

ABUSE OF AUTHORITY OF THE VILLAGE HEAD IN MANAGING VILLAGE FUNDS IN DELI SERDANG DISTRICT AND CRIMINAL ACCOUNTABILITY

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Abstract

Explaining the issues related to the rule of law in financial management is very important. This is because every financial management has responsibilities and regulations in its implementation. This study describes the legal rules that address accountability for financial misuse by village heads. Collecting data in this study using sociological juridical methods. That is, data comes from primary and secondary sources. The findings in this study include that the laws that apply in regulating the authority of the village head are good. However, the facts show that many village heads need to understand their duties in carrying out their positions based on the applicable laws and regulations.

Keywords: criminal liability, abuse of authority, village head, managing finance

I. Introduction

The village is the forerunner to the birth of regional autonomy, which in turn gave birth to village government as the smallest sphere in the implementation of the autonomous system.¹ According to Government Regulation Number 72 of 2005 concerning Villages, Villages are legal community units that have territorial boundaries that are authorized to regulate and manage the interests of the local community based on local origins and customs that are recognized and respected in the State Government system. The Unitary State of the Republic of Indonesia. Unlike the Kelurahan, the Village has the right to regulate its wider territory. However, in its development, the status of the village can change to become the village head.² This means that the village government unit and the customary law community unit have the same position as legal subjects in the traffic of national law.³ Village autonomy is the basis for the division of the Indonesian constitutional structure starting from the central government to the regions, so that village autonomy arrangements are still guided by the authenticity of the village as a general community unit.⁴

Based on Article 18 of the Village Law, the village government has the right to manage the village autonomously, including the annual allocation of village funds. management and allocation of village funds are managed by the village government directly.⁵ Through village funds, the village government can carry out a pattern of increasing the village economy through Village-Owned Enterprises (BUMDes), regulate the Village Revenue and Expenditure Budget (APBDes) and carry out various development infrastructure that can increase village economic development.⁶⁻⁷ From the village to build the country to be realized. The central government currently provides a budget of approximately 1 billion for each village throughout Indonesia to build the village itself. In the case of village funds, this has been regulated in Law Number 6 of 2014, Government Regulation Number 60 of 2014, concerning Village

¹Greece Hasyim, et al, Local Government Law, Rajawali Press, Jakarta, 2017, p . 129-130

²Sayogya, Rural Sociology, Yogyakarta, Gadjah Mada University Press, 2002, Pg .13.

³Jimly Asshididiqie, The Idea of Social Constitution: Institutionalization and Constitutionalization of Civil Society Social Life, LP3ES, Jakarta, 2015, p. 351

⁴Ateng Syafrudin, Village Republic, PT. Alumni, Bandung, 2010, p. 11

⁵I Putu Jericko Susila Adnyana and I Ketut Rai Setiabudhi, Criminal Responsibility of the Head of Satra Village Regarding Irregularities in Village Fund Management (Based on Case Decision Number 10/Pid.Sus-Tpk/2018/Pn.Dps), Journal of Kertha Wicara Vol . 9 No. 7 of 2020, p. 2

⁶Yusrianto Kadir, and Roy Marthen Moonti, Corruption Prevention in Village Fund Management, IUS Journal, Vol VI, No. 3, December 2018 Issue, p. 432

⁷Wantu, FM, Mahdi, I., Purba, AS, Haris, I., & Amal, BK (2021). Plant Protection Law, Efforts to Save Indonesia's Earth: International Publication Study. International Journal of Modern Agriculture, 10(1), 867-879.

Funds Sourced from the State Revenue and Expenditure Budget, Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia Number 21 of 2015 concerning Priority Setting for the Use of Village Funds for 2016.

In 2019 the government plans to increase the village fund budget to 73 trillion. In addition to village funds originating from the State Revenue and Expenditure Budget (APBN), village government financial sources come from village fund allocations, tax and regional retribution sharing, as well as village original income (PAD).⁸Based on these conditions, each village received fresh funds for administering village governance, which triggered widespread misuse of village funds by village officials. The occurrence of corruption in the city is one of the fundamental problems. This problem arises because of effective budget management. However, its implementation at the village level is not accompanied by the principles of transparency, participation and accountability in village politics, development and finance.⁹However, the attention of the public and the national media to the city is still minimal, especially regarding the strategic position of the city in order to win regional elections, the phenomenon of the affiliation of village heads with certain regional head candidates, and the lack of knowledge. and village community supervision.¹⁰ In 2021, 154 cases of village fund corruption will be handled, and 245 suspects will be charged.¹¹The background for corruption in village funds is that the village budget is so large by the central government; for example in 2022, the village fund budget is IDR 68 trillion.¹² The practice of village fund corruption that occurred in North Sumatra was carried out using the modus operandi including embezzlement, budget abuse, extortion, inflating, bribery and budget cuts starting from the planning process to disbursement..¹³Until 2017, 1 case of village fund corruption occurred in North Sumatra Province, namely in Percut Village, Percut, Sei Tuan District, Deli Serdang Regency. The increase occurred in 2018 by 5 (five) cases, and in 2019 it increased to 8 (eight) cases of village fund corruption in North Sumatra Province.¹⁴

