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## THE ESSENCE OF VILLAGE AS A CONSTITUTIONAL GOVERNMENT ORGAN IN STATE MANAGEMENT SYSTEMS

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### Abstract

*In history, all local community in Indonesia have strong local wisdom that contains a soul of adequacy, balancing dan continuity, especially in managing natural resources and residents. Philosophically it is clear that before there was a government, the Village first existed. Therefore the village should be the foundation and part of the governance arrangements afterwards. Villages that have an older governance, should also be the spearhead in every implementation of government affairs, development and society.*

*The research used in this study is a normative study that uses secondary such as laws and regulations, legal theory, expert opinion, and court decisions. The approach that I use is the statute approach and the conceptual approach.*

*The autonomy and democracy of the Village which will be framed by the law on Villages is not just an institutional matter, but has a deep philosophical basis. Efforts to strengthen regional autonomy and "village autonomy" are part of these ideals, while at the same time intending to build a strong and perfect imagination of Indonesia, which goes beyond centralism and localism. NKRI will become stronger if it is supported by the sovereignty of the people and local independence (regions and villages), namely centers that "respect" local and local "respect" centers. Village independence will be the foundation and strength of NKRI and the imagination of Indonesia. If the village is always marginal and dependent, then it will be a heavy burden on the government and paralyze the foundation of NKRI. In the future we need the Village as a local entity that is socially powerful, politically sovereign, economically empowered and culturally dignified.*

### Abstrak

Secara historis, semua masyarakat lokal di Indonesia mempunyai kearifan lokal secara kuat yang mengandung roh kecukupan, keseimbangan dan keberlanjutan, terutama dalam mengelola sumberdaya alam dan penduduk. Secara filosofis jelas bahwa sebelum tata pemerintahan di atasnya ada, Desa itu lebih dulu ada. Oleh karena itu sebaiknya Desa harus menjadi landasan dan bagian dari tata pengaturan pemerintahan sesudahnya. Desa yang memiliki tata

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pemerintahan yang lebih tua, seharusnya juga menjadi ujung tombak dalam setiap penyelenggaraan urusan pemerintahan, pembangunan dan kemasyarakatan. Penelitian yang digunakan dalam penelitian ini yaitu penelitian secara normatif yang menggunakan bahan hukum sekunder seperti peraturan perundang-undangan, teori hukum, pendapat ahli, dan putusan pengadilan. Adapun pendekatan yang penulis gunakan adalah pendekatan Peraturan Perundang Undangan dan pendekatan konseptual.

Otonomi dan demokrasi Desa yang akan dibingkai dengan undang-undang tentang Desa bukan sekadar perkara kelembagaan semata, melainkan mempunyai dasar filosofis yang dalam. Upaya penguatan otonomi daerah dan "otonomi Desa" menjadi bagian dari cita-cita itu, sekaligus hendak membangun imajinasi Indonesia yang kuat dan sempurna, yang melampaui (beyond) sentralisme dan lokalisme. NKRI akan menjadi lebih kuat bila ditopang oleh kedaulatan rakyat serta kemandirian lokal (daerah dan Desa), yakni pusat yang "menghargai" lokal dan lokal yang "menghormati" pusat. Kemandirian Desa akan menjadi fondasi dan kekuatan NKRI dan imajinasi Indonesia itu. Jika Desa selamanya marginal dan tergantung, maka justru akan menjadi beban berat pemerintah dan melumpuhkan fondasi NKRI. Kedepan kita membutuhkan Desa sebagai entitas lokal yang bertenaga secara sosial, berdaulat secara politik, berdaya secara ekonomi dan bermartabat secara budaya.

## 1. Preliminary

The existence Undang-Undang Nomor 6 Tahun 2014 tentang Desa, Peraturan Pemerintah Nomor 43 Tahun 2014 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2014 tentang Desa enacted on May 30, 2014. Then Peraturan Pemerintah Republik Indonesia Nomor 47 Tahun 2015 tentang Perubahan Atas Peraturan Pemerintah Nomor 43 Tahun 2014 Tentang Pelaksanaan Undang-Undang Nomor 6 Tahun 2014 tentang Desa, provide an understanding of the importance of the Village Government, therefore the village is now the prima donna and the focus of attention after the issuance of Undang-Undang Desa, because the village is the smallest area in an original democracy.

