



Legis Ratio Arrangement of 3 (Three) Times of Service for Village Head Based on Law Number 6 of 2014 Concerning Village in State of Law and Pancasila Democracy

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Abstract

One of the core values for changing the role of the village head is to avoid elevating locals to the status of minor dynasty. This principle is also based on the desire to leave the new order and herald in the reform era. But in the current reform era, the village head's authority is not constrained by the constitution and has actually had his term of office lengthened by the most recent law. According to Law No. 6 of 2014 Concerning Villages, the position of the village head remains for 6 years and increases three times for a total of 18 years in a row. In this paper, we will investigate the legislative ratio of changes in the term of office of the village head and provide the concept of the term of office of the village head with state law and Pancasila democracy. With the enactment of three periods, it will surely conflict with the direction of legal politics and the hierarchy of laws and regulations in the constitution of a constitutional state.

Keywords: *Ratio Legis; Term of Office; Village Head; State of Law; Pancasila Democracy*

Introduction

According to the most recent regulation on villages, villages and traditional villages, or what are considered by other names, hereinafter referred to as Villages, are legal community units with territorial boundaries that are authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, rights origins, and/or traditional rights recognized and respected in the government system of the Unitary State of Indonesia (Article 1 point 1 of Law Number 6 of 2014). Furthermore, it was confirmed that Village Government is the organizer of government affairs and the interests of the local community in the government system of the Unitary State of the Republic of Indonesia.

According to Mashuri Maschab, the term "village" in the Indonesian state elicits at least three different types of definitions or interpretations (Mashab, 2013). First, the sociological definition, which indicates how communities of people who live and settle in the current area are united and have a tendency toward homogeneity in their lifestyles and interpersonal relationships. According to the sociological definition, the village includes people who lead simple lives, typically work in agriculture, have strong social ties and uphold long-standing customs and traditions, are honest and prosperous, and have little access to formal education. The second definition is economic in nature and refers to how citizens try to meet their daily needs by using resources from the natural world. According to this definition, the village is the area of the economy that forces its population to work to meet their basic needs (Mashab, 2013). Lastly, according to the definition used in politics, a "village" is a legitimate organization since it is a division of the state government. The village is commonly described in this definition as "a legal community unit with the authority to administer its own government" (Mashab, 2013).

The village government is viewed by the national government as the smallest unit of government that implies to be a part of the country's territory. In this regard, the national government serves as a bridge between the various above-mentioned government structures and village government systems (Hutabarat et al., 2022). In other words, the village government only serves as a subsystem whose survival and demise are determined by the policies of the supra-system above, i.e., the national or state government, which provides support in layers to the sub-district, district, and provincial governments as well as the central government. If the structural support is removed, the village government will be free to create its own independent system. According to this viewpoint, the national government can be seen as an integrator and articulator of the various interests of the government systems that are expanding and going through changes at the grassroots level (Gunawan & Kuncoro, 2004; Zakaria, 2002).

During this period of reform, regulations pertaining to the village were incorporated into Law no. 6 of 2014, which was passed in relation to the village. This represents a very significant step forward because, after several decades, the village now has its own regulations or rules, which are enshrined in Law no. 6 of 2014 concerning Villages. The research focuses on legal issues pertaining to the regulation of three (3) terms of office for the head of the village, as stated in Part 3 (three) of Article 39 of Law no. 6 of 2014 concerning Villages:

- (1) "The Village Head holds the position for 6 (six) years from the date of inauguration"
- (2) The Village Head as referred to in paragraph (1) may serve a maximum of 3 (3) terms of office consecutively or not consecutively."

In the previous law, which was Law No. 32 of 2004 regarding Regional Government, the regulation regarding the term of office of the village head was as follows: "the position of the village head is for six (six) years, and it is allowed to be re-appointed for the next one term of office, and the maximum term of office is either two or 12 years". Nevertheless, there has been a change in the regulation regarding the term of office of the village head. But then again, according to Article 39 of Law No. 6 of 2014 Concerning Villages, the position of Village Head can be held for up to 3 (three) Times for a Total of 18 Years in a Row or Not.

The term of office of the village head was changed from two terms to three periods, which has generated controversy and is in conflict with the Academic Manuscript, which clearly says that the term of office is double the term of office, or one period of six years. Whether the addition of the term of office support the goal of effective village governance within the framework of Pancasila's legal system and democratic system, or likewise, will it further increase the risk of an oligarchic and corruptive village government as a result of the firmly established power of the "strong" people in a village? Hence, we all

need to be reminded that while absolute (lasting) power tends to lead to much greater corruption, relative power can lead to corruption.

