Dan Bentuk Pemerintahan Daerah : Dari Era Orde Baru Ke Era Reformasi* (Jakarta: DIA FISIP UI, 2011).

proper regulations can be associated with the principles of Good Corporate Governance to illustrate the earnest efforts to establish the correct and proper legislation. Valid in the constitutional sense and the legitimate sense of its use,¹⁸ the product of true and fine is referred to as constitutional and good Law or legal and legitimate Law.¹⁹

According to the common-law system,²⁰ measuring legal or legality is determined based on scientific method or legislation. Conversely, the term legitimate implies 'Good' because it fulfils the community's benefit requirements. Thus, the notion of the legality-legitimacy principle in Law 6/2014 concerning the Village arrangement means whether this Law fulfils the principle of legality and legitimacy criteria elements in the formation of legislation. Legality-legitimacy of Law 6/2014 can be carried out through the Statute and Conceptual Approach approaches reflected in the formulation of the principles stipulated in Law 12/2011 concerning the Establishment of Laws and Regulations to determine whether there is a synchronicity and legal ambiguity in the institutional arrangements of the Village Government.

Lawrence Mier Friedman believes that the effectiveness of law enforcement depends on the good and bad conditions of the legal structure, in addition to legal substance and legal culture.²¹ Legal structures, namely the permanent framework of a legal system that keeps the process within its limits. The State applies Law 6/2014 about the village to improve the welfare of the village community. However, this village law leaves a fundamental problem concerning the status of its institutions which are outside the system of government bureaucracy according to the principle of decentralisation as stipulated in Law 30/2014 concerning Government Administration, so the status is unclear: whether a local-state Government, local-self-government, self-governing community, as a combination of them or state-corporatism.²²

The ambiguity of the status of the Village Government is not following the constitutional Law, namely the Law that regulates "the state in silence," and the Law of governance, namely the Law that regulates "the state in motion".²³ In constitutional Law, the problem of 'authority' is fundamental to the division of authority as a state in a state of movement.²⁴

The state corporatism model in village government is actually not a government regime but a state-formed socio-political organisation regime. In this model, the State only forms social

¹⁶ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 1998).

¹⁷ Maria Farida Indrati, *Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muatan*, Yogyakarta: Kanisius, 2007.

¹⁸ Jimly Asshidiqie, *Orasi Dalam Rangka Silaturahmi Dewan Dakwah Islamiyah Indonesia (DDII)* (Jakarta, 2011).

¹⁹ Mike Reid, "The Central- Local Govern Men t Relations h i P : The Need for a Framework ?," *POLITICAL SCIENCE* 50, no. 2 (1999): 165–81. See also Carl Schmitt, Hans Kelsen, Hermann Heller. 1974. *Legality and Legitimacy*. Paper-Work Collection, by Reid, with no publisher.

²⁰ Asshidiqie, *Orasi Dalam Rangka Silaturahmi Dewan Dakwah Islamiyah Indonesia (DDII)*.

²¹ Friedman L. M, *Teori Dan Filsafat Hukum: Telaah Kritis Atasi Teori-Teori Hukum (Susunan I)*, Judul Asli *Legal Theory*.

²² Nurcholis. Hanif, *Pemerintahan Desa. Unit Pemerintahan Semu Dan Inkonstitusional. Makalah Disampaikan Dalam Bedah Buku "Pemerintahan Desa: Unit Pemerintahan Semu Dalam Sistem Pemerintahan NKRI*.

²³ Titik Triwulan Tutik, *Pengantar Hukum Tata Usaha Negara*, Jakarta: Prestasi Pustaka Publisher, 2012.

²⁴ Hoessein, *Perubahan Model, Pola, Dan Bentuk Pemerintahan Daerah : Dari Era Orde Baru Ke Era Reformasi*.

and political organisations using the mobilisation method for political and economic interests. Thus, Village Government is not a local-state Government, nor is it a local-self-government. Therefore, the Village Government is not an executor of the Central Government policy and also does not regulate and manage decentralised government affairs.²⁵ Such status raises a problem: Is the Village Government regulated by Law 6/2014 in its implementation fulfills the clear objective principle (*beginsel van duidelijke doelstelling*); the right organ (*beginsel van het juiste organs*); the principle of implementability (*het beginsel van uitvoerbaarheid*); the principle of correct terminology and systematics (*het beginsel van duidelijke terminology en duidelijke systemetiek*); the principle of legal certainty (*begins with van rechtszekerheids*); and the principle of implementability in accordance with the individual ability (*het beginsel van de individuele rechtsbedeling*).