The essence of village governance in the level of democracy has been regulated in Pasal 18b Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 which mandates the existence of a unitary society of customary law. Pasal 18 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 which regulates the existence of large and small villages. Pasal 18 reads:

" Pembagian daerah Indonesia atas daerah besar dan kecil, dengan bentuk susunan pemerintahannya ditetapkan dengan undang-undang, dengan memandang dan mengingat dasar permusyawaratan dalam sistem pemerintahan negara, dan hak-hak asal-usul dalam daerah-daerah yang bersifat istimewa."

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The village is a small area that has original rights and is special. The explanation also emphasized: "Daerah Indonesia akan dibagi dalam daerah provinsi dan daerah provinsi akan dibagi pula dalam daerah yang lebih kecil." This means that smaller areas cover districts / cities and villages, or at least the law must also give an appropriate position for the existence of villages that existed long before the NKRI was born, and villages in the colonial period were also regulated separately. Even more sadly, in NKRI the Second Amendment even omitted the term Village so that the opinion stated that the village was unconstitutional.

Pasal 18 ayat 1 confirms:

"Negara Kesatuan Republik Indonesia dibagi atas daerah-daerah provinsi dan daerah provinsi itu dibagi atas kabupaten dan kota, yang tiap-tiap provinsi, kabupaten dan kota mempunyai pemerintahan daerah yang diatur dengan undang-undang."

Pasal 18B ayat 2 confirms:

"Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang".

Although the term "Desa" is lost in the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 the 2nd amendment, but the clause "Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya..." means that the state requires recognition of customary law community units, which includes the Village, kampung, lembang, nagari, negeri mukim, huta, sosor, marga, , parangiu, pakraman, dan seterusnya.

Then in a general explanation of Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah explained "..., maka otonomi Desa akan diberikan kesempatan untuk tumbuh dan berkembang mengikuti perkembangan dari Desa itu sendiri..." This means that the village as the lowest government structure in Indonesia has a different identity and entity and needs to be regulated separately in the form of a law. In addition, the proposal regarding the importance of Undang-Undang Desa was put forward by DPR as the holder of legislative power.

In achieving the welfare of the people carried out by the village government, especially to the village community, According to Bachsan,<sup>1</sup> the role of government must be in accordance with the interests and needs of the community. In line with that opinion of David Osborne and Ted Gaebler, quoted by Tumar,<sup>2</sup> that the community as a public entity must receive special attention, get satisfaction in service, to realize civil society. Osborne's view is known as the concept of "reinventing government", which is an attempt to rethink the government to determine the concept of democratic development and provide space for public participation.<sup>3</sup> So in this case it is very necessary a Village Head who has a good development concept so that the Village can always be recognized by always having legislative rules such as village regulations and village head regulations.

<sup>1</sup> Musthafa. Bachsan. 2001. *Sistem Hukum Administrasi Negara Indonesia*. Citra Adi-tya Bakti. Bandung. h. 9

<sup>2</sup> Sumihardjo. Tumar. 2008. *Penyelenggaraan Pemerintahan Daerah Melalui Pengembangan Daya Saing Berbasis Potensi Daerah*. Fokusmedia. Bandung. h. 66

<sup>3</sup> Osborne dan Gaebler. 1992. *Mewirusahaakan Birokrasi : Reinventing Government : mentransformasi semangat wirausaha kedalam sector public*. Pustaka Binaman pressindo. Jakarta. h. 32

1 Every process of making Village Regulations and Village Head regulations, the role of local government as the party invited to coordinate by the village government must be able to implement autonomy consistently including Village autonomy, not arbitrary.<sup>4</sup> To intervene in villages aimed at interests that violate the rule of law. Local governments must support village governments which will ultimately lead to the rule of law based on local wisdom<sup>5</sup> and also realize good governance<sup>6</sup> in the context of village development and development. So according to Huijbers,<sup>7</sup> the establishment of a legal system must be guided by general principles taken from the beliefs that live in society about a just and good life. According to Damanhuri, Such conditions and systems are closer to the liberal system with characteristics such as the existence of extensive recognition of personal rights, the economy is regulated according to market mechanisms and motives driving the economy are profit motives or profits.<sup>8</sup> Based on the description of the facts above, the problem that will be examined and at the same time becomes a legal issue in this scientific article is : The Essence of Village As A Constitutional Government Organ In State Managemen System.

## **2. Research Method**

The research used in this study is a normative study that uses secondary data such as laws and regulations, legal theory, expert opinion, and court decisions. The approach that I use is the statute approach and the conceptual approach.

