

Legal Analysis of the Reappointment of Former Convicted Village Head Based on the Policy of Extending the Term of Office of the Village Head

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Abstract. *The election of village heads is a manifestation of local democracy that affirms the sovereignty of the village people in determining leadership at the most basic level of government. Changes in regulations through Law No. 3 of 2024 which extended the term of office of village heads from six years to eight years, as well as the birth of the Ministry of Home Affairs Circular Letter Number 100.3/4179/SJ, have juridical and sociological implications for the legitimacy of the village head position. One of the crucial issues is the reappointment of village heads who have been entangled in criminal acts, as in the case of the Sekapuk Village Head who was sentenced to five months in prison for embezzlement but was re-inaugurated and received an extension of office. This study uses normative legal methods with legislative and conceptual approaches to examine the suitability of these policies with democratic principles, the principles of clean governance, citizens' political rights, and public accountability. The results of the study show that although the circular provides administrative legal certainty and prevents a vacancy in village leadership, the policy creates a normative conflict between the restoration of the political rights of former convicts and the demands for the integrity of public office. This condition has the potential to reduce public trust in village government and weaken the principle of accountability. Therefore, a more comprehensive policy formulation is needed by including morality and integrity requirements for village heads whose positions are extended so that the principles of democracy and good village governance are guaranteed.*

Keywords: *Accountability Election; Public; Village.*

1. INTRODUCTION

The Indonesian state of law places the integrity of public office holders as the main prerequisite for achieving the goal of the state protecting the entire nation, advancing public welfare, and upholding justice as mandated by the Preamble to the 1945 Constitution. This principle needs to be upheld and upheld for every leader or state administrator in realizing the achievement of the state's ideals in accordance with the Indonesian constitution (Mahfud, 2024). For this reason, Indonesia as a country of law has formulated its government system to be a country that uses a democratic system in

electing leaders or public officials, both in the central government and village government.

Villages as the most basic government entity in Indonesia are one of the main defenses in guarding democracy (Akbar, 2023). Quoting Naeni Amanulloh, that democracy at the grassroots level is very important for the strength of national democracy (Naeni Amanullah, 2015). Over the past two decades, counting since the 1998 reforms, the public focus has shifted to the national democratic system and its continuation. Village democracy is believed by most Constitutional Law experts to be the oldest democracy in Indonesia. In addition to having the uniqueness of growing and developing first in Indonesia, village democratization is the root of the implementation of democracy that exists until now. Based on this opinion, village democracy is an important foundation for the establishment of national democracy in Indonesia in supporting and strengthening the implementation of democracy at all levels of government until now.

In the lowest society, democracy has not been a priority in political regulations and processes. So far, the village community has only been "involved" in local and national "democratic" events, one of which is simultaneous elections, direct elections, or arrangements in regional autonomy. Periodic general elections (elections) aim to form and fill positions in the government (Ekatjahjana, 2009). Along with the development of regulations regarding villages in Indonesia, based on Article 31 of Law No. 6 of 2014 concerning Villages, it is stated that the election of Village Heads is carried out simultaneously in all Regency/City areas whose technical implementation is regulated in Regency/City Regional Regulations. Then in Article 40 of Government Regulation No. 43 of 2014 concerning Implementation Regulations of Law No. 6 of 2014 concerning Villages, it is determined that the election of Village Heads can be carried out simultaneously in waves at most 3 (three) times within a period of (six) years. Therefore, in the current village government legal system, the Central Government through the Circular Letter of the Ministry of Home Affairs Number 100.3/4179/SJ concerning the Extension of the Village Head Position is one of the reasons for synchronizing the position of the village head to be elected simultaneously (Saleng, 2004).

In the Circular Letter policy, it has given the task to the regions to collect data in their areas. In addition, to be reappointed, the conditions for the Village Head are not applicable to the village head who quits due to death, self-request or dismissal, who fills the vacancy of the position of village head, is not willing to be extended and the village has carried out the election of the village head. This policy is referred to as a "breath of fresh air" because it ends the uncertainty of the *Pilkades* schedule and prevents a vacancy in village leadership. However, in its implementation, it is still necessary to pay attention to the principles and provisions of laws and regulations (Muhammad Sholeh, 2025).