In forming legislation, it is necessary to be guided by the principles of forming excellent and ideal regulations. This follows the opinion of I.C. van der Vlies in his book *Handboek Wetgeving* namely formal and material principles.²⁶ The formal and material principles relevant to this study are: clear objective principle (*beginsel van duidelijke doelstelling*); the right organ (*beginsel van het juiste organs*); the principle of implementability (*het beginsel van uitvoerbaarheid*); the principle of correct terminology and systematics (*het beginsel van duidelijke terminology en duidelijke systemetiek*); the principle of legal certainty (*beginsel van het rechtszekerheids*); and the principle of implementability in accordance with the individual ability (*het beginsel van de individuele rechtsbedeling*).

Village Government's Legal Structure

It is believed that the legal-structure Village Government institution is not in the line of the local government bureaucracy based on either the deconcentration principle or the decentralisation principle. As for the legal substance, the findings of nine norms of the articles in Law 6/2014, which are counter-productive, are directly related to the regulation of the institutional status of the Village Government. Through content analysis of the norms of Law 6/2014, the main weakness of the institutional, legal structure of the Village Government lies in the formulation of norms in the formation of village institutions that are ambiguous in their legal status in the legal structure of Indonesian governance. Institution of Village Government is not local Government and -local state government. The reality of the Village Government institutions is managed by the Village Head, assisted by the Village Secretary and village officials, and the employment status is not included in the State Civil Apparatus according to Law 5/2014 concerning the State Civil Apparatus.²⁷ Law 6/2014 explains that the Village Government combines self-governing communities with local-self-government. Such regulation is precisely the confusion of the juridical foundation because it has no legal basis for

²⁵ Abdul Gaffar Karim, *Kompleksitas Persoalan Otonomi Daerah Di Indonesia* (Yogyakarta: Pustaka Pelajar Offset, 2003).

²⁶ I.C. van de Vlies, *Handboek Wetgeving* (Zwolle: Tjeenk Willink, 1987). See also Indrati, M, F. S. 1998. *Ilmu Perundang-undangan Dasar-Dasar dan Pembentukannya*, Kanisius, Yogyakarta.

²⁷ Kridasakti, Sudarsono, and Nurcholis, "Analysis of M-P-F-a-a-C (Meaning - Positioning - Functioning - Authorising - Actuating - Controlling) on the Village Government Institutional Arrangement."

regulating good governance functions.²⁸ General Provisions Article 1 of Law 6/2014 mentions that:

“Villages are customary villages and villages or what is called by other names, from now on referred to as villages, are legal community units that have territorial limits that are authorised to regulate and manage government affairs, interests of local communities based on local community initiatives, origin rights, and/or rights traditionally recognised and respected in the system of government of the Unitary State of the Republic of Indonesia”.

Based on the theory of local-government legal subjects with territorial boundaries and the authority to 'regulate' and 'manage' government affairs are formal autonomous regions formed by the central Government. However, Customary/Non-Bureaucratic-Village are not autonomous regions as local-self-government;²⁹ Because the head of the village is a major, there is no council, does not have a state civil apparatus, does not regulate and administer decentralised government affairs, and has the authority to draw local taxes.³⁰ This situation shows that the element is not fulfilled by the principle of correct terminology systematics (*beginsel van duidelijke terminologie en duidelijke systematiek*).

