

## Juridical Analysis of the Village Head's Term of Office from a Constitutional Perspective

Dahlan Hasan<sup>1</sup>, Sumiyati B<sup>2</sup>, Marwan<sup>3</sup>

Universitas Ichsan Gorontalo

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### Abstrak

*The Village Head has the position of village leader who is responsible for the prosperity and well-being of the village. The Village Head is an aspect that greatly influences the success or failure of developing a village. As the leader of the village government, the village head must be able to carry out his duties well and be able to regulate the performance of the village government to build a prosperous village and create a prosperous community. As a leader who is full of trust in managing and developing the village, the village head is assisted by village officials in handling all affairs in the village. The aim of this research is to determine the term of office of the village head from a constitutional perspective. This research uses normative legal research methods. Normative legal research is legal research carried out by examining library materials or secondary data. The revision of Law Number 6 of 2014 concerning Villages in Article 39 Paragraphs (1) and (2) which regulates terms of office and periodization is not the only way to maximize the performance of village heads, the government can make provisions for the requirements and quality of human resources. who will serve as village head because good human resources can change the quality and quantity of life of people in rural areas or cities.*

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### Corresponding Author:

Dahlan Hasan

Universitas Ichsan Gorontalo

Email: [alancaqra@gmail.com](mailto:alancaqra@gmail.com)

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## 1. INTRODUCTION

In the development of constitutional history, the word separation of powers was first coined by John Locke, who divided state power into three functions, but the contents were different. According to him, the functions of state power include: legislative function, executive function and federative function. Furthermore, the concept of separation of powers put forward by John Locke was further developed half a century later in the 18th century by Montesquieu (1668-1748) in his work *L'Esprit des Lois* (The Spirit of the Laws).

Montesquieu divided the power of government into three branches, namely the power to make laws (legislature), the power to implement laws which according to Montesquieu prioritized actions in the field of foreign policy (executive) and the power of the military administration to violate laws (judicial). Montesquieu firmly said that powers must be separate from each other, both regarding tasks (functions) and regarding the equipment (institutions) that carry them out. This conception is known as the *Trias Politica* teaching. Separation of power from the previous *trias politica* was difficult to implement because it was impossible for state institutions to come into contact with each other, thus causing the theory of distribution of power to become more developed, used in various countries, and culminating in the birth of the theory of checks and balances.

In Indonesia itself, constitutional developments leading to a system of checks and balances were accompanied by amendments to the 1945 Constitution of the Republic of Indonesia, namely state institutions that mutually supervise and balance other state institutions. Indonesia divides government power into the executive which is exercised by the president, the legislative by the People's Representative Council (DPR), and the judiciary by the Supreme Court, Constitutional Court and Judicial Commission.

The amendment to the 1945 Constitution which states "The Indonesian state is a state of law" (article 1 paragraph 3 of the 1945 Constitution) emphasizes that the rule of law is a state in which there are various aspects of regulations that are coercive in nature and have strict sanctions if they are violated and without discrimination (equity). before the law). Frans Magnis Suseno stated that the rule of law is based on a desire that state power must be exercised on the basis of good and fair law. The law is the basis of all state actions and the law itself must be good and fair.

After the 1998 Reformation, there were massive changes to the Indonesian constitutional system, one of which was the change in government from centralized to decentralized with a system of direct election of heads of state and regional heads. Reform of the constitutional and government system began with the birth of various legislative regulations aimed at ensuring the functioning of democracy in Indonesia.

The development of the Indonesian state constitution began with the birth of Law Number 22 of 1999 concerning regional government which replaced Law Number 5 of 1974 concerning the Principles of Regional Government and Law Number 5 of 1979 concerning Villages which were deemed no longer relevant to the development of the Indonesian state constitution. . Then Law Number 22 of 1999 concerning regional government underwent another change with the promulgation of Law Number 32 of 2004 concerning regional government. Which was then changed again by Law Number 23 of 2014 concerning regional government as a sign of a change in the government power system from centralized to autonomous.

In relation to the structure and administration of regional government, after the amendment to the 1945 Constitution of the Republic of Indonesia, Village Regulation or referred to by other names in terms of government refers to the provisions of Article 18 paragraph (7) which confirms that "the structure and procedures for administering Regional Government regulated in the Law" this means that article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia opens up the possibility of a government structure in the Indonesian government system.

