SRIWIJAYA Law Review

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Website: http://journal.fh.unsri.ac.id/index.php/sriwijayalawreview

ISSN Print: 2541-5298
ISSN Online: 2541-6464

The Legitimacy Crisis of Customary Villages Under Indonesia's Village Law

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Article

Keywords:

Aceh; Baduy; Closed *Stelsel;* Customary Village; Open *Stelsel*; Principles of Recognition.

Article History
Received: Aug 1, 2024;
Reviewed: Jul 14, 2025;
Accepted: Jul 21, 2025;
Published: Jul 31, 2025.

DOI:
10.28946/slrev.v9i2.3998

Abstract

The absence of clear institutional linkages between bureaucratic villages (BVs) and customary villages (CVs) raises significant concerns regarding the legitimacy and effectiveness of their governance structures. Understanding the institutional relationship between these entities is therefore essential. This research analyses the legitimacy and legal implications of customary village regulations and investigates the disharmony between these regulations and Law Number 6 of 2014 in relation to the 1945 Constitution of the Republic of Indonesia (UUD 1945). Employing a socio-legal case study approach, this study focuses on five key sites: Gampong-Mukim in Aceh, Tosari-Tengger Village, Kanekes-Baduy, Tenganan Pegringsingan-Karangasem, and Pecatu-Badung. Legal materials were collected through document reviews and focus group discussions related to customary village governance. Findings reveal that Law Number 6 of 2014 concerning Villages fails to align with constitutional principles and shows inconsistencies when compared with regional regulations across the observed areas. Furthermore, the study identifies state intervention in customary village governance through the implementation of Law Number 6 of 2014—an approach deemed inappropriate unless such villages are fully and formally recognised. These regulatory inconsistencies and interventions undermine the legitimacy of Law Number 6 of 2014 in the context of customary village governance and threaten the autonomy and legal standing of Indonesia's indigenous communities.

INTRODUCTION

In the framework of national and regional development, rural area development is vital because it includes the component of development equality.[1] The results of rural development are seen

[1] JICA, "Chapter 4 Effective Approaches for Rural Development 1," in *Effective Approaches for Rural Development*, 2020, 173–229.

to be more likely to directly affect the interests of a sizable section of the populace that lives in rural regions. The village government is positioned as a subsystem of the governance system in the context of rural development, giving the village the power and responsibility to administer and monitor the interests of its community by expanding its income sources.[2]

According to Law No. 6 of 2014 concerning Villages, the development of villages aims to improve the standard of living and welfare of rural communities.[3] It also aims to reduce poverty by meeting basic needs, building village infrastructure, fostering local economic growth, and using natural resources and the environment sustainably. Based on community initiatives, customary rights, and village traditions, the Village Law embodies a vision and design that grants villages extensive authority in the areas of village governance, village development implementation, village community development, and village community empowerment.[4]

The idea that villages possess ancestral and traditional rights is a key foundation of Law No. 6 of 2014 concerning Villages.[5] These rights allow villages to govern and manage the interests of their local communities. They also support the realisation of community aspirations for independence, in line with the 1945 Constitution and the broader process of state governance in Indonesia. Law No. 6 of 2014 introduces new institutional structures for villages, but it also creates new challenges.[6] One of the main issues is the ambiguity in the status and relationship between Customary Villages (regulated in Articles 96–111) and Administrative Villages (regulated in Articles 1–95). Although the law contains 115 articles aimed at modernising and formalising village governance, it has triggered various concerns, ranging from theoretical and philosophical to social and legal problems.

The Bureaucratic Village listed in Articles 1-95) and the Customary Village listed in Articles 96-111 in Law No. 6 of 2014 concerning Villages are part of Law 6/2014 referring to Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, the Constitution does not specifically regulate villages, especially customary villages.[7] The customary village governments in the Mukim-Gampong area in Aceh, Tenganan Pegringsingan-Karangasem village, Pecatu-Badung, Tosari-Pasuruan, and Kanekes-Baduy have different sociological and cultural system characteristics (Open Stelsel and Closed Stelsel), but without exception must be subject to the village government regulations according to Law 6/2014.[8] However, in regions with customary law communities and customary villages,

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2 Komang Krisna Heryanda et al., "Advancing Customary Village Development in Bali Through Community Participation: Do Village Government Roles Matters?," *Journal of Accounting Research, Organization and Economics* 6, no. 1 (2023): 34–48, https://doi.org/10.24815/jaroe.v6i1.32107.

3 Sri Wahyu Kridasakti et al, "Mukim : An Alternative Dispute Resolution Village Level in Indonesia Judicial System," *Syiah Kuala Law Journal* 8, No. April (2024): 17–29.

4 Kurniawan, "Evaluasi Dampak Dana Desa Terhadap Pembangunan Infrastruktur Desa Di Indonesia," *Forum Ekonomi: Jurnal Ekonomi, Manajemen Dan Akuntansi* 23, no. 3 (2021): 513–22.

5 The Republic of Indonesia, "Undang-Undang Nomor 6 Tahun 2014" (2014), http://www.indolaw.org/UU/Law No. 6 of 2014 on Villages.pdf.

6 The Republic of Indonesia.

7 Anggun Rahmawati et al., "Legal Issues Behind Village Autonomy and Village Head Role in Village Governments," *Audito Comparative Law Journal (ACLJ)* 4, no. 2 (2023): 68–75, https://doi.org/10.22219/aclj.v4i2.23281.

8 Sri Wahyu Kridasakti et al., "Studi Kasus Pengaturan Hubungan Kelembagaan Pemerintahan Desa-Birokrasi Dengan Desa-Adat Di Wilayah Provinsi Bali," *Jurnal Supremasi* 12 (2022): 25–43, https://doi.org/10.35457/supremasi.v12i1.1825.

the implementation of Law 6/2014 has generated significant confusion regarding the application of Articles 96 to 111, which are intended to govern customary villages. In practice, Customary Villages are regulated more clearly through various Regional Regulations (Peraturan Daerah/Perda) at the provincial and district levels, particularly in Aceh and Bali.

These Regional Regulations often omit any reference to Law No. 6/2014 in their foundational considerations, and in many cases, the formulation of norms in these regional instruments offers more coherent and locally appropriate provisions than the national law. This situation reflects two critical juridical inconsistencies. First, there is a vertical inconsistency between Law No. 6 of 2014 and the 1945 Constitution, particularly Article 18B(2),[9] which mandates that the State must recognise and respect customary law communities along with their traditional rights, provided they remain in existence and are in line with the development of society and the principles of the unitary State. Law No. 6/2014 fails to fully implement this constitutional recognition, especially in the way it imposes a uniform bureaucratic framework on diverse customary systems. Second, there is a horizontal inconsistency between Law No. 6 of 2014 and existing regional regulations (Perda), particularly in Aceh and Bali, where local governments have enacted legal frameworks that better reflect the identity, authority, and governance structures of customary villages. These inconsistencies raise complex questions about the hierarchy of laws and the appropriate balance between national regulation and local autonomy.

The dicta contained in Law No. 6/2014 concerning customary villages, particularly in Articles 98 to 110, reveal a strong element of state intervention and standardisation, which may undermine the unique status of customary law communities. These communities—such as those in Mukim-Gampong (Aceh), Tenganan Pegringsingan and Pecatu (Bali), Tosari (East Java), and Kanekes-Baduy (Banten), function according to cultural systems deeply rooted in either Open Stelsel or Closed Stelsel traditions. Their legal consciousness and sociocultural norms operate as *living law*, whose legitimacy derives from within the community rather than state recognition. Inserting external authority into this context without appropriate recognition threatens the integrity and sustainability of these customary systems.

