



Potential Irregularities in Arrangements of Amendment Regarding the Term of Office of Village Heads in the Indonesian Constitutional Law System

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Abstract. The discourse to extend the term of office of the village head creates problems in the Indonesian constitutional system. This is because the addition will potentially extend the term of office of the village head to 27 (twenty-seven) years. In fact, cumulatively, the term of office of the village head based on Law Number 6 of 2014 concerning Villages is quite long, namely 6 (six) years and can be elected 3 (three) times, which means that the village head can serve 18 (eighteen) year. On the other hand, the duration of a village head, which has the potential to reach 18 years, is also essentially inconsistent with democratic principles which provide a maximum limit for public officials who are elected through political mechanisms to hold office. For this reason, the idea of reconstructing the village head's term of office has become an urgent issue in the Indonesian constitutional system. The research question in this article is whether there is a potential for irregularities in the arrangements regarding the extension of the village head's term of office. The type and research approach used in this article is comparative normative juridical research with a statutory approach. The hypothesis in this article is that the long term of office of the village head is contrary to the concept of democracy, namely the limitation of power.

Keywords: Democracy; Office; Village

Introduction

Article 39 paragraph (1) of Law Number 6 of 2014 concerning Villages states that the Village Head holds office for 6 (six) years after being appointed. The following paragraph states that the Village Head can hold office for 3 (three) consecutive or non-consecutive terms. This provision means a person can serve as a Village Head cumulatively for 18 (eighteen) years. In terms of duration, the term of office is quite long. Moreover, when this duration compares with the tenure of other public officials directly elected by the people, namely the President and Regional Heads, the length of the village head's term of office can present irregularities. This deviation can occur when looking at the historical facts of the history of the New Order government. President Soeharto's 32-year leadership set a precedent for harmful consequences when a ruler has a long period in power.¹

The era of reform is a political momentum that presents a change in people's perspectives on power. That was because power was a form of patrimonial domination in the Old Order and New Order eras, where the concept meant that a kingdom or empire symbolized power. At the same time, the people did not have the political right to fight. This hypothesis is in line with the opinion of Harold Crouch, who stated that "...while Indonesia had changed a great deal in the twentieth century, its political system under Guided Democracy and the New Order was still characterized by 'important traditional features' which appeared to hark back to the patrimonial politics of earlier, precolonial Javanese empires."² This condition was the background for the long duration of the reigns of President Soekarno and President Soeharto. Even in historical records, President Soekarno was appointed President for life based on the Resolutions of the People's Consultative Assembly (TAP MPR) Number III/MPRS/1963

¹Hal Hill and Donny Harrison Pasaribu, "Avoiding the Resource Curse: Lessons from Indonesia," *Journal of Southeast Asian Economies* 39, no. 3 (2022): 225–50, <https://doi.org/10.1355/ae39-3a>.

²Mark T. Berger, "Old State and New Empire in Indonesia: Debating the Rise and Decline of Suharto's New Order," *Third World Quarterly* 18, no. 2 (1997): 321–62, <https://doi.org/10.1080/01436599714975>.

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concerning the appointment of the Great Leader of the Revolution, Bung Karno, to become President of the Republic of Indonesia for life.³

However, the leadership philosophy, interpreted in a top-bottom manner, in which the people do not have the right to determine their destiny, is slowly turning into a bottom-up concept, in which the people have the sovereignty to determine where the country will go. The amendments to the 1945 Constitution of the Republic of Indonesia marked this phenomenon, which suppressed several potential political oligarchies in the Indonesian constitutional system.⁴ The amendment of several provisions in the constitution, including the abolition of the authority of the MPR in presidential elections and the limitation of the position of the President for two terms of office, are shreds of evidence.⁵ These restrictions essentially align with the idea of creating a modern democratic system. This hypothesis aligns with McKie's opinion, which states that term limits are implemented only in states where the constitutional framers are sincerely committed to democratization.⁶

Apart from being a manifestation of the state's efforts to internalize democratic values into society, all of these changes are essentially public learning from the dark history of the past, namely when the rulers have unlimited power, the potential for deviations will be even more tremendous. For this reason, limiting power became the reform law's goal, implemented for all public officials elected through a democratic mechanism.

However, this idea has not targeted the smallest government in the Indonesian constitutional system, namely the Village Government. The smallest in the Indonesian constitutional system is the Village Government. The provisions in the Village Law mean that a person can serve as Village Head cumulatively for 18 (eighteen) years. Regarding the term of office, 18 years creates problems in the

³ Hayatun Naimah, "Peralihan Kekuasaan Presiden Dalam Lintasan Sejarah Ketatanegaraan Indonesia," *Khazanah: Jurnal Studi Islam Dan Humaniora* 12, no. 2 (2015): 119–39, <https://doi.org/10.18592/khazanah.v13i1.518>.

⁴ MPR Prayudi, "Transisi Kedaulatan Rakyat Dan Dampak Politikanya," *Politica* 3, no. 1 (2012): 19–40.

