
AN EVALUATION OF THE ASPECTS OF ARRANGEMENT OF CUSTOMARY VILLAGES IN MALUKU PROVINCE

Siska Giofana Mapusa

Ministry of Law and Human Rights of the Republic of Indonesia

*e-mail: giofanaiska@gmail.com

*Correspondence: giofanaiska@gmail.com

Submitted: March 27th 2023

Revised: April 14th 2023

Accepted: April 25th 2023

Abstract: This study aims to determine whether Maluku Province regulations have regulated arrangements for customary villages in a consistent manner in accordance with statutory regulations. Furthermore, this study will analyze and evaluate one of the objects of regional legal products, namely the Regional Regulation of the Province of Maluku Number 16 of 2019 concerning the Arrangement for Customary Villages. This study was conducted using normative methods. The data used in this study consisted of primary data and secondary data. All data were analyzed using qualitative methods. The results of this study were presented in a descriptive analysis report. The results showed that regional legal products in Maluku Province have formulations that were not in accordance with the higher laws and regulations and have legal uncertainties in the implementation of customary village arrangements in Maluku Province.

Keywords: Arrangement of Customary Villages; Regional Regulations.

INTRODUCTION

In the initial draft of the General Explanation to the 1945 Constitution of the Republic of Indonesia Number I, it was stated that unwritten basic laws also apply as a fundamental unwritten law. However, since the fourth amendment to The 1945 Constitution of the Republic of Indonesia, which only consisted of the Preamble and articles, then the recognition of unwritten law in the form of customary law in the constitution is contained in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state recognizes and respects customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia (Pusat Analisis dan Evaluasi Hukum Nasional, 2019). Furthermore, the recognition of customary law in Indonesia is strengthened by several laws and regulations that facilitate the embodiment of aspects of regional autonomy. One is Law Number 23 of 2014 concerning Regional Government and Law Number 6 of 2014 concerning Villages. The presence of these two legal products provides a strong legal basis for the regions in regulating their respective customary laws, especially customary law community units within the scope of the community, hereinafter referred to as customary villages, which need to be properly organized following the provisions in the applicable legal products.

The arrangement for the customary village framework referred to is

constitutionally guaranteed. According to (Asshiddiqie, 2003), the regulation regarding the arrangement of traditional villages and villages is an implementation of Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. According to Jimly Asshiddiqie, it is necessary to pay attention that this recognition is given by the state (i) to the existence of a customary law community along with their rights -traditional rights they have; (ii) The existence that is recognized is the existence of customary law community units; (iii) the customary law community is alive (still alive); (iv) In a certain environment (lebensraum); (v) Such acknowledgment and respect shall be given without neglecting the appropriate criteria for humanity in accordance with the level of development of the nation's existence; (vi) recognition and respect must not reduce the meaning of Indonesia as a country in the form of a unitary state of the Republic of Indonesia.

After the enactment of Law No. 6 of 2014, in accordance with Article 96 states, "The Government, Provincial Governments, and Regency/City Regional Governments carry out the arrangement of customary law community units and are determined to become Traditional Villages." However, until now, there has been no official recognition of the status of traditional villages in Maluku Province, so 1200 villages in Maluku Province are still administrative, according to the table below:

Table 1. Data on the Number of Districts, Urban Villages and Villages in 11 Regencies/Cities in Maluku Province from the Community and Village Empowerment

Office of Maluku Province

No	Regency/ City	Sub- distri ct	Regen cy	Villa ge
1	2	3	4	5
1	Central Maluku	18	6	186
2	Southeast Maluku	11	1	190
3	Tanimbar Islands	10	2	80
4	Buru	10	-	82
5	Eastern Seram	15	-	198
6	Western Seram	11	-	92
7	Aru Islands	10	2	117
8	Southwes t Maluku	17	1	117
9	South Buru	6	-	81
10	Ambon City	5	20	30
11	Tual City	5	3	27
Total		118	35	27

Furthermore, in the practice of community and village empowerment in Maluku, the Maluku Provincial Government c.q. Community and Village Empowerment Office, several regulations that are used as references include;