Based on the foregoing, this study aims to evaluate whether the regulation of customary villages in Law No. 6 of 2014 is legally valid and consistent with constitutional principles and legal development standards. It also investigates the juridical implications of this law's application in regions with strong customary village traditions, such as Aceh, Bali, Banten, and East Java.

RESEARCH METHODS

This research adopts a socio-legal approach[10] combining normative legal analysis with empirical inquiry to explore the regulation and legitimacy of customary villages under Law No. 6 of 2014. Typologically, it uses a qualitative case study design with five observation loci:

[9] The Republic of Indonesia, "The Constitution Of The State Of The Republic Of Indonesia Of The Year 1945" (1945).

[10] Rina Elsa Rizkiana and Michael Gerry, "Penanganan Hak Atas Perumahan Yang Layak Terkait Backlog Di Masa Pandemi Covid 19 : Studi Kasus Di Kota Samarinda (Decent Housing Rights Handling Related to Backlog during Covid-19 Pandemic : Samarinda City Case Study)," *HAM* 13, no. 2 (2022): 287–304, https://doi.org/http://dx.doi.org/10.30641/ham.2022.13.287-304.

Gampong-Mukim in Aceh, Tosari-Tengger in East Java, Kanekes-Baduy in Banten, Tenganan Pegringsingan in Karangasem, and Pecatu in Badung, Bali. Data were collected through two main techniques: document review and fieldwork involving Focus Group Discussions (FGDs) and semi-structured interviews. The document review covered Law No. 6/2014, relevant regional regulations (Perda) at the provincial and district levels, village-level rules such as Qanun Gampong and Awig-Awig, and related policy documents. Meanwhile, the empirical data were obtained through FGDs and interviews with a total of 23 informants across the five customary village communities. These informants included traditional leaders (such as Imum Mukim, Panglima Laot, Kepala Suku, and Pemangku Adat), bureaucratic village officials (such as Kepala Desa and BPD), and local scholars or community members who are actively involved in customary governance. The fieldwork was conducted over four months, from January to April 2024.

To ensure the validity and reliability of the data, the study applied triangulation techniques, comparing insights from various informant groups and document sources. Cross-verification among participants within the same locality was used to confirm consistency, and data were coded iteratively to identify recurring themes and contradictions. The analytical method involved both content analysis of key legal provisions in Law No. 6/2014 particularly Articles 98 to 100 (on recognition and subsidiarity), Article 103 (authority), Article 104 (diversity), Article 105 (as-signment), and Article 110 (customary village regulations), and contextual analysis of how these provisions are interpreted and implemented in the five field sites. These analyses were grounded in theories of legal pluralism, decentralisation, subsidiarity, and the principles of legal harmonisation, providing a comprehensive socio-legal assessment of the conflicts and gaps in the current regulatory framework.

ANALYSIS AND DISCUSSION

Legitimacy of Customary Village Regulations in Law 6/2014

The rules that live in indigenous villages run as the living law together with customary law, melting into one whole current life behaviour.[11]. The concept of *Open Stelsel*, which characterises the normative structure of customary village communities in Aceh, reflects the pluralistic and adaptive nature of living law (*ius vivum*). However, this dynamic character often clashes with the formalistic tendencies of national law, especially when statutory frameworks such as Law 6/2014 impose rigid administrative requirements. The open-ended nature of customary norms becomes vulnerable to state reinterpretation and instrumentalisation, as the State often does not recognise this fluidity as a source of legal legitimacy, but rather treats it as an administrative irregularity[12] The institutional relationship between Gampong/village bureaucratic government is a dynamic condition of interaction between the lowest and smallest legal community organs of the government system, which have their respective interests and territorial boundaries based on their origins or customs (recognised by the State) as the

[11] Fany N R Hakim et al., "Living Law and the Struggle for Indigenous Forest Rights : A Critical Criminology Study of the Baduy Community," *DEVIANCE JURNAL KRIMINOLOGI* 9, no. 1 (2025): 21–35, https://doi.org/10.36080/djk.3918.

[12] Achmad Hariri and Basuki Babussalam, "Legal Pluralism: Concept, Theoretical Dialectics, and Its Existence in Indonesia," *Walisongo Law Review (Walrev)* 6, no. 2 (2024): 146–70, https://doi.org/10.21580/walrev.2024.6.2.25566.

vanguard in carrying out government functions in the area. The problem is that since the promulgation of the existence of two types of Gampong/bureaucratic village and Mukim/customary village in Law 6/2014, the regulation of institutional relations, especially the existence of Mukim, has not been explained so that in the matter of regulating the institutional relations of the Gampong/bureaucratic village and Mukim/customary village until now. This indicates a potential gap in the synchronisation between national and regional laws, which still needs to be addressed through clearer regulations

The legal relationship between Gampong/bureaucratic village and Mukim/customary village is not regulated in Law 6/2014.[13] The absence of explicit regulation on the institutional relationship between Gampong and Mukim in Law 6/2014 creates not only legal ambiguity but also administrative fragmentation. In practice, this normative vacuum results in overlapping jurisdictions, particularly in areas such as land titling, dispute resolution, and budget allocation. For instance, where Mukim leaders exercise authority based on communal consensus, Gampong heads claim statutory backing for unilateral decision-making, leading to legal uncertainty and community disempowerment.[14] This institutional dualism undermines both the principle of legal certainty (*rechtssicherheit*) and the constitutional mandate of recognition for traditional communities under Article 18B(2) of the 1945 Constitution..The legal status of the Gampong is 'Semi Formal Government' because it is not part of the decentralised government system regime. Law 6/2014 and Government Regulations number 43/2014 jo. Government Regulation 11/2019 does not regulate the relationship between Gampong/bureaucratic village and Mukim/customary village, even though, in fact, within one village area entity, there can be Gampong/bureaucratic village and Mukim/customary village. The Mukim government system as a customary village has autonomous authority attributively to regulate and manage its respective community entities and traditional territories, through the implementation of the principle of recognition and the principle of subsidiarity. However, there is confusion in the implementation of the regulation and management of legal relations between the Gampong/bureaucratic village and the Mukim/customary village. This is also indicated to occur in the province of Bali and the Tengger community in East Java.

The norms in customary village communities in Bali (Tenganan Pegringsingan and Pecatu) and the Tengger community (Tosari) are characterised by open *stelsel*, which means that what is adopted by village communities is dynamic and flexible in responding to or facing the influence of the development of modern civilisation[15], Society 5.0, without having to clash with religious (Hindu) and customary values and principles. The dynamics of change are addressed through justification for fulfilling benchmarks for the values of benefit, progress and prosperity of the general village community, which do not conflict with religious and traditional values.

[13] Sulaiman et al., "The Strategy of Institutional Collaboration to Expedite The Recognition of Customary Law Communities Through Land Registration in Aceh Besar, Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 21, no. 1 (2025): 135–54, https://doi.org/10.14710/lr.v21i1.64760.