⁵ Juang Intan Pratiwi, Neneng Salama, and Siti Ulfah, "Pembatasan Masa Jabatan Presiden Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 1 (2021): 18–26, <https://doi.org/10.52005/rechten.v3i1.23>.

⁶ Kristin McKie, "The Politics of Institutional Choice Across Sub-Saharan Africa: Presidential Term Limits," *Studies in Comparative International Development* 52, no. 4 (2017): 436–56, <https://doi.org/10.1007/s12116-017-9252-z>.

Indonesian constitutional system. Although not explicitly regulated in several regulations, there are constitutional conventions regarding the limits of executive officials in holding a position. That is in line with Versteeg's opinion, which states that an executive is allowed one or two fixed terms of four to seven years, after which time he must step down and allow another person to fill the role. Based on Versteeg's opinion, the maximum duration of a public official is seven years multiplied by two terms of office or 14 (fourteen) years.⁷ For this reason, the de jure tenure scheme for village heads based on Law Number 6 of 2014 concerning Villages, which is 6 (six) years with the potential to serve for 3 (three) terms, is essentially not in line with constitutional conventions. Moreover, when the discourse to serve for 9 (nine) years with the potential to serve for 3 (three) periods implemented in the Indonesian constitutional system.⁸

Research related to potential deviations in changes to the term of office of village heads has novelty when referring to previous articles. There is some research regarding the term of office of village heads, including by Riza Multazam Luthfy, who saw a downward trend in limiting the term of office of village heads.⁹ Apart from that, there is also an article from Putera Perdana Ahmad Saifullah highlighting the concepts of village head tenure in the Indonesian constitutional system.¹⁰ In the third article, Evaline Suhunan conducted a study regarding the discourse on extending the term of office of village heads.¹¹ These three articles are similar to this article because they examine the term office of village heads in the Indonesian constitutional system. However, it is novel that this article examines historical and comparative aspects related to the term of office of village heads, which researchers must carry out.

⁷ Mila Versteeg et al., "The Law and Politics of Presidential Term Limit Evasion," *Columbia Law Review* 120, no. 1 (2020): 173–248.

⁸ <https://kbr.id/nasional/01-2023/kades-tuntut-jabatan-9-tahun-ini-alasannya/110779.html> be accessed in 27 February 2023

⁹ Riza Multazam Luthfy, "Masa Jabatan Kepala Desa Dalam Perspektif Konstitusi," *Masalah-Masalah Hukum* 48, no. 4 (2019): 319, <https://doi.org/10.14710/mmh.48.4.2019.319-330>.

¹⁰ Putera Perdana Ahmad Saifullah, "REFORMULASI PENGATURAN MASA JABATAN KEPALA DESA DALAM SISTEM KETATANEGARAAN REPUBLIK INDONESIA," *Rechtswinding* 12, no. 1 (2023): 63–80.

¹¹ Evaline Suhunan, Purba Made Aubrey, and Rasji, "Analisis Wacana Perpanjangan Masa Jabatan Kepala Desa Dalam Perspektif Demokrasi Dan Konstitusi," *INNOVATIVE: Journal Of Social Science Research* 3, no. 1 (2023): 1877–84.

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This discourse can bury the spirit of reform, which requires establishing a democratic government system from the central to the village level. Based on these matters, the research question in this article is whether there is a potential for irregular arrangements regarding the extension of the village head's tenure.

Research methods

The research was carried out through normative legal research by reviewing and analyzing statutory regulations or other legal materials related to Potential Irregularities in Arrangements Regarding the Tenure of Village Heads in the Indonesian State Administration System. That legal research is a statutory approach. The statutory regulation approach reviews the statutory regulations related to the research theme.¹² This normative legal research uses secondary data types or data obtained through library materials, so the data collection method is to search relevant literature through libraries and online journal databases. The secondary data collection used in this study focused on: (a) primary legal materials, in the form of laws and regulations related to the research theme; and (b) secondary legal materials, in the form of reference books and journals related to research themes and further elaborating primary legal materials in relevant theoretical and implementation contexts.

Discussion

Etymologically, the village comes from the Sanskrit word *deca*, which means homeland, homeland, or birthplace. According to the Big Indonesian Dictionary, a village is a unitary area inhabited by several families that have their government system (headed by a village head), or a village is a group of houses outside the city that are a unit.¹³

Meanwhile, in the Indonesian legal system, Article 1 point 1 of Law Number 6 of 2014 concerning Villages states that a village is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, local community interests based on community initiatives, origin rights, and traditional rights that are recognized and respected within the system of

¹² Johni Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007).

