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**Freies Ermessen in the Delegation of Authority
from District Government to Village Government**

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FREIES ERMESSEN IN THE DELEGATION OF AUTHORITY FROM DISTRICT GOVERNMENT TO VILLAGE GOVERNMENT

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Abstract

This study describes the problems delegating authority from the district government to the village government. The implementation of Law Number 6 in 2014 concerning villages still has shortcomings in its implementation. It is due to a lack of understanding and socialization among stakeholders who run the government in the village. This study used a qualitative approach where respondents were stakeholders in the Gampong Lamteh village, Banda Aceh. The population of this study was the village apparatus and public figures of the Lamteh Village. Thus, the total sample of this study was ten people. Data collection used observation techniques, interviews, and document analysis. The analysis of data employed the triangulation method. The study results indicated that the implementation of Law Number 6 in 2014 concerning villages are not optimal yet, where the authorities still provide a lack of socialization. There is a need for socialization to improve the stakeholders' understanding regarding authority and its restriction when performing the administration in the village.

Keywords: *Freies Ermessen; Authority; Village Government.*



A. Introduction

Freis Ermessen, also known as discretionary power, is a term commonly used to refer to a mechanism that allows officials to act without being entirely bound by the law (Purnamawati & Hijawati, 2022). Another opinion was from Bachsan Mustafa, who said that Freis Ermessen is given to the government or state administration to organize public welfare, which differs from the judiciary's function to select disputes between residents (Suryana, 2018). Moreover, applying Law No. 6 of 2014 about villages necessitates maximum enforcement to improve the implementation of authority in public services. It requires village stakeholders' skills to understand their roles and authorities. Village regulations are one of the easiest ways to measure community participation. However, the village government has not been given the freedom to determine policies, nor has it been accompanied by adequate infrastructure development, such as preparing professional human resources and unfair financing. There is still a discrepancy with the Freis Ermessen principle, which delegates authority to stakeholders. As a result, a village is not independent, causing the village government to depend on the district government, thus forming a community that is apathetic to the dynamics of village development.

With participatory village regulations as part of Law No. 6 of 2014 concerning villages, the development carried out following the village regulations fulfills the aspect of law enforcement. It can meet the purpose of its formation, including the sense of belonging from the community toward village development. Participatory village regulations can be implemented as follows: (1) identification of community problems; (2) receiving community input/ community involvement in the process of drafting village regulations; (3) making the topic of village regulations; (4) drafting the general framework of village regulations; (5) public consultation; (6) village regulations with local wisdom; (8) confirmation of village regulations becomes an agreement between the village's leader and village's officials including the Village Consultative Body (BPD, *Badan Permusyawaratan Desa*); and (9) implementation of village regulations: barriers and support. In the decentralized government system, in principle, the central government administers government affairs in foreign

affairs, security, defense, finance, and national monetary and religion. Meanwhile, the provincial and district/ city governments regulate and manage government affairs that support the central government with financial support, infrastructure, and human resources.

The current village government system in implementing village development programs is designed and decided based on considerations and approaches from the top (top-down) and does not involve the community, which is the subject of development. As a result, many programs experience problems in their implementation because the community feels that the program is not following their needs and interests. New policies from district governments were found not following the conditions and expectations of the community, often leading to apathy or rejection of the program. The low participation of the community in village government is also due to the influence of socio-economic progress, so the pattern of community life has begun to change, namely the form of shared life in which members are bound by pure and natural inner relationships, becoming a pattern of urban life, namely the primary physical bonds. For a short period, each person works hard and ignores the common interests of others so that the tendency of the participatory pattern also changes from emotional to rational.

The strategy in optimizing the implementation of village governance, according to Law Number 6 of 2014, article 1, paragraph 2, explains that a village government is the administration of government affairs and the interests of local communities in the government system of the Republic of Indonesia. Based on Law No. 72 of 2005, the village government also organizes the BPD to regulate and manage the local community's interests. Accordingly, the village government has functions to carry out village household affairs, community development, the village economy, participation and self-help mutual assistance, and village deliberations.

At the province level in particular, the regulation has been running for more than a decade, but the condition of government in the region is still facing considerable challenges in carrying out the process of bureaucratic reform. On one side, district governments must be ready to implement decentralization. At the same time, there are opinions from several parties



that the bureaucracy appears to be incompetent, so in this condition, the district governments are always in doubt about their capacity to carry out decentralization. Conversely, the regional bureaucracy must also reform itself from a corrupt government to a clean, transparent, and accountable government.