General Provisions Article 2 of the Law 6/2014 mentions that “the Village Government is the administration of government and the interests of the local community in the system of government of the Unitary State of the Republic of Indonesia”. The General Provisions are not formulated from the government bureaucracy system at the village level and scope. Law 6/2014 should put the village government as part of the government bureaucracy on it. However, the village government is not part of the superior Government (regency/city and province). The position of the village government is the same and congruent with the position of the *haminte* (indigenous-people local Government) as regulated in the IGO 1906 *juncto* IGOB 1938. Therefore, the status of the village head and the personnel are not government official, and the village apparatus is not a civil service as stipulated in Law 5/2014 concerning the State Civil Apparatus. This situation also shows that the element of accuracy in terms of terminology and systematics is not fulfilled as to the principles of *het beginsel van duidelijke terminologie en duidelijke systematiek*. Thus, what is called a "village government institution" is not a legal government regime but a state-formed socio-political regime that is so-called state corporatism. The State forms social and political organisations at the village level that are used for political and economic interests using the mobilisation method. Village Government is neither local-state-government nor local-self-government. Therefore, the Village Government is not an executor of the Central Government policy and does not regulate and manage decentralised government affairs.³¹

Village Regulation is a regulation made by the Village Government with the Village Council Body. It is also supported by the General Provisions Article 7 of the Law 6/2014, mentioning that “Village Regulation is a statutory regulation stipulated by the Village Head

²⁸ Kridasakti, Sudarsono, and Nurcholis.

²⁹ Chanif Nurcholis et al., “Village Government and Its Institutional Design Under the Constitutional Norms (The Case of Village Regulation in Indonesia),” *Talent Development & Excellence* 12, no. 2 (2020): 1358–67.

³⁰ Nurcholis. Hanif, *Pemerintahan Desa. Unit Pemerintahan Semu Dan Inkonstitusional. Makalah Disampaikan Dalam Bedah Buku “Pemerintahan Desa: Unit Pemerintahan Semu Dalam Sistem Pemerintahan NKRI*.

³¹ Karim, *Kompleksitas Persoalan Otonomi Daerah Di Indonesia*.

after being discussed and agreed upon jointly by the Village Consultative Body.” The Village Regulation does not have the basis of the law enforcement because if Village Regulation is compulsory, then the State’s institutional status must be a formal organ instead of the faulty governance unit or so-called pseudo-government.³² Law 12/2011 regarding Regulations on the Establishment of Legislation states that village regulation is not mentioned as legislation. This situation shows that the fundamental element of the correct objective of goal (*beginsel van duidelijke doelstelling*) and the proper organ (*beginsel van het juiste organ*) have not been fulfilled. This fact affirms the contra-productiveness of the institutional design of the village as state-corporatism.

Moreover, Article 6 paragraph (1) states that “Village consists of Customary Villages” does not have a juridical basis. It is unclear what the Village and Customary Village means unless the understanding of Article 6 to Article 95 is understood as a Village under Law 5/1979, Law 22/1999, Law 32/2004, and Government Regulation 72/2005. Customary Village is not explained in the General Understanding, so the material object arrangement in Article 96 to Article 111 of Law 6/2014 is unclear. Suppose the Customary Village means a legal community unit as stipulated in Article 18B Paragraph (2) of the 1945 Constitution. In that case, the village arrangements in Articles 96 up to Article 111 must deviate from the Constitution because these Articles regulate, organise and give attributive authority to the indigenous peoples' institutions. The contents of Article 18B Paragraph (2) of the 1945 Constitution is that the State recognises the unity of indigenous peoples who are still alive.

Indonesia's Constitution does not contain the norms of rules about ‘Village’ or what is referred to as the terms “ Formal Villages, ” which is not supposed to be derivated through Article 18 B paragraph (2). According to Indonesia's legal history since the days of the Dutch, Japanese, and the Government of the Republic of Indonesia today, the institutional status of the village has never changed from out of the formal government regime: the social and political legal entity formed by the State with ordinances and laws as a state-corporatism practice. This situation indicates that the element of clear objective principle is not fulfilled (*beginsel van duidelijke doelstelling*), the principle of the proper organ (*beginsel van het juiste organ*) is not fulfilled, and also the fulfillment of the principle of correct terms (*het beginsel van duidelijke terminology en duidelijke systemetiek*).