Departing from the scientific criticism above, the researcher observed the legislative ratio regarding the regulation of the term of office of the village head in the Academic Manuscript of Law Number 6 concerning Villages, in Chapter IV, the Scope of Regulation, precisely in the Village Government Administration section, the position of Village Head is only two consecutive terms or not, and in one period of 6 (six) years and also in the Draft Bill, especially the Election of Village Heads Article 46: "the term of office of the village chief is 6 years from the date of inauguration and can be re-elected only once a term". Consequently, if the academic manuscript is examined more deeply with regard to the position of village head in terms of philosophy, law and sociality in order to avoid problems as described above, it has taken into account the impact and causes that will take place over time, as well as the impact and causes that will take place in the future.

In light of this explanation, the authors seek to examine and analyze two aspects. First, based on Law No. 6 of 2014 concerning Villages in a state of law and Pancasila democracy, what is the ratio legis regulation of 3 (three) times the term of office of the village head? Moreover, how is the term of office of the village head constructed in accordance with the rule of law and Pancasila democracy?

Method

The author employs normative juridical research. The study of normative legal is prescriptive. This research will seek to comprehend and resolve legal issues that arise. Legal research requires the skills of problem identification, problem analysis, and legal reasoning (Marzuki, 2016). The activity of researching normative law is research through analyzing the rules of law based on dogmatic law, legal theory, and legal philosophy. In addition, research was carried using statute approach, conceptual approach, and history historical approach.

Results and Discussion

1. Legis Ratio regarding the arrangement of 3 (three) terms of office of the village head based on Law no. 6 of 2014 concerning Villages in a state of law and Pancasila democracy

a. The history of post-independence village head arrangements Law Number 19 of 1965 concerning Villages

Based on Article 18 of the 1945 Constitution, which divides Indonesia into large and small areas by remembering origin rights to special areas, and MPRS NO. II / MPRS / 1960. The Law on the Principles of Government of Daerah divides Indonesia into level I, II, and III large and small regions. With Indonesia's territory divided into autonomous regions, Level III Regions should no longer have other regions besides administrative restrictions. According to Law No. 19 of 1965, *Desapraja* (the unity of a legal society that has certain boundaries of its territory, has the right to take care of its own household, choose its ruler and have its own property) is not in or subordinate to the Level III Region, but is a transition to accelerate the realization of Level III Regions throughout Indonesia.

Law No. 19 of 1965 expresses high regard for the legal community's unity, which reads:

"... The legal community units that have had a history of thousands of years, during the colonial period of suffering turned out to have strong resistance and during the colonial wars they have had services of high value. For the future it can be expected that community units The customary

law will also have an important role in completing and achieving the goals of the revolution, given that the largest part of the main forces of the revolution as stated in the Political Manifesto, is contained in these legal community units... " (Soemitro, 1983).

Moreover, regarding the regulation of village heads in Law 19 of 1965, the Village Head is appointed by the Head of the Level I Region from between two and three candidates directly selected by the *Desapraja* residents who are at least 18 years old, married, and have become *Desapraja* residents in accordance with local customs. Residents of the village who meet the following criteria are eligible to be elected and appointed as village heads: a. At least 25 years old; b. Spirit of the proclamation of August 17, 1945 and never hostile to the struggle for independence of the Republic of Indonesia; c. Approving the 1945 Constitution, Indonesian socialism, guided democracy, guided economy and Indonesian personality and willing to actively participate in implementing the RI political manifesto on 17 August 1945 and the guidelines for its implementation, d. Not being dismissed from the right to vote and the right to be elected by a court decision that cannot be changed, and e. Have the necessary skills and work experience and at least have an elementary school education or equivalent knowledge.

The Village Head has several important responsibilities, including acting as the primary organizer of *Desapraja* household affairs and as a tool for the Central government; taking significant actions and decisions only after receiving the approval of the Village Consultative Body; ensuring that he or she is not removed from office as a result of a decision made by the Village Consultative Body; representing *Desapraja* both in and out of court; and serving as the Chairman of the *Desapraja* Deliberative Council.

Indeed, the content of Law No. 19 of 1965 reflects the authoritarian and centralist spirit that grew during the period of Guided Democracy. *Desapraja* is a branch of the *supradesa* or village government that executes directives from on high. Within the *Desapraja*, the village head is designated as the sole corporatist ruler, with a commanding position over all political institutions; for instance, he or she serves as chairman of the village deliberative body. In addition, the village head term of office is restricted to eight years.

b. The New Order Era (Law Number 5 of 1979 concerning Village Government)

The substance of Law No. 5 of 1979 includes centralization-stateization in the context of the relationship between the village and the state (*supradesa*) and authoritarianism-corporatism within the internal government of the village. The village is controlled by the state (the local state government) through the sub-district and is not an autonomous unit like the regions. The state actually entered the community. The village head serves as an extension of the *supradesa* government, which is used to control the community and land.