Village fund corruption in Percut Village, Deli Serdang Regency, namely in the distribution of village funds amounting to IDR 782 million for the 2016 fiscal year.¹⁵In addition, the Padang Lawas District Attorney's Office (Palas) has named the Head of Tangga Bosi Village with the initials AH as a suspect in the alleged criminal act of corruption in village funds for the 2016 fiscal year which caused losses to the state of Rp. 286,606,603. Palas was named a suspect based on the suspect determination letter No. Print -109/N. 2.37 /Fd.1/ 08/2017 dated 29 August 2017 .¹⁶ Previously Corruption in the Village Fund by Paya Itik Village Head, Galang, Deli Serdang, where Suparno as a former Village Head was imprisoned for three years, a fine of IDR 50 million, a subsidiary of one month in prison. According to the judge, the defendant was deemed to have violated Article 3 juncto Article 18 of Law Number 31 of 1999 concerning Corruption Crimes as amended by Law Number 20 of 2001 concerning Corruption Crimes.¹⁷ Corruption has reached hypercorrection and become so entrenched that property rights are no longer respected, the rule of law is undermined, and incentives for investment are chaotic, resulting in a

⁸I Made Agus Mahendra Iswara and Ketut Adi Wirawan, "The Prosecutor's Role in Eradicating Village Corruption Crimes in Indonesia", *Kertha Wicaksana Journal*, Vol. 14, NO.1, 2020, Pg. 69-70

⁹Rizki Zakaria, "Community Participation in Village Fund Corruption Prevention: Recognizing the Modus Operandi", *Journal of Integrity*, Vol. 6, No.2, 2020, p.264

¹⁰<https://antikorupsi.org/id/article/outlook-dana-desa-2018-potential-pelaguna-anggaran-desa-di-tahun-politik>, accessed on December 28, 2022, at 20.00 WIB, in Medan City

¹¹<https://kumparan.com/kumparanews/report-icw-pengelolaan-dana-desa-jadi-cases-korupsi-terbanyak-pada-2021-1xuGNzQHxVx/4>, accessed on January 2, 2022, at 20.00 WIB, in Medan City

¹²<https://www.antaraneews.com/berita/2827093/icw-cases-korupsi-2021-termulti-di-sector-anggaran-dana-desa>, accessed on December 28, 2022, at 20.00 WIB, in Medan City

¹³Ismarandy, Alfi Syahrin, M. Hamdan, Rosnidar Sembiring, The Attorney's Role in Preventing and Handling Village Fund Corruption Crimes in the Legal Area of the Sumatra High Prosecutor's Office, *Journal of Iuris Studia: Journal of Legal Studies*, Vol.2, No.2, June 2021, p. 190

¹⁴<https://medan.tribunnews.com/2019/12/30/tren-korupsi-sumut-tahun-2019-case-dana-desa-meningkat-penindakan-korupsi-melogar>, accessed December 28, 2022, 20.00 WIB, in Medan City

¹⁵<http://news.akurat.co/id-78434-read-diduga-korupsi-dana-desa-kejati-sumut-tahan-kades-percut> accessed December 25, 2022

¹⁶<https://www.gosumut.com/berita/read/2017/08/29/korupsi-dana-desa-2016-kejari-palas-tetapkankades-tangga-bosi-as-tersangka#sthash.MOnsPLVo.dpbs>, accessed December 20, 2022

¹⁷ <http://www.tribunnews.com/regional/2016/04/25/korupsi-dana-desa-kades-paya-itik-divonis-3-tahun>, December 20, 2022

decline in economic and political development.¹⁸ In the enforcement of criminal acts of corruption in the regions, two law enforcers are more dominant in conducting investigations of criminal acts of corruption, namely the police and the prosecutor's office, although the law enforcement command for eradicating corruption remains with the KPK after the enactment of Law Number 30 of 2002, the Corruption Eradication Commission.¹⁹ From this description it can be seen that there are three institutions authorized to investigate corruption, namely the Police, the Attorney General's Office, and the KPK.²⁰ For example, investigators at the Attorney General's Office investigate corruption cases. In that case, the research case file will be forwarded to the Public Prosecutor at the Attorney General's Office to be transferred to the Corruption Court..²¹

II. Research Method

This research departs from the paradigm of constructivism (legal constructivism) which views the truth of a legal reality as a relative thing. Reality is a human mental construction, so this research provides empathy and dialectical interaction between the researcher and those being studied to reconstruct legal reality through qualitative methods.²² Researchers who use the constructivism paradigm. As constructivism applies hermeneutic and analytic methods in the process of achieving truth. Hermeneutics is done by identifying facts/construction of individual opinions. Epistemologically, it is transactional/subjective to the findings made, or researchers and objects of investigation relate interactively.²³