[14] Teuku Muttaqin Mansur et al., "The Division of Mukim and Gampong Traditional Areas in Customary Forest Management in Aceh Province, Indonesia," *Jurnal Geuthèë: Penelitian Multidisiplin* 7, no. 1 (2024): 49, https://doi.org/10.52626/jg.v7i1.329.

[15] Anak Agung Gede Agung Indra Prathama, "Desa Adat Sebagai Subyek Hukum Dalam Struktur Pemerintahan Provinsi Bali," *Jurnal Yustitia* 16, No. 1 (2022): 62–70, Https://Doi.Org/10.62279/Yustitia.V16i1.901.

The findings show the inaccuracy of the norms formulated as regulations for customary villages in Articles 98-100 regarding the implementation of the principles of "recognition and subsidiarity", Article 103 regarding "authority", Article 104 regarding "diversity", Article 105 regarding "assignment" and Article 110 regarding "customary village regulations". These inconsistencies potentially hinder the realisation of the State's constitutional mandate to acknowledge and respect traditional institutions and customary communities. The analysis of these findings is explained as follows:

Article 98, paragraph (2) determines Customary villages

Article 98 establishes customary villages by requiring alignment with statutory regulations concerning village governance, development, and infrastructure.[16] Article 98, by subordinating the recognition of customary villages to administrative prerequisites, such as the presence of infrastructure, development planning, and bureaucratic apparatus, essentially redefines the legitimacy of adat communities through a technocratic lens. This not only contradicts the *attributive nature* of indigenous rights but also marks a shift from recognition to assimilation. Such top-down standardisation echoes the colonial legacy of the *Binnenlands Bestuur*, where native institutions were co-opted rather than empowered.[17] As a result, sociocultural legitimacy is rendered invisible unless it conforms to state-centric development logic. In effect, the formal recognition of a customary village is conditioned not upon its historical continuity, sociocultural cohesion, or traditional governance, but upon the fulfilment of criteria derived from modern state governance frameworks such as having infrastructure, development plans, and an administrative apparatus.

This reflects a top-down model of legal recognition, where the State acts as the sole arbiter of what constitutes a legitimate community. Consequently, customary villages that do not meet the formal bureaucratic standards, even if they function effectively based on adat norms, may be excluded from legal recognition. This contradicts the principle of recognition, which should acknowledge the legitimacy of traditional institutions as they exist de facto in society. Moreover, by standardising the prerequisites for village recognition, Article 98 undermines the subsidiarity principle, which entails that governance should occur at the most local level capable of addressing the issues at hand. Rather than empowering local communities to assert their own identities and governance structures, the article imposes a uniform administrative template that prioritises state-defined notions of functionality over indigenous self-governance. This bureaucratic formalism effectively marginalises communities whose customary governance systems do not fit neatly within the State's legal-administrative mould.

In practice, this leads to the erasure or dilution of local governance models that are not sufficiently 'modern' or 'efficient' in the eyes of the State. It also risks instrumentalising customary communities, recognising them only to the extent that they can serve state development agendas, rather than respecting their autonomy. Therefore, Article 98 fails to

[16] Dian Herdiana, "Urgensi Revisi Undang-Undang Nomor 6 Tahun 2014 Tentang Desa Perihal Pembangunan Desa," *Jurnal Hukum & Pembangunan* 50, no. 1 (2020): 245, https://doi.org/10.21143/jhp.vol50.no1.2493.

[17] Maarten Manse, "The Plural Legacies of Legal Pluralism: Local Practices and Contestations of Customary Law in Late Colonial Indonesia," *Legal Pluralism and Critical Social Analysis* 56, no. 3 (2024): 328–48, https://doi.org/10.1080/27706869.2024.2377447.

implement a genuinely pluralistic legal approach and instead perpetuates the dominance of state law over living customary law systems

Article 100, paragraphs (1) and (2) regarding changes in the status of Customary village

Article 100 introduces the possibility of changing the status of customary villages and administrative villages (*Desa* or *Kelurahan*), allowing for transitions between these categories. On the surface, the provision adopts a participatory approach, as it requires the initiative to come from the local community through a village deliberation process (*Musyawarah Desa*). However, in practice, the mechanism remains state-directed because the final decision-making authority rests entirely with the regional government. This top-down control structure effectively reduces the community's deliberation to a procedural requirement rather than a decisive exercise of self-determination.

Such a framework reveals a limited understanding of the principle of subsidiarity, which should grant more decision-making autonomy to communities themselves, particularly in matters concerning their identity and governance model. Instead of being a process of community-driven legal transformation, the change of status becomes an administrative procedure mediated by the State, which retains the discretion to approve or deny such transitions based on considerations that may not align with the community's customary worldview or aspirations.

Moreover, Article 100 also stipulates the automatic conversion of village assets following a change in status. For instance, if a *Kelurahan* (sub-district) becomes a customary village, its assets are automatically transformed into customary village property, and vice versa. The automatic conversion of village assets following a change in status, as regulated in Article 100, reflects a reductive interpretation of property regimes, ignoring the ontological difference between adat property and state-defined assets.[18] In many customary systems, land functions not as a commodity but as a spiritual, ancestral trust, where ownership implies stewardship rather than title. By failing to distinguish between administrative and ritual property legally, the article opens the door to *bureaucratic expropriation*, where adat lands may be reclassified and allocated without community consent, especially in the absence of cadastral documentation. Such conditions heighten the risk of *legalised dispossession*.[19] In many customary law systems in Indonesia, land and assets are not owned individually or even collectively in the modern legal sense, but are inherited, stewarded, and managed based on ancestral, religious, or ritual significance.

Treating such assets as interchangeable with administrative village property ignores the ontological differences in how property is conceptualised. It also exposes customary communities to the risk of asset alienation, bureaucratic misclassification, or even land grabbing, especially when the customary land has not been formally registered under state cadastral systems. These dynamics point to a broader lack of legal sensitivity to Indonesia's pluralistic socio-legal landscape, where customary and State law often operate in parallel but conflicting frameworks.

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[18] Rika Fajrini, "Environmental Harm and Decriminalization of Traditional Slash-and-Burn Practices in Indonesia," *International Journal for Crime, Justice and Social Democracy* 11, no. 1 (2022): 28–43, https://doi.org/10.5204/ijcjsd.2034.

[19] S Srinivas et al., "Towards Indonesian Land Reforms: Challenges and Opportunities," *The World Bank*, 2014.

Ultimately, Article 100 reflects a state-centric model of legal transformation that views customary identity as fluid and administratively reconfigurable, without acknowledging the deeper cultural, spiritual, and historical meanings embedded in the customary village structure. The provision exemplifies how symbolic recognition of customary institutions can coexist with substantive marginalisation, especially when the legal instruments of change are designed to conform to a singular administrative logic.

Article 102 concerns the arrangement of Customary villages

Article 102, which mandates that the structuring of customary villages must follow existing general provisions related to villages (Articles 7, 8, 14–17), reflects a homogenising tendency. Instead of allowing space for diversity in institutional arrangements and local governance forms, this article effectively subordinates customary villages under the same administrative logic applied to non-customary villages. This contradicts Article 18B paragraph (2) of the 1945 Constitution, which guarantees recognition and respect for traditional communities along with their traditional rights, as long as they are still alive and in accordance with societal development. Articles 103–105 and 110, which pertain to authority, diversity, assignment, and the issuance of customary village regulations, also fail to offer genuine autonomy to customary villages. Although these articles rhetorically acknowledge diversity and the possibility of local regulation, in practice, they impose rigid frameworks that must conform to higher-level legislation. As a result, the authority of customary villages is not derived from their traditional legal systems, but rather from delegation by the State, violating the very principle of subsidiarity.