According to Law No. 5 of 1979, "The term of office of the village head is 8 (eight) years from the date of his inauguration and can be reappointed for the next 1 (one) term of office," and the village head is chosen directly by the population. One aspect of democracy (electoral) at the village level is the provision for direct village head elections. Village head is chosen directly by the general population in contrast to the oligarchy that the parliament uses to choose the president, governor, and regent. As a result, this privilege is frequently referred to as a bulwark of democracy at the local level. Even so, based on empirical evidence, the practice village head election (hereinafter referred to as *Pilkades*) does not entirely reflect the aspirations of the populace because there is essentially no public vote prior to the election (voting). Village head elections (*Pilkades*) are considered as always full of manipulation and control by the supra-village government.

The position of village head was recognized to "sole ruler" by Law No. 5 of 1979. The village is designed as a "small country," which means it is positioned as a territory, organ, and instrument of the

state's arm, which is hierarchically-corporately structured, and not as a place for citizens to build a community. The village has only a local-state government, not a local-self government. The village head is an extension of the state bureaucracy that executes commands to control the territory and the community members.

c. Reform Era (Law Number 22 of 1999 concerning Regional Government and Law Number 32 of 2004 concerning Regional Government)

The enactment of Law No. 22 of 1999 which also regulates village and sub-district governance is a logical consequence of the rise of many demands from the community to carry out reforms in all fields (Huda, 2015). With the issuance of this Law, the term of office of the village head is a maximum of ten (10) years or two terms of office from the date of stipulation.

According to the opinions of field experts, the passage of Law no. 22/1999 has introduced a fresh wrinkle into the workings of local governments and administrations of villages. This law is considered by a number of parties to be very democratic and even liberal due to the fact that it delegates a very broad range of authority to regions in order to advance the potential that exists in villages and regions. But there has been a lot of progress made in it. In light of the this authority, one mass media outlet has even mentioned the possibility of a "revolution" in the structure of the local government (Lili, 2007).

According to Hans Antlov, with the passing of Law No. 22 of 1999, village leaders are required to pass at least "three layers of examination." This is accomplished to diminish his influence. First, the village head is elected every five years through elections. Second, the village head submits a report of accountability to the residents via the Village Representative Body (BPD). Lastly, the village head is annually accountable to the sub-district head (Antlov, 2003).

However, the overall regulation of Law no. 22 of 1999 regarding the village, has not yet given a positive impact in the sense that it can be the basis for the development of an autonomous village government that can provide space to improve the welfare of its citizens (Mashab, 2013). This law regulates regional government and village government is considered a part of regional government. Therefore, the regulation regarding village government is only in the form of general provisions and almost does not reveal a special characteristic in village government that is different from regional government (Mashab, 2013).

The regulation of the village that was included in Law Number 32 of 2004 has not developed any significant revisions in comparison to Law Number 22 of 1999. Some of the distinctions that do exist are more technical in nature, and as a result, they do not produce any fundamental changes. These differences include the following:

- a. The village is established as a unit of the legal community with territorial boundaries that are authorized to control and formulate the interests of the local community, based on the origins and customs of the local community that are acknowledged by the government system of the Republic of Indonesia.
- b. Villages that were previously considered to exist solely in the county area are now permitted to exist in urban areas as well.
- c. The Village Representative Entity was renamed the Village Consultative Entity. (Huda, 2015)

The term of office of the village head and the village representative body, which was initially 5 (five) years, has been increased to 6 (six) years, with the possibility of re-elected once during the subsequent term of office. Comparing Law No. 22 of 1999 and Law No. 32 of 2004 reveals that there are contradictions. The point in question is that the term of office of the village head under the second law is one year longer than under the first law (Luthfy, 2019).

d. The idea of the term of office of the village head in Law Number 6 of 2014 concerning Villages

From the perspective of legal politics, the enactment of Law No. 6 of 2014 regarding the village is the result of a lengthy political alliance and a struggle of thought to make the village the foundation for enhancing the quality of life. The presence of Law No. 6 of 2014 solidifies the political will of a parliament that is about to face legislative elections and was conceived during the political year. Therefore, it could be due to political commodities (Huda, 2015).

The term of office of the village head is 6 (six) years from the date of inauguration and can be re-elected only once, according to Article 46 of the Draft Bill's inventory of issues. The Draft Bill's Article 46, which reads, "The term of office of the village head is 6 (six) years from the date of inauguration and can only be re-elected once," was the subject of numerous arguments and explanations from various factions as follows.