¹³ Sugiman Sugiman, "Pemerintahan Desa," *Binamulia Hukum* 7, no. 1 (2018): 82–95.

government of the Unitary State of the Republic of Indonesia.¹⁴ These meanings illustrate that a village is a community group with an independent government within the state administration system. This conception aligns with Jul Indra's opinion, which states that the village's role is the smallest government administration unit closest to the community.¹⁵

As the smallest part of the government system, the village should spearhead implementing democracy at the local level—implementing village head elections by direct election is proof. Even in the New Order era, known as the dark phase of democracy, village head elections were held directly. This fact is quoted from data written by Martinez-Bravo, stating that village elections were nonpartisan. All candidates were supposed to be supporters of Suharto's party. The candidate with the most votes obtained the village head position. Villagers had to be at least 17 years old to be able to vote in these elections. Seventeen is the minimum voting age in all elections in Indonesia. It can be seen from Bravo's opinion that even though the Village Head candidate supports President Soeharto, the election mechanism is still carried out democratically, namely one man, one vote, one value.¹⁶

1. Historical Regulations Related to the Position of Village Head

Problems related to the position of village head are equivalent to the age of the Indonesian nation itself. Village arrangements were stated for the first time in Law Number 22 of 1948 concerning Regional Government which recognized the existence of villages as part of the government in the state administration system in Indonesia.¹⁷

In Article 1, paragraph (1) of Law Number 22 of 1948 concerning Regional Government, it is stated that the regions of the Republic of Indonesia are

¹⁴ Arif Zainudin, "Model Kelembagaan Pemerintahan Desa," *JIP (Jurnal Ilmu Pemerintahan): Kajian Ilmu Pemerintahan Dan Politik Daerah* 1, no. 2 (2016): 338–51, <https://doi.org/10.24905/jip.1.2.2016.338-351>.

¹⁵ Jul Indra and Khoirunurrofik Khoirunurrofik, "Understanding the Role of Village Fund and Administrative Capacity in Stunting Reduction: Empirical Evidence from Indonesia," *PLoS ONE* 17, no. 1 January (2022): 1–13, <https://doi.org/10.1371/journal.pone.0262743>.

¹⁶ Monica Martinez-Bravo, "The Local Political Economy Effects of School Construction in Indonesia," *American Economic Journal: Applied Economics* 9, no. 2 (2017): 256–89, <https://doi.org/10.1257/app.20150447>.

¹⁷ Dadang Sufianto, "Pasang Surut Otonomi Daerah Di Indonesia," *Jurnal Academia Praja* 3, no. 2 (2020): 271–88, <https://doi.org/10.36859/jap.v3i2.185>.

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composed of three levels, namely Provinces, Regencies (big cities), and Villages (small cities). Organize and manage their household. The existence of the authority to self-regulate makes the term of office of the village head during the period when this law enforces to be relative.

Arrangements related to the tenure of the village head after Law Number 22 of 1948 concerning Regional Government have stagnated. The non-regulation regarding the term of office of the Village Head in two subsequent regulations, namely Law Number 44 of 1950 concerning Regional Government and Law Number 1 of 1957 concerning Principles of Regional Government, both of which also do not regulate the term of office of the village head is the proof. In line with before, arrangements related to the tenure of the village head experienced de-escalation in Presidential Decree No. 6 of 1959 concerning the Regional Government, which materially did not regulate anything related to villages. Arrangements related to villages have progressed with the promulgation of two laws, including Law Number 18 of 1965 concerning Principles of Regional Government and Law Number 19 of 1965 concerning Villages as a Transitional Form to Accelerate the Realization of Level III Regions throughout the Territory of the Republic of Indonesia which in Article 9 paragraph (2) states Level I appoint Regional Heads Village Heads from at least two and a maximum of three candidates, based on valid election results for a maximum term of eight years. The arrangement regarding the term of office limitation is one of the legal progressives carried out in the old order era. However, this provision was revoked through Law Number 6 of 1969 concerning the Declaration of the Non-Applicability of Various Laws and Government Regulations instead of Laws.

The New Order era was known as the dark phase of democracy because the government system was slowly moving toward dictatorship. That is in line with the opinion of the Nusa Bakti Pledge, which states that the New Order moved slowly and in the direction of dictatorship.¹⁸ However, the spirit of democracy emerges from the minor stream of government in the Indonesian constitutional system. Article 5 of Law Number 5 of 1979 concerning Village Administration mandates that village head elections directly, publicly, freely, and secretly. Even the provisions contained in Article 7 state that the term of office of the village head is 8 (eight) years from the date of the inauguration and can be reappointed

¹⁸ Nusa Bakti Ikrar, "The Transition To Democracy In Indonesia: Some Outstanding Problems," *The Asia-Pacific: A Region in Transition*, 2004, 195–206.

for 1 (one) next term of office. This provision meant that the village head could serve a maximum of 16 (sixteen) years during the New Order era.

The presence of the reform era became the starting point for the democratization of Government from the central to the regional levels. The village, as the smallest Government, does not escape the object of democratization. Even though previously, the village could be categorized as a concrete example of the implementation of direct democracy, as part of Government, the election and tenure of the village head include objects that needed to be regulated more specifically and limited.¹⁹ The provisions in Articles 94 and 95 of Law Number 22 of 1999 concerning Regional Government which states that the people directly elect the Village Head and the term of office is a maximum of ten years or two terms from the date of stipulation, is the proof. The election procedure and duration of the term of office of the village head have essentially adopted the concept of Government at the central and regional levels, namely the President and the Regional Head, who can only serve for a maximum of 10 (ten) years.