The Aceh government has issued Aceh governor regulation number 78 of 2015 in conjunction with Aceh governor's regulation number 114 of 2018 regarding the master plan for the use of Aceh's special autonomy funds in 2008-2027. The master plan for utilizing the Aceh Special Autonomy Fund guides the Aceh government in determining priority programs and activities whose funding derives from the Special Autonomy Fund. In the master plan of special autonomy for Aceh, there are objectives of special autonomy for Aceh to realize: 1) integration of development programs based on the functions of the government, the provincial government, and district and city governments according to region, space, and time; 2) interest and consistency of development between planning, budgeting, and implementation, and 3) realizing the use of resources effectively, efficiently, fairly and sustainably.

This bureaucratic condition will also be reflected in the village government administration system, considering that in the context of special autonomy, the system and policies of the regional government largely determine the implementation of the village government. The most often discussed point concerning the reform process in the regional bureaucracy is how to measure the performance of the bureaucracy. Efforts made by district governments in the bureaucratic process towards good governance are (1) streamlining the organization in government towards a more efficient bureaucracy, (2) providing incentives for achievement, (3) eradicating any corruption acts, (4) improving the quality of public services and (5) encouraging public participation (Hatifah, 2003).

In carrying out its government, Aceh has special autonomy facilities that are essential in implementing and developing the province. Using the *Freis Ermessen* principle, this autonomy can determine a policy for policymakers. This view lies on 'concerns' about parties who will feel disadvantaged by the new village authority and a new policy on village

budgets. Assuming the village budget will cut the funds managed at the city government level, it will cause problems if village development is not the primary concern in all regional apparatus.

Based on the results of research conducted by Damayanti and Saravistha (2022), the village head, in carrying out his duties and functions, has authority based on legal certainty, orderly administration of government, orderly public interest, openness, proportionality, professionalism, accountability, effectiveness and efficiency, local wisdom, diversity according to the national motto and participation as one of the efforts to implement the Principles of Democracy at the village level. Furthermore, this study also explains that the exercise of discretion, which has the potential to lead to the abuse of power, must be limited by legal instruments (Damayanti & Saravistha, 2022).

It is in line with the results of Widiasari's research (2019), where this study shows that in the implementation and regulation of discretion carried out by regional heads, regional heads must be able to follow and comply with the benchmark rules and elements in the discretion. If discretion is carried out properly and correctly under predetermined rules, this discretion can indirectly provide welfare and exemplary service to the community. Moreover, the study results also concluded that with his discretionary authority in assigning village head officials, it seems that the regional head becomes the breakthrough in solving problems that would later allow the inhibition of inequality in the village. Discretion will undoubtedly be severely detrimental if not following the existing rules (Widiasari, 2019).

However, these two studies did not discuss the delegation of regional government authority to village administration. Therefore, the researchers were interested in researching the implementation of government policies in delegating district government authority to village governance in the Freies Ermessen form.

B. Method

This study used a qualitative approach with a descriptive method. According to Lincoln and Guba (1981) in the Naturalistic Inquiry, epistemologically, qualitative research is based on values and value



judgments, not facts. In the standard view, in the field, they claimed that the value of the researcher guides and shapes research conclusions because researchers construct the reality of research. At the same time, the researcher is sensitive to the reality created by the other people involved and the consequences of these changes and value differences.

In addition, Creswell (2010) explained that qualitative research consists of philosophical assumptions, strategies, data collection methods, data analysis, and data interpretation, which is more diverse than quantitative research. Creswell's explanation of qualitative research, which is a form of research that contains data collection, is then analyzed and compared and can be interpreted. The purpose is to examine the implementation of government policies in delegating district government authority to village governments in the form of *Freies Ermessen*. The population of this study was the village apparatus and public figures of the Lamteh Village, with the total sample of this study being ten people. The researchers used observation techniques, interviews, and document analysis to collect the data. The analysis of data employed the triangulation method.

C. Result and Discussion

1. Result

A village is a territory under a sub-district consisting of countries and alleys. However, a village in Acehnese is called *Gampong*, based on a privilege granted by the central government to each region based on statutory regulations.

The regulation from the Minister of Village (Permendesa, *Peraturan Menteri Desa*) Number 01 of 2015 (Article 2) explicitly explains the Village Authority, namely, based on the right of origin, which consists of 1) Village apparatus organizational system, 2) Indigenous community organization system, 3) Community institutional development, 4) Institutional development and customary law, 5) Village treasury land management, 6) Village land or ownership rights of village land management using local designations, 7) Management of bent land, 8) Management of *pecatu* land, 9)

Management of *titisara* land, and 10) Development of the role of the village community. The public's views or responses to the implementation of Law Number 6 of 2014 concerning villages are based on public knowledge about the village law itself.