Article 12 Law 6/2014 mentions that “The Regency/City Regional Government can change the status of the Sub-Regency Office (Kelurahan) into a Village based on community initiatives and fulfil the requirements specified following the provisions of the legislation.” Based on this article, the village government and sub-regency status and types are not equal, so they cannot be overthrown just like that in the government structure. Based on Law 23/2014, the village is the sub-regency technical implementation unit as a regency/city apparatus, while the Village Government is a semi-government unit.³³ Viewed from the sociological aspect, the characteristics of the Village Government are community members (*gemeinschaft*). At the same

³² Hanif Nurcholis et al., “Village Government in Indonesia: A Pseudo Government, World Conference on Public Administration” (Daegu, 2014).

³³ Soerjono Soekanto, *Mengenal Sosiologi Hukum* (Bandung: Citra Aditya Bakti, 1989). See also Nurcholis, H. 2018, *Pemerintahan Village. Unit Pemerintahan Semu dan Inkonstitusional*. Makalah disampaikan dalam bedah buku “Pemerintahan Village: Unit Pemerintahan Semu Dalam Sistem Pemerintahan NKRI”. Cetakan ke-4. Penerbit Bee Media Indonesia. Jakarta. Hlm. 89-114.

time, the Subregency Office (*Kelurahan*) is *patembayan* (*gesellschaft*), so the Village Government and the *kelurahan* have characteristics that are wide and cannot be exchanged for status.³⁴ Another legal issue is that *Kelurahan* is a deconcentration device according to Law 5/1974 *jo* Law 5/1979 with the status of the Regency/City agent or Subregency Office. According to Law 32/2004, *Kelurahan* status is a Technical Implementation Unit as the Subregency Office, so *Kelurahan* cannot be turned into a village legal entity.³⁵ This situation not only fulfills the correct systemic principle (*Het Beginzelen van de Systematiek*), but also the clear principle of purpose (*beginsel van duidelijke doelstelling*), and the assuring principle of legal certainty (*beginsel van het rechtszekerheids*).

Article 19 states, “Village authority includes authority based on origin rights.” Elucidation of Article 19(a), referring to what is meant by “the right of origin”, is the right that is the surviving heritage and the Village initiative. However, if this provision is related to Article 34 (1) of Government Regulation 43/2014 on the Village Law Implementation Regulations, it states that the authority of the village government regulation includes: (a) an indigenous peoples organisation system; (b) the establishment of community institutions; (c) the development of customary institutions and laws; (d) land management of Village Capital Resources; and (e) the development of village community role. Thus the authorisation of letters b, c, d, and e above are contrary to the mandate of Article 18 B paragraph (2) Constitution because the norms contained in letters b, c, d, and e are not meant for acknowledging and respecting but rather making new authority.³⁶ The norms of Article 19 and the elucidation of Article 19 a are the primary sources of the recognition principle, while Section 19 b below are the primary sources of the subsidiarity principle.

Article 19 b Law 6/2014 mentions, “Village authority covers authority based on village-level local authority”. Explanation of Government Regulation No. 43/2014 of Article 19 b Law 6/2014:

“What is meant by village scale local authority is the authority to regulate and manage... among others management: (1) boat berth; (2) village market; (3) public bathing place; (4) irrigation network; (5) settlement environment of rural communities; (6) Development of village communities and management of integrated service posts; (7) Development and development of art and learning studios; (8) village libraries and reading parks; (9) village ponds; (10) village scale drinking water; and (11) Making village roads between settlements to agricultural areas.”

The issue of the legal structure is that the Norms of Article 19(b) of this government regulation are not following the facts in the field. The authority referred to in Article 19(b) Government Regulation No. 43/2014 is not clear enough because the principle is not an authority based on the principle of decentralisation or based on the recognition principle. Therefore, 74.956 villages did not regulate and administer these complex and various matters. This happened because the Central Government had never submitted these matters. If a Village Government has one or more of these affairs based on the project, it can be assured that the village would be unable to take care of it. It is due to a shortage of village institutional

³⁴ Soekanto.

³⁵ Soekanto, *Mengenal Sosiologi Hukum*. see also Nurcholis, H. 2018. Pemerintahan Village. Unit Pemerintahan Semu dan Inkonstitusional.