However, the regulation regarding the term of office of the village head changed in 2004; the existence of Article 204 of Law Number 32 of 2004 concerning Regional Government which states that the term of office of the village head is 6 (six) years and can be re-elected only for 1 (one) next term of office is the fact of the proof. That means there is an additional term of office of at least 1 (one) year and a maximum of 2 (two) years for the village head to hold office.

Then, after the issuance of Law Number 6 of 2014 concerning Villages, there is a provision in Article 39 which states that the Village Head holds office for 6 (six) years from the date of inauguration. Moreover, they can serve a maximum of 3 (three) consecutive terms of office or not consecutively, creating problems in the village government system.²⁰ That is because, with the addition of one additional period, the position of village head will likely last for 18 (eighteen) years. In simple terms, the comparison of the tenure of village heads is in the following table:

Table 1

Comparison of Village Head Positions 1945-2014

¹⁹ Luthfy, "Masa Jabatan Kepala Desa Dalam Perspektif Konstitusi."

²⁰ Syaifullahil Maslul, "Konstruksi Hukum Masa Jabatan Kepala Desa Pasca Putusan Mahkamah Konstitusi Nomor 42/PUU-XIX/2021," *Jurnal Literasi Hukum* 6, no. 2 (2022): 131–40.

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Regulation	Tenure	Explanation
Law Number 22 of 1948 concerning Regional Government	Not Regulated	-
Law Number 44 of 1950 concerning Regional Government	Not Regulated	-
Law Number 1 of 1957 concerning Fundamentals of Regional Government	Not Regulated	-
Law Number 19 of 1965 concerning Villages as a Transitional Form to Accelerate the Realization of Level III Regions throughout the Territory of the Republic of Indonesia	8 (eight) years	-
Law Number 5 of 1979 concerning Village Government	Maximum 8 (eight) years and can be re-elected for 1 term of office	Maximum 16 Years
Law Number 22 of 1999 concerning Regional Government	Maximum 5 (five) years and can be re-elected for 1 term of office	Maximum 10 years
Law Number 32 of 2004 concerning Regional Government	Maximum 6 (six) years and can be re-elected only for 1 (one) term of office	Maximum 12 years
Law Number 6 of 2014 concerning Villages	Maximum 6 (six) years from the date of inauguration. And can serve a	Maximum 18 years

	maximum of 3 (three) consecutive terms of office or not consecutively	
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Source: processed from various sources

As shown in Table 1 above, the village head's term of office experiences fluctuating movements. However, the maximum duration of 18 (eighteen) years in Law Number 6 of 2014 concerning Villages can potentially create problems in the Indonesian constitutional system.

2. Limitations of Power in Village Government

One of the primary problems in village government is the need for more norms that explicitly regulate the existence of village government in the constitution. Recognition related to the existence of a village interprets in terms of a village in the Village Law which is instead interpreted as a customary law community unit based on origin and customs (self-governing community) as stipulated in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, not as an entity autonomous (local self-government). However, the construction of positioning the village as a self-governing community is different from its implementation, which classifies the village as the smallest autonomous government in the Indonesian constitutional system. That is in line with Vita Deliana's opinion, which states that the village is the smallest administrative unit recognized by the state.²¹

In addition, the direct village head election proves that the village head is an elected official, which is one of the parameters for selecting public officials in a modern democratic system. Duarte-Recalde stated that elections are a relatively ineffective means for creating or sustaining representation. In this representative democracy, a gap between political representatives and citizens “requires institutional mechanisms to ensure that such separation does not result in unresponsive or illegal governments.”²² Based on this opinion, the appointment

²¹ Vita Deliana, “Pengaruh Homogenisasi Pemerintahan Desa Di Indonesia Terkait Perubahan Sosial,” *Jurnal Hukum Peratun* 5, no. 1 (2022): 1–18.

²² Liliana Rocío Duarte-Recalde, “Democracy and Representation in Paraguay,” *Partecipazione e Conflitto* 10, no. 1 (2017): 65–88, <https://doi.org/10.1285/i20356609v10i1p65>.

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of elected officials is meant to bridge the will of the people divided within the corridors of a democratic state. For this reason, in terms of the constitutional mechanism, the Indonesian legal system positions the village head on a par with other democratically elected public officials, namely the President, Governors, and Regents/Mayors in the context of being public officials.

However, as an implication when positioning the Village Head as a public official equal to the President, Governor, Regent/Mayor, the election and position of the village head must meet similar requirements to maintain the quality of Indonesian democracy at the local level.