The Lamteh community in Ulee Kareng District is only partially aware of Law Number 6 of 2014 concerning Villages. The interview results with M. Yusuf as Keuchik (village leader) of Lamteh provided data that.

"Law number 6 of 2014 concerning villages, and I already know it. As for the policy that I will take concerning the law, it is to disseminate information to village officials in the hope of improving village administration. I think the new village law is very important, especially in complementing the Aceh Government Law and the Banda Aceh Qanun (Law). What is not regulated in the Aceh government law, I see that it is regulated in the Village Law, especially in the Village Fund, both in making programs and making accountability. Then for the strategy to improve welfare related to this village law, I plan to complete infrastructure development, including road repairs and renovation of village offices. The tips that I do are by means of good coordination and communication between institutions and community leaders and deliberation in every policy decision".

Furthermore, the researcher also interviewed Mahdi, the village secretary. He said:

"Regarding Law number 6 of 2014, I have participated in the socialization. Even now, many people are talking about village funds, and in yesterday's debates on television media, indeed many things are discussed in the village law, especially in the authority of the village itself, among others, relating to the implementation of village government, implementation of village development and ways to improve community empowerment. The instructions are very good, but whether the village apparatus and the community are willing or not to implement it. I hope that this Village (Lamteh) must implement every regulation so as not to be left behind by other villages. Moreover, it has been a model village at the Aceh Province level. In mobilizing the community, it is easy, especially the delegated authority, namely through deliberation involving all elements of the village community, especially in village planning and village structuring activities".

Based on the interviews above, ones can observe that all parties support each other and have reasonable goals to advance Lamteh village,



Ulee Kareng District, Banda Aceh, both from the village leaders, community leaders, and community elements.

In principle, village development is integrated with regional development, which includes the activities of the village head in the planning, implementation, and control mechanisms, as well as the schedule of activities following the budget year. Village leaders must involve the community as the subject of development, a process involving this community, including public hearings with many citizens. Furthermore, on a different occasion, the researcher interviewed Iskandar, the chairman of *Tuha Peut* (Religious Affairs) Gampong Lamteh. He said.

"In terms of rights and obligations in society, running according to the rules, the community really understands the rights of the community. There was one time when I (Keuchik Gampong) made a little mistake, which was actually my goal. There are assets in the form of land to be used as village markets, especially for selling fish. I have made a mistake; namely, without deliberation with the community, I made my own decision to stockpile land that would be used as a place of sale (market), especially for selling fish. For that mistake, I apologize, and in the end, my decision was revised again, and a consensus agreement with the community had to be held again in order to decide on the land".

In the general provisions of Permendagri, 114 of 2014, Article 1, paragraph 10 describes village development planning as a stage of activities organized by the village government in collaboration with the Village Consultative Body and community members for the use and allocation of village resources to achieve village development objectives. Planning is a crucial step in the implementation of development, and community involvement or participation is an effort to bring community needs closer to the framework of planning decisions.

In addition, Article 1, paragraph 1 of Law Number 6 of 2014 states that village regulations are villages and customary villages or what is called by another name. A village is a legal community unit with territorial boundaries authorized to regulate and manage government affairs and the interests of the local community based on community initiatives, rights of origin, and/ or

traditional rights recognized and respected in the system of government of the Republic of Indonesia.

This connection is described in Article 79, paragraph 1 of Law Number 6 of 2014, stating that the Village Government prepares village development plans per its authority regarding the Regency/ City development planning. Then, paragraph 2 states that the village development plans, as referred to in paragraph 1, are prepared systematically, which includes the Village Medium Term Development Plan (RPJMDes, *Rancangan Pembangunan Jangka Menengah Desa*) for 6 (six) years; and the Village Annual Development Plan or the so-called Village Government Work Plan (RKPDes, *Rencana Kerja Pemerintah Desa*) is an elaboration of the RPJMDes for 1 (one) year. Following Article 79, Article 80 paragraph 3, it is stated that the Village Development Planning Deliberation determines the priorities, programs, activities, and needs of village development funded by the Village Revenue and Expenditure Budget, village community self-help, and/ or the Regency/ City Revenue and Expenditure Budget. Furthermore, Mr. M.Yusuf as the leader of Gampong Lamteh, Ulee Kareng stated that.