Likewise in the study of Criminal Responsibility for the Abuse of Village Head Authority in Village Financial Management in Deli Serdang Regency, law enforcement against criminal acts of corruption in village funds is a reality observed by researchers that is relative in nature and cannot be generalized. Policy is a multiple reality that varies based on individual social experiences. This reality is a human mental construction. Therefore, to reveal various cognitive structures of each individual or society towards government policies, researchers provide empathy and dialectical interactions between researchers to reconstruct legal reality. This construction process will run continuously because new understanding is found,²⁴ Constructivism theory states that people understand their experiences by grouping events according to their similarities and distinguishing things through their differences.²⁵

This type of research on Criminal Responsibility for the Abuse of Village Head Authority in Village Financial Management in Deli Serdang Regency is Juridical Sosoiology (Empirical) research.²⁶ Research is conducted on actual conditions or real situations that have occurred in society to find out and find the facts and data needed.²⁷ Empirical research also examines the application of rules or norms in positive law that apply in society.²⁸ Ibrahim is usually the approach that is often used in normative legal research is conceptual.²⁹⁻³⁰ Sources of data used in this study are primary data and secondary data.

¹⁸Fathur Rahman, "Corruption at the Village Level", *Journal of Governance*, Vol. 2, No.1, November 2011, p. 14

¹⁹Achmad Surya, "Problematics of Investigators in the Determination of Suspects of Corruption in Village Funds in Central Aceh District", *Resam Law Journal of Muhammadiyah Law College of Central Aceh*, Vol. 4, No.1, 2018, p. 31-44

²⁰Tri Novita Sari Manihuruk, Riantika Pratiwi, "Problematics of Bangkinang District Attorney Investigators in Measuring Village Fund Corruption Crimes", *Al Daulah Journal*, Vol.9, No.2, p. 156

²¹Yudi Kristiana, *Investigation Techniques and Filing of Corruption Crimes*, Thafamedia, Yogyakarta 2018. Pg 16

²²Esmi Warassih, *Socio Legal Research, Legal Methodology Updating Workshop Paper*, Bandung 2006., p. 7.

²³EG Guba and YS Lincoln, *Paradigmatic Controversies, Contradictions and New Mixing Currents*, in Norman K. Denzin and YS Lincoln, 2011, *The Sage Handbook Of Qualitative Research*, Third Edition, translated by Dariyatno, Student Library, Yogyakarta, p. 207.

²⁴Jawade Hafidzh, *Bureaucratic Reform of Government Goods and Services Procurement in Preventing Corruption Crimes in Indonesia*, Dissertation, Semarang, 2014, p.17.

²⁵<http://repository.usu.ac.id/bitstream/123456789/38405/3/Chapter%20II.pdf>, downloaded on January 202023 at 21.30 WIB.

²⁶Soerjono Soekanto, *Normative Legal Research*, (Jakarta: Raja Grafindo Persada, 1995), p. 12.

²⁷Johny Ibrahim, *Normative Law Research Theory and Methodology*, (Surabaya: Bayumedia, 2008), p. 295.

²⁸Peter Mahmud Marzuki., *Legal Research*. (Jakarta, Kencana Persada Group, 2010), p. 32

²⁹Johnny Ibrahim, *Normative Law Research Theory & Methodology* (Malang: Bayu Media Publishing, 2008), Pg. 300.



III. Results And Discussion

The discussion of legal research departs from reasoning about references to legal theory; legal theory refers more to its theoretical arguments through in-depth reasoning so that it is different from positive law; legal theory sees law as what it should be (*das sollen*), while dogmatic/positive jurisprudence which discusses legal issues refers to legal regulations that apply profitably, so "as is" (*das sein*).³¹In other words, legal theory seeks truth and justice from a rule or rule of law. According to Wolfgang Friedman, legal theory deals with various antinomies, such as the universe and the individual, will and knowledge, reason and intuition, stability and change, positivism and idealism, collectivism and individualism, democracy and autocracy, universalism and nationalism.³²All of these antinomies show the sociology of legal theory throughout history as a response to environmental challenges, which from time to time is marked by the cosmological dialectics of the era.

According to Rahardjo, a theoretical basis in legal research is needed to make the types of values according to legal arguments arrive at their highest philosophical foundation. According to Jhon, the theoretical framework is intended to provide an overview or limitations on the theories that will be used as the basis for the research to be carried out. Remarkably, Theory contains a description of the causal relationship between variables. A theory in itself includes the advantage of explaining a phenomenon. Not only that, the approach also has the power to predict a phenomenon.³³

3.1 Legal system

Law is one of the important elements in the life of the state as stated by Sri Soemantri Martosoewigno, that a form that is categorized as a rule of law must have the following elements. :³⁴

1. In carrying out its duties and obligations, the government must be based on laws or statutory regulations.
2. There is a guarantee of human rights (citizens)
3. There is a division of powers within the State; And
4. There is supervision from the judiciary (*rechtterlijk controle*).