Referring to Lyman Tower Sargent's opinion, a democratic country must fulfill several elements, including:

- a. *Citizen involvement in political decision making*
- b. *Some degree of equality among citizen*
- c. *Some degree of liberty or freedom granted by citizen*
- d. *A system of representation*
- e. *Rule of law*
- f. *An electoral system-majority rule*
- g. *Education*

Based on Sargent's opinion, the electoral system is one of the benchmarks for assessing the quality of a country's democracy. However, elections based on majority sovereignty have several parameters to be considered democratic elections. One of them is that the positions contested in the elections apply a limiting mechanism to avoid the emergence of a dictatorship. Baturo stated that starting out by noting that a regime can never be truly dictatorial if the power of the chief executive is effectively temporally restricted, Baturo argues that term limits have great potential to prevent countries from sliding into dictatorship. At the same time, term limits are a 'cheap' institution, easily included in constitutions, which are almost invariably rewritten when a country democratizes.²³ That was also agreed upon by Reyntjens, who stated that the limitation of power has a strong correlation with the strengthening of democracy; the correlation between effective term limits and democratic quality is

²³ Alexander Baturo, "Democracy, Dictatorship, and Term Limits," *West European Politics* 38, no. 3 (2015): 37–41.

substantial.²⁴ Based on this, it is appropriate to limit the power in every public office directly elected by the people (elected officials) as a form of respect for democratic values.

3. Term of Office of the Village Head in the Constitutional Law System

In essence, the tenure of a village head is an open legal policy for legislators, but what is the maximum standard for a public position that a person can hold while in office? The Constitutional Court, in its decision Number 42/PUU-XIX/2021, stated that the tenure of a village head is 6 (six) years and that they can elect three times six years with a maximum of 3 terms of office is a constitutional rule; however, The Constitutional Court in its legal considerations stated that:

“...limiting the term of office of the village head is one of the important spirits desired by the legislators. In fact, since the enactment of Law 5/1979, the limitation is not only intended for the term of office but also to limit the periodization of the term of office. Within the limits of reasonable reasoning, such restrictions are not **only intended to open up opportunities for certainty of the transfer of leadership generations at all levels of government, including at the village level but also to prevent abuse of power (power tends to corrupt) due to being in power for too long.**”

Based on the legal considerations of the Constitutional Court Decision, it concluded that the term limit is basically to open up opportunities for leadership regeneration as a form of effort to avoid acts of abuse of power (power tends to corrupt). For this reason, even though the Constitutional Court essentially provides leeway for legislators to determine the term of office of the Village Head, the Constitutional Court also provides a time limit to achieve the goal of carrying out restrictions.

The spiritual nuance in the legal consideration of the Constitutional Court's decision intended to prevent deviations committed by the Village Head. Based on ICW data, corruption in village funds increases every year. Every year, 61 corruption cases in the village sector are carried out by 52 village heads, causing

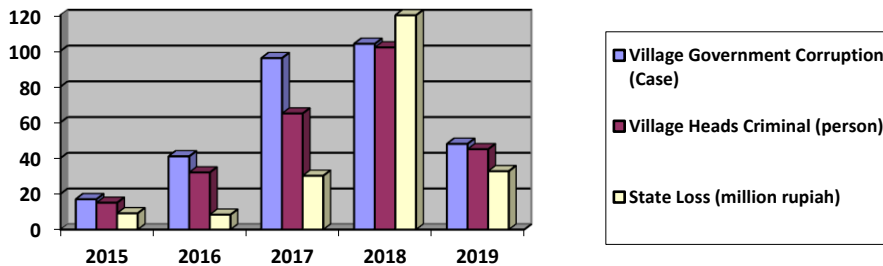
²⁴ Filip Reyntjens, “A New Look at the Evidence The Struggle Over Term Limits in Africa A New Look at the Evidence,” *Journal of Democracy* 27, no. 3 (2017): 61–68.

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state financial losses of up to IDR. 256 Billion. Overall, village sector corruption that occurred during 2015-2019 reached Rp. 1.28 Trillion.²⁵

Graphic 1

Corruption that occurred in the Village in 2015-2019



Referring to Versteeg's opinion, based on constitutional conventions, the maximum term of office of a public official directly elected by the public is 14 (fourteen) years. However, to find out whether this duration is a relevant figure for the position of village head, it is appropriate to carry out a comparative study with the application of the tenure of village heads in the United States of America, which is known as the mecca of a democratic country.²⁶

4. Implementation of the Position of Village Head in the United States

The United States is a democratic country that allows each state government to regulate village management independently. In the United States constitutional system, village government can divide into several types: special districts, municipalities, and unincorporated areas. Special districts government refers to the official website of the Special Districts of California, interpreted as local governments created by the people of a community to deliver specialized services essential to their health, safety, economy, and well-being. Regarding the officials,

²⁵ Rizki Zakariya, "Partisipasi Masyarakat Dalam Pencegahan Korupsi Dana Desa: Mengenal Modus Operandi," *INTEGRITAS: Jurnal Antikorupsi* 6, no. 2 (2020): 263–82, <https://doi.org/10.32697/integritas.v6i2.670>.