Table 1. List of Draft Bill Inventory

Draft Bill	Fraction	Proposed adjustments	After the adjustment	Information
Article 46 The term of office of the village head is 6 (six) years from the date of inauguration and can be re-elected only once	FPD	Changed from article 46 to article 45 and changes in substance	Article 45 The term of office of the village head is 10 (ten) years from the date of inauguration and can be re-elected only once	Choice of 10 (ten) years to simplify the 5 (five) year medium-term development planning (henceforth RPJMD) process. With the limitation that it can only be re-elected for one period, it gives room for leadership regeneration, and at the same time the elected village head also has enough time to realize the planned programs.
	FPG	The term of office was changed to 10 (ten) years	Article 46 The term of office of the village head is 10 (ten) years from the date of inauguration and can be re-elected only once	Maintaining the continuity of community life, with an emphasis on maintaining harmony.
	FPDIP	Change of article number	Article 47 The term of office of the village head is 6 (six) years from the date of inauguration and can be re-elected only once	

	FPKS	Change of article number	Article 47 The term of office of the village head is 6 (six) years from the date of inauguration and can be re-elected only (1) once	
	FPAN	Permanent		
	FPP	The word "6 (six) years" is replaced by 8 (eight) years, adjusting to Article 72: The term of office of the village head is 8 (eight) years from the date of inauguration and can be re-elected only for 1 (time) term of office.	Article 72 The term of office of the village head is 8 (eight) years from the date of stipulation and can be re-elected only for the next 1 (time) term of office or a maximum of 2 (two) periods.	
	FPKB	Adjustment of the serial number of articles	Article 47 The term of office of the village head is 6 (six) years from the date of inauguration and can be re-elected for only 1 (one) term of office.	
	FPGERINDRA	Permanent		
	FPHANURA	Change from 6 years to 5 years	Article 46 The term of office of the village head is 5 (five) years from the date of inauguration and can be re-elected only 1 (one) term of office.	Refers to the 5 (five) year periodization of regional leadership political positions from president to regents and mayors, and looks at the psychopolitical conditions of rural communities.

Regarding the implementation of the position of village head, it can be concluded that in the formulation of the bill, the term of office of the Village Head is 2 periods where the term of office is 1 period of 6 years and can only be re-elected once. FPDIP, FPAN, and Gerindra concur in the formulation of the DIM (also refers to Problem Inventory List) of the proposed bill. The FPD (Demokrat Faction) and FPG (Golkar Faction) propose a 10-year term with one reelection opportunity for the village chief. The intention of FPD and FPG's 10-year proposal was to simplify the planning process, especially the RPJM

preparation (5 years). With the restriction that it can only be re-elected for one term, it allows for the regeneration of leadership and the planning of new programs. FPG is of the opinion that the proposal for more than ten years is intended to preserve the viability of people's lives.

From the preceding explanation based on a series of Academic manuscripts, Draft Bills, Inventory Lists of Problems, and Minutes of Special Committee Meetings and public hearings pertaining to the term of office of the village head, it can be inferred that in the formula of Draft Bill that the term of office for the Village Head is 6 years, and he or she may only be re-elected once. Bill is supported by FPDIP, FPAN, and Gerindra in the formulation of DIM. The FPD (Democratic Party Faction) and FPG (Golkar Party Faction) propose a 10-year term with one reelection opportunity for the village head. The primary aim of FPD and FPG's 10-year proposal was to simplify the planning process, particularly the RPJM preparation (5 years). With the restriction that a Village Head can only be re-elected once, there is room for leadership renewal, and the elected Village Head has sufficient time to implement the planned programs. FPG is of the opinion that the proposal for more than ten years is intended to preserve the viability of human life. The PPP faction proposes that the term of office for the position of Village Head be limited to eight years and one election. In contrast, the Hanura Party faction proposed the position of Village Head, referencing the five-year periodization of regional leadership positions from president to regent to mayor.

Indeed, in the final opinion stage of the factions on December 11, 2013, there was a difference between the initial support for two terms in the Inventory List and the final opinion of the Gerindra Faction, in which Golkar proposed three terms of office and PPP also proposed three terms of office with regulatory arguments in the Draft. This law is a compromise between the current dynamics and enhancing the welfare of the village chief and village apparatus. This Draft Bill stipulates that the fixed income of the village head and village apparatus is derived from the State Budget (hereinafter APBN) balancing funds received by the regency/city and the Regional Budget (hereinafter referred to as APBD), and that allowances are derived from the Regional Budget (APBD), other legitimate receipts, and health insurance, which will be regulated by Government Regulation in the future.

The Chairperson of the Special Committee for the Village Bill, Budiman Sudjatmiko, at the fourth working meeting on December 11, 2013, conveyed the views or decisions of the Special Committee as follows:

"As for the position of the Village Head, which is stated in Article 39, initially there were 2 alternative formulations, namely Article 39 paragraph (1), the Village Head holds the position for 6 years from the date of inauguration. Paragraph (2), the Village Head as referred to in paragraph (1) may serve a maximum of 3 times the term of office in a row or not in a row. The second alternative is Article 39. Village head holds office for 8 years from the date of inauguration. Paragraph (2), the Village Head as referred to in paragraph (1) may serve a maximum of 2 terms of office in a row or not consecutively. In the end, an understanding was reached that Article 39 chose the first Alternative".

first".

