

Management of the Ground Village in Malang district in Order to Sustainable Village Development

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Abstract

The ground village or other names in Malang Regency, before the Minister of Home Affairs Regulation Number 4 2007 about Guidelines for Village Wealth Management, then followed by the Minister of Home Affairs Regulation Number 1 2016 about Village Asset Management there are two statuses of land which is the village wealth, namely: first, the bengkok land worked by the Village Head and Village Device, the result is used for their income; and second, other arable lands, belonging to the village, which is worked on by the Village Head and the result are used to finance village needs according to their respective functions. However, with the enactment of the Minister of Home Affairs Regulation, followed by the Malang Regent's Regulation about Village Asset Management, the entire Ground Village may no longer be carried out by the Village Head and village device, but must be rented out, the rent of which goes into the Village account, then used Village operations, including paying additional income for the Village Head and village device. The problem is that the Village Head and village device can no longer manage village assets directly, while on the other hand, they must carry out village governance and development with various village problems. The purpose of this study is to analyze the management of village assets based on applicable laws and regulations in the context of implementing sustainable development in the village. This study and research use normative research methods. The expected contribution of this research is for the Malang Regency Government as input in the formation of Village Asset Management regulations at the Regency level so that it can meet the expectations of all parties.

Keywords: Implementation of village development; Village asset management

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1. Introduction

The ground village, is one of the original wealth of the village which has been owned by the village for a long time. In the past, the ground village used for the income of the Village Head and Village device was called Bengkok Land / Ganjaran Land / Pecaton Land and the land used for other village government needs was called Titisoro Land, Pongan Land, Sengkeran Land, Guron Land, Cawisan Land, Suguh Dayoh Land, Intilan Land, Graveyard Land, Field Land and other Village Land. But now one term is used, namely Ground Village since the enactment of the Minister of Home Affairs Regulation Number 4 2007 about Guidelines for Village Wealth Management, then followed by the enactment of Law of The Republic of Indonesia number 6 2014 about Village, followed by Government Regulation Number 43 2014 about the implementing regulations of Law of The Republic of Indonesia number 6 2014 about Village, followed by Minister of Home Affairs Regulation Number 1 2016 about Village Asset Management, followed by Malang Regency Regional Regulation Number 1 2016 about villages.

The author, deliberately chose the ground village as the topic, because with the enactment of the above ministerial regulation, there are differences in the way of managing ground village compared to before, in Malang Regency, which is regulated in Malang Regent Regulation number 24 2016 about village asset management which was later changed to Malang Regent Regulation number 171 of 2019 was later amended by Malang Regent Regulation number 194 2020. This difference in method is a solution for the Malang Regency Government in controlling and supervising villages, but also raises new problems for the village.

The purpose of this paper is to analyze the intent and purpose of the enactment of Law of The Republic of Indonesia number 6 2014 about Village, which is the implementation of article 18 section (7) and article 18B section (2) of the 1945 Constitution of the Republic of Indonesia, especially relating to village and ground village, which law is the highest guideline, for laws and regulations in Indonesia, also for the Regent of Malang in preparing the regent's regulation on ground village. Then it will continue to analyze the Malang Regent's Regulation on ground village.

The author's literature study in analyzing the Malang Regent's Regulation on ground village are (1) Article 18 section (7) and article 18B section (2) of the 1945 Constitution of the Republic of Indonesia, (2) The Minister of Home Affairs regulation number 4 2007 about Guidelines for Village Wealth Management, (3) Law of The Republic of Indonesia number 6 2014 about Village, (4) Government Regulation number 43 2014 about implementing regulations of Law of The Republic of Indonesia number 6 2014 about Village, (5) The Minister of Home Affairs regulation number 1 2016 about Management of Village Assets, and (6) Malang Regency Regional Regulation number 1 2016 about villages.

With this paper, the author will try to provide solutions to the Malang Regency Government in controlling and supervising villages, especially those related to ground village, without creating new problems for the village, in the context of sustainable village development, so that the objectives of the enactment of Law number 6 2014 about Villages.

2. Literature Review and Hypotheses

The ground village, is one of the original wealth of the village which has been owned by the village for a long time. In the past, the ground village used for the income of the Village Head and Village device was called Bengkok Land or Ganjaran Land or Pecaton Land, and the land used for other village government needs was called Titisoro Land, Pangonan Land, Sengkeran Land, Guron Land, Cawisan Land, Sugu Dayoh Land, Intilan Land, Graveyard Land, Field Land and other Village Land. But now one term is used namely Ground Village after the enactment of the Minister of Home Affairs Regulation number 4 2007 about Guidelines for Village Wealth Management, then followed by the enactment of Law of The Republic of Indonesia number 6 2014 about Village, followed by Government Regulation Number 43 2014 about the implementing regulations of Law of The Republic of Indonesia number 6 2014 about Village, followed by Minister of Home Affairs Regulation Number 1 of 2016 about Village Asset Management, followed by Malang Regency Regional Regulation Number 1 2016 about villages.