The reappointment of the village head is a strategic policy in continuing his leadership in the village as well as a policy in carrying out simultaneous elections as formulated in Law No. 6 of 2014. However, in empirical practice, there is turmoil in the community regarding the central government's decision to extend the position of village head. One of them is against the reappointment of a former village head who is a convict in Gresik Regency (Muhammad Sholeh, 2025). As a result of the Ministry's Circular, the Head of Sekapuk Village, Ujung Pangkah District who has been sentenced to 5 (five) months by the District Court for embezzlement cases can be re-inaugurated. As a result of this

policy, the public began to speak out and show protests against rejection. This case is proof that the social legitimacy of leadership is very much determined by public trust. Criminal cases that ensnare the village head have the potential to erode residents' trust, trigger social resistance, and disrupt the sustainability of basic services. However, the Circular Letter issued by the Ministry of Home Affairs has not accommodated the empirical conditions that occur in Sekapuk Village. So, the policy is a breath of fresh air for the former Village Head to be reappointed.

Previous studies have shown that the issue of extending the term of office of village heads has been widely discussed in the perspective of politics, law, democracy, and power limitations. For example, Rafi Al Malik, Radian Salman, and Rosa Ristawati (2024) emphasize that extending the term of office of village heads has the potential to give birth to oligarchy and abuse of power at the local level, thus contradicting the principles of democracy and accountability (Rafi Al Malik, 2024). Meanwhile, Mahfud et al. (2024) examine the term of office of village heads in Indonesia's positive legal system and conclude that term limits are important to ensure leadership rotation, accountability, and prevent corrupt and nepotism practices that often occur in the management of village funds (Mahfud, 2024). These two studies focus on the urgency of term limits as a constitutional instrument to avoid the centralization of power and abuse of authority.

The novelty of this study lies in the focus of a more specific and contextual study. If the previous research only highlighted the political and legal aspects of the extension of the term of office of the village head in general, this study examines the legal problems related to the legitimacy of the reappointment of a former convict in the case of embezzlement as the village head in the context of the extension of the term of office. Thus, this study offers a novelty in the form of a normative analysis of the clash between democratic principles, the principle of clean government, citizens' political rights, and the value of public accountability when a village head who has been sentenced can still return to office on the basis of term extension. This focus has not been touched in previous researches, so it makes an academic and practical contribution to the formulation of legal policies that are more accommodating to the principles of justice and integrity in the implementation of village government.

Based on these conditions, the researcher is interested in exploring this case with the title "Legal Analysis of the Reappointment of Former Convicted Village Head Based on the Policy of Extending the Term of Office of the Village Head". This research will contain how the concept of policy in the Village Head Election in Indonesia and whether the reappointment of former convict Village Head based on the policy of extending the term of office of the Village Head is qualified based on legal principles and laws and regulations?

2. RESEARCH METHODS

The research method used in this study is normative legal research, which is research that relies on doctrinal studies of applicable positive legal norms (Muhaimin, 2020). Normative legal research was chosen because the problems regarding the reappointment of former convicts as village heads and the policy of extending the term of office of village heads are basically closely related to the interpretation of norms, legal principles, and constitutional principles that govern the implementation of village government.

This research employs several approaches, including the statute approach to examine relevant normative provisions, the conceptual approach to understand the principles underlying village governance, and the case approach to analyze practices and judicial decisions related to the research issue.

The analytical method used is a juridical-qualitative analysis, which interprets legal norms based on the logical relationship between regulations, doctrines, and constitutional principles, and evaluates their application in the practice of village governance. Through this analytical technique, the research is expected to produce systematic and solution-oriented normative arguments addressing the issues under study.

3. RESULTS AND DISCUSSION

3.1. Policy Concept in the Election of Village Heads in Indonesia and the Reappointment of Former Convicted Village Heads Based on the Policy of Extending the Term of Office of Village Heads Meet the Requirements Based on Legal Principles and Laws and Regulations

The election of village heads is a concrete form of the realization of democracy at the local level which is specifically regulated within the framework of national law. The concept of policy in the election of village heads cannot be separated from the principles of decentralization and regional autonomy as affirmed in the 1945 Constitution of the Republic of Indonesia, especially Article 18 which states that the Unitary State of the Republic of Indonesia is divided into provincial areas and districts/cities which each have a regional government. A village is recognized as the smallest governmental entity that has the authority to regulate and manage the affairs of its community based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected. Therefore, the election of the village head is seen as part of a legal policy that affirms the position of the village as an autonomous public legal entity but remains within the framework of the Unitary State of the Republic of Indonesia (Sherly Dantis Suhamartha, 2023).