Along with the development of the state and government, the legal state teachings that are now being adopted by countries all over the world, especially after the second world war, is the welfare state. According to Lemaire, as quoted by Marbun, the function of the state to organize public welfare is a conception of a modern rule of law that places the role of the state in a strong and large position. The concept of the welfare state (Lemaire calls it *bestuurzorg*)³⁵It can be said that in addition to being subject to applicable law, the state also has the duty and responsibility to realize the welfare of its people. The state is not merely the guardian of security or public order, but is responsible for studying social justice and public interest for the greatest prosperity of the people. The function of law in an advanced society can be seen from two sides; first, the progress of mankind in various fields requires legal rules to regulate it so that the development of society also attracts the field of law. The second side is where good law can develop culture or direct the evolution of society. The function of law in society is very diverse, depending on various factors in society. In addition, the role of law in an underdeveloped society will also be different from that of an advanced civilization. In every culture, the law functions more to ensure security in society and achieve the social structure expected by society. However, in advanced civilizations, law becomes more general, abstract, and far from context.³⁶

Success in carrying out the law is that it has achieved its goal. The purpose of legal norms is to regulate human interests. If the legal standards are complied with and implemented by the community and law enforcers, then the implementation of the law is said to be effective. This can be seen in

³⁰ Erlies Septiana Nurbani. Salim HS., *Application of Legal Theory in Thesis and Dissertation Research* (Jakarta: PT RajaGrafindo Persada, 2013), Pg. 17.

³¹ Munir Fuady, *Grand Theories in Law*, (Jakarta: Kencana Prenadamedia Group, 2014), p. 5

³² Wolfgang Friedman, in Bernard L.Tanya, Yoan N. Simanjuntak, Markus Y.Hage, *Legal Theory: Human Orderly Strategies across Space and Generations*, (Yogyakarta: Genta Publishing, 2010), p. 2

³³ Mardalis, *Research Methods: A Proposal Approach*, (Jakarta: Aksara, 1999), p. 41

³⁴ R Sri Soemantri Martosoewigno, *Anthology of Indonesian Constitutional Law* (Bandung: Alumni, 1992), P.29.

³⁵ SF Marbun, *Administrative Courts and Administrative Efforts in Indonesia* (Yogyakarta: UII Press, 2003), Pg.153.

³⁶ Munir Fuady, *Grand Theories in Law* (Jakarta: Prenada Media Group, 2014), Pg. 245.

society in implementing the rule of law. The application of the Basic Norms is not based on, does not originate from, or is not formed by a higher norm. Still, society determines its validity as a Basic Norm which forms the basis for the examples below, so that the Basic Norm is said to be a presumption.³⁷If the Basic Norms change, then the system of norms at the lower level will be broken. Legal stems contain the intent or purpose to protect people's rights.

The goal to be achieved by law is the creation of an orderly social order, the result of order and balance, so that human interests can be protected.³⁸So, the law divides the rights and obligations between individuals in society, separates authority, and regulates how to resolve legal issues and maintain legal certainty. Law aims to achieve justice, legal certainty and order for human life. For countries that adhere to the concept of rule of law, the purpose of law is the starting point and direction in law enforcement carried out by law enforcement officials.³⁹Whether or not the law works in a rule-of-law state requires law enforcement tools, namely legal instruments, law enforcement officials, supporting facilities or facilities, including the status and role of law enforcement officials, and the public. As stated by Lawrence M Friedman, legal life in a rule of law is influenced by structural, substantive, legal and cultural factors. The theory of the legal system (Legal System Theory) from Lawrence M. Friedman basically states that a legal system consists of 3 (three) components, namely⁴⁰:

- 1) Legal Substance⁴¹
- 2) Legal Structure⁴²
- 3) Legal Culture⁴³⁻⁴⁴

Thus, the success of law in realizing its ideals (review) is largely determined by these three factors, in which the operational effectiveness of legal structures or institutions, legal substance, and legal culture are also influenced, and their characteristics are determined. As Richard M Steers said, one of the factors that contribute to organizational effectiveness is organizational characteristics which include structure and technology.⁴⁵Examining the effectiveness of law is comparing legal reality with legal ideals. Law determines what role legal subjects must play, and law will be more effective if the role played by legal issues is closer to what has been done in the setting. Effectiveness in the legal context means that the law is alive and valid, both juridically, sociologically and philosophically.⁴⁶People say that the rule of law applies factually or effectively if the members of society to whom the rule of law applies comply with the rule of law.⁴⁷According to Achmad Ali said that:

"The effectiveness of the rule of law in general also depends on whether or not law enforcement officials are optimal in enforcing the law, starting from the stages of formation, socialization, and the process of law enforcement, which includes the steps of finding law (use of reasoning, interpretation and construction of law) and its application to concrete case.⁴⁸ According to Soekanto, there are five factors that affect the effectiveness of a law, namely⁴⁹:

1. The legal factor itself.

³⁷ Muhammad Yusrizal Adi Syaputra, 'Juridical Study of the Affirmation of the Hierarchy Legislation in Indonesia in the Perspective of Stufen Theorie', *Mercatoria Journal* 9, No.2 (2017), p. 95.