The normative framework provided in these articles prioritises administrative integration over authentic legal pluralism. The inconsistency lies in the symbolic recognition of customary institutions while simultaneously constraining their autonomy through procedural and substantive standardisation. These findings suggest the need for regulatory reform that upholds the spirit of constitutional recognition, respects the distinctiveness of customary law systems, and truly implements the subsidiarity principle by empowering communities to govern according to their traditions and internal structures.

Article 101 paragraph (1) The Government, Provincial Regional Governments and Regency/City Regional Governments can organise these Customary villages. Article 102 further emphasises this by requiring it to refer to the articles governing Village Bureaucracy. The norms of Article 101 and Article 102 have implications for the ambiguity of the application of the principles of "recognition and subsidiarity" in this formulation. Before presenting the core legal inconsistencies, it is important to understand the political and legal positioning of traditional villages within regional legal frameworks. In the case of Bali, the legal foundation for traditional village governance is primarily rooted in regional autonomy and cultural identity. This is reflected in the Bali Province Regional Regulation No. 4 of 2019 concerning Traditional Villages. Interestingly, as seen in its preamble, this regulation does not refer to Law No. 6 of 2014 on Villages as a legal basis, but instead relies on broader regional government laws, such as Law No. 23 of 2014 on Regional Government.[1] This omission raises questions about the coherence of national and regional legal instruments in accommodating the recognition and institutionalisation of traditional villages. The research findings apparently

show that the legal politics regarding the arrangement of customary villages in Bali Province Regional Regulation 4/2019 concerning Customary villages, in the preamble section, does not place reference to Law 6/2014 but to regional government laws. Bali Province Regional Regulation 4/2019 concerning Customary villages, the legal side of which uses Article 236 paragraph (4) of Law 23/2014 concerning Regional Government, especially the content of local material in the formation of the Regional Regulation. This can be interpreted as meaning that Law 6/2014, which regulates Administrative Village and customary villages, is considered to mean that the legal policies forming the Bali Provincial Regulation are irrelevant to the meaning and significance of customary villages (Pakraman) in Bali, which do not need to be regulated (intervened) but given recognition through granting attributive authority through related laws.

In Kanekes-Baduy village, the institutional relationship between the bureaucratic village (Baduy-Outer) and the customary village (Baduy-Inner) before the promulgation of Lebak Regent Regulation number 38 of 2023 regarding the implementation of the Kanekes customary village as a customary village is completely based on the norms of the living law. At the level of statutory regulations, Law 6/2014 concerning Villages, Government Regulations number 43/2014 concerning Implementing Regulations of Law 6/2014, and Government Regulations number 11/2019 regarding the Second Amendment to Government Regulations number 43/2014 concerning Implementing Regulations of Law 6/2014 do not regulate the bureaucratic village and customary village institutional relationship. Article 1-95 of Law 6/2014 regulates bureaucratic villages, and Articles 96-111 of Law 6/2014 regulate customary villages, but neither regulates the relationship between bureaucratic and customary villages. There are two types of village institutions with different statuses, main tasks and functions, but in the four observation villages, physical territories are not mutually exclusive. The legal problem is that the bureaucratic village and customary village relationship is not regulated in concrete norms and rules, so all aspects of power, rights, obligations, responsibilities, leadership, property ownership, territorial areas, and administrative relations between the two institutions cause unanticipated conflicts of interest. The legal problem is that the relationship between the administrative village and the customary village is not regulated in concrete norms and rules. As a result, issues related to power-rights, obligations, responsibilities, leadership, property ownership, territorial boundaries, and administrative relations between the two institutions often lead to unanticipated conflicts of interest.

In several regions in Aceh, for example, disputes have occurred between the *Keuchik* (bureaucratic village head) and *Imuem Mukim* (customary leader) regarding authority over land certification and the management of *tanah adat*.. This case illustrates a deeper clash between *bureaucratic legality* and *customary legitimacy*. The refusal of the Mukim leader to consent to infrastructure projects outside of adat deliberation reflects a parallel claim to sovereignty where participation is not merely consultative,[20] but constitutive of decision-making. Meanwhile, the Keuchik's reliance on statutory authority underscores the dominance of state proceduralism. Such dual claims generate *normative dissonance*, often culminating in regulatory deadlocks or

[20] Khaidir Ali, Winda S Meliala, and Corry Novrica Sinaga, "Peran Pemerintahan Mukim Dalam Upaya Meningkatkan Pembangunan Desa Di Kecamatan Terangun, Kabupaten Gayo Lues," *Jurnal Intervensi Sosial Dan Pembangunan (JISP)* 4, no. 2 (2023): 77–86, https://doi.org/10.30596/jisp.v4i2.14276.

community resistance. These tensions reaffirm the necessity for a hybrid legal framework that institutionalises co-governance between formal and informal institutions. The bureaucratic village government, on the other hand, claimed it had full administrative authority under the framework of Law No. 6/2014. This situation illustrates how the absence of clear legal arrangements has resulted in overlapping claims and friction between these two institutional frameworks. Therefore, for the sake of order, there must be regulation through a formal codification system that synergistically meets the interests of the formal bureaucracy and the Open Stelsel customary system, and there is a Closed Stelsel pattern. The norms for relations with the bureaucratic village and customary village institution are dynamic and flexible, which fulfil the values of benefit, progress and prosperity of the general village community as a development of civilisation without conflicting with the principles of the Hindu religion and Balinese customs.

The connection between institutional gampong/bureaucratic village is a condition of dynamic interaction between unitary organs of society, the law of the lowest and smallest from the system government that owns its interests and boundaries of each region based on origins or customs (recognised by the State) as the vanguard operates a function government in the Aceh region. The problem is that there are two types of village figures: Gampong/bureaucratic village and Mukim/customary village (UU 6/2014). This institutional Imeun Mukim operates a custom function. The connection between the two types of villages is not explained. The arrangement of its institutions is also unclear, as is the existence of Mukim. Therefore between the two types different villages this is the fact its existence something melted No can separated, no as intended by Law 6/2014 which regulates Gampong/Village (Article 1 to Article 95) and Village- adat or in matter This is the Mukim (Articles 96 to Article 111) which separate on status and existence Imeun -Mukim (Qanun 4/2003 jo. Aceh Qanun 9/2008)

Article 103 regarding "authority"

Article 103 of Law No. 6/2014 appears, at first glance, to affirm the autonomy of Customary Villages (desa adat) by outlining a range of authorities based on the "rights of origin" (hak asal-usul). These include governance based on traditional structures, management of ulayat lands, preservation of local culture, dispute resolution based on customary law, the operation of customary courts, and maintaining public order within the community. However, a closer examination reveals that the formulation of these authorities reflects a delegative rather than an attributive model of recognition,[21] meaning that the state "grants" authority rather than acknowledges an inherent, pre-existing one.

The most notable constraint lies in the conditional subordination of these powers to statutory law. Although customary villages are described as having internal self-governance, their ability to resolve disputes or hold customary court sessions is subject to compliance with national statutory provisions and interpretations of human rights. This reflects a state-centric approach to legal pluralism, where indigenous legal orders are permitted to operate only to the extent that they align with national legal standards, which are themselves framed within a dominant legal culture that may not fully understand or accommodate local values.