Normatively, the arrangements regarding the election of village heads are regulated in Law No. 6 of 2014 concerning Villages as amended by Law No. 3 of 2024, along with its implementing regulations such as Government Regulation Number 43 of 2014 concerning Implementation Regulations of the Village Law. Through the regulation, it is emphasized that the village head is directly elected by the villagers through the mechanism of election of the village head (*Pilkades*). This mechanism affirms the recognition of the sovereignty of the village people, where villagers have the right to determine who will lead them within a certain period of time. This policy demonstrates the commitment of national law to uphold the principle of direct democracy at the local level, while still providing restrictions so that the implementation of village head elections does not conflict with the principles of the rule of law and the principles of sound democracy.

The policy of electing village heads is a manifestation of the implementation of citizens' political rights. In Article 43 of Law No. 39 of 1999 concerning Human Rights, it is

emphasized that every citizen has the right to be elected and vote in general elections based on equal rights through direct, public, free, secret, honest, and fair voting in accordance with the provisions of laws and regulations (Ekatjahjana, 2009). Although the regional elections are not included in the category of national elections as stipulated in the Law on Elections, the right to vote and be elected is substantially guaranteed as part of the political rights of citizens. This shows that the policy of electing village heads is within the framework of respecting the constitutional rights of the village community.

In addition, legal policies related to the election of village heads emphasize the principle of power limitation. Article 39 of Law No. 6 of 2014 previously stipulated that the term of office of the village head was six years and could be re-elected for a maximum of three consecutive terms or non-consecutively. However, through changes contained in Law No. 3 of 2024, the term of office of the village head is extended to eight years with the possibility of serving two terms (Warsudin, 2023). This policy change reaps pros and cons, because on the one hand it provides space for village heads to realize the vision of sustainable village development, but on the other hand it raises concerns about the birth of power dominance for too long, which has the potential to hinder leadership regeneration and increase the risk of abuse of authority. From a public policy perspective, this debate reflects the tug-of-war between the interests of village development stability and the principles of accountability and local democracy. The policy of selecting the village head must be understood within the framework of village autonomy. Village autonomy means that the village has the original authority recognized by the state to govern its own household. In this case, the election of the village head is an instrument to ensure the realization of village leadership that is born from the aspirations of the village community itself (Pariangu, 2023). However, because villages are an integral part of the Republic of Indonesia, the policy of electing village heads must still be within the framework of national law that regulates governance as a whole. This is where there is a balance between the principle of recognition of local sovereignty and the principle of the rule of national law.

The policy concept in the election of village heads includes aspects of electoral justice (Sherly Dantis Suhamartha, 2023). Justice in the election of village heads demands equal opportunities for every villager to run for office, free from discrimination, and legal protection for the voting rights of village people. The issue that often arises is about whether or not the former convict can continue as the village head. This raises a legal debate because on the one hand every citizen has political rights, but on the other hand the position of village head requires high moral integrity. Legal policy in this case must be able to balance individual political rights with the public interest to realize clean, transparent, and accountable village governance.

Referring to the Circular Letter of the Ministry of Home Affairs Number 100.3/4179/SJ concerning the Extension of the Position of Village Head is an administrative product that was born as a follow-up to the ratification of Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages. The regulation extends the term of office of the village head from six years to eight years and can be re-elected for two terms, so that the total term of office of the village head can reach sixteen years (Muhammad Sholeh, 2025). This circular is addressed to the regency/city local governments as a technical guideline for the implementation of the new provisions so that there is uniformity of interpretation in its implementation throughout Indonesia. However, the effect of the enactment of this circular has serious implications for the

status of village heads who have previously been entangled in criminal cases, for example the case of the Sekapuk Village Head who was convicted of embezzlement with a sentence of five months in prison by the District Court.

From the perspective of constitutional law, the circular letter is not a law and regulation as referred to in Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. Circular letters have the position of being an administrative instrument that is binding internally on the bureaucratic ranks of ministries and related agencies, and in practice can have regulatory and decision-making effects. In the case of Circular Letter Number 100.3/4179/SJ, the nature is to provide guidelines for local governments to extend the position of the incumbent village head, on the legal basis of legal orders. Thus, even though the circular letter is not a formal legal source, its existence can still have a normative and administrative impact on the practice of government administration, including in terms of the meaning of the term of office of village heads who have had problems with criminal law.