"Besides that, in developing the role of the community, especially the community is trying to be more creative in their daily lives, which is also the authority of the Gampong. Because the roles of the community are supervising government administration, conveying their aspirations, suggestions, and services needs to be served. Then regarding the system of indigenous peoples' organizations, fostering community institutions and fostering legal and customary law institutions, we continue to strive to exist more".

Furthermore, the researcher interviewed Iskandar, the chairman of *Tuha Peut* Gampong Lamteh, who also had a similar perception.

"In this case, Gampong Lamteh is improving especially for the smooth running of the government, improving personnel by filling vacant positions and equipping professional staff and know the problem. Making programs in the context of development, we work hard so that the budget plan follows the community's aspirations, especially in empowerment. We make every effort to accommodate all development activities, then Regarding the connection with articles 9 and 12 of Permendagri 44/2016, we are very concerned with making programs, of course, based on the needs and capabilities of personnel



(HR), emphasizing the principles of efficiency, improving public services, accountability, in increasing efficiency and effectiveness, and encouraging the community to provide participation initiatives in order to increase the socio-cultural resilience of the community".

Next, Mahyuddin, the Head of Blang Karieng Hamlet, and Iskandar, the head of *Tuha Peut* Gampong Lamteh, also have a similar perception.

"The authority given can be described by sector. This local authority of the village includes the dimensions of institutions, infrastructure, commodities, capital, and development. In the agricultural sector, for example, villages have the authority to develop and foster farmer groups, train farmers, provide village-scale agricultural infrastructure, provide the budget for capital, seed development, land consolidation, selection of superior seeds, planting systems, development of appropriate technology, and farmer business diversification".

Local authority impacts the entry of government programs into the village realm. Article 20 of Law no. 6 of 2014 confirms that the village regulates and manages the implementation of authority based on the right of the origin and local authority at the village scale, as referred to in Article 19 letters a and g. This article is related to Article 81, paragraph (4): "Village-scale local development is carried out by the Village itself" and paragraph (5): "The implementation of sectorial programs that enter the village is informed to the Village Government to be integrated with Village Development".

M. Yusuf said:

"In order to carry out the tasks assigned by the regional government to the village, they are usually given additional tasks as assignments to the village which are usually accompanied by the cost of facilities and infrastructure, for example, the existence of poverty reduction activities and regional economic development activities. The co-administration task given to assist the central government is handled by the village government".

It is visible that the assigned authority has already begun in Gampong Lamteh, Banda Aceh. It belongs to the type of authority based on assignments from the district government to the village government, such as poverty alleviation, which occurs in almost all villages. It provides recommendation on such permits (mining, business, plantation, forest, underground water

use, housing, fisheries, and many more), facilitate the provision of land for public facilities, form voting committees and polling stations in general elections, distribution of poor rice and fertilizers subsidized, facilitating anti-drug and HIV/ AIDS campaigns/ socialization, assisting or facilitating local institutions such as farmer groups, helping to eradicate disease outbreaks, assisting in sending letters, and others.

The given authority can be developed in various sectors. The authority of the village includes the dimensions of institutions, infrastructure, commodities, capital, and development. It is still not maximally implemented due to the lack of community participation in supporting programs implemented by the village. In addition, the village has the authority to develop and foster its community to increase productivity in agriculture, fisheries, and other creative economic sectors. This delegation of authority aims to provide and accelerate village development to build human resources and realize the state's goal of protecting the entire nation. The delegation of authority from the local government to the village government is inseparable from the *freis ermesen* principle, which gives authority and freedom in forming a policy in the village.

2. Discussion

The village has the authority to manage its territory, especially regarding society. Villages are considered as places where people live. Civilizations are more backward than cities (Suhartono, 2000). The activities contained in the community sector include coordination and carrying out control in the context of natural disaster management, providing services to the community in the field of community welfare, assisting, fostering, and preparing materials in the framework of deliberation of village community resilience institutions, strengthening environmental security system, development and maintenance of environmental security posts, capacity building for civil defense units (Hansip) and Community Protection units (Linmas) in Villages and Sub-districts, and mobilizing community participation in developing villages and sub-districts mutually.



In village governance, village stakeholders make overall plans regarding all types of formal and informal resources and manage villages by combining various means to realize village governance targets (Li Z, 2018). Democratic societies simultaneously pursue social solidarity (Forde, 2015). It is because humans cannot live without groups, so they need other humans to trigger social interaction.