[21] Nancy Fraser, *Recognition without Ethics?*, *The Culture of Toleration in Diverse Societies*, 2018, https://doi.org/10.4135/9781446216897.n2.

This formulation signals a lack of intercultural legal dialogue. Rather than fostering mutual respect and integration between legal systems, Article 103 imposes a one-way accommodation, where customary systems must adjust to the State's framework without reciprocal adaptation or recognition. While reference to human rights is important, the absence of a mechanism that allows for negotiation or contextual interpretation risks marginalising indigenous legal concepts under the guise of universalism.

Furthermore, the article assumes a uniform capacity among all customary villages to carry out complex administrative and judicial tasks. This ignores the historical diversity of customary communities in Indonesia, some of which have deeply institutionalised legal traditions. In contrast, others have experienced erosion or hybridisation due to colonial, missionary, or modern bureaucratic interventions. By applying a standardised template, Article 103 disregards the principle of subsidiarity, which holds that authority should be exercised at the most local level capable of managing it, based on internal dynamics rather than imposed expectations.

In addition, the emphasis on customary villages as institutions that "maintain peace and order" and "develop traditional legal life" reflects an instrumentalist logic. Instead of recognising these communities as autonomous legal orders, the State frames them as extensions of state control, designed to support public order or serve development goals. This approach fails to capture the normative richness and internal coherence of customary legal systems and may reduce them to mere cultural ornamentation within a bureaucratic framework.

In summary, although Article 103 outlines traditional village authorities, its wording subtly embeds a *delegative logic* where powers are 'granted' by the State, rather than recognised as inherent. This contradicts the *attributive model of recognition*, a principle in constitutional jurisprudence whereby indigenous rights are acknowledged as pre-existing and self-legitimating. The requirement that adat courts or dispute mechanisms comply with national standards reflects a vertical legal hierarchy inconsistent with the pluralist architecture implied in Article 18B(2). Without reciprocal legal dialogue, this provision enforces legal assimilation rather than intercultural justice.[22] From the perspective of legal pluralism, genuine recognition requires that customary law be accepted not merely as a supplement to state law but as a coexisting, legitimate legal order. Moreover, in line with the principle of subsidiarity, regulation should be aimed at facilitating, not overriding, the organic self-regulation of indigenous communities. Therefore, future reforms should ensure that recognition of customary authority is not conditional upon conformity with external standards, but rooted in mutual respect and institutional parity.

Article 104 regarding "diversity"

Article 104, which emphasises that the implementation of customary village authority must consider the principle of "diversity," appears to signal respect for plural legal traditions. However, a closer reading reveals that this clause serves more as a rhetorical gesture than as a substantive affirmation of indigenous legal autonomy. The notion of "diversity" is framed within a top-down regulatory logic, where state law sets the outer limits of acceptable variation.

[22] Kirsten Anker, "Reconciliation in Translation: Indigenous Legal Traditions and Canada's Truth and Reconciliation Commission," *Windsor Yearbook of Access to Justice* 33, no. 2 (2020): 15–43, https://doi.org/10.22329/wyaj.v33i2.4842.

Rather than enabling indigenous communities to define their models of diversity, the article imposes a generalised understanding of democratic and tolerant values, potentially derived from national or even international legal frameworks.

Such framing risks delegitimising customary systems that do not align with liberal democratic ideals.[23] In practice, indigenous governance traditions in places like Gampong and Mukim (Aceh), Desa Adat Tenganan and Pecatu (Bali), Kanekes (Banten), and Tosari (Tengger) reflect legal pluralism in action, where state law and adat coexist.[24] These models embody "vernacular legalities" that diverge from the universalist assumptions embedded in Article 104.[25]

Moreover, the imposition of a singular state-defined "diversity" undermines genuine recognition that state recognition must not condition indigenous autonomy on conformity to external norms.[26] Therefore, Article 104 reflects not just regulatory control but a form of *managed diversity* that sustains the hegemonic legal order under the guise of pluralism.

A more pluralistic and respectful legal architecture would treat indigenous interpretations of diversity as valid in their terms, and provide space for different epistemologies, governance models, and legal reasoning, so long as they are consistent with fundamental human dignity and constitutional norms. Instead, Article 104, as currently framed, facilitates intervention under the guise of safeguarding diversity, thereby reasserting state dominance over indigenous legal autonomy.

Article 105 regarding "assignment"

The normative formulation of Article 105 reflects a problematic approach to the regulation of "assigned authority" and "other task authority" from higher levels of government to the Customary Village. The provision ambiguously defines what constitutes such delegated or assigned powers, leaving room for conflicting interpretations and inconsistent implementation. This lack of clarity creates a legal vacuum that may result in overlaps and friction between state-imposed responsibilities and the pre-existing authority structures of customary communities. This resonates with what Ali Muhammad *et al* (2025) described as the fragmentation of decentralised authority, where the lack of specificity in legal delegation creates room for bureaucratic overreach.[27] The unclear frameworks of assignment in village governance tend to produce accountability gaps and elite capture, especially when local legal norms are marginalised.

As Moonti and Ahmad (2023) emphasise, effective oversight mechanisms are critical in preventing abuse of power and ensuring fiscal accountability in village governance. However, applying uniform administrative oversight models to customary villages, without adjusting to

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[23] Belinda Pudjilianto and Emy Handayani, "Penerapan Pluralisme Hukum Dalam Masyarakat," *Diponegoro Law Journal* 11, no. 2 (2022): h. 344, https://ejournal3.undip.ac.id/index.php/dlr/article/view/34957/27381.

[24] Suci Flambonita et al., "The Concept Of Legal Pluralism In Indonesia," *Jurnal Analisa Sosiologi* 10, no. Edisi Khusus ICOSAPS (2021): 361–73.

[25] Taufik Siregar, Ikhsan Lubis, and Anwar Sadat Harahap, "The Role of Local Wisdom in Law: Alternative Dispute Resolution in the Land Sector in North Sumatra, Indonesia," *ISVS E-Journal* 10, no. 1 (2023): 312–19.

[26] Retno Kus Setyowati, "Pengakuan Negara Terhadap Masyarakat Hukum Adat," *Binamulia Hukum* 12, no. 1 (2023): 131–42, https://doi.org/10.37893/jbh.v12i1.601.

[27] Ali Muhammad et al., "Multilevel Governance and Indonesia's Strategy for Climate Change Mitigation and Adaptation," *Jurnal Hubungan Internasional* 13, no. 2 (2025): 14–27, https://doi.org/10.18196/jhi.v13i2.20999.

their internal legal and social structures, risks undermining both accountability and legitimacy. In the context of Article 105, where assignment of authority lacks clarity and specificity, such models may exacerbate governance challenges rather than resolve them.[28]

The urgency of administrative law reform becomes apparent when legal norms concerning village governance, particularly those allowing open legal policy, are not accompanied by clear implementing regulations.[29] This resonates with the ambiguous formulation of assigned authority in Article 105, which risks fostering conflicts between state-led assignments and the internal autonomy of customary institutions.

From a theoretical perspective, this ambiguity undermines the principles of legal subsidiarity and reconciliation that are fundamental to the recognition of Customary Villages as autonomous and culturally grounded legal entities. Rather than empowering local governance in accordance with their distinct socio-legal traditions, the undefined nature of assigned authority opens the door for top-down interventions that may override indigenous norms, priorities, and decision-making processes.