³⁶ Nurcholis. Hanif, *Pemerintahan Desa. Unit Pemerintahan Semu Dan Inkonstitusional. Makalah Disampaikan Dalam Bedah Buku “Pemerintahan Desa: Unit Pemerintahan Semu Dalam Sistem Pemerintahan NKRI*.

resources that do not have an organisational organ to carry out these matters. This situation shows that the failure to fulfill the principle of systemic precision (*beginsel van duidelijke systemetiek*), the principle of executable (*het beginsel van uitvoerbaarheid*), and the principle of implementability in accordance with individual abilities (*het beginsel van de individuele rechtsbedeling*). Village governance as a pseudo-government does not have leveraging power to execute such myriad public affairs. Article 19(c) and Article 19(d) Law No. 6/2014 mention that:

“Village authority includes authority based on authority assigned by the Government, Provincial Government, or Regency/City Government and other authorities assigned by the Government, Provincial Government, or Regency/City Regional Government following the provisions of legislation”.

The legal-structure problem is that the authority possessed by the Village Government creates a blur system in the governance of the bureaucracy. The kind of authority given (attributive) to village government institutions is unclear. Is the authority given a delegation type or *medebewind*. If the type is delegation, the problem is from whom. Is it the Government of the Central Government superior to the village as a local-state government, the Government of the local-self-government superior to the village as local self-government, or the Government of local self-government to the village as a self-governing-community? This situation shows that the principle of systemic precision is not fulfilled, starting with the *het beginsel van duidelijke systemetiek*, the clear principle of purpose (*het beginsel van duidelijke doelstelling*), and the principle of legal certainty (*het beginsel van rechtszekerheids*). Thus village, with its status as a pseudo-government, negatively implicates its bureaucratic performance and public services. Article 69 Law 6/2014 regarding the Village Regulation states that:

“The type of regulation in the village consists of Village Regulations, joint rules of the Village Head, and Village Head regulations... The draft Village Regulation on the Village Revenue and Expenditure Budget, levies, spatial planning, and Village Government organisations must be evaluated by the Regent/Mayor before being determined to be a Village Regulation etc.”

The legal structure issue is that the status of the Village Government is as "Pseudo Government Units", so the illegal Village Government makes laws and regulations as stipulated in Law 12/2011. Law 12/2011 - there is no mention of Village Regulations legislation. The Village Government has not been able to make Village Regulations because of the limited institutional resources. This situation indicates that Article 69 does not fulfill the correct systemic principle (*het beginsel van duidelijke systemetiek*), the right organ principle (*beginsel van het juiste organs*), and the legal certainty (*beginsel van rechtszekerheids*), and implementability (*het beginzelen van uitverbaarheid*) and executable (*beginzelen van de individuele rechbedeling*). Village government institutions as state corporatism only bring about bureaucratic complications and are contra-productive to public services.

The Legitimacy of Institutional Status of the Village Government

The interdimensional findings and the analysis of village government legitimacy are brought forward in this Table 1. The analysis results can be clearly seen from the perspective of legal history concerning the six principles of the formation of legislation. In essence, Table 1 shows the illegitimacy of regulating the status of village government institutions, taking a look from the

perspective of the principles of establishing good local-governance legislation. Throughout the history of village regulation, practically, villages have never been placed on the platform of a decentralised local government system. Always put as "Pseudo-Government" or "State-Corporatism". This condition causes 'Chronic-Decease' to cause various development problems in implementing village laws and regulations. Except in the era of Old Order, there were through Law 22/1948 and Law 1/1957. However, these were never implemented due to the uncondusive political situation.³⁷ However, in the New Order era through Law 5/1979, the State remodelled the village institution back into a system of village government bureaucracy in the form of an institutional model of the Japanese era. The six Law making principles were also fail to comply.