The main content of the Ministry of Home Affairs Circular Letter Number 100.3/4179/SJ emphasizes that all village heads who are in office at the time Law No. 3 of 2024 is promulgated, their term of office is automatically extended from six years to eight years without going through the re-election process. This policy is based on the principle of legal transition and the principle of legal certainty which provides a guarantee that the village head no longer needs to carry out the election of the village head in the middle of the current term of office. Thus, this circular emphasizes that there is no re-election in the current term of office, but rather the term of office is administratively extended.

The direct effect of this circular is to increase the legitimacy of the power of the incumbent village head, so that they remain authorized to run the wheel of village government until the end of their eight-year term. However, the consequence that arises is the potential for the extension of the power of village heads who have previously been entangled in criminal offenses, including crimes related to integrity such as embezzlement or corruption. This raises serious questions about the principle of public accountability and the integrity of the village head's position, because the administrative policy of extending the position does not explicitly distinguish between a village head who has a good track record and a village head who has a criminal record.

In positive law, a person who has served a sentence and has completed his sentence in principle regains his rights as a citizen, including the political right to vote and vote. However, in public office, there are additional principles, namely the principles of propriety, morality, and integrity of office. Village heads who have been convicted of embezzlement basically face the problem of moral hazard because their position requires full trust from the community in managing village finances and assets. With the automatic extension of position based on this circular, the former convict will continue to serve without any evaluation mechanism or fit and proper test again. This clearly raises the potential for degradation of public trust in the implementation of village government.

The case of the Head of Sekapuk Village is relevant because it is concrete. The village head was once convicted for five months for embezzlement, but then returned to serve as the village head. With the existence of Circular Letter Number 100.3/4179/SJ, his position was not only restored but also administratively extended. Legally, this can pose

a moral hazard because the public sees that a village head who has been entangled in embezzlement cases is still given legitimacy to lead even with a longer term of office. This has the potential to contradict the principles of good governance, especially the principles of accountability, transparency, and public trust in village officials.

The extension of office through the circular gives rise to a normative conflict between individual political rights and the principle of integrity of public office. On the one hand, the village head who has been convicted is still a citizen who is entitled to the opportunity to lead if elected by the villagers. On the other hand, the position of the village head requires high ethical and moral standards, considering that his position is very close to the management of village finances. Extension of office without additional control mechanisms risks negating the principle *of clean and good governance*. Therefore, this policy can be seen as substantially flawed if it is not accompanied by a mechanism to verify the integrity of officials who are in office.

Juridically, this policy must be tested in the perspective of legal principles. First, the principle of clean government requires that government officials be free from corrupt practices, collusion, and nepotism. Second, the principle of due process of law emphasizes that every individual who has been sentenced to a criminal sentence still has political rights, but the state is authorized to impose restrictions through the regulation of public office. Third, the principle of substantive justice requires a balance between the interests of the village community to be led by leaders with integrity and the individual rights of ex-convicts to have their political rights restored. Circular Letter Number 100.3/4179/SJ seems to emphasize more on the certainty of government administration than the protection of the principle of integrity.

The practical effect that arises is that the village community has the potential to lose trust in their government apparatus because they are led by a village head whose track record is not clean. This can cause political apathy, horizontal conflicts, and even the potential for a decrease in community participation in village development. From the government side, the sustainability of the position of village heads who have been convicted can raise doubts from supervisory and law enforcement agencies in providing administrative legitimacy, especially regarding the management of village funds, which are very significant.

4. CONCLUSION

The policy of village head elections in Indonesia is a manifestation of local democracy based on the principles of decentralization, village autonomy, and respect for the political rights of citizens as guaranteed by the constitution and laws and regulations. However, with the change in regulations through Law No. 3 of 2024 which extends the term of office of the village head to eight years and the Ministry of Home Affairs Circular Letter Number 100.3/4179/SJ as an administrative guideline, new problems have arisen, especially related to village heads who have criminal records. Automatic extension of positions without an integrity evaluation mechanism creates potential moral hazards, reduces the principle of public accountability, and has the potential to weaken public trust in village officials. The case of the Sekapuk Village Head is a concrete example of how this policy causes a normative conflict between individual political rights and the principles of clean and good governance. Therefore, although the circular provides legal certainty administratively, this policy is considered problematic substantively because it

does not pay attention to the principles of morality, integrity, and substantive justice that should be inherent in the position of the village head as a community leader at the local level.

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- Circular Letter of the Ministry of Home Affairs Number 100.3/4179/SJ
- Law No. 39 of 1999 concerning Human Rights