Empirical observations from various regions, such as the Mukim institution in Aceh, the Desa Adat in Bali, and the Kanekes in Banten, illustrate that state-driven assignments often contradict local governance logics, especially when they are issued without genuine consultation or adaptive mechanisms. In practice, many assignments have involved administrative or development tasks that fail to align with customary roles and thus generate tension between government officials and adat leaders.

The lack of institutional harmony between the Ministry of Home Affairs (*Kemendagri*) and the Ministry of Villages (*Kemendes*), as described by Sarip et al. (2020), reflects deeper constitutional inconsistencies in how authority over village governance is divided.[30] This disharmony becomes especially visible in the context of customary villages, where regulatory overlaps can result in legal uncertainty and undermine subsidiarity. Such institutional dissonance exacerbates the problem of unclear assigned authority, making it difficult for local actors to determine which ministry's directives take precedence, particularly in contexts where adat governance structures are strong and historically embedded.

To address this, the concept of "assignment" should be reformulated not merely as a one-way delegation of duties, but as a framework of cooperation and negotiated partnership. A clearer delineation is required to distinguish between supportive interventions and intrusive mandates. This would ensure that assigned tasks are context-sensitive, mutually agreed upon, and do not erode the Customary Village's inherent authority. In turn, such an approach would realign the law with its purported commitment to asymmetric decentralisation and legal pluralism.

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[28] Roy Marthen Moonti and Ibrahim Ahmad, "Budget Supervision and Mechanism by an Administrative Village in Indonesia," *Sriwijaya Law Review* 3, no. 2 (2019): 176–86, https://doi.org/10.28946/slrev.vol3.iss2.213.pp176-186.

[29] Diding Rahmat et al., "The Urgency of Administrative Law in Light of Ius Constituendum Regarding the Role of Village Heads," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024): 53–67, https://doi.org/10.24090/volksgeist.v7i1.10204.

[30] Sarip, Nur Rahman, and Rohadi, "Hubungan Kemendagri Dan Kemendes Dalam Tata Desa Dan Administrasi Desa," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 81–97, https://doi.org/10.24090/volksgeist.v3i2.3980.

Article 111 paragraph (2) regarding "customary village regulations"

The formulation of Article 111(2) reflects a hierarchical logic in which general village provisions are presumed to apply to Customary Villages, unless specifically excluded. This residual approach creates a legal uncertainty that undermines the recognition of Customary Villages as autonomous legal subjects. The assumption that bureaucratic village laws can automatically extend to Customary Villages in the absence of "special provisions" contradicts the very notion of legal pluralism and asymmetrical decentralisation promoted by Law No. 6 of 2014. As noted by von Benda-Beckmann, residual legal frameworks often fail to accommodate the fluidity of adat authority, which is not easily mapped onto bureaucratic templates.[31] The imposition of state-centric regulations as defaults, unless explicitly overridden, reflects a constitutional monoculture that contradicts the principles of legal pluralism.[32] Studies also confirm that the lack of clarity in legal hierarchies contributes to the marginalisation of adat authority, despite formal recognition post-Constitutional Court decisions.[33]

This ambiguity becomes problematic in practice. Field findings in four research sites reveal that the institutional relationship between bureaucratic and customary villages is shaped not by formal codification, but by locally grounded norms of mutual trust and living law. For instance, in Bali, the relationship is characterised metaphorically as that of a "husband and wife," reflecting a partnership based on balance and mutual respect rather than top-down control. These practices operate successfully *without the need for detailed written rules*, highlighting the strength of local legal culture in mediating institutional arrangements.

However, not all village regulations rooted in local tradition operate harmoniously. The empirical findings in Bukittinggi demonstrate how village regulations, though designed to safeguard local culture and social cohesion, can also raise concerns regarding discrimination against outsiders.[34] In Campago Guguak Bulek Nagari, for example, certain customary norms embedded in village regulations were found to limit the participation and presence of migrants or non-natives, sparking debate over the inclusivity of adat-based rule-making. This illustrates the tension in Article 111, which assumes that general village regulations can be uniformly applied without regard to such nuanced socio-legal dynamics.

However, in regions where such mutual trust has not been institutionalised or respected, the vagueness of Article 111(2) has been exploited to impose development projects that disregard customary rights. There are documented cases where forest areas managed under adat jurisdiction have been compromised in the name of "national development," with Customary Villages left with little legal recourse due to the weak normative protection under current statutory law.

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[31] Bertram Turner, "Exploring Avenues of Research in Legal Pluralism: Forward-Looking Perspectives in the Work of Franz von Benda-Beckmann," *Journal of Legal Pluralism and Unofficial Law* 47, no. 3 (2020): 375–410, https://doi.org/10.1080/07329113.2015.1113690.

[32] Muhammad Nizar Kherid and Fifiana Wisnaeni, "Pluralism Justice System Dalam Penyelesaian Masalah Kebebasan Beragama," *Masalah-Masalah Hukum* 48, no. 4 (2019): 385, https://doi.org/10.14710/mmh.48.4.2019.385-392.

[33] Iqbal Maulana et al., "Justice for Indigenous People: Management Right Term to Third Parties," *Indonesia Law Reform Journal* 4, no. 1 (2024): 59–74, https://doi.org/10.22219/ilrej.v4i1.33058.

[34] Helfi et al., "Portraying 'Village Regulations' among Urban Community in Campago Guguak Bulek Nagari, Mandiangin Koto Selayan, Bukittinggi, West Sumatra," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 1 (2021): 24–49, https://doi.org/10.19105/al-lhkam.v16i1.4340.

Thus, the provision as currently written tends to subordinate Customary Villages to bureaucratic frameworks unless otherwise stipulated, placing the burden of proof for legal recognition on the indigenous communities themselves. This reverses the spirit of recognition enshrined in the Constitution and various international human rights instruments. To ensure coherence with the principle of *recognition and respect* for indigenous law, Article 111(2) should be reformulated to affirm that provisions concerning bureaucratic villages do not apply to Customary Villages unless expressly agreed to or aligned with local adat norms, thereby strengthening their autonomy and avoiding normative imposition under the guise of general regulation.

In Bali, the Ratio-legis for the formation of Bali Province Regional Regulation number 4 of 2019 does not refer to Law 6/2014, indicating the irrelevance of customary villages regulated through Law 4/2016, because customary villages do not need to be regulated but are recognised. On the other hand, the village of Kanekes-Luwidamar-Lebak-Banten (Baduy Community) is regulated by Regency Regulation No. 13 of 1990 concerning the Guidance and Development of Baduy Traditional Institutions and Regency Regulation No. 32 of 2021 concerning the Protection of Baduy Ulayat Rights. These two regional regulations do not refer to Law 6/1014, but do refer to Law 23/2014 concerning Regional Government. For the Balinese people, the bureaucratic village-customary village relationship is not a separate institutional relationship. Meanwhile, the indigenous communities in the villages of Tosari, Tengger, Pasuruan, East Java, are currently not regulated by Provincial Regional Regulations or Regency Regulations.

In Aceh, Mukim was formed to bring together people in a single area, comprising at least four internal Gampong authorities, which is legally formally determined by the Regency or City Government through the formation of Qanun Number 4 of 2003 and Aceh Qanun Number 9 of 2008. The legal implications of the absence of codification of norms and institutional relations in bureaucratic villages and customary villages in the four observation areas did not reveal any tangible negative impact.