No single village can be said to represent all villages in developing countries (Durbrow, E. H., Wagstaff, D. A., & Turk, N, 2002). A village (Village) is "a regional community whose organization is based on an authoritative central administration throughout its territory". The implementation of development planning is a continuous process that includes decisions or choices as alternative uses of resources to achieve goals in the future. Communities will be attracted to local government when a problem directly affects them (Copus C, 2010). Civil association assistance can contribute to unsustainable activities but can encourage group polarization and impact organizational dependency (Spina & Raymond, 2013).

Siagian (2000) defines planning as the process of thinking and determining carefully what will be done in the future to achieve the specified goals. Based on this opinion, it is required to make a structured plan for the implementation of development. Article 79, paragraph 1 of Law Number 6 of 2014 states that the village government prepares for village development plans. It means how much income or village assets are obtained from, among others, village treasury land, *ulayat* land, village markets, and village buildings. Meanwhile, those relating to Article 77, paragraphs 1 and 2 of Law 6 of 2014 emphasize that it must be carried out based on the principles of public interest, functionality, accountability, and certainty of economic value. It is intended to improve the welfare and standard of living of rural communities and increase village income.

The village's authority formed a Village Owned Enterprise (BUMD, *Badan Usaha Milik Desa*), which came from village wealth to manage assets, services, and other businesses for the welfare of the village to increase income and obtain capital. Article 1, paragraph 6 of Law No 6 of 2014,

mentions that Village-Owned Enterprises can run businesses in the economy and public services following the provisions of laws and regulations. On this basis, BUMD can be an alternative to encourage the village economy, hoping to create new economic resources and overcome the limitations of village natural resources. The villagers are jointly responsible for defending their rights and obligations (Chen, 2012). The rule of law is inseparable from the notion of populism because, ultimately, the law regulating and limiting the state's power (government) is defined as a law based on the people's power or sovereignty. Politics is understood as a correlation between two activities (Palonen, 2019).

Concerning the rule of law, people's sovereignty is a material element of the rule of law, in addition to the problem of people's welfare (Yuniar, 2016). *Freies Ermessen* is a logical consequence of the conception of the welfare state, but within the framework of the rule of law, *Freies Ermessen* cannot be used indefinitely. On that basis, Sjachran Basah put forward the elements of *Freies Ermessen* in a state of law, namely as follows: 1. Aimed at carrying out public service tasks; 2. It is an active attitude of the State administration; 3. The attitude of the act is allowed by law; 4. The attitude of action intends to solve significant problems that arise suddenly; 5. The attitude of the act can be accounted for morally to God Almighty and legally.

To prevent each stakeholder from constantly having to decide which decision to make, one often sees administrative bodies lying down policies that must be followed in regulatory policies (*Verwaitungsvorschriften*) (Bok, A. J. 1994). Villages grow from communities that run their affairs as self-governing communities so that the village becomes a unit of customary law community. Customary law communities have three components: (1) an organized group of people, namely the village where people live, who form an orderly social system based on prevailing values and norms, (2) a steady and permanent institution, meaning that the village community has social institutions, an established institution followed by the community without anyone regulating and forcing it, and (3) the power and authority to manage the property. It means that the village has its property regulated and managed by the community (Teer Haar, 1994).



D. Conclusion

The authority granted by the district government to the village government is still not maximized, as stated by Law No. 6 of 2014. It can be seen from the understanding by village officials and officials who do not understand the law comprehensively. Thus, socialization and leadership training from district governments are still needed to improve officials' quality in understanding the *Freies Ermessen* principle for policy making. If someone does not understand the guidelines of the law, it will not be easy to make policies that are in accordance with the legal basis that applies to the village.

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Appendix

The Data about Gampong Lamteh's Potential Products

No.	Crops Types	Width (Ha)	Description
1.	Corn	0.3 Ha	Potential/Good
2.	Long Beans	0.3 Ha	Potential
3.	Cassava	0.3 Ha	Potential
4.	Chilly	0.3 Ha	Potential
5.	Cabbage	0.2 Ha	Potential
6.	Cucumber	0.2 Ha	Potential
7.	Water Spinach	0.4 Ha	Potential
8.	Lettuce	0.2 Ha	Potential
Plantation Crops		Width (Ha)	Description
1.	Coconut	1 Ha	Potential
2.	Banana	0.5 Ha	Potential
3.	Manggo	0.3 Ha	Potential
Livestock Types		Number of Breeder	Number of Cattle
1.	Cow	5	15
2.	Chicken	23	255
3.	Goat	10	87
4.	Duck	14	109