²⁶ Muhammad Nasir Badu, "Demokrasi Dan Amerika Serikat Democracy and the United States of America," *Jurnal Magister Ilmu Politik Universitas Hasanuddin* 1, no. 1 (2015): 9–22.

known as the board of directors, and commissioners, the Mayor or Regen appoints the board of supervisors.²⁷

Meanwhile, the municipality on the Britannica website defines as an urban unit of local government. A municipality is a political subdivision of a state within which a municipal corporation is established to provide general local government for a specific population concentration in a defined area.²⁸

In contrast to the special districts, where the regional head congruently appoints officials, the person in office can be elected in the context of a municipality. One of them is the village of Stillwater in New York. Stillwater is one of the villages in New York that holds its village head election directly. In fact, to ensure the functioning of democracy in Stillwater Village, there is a time limit for holding office, namely 4 (four) years, and you can be elected for 3 (three) terms of office, either consecutively or non-consecutively. Referring to the opinion of Patrick Nelson, the idea is intended to ensure political regeneration at the local level; the idea here is to create a system of predictable vacancies that allows a person to step in and run where there will be known opportunities.²⁹

Apart from municipalities, there are also unincorporated areas. Based on the property club. An unincorporated NY site can be interpreted as a loose area or an area that is not affiliated with a district or city, an area that's either a neighborhood inside a larger city or a completely uninhabited area. Unlike towns, these areas are generally not governed by neighboring towns under the same legal umbrella.³⁰ Even though it is not tied to any one area, it does not mean that the unincorporated area has no leader as a law enforcer. According to the Lawsoup website, unincorporated areas are led by a county board of supervisors equivalent to a city council.

When referring to these facts, in essence, villages in the United States can be classified as follows:

Table 2

²⁷ <https://www.sdao.com/what-is-a-special-district> be accessed 25 February 2023

²⁸ <https://www.britannica.com/topic/municipality> be accessed 25 February 2023

²⁹ <https://villageofstillwatery.org/archive/village-board-enacts-term-limits-on-elected-officials/> be accessed 25 February 2023

³⁰ <https://propertyclub.nyc/article/what-is-an-unincorporated-community> be accessed 25 February 2023

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Classification of Villages in the United States

Type	Acting	Status	Tenure
<i>Special districts</i>	<i>board of directors, commissioners, board of supervisors</i>	Appointed	No limits
<i>municipality</i>	<i>Mayor, Head of Village</i>	Elected or appointed	Limited time, in Stillwater Village is 4 (four) years and can be selected 3 times
<i>unincorporated area</i>	<i>county board of supervisors</i>	Appointed	No limits

Source: processed from various sources

From the table, for appointed officials, there is no time limit for serving; this is because the duration of the term of office depends on the official who appointed him. On the other hand, for elected officials, as happened in Stillwater Village, there is a time limit for serving, namely 4 (four) years with a maximum of 3 (three) terms elected.

5. Reconstruction of Village Head Tenure Arrangements in Indonesia

The smallest administrative area in Indonesia divides into two categories, *desa*, and *kelurahan*. In contrast to villages in Law Number 6 of 2014, Villages classified as customary law community units that autonomously can determine their destiny; on the other hand, *Kelurahan*, their existence based on Government Regulation Number 17 of 2018 concerning Subdistricts interprets *kelurahan* as part of the territory from the District as the apparatus of the District.³¹

Village arrangements divided into two categories, namely *kelurahan* and *desa*, have the enthusiasm to replicate the concept of village governance in various countries, which provides opportunities for villages to be administrative regions or independent areas. This division is in line with the concept applied in the United States, which divides areas like villages into 3 (three) categories. However, if the

³¹ Murtir Jeddawi, Abdul Rahman, and M. Nawawi, "Studi Kemungkinan Perubahan Status Desa Teluk Kapuas Menjadi Kelurahan Di Kabupaten Kubu Raya," *Jurnal Ilmu Pemerintahan Suara Khatulistiwa* 3, no. 1 (2018): 31–50, <https://doi.org/10.33701/jipsk.v3i1.301>.

people carry out a direct election in that area, then actually, the position is subject to restrictions. That is a manifestation of implementing democratic values in the constitutional system.

Table 3

Perbedaan Konsep Desa di Amerika Serikat dan Indonesia

The Concept of Village	United States	Indonesia	Explanation	Official
Administrative	Special District	<i>Kelurahan</i>	Administrative	Appointed
	Unincorporated Area	-	Administrative	Appointed
Otonom	Municipality	Village	Autonomy	Elected

Source: processed from various sources

Based on this classification, the village concept in Indonesia essentially has similarities with several states in the United States, where there are administrative and autonomous regions. However, in the context of an autonomous region, the duration of the term of office should be limited as a form of democratic consistency at the local level. In the village of Stillwater, the village head can only hold office for 4 (four) years and can be re-elected for 3 (three) terms of office, meaning that a person can only serve for a maximum of 12 (twelve) years. Meanwhile, in Indonesia, the tenure of a village head is 6 (six) years, and they can be re-elected for 3 (three) terms of office, which means that a village head can hold office for 18 (eighteen) years.