These legal and empirical findings indicate the need for a stronger theoretical framework to understand the relationship between bureaucratic and customary villages. Viewed through relevant legal theories, the observed inconsistencies reflect deeper systemic and normative challenges, as elaborated below: this study analyses the regulatory tension between bureaucratic villages and customary villages in light of several core legal theories. Drawing on the framework of legal pluralism, the study recognises that state law (Law 6/2014) does not operate in isolation but coexists with living customary laws, which function autonomously within indigenous communities.

Applying recognition theory, the analysis highlights how the principle of recognition enshrined in Article 18B(2) of the 1945 Constitution requires more than symbolic acknowledgement; it demands substantive legal space for customary governance to thrive without undue state interference. Furthermore, the paper uses decentralisation theory to critique the centralist tendencies of Law 6/2014, which creates vertical inconsistencies with the constitutional mandate of regional autonomy and horizontal inconsistencies with local regulations (Perda), such as those found in Aceh and Bali. Finally, the rule of law framework is employed to interrogate whether the legislative and administrative practices concerning

customary village regulation meet the standard of legality, clarity, and justice expected in a pluralistic legal order.

Such structural bias in the legal design of village governance raises fundamental constitutional concerns. Instead of giving effect to the mandates of Articles 18, 18A, and 18B of the 1945 Constitution, particularly the recognition of traditional communities and their rights, the corporatist approach embedded in Law No. 6/2014 imposes a state-defined model that eclipses local diversity. This corporatist design reflects a centralistic logic that prioritises institutional conformity over substantive autonomy, reducing customary authority to symbolic recognition and undermining the principles of legal pluralism and decentralisation.[35]

The research findings further demonstrate a vertical inconsistency between Law No. 6/2014 and Article 18B(2) of the 1945 Constitution. Although Article 18B(2) guarantees state recognition and respect for customary law communities and their traditional rights, the implementation of Law 6/2014 limits this recognition to formal administrative structures, such as the designation of villages as 'Desa Adat', which is a process often requiring adaptation to bureaucratic frameworks. This top-down model erodes the lived authority structures and social functions of customary villages, particularly in Aceh and Bali, where local governance traditions are deeply embedded in community life.

In Aceh, the Gampong-Mukim structure reflects a distinct legal tradition embedded in Islamic and adat (customary) law. However, the current regulatory model in Law 6/2014 does not adequately accommodate the dual governance system between Gampong and Mukim. This gap indicates a failure of substantive recognition as conceptualised by recognition theory, where legal acknowledgement must go beyond procedural inclusion and extend to institutional empowerment.

The findings from Bali, particularly in Tenganan Pegringsingan and Pecatu, show horizontal disharmony between national law and regional regulations (Perda Provinsi Bali). The existence of distinct forms of community-based regulations (awig-awig) rooted in Hindu-Balinese cosmology reveals the limits of Law 6/2014's standardisation. From the standpoint of legal pluralism, these awig-awig should be respected as autonomous normative systems that do not need to conform to state law hierarchies.

In Banten's Kanekes (Baduy) and East Java's Tosari (Tengger), the findings reveal similar tensions. The Baduy community continues to operate based on deeply internalised customary law, which does not always align with formal legal constructs. The Tengger village shows signs of integration with state bureaucracy but still retains a strong adat core. This duality illustrates a need for decentralisation theory to inform policy, acknowledging the asymmetry of village governance needs and allowing for region-specific frameworks.

The rule of law dimension becomes particularly relevant in assessing whether Law 6/2014 ensures legal certainty, equality before the law, and the protection of minority legal traditions. The research indicates a lack of clear statutory guidance on how customary village regulations should be recognised, which violates the principle of legal clarity as an essential component of the rule of law.

[35] Sri Wahyu Kridasakti et al., "Chronic Disease of State Corporatism in Indonesian Village Government," *Sriwijaya Law Review* 6, no. 2 (2022): 304–18, https://doi.org/10.28946/slrev.Vol6.Iss2.403.pp304-318.

By applying a combination of content analysis of Law 6/2014 particularly Articles 98–100 on recognition and subsidiarity, Article 103 on authority, Article 104 on diversity, Article 105 on assignment, and Article 110 on customary village regulations, and contextual analysis based on field data from Aceh, Bali, Banten, and East Java, the study finds that the harmonisation between State and customary regulation remains problematic. The integration of theoretical frameworks of legal pluralism, recognition theory, decentralisation, and the rule of law helps explain why legal disharmony persists despite constitutional and policy-level commitments.

This demand for recognition, when not accompanied by institutional adaptation, often creates a fragmented legal landscape, where customary and state legal systems operate in parallel yet remain disconnected. This highlights the urgency of legal reforms that are grounded in the lived practices and authority structures of adat institutions, rather than being imposed externally. Such reforms should involve not only revising Law No. 6 of 2014 to reflect the constitutional mandate for legal pluralism better, but also reinforcing local regulatory frameworks that are responsive to the diverse normative systems governing Indonesia's villages.

The following Table 1 below shows an overview of the relationship between administrative villages and customary villages in Gampong-Mukim Aceh, Tenganan Pegringsingan-Karangasem village, Pecatu Badung Bali, Tosari-Pasuruan East Java, Kanekes-Lebak Banten.

Table 1: ***An overview of the relationship between administrative villages and customary villages in Gampong-Mukim Aceh, Tenganan Pegringsingan-Karangasem village, Pecatu Badung Bali, Tosari-Pasuruan East Java, Kanekes-Lebak Banten.***

Region	Legal Reference	Institutional Status	Terminology & System	Funding & Village Assets
Tenganan (Bali)	Refers to Law 32/2004, not Law 6/2014	A hybrid of Customary and Bureaucratic Villages (semi-formal)	Awig-awig functions as a living law; an open legal system	Manages its own APBDes-Adat; land is leased for village benefit
Pecatu (Bali)	Same as Tenganan	Semi-bureaucratic Customary Village	Local-traditional mixed terms	Funded through tourism and local government support
Kanekes (Baduy)	Recognised under Law 6/2014 since Perda 38/2023	Initially semi-formal; now fully formal Customary Village	Distinction between Inner and Outer Baduy; closed system	No longer receives ADD; manages funds through APBDes-Adat
Tosari (Tengger)	Refers to Law 6/2014	Bureaucratic village with strong customary leadership	Open system; Dhukun and the Village Head lead jointly	Funding flows through the bureaucratic village; no separate adat finance
Aceh (Gampong–Mukim)	Refers to Qanun, not Law 6/2014	Dual structure: Gampong (bureaucratic) and Mukim (customary)	No clear regulation on institutional relationship	Gampong manages state funds; Mukim is not regulated under Law 6/2014