³⁸ Sudikno Mertokusumo, *Knowing the Law of an Introduction* (Yogyakarta: Liberty, 1999), P.71.

³⁹ Sadjijono, *Law Between Sollen and Sein* (In Perspective of Legal Practice in Indonesia) (Yogyakarta: LaksBang Pressindo, 2017), P.33-34.

⁴⁰ Lawrence M Friedman, *The Legal System A Social Science Perspective* (New York: Russell Sage Foundation, 1975), P.14.

⁴¹ Friedman, *Legal Systems Social Science Perspective*. *ibid*.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ Niniek Suparni, *The Existence of Criminal Fines in the Criminal and Criminal System* (Jakarta: Sinar Graphic, 1996), Pg. 59.

⁴⁵ Sadjijono, *Law Between Sollen and Sein* (In Perspective of Legal Practice in Indonesia).

⁴⁶ Suparni, *The Existence of Criminal Fines in the Criminal and Criminal System*, Pg. 60.

⁴⁷ JJ HLM Bruggink, *Reflections on Law*, ed. Arief Sidharta (Bandung: PT Citra Aditya Bakti, 1999), Pg.149.

⁴⁸ Achmad Ali, *Revealing Legal Theory and Judicial Prudence Including Interpretation of Laws (Legisprudence)* (Jakarta: Prenada Media Group, 2012), Pg. 378.

⁴⁹ Soerjono Soekanto, *Factors Influencing Law Enforcement* (Jakarta: Rajawali Press, 2012), P.8-9.



2. Law enforcement factors, namely the parties that form and apply the law.
3. Facility factors or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely work, creativity and feelings based on human initiative in social life.

Lawrence M. Friedman's Legal System Theory was also used as an initial basis in the formulation of the Grand Design for the Development of National Law, in which legal development is directed at the realization of a national legal system that is stable and capable of functioning both as a means of achieving order and prosperity, as well as a means of implementing development.⁵⁰ Legal development includes material, institutional and cultural arrangements. These elements influence each other. Therefore, law must be developed in an integrated and sustainable manner with a global perspective. The development of the national legal system is carried out by forming legal material that reflects social values and interests as well as the realization of a legal community which is reflected in high adherence to the rule of law. Legal material must ensure the implementation of legal certainty and order, as well as the protection of human rights, capable of cultivating discipline and compliance as well as respect for the law, which in turn can encourage the creativity of the community's role in national development.⁵¹

3.2 Progressive Law Enforcement

So the basic assumption of progressive law is that there is a relationship between law and humans. Progressivism departs from a humanitarian perspective, which expresses the idea that humans are good and have compassion and concern for others. Thus, the basic assumption of Progressive Law starts from the nature of law which is essential for humans. The law does not exist for itself, as stated by the science of positive law, but for humans to achieve human welfare and happiness. Such a position creates a tendency that the law is always in the status of "law in the making".⁵² Law enforcement is essential and substantial in a rule of law country because, as stated by Sudikno Mertokusumo, one of the elements to create or restore a balance in society is law enforcement. Satjipto Rahardjo in his book entitled "Law Enforcement Issues" stated this⁵³ "Law enforcement is the application of discretion (policy) which makes legal decisions not strictly regulated by law but also based on a policy between law and ethics. Therefore considerations are only applied selectively in matters of crime prevention." Law enforcement can be formulated as an effort to implement the law as it should, and if a violation occurs, restore the violated law so that it can be enforced again. Furthermore, quoting Notohamidjojo's opinion, it is said that in law enforcement there are four essential norms, namely humanity, justice, decency, and honesty.⁵⁴ Thus, law enforcement is part of legal development, which leads to efforts to apply the law to restore balance in people's lives. Progressive law is a legal concept that is not limited to the idea of legal texts but also pays attention to the sense of justice that lives in society. However, not all agree that law should be open for an age. Another school of legal thought states that judges are mere mouthpieces of law (*bouche de la loi*), as stated by Immanuel Kant and Montesquieu. At this level, the meaning is implied that law enforcement officers are just like law enforcement robots.⁵⁵

Law enforcement is an integral part in building and improving the quality of a more sophisticated and meaningful environment.⁵⁶ Therefore, law enforcement is not only in the juridical dimension but also in the sociological and philosophical dimensions. Thus, the principle of "social justice for all Indonesian

⁵⁰Priyo Hutomo, and Markus Marselinus Soge, "Theory Perspective of the Legal System in Reforming the Arrangement of the Military Penitentiary System", *Legacy Journal: Journal of Law and Legislation* Vol 1 No 1 – March 2021, p. 53

⁵¹*Ibid.* p. 53

⁵²Satjipto Rahardjo, *Progressive Law: The Liberating Law*. Progressive Law Journal Program Doctor of Law Science Univ. Diponegoro, Vol. 1/No. 1/April 2005, p. 3-5.