In the history of Village regulation, several regulations regarding Villages have been established, namely Law Number 22 of 1948 concerning the Principles of Regional Government, Law Number 1 of 1957 concerning the Principles of Regional Government, Law Number 18 of 1965 concerning the Principles of Regional Government. Regional Government, Law Number 19 of 1965 concerning Praja Villages as a Transitional Form to Accelerate the Realization of Level III Regions in All Territories of the Republic of Indonesia, Law Number 5 of 1974 concerning the Principles of Regional Government, Law Number 5 of 1979 concerning Villages, Law Number 22 of 1999 concerning regional government, Law Number 32 of 2004 concerning regional government. Which was then amended again by Law Number 23 of 2014 concerning regional government, and Law Number 6 of 2014 concerning Villages.

Since the birth of Law Number 6 of 2014 concerning Villages, the position of villages as autonomous regions that have village authority to regulate their own government has become stronger. Even though villages are the smallest part of the regional autonomy system, therefore decentralized villages cannot be separated from regional autonomy and decentralization. The village has a government that has the authority to administer government affairs and the interests of the local community, led by the village head.

The Village Head as the organizer of village government is increasingly strengthened by being given the authority to prepare the Village Medium Term Development Plan (RPJM Desa), plus the existence of Village funds as a source of village finance also gives the village more strength to carry out development.

The position of Village Head is strategic and sought after by many people, almost every Village Head election has many or more than 2 (two) candidates. In addition, the Village Head's term of office is 6 (six) years per period and can be re-elected up to 3 (three) times by direct election. This means that a village head can serve for 18 (eighteen) years (vide article 39 paragraphs 1 and 2 of Law No. 6/2014 concerning villages). This is different from the positions of President, Governor, Mayor and Regent which are also directly elected but for 1 (one) period of only 5 (five) years and may only be elected for 1 (one) return period or a maximum term of office of only 10 (ten) year.

The term of office of the village head in Law Number 22 of 1999 concerning regional government, Law Number 32 of 2004 concerning regional government, and Law Number 6 of 2014 concerning Villages is the object of study for prospective researchers where if we reflect on the New Order era in power, the dominance of the Village Head at the grassroots level is very strong. This is the impact of the issuance of Law Number 5 of 1979 concerning Village Government. The village head is the sole authority in the village which is an extension of the central government. The state's intervention in subordinate governments was carried out by unifying village government structures, one of which resulted in a process of centralization of power, through the placement of the village head as the sole authority at the local level.

Then after the existence of Law Number 32 of 2004 as an amendment to Law Number 22 of 1999 concerning Regional Government, the term of office of the Village Head underwent another change where the term of office of the Village Head was 6 (six) years and could be re-elected for only 1 (one) subsequent term of office (vide article 204 of Law No.32/2004 concerning Regional Government). There is a one year difference in the village head's term of office in the two laws, where the village head's term of office in Law No. 32/2004 is greater than in the first law.

What is interesting is that both Law Number 22 of 1999 and Law Number 32 of 2004 extend the term of office of village heads generally only once, meaning that after their term of office ends, the village head may increase it by one term. Meanwhile, the provisions of Law Number 6 of 2014 concerning Villages state that village heads who have carried out their duties for one period (6 years) may be re-elected for two subsequent terms. This means that this law allows the position of village head for three periods, either consecutively or not, or for 18 (eighteen) years).

Limiting the term of office of village heads is one of the important things desired by the legislators. In fact, since the enactment of Law 5/1979, restrictions are not only intended for terms of office but also to limit the periodization of terms of office. Within the limits of reasonable reasoning, such restrictions are not only intended to open up opportunities for guaranteed leadership change at all levels of government, including at the village level, but also to prevent abuse of power (power tends to corrupt) due to being in power for too long.

## **2. RESEARCH METHOD**

This research uses normative legal research methods. Normative legal research is legal research carried out by examining library materials or secondary data. This is done by reviewing all laws and regulations related to the legal issue being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study whether there is consistency and suitability between one law and other laws.