The regulations that i used in this research are:

1. Undang Undang Dasar Negara Republik Indonesia 1945
2. Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan
3. Undang-undang Nomor 6 Tahun 2014 Tentang Desa.
4. Undang-undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah
5. Undang-undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan
6. Peraturan Pemerintah Nomor 43 Tahun 2014 Tentang Undang-undang Nomor 6 Tahun 2014 Tentang Desa.
7. Peraturan Pemerintah Nomor 47 Tahun 2014 Tentang Perubahan atas Peraturan Peraturan Pemerintah Nomor 43 Tahun 2014 Tentang Undang-undang Nomor 6 Tahun 2014 Tentang Desa.

After the author examines the legal material, then the legal material analysis technique used in this legal research is qualitative analysis, namely the data obtained is then arranged systematically and then analyzed qualitatively to answer the problems to be discussed.

## **3. The Results And Discussion**

In the government of NKRI, the village or kelurahan is the lowest government institution, the village is the lowest regional government apparatus. The area above the government of village is the sub-district. Sub-districts also include local governments. Village government institutions, village government is managed by the village government and the BPD (*Badan Permusyawaratan Desa*). The village is a combination of several hamlets and the Rukun Warga. Hamlet is part of the village area which is the work environment of the village administration. The hamlet or kapunduhan is headed by the hamlet head. Whereas RW is a combination of several

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<sup>4</sup> Ni'matul Huda. 2005. *Otonomi Daerah, Filosofi, Sejarah Perkembangan dan Problematikanya*. Pustaka Pelajar. Yogyakarta. h. 64

<sup>5</sup> I Nyoman Nurjaya. 2008. *Pengelolaan Sumber Daya Alam Dalam Perspektif Antropologi Hukum*. Prestasi Pustaka Publishier. Jakarta. h. 94.

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RTs. The structure of village and village office government may be different according to the needs of each district / city. Pemerintahan desa dipimpin oleh seorang kepala desa. The village head is chosen by the local village people. A village head served for six years. (BPD).

At first the village was a local community that had territorial boundaries, was inhabited by a number of residents, and had customs to manage itself. In Indonesia, The village has always been the basis of the livelihood of the local community, which incidentally has autonomy in managing governance and governance of the population, local institutions and economic resources. This is what is called the self-governing community. the term Village as a legal community was first known in the Dutch colonial period. Villages in general have autonomous self-managed governments without hierarchical-structural ties with higher structures. Diverse villages throughout Indonesia have always been the basis of local community livelihoods, which incidentally have autonomy in managing governance and governance of residents, local institutions and economic resources.

So that in determining the position of the village in the role of government for the administration of the State, the authors try to do an analysis of 2 forms of theory, namely the Theory of Village Autonomy and Policy Theory.

### 1. Theory of Village Autonomy

The term autonomy comes from the Greek, namely *autos* (itself) and *nomos* (regulations) or laws. Therefore autonomy means its own rules / laws, which then develop into self-government. Autonomy according to Pasal 1 butir 5 Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, viz :

"Hak, wewenang dan kewajiban daerah otonom untuk mengatur dan mengurus sendiri urusan pemerintahan dan kepentingan masyarakat setempat sesuai dengan peraturan perundang-undangan."

Related to the existence of autonomy, then known as autonomous regions, hereinafter referred to as regions, which according to Pasal 1 butir 6 Undang-undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah is:

"Daerah otonom adalah kesatuan masyarakat hukum yang mempunyai batas-batas wilayah yang berwenang mengatur dan mengurus urusan pemerintahan dan kepentingan masyarakat setempat menurut prakarsa sendiri berdasarkan aspirasi masyarakat dalam sistem negara Kesatuan Republik Indonesia.." <sup>9</sup>

In the history of governance in Indonesia, genuine autonomy, in fact has been going on for a long time in the direction of locality, and not in the districts or cities as people know today.. Why ? because the organization and organization of the social life of the community has taken place in the direction of locality since "a long time ago" before the instruments of government organization at the "supra local" level were formed by the center of government power<sup>10</sup>. Within the framework of regulating the social life of the autonomous community, the local community forms a customary law community with various original names that vary according to the culture of their respective regions.