- a) Law Number 6 of 2014 concerning Villages;
- b) Law Number 23 of 2014 concerning Regional Government;
- c) Government Regulation Number 47 of 2015 concerning Amendments to Government Regulation Number 43 of

2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages;

- d) Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections;
- e) Regulation of the Minister of Home Affairs Number 45 of 2015 concerning Guidelines for Determining and Confirming Village Boundaries;
- f) Regulation of the Minister of Home Affairs Number 84 of 2015 concerning the Organizational Structure and Working Procedures of the Village Government;
- g) Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management;
- h) Regulation of the Minister of Home Affairs Number 110 of 2016 concerning the Village Consultative Body; and
- i) Regulation of the Minister of Home Affairs Number 1 of 2017 concerning Village Management.

Furthermore, specifically related to the aspect of structuring customary villages within the scope of regional autonomy based on the attributive authority granted by Law Number 23 of 2014 concerning Regional Government, the regional legal product that is binding in Maluku Province is Maluku Province Regional Regulation Number 16 of 2016 concerning arrangements for Customary Village. The presence of this regional regulation is used as an "umbrella provision," to give birth to various regulatory policies at the local legal system level, especially in regencies/cities which are expected to be able to develop even more advanced according to the characteristics and characteristics of the

region. Therefore, this Regional regulation functions as an umbrella provision that will only regulate matters of a principal nature which will then be elaborated further with various regulations in the field of other local legislation, such as regional regulations, regulations/decisions from the Regent/Mayor or customary village regulations/decisions following the authority they have.

If you look at the regency/municipality level regulations, Southwest Maluku Regency Regional Regulation Number 4 of 2022 concerning Village Management and customary village has been issued, making Maluku Province Regional Regulation Number 16 of 2016 as one of its legal bases. The inclusion of the legal basis illustrates that this regional regulation has become a reference for regencies/city governments in drafting regional regulations in the local area. In connection with the importance of the existence of this regional regulation, in substance and technique, laws and regulations must be effective, efficient, and have a quality implementation impact on the community.

Based on the Academic Text of the Maluku Province Regional Regulation Number 16 of 2019 concerning Arrangements for Customary Villages. From a philosophical aspect, the customer village (or called by other names) in Maluku Province has grown and developed throughout history for centuries. It has become a symbol of identity for the continuity of community life and national development in Maluku Province. In addition, to preserve local cultural values, customs, and customary laws in the administration of customary village

governance as a unit of customary law communities in Maluku Province, they have a very large and strategic role, so they need to be preserved, their position, function, and role need to be regulated as a Provincial Regulation concerning arrangement for the customary village.

From a sociological perspective, arrangements regarding arrangement for the customary village (or referred to by other names) are carried out as an effort to organize the administration of village governance based on customary and cultural characteristics, value systems and systems, institutions, and social institutions that live, grow and develop following the values -the traditional values of the Maluku people and in line with the system of government of the Unitary State of the Republic of Indonesia.

From a Juridical Aspect, arrangements regarding arrangement for the customary village (or referred to by other names) are carried out as an effort to structure the administration of village governance based on customary and cultural characteristics, systems and systems of values, institutions, and social institutions that live, grow and develop following the values -the traditional values of the Maluku people and in line with the system of government of the Unitary State of the Republic of Indonesia. In order to preserve local cultural values, customs, and customary laws in the administration of customary land as a unit of customary law communities in Maluku Province, they have a very large and strategic role that needs to be preserved; their position, function, and role need to be regulated as in regulation area; Whereas to confirm the

regulatory material regarding the arrangement of villages and customary villages which are part of the arrangements regarding the administration of village governance to guarantee more detailed, comprehensive and specific arrangements and is a serious and strategic effort for the benefit of participatory development and the welfare of all levels of society as well as a symbol of identity which is the strength of the Maluku people in the context of national development carried out in Maluku Province.