Table 1: Matrix of the Legality and Legitimacy of Village Government Institution Status Based on Law 6/2014 Regarding Village

No	Docu ment	The object of Legal Analysis of Village Government Institution Status						
		The Legality Profile of Village Institutional Status	The Legitimacy Profil of Village Institutional Status					
			(1) The principle of clear objective	(2) The principle of the suitable organ	(3) The principle of precise terminology and systematics	(4) The principle of legal certainty	(5) The principle of enforceability.	(6) The principle of individual competence to administration.
1	RR 1854	o Article 71 RR, Village is an entity of indigenous people community	Colonialism context	Colonialism context	Colonialism context	Colonialism context	Colonialism context	Colonialism context
2	IGO 1906 jo. IGOB 1938	o The village as an indigenous people's legal entity. o Village Govt. institution. o State-Corporatism	o Colonialist administration; o Divisive decentralisation o State-Corporatism	o Divisive decentralisation o State-Corporatism.	o Colonialist administration; o State-Corporatism.	o Colonialist administration; o State-Corporatism.	o Colonialist administration; o Divisive decentralisation	o Colonialist administration. o Divisive decentralisation
3	Osamu Seirei 7/1944	o The village is 'Ku'. o State-Corporatism	o Colonialist administration; o State-Corporatism; o Resources Exploitation.	o Colonialist administration; o State-Corporatism	o Colonialist administration; o State-Corporatism; o Controlling over resource	o Colonialist administration; o State-Corporatism.	o Colonialist administration; o State-Corporatism o Exploitation over resources	o Colonialist administration. o State-Corporatism; o Exploitation over resources.
4	Law 22/1948a and Law 1/1957 on the Principles of Regional Governance.	o Unregulated by Indonesia 1945 Constitution. o Autonomous Region Level-3 o Below Regency/ City Level-2. o Symmetrical / Asymmetrical autonomous regions.	o Meet the decentralisation principles o Using the decentralisation on platform	o Using the decentralisation platform o Meet the decentralisation context	o Using the decentralisation platform o Meet the decentralisation context	o Using the decentralisation platform	o Using the decentralisation platform	o Using the decentralisation platform o Meet the decentralisation context
5	Law 5/1979 on Village Government.	o 'Semi-Govt Institutions' o State-Corporatism institutions.	o Uniformity platform; o State Corporatism	o Uniformity platform; o State Corporatism	o Uniformity platform; o State Corporatism	o Uniformity platform; o State Corporatism	o Uniformity platform; o State Corporatism	o Uniformity platform; o State Corporatism
6	Law 22/1999 and Law 32/2004 on Regional Government.	o Autonomous rights over its origin o 'Semi-Govt Institution' o below the Regency/City. o State-Corporatism	o 'Semi-Govt Institution' o State Corporatism	o 'Semi-Govt Institution' o Non-decentralization platform; o State Corporatism	o 'Semi-Govt Institution' o State Corporatism	o 'Semi-Govt Institution' o Non-decentralization on platform;	o Non-decentralization platform; o State Corporatism o Below the Regency/ City.	o 'Semi-Govt Institution' o Non-decentralization platform.

³⁷ Kridasakti, "Ius Constituendum of Regulating Institutional Village-Government System."

No	Docu ment	The object of Legal Analysis of Village Government Institution Status						
		The Legality Profile of Village Institutional Status	The Legitimacy Profil of Village Institutional Status					
			(1) The principle of clear objective	(2) The principle of the suitable organ	(3) The principle of precise terminology and systematics	(4) The principle of legal certainty	(5) The principle of enforceability.	(6) The principle of individual competence to administration.
7	Law 6/2014 on Village	<ul style="list-style-type: none"> ○Hybrid-Village over the principles of Recognition & Subsidiarity. ○Autonomous rights over its origin ○'Semi-Govt Institution' ○below the Regency/City. ○State-Corporatism ○The Law 6/2014 is in disharmony with Article 18 B paragraph (2) of Indonesia Constitution 1945. ○Article-1-95 Law 6/2014 does not comply with the six- law-making principles of Law 12/2011. 	<ul style="list-style-type: none"> ○'Semi-Govt Institution' ○State Corporatism ○Not complying with the principle of a clear objective. 	<ul style="list-style-type: none"> ○'Semi-Govt Institution' ○Non-decentralization platform; ○State Corporatism ○Not complying with the principle of right organ /institution. 	<ul style="list-style-type: none"> ○Hybrid-Village ○'Semi-Govt Institution' ○'Semi-Govt Institution' ○State Corporatism ○Not complying with the principle of correct terminology creates legal complication horizontally to Law 30/2014: Government Administration and Law 5/2014: State Civil Apparatus; 	<ul style="list-style-type: none"> ○'Semi-Govt Institution' ○Non-decentralization platform ○Not complying with the principle of legal certainty concerning village diversity and types of authority and autonomy being attributed. 	<ul style="list-style-type: none"> ○Non-decentralization platform; ○State Corporatism /City. ○Not complying with the principle of the ability to implement due to the incompatibility of regulatory norms with the actual institutional conditions. 	<ul style="list-style-type: none"> ○'Semi-Govt Institution' ○Non-decentralization platform. ○The dependence on external professional assistants in implementing village authority is not complying with the principle of individual capabilities.