According to Ateng Syafruddin, autonomy implies freedom or independence (*zelfstandigheid*), But not independence (*onafhankelijkheid*). Limited freedom or independence is a form of providing opportunities that must be accounted for.<sup>11</sup> So according to Bagir Manan, in the autonomy of freedom and independence to carry out government affairs. Local governments accept the surrender of autonomy, so the intended freedom and independence is the essence of autonomy.<sup>12</sup> In line with that according to M. Fauzan, autonomy is not a process

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of regional independence (separate sovereignty), but a process of providing opportunities for development.<sup>13</sup>

Autonomy, seen from the understanding of state administrative law, according to Bagir Manan, in addition to the dispersal of the administration of government for the efficiency and effectiveness of government, it also forms an administrative system (*staatsrechtelijk*) which is closely related to the basic state and state organization. Based on the meaning of the intended autonomy, there are principles of regional autonomy which include :

- a. The principle of broad autonomy;
- b. The principle of real autonomy; and
- c. The principle of responsible autonomy.<sup>14</sup>

The principle of broad autonomy implies the existence of freedom, which includes three systems of material household affairs (all matters), formal household affairs (matters handed over) and real household affairs (affairs according to real circumstances and needs).

According to David Held,<sup>15</sup> the principle of autonomy means a system of limited power, the government is entrusted with the capacity of the state to a broad extent so that they uphold the rule of law. Decentralization breeds autonomy, according to The Liang Gie, there are several reasons, viz :

- a. Viewed from political perspective, to prevent the accumulation of power on one party that can cause tyranny including that people want to exercise their rights in democracy;
- b. Viewed from an organizational technical point of view, to achieve an efficient government, because the management is handed over by the region while things that are more appropriate in the hands of the central government are still managed by the central government;
- c. Viewed from cultural point of view, so that the implementation of government in accordance with the conditions of the region with all aspects of culture and economy;
- d. Viewed from point of view of economic development interests, so that it can directly assist development in the area concerned.<sup>16</sup>

The administration of the village government is a subsystem in the administration of the National Government, so that the village has the authority to regulate and manage the interests of its people. The rationale for regulating village governance is diversity, participation, genuine autonomy, democracy and community empowerment. This is in line with the recognition and respect for the existence of the Pasal 18 B Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Adapun Pasal 18 B reads:

Ayat (1) Negara mengakui dan menghormati satuan-satuan pemerintahan daerah yang bersifat khusus atau bersifat istimewa yang diatur dengan Undang-undang.

Ayat (2) Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai perkembangan masyarakat dan prinsip Negara kesatuan Republik Indonesia yang diatur oleh Undang-undang.

In carrying out its duties and authority, the Village has several authorities based on Pasal 18 Undang-Undang Nomor 6 tahun 2014 tentang Desa, :

1. Kewenangan Desa meliputi kewenangan di bidang penyelenggaraan Pemerintahan Desa,

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2. Pelaksanaan pembangunan Desa,
3. Pembinaan kemasyarakatan Desa,
4. Pemberdayaan masyarakat Desa berdasarkan prakarsa masyarakat, hak asal usul, dan adat istiadat Desa.

From four of these things, it is hoped that the village government, especially the Village Head, can exercise its authority properly. The realization of authority accountability can be seen if the Village Head is able to manage it well. The authority is part of the decentralization granted by the local government to the village with the aim of efficient implementation of human resource improvement and village development. The main role of the Village Head is the main key to realize the results of increased village development that is expected by the surrounding Village community.

Recognition of autonomy in the Village, according to Taliziduhu Ndraha explained as follows :

- a. Village Autonomy is classified, recognized, fulfilled, trusted and protected by the government, so that the dependence of villagers on the government's "generosity" can be reduced.
- b. The position and role of the village government are restored or developed so that they are able to anticipate the future. <sup>17</sup>

The realization of village autonomy has become increasingly clear to be implemented as a whole. But, each purpose and authority cannot be fully implemented directly by the Village apparatus, there are several things that must be reviewed by the Village to be implemented immediately. As is the case in Undang-Undang Nomor 6 Tahun 2014 tentang Desa, stated that the village head was authorized to appoint and dismiss village officials.