The purpose of enacting Maluku Province Regional Regulation Number 16 of 2019 concerning arrangement for the customary village is as follows;

1. Give recognition and respect for existing villages with their diversity before and after the formation of the Unitary State of the Republic of Indonesia;
2. Providing clarity on the status and legal certainty for villages in the constitutional system of the Republic of Indonesia to realize justice for all Indonesian people;
3. Preserving and advancing the customs, traditions, and culture of the village community;
4. Encouraging initiatives, movements and participation of the village community to develop village potential and Assets for common prosperity;
 - a. Establishing a professional, efficient and effective, open and responsible village government;
 - b. The regulatory principle in this law are:
 - 1) recognition;

- 2) diversity;
- 3) togetherness;
- 4) mutual cooperation;
- 5) kinship;
- 6) deliberation; And
- 7) democracy.

In this regard, it is necessary to carry out evaluative steps to look at aspects of structuring traditional villages in the Maluku province through the existence of the Maluku Province Regional Regulation Number 16 of 2019. This is a logical consequence of the presence of Monitoring and Review aspects regulated in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislation. The results of this juridical evaluative step can provide input for local governments in controlling the achievement of implementation of regional legal products that specifically contribute actively to the arrangement for customary village aspects in Maluku Province. Thus, the author submitted the title regarding "An Evaluation of the Aspects of Arrangement of Customary Villages in Maluku Province (Implications of the Existence of Maluku Province Regional Regulation Number 16 of 2019 concerning Arrangement for Customary Villages)."

Based on the background review above, the formulation of the problem raised by the author is as follows;

1. What is the legal analysis and evaluation of Maluku Province Regional Regulation Number 16 of 2019 concerning arrangement for customary village?

2. What is recommended from the results of the analysis and legal evaluation of Maluku Province Regional Regulation Number 16 of 2019 concerning arrangement for customary village?

This study is a normative legal research based on library research. Library research was conducted by searching for secondary data obtained by literature study obtained from various books, literature, laws and regulations, theses, theses, papers, legal journals, magazines, decrees, and other materials related to research conducted afterward to study and analyze the data obtained.

MATERIALS AND METHODS

Evaluation research on the aspects of structuring traditional villages in Maluku Province aims to obtain information and a better understanding of the success of the structuring of traditional villages that have been carried out in that area. This research will use a qualitative approach using several stages as follows:

Identification and definition of variables to be measured in this study. These variables can include social structure, traditional village spatial planning, community participation, tradition continuity, and others.

Traditional village in Maluku Province as a research sample. The selected traditional village will include various characteristics such as population, type of tradition, geographical conditions, and others.

Third, researchers will make observations in the field to study social structure, traditional village spatial

planning, community participation, tradition continuity, and other variables. Observations can be made by means of interviews, direct observation, and recording.

Fourth, the researcher will use a questionnaire to interview indigenous village communities and customary leaders to obtain more detailed information about the identified variables.

The quality of the data obtained from observations and interviews will be analyzed using a thematic analysis approach. Researchers will identify patterns that emerge from the data, collect relevant information, and make appropriate conclusions.

Research results and provide recommendations for improving the arrangement of traditional villages in Maluku Province. The recommendations given can be adapted to the situation of each customary village that has been studied.

Research that includes a summary of research results, methodology used, data analysis, interpretation, and recommendations. It is important to involve the local community in this research so that the results of the research can be well understood and implemented effectively.

RESULTS AND DISCUSSION

A. Legal analysis and evaluation of Maluku Province Regional Regulation Number 16 of 2019 concerning Arrangement for Customary Villages

In analyzing and evaluating Maluku

Province Regional Regulation Number 16 of 2019 concerning arrangement for customary villages, the author uses guidelines from the Center for Legal Analysis and Evaluation of the National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia. The evaluation method uses 6 (six) dimensions of assessment based on evaluation guidelines for laws and regulations, including;

1. Dimensions of Pancasila;
2. Dimensions of the Accuracy of Types of Legislation;
3. Dimensions of Regulatory Disharmony Potential;
4. Dimensions of clarity of formulation;
5. Dimensions of Conformity Principles in the Legal Field of the Relevant Legislation;
6. Dimensions of the Effectiveness of the Implementation of Laws and Regulations.