Source: *Analysed from the primary source*

In table 1 also can be seen that in the village government institution status is continued to be out of the local government system or so-called “State-Corporatism” until today, as through Law 22/1999, Law 32/2004, up to the latest Law 6/2014. Even though Law 32/2004 stipulated that the village is a part government unit under the regency/city, its institutional status to date has not wholly entered into the formal structure of the government bureaucracy.³⁸

CONCLUSION

It can be concluded that applied regulation as an instrument of social engineering during the inter-period has failed to comply with the law-making principles of good local governance to bring the village to prosper. The applied regulation as the instrument of social engineering through State-Corporatism to village status during the inter-period has failed to bring relations between Law and regulation in harmony, let alone village prosperity. The village government regulation until today is not justifiable based on the six law-making principles. For example, the clear objective principle, the correct organ principle, the implement ability principle; the correct terminology principle, the legal certainty principle; and the executable principle. The primary material of Law 6/2014, which regulates the institutional status of the Village Government, which is regulated in Provisions Number 1, Number 2, Number 7, and Article 6 paragraph (1) of Law 6/2014, is not synchronous vertically with Article 18 B paragraph (2) of the Constitution at which does not regulate the institution of the Village Government. Article 12 Law 6/2014 constitutes a new intervention that regulates changes in the village status from

³⁸ Nurcholis et al., “Village Government and Its Institutional Design Under the Constitutional Norms (The Case of Village Regulation in Indonesia).”

Subregency Office or “bureaucratic-village” status (Kelurahan) becoming common-villages. Viewed from the sociological perspective, the Village Government characteristics are communal (*gemeinschaft*). At the same time, the Subregency Office (*Kelurahan*) is *patembayan* (*gesellschaft*), so the Village Government and the Kelurahan have characteristics that cannot be exchanged for their status. In the same situation, Article 19, Article 19 b, c, d. Article 69 of Law 6/2014, which regulates the authority, implies horizontal disharmony to Law 30/2014 on Government Administration. The attributed village authority (recognition and subsidiarity principles) possessed by Village Government is, in fact, not an autonomous authority based on decentralisation principles. So Village Governments are not fully part of the government bureaucratic system or so-called 'Pseudo Government'. As prescribed, the model of the Village Government system as the so-called “Hybrid-Village”, as a combination of local self-government and the self-governing community (Explanation of the Law 6/2014), this model has severe implications for its inconsistency with the principle of decentralisation for autonomous regions that have created “chronic-disease as for ineffective and inefficiency in law implementation. What can be learnt from the above analysis results is that the political Law of Law 6/2014 is that establishing state-corporatism for village institutional status is a mistake.

This study recommends that Articles in Law 6/2014 which is problematic need to be reconstructed based on sincere legal politics, jointly between the Government and the Legislative, considering correct vertical and horizontal legal harmony. The institutional status of the Village Government will be correct-full when it is placed as a symmetrical and/or asymmetrical formal autonomous region as it has the original attributive recognition under Article 18 B paragraph (2) of the 1945 Indonesia Constitution. The Norms in Article 1 - 95 of the Law 6/2014, which are not synchronous vertically with the 1945 Constitution and the equivalent laws, must be corrected and reconstructed through the judicial review in Constitutional Court. By far, some other critical legal issues still need attention for further studies. One is the legal standing of village authority in ruling village law and village institutional, the legal status of quasi Government in managing the state budget. Thus, with that complementary various research results, it is hoped that an adequate legal system (Structure-Content-Culture) can be built to manage the village.

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