The realization of village autonomy is the ideals of the people in the smallest region, namely a group of areas called villages. The exercise of the rights, authority and freedom of village autonomy requires responsibility to maintain the integrity, unity and integrity of the nation in the ties of the NKRI and the responsibility to realize the welfare of the people carried out in the corridor of applicable laws and regulations. <sup>18</sup>

Village Autonomy as a consequence of the Decentralization Principle in the implementation process will not be separated from financing, provision of facilities and infrastructure and the quality of the Human Resources of the Apparatus so that village autonomy can run well. In essence, the autonomy granted to the Village is expected to be able to realize "independence". Sri Edi Swasono argur that : "Independence is nothing but the awareness achieved through activity, self-initiative, creativity and self-help awareness, and refusing dependence ".<sup>19</sup>

In the Napak Tilas Penyelenggaraan Alokasi Dana Desa (ADD) Dalam Rangka Otonomi Desa book says that : " So at the administrative technical level the role of the District Government is very strategic as an instrument in expediting development programs and government tasks, especially in carrying out public service functions. While on the political level, regional government is an autonomous political unit that plays a role in increasing the participation and empowerment of the community in government and development activities " <sup>20</sup>

From the description above, the role of the Regency / City Government to realize the village autonomy is very strategic, both original autonomy originating from the origin of the village itself and the autonomy obtained as a consequence of the



principle of decentralization. According to Sadu Wasistiono : “ Juridical recognition of village authority will not mean much if it is not supported by the provision of sources of funding and efforts to empower conceptually and continuously. Because basically financing will follow the functions carried out (*money follows function*) “ .<sup>21</sup>

## 2. Policy Theory

A state of law certainly cannot simply carry out the actual function of the law itself, so legal awareness is needed from each of its citizens, Such awareness is not only limited to compliance, but in-depth understanding of the objectives of a policy which is the essence of a decision, apart from other matters relating to the policy, such as the accuracy of decision making, as well as good and correct implementation, also with the support of various elements and factors that take effect.

The definition of policy cited by Jones in the view of Prof. Heinz Eulau and Kenneth Prewitt is: “*a standing decision characterized by behavior consistency and repetiveness on the part of both those who make it and those who abide by it*”. According to Jones, that policy is a permanent decision characterized by consistency and repetiveness of the behavior of those who make and of those who comply with the decision. Even though the definition raises several questions or problems to judge a number of questions or problems to assess how long a decision can last or what forms the consistency and repetition of the intended behavior and who actually did the number of policy makers and policy makers, but this definition has introduced several components of public policy.<sup>22</sup>

According to William Dunn in Sahya Anggara explains that there are four main features of policy, namely as follows:

1. Dependence on each other. Policy is not a stand-alone entity, but rather part of the whole system of problems.
2. Subjectivity. External conditions that cause problems are defined, clarified, explained, and evaluated selectively.
3. The nature of assistance. Policy issues are understood, defended and changed socially.
4. The dynamics of the policy problem. People's perspective on the problem will ultimately determine the solution offered to solve the problem.<sup>23</sup>

These four things show that the policy contains various considerations, especially when it involves the public at large. This means that it can relate to the principles of humanity, justice, welfare, and democratic principles.

The existence of the Village Government Policy towards the concept of evaluation and accountability of the administration of the Village Government. I see that the majority of the performance of the village government is only a structural extension of the district government. whereas the position of Village Head is directly elected by the Village community, so in fact the authority of the Village Head towards the Village led is very large in determining the direction of Village development independently.

Village government policy is one of the legal products because every village government legally also has that authority. Although small and local scale which covers the administration of the village itself. By law, formal policies at the village level are written in the form of village regulations. structurally, the law and state administration, Village regulations are a form of follow-up and elaboration of higher regulations, not to carry out autonomy independently, but the responsibility

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for Village autonomy remains under the authority and supervision of the city / district government.

Nevertheless the village has the right and authority to participate in determining the direction of national development in general and the development of the village itself specifically. Village government formally has the authority to make regulations that are formal and have a legally binding force in the form of Village regulations, but apart from the formality point of view, every village traditionally has local wisdom in every village problem resolution. Therefore, the village government as a formal state institution does not necessarily have to bring out raw every operational standard and state provisions in general.