Finally, in the plenary session of the House of Representatives (DPR) on 18 December 2013 the final draft of the Village Head's decision on the term of office was decided to be 6 years and can be re-elected for 3 consecutive or non-consecutive terms. This is as stated by Akhmad Muqowam:

". . . The Village Head holds office for 6 years from the date of inauguration, the Village Head may serve 3 consecutive or non-consecutive terms. Meanwhile, the PKB faction in a plenary meeting through its spokesman Abdul Kadir Karding noted that PKB proposed a term of office for the Village Head for 8 years. "... . We agree (validated), with the hope that prosperity will be

achieved soon. However, the PKB faction needs to note that the PKB proposes that the term of office of the village head is 2 times for 8 years. That is, every 8 years,".

The debate over the term of office of the Village Head captivated the members of the Council, but in the end, the formulation of Article 39 was agreed upon. In addition, the community receives a greater legal basis compared to the previous village law. It cannot be denied that the public's perception of this law is limited to the distribution of village funds. Even though this village law does not only cover the allocation of village funds, it has a very broad scope (Ni'matul Huda, Loc.Cit, p. 206). Even so, it must also take into account changes in village positions that were previously only 6 (six) years old, may be re-elected for 1 additional term or two 12-year periods to 3 (three) 18-year periods.

2. Construction of the village head's term of office in accordance with the framework of the state of law and Pancasila democracy

a. The Legal Force of Academic Manuscripts of The Draft Law in the constitution of the State of Law

Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 Concerning the Establishment of Legislations regulates the formation of statutory regulations (laws) in greater detail. The formation of laws and regulations entails the phases of planning, drafting, discussing, ratifying or deciding, and enactment. Every draft of a bill must include a scholarly document. The existence of academic manuscripts is crucial, even if at first they are alternative or must be considered. Law Number 10 of 2004 concerning the Establishment of Legislation made known the regulation of academic manuscripts, although it is still optional or not yet mandatory. Draft Bills originating from the DPR, the President, or the DPD must be accompanied by an academic manuscript, per Article 43 paragraph 3 of Law Number 12 of 2011, which states: "a Draft Bill originating from the DPR, the President, or the DPD" must be accompanied by a "academic manuscript." The usage of "must" in the article constitutes a requirement that must be met. Academic manuscripts are the results of research or legal studies and other research results on a specific issue that can be justified scientifically in relation to the regulation of the issue in a Draft Bill. As a solution to the problems and legal needs of the community, draft provincial regulations or draft reGENCY/city regional regulations (Supriyanto, 2016).

The urgency of academic manuscript is to provide an overview of the results of scientific research that underlies the proposed draft of each law that will later be proposed and discussed in the DPR (Asshiddiqie, 2014). In addition, academic manuscripts are guidelines for legislators to discuss and determine whether the substance or material contained in academic manuscript is appropriate to be regulated or included in statutory regulations (Rusdianto, n.d.).

In addition to being essential to the process of drafting or forming a law, academic manuscripts are sometimes required as one of the evidences in constitutionality testing. Academic manuscripts can be used by litigants, both the applicant and the respondent, to interpret the provisions of the law as written or written evidence. In every case of judicial review, constitutional judges may use academic manuscripts as a resource for examining and deciding the case (Hamid & Attamimi, 1990).

It can be said that every statutory provision needs to be explained, it needs to be interpreted first to be applicable to the event (Hamid & Attamimi, 1990). According to Manan, the benefits of interpretation in general are first, understand the meaning of the principles and rules of law; second, linking a legal fact with the rule of law; third, to ensure that the application of law or law enforcement is carried out appropriately, correctly and fairly; and fourth, actualizing the law, in the sense of bringing together the rule of law with the changes that occur in society with the intention that the legal rules are still able to meet the needs in accordance with changes in society (Manan & Harijanti, 2014).

Indeed, an academic manuscript is a document resulting from a scientific study that must be included in every proposed Draft Bill. Academic manuscripts have an important role in determining the scope of the content of a law. In the application for judicial review, especially for formal examination, the existence of an academic manuscript is one of the reasons or arguments used by the applicant to cancel the validity of a law being tested, due to the absence of an academic manuscript. The material content of a law can also be used as a reason or argument for testing, because the content of the law is not in harmony or in accordance with the academic manuscript. Constitutional Court on judicial review of the relevant law with the existence of the academic manuscript, do constitutional judges use academic manuscripts as legal material for their basic considerations in interpreting a law. The following are some examples of decisions on cases of judicial review of laws against academic manuscripts, as in: Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39). Application for Judicial Review of Law Number 13 of 2003 concerning Manpower against the 1945 Constitution with Case Registration Number 012/PUU-I/2003, the applicant submits judicial review of the law on the grounds that the Manpower Act has been drafted in violation of the principles and procedures for the preparation and the making of an appropriate law, without following the procedures and procedures for drafting a good law. This can be seen from the facts, among others; the absence of an academic manuscript that provides the basis for scientific considerations of the need for a *quo* law, even though an academic manuscript is important so that there are no miscalculations and logical errors regarding the impact of the existence of a law.