In Malang Regency, since the stipulation of Malang Regent Regulation number 24 2016 about the management of village assets and then amended by Malang Regent Regulation number 171 2019 then amended by Malang Regent Regulation number 194 2020, there is a very significant difference regarding ground village management between before and after the regulation is stipulated, namely (1) Previously, bengkok land could be worked directly by the Village Head and Village device in accordance with their respective share for their income, while other village lands could be worked directly by the Village Government, the proceeds for the needs of the village government in carrying out the mandate of the community, and (2) After the regulation has been in effect until now, all village land or what is now called ground village may not be cultivated directly by the Village Head or by the Village device or by the Village Government.

If the Village Head or Village device wants to work on the bengkok land which is their right to cultivate, then they must pay the rent which is then put into the village account, after which the money is taken back from the village account to be paid back to the Village Head. or the Village device concerned as additional income, while other village land must be rented out and may not be cultivated directly.

From these differences, the main problems are currently, the Village Head or Village device must rent the bengkok land which has become their right to cultivate, if they want to work on it themselves. This makes it difficult for them to take their rights as Village Heads or Village device, which have been given since the village was formed.

The question, is it appropriate, the policy of managing ground village in Malang Regency with the aim of enacting Law of The Republic of Indonesia number 6 2014 about Village, which is the implementation of article 18 section (7) and article 18B section (2) of the 1945 Constitution of the Republic of Indonesia ?

3. Methods

To answer this questions above, the authors conduct studies and research using normative legal research methods with document or literature studies, namely (1) Article 18 section (7) and article 18B section (2) of the 1945 Constitution of the Republic of Indonesia, (2) The Minister of Home Affairs regulation number 4 2007 about Guidelines for the village wealth management, (3) Law of The Republic of Indonesia number 6 2014 about Village, (4) Government Regulation number 43 2014 about implementing regulations of Law of The Republic of Indonesia number 6 2014 about Village, (5) The Minister of Home Affairs regulation number 1 2016 about Management of Village Assets, and (6) Malang Regency Regional Regulation number 1 2016 about villages.

Data

Data 1

The contents of article 18 section (7) of the 1945 Constitution of the Republic of Indonesia.

“The structure and administrative mechanisms of regional authorities shall be regulated by law.”

Data 2

The contents of article 18B section (2) of the 1945 Constitution of the Republic of Indonesia.

“The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

Data 3

The explanation contents of article 18 of the 1945 Constitution of the Republic of Indonesia.

“...*The Republic of Indonesia respects the position of these special areas and all state regulations concerning these areas will remember the rights origin of the area.*”

Data 4

The considering contents to Law of The Republic of Indonesia number 6 2014 about Village.

“... A. that the village has the right to its origin and traditional rights to organize and manage the interests of the local community and help realize the ideals of independence based on the Republic of Indonesia's 1945 Constitution”

B. that throughout state administration of the Republic of Indonesia, the village has developed in a variety of ways that need to be protected and empowered in order to be strong, advanced, independent, and democratic; ...”

Data 5

The contents of article 19 Law of The Republic of Indonesia number 6 2014 about Village.

“Village authorities include:

a. authority based on the origin of the right; ...”

Data 6

The contents of article 34 section (1) of the Government Regulation number 43 2014 about implementing regulations of Law of The Republic of Indonesia number 6 2014 about Village.

“The authority of the Village based on the origin of the right as referred to in article 33 section a shall at least consist of:

...

d. Ground village management; and ...”

Data 7

The contents of article 12 Minister of Home Affairs regulation number 1 2016 about Management of Village Assets.

“(1) Utilization of village assets in the form of rent as referred to in article 11 section (2) subsection a, does not change the ownership status of village assets.

(2) The rental period as referred to in section (1) is a maximum of 3 (three) years and can be extended.

(3) The rental of village assets is carried out based on an agreement that at least contains ...”

Data 8

The contents of article 18 Minister of Home Affairs regulation number 1 2016 about Management of Village Assets.

“ The results of the utilization as referred to in article 12, article 14 and article 15 are village income and must be entered into the Village account. “

Data 9

The contents of article 15 of the Malang Regent Regulation number 194 2020.

Data 10

The contents of article 33 of the Malang Regent Regulation number 24 2016.

“... The deposit of Village Income from the utilization of Village assets as referred to in article (2) must be made at once in cash no later than 2 (two) working days prior to the signing of the Village asset utilization agreement. ...“

Theory

The order of legal norms theory (Hans Naviasky)

Hans Naviasky argues, the order of legal norms in “ *Theorie vom Stufenaufbau der Rechtsordnung*”, grouping the order of legal norms into four levels, respectively. (1) *Staatsfundamentalnorm*, state fundamental norms; highest norm level, (2) *Staatsgrundgesetz*, constitution, (3) *Formellgesetz*, law in the formal sense, and (4) *Verordnung und autonomesatzungen*, implementing regulations and autonomous regulations, as the lowest order of norms in the hierarchy of laws and regulations.