Village Government wisely must adjust and position itself with the wisdom and norms that exist in an area, especially since each region has a different wisdom, therefore every state institution at the lowest level must have flexibility in carrying out the duties and functions of government. This is the background of policies, programs, or all forms of village government decisions that do not have to take the form of village regulations that are officially binding under positive laws in the country.. However, the village has traditionally had its own norms in each village problem solving that aims to determine the direction of village development itself, however, it is still hoped that the village government can play an active role as a form of implementation of government functions, namely the service function, facilitator and initiator of solving public problems within the scope of the village itself both in formal and informal, because basically it returns to the priority of effectiveness in each form of policy in achieving its goal of bringing the community towards better development.<sup>24</sup>

In Undang-Undang Nomor 6 Tahun 2014 tentang Desa known Village regulations and Village Head regulations. The two are different because what is meant by Village regulations is the regulations determined by the Village Head after being discussed and agreed with the BPD based on Pasal 1 angka 7 Undang-Undang Nomor 6 Tahun 2014 tentang Desa. While the regulations of the Village Head are the regulations for implementing village regulations based on Pasal 85 Peraturan Pemerintah Nomor 43 Tahun 2014 concerning Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2014 tentang Desa.

Village regulations and village head regulations, both of which are still included in the legislation. This is based on the provisions of Pasal 8 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan which among other things says that the type of legislation includes regulations determined by the Village Head or equivalent and is recognized for its existence and has binding legal force insofar as it is ordered by higher legislation or formed based on authority. In reading a position in the legislation, according to Parsons in Tachjan stated that what is really important in implementation is the relationship between policy makers and policy implementers. The bottom-up model is a model that views the process as a negotiation and consensus building which in the end the agreement gives birth to a policy<sup>25</sup>. The bottom-up approach model emphasizes the fact that implementation on the ground provides flexibility in the application of policies. When analyzed into the policies of the village government, the bottom-up approach in public policy is very rational if applied in any local government policy such as the village, because the village government has aspects of its own way of wisdom in solving any village problems that are not accommodated in higher government institutions, in other words central government or local government policies that

<sup>1</sup> are structurally higher than village government are not effective in solving problems in a village, so that the village government has its own way that is felt to be more effective in resolving existing problems in the village.

As a miniature of the Indonesian state, The village is the closest political arena for relations between society and power holders (Village apparatus). On one side, Village apparatuses are part of the state bureaucracy which has a list of state duties, namely running the bureaucracy at the village level, carry out development programs, provide administrative services to the community. The important task of the village government is to provide administrative services (correspondence) to residents.

On the other hand, because of the proximity of the arena, normatively grassroots communities can actually touch directly and participate in government and development processes at the village level. The village apparatus is always constructed as a "village guardian" who is expected to be a protector and protector of the community. Village officials and other village elites are respected, empowered and trusted by community members to manage the public and private lives of villagers.

In practice between the community and the village officials have a personal relationship that may be tied with kinship or neighboring ties, so that the two elements touch each other personally in a more private area than the public. The boundaries of private and public affairs in the village are often blurred. For example, community members assess the performance of village officials not to use modern criteria (transparency and accountability), but instead to use traditional criteria in the clientelistic relationship framework, especially the closeness of the pamong with citizens which can be seen from the customs and willingness of civil servants to continue.

The village head must know all the lives of many people, even if a leaf falls from a tree. Therefore the village head is always sensitive to legitimacy in the eyes of his people. Legitimacy means the people's recognition of the village head's power and authority to act to regulate and direct the people. The democratically elected village head does not necessarily obtain continuous legitimacy when he becomes a leader in his village. Legitimacy has its origins and sources. The village head's legitimacy stems from the utterances conveyed, the recognized values and the actions taken.

Generally, village heads believe that popular recognition is needed to build their existence and support the smooth running of policies and tasks, although each village head has different sizes and styles in building legitimacy. However, the village head generally builds legitimacy in ways that are very personal rather than institutional. The village head is easily accepted by residents if he is helping and attending private events of the community, and generous, friendly to his citizens, and others.

The village head always appears dominant in public and political affairs, but he does not develop a governance system that is based on transparency, accountability, responsiveness, trust and togetherness. What happened was the opposite: hegemonic submission to residents, because the village head felt trusted and characterized by residents. The Village Head has a benevolent self-image or trustee who has been trusted and entrusted with the mandate of his people, so that the village head does not need to beat around the bush to work in a participatory and transparent spirit, or must be accountable for his actions and policies before the public. In contrast, villagers are not too concerned with the performance of the

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village head as the holder of village power, as long as the village head does not directly interfere with the economic efforts and lives of his citizens.

When the Law on Village Government is rolled out at an empirical level it is an instrument to build a vision towards a new life of an independent, democratic and prosperous Village.