The Constitutional Court on the applicant's application, gave consideration that although the existence of an academic manuscript is important to provide a scientific basis and consideration for a law that is designed to avoid miscalculations and logical errors, the existence of an academic manuscript is not a constitutional requirement in the process of forming the law. The absence of an academic draft of the Manpower Bill is not a legal defect which results in the cancellation of a *quo* law as argued by the petitioners.

The position of academic manuscripts as a guide for legislators and legal materials for interpreting statutory provisions in the judicial review was found to be non-binding. According to the Constitutional Court, the absence of an academic manuscript in a Draft Bill does not cause a law to be unconstitutional as long as the other stages/procedures have been carried out and fulfilled by the legislators. So based on the opinion of the Constitutional Court, legislators are not bound by academic manuscripts. Furthermore, academic manuscripts as legal material is also not binding on the Constitutional Court to use in interpreting the provisions of the (Supriyanto, 2016).

In the construction of a judicial review in Indonesia, whether a judicial review in the form of a judicial review relating to the substance of a statutory regulation or regarding a judicial review in the form of a formal aspect or an aspect in the formation of legislation, is never mentioned in the law of the Court. The Constitution and related Supreme Court laws regarding a law, if one content material in a law is not in accordance with the Academic manuscript then it is null and void or can be canceled not in the regulations.

Where the strength of the Academic manuscript itself does not have binding legal force, but becomes the basis for the formation of the charge material and becomes one of the bases for the formation of legislation. Because apart from the Academic Manuscript, it is very possible that changes will occur due to the aspirations of the people and changes can also occur after the Academic Manuscript is finished. And the most important thing from the legal point of view that has been described above is that there is no article that states that if a law in its content contradicts the Academic manuscript, it can be canceled in court. So the incompatibility of the term of office of the village head as contained in the Academic manuscript of the Law on Villages is 2 periods with the material content of 3 periods in the Village Law Number 6 of 2014 concerning Villages without legal consequences except as a result of the academic

aspect where there is no consistency between The results of research that have been covered are based on sociological and juridical philosophical foundations related to the term of office of the village head. As in an academic point of view, it can be interpreted that there is no consistency but does not cause a legal consequence.

b. The Limitation of the Village Head's Position in Accordance with the Constitution and the Pancasila Democracy

Based on the explanation in the formulation of the first problem and the description above, the norms regulated in Law no. 6 of 2014 concerning Villages must be returned to the constitution. Thus, the 1945 Constitution of the Republic of Indonesia must be a reference or guide for the stipulation of a norm in the law. If the determination of the term of office of the village head matches what is contained in the 1945 Constitution of the Republic of Indonesia, then the norm is considered constitutional. Vice versa. If the determination of the term of office of the village head is not appropriate or even contradicts the contents of the 1945 Constitution of the Republic of Indonesia, then the norm is considered unconstitutional (Luthfy, 2019).

As stated by Friedrich, constitutionalism is defined as "an institutionalized system of effective, regularized restraints upon governmental action". In this sense, what is considered most important in every constitution is the regulation of supervision or limitation of government power (Asshiddiqie, 2021).

Nowadays, sovereignty must be understood as the concept of supreme power that can be divided and constrained. No matter how great, power must be limited by its internal nature, which is generally governed by the constitution. Essentially, these limitations are typically associated with the concept of modern state constitutionalism. In other words, in the hands of whoever holds the highest power or sovereignty, the law and constitution, as a product of the owners' mutual agreement, always impose restrictions (Asshiddiqie, 2021).

Constitutionally speaking, the regulation that a person may hold the position of village head for three terms (18 years) contradicts the social consensus of a modern state. A person has held the position of village leader for too long, preventing others from obtaining the same opportunity. Nevertheless, the right of every citizen to be treated equally must be secured. In fact, according to Abrar Saleng, the regulation and limitation of power must be manifested in justice-oriented regulations (Saleng, 2004). The notion of constitutionalism has laid the basis for the limitation of power that has been formulated in the Indonesian Constitution. The fundamental values underlying the limitation of power are to prevent the domination of power by state administrators and at the same time aim to protect human dignity. This limitation of power practically ends and aims at the welfare of the people (Zoelva, 2012).

Allowing a person to serve as village head for three terms (18 years) is contrary to the ideals of the law and the constitution. When viewed carefully, these norms override any limitation of power. In fact, the norms regulated in every statutory regulation, including Law no. 6 of 2014 concerning Villages, should contain restrictions on power. Moreover, the constitution has emphasized that the Indonesian state is a State of Law (*Rechtsstaat*), not a State of Power (*Machtsstaat*). When referring to the opinion of Dahlan Thaib, the term *Rechtsstaat* in the Indonesian government system, according to Friedman, means limiting power by law (Thaib, 2003).