Based on the Constitutional Court Decision Number 42/PUU-XIX/2021, arrangements related to the term of office of village heads have two objectives, among others, to open up opportunities for certainty of the transfer of leadership generations at all levels of government, including at the village level and prevent abuse of power (power tends to corrupt). The conception of setting the term of office for the village head indirectly raises the negative impact of power that lasts continuously, namely the growth of political dynasties in the village government. The thesis found by Pahruddin in his research on Polewali Mandar Village, where

one family has controlled the village since the New Order era, proves that.³² This phenomenon also occurs in Kertosono District, East Java, and several other areas in various regions of Indonesia.³³

This deviation is reasonable due to the duration of the village head's tenure of 18 (eighteen) years, which is inconsistent with the constitutional convention, which states that the maximum duration of a politically elected public official is 14 (fourteen) years. For this reason, the researcher feels the need to reconstruct the arrangements regarding the term of office of the village head.

This change can be made by amending Article 39 of Law Number 6 of 2014 concerning Villages which regulates the term of office for village heads which was previously 6 (six) years and can be elected 3 (three) times to be changed to 5 (five) years and can be selected a maximum of 2 (two) times. Thus, the provisions in Article 39 of the Law on Village Administration read as follows:

Article 39

- (1) The Village Head holds office for 5 (five) years from the inauguration date.
- (2) The Village Head, as referred to in paragraph (1), may serve a maximum of 2 (two) consecutive terms of office or not consecutively.

Determination of the number 5 (five) years is based on the position of the village as the smallest government in a unitary state, in the sense that the village is a subordinated area of the Regional Government. For this reason, the duration of the village head's term of office should be equated with the position of the regional head.

Related to the argument that the short tenure of the village head has the potential to create political polarization, which makes the village head's performance not optimal, in essence, it can be countered by several things, among others, first converting the status of a village into a kelurahan for areas with a high potential for conflict. Determination of village and kelurahan status should be based on the homogeneity of the area. When a heterogeneous community occupies a village and has the potential to create horizontal conflicts, then the village should

³² Pahrudin, "Dinasti Politik Pemerintah Desa Di Kabupaten Polewali Mandar," *Trias Politika* 2, no. 2 (2018): 233–47.

³³ Fitra Hermansyah and Agus Satmoko Adi, "Persepsi Masyarakat Terhadap Politik Dinasti Kepala Desa Kepuh Kecamatan Kertosono Kabupaten Nganjuk," *Kajian Moral Dan Kewarganegaraan* 5, no. 2 (2017): 686–700.

be converted into a kelurahan. Second, optimal political education is needed. Political contests should recognize defeat and victory. Understanding related to this matter can only be constructed through optimal political education. The titles in the Discussion are written without using numbers.

Conclusion

The idea of declaring the village head's term of office to be 9 (nine) years and to be elected for 3 (three) periods means that the village head can serve for 27 (twenty-seven) years normatively contradicts the principle of limiting powers regulated in a democratic country. In addition, the de jure term of office for village heads is 6 (six) years, and they can elect for 3 (three) terms of office contrary to constitutional conventions regarding the maximum duration of office for democratically elected public officials. This long duration is de facto based on cases in several areas, including Polewali Mandar and Kertosono, which have given rise to dynastic politics which are substantially contrary to democracy.

Based on this, this article provides suggestions for rearranging regulations related to village head positions in Law Number 6 of 2014 concerning Villages, by changing the tenure of village heads from the previous 6 (six) years and can be elected for 3 (three) times the term of office is 5 (five) years and can elect for only two terms. This amendment needs to reinforce the position of the village government as part of the smallest government in the unitary state of the Republic of Indonesia.

Bibliography

- Badu, Muhammad Nasir. "Demokrasi Dan Amerika Serikat Democracy and the United States of America." *Jurnal Magister Ilmu Politik Universitas Hasanuddin* 1, no. 1 (2015): 9–22.
- Baturo, Alexander. "Democracy, Dictatorship, and Term Limits." *West European Politics* 38, no. 3 (2015): 37–41.
- Berger, Mark T. "Old State and New Empire in Indonesia: Debating the Rise and Decline of Suharto's New Order." *Third World Quarterly* 18, no. 2 (1997): 321–62. <https://doi.org/10.1080/01436599714975>.
- Deliana, Vita. "Pengaruh Homogenisasi Pemerintahan Desa Di Indonesia Terkait Perubahan Sosial." *Jurnal Hukum Peratun* 5, no. 1 (2022): 1–18.
- Duarte-Recalde, Liliana Rocío. "Democracy and Representation in Paraguay." *Partecipazione e Conflitto* 10, no. 1 (2017): 65–88. <https://doi.org/10.1285/i20356609v10i1p65>.
- Hermansyah, Fitra, and Agus Satmoko Adi. "Persepsi Masyarakat Terhadap Politik Dinasti Kepala Desa Kepuh Kecamatan Kertosono Kabupaten Nganjuk." *Kajian Moral Dan Kewarganegaraan* 5, no. 2 (2017): 686–700.
- Hill, Hal, and Donny Harrison Pasaribu. "Avoiding the Resource Curse: Lessons from Indonesia." *Journal of Southeast Asian Economies* 39, no. 3 (2022): 225–50. <https://doi.org/10.1355/ae39-3a>.
- Ibrahim, Johni. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2007.
- Ikrar, Nusa Bakti. "The Transition To Democracy In Indonesia: Some Outstanding Problems." *The Asia-Pasific: A Region in Transition*, 2004, 195–206.
- Indra, Jul, and Khoirunurrofik Khoirunurrofik. "Understanding the Role of Village Fund and Administrative Capacity in Stunting Reduction: Empirical Evidence from Indonesia." *PLoS ONE* 17, no. 1 January (2022): 1–13. <https://doi.org/10.1371/journal.pone.0262743>.
- Jeddawi, Murtir, Abdul Rahman, and M. Nawawi. "Studi Kemungkinan Perubahan Status Desa Teluk Kapuas Menjadi Kelurahan Di Kabupaten Kubu Raya." *Jurnal Ilmu Pemerintahan Suara Khatulistiwa* 3, no. 1 (2018): 31–50. <https://doi.org/10.33701/jipsk.v3i1.301>.
- Juang Intan Pratiwi, Neneng Salama, and Siti Ulfah. "Pembatasan Masa Jabatan Presiden Di Indonesia." *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 1 (2021): 18–26. <https://doi.org/10.52005/rechten.v3i1.23>.