## **3. RESEARCH RESULTS AND DISCUSSION**

Regulations regarding the term of office of the village head are regulated in Law Number 6 of 2014 concerning Villages, where the village head is given a time limit for his term of responsibility and authority while serving in the village government. The village

law regulates various aspects starting from the responsibilities, educational requirements of a village head and the term of office of a village head himself.

Article 33 of the Law on Villages contains content regarding minimum education to become a village head. Education itself is a long-term investment, especially as a village head, someone who has an obligation to improve the lives of the people in the village who should have a qualified educational background. Therefore, good education for a village head can develop the potential, knowledge and skills in the village. In article 33, it is stated that there are 13 conditions that must be fulfilled by prospective candidates, one of which is "The lowest level of education is completing junior high school".

Article 39 in the Village Law states the term limits for a village head where the village head is given a term of office for 6 years starting from the date of inauguration and a village head can be re-elected 3 times.

Regulation of the term of office of village heads is something that is carefully described in Law Number 6 of 2014 concerning Villages, especially in Article 39 paragraphs 1 and 2. This law strictly regulates that a Village Head holds office for six years, starting from inauguration date. In addition, the same legal framework also allows the Village Head, in accordance with Paragraph 1, to serve a maximum of three consecutive or non-consecutive terms of office.

In a complex government structure in a country, the existence of different positions functions as an important aspect, which is a manifestation of the state's function in serving its citizens. Logemann correctly characterizes these positions as social incarnations of the state, inseparable from the ongoing exercise of governmental functions. The permanence and continuity of these positions requires a regulatory framework that ensures harmonious coexistence. The law, as proposed by Logemann, acts as a normative compass that guides the formation of positions and describes how stakeholders should behave in their respective capacities. In this case, the legal system takes the role of overseeing the transition of office, recognizing the office as a persistent entity that transcends personnel changes, whether due to term limits or delegation of office.

Discourse about the terms of office of village heads and the temporal parameters that allow them to hold office is a recurring theme in the legislative framework governing villages. Syaifullahil Maslul explained the difference between term of office, which indicates the period spent in one term, and term of office, which indicates the overall duration for which an official can serve. The evolution of legal prescriptions governing villages has seen changes in the duration and terms of office of village heads, in line with the evolving needs of society.

Attributive authority is given to the Regency Regional Government through this law, which gives them the authority to adjust the term of office of the village head to local social and cultural conditions. However, the pendulum for adjustments to statutory regulations continues, with other changes to Law Number 32 of 2004 concerning Regional Government. Based on this law, village heads appointed by the Regent, who are produced through village head elections, are mandated to serve for a fixed term of 6 years, and the right to be re-elected is limited to one additional term. The cumulative maximum term of service for a village head is 12 years based on this legal paradigm.

The desire to extend the term of office of village heads, which appears to be rooted in the socio-political fallout following village head elections (*pilkades*), reveals layers of political justification that hide the hidden aspirations of these leaders. The use of post-election social conflict as an excuse seems to oversimplify the broader issues inherent in democratic precedent. The consequences of tense socio-political relations after elections are characteristic of electoral contestation at various levels, so that a comprehensive

solution that is only embedded in extending the term of office has the potential to be an inadequate solution.

An academic perspective on this matter does not provide a strong guarantee that extending the term of office is correlated with increasing the effectiveness of the village head's performance. The constitutional framework, as stated in the 1945 Constitution, carefully describes the management of power within the ethos of national justice. The framers viewed power as an area of application of leadership, which can be exercised by state organs, and all within the limits of constitutional principles. This concept, known as constitutionalism, underscores the importance of limiting power to prevent arbitrariness and prevent abuse of authority. The term of office or periodization of power as referred to in Article 39 of Law Number 6 of 2014 concerning Villages embodies this spirit by strictly implementing a village head term of office of six years, plus the eligibility to be elected three times in a row.

#### **4. CONCLUSION**

Within the existing legal framework, Article 39 paragraphs (1) and (2) of Law No. 6 of 2014 concerning Villages carefully regulates the term limits and periodization of the Village Head's term of office. The provisions of this law regulate the term of office of the Village Head for six years, with the option to be re-elected for three terms of office, which cumulatively has a maximum term of office of 18 years. The rigidity of this framework, as it relates to the number of terms and time periods involved, became a focal point in the ongoing discourse surrounding the proposed revision.

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