⁵³ Satjipto Rahardjo, *Law Enforcement Issues* (Bandung: Alumni, 1995), Pg. 80.

⁵⁴ Abdulkadir Muhammad, *Ethics of the Legal Profession* (Bandung: PT Citra Aditya Bakti, 2006), P.115.

⁵⁵Lutfil Ansori, "Law Enforcement Reform with a Progressive Legal Perspective", *Juridical Journal* Vol. 4 No. 2, December 2017, p. 155

⁵⁶ Barda Nawawi Arief, *Law Enforcement Issues and Criminal Law Policy in Crime Control* (Jakarta: Kencana Prenada Media Group, 2008), P.19-20.

people" is the core value of the welfare state.⁵⁷ For the Indonesian people, the life of nation and state is the general goal of society or acceptance by society of the same philosophy of government, namely the goals of the state which are formulated in the philosophy of the state, both formal and material rule-of-state based on the precepts of social justice for all Indonesian people.⁵⁸ Law enforcement deviations that are not fundamental at all will appear as repressive law enforcement. However, deviations from law enforcement may occur to achieve legal objectives based on the public interest, efforts to create social welfare. Law enforcement can occur as actual enforcement, which is unavoidable. However, in this case, enforcement is actually carried out solely to fill the void in the existing law.⁵⁹ According to Rahardjo in his book, this technological development at one time also challenged thinking about conventional methods used in law enforcement, especially in law enforcement.⁶⁰

In enforcing criminal law, there are four aspects of public protection that must receive attention, namely:⁶¹

1. The community needs protection against anti-social assistance that is detrimental and endangers the community. Law enforcement aims to tackle crime;
2. Society needs protection against the dangerous nature of a person.
3. Criminal law enforcement aims to improve behavior so that they return to obeying the law and become good and functional citizens.
4. The community also needs protection against abuse of sanctions or reactions from law enforcement and members of the public in general.

Law enforcement itself, according to Muladi, must be interpreted within the framework of three concepts, namely:

1. The concept of law enforcement that is total (total enforcement concept), which demands that all values behind these legal norms be upheld without exception,
2. The concept of complete enforcement realizes that the total concept must be limited by procedural law and so on for the protection of individual interests and
3. The concept of actual law enforcement emerged after it was believed that there is discretion in law enforcement due to limitations, both related to infrastructure, quality of human resources, quality of laws and regulations and lack of community participation.⁶²

Criminal law enforcement is a law enforcement system or criminal law enforcement as part of a crime prevention policy or against the law. In crime prevention, two methods are needed, namely penal means or criminal sanctions and non-penal means, which means law enforcement is carried out without criminal sanctions (punitive).

According to Atmasasmita, good law enforcement is if the criminal justice system works objectively and impartially and pays attention to and takes into account the values that live and develop in society. These values are the reaction of society to every criminal policy implemented by law enforcement officials.⁶³ Law enforcement should not be equated with law enforcement and regulations alone. According to Baharuddin, Lopa wrote that there are three components or elements that make it possible to uphold law and justice in society, namely:

1. There needs to be a legal regulation in accordance with the aspirations of the people;
 - a. The existence of professional law enforcement officials with a tough mentality or commendable moral integrity.

⁵⁷Pupu Sriwulan Sumaya, "The Relevance of Application of Legal Theory in Law Enforcement to Realize Social Justice Values," *Journal of Responsive Law FH UNPAB*, VOL. 6 NO. 6. November 2018 , p. 63

⁵⁸Kahar Masyhur. *Fostering Morals and Morals*, Kalam Mulia: Jakarta, 1985, p. 71

⁵⁹ Sunarto as quoted in Muladi, ed., *Alternatives to Minimizing Human Rights Violations in Criminal Law Enforcement*, Muladi (Ed.), 2009, *Human Rights In essence, Concepts and Implications in the Perspective of Law and Society* (Bandung: PT Refika Aditama, 2009), Pg .140.

⁶⁰ Satjipto Rahardjo, *Law Enforcement A Sociological Review* (Yogyakarta: Genta Publishing, 2009), Pg. 152.