The fact that the village head serves for three terms (18 years) under Law No. 6 of 2014 regarding Villages seems to contradict the spirit of the constitution. According to Retno Saraswati, Article 39 paragraph (2) of this law states that a village head may serve no more than three consecutive or non-consecutive terms of office. At the national level, the direction of legal politics outlined in the constitution limits the terms of office of the President, Vice President, Regent and Deputy Regent, Mayor and Deputy Mayor, and other institutions to two terms. Therefore, the regulation declaring that the village head can serve for three terms is inconsistent with the constitutional directives regarding the length of office.

Theoretically, power that is held for too long is likely to be damaged or potentially corrupt, as Lord Acton stated that "Power tends to corrupt, and absolute power corrupts absolutely" (Saraswati, 2014).

With three terms in office over a period of six years, the village head tends to become more unyielding and better able to recognize patterns in the situation. Since we're a state of law, and one of the characteristics of a state of law is the constitutionalism of the law, the village conforms to the spirit of the 1945 Constitution of the Republic of Indonesia. Indeed, the Constitution (UUD 1945) serves as the basis for all laws. Though, since the aim of the act is to limit power, if power is not constricted, people who have been in power for three periods tend to psychology related to the establishment and feel very comfortable in power and tend to if they can not go down and before going down like how they can do deeds that can enrich themselves and become a kind of political culture in Indonesia where people who have been in power for a long time in Indonesia tend to be comfortable and do deeds that can enrich themselves.

This phenomenon is noticeable in the numerous levels of local government corruption. Despite the fact that the Village Government is distinct from the Regional Government, the village head can be viewed as a miniature regional leader who controls only a portion of one village and is elected by the people equally. When the election of the Village Head occurs three times and over a longer period of time, namely six years compared to five years for the Regional Head, these patterns are highly likely to occur in the future. For instance, patterns of power abuse. And in the village, it is highly probable if they are in power for a very long time and have the ability to consolidate politics with their closest allies and create a corrupt environment. And if we consider the Theory of Power, which states that a person who has been in power three times within a given period has the potential to commit corruption, then it must be related to the allocation of village funds, which did not exist prior to the reform. Village allocation funds in the billions are distributed annually, hence village fund is so appealing to everyone, it is highly probable that corruption will occur.

As revealed by ICW (Indonesian Corruption Watch) found that the most cases of corruption enforcement by law enforcement officials (henceforth APH) occurred in the village fund budget sector, namely 154 cases in 2021 with potential state losses of IDR 233 billion. Corruption in the village fund budget has even tended to increase since 2015. At that time, corruption in the village fund budget only amounted to 17 cases with a loss of IDR 40.1 billion (Dihni, 2021).

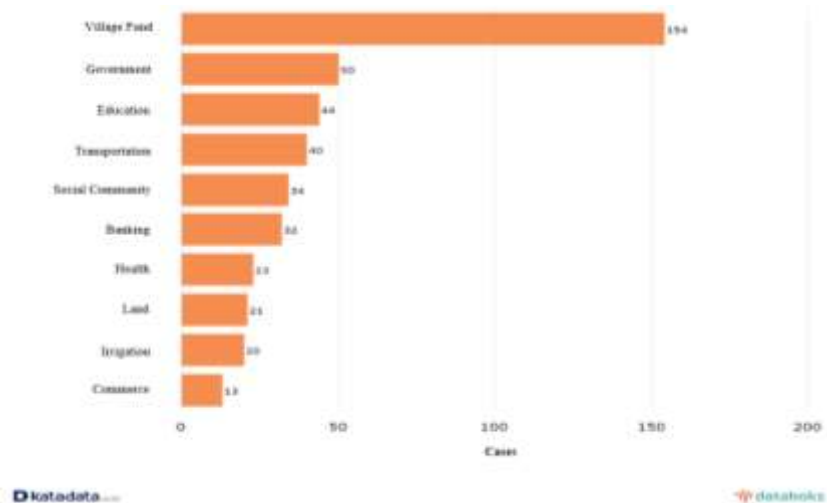


Figure 2 Corruption Cases in Indonesia

Source: Indonesian Corruption Watch (ICW), 18 April 2022

From the perspective of the preceding comparison table, people become Village Heads through money politics and then create the safest possible environment by abusing their power to enrich themselves. By governing for three periods, more potential and dangerous situations will be created to protect him. According to the Theory of Power, the three-time period of political culture in Indonesia is likely to result in the village chief abusing his authority. Therefore, it is essential to limit power, and the author proposes in this case two terms of office so that no one has sufficient time to safely consolidate corruption.

Due to the fact that at the regional or local level, the village head is elected on the basis of electability, but the economic modality side is very weak, he is encouraged to commit corruption crimes. Consequently, there is an inclination to restore its political finances. The position of village chief became the grassroots coffers of political parties. It is no surprise that political parties have planted their political roots even at the village level in the modern era by electing cadres as village heads (Rahman, 2011).