- Luthfy, Riza Multazam. "Masa Jabatan Kepala Desa Dalam Perspektif Konstitusi." *Masalah-Masalah Hukum* 48, no. 4 (2019): 319. <https://doi.org/10.14710/mmh.48.4.2019.319-330>.
- Martinez-Bravo, Monica. "The Local Political Economy Effects of School Construction in Indonesia." *American Economic Journal: Applied Economics* 9, no. 2 (2017): 256–89. <https://doi.org/10.1257/app.20150447>.
- Maslul, Syaifullahil. "Konstruksi Hukum Masa Jabatan Kepala Desa Pasca Putusan Mahkamah Konstitusi Nomor 42/PUU-XIX/2021." *Jurnal Literasi Hukum* 6, no. 2 (2022): 131–40.
- McKie, Kristin. "The Politics of Institutional Choice Across Sub-Saharan Africa: Presidential Term Limits." *Studies in Comparative International Development* 52, no. 4 (2017): 436–56. <https://doi.org/10.1007/s12116-017-9252-z>.
- Naimah, Hayatun. "Peralihan Kekuasaan Presiden Dalam Lintasan Sejarah Ketatanegaraan Indonesia." *Khazanah: Jurnal Studi Islam Dan Humaniora* 12, no. 2 (2015): 119–39. <https://doi.org/10.18592/khazanah.v13i1.518>.
- Pahrudin. "Dinasti Politik Pemerintah Desa Di Kabupaten Polewali Mandar." *Trias Politika* 2, no. 2 (2018): 233–47.
- Prayudi, MPR. "Transisi Kedaulatan Rakyat Dan Dampak Politiknya." *Politica* 3, no. 1 (2012): 19–40.
- Reyntjens, Filip. "A New Look at the Evidence The Struggle Over Term Limits in Africa A New Look at the Evidence." *Journal of Democracy* 27, no. 3 (2017): 61–68.
- Saifullah, Putera Perdana Ahmad. "Reformulaasi Pengaturan Masa Jabatan Kepala Desa Dalam Sistem Ketatanegaraan Republik Indonesia." *Rechstwinding* 12, no. 1 (2023): 63–80.
- Sufianto, Dadang. "Pasang Surut Otonomi Daerah Di Indonesia." *Jurnal Academia Praja* 3, no. 2 (2020): 271–88. <https://doi.org/10.36859/jap.v3i2.185>.
- Sugiman, Sugiman. "Pemerintahan Desa." *Binamulia Hukum* 7, no. 1 (2018): 82–95.
- Suhunan, Evaline, Purba Made Aubrey, and Rasji. "Analisis Wacana Perpanjangan Masa Jabatan Kepala Desa Dalam Perspektif Demokrasi Dan Konstitusi." *Inovative: Journal Of Social Science Research* 3, no. 1 (2023): 1877–84.
- Versteeg, Mila, Timothy Horley, Anne Meng, Mauricio Guim, and Marilyn

Potential Irregularities in Arrangements of Amendment Regarding the Term of Office of Village Heads in the Indonesian Constitutional Law System

Guirguis. “The Law and Politics of Presidential Term Limit Evasion.” *Columbia Law Review* 120, no. 1 (2020): 173–248.

Zainudin, Arif. “Model Kelembagaan Pemerintahan Desa.” *JIP (Jurnal Ilmu Pemerintahan) : Kajian Ilmu Pemerintahan Dan Politik Daerah* 1, no. 2 (2016): 338–51. <https://doi.org/10.24905/jip.1.2.2016.338-351>.

Zakariya, Rizki. “Partisipasi Masyarakat Dalam Pencegahan Korupsi Dana Desa: Mengenal Modus Operandi.” *INTEGRITAS: Jurnal Antikorupsi* 6, no. 2 (2020): 263–82. <https://doi.org/10.32697/integritas.v6i2.670>.

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