⁶¹Barda Nawawi Arief, *Law Enforcement Issues and Crime Control Policies*, Bandung, Citra Aditya Bakti, 2001, Pg. 12

⁶²Muladi, *Human Rights, Politics and the Criminal Justice System*, Semarang, Dipenogoro University Publishing Agency, 1997, p. 58

⁶³Romli Atmasasmita, *Criminal Justice System, Existentialism and Abolitionism Perspective*, Bandung, Binacipta, 1996, Pg. 100



b. The existence of public legal awareness that allows the implementation of law enforcement. Furthermore, Lopa explained that legislators must understand and feel the conscience of the people who always yearn for justice, objective justice, which is generally desired by common sense.⁶⁴ In efforts to enforce criminal law, community participation has a very strategic role; it can even be said to also determine the criminal justice process. For this reason, in maintaining and developing community participation, law enforcement officers must always give appreciation to the community. Law has the nature of regulating and forcing everyone to comply with order in society and to provide strict sanctions (in the form of punishment) to anyone who does not want to comply.⁶⁵ Efforts to overcome crime with criminal law are essentially part of law enforcement efforts. Therefore it is often said that politics or criminal law policies are part of law enforcement policies.⁶⁶ Barda Nawawi stated that penal facilities are still needed in the context of crime prevention, namely:⁶⁷

- a. Criminal sanctions are required; we cannot live, now or in the future, unpunished;
- b. Criminal sanctions are the best tools or means available, which we must handle in the face of grave crimes or dangers and in the face of threats of danger;
- c. In the past, criminal sanctions were the main/best guarantor and one day they became the main threat to human freedom. It is a guarantor if used sparingly, carefully and humanely; it is a threat if used carelessly and forcefully.

The policy of overcoming crimes by means of penal by some criminologists is also called repressive. This integration will eventually achieve harmony and balance of life in society. Criminal law policy (penal policy) is a science as well as an art which ultimately has the practical goal of enabling favorable legal regulations to be better formulated and providing guidance not only to legislators but also to the courts that apply the laws and also to organizer. or executor of court decisions.⁶⁸

3.3 Criminal Liability

Criminal law aims to protect individual interests or human and social rights. The purpose of criminal law in Indonesia must be in accordance with the Pancasila philosophy which can realize fair demands for all citizens. Thus the criminal law in Indonesia is to protect all Indonesian people. Anyone who violates the criminal law must be held accountable and subject to sanctions by law. The provision of sentencing and sentencing in judicial practice so far has paid attention to the qualifications of crimes, and the state provides all forms of discipline with the assumption that citizens are responsible beings and can be held accountable for their actions.

According to Moeljatno, a person cannot be held accountable (punished) if he has not committed a crime.⁶⁹ Thus, criminal responsibility depends primarily on the criminal act. Whether the person who committed the deed is then punished depends on whether he made a mistake in saving the show or not. If the person who committed the crime did have a fault, then he will be punished. However, if he is innocent, even though he has committed a prohibited and despicable act, he will certainly not be punished. The unwritten principle, "no punishment, if there is no mistake", is the basis for the punishment of the maker.⁷⁰ So the despicable actions of the community are held accountable to the perpetrators, meaning that objective reproaches for these actions are then forwarded to the defendant.

Criminal liability is determined based on the fault of the maker (liability based on the spot) and not only by fulfilling all criminal elements. Thus, mistakes are a determining factor for criminal

⁶⁴Baharuddin Lopa, *Problems of Development and Law Enforcement in Indonesia*, Jakarta, Bulan Bintang, 1987, p. 4

⁶⁵Suharto and Junaidi Efendi, *Practical Guide When Facing Criminal Cases, Starting from the Investigation Process to Trial*, (Jakarta: Prestasi Pustaka, 2010). Pgs 25-26.

⁶⁶Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Jakarta: Kencana, 2008, p. 24.

⁶⁷Barda Nawawi Arief, *Legislative Policy in Combating Crime with Imprisonment*, (Semarang: CV. Ananta, 1994), p. 31.

⁶⁸Teguh Prasetyo, *The Politics of Criminal Law*, (Yogyakarta: Student Library, 2005), p. 18.

⁶⁹Moeljatno, *Criminal Law Principles*, Jakarta: Rineka Cipta, 1993, p.155.

⁷⁰Roeslan Saleh, *Criminal Acts and Criminal Liability*, Jakarta, New Script, 1983, p.75.

responsibility and are not only seen as mere psychological elements in criminal acts.⁷¹ The conception of wrongdoing as a determinant of criminal responsibility can also be found in the standard legal system, where the Latin proverb, namely *actus non est reus, nisi mens sit rea*, applies. (An act cannot be considered a crime without malicious intent). On the one hand, this doctrine causes the existence of *mens rea* as a necessity in criminal acts. On the other hand, this confirms that holding someone accountable for committing a crime is very much determined by the existence of *mens rea* for that person. Thus, *mens rea* which in this case is synonymous with the guilty of mind or evil will determines the accountability of the perpetrators of crimes. Based on the principle of no crime without fault, Moeljatno put forward the view that Indonesian criminal law is known for its dualistic teachings; in essence this teaching separates between criminal acts and criminal liability. Separation of criminal acts and criminal liability causes mistakes to be excluded from the elements of criminal acts and is placed as a determining factor in criminal liability. The mistake that determines the responsibility of the maker is the perspective of the mistakes made by the maker. Meanwhile, mistakes that determine the maker's punishment are the perspective of the future, in this case the maker's future. The mistake that determines the responsibility of the maker is the perspective of the mistakes made by the maker. Meanwhile, mistakes that determine the maker's punishment are the perspective of the future, in this case the maker's future. The mistake that determines the responsibility of the maker is the perspective of the mistakes made by the maker. Meanwhile, mistakes that determine the maker's punishment are the perspective of the future, in this case the maker's future.⁷² In general, criminal liability is divided into three types, namely:

1. *Individual Burden*

This theory imposes accountability on individuals who have committed crimes. Crime is charged with crimes committed by individuals as a result of the actions they committed. Criminal liability has not been or has not been regulated in the Criminal Code. There are still several provisions governing legal subjects who commit criminal acts and who can be held accountable, namely: Article 2 of the Criminal Code, which applies to all the contents of the regulations for everyone. The concept of individual criminal responsibility is criminal responsibility that has been enacted as the most widely applicable law and is the most basic form of responsibility of all types of responsibility. In individual accountability, there is no transfer of responsibility to other individuals because punishment according to the principle of justice must be carried out by those who are responsible. Because individual accountability has been written about in various literatures.

The Criminal Code does not clearly state the system of criminal responsibility adopted. In the Criminal Code it is stated that there was intention (*dolus*) or negligence (*culpa*). According to Roeslan Saleh, these two words are often used in formulating offenses as if they are certain but do not know their meaning, which raises doubts.⁷³ Judging from its shape, Modderman said there are two forms of forgetting (*culpa*), namely conscious forgetting (*bewuste culpa*) and unconscious forgetting (*onbewuste culpa*). *Bewuste culpa* is almost similar to *dolus eventualis* in the possibility of crime; the difference between the two is the will of the doer and a sense of remorse.⁷⁴

2. *Strict responsibility*

Strict liability is criminal responsibility without fault or *mens rea*. The perpetrator can be punished if he has committed a crime as specified in the law, regardless of his inner attitude. Strict criminal liability (strict liability) is applied based on several factors, among others.

3. *Substitute Liability*

Vicarious Liability is a form of criminal responsibility that transfers responsibility from individuals who make mistakes to others. The Elements of Criminal Liability according to Martiman Prodjhamidjojo that the subjective element is the existence of errors in the form of intentional and negligent so that acts

⁷¹Chairul Huda, *From No Criminal Without Guilt To No Criminal Liability Without Guilt*, Jakarta: Prenada Media, 2006, p.14.

⁷²Chairul Huda, *From No Criminal Without Guilt*, Jakarta: Fajar Interpratama Offset, 2008, p. 126.

⁷³Amrani and Mahrus Ali, *Criminal Liability System (Development and Implementation)*, PT Raja Grafindo: Jakarta, 2015, p. 46

⁷⁴Fitri Wahyuni, *Fundamentals of Indonesian Criminal Law*, PT Nusantara Persada Utama, Tangerang, 2017, p. 144

against the law can be accounted for. Subjective element ie⁷⁵Mistakes, Intentions, Negligence, Acts, and Unlawfulness. The objective element is an act that is contrary to law; in other words, there must be an element against the law. Factual details are acts and acts against the law. According to Leden Mapaung's opinion, negligence (culpa) is divided into 2 namely⁷⁶Negligence with awareness and Negligence without awareness .

An act is said to violate the law and can be subject to criminal sanctions, so 2 (two) elements must be fulfilled, namely the presence of a component of a criminal act (actus reus) and the inner state of the maker (mens rea). Error (schuld) is an element of the delict maker, so that it includes details of criminal responsibility, which means that the maker can be blamed for his actions.⁷⁷If guilt is not proven, it means that a crime has not been proven because the judge cannot prove a mistake if he knows in advance that the crime did not exist or it has not been proven that the defendant committed it. . Furthermore, in criminal law, not everyone who commits a crime can be punished; this is related to reasons and reasons justification. The reason for forgiveness is the reason someone cannot be punished because of the condition of the person being legally forgiven. This can be seen in articles 44, 48 and 49 paragraph (2) of the Criminal Code.

Based on the description above, it can be said that criminal responsibility means that every person who commits a crime or violates the law as referred to in the law, that person must be held accountable for his actions according to his mistakes. In other words, a person who commits a crime will be held accountable for his criminal actions if he makes a mistake; someone has a mistake when he commits an act seen from the point of view of society, it shows a normative theory about the mistake that person made.

IV. Conclusion

This study concludes that the statutory regulations regarding the position of the village head available to those in charge of their work are reasonable. The existing articles already regulate how the village head should carry out his functions and what sanctions will be received if he violates the existing regulations. It needs to be an evaluation material that every village head who nominates himself must first understand the function that will be carried out as a leader later. Many facts indicate that the village head must understand his duties in his position based on the applicable laws and regulations. So that the village head often commits violations that can harm the village and even the state in managing village finances. Therefore, there is a need for socialization and a selective process in determining a candidate who is eligible or meets the requirements.


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