In comparison with the Australian government who is very concerned about the Village, in making policy, the government gives full responsibility to the departments that overshadow the village issues, as Pnina levine said in the journal *The University of Western Australia Law Review*, as follows :

*"The Department of Commerce (Department) is principally responsible for the administration and enforcement of the legislative regime regulating retirement villages. Final Report (the Review) prepared by the Department was tabled in Parliament, containing several recommendations for reform. This Review was influential in Parliament's making amendments to the legislation which sought to implement some of the key recommendations for reform set out in the Review"* <sup>6</sup>

#### 4. Conclusion

The conclusions drawn from the discussion of this research are as follows:

1. Village independence is not the only village in supporting itself. Village independence certainly does not stand in a political vacuum, but also related to the dimension of justice which is in the context of the relationship between the village (as a local entity) and the supra-village (central and regional) power which is bigger. Locally-internally, Village independence means strong local capacity and initiative. Local initiatives are ideas, willingness of Village entities based on local wisdom, communalism and social capital (leadership, networking and social solidarity). Thus, strong local initiatives are the local foundations for Village independence.

Independence is the same as Village autonomy. The idea of Village autonomy actually has the following relevance (objectives and benefits) :

- a. Strengthening the independence of the Village as the basis for the independence of the NKRI
  - b. Strengthening the position of the Village as a subject of development;
  - c. Bring development planning closer to the community;
  - d. Improve public services and equitable development;
  - e. Creating development financing efficiency according to local needs;
  - f. To stimulate the local economy and the livelihoods of the Village community;
  - g. Providing trust, responsibility and challenges for the Village to awaken the initiative and potential of the Village;
  - h. Forging village capacity in managing governance and development;
  - i. Opening a place of learning that is very valuable for the village government, village institutions and the community.
  - j. Stimulate the growth of local community participation.
2. Democracy is a value and system that provides a framework for village governance. Conceptually democracy contains a number of basic principles: representation, transparency, accountability, responsiveness and participation, all of these principles form the basic foundation for policy management, Village

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<sup>6</sup> Pnina levine, *Security of tenure for retirement villages in Wa – will the law walk the walk or just talk* *The talk*, (*The University of Western Australia Law Review* Volume : 40. 2015)

**1**  
planning, Village financial management and public services. If these basic principles do not exist in the village, an autocratic “single ruler” will emerge, and village policies and finances will run as they are routinely, or problematic cases may occur that harm the village people.

Village Democracy will open up space for the people to convey their aspirations to the Village government. Aspirations are the foundation of people's sovereignty that has long been mandated in the constitution. Democracy is also a place to educate the mentality and personality of the people so that they are more capable, independent, militant and have awareness about the management of public goods that affect their lives. Education and learning are important, considering that society tends to be pragmatically economically and politically conservative, as a result of the times that prioritize material orientation.

3. The issue of welfare includes two major components, namely the provision of basic services (food, housing, education and health) and village economic development based on local potential. Village independence and democracy are tools and road maps to achieve the welfare of the village people. Decentralization allows the allocation of resources to the Village, and democracy allows the management of Village resources in favor of the Village people. The village's right to manage natural resources, for example, is a very valuable asset for the economy of rural communities. Likewise, a larger allocation of Village funds will be very useful to sustain the function of the Village in providing basic services for Village residents. However, the more optimal welfare of the Village people is certainly not possible to be covered by the Village government alone, because that is why a responsive and participatory government policy is also needed, which is oriented towards improving basic services and developing the local economy.

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THE ESSENCE OF VILLAGE AS A CONSTITUTIONAL GOVERNMENT ORGAN IN STATE MANAGEMENT SYSTEMS Muhammad Mashuri<sup>1</sup> Fakultas Hukum Universitas Merdeka Pasuruan, E-mail: mashuri\_faci@yahoo.com Info Artikel Masuk: Diterima: Terbit: Keywords: The Essence Of Village, Government Organ, Constitutional, State Management Systems Abstract in historv. all local community in Indonesia have strong local wisdom that contains a

community, especially in managing natural resources and residents. Philosophically it is clear that before there was a government, the Village first existed. Therefore the village should be the foundation and part of the governance arrangements afterwards. Villages that have an older governance, should also be the spearhead in every implementation of government affairs, development and society.

The research used in this study is a normative study that uses secondary such as laws and regulations, legal theory, expert opinion, and court decisions. The approach that I use is the statute approach and the conceptual approach.

The autonomy and democracy of the Village which will be framed by the law on Villages is not just an institutional matter, but has a deep philosophical basis. Efforts to strengthen regional autonomy and "village autonomy" are part of these ideals, while at the same

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