The intended analysis and evaluation reviews 2 (two) aspects, namely regulatory and non-regulatory aspects.

1. Regulatory Aspect

Meanwhile, based on the analysis and evaluation that has been carried out on the Maluku Province Regional Regulation Number 16 of 2019 concerning the arrangement for customary village, a number of crucial dimensions are obtained including;

- 1) Clarity of Formulation;
- 2) Regulatory Disharmony; And
- 3) Accurate Types of Legislation.

However, of these three dimensions, the dimension of clarity of formulation has a more crucial portion, including the Maluku Province Regional

Regulation Number 16 of 2019 concerning Customary Village Management which has not formulated firm, clear and precise regarding;

- 1) The sociological basis for regional regulations has not yet been formulated. Therefore, it is necessary to reformulate the sociological and juridical basis for regional regulations regarding village management.
 - 2) The absence of a chapter on the procedures for exercising customary village authority in the formulation of the article on the scope of regional regulations.
 - 3) It has not been regulated yet in a precise, firm, and clear manner regarding institutional arrangements, filling in positions and terms of office for heads of customary villages based on customary law, which is the authority of the Provincial Government in accordance with Article 66 paragraph (1) and paragraph (2) of the Minister of Home Affairs Regulation Number 1 of 2017 concerning Village Management.
 - 4) There is no formulation of further regulations implementing regulations (governor regulations) from regional regulations. Arrangements regarding implementing regulations (governor regulations) must be formulated in the content material so that a time limit can be set for implementing regulations from
-

this regional regulation. If there is no further regulation of this regional regulation in the governor's regulation, then this provision does not need to be included.

Some of the issues that arise from the dimensions of regulatory disharmony and the accuracy of the types of laws and regulations, among others;

- 1) Content material regarding arrangement for customary village is not in accordance with Permendagri Number 1 of 2017 concerning Village Management, Article 52 and Article 55.
- 2) The legal basis for forming regional regulations is too broad, which should conform to the Boundaries following Appendix II numbers 28 and 39 of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Formation of Regulations Legislation, states that:

The legal basis contains:

- a. Basis of authority for formation of Legislation; and
- b. Legislation that orders the formation of statutory regulations.

The legal basis for forming regional regulations is Article 18 paragraph (6) of the 1945 Constitution of the Republic of

Indonesia, the Law on the Formation of Regions and the Law on Regional Government.

2. Non-Regulatory Aspects

Based on data from the Maluku Province Community and Village Empowerment Office, the following information was obtained;

- 1) With regard to the function of the Regional Government in the arrangement for the customary village, so far, the responsibilities and functions of the Provincial Government have only been limited to Guidance and Supervision. This is related to the condition where all 1,200 villages in Maluku Province still have administrative status, so the process of fostering customary villages has not been running. The process of arranging for customary village is only limited to a proposal for a change in status by the regency government to the provincial government.
 - 2) Related to the aspect of community complaints, many people wish that their village would immediately receive recognition as a customary village status. As for some of the case data obtained, the village of Iha Luhu did not want to participate in the simultaneous village election by the Regional Government of West Seram Regency because they thought they were a traditional village. Hence, the election of the King had to go through a determination by the
-

Regent. As a result, until now, the village is still occupied by an acting Village Head appointed by the Regent. In addition, for example, the villages in Kei Besar Utara Barat sub-district are related to the dualism of the King, which the Southeast Maluku District Government has not resolved.

- 3) Regarding aspects of efforts to solve customary village problems, so far, referring to regional regulations related to customary villages/countries in their respective regencies/cities, especially for regencies/cities that have made regional regulations related to customary villages.
- 4) Regarding the aspect of understanding community law, the Maluku Province Regional Regulation Number 16 of 2019 has not been well socialized to Regency/City Governments because the substance of the Regional Regulation still needs to be reviewed according to the real conditions of the people in customary villages.