The law of will theory (J.W. Harris)

Types of Legal Theory according to J.W. Harris in his book entitled “ *Law and Legal Science An Inquiry into the Concepts Legal Rule and Legal System* ”. he noted that there are five types of legal theory in the perspective of law and legal science, and one of them is the will of the sovereign party must be interpreted as an absolute will that must be accepted and obeyed by the people who are ruled or subordinates.

Attribution Theory (Philipus M. Hadjon, Professor of Airlangga University)

Hadjon explains the core of attribution theory, how to obtain government authority is described as (1) Attribution is the normal way to gain government authority, (2) Attribution is also the authority to make decisions (besluit) which is directly sourced from the law in a material sense, (3) Attribution is the formation of certain authorities and their giving or distribution to certain organs, and (4) The establishment of authority and distribution of the main authority is stipulated in the Constitution; and the establishment of government authority is based on the authority stipulated by the legislation.

Order of legal norms

In accordance with the theory of ordering legal norms from Naviasky, the order of legal norms in Indonesia, in accordance with article 7 of Law Number 12 of 2011 is (1) The 1945 Constitution of the Republic of Indonesia, (2) Decree of the people's consultative assembly, (3) Laws/government ordinance in lieu of law, (4) Government ordinance (Presidential Regulation, Provincial Regulations, Regency/City Regional Regulation)

4. Results

Analysis Method

In analyzing the Malang Regent's Regulation on the management of village assets, it must be in accordance with the order of legal norms in Indonesia, this is in accordance with the theory of ordering legal norms from Naviasky.

5. Discussion

The law of The Republic of Indonesia number 6 2014 about Village is stipulated with the objectives as described in the considering sections (a) and (b), which are the implementation of article 18 section (7),

article 18B section (2), explanation of article 18 of the 1945 Constitution of the Republic of Indonesia, namely (Data 1, Data 2, Data 3, and Data 4)(1) "Villages have the origin of the rights and traditional rights" (2) "The origin of the rights and traditional rights need to be protected and empowered to become strong, advanced, independent, and democratic so that they can create a strong foundation in implementing governance and development towards a just, prosperous and prosperous society. "

The origin of the rights and traditional rights that need to be protected, one of which is "Village Authority in managing ground village " (Data 5 dan Data 6).Ground village management procedures have been traditionally regulated by village communities since before the Unitary State of the Republic of Indonesia was established, which can be worked on directly by the Village Head or Village device or Village Government.

Then, what is the procedure for managing ground village in Malang Regency at this time? From Data 10, phrase "must be made at once in cash no later than 2 (two) working days before the signing of the Village asset utilization agreement " emphasized that ground village should not be cultivated directly, if you want to work, you have to rent. Whereas in the provisions of the legislation above the regent's regulation, it is still allowed to be worked on directly (Data 7 and Data 8).

There are still some provisions in the Malang Regent Regulation that reduce village authority, which has actually been determined in Law of The Republic of Indonesia number 6 2014 about Village. One of them is article 15 of Malang Regent Regulation number 194 2020 about the second amendment to Malang Regent's Regulation number 24 2016 about village asset management. (Data 9). With the article 15, the Malang Regency government has taken the village attribution authority that has been given by Law of The Republic of Indonesia number 6 2014 about Village. Article 15 should be deleted, because it is already regulated in article 12 of the Minister of Home Affairs Regulation number 1 2016 about Management of Village Assets (Data 7), in accordance with Attribution Theory - Philipus M. Hadjon, Professor of Airlangga University.

6. Conclusions

Conclusion

From the above review it can be concluded that (1) The management of ground village and its procedures is one of the village authorities based on the right origin which has been mandated by Article 18 of the 1945 Constitution of the Republic of Indonesia, and implemented by Law of The Republic of Indonesia number 6 2014 about Village, and is described in Government Regulation number 43 of 2014 about the implementing regulations of Law of The Republic of Indonesia number 6 2014 about Village, and (2) The authority to manage the ground village and its procedures should be fully delegated to the village, because this is an attribution authority, and the security of its existence is controlled by the government above it, such as the sovereign will (the people), which has been implemented in Article 18 section (7), Article 18B section (2), explanation of Article 18 of the 1945 Constitution of the Republic of Indonesia. And this is in accordance with Attribution Theory Philipus M. Hadjon, The order of legal norms theory Hans Naviasky "Theorie vom Stufenaufbau der Rechtsordnung", and Law of Will theory J.W. Harris.

Limitations and suggestions

In Malang Regency, the Regent's Regulation regarding the management of village assets must be immediately addressed in order to further strengthen sustainable village development, several articles must be changed or deleted, especially Article 15 of Malang Regent's Regulation number 194 of 2020 about the second amendment to Malang Regent's Regulation number 24 of 2016 about management village assets (Data 9) must be deleted and Article 33 section 7 Malang Regent Regulation number 24 of 2016 about the management of village assets (Data 10) must be deleted.

Suggestions for the abolition of the two articles above because according to the order of legal norms in Indonesia, the regent's regulations must comply with the above legal norms. While the legal norms above the regent's regulation have determined that the management of ground village and its procedures is one of the village's authorities based on the right of origin and the authority of ground village management and procedures should be left entirely to the village.

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