Former United States Senator Tip O'neil is "Politics is Local". The argument for the importance of politics at the local level is because: (1) Local politics is a learning laboratory in a more general and sensitive framework; (2) Local politics is the first arena for political participation to take place; (3) Local politics is a barometer of daily life so that it can be taken into consideration by the government and stakeholders (Christensen, 1994).

The purpose of the principles of separation or division of power is to limit the power of the state to prevent oppression and arbitrary actions by the rulers. Constitutionalism is characterized by the regulation and limitation of power, which is also the primary function of the constitution. Consequently, the possibility of power arbitrariness can be minimized. In the absence of constitutional controls and limitations, the iron law of power can become a source of disaster. Moral authority should not depend solely on the intentions or qualities of its holder. No matter how good a person is, power is always regulated and constrained, so that the goodness of individuals is not obliterated by the absolute rule of power (Christensen, 1994).

Within Pancasila, the atmosphere is concentrated with consensus or deliberation and democratic ethics, and it is also the source of all laws. Naturally, we must take what legal sources exist in Pancasila in accordance with our country, a legal state with a hierarchy of laws and regulations governing the tenure of regional leaders. Considering that the President, Governor, Mayor, and Regent can only serve two terms, DPR legislators must take this into account when using the ratio legis method to pass laws governing the tenure of village leaders. As the benefit of Pancasila is to prioritize the public interest over personal interests, it is advantageous for the public. Meanwhile, the 3 terms of office of the village head who served 1 period was given a term of office of 6 years, then 3 periods of 18 years will prevent potential leaders from taking an active role in becoming a leader who will lead the administration in the village that was elected for 3 times. In a matter of fact, they will understand the political culture in Indonesia, where massive amounts of money have the potential to win elections.

With the extension of the village head term to three terms, the range of possible leaders will be reduced. The limitation should not be three terms, but two, because two terms are the most variable, whereas 12 years is considered short or not very long; this is an intriguing aspect of Pancasila democracy. As the Pilkades election (Village Head's Election) fosters an environment in which everyone can play an active role in organizing village governance in turn, everyone has the opportunity to participate. In the meantime, the three periods alternate but are lengthy, and the length of a term of office in Indonesia can be tied to the country's political culture. For instance, the culture of corruption, collusion, and the pragmatic culture of those who elect wealthy leaders. To break free the political culture circles that exist in Indonesia, we must seriously limit our power, including the duration of our rule. Consequently, the

limitation of 2 terms will prevent the emergence of a political culture characterized by collusive corruption and nepotism. On this premise, local leadership in the village government is not actually controlled by certain groups or individuals, but is accessible to all and supports a Pancasila-based democratic system.

It is very necessary to implement restrictions on the power of the village head because doing so will prevent a government at the local grassroots level from becoming centralized and authoritarian. This will be accomplished through the implementation of the restrictions. Limits need to be placed on a variety of forms of power in order for democracy to function properly, particularly powers that affect people's ability to provide for themselves. Authoritarianism is the political system that results when power is held by a single individual for an extended period of time. In this system, the functions of government are centered on the role of the leader. On the other hand, one of the characteristics of democracy is the restriction of power (Luthfy, 2019).

Closing

Based on the above discussion that the ratio legis Law no. 6 of 2014 concerning Villages, especially in Article 39 concerning the term of office of the village head which is 3 periods must pay attention to the impact and consequences when talking to 3 periods. Considering that the term of office of the village head is 3 periods, when analyzed in terms of power, it is very vulnerable to corruption, especially now that there are so many village funds that have been disbursed. And from the aspect of the rule of law, hence it must refer to the hierarchy of laws and regulations for harmonization of laws and regulations. Where, in the process of the minutes of the session on the making of the Village Law, there were several factions who stated that they had 3 terms of office, including F-Goklar and Gerindra while F-PPP with the argument that The regulation in this Draft Bill is a middle way to the existing dynamics and improving the welfare of the village head and village apparatus. This Draft Bill has stipulated that the fixed income of the village head and village apparatus is sourced from the state budget (APBN) balancing funds received by the regency/city and the regional budget (APBD) is determined, the allowance comes from the APBD, other legitimate revenues and health insurance which will later be regulated in a Government Regulation.

In relation to the 3 terms of the village head who serves 1 term given a term of service of 6 years, 3 periods are 18 years will prevent those with a leadership spirit from playing an active role as a leader who will lead the implementation in the village. With someone who has been elected three times, everyone will understand the Indonesian political culture without a doubt. Apparently, the construction limitation is not three periods, but two, because two periods are the most variable in terms of the period from the president to the regional level in carrying out the government leadership process. In theory, the rule of law must refer to the hierarchy of laws and regulations in a systematic manner because, according to the theory of the rule of law, all regulations must be based on statutory regulations and law in Indonesia must be based on Pancasila. In the theory of Pancasila democracy, the atmosphere is dense with consensus/deliberation and ethics. One of the advantages of Pancasila is that it encourages members of society to place a higher value on the common good than they do on their own individual interests.

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