Some of the articles that need to be amended from the Maluku Province Regional Regulation Number 16 of 2019 concerning the Arrangement for Customary Villages include;

1) Preamble

The sociological basis for regional regulations has not yet been formulated. Therefore, it is necessary to reformulate the sociological and juridical basis for regional regulations regarding village management.

The sociological formulation illustrates that regulations are formed to meet the needs of society in various aspects.

The juridical basis illustrates that regulations are formed to overcome legal problems or fill legal voids by taking into account existing regulations, to guarantee legal certainty and a sense of justice for the community.

2) Article 3

The content material contained in the scope provisions should be further elaborated in the content material articles.

Scope of Material The content of regional regulations is not elaborated in the following material. Article 3 letter d, which contains procedures for implementing customary village authority, is not formulated in a separate chapter in the regional regulation.

3) Article 4 to Article 7

The indicator used is the existence of arrangements regarding the same matter in 2 (two) or more regulations that have different hierarchies but provide different authorities.

The content material is not in accordance with the laws and regulations regarding the arrangements for the customary village. Content material regarding arrangements for the customary village is regulated in the Regulation of the Minister of Home Affairs Number 1 of 2017 concerning Village Management, Article 52 and Article 55.

4) Article 8

In accordance with Article 66 paragraph

(1) and paragraph (2) of the Regulation of the Minister of Home Affairs Number 1 of 2017 concerning village arrangements, it is necessary to formulate content material concerning the Institutional Arrangement, filling in positions and terms of office for heads of customary villages based on customary law. This needs to be done because it is a guideline for District/City Governments in establishing regional regulations regarding the administration of customary village governance, implementation of customary village development, customary village community development, and customary village community empowerment.

Article 8 does not regulate precisely, explicitly, and clearly regarding the institutional structure, filling of positions, and terms of office for the Head of a customary village based on customary law.

5) Article 13 paragraph (2)

The indicators used are regulated Main Materials, written in a special general systematic (See Instructions No. 62 Appendix II of Law Number 12 of 2011 concerning Formation of Legislation).

The abbreviations used in the content material need to be stated explicitly in the general provisions. It must be written as its extension if it is not stated in the general provisions.

Village-owned enterprises are not mentioned in the general provisions.

6) Article 15

The indicator used is Closing Provisions (Settings regarding Implementing Regulations. See Instructions No. 207

Appendix II of Law Number 12 of 2011 concerning Formation of Legislation).

Furthermore, there is no formulation of further regulations implementing regulations (governor regulations) from regional regulations.

Arrangements regarding implementing regulations (governor regulations) must be formulated in the content material so that a time limit can be set for implementing regulations from this regional regulation. If there is no further regulation of this regional regulation in the governor's regulation, then this provision does not need to be included.

B. Recommendations for the Results of Legal Analysis and Evaluation of Maluku Province Regional Regulation Number 16 of 2019 concerning Arrangement of Customary Villages

1. Regulatory Recommendations

Meanwhile, based on the analysis and evaluation that has been carried out on the Maluku Province Regional Regulation Number 16 of 2019 concerning the Arrangement for Customary Villages, several crucial dimensions are obtained, including;

- 1) Clarity of Formulation;
- 2) Regulatory Disharmony; And
- 3) Accurate Types of Legislation.

In connection with a number of issues based on the three dimensions of the assessment, the recommendations formulated include;

- 1) Changing the preamble considers adding the formulation of the sociological basis describing that regulations are formed to meet the needs of society in various aspects,

- and the formulation of the juridical basis, which describes that regulations are formed to resolve legal problems or fill legal voids by taking into account existing rules, to guarantee legal certainty and sense of social justice.
- 2) Changing the legal basis for remembering by adjusting to numbers 28 and 39 Appendix II of Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 13 of 2022 concerning Second Amendment to Law Number 12 of 2011 concerning Formation of Legislation.
 - 3) Changing the formulation regarding the scope of regional regulations in Article 3 with options;
 - a. Eliminate the scope of letter d if there is no further elaboration regarding the Chapter on procedures for implementing customary village authority; or
 - b. The scope of letter d still exists, but furthermore it is necessary to elaborate further on the chapter regarding this scope, namely the chapter on procedures for implementing customary village authority.
 - 4) Changing the formulation of Articles 4 to 7 concerning the arrangement for customary village by adjusting to the content stipulated in Articles 52 and Article 55 of Permendagri Number 1 of 2017 concerning Village Arrangement.
 - 5) The need to change or delete the formulation of article 8 which regulates customary village governance with options;
 - a. Amended by regulating precisely, firmly and clearly regarding the institutional structure, filling of positions and term of office of the Customary Village Head based on customary law, or
 - b. Deleted with a recommendation to establish a new Maluku Province Regional Regulation concerning Institutional Structure, filling in positions and terms of office for customary village heads. This is in accordance with the provisions in Article 66 paragraph (1) and paragraph (2) of the Minister of Home Affairs Regulation Number 1 of 2017 concerning Customary Village.
 - 6) Removing the abbreviation for village-owned enterprise in Article 13 paragraph (2) because it is not mentioned in the general provisions.
 - 7) Removing Article 15. There should be a formulation of further regulations implementing regulations (governor regulations)
-

from regional regulations. Arrangements regarding implementing regulations (governor regulations) must be formulated in the content material so that a time limit can be set for implementing regulations from this regional regulation. If there is no further regulation of this regional regulation in the governor's regulation, then this provision does not need to be included.

2. Non-Regulatory Recommendations

- 1) The need for institutional coordination within the Maluku Provincial Government's scope in formulating policies for structuring traditional villages. Coordination for the equal perception of the substance of customary village arrangement, which is the authority of the Provincial Government and the content framework to be outlined in a regional legal product.

In connection with one aspect of the material content mandated by Article 66 paragraph (1) Permendagri Number 1 of 2017 concerning Village Management, it is necessary to be taken into consideration the Regional Government of the Province in terms of determining future legal policies regarding the follow-up to the establishment of a separate Provincial Regulation regarding this aspect.

CONCLUSIONS

Based on the results of legal analysis and evaluation within the scope of the 6

(six) dimensions of the assessment carried out on the Regional Regulation of Maluku Province Number 16 of 2019 concerning the Arrangement of Customary Villages, it can be said that the achievement of the implementation of the said Regional Regulation has not been maximized because it illustrates that the 3 (three) dimensions of the assessment include aspects unclear formulation, potential regulatory disharmony and inaccuracy in the types of laws and regulations.

Based on the lack of clarity in the formulation, the potential for regulatory disharmony, and the inaccuracy of the types of laws and regulations from the Maluku Province Regional Regulation Number 16 of 2019, the recommendations given are based on sharpening the analysis and evaluation of the Maluku Province Regional Regulation Number 16 of 2019 concerning Arrangement of Customary Villages, which are recommendations from regulatory aspects. Namely changes to a number of articles with special notes adjusting to the content of the contents of the article and recommendations from non-regulatory aspects

REFERENCES

Pusat Analisis dan Evaluasi Hukum Nasional, BPHN Kemenkumham, 2019, Analisis dan Evaluasi Hukum Terkait; Pemberdayaan Hukum Tidak Tertulis, Jakarta : Laporan 2019.

Ashiddiqie, Jimly, 2003, Konsolidasi Naskah UUD 1945, Jakarta : Penerbit Yarsif Watampoe.

Undang-Undang Dasar Negara Republik

Indonesia Tahun 1945.

Undang-Undang Nomor 6 Tahun 2014 tentang Desa, Lembaran Negara Republik Indonesia Tahun 2014 Nomor 7, Tambahan Lembaran Negara Republik Indonesia Nomor 5495.

Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244, Tambahan Lembaran Negara Nomor 5587.

Peraturan Menteri Dalam Negeri Nomor 1 Tahun 2017 tentang Penataan Desa (Berita Negara Republik Indonesia Tahun 2017 Nomor 155).

Peraturan Daerah Provinsi Maluku Nomor 16 Tahun 2019 tentang Penataan Desa Adat.



© 2023 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution (CC BY SA) license (<https://creativecommons.org/licenses/by-sa/4.0/>).