Source: *Analysis Research Data, 2024*

Legal Implications of Law 6/2014 on the Regulation of Customary Villages

The research results show that the legal implications of the 1945 NRI Constitution, Law 6/2014, Government Regulation (PP) no. 43 of 2014 jo. PP 11/2019, Bali Province Regional Regulations number 4 of 2019, as well as Qanun 4/2003 jo Aceh Qanun 9/2008. This regulatory inconsistency reflects a deeper normative tension between the State's legal-centralist

framework and the decentralised socio-legal foundations of customary law. Legal dualism in postcolonial states often fails when formal law does not internalise local legal meaning. The coexistence of bureaucratic and customary villages within the same territorial space without a clear normative hierarchy results in overlapping jurisdictions and fragmented authority. The existence of Customary Villages is almost entirely in the same territorial area as Bureaucratic Villages. The implication is that regulation of Customary Villages at the national level creates confusion in the understanding between regulating or recognising the authority rights of Customary Village originaires. Bali Province Regional Regulation number 4 of 2019 has shown the irrelevance of Pakraman-Customary Villages regulated through Articles 96 to 111 of Law 4/2016, because Customary Villages are already sufficiently recognised. The next research finding is that in the Baduy Customary Law Unit, Kanekes Village, Kab. Lebak Banten has been fully recognised as a Customary Village by Lebak Regent Regulation number 38 of 2023 concerning the Implementation of the Kanekes Village as a customary village. Before the publication of Lebak Regent Regulation number 38 of 2023, Banten Province Regional Regulation Number 2 of 2022 concerning Institutional Structure, Filling Positions, and Term of Office for Customary Village Heads, whose norms and rules regulate and recognise Kanekes village as a semi-governmental Administrative Village and Customary Village. The formal recognition of Kanekes as a Customary Village via Perbup 38/2023 marks a shift toward localised legal empowerment. However, without integration into the national village governance schema, such recognition remains vulnerable to administrative reinterpretation. As Perbawati *et al* (2023) emphasise, regional legal instruments must be synchronised with national frameworks to ensure the sustainability of indigenous autonomy.[36] The style of norms that apply in the Kanekes villages system is of a '*closed-stelsel'* character, which cannot or rejects the influence of civilisational values from outside. The distinction between closed and open legal systems (stelsel) reflects differing adaptive capacities toward legal modernization. Kanekes' closed-stelsel resists external legal influence, preserving legal identity but potentially hindering harmonization with statutory norms. Conversely, open-stelsel communities like Tosari may enable more legal integration but risk normative erosion. Legal pluralism must therefore balance cultural continuity with administrative coherence. [37]

Pakraman in the Balinese Customary Villages (Tenganan Pegringsingan and Pecatu), whose norms regulate the integration of the domain of Hindu religious spirituality with the domain of Balinese customs and the government domain of the Service Village; as stated in Bali Provincial Regulation 4/2019 and status of the Service Village according to Articles 1 to 95 of Law 6/2014. Implementation of Pakraman-Customary Village government norms in Bali (Tenganan Pegringsingan and Pecatu) has an "*Open-Stelsel*" character, the application of flexibility of customary norms towards the adoption/implementation of positive changes in need of the values of a developing external environmental civilisation. However, as another

[36] Candra Perbawati et al., "Progressive Law and Legal Discourse on the Determination of Customary Forests," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (2023): 17–30, https://doi.org/10.25041/fiatjustisia.v17no1.2815.

[37] James Kirunda, Helen Nabirye, and Ronald Muwanguzi, "Legal Pluralism in Postcolonial Nations: Reconciling Customary, Religious, and State Norms in Judicial Practices," *Rechtsnormen: Journal of Law* 3, no. 2 (2025): 199–208, https://doi.org/10.70177/rjl.v3i2.2217.

finding, what happened in the Tosari village area (Tengger) was different from what happened in the Kanekes-Baduy Customary Village and the Pakraman-Bali village (Tenganan Pegringsingan and Pecatu). As shown in Table 1, the Tosari Customary Village does not exist, except for the existence of Tengger traditional institutions, which are integrated into the Tosari Village-Dinas institutional structure. In the East Java region, there are no Government regulations (Perdaprov or Perbup Pasuruan) that regulate or fully recognise it as a Tosari Customary Village. The traditional values and norms that apply to the Tengger community, including Tosari village, have an " *Open-Stelsel* " character, which opens up space through a filtering process for the adoption of external values to improve the civilisation of the village community. The character of *the Open Stelsel* in Tosari village is the same as the traditional stelsel in Bali (Tenganan Pegringsingan and Pecatu).

Although Law 6/2014 appears to lack detailed provisions regarding the specific legal relationship between Gampong (administrative villages) and Mukim (customary villages), particularly when compared to Article 18B paragraph (2) of the 1945 Constitution and Qanun 4/2003 jo. Aceh Qanun 9/2008 on the development of traditions and customs, which may reflect an open legal policy approach. Such openness could be intended to allow regions with special autonomy, such as Aceh, to define these relationships based on local values and governance practices. Mukim implements the living law and does not cause problems in the relationship between the two institutions, Mukim as a Customary Village and Gampong as a bureaucratic village. The Mukim's supervision is not part of the formal village/*Gampong* government system but is rather an external supervision of community institutions that has an effective impact. This institutional ambiguity reveals a gap in normative structuring within Law 6/2014. While Aceh's Qanun framework supports living law, the absence of constitutionalised village-customary interfaces creates vulnerability. The neglect of structural equivalence between formal and informal governance weakens legal certainty in pluralistic regions. A model of asymmetric decentralisation, such as Mukim–Gampong dynamics, requires clearer legal anchoring to avoid functional duplication. The scope of the nomenclature and meaning contained in Mukim, can be ensured that the Qanun legislation in Aceh has a constitutional basis, Law 44/1999 concerning the Implementation of Aceh Specialties, and Law 11/2006 concerning Aceh Government until several Qanuns were formed and ratified, almost all of the legislative process was in the DPRDA Aceh went smoothly and the Qanun was passed as positive law.

The formation of this institution through norms in Law 6/2014 creates horizontal asymmetry in the existence of Customary Villages. The Gampong/village institutional system is not the same as the Customary Village institution, specifically Imeun-Mukim. Traditional institutions, in this case Imeun-Mukim, are not institutions that are included in the *Gampong*/village institutional structure. Imeun-Mukim is a community of indigenous people who exist outside the Gampong/village structure and system. So this can lead to confusion and overlap in the regulation of village institutional legal relations between *Gampongs*/villages and their Customary Village institutions, as is indicated by what exists in Aceh. Of course, there is nothing wrong with the existence of the Imeun-Mukim traditional community, which is outside the Gampong/village institution and at the same time shares the same territory as the Gampong/village. However, the problem is the pattern

of regulating the relationship between what is called Gampong/village and Customary Villages or in this case, Mukim, as the legal community of traditional communities.

Technically, the disharmony in the legal regulations in the institutional arrangements for the Customary Village administration is linked to the existence of a legal vacuum until now, namely, the regulation of the legal unity of traditional communities. It is important to understand that "Customary Law Community Unity" is not synonymous with "Customary Village".[38] Law 6/2014 imposes mixed arrangements between Customary Village government institutions and official villages under one legal umbrella of village law, which is full of regulatory interventions rather than merely recognising them. Rather than offering substantive recognition, Law 6/2014 often operationalises customary institutions as extensions of state bureaucracy. This legal architecture fails to appreciate the distinct normative systems embedded in indigenous governance structures, thus marginalising genuine local law-making processes. The findings indicate that the customary norms that apply in Aceh (Gampong/Bureaucratic Village and Mukim/Customary Village), Bali (Tenganan Pegringsingan Village and Pecatu Village), Tengger (Tosari Village) and Baduy (Kadekes Village) all apply as *the living law* (unwritten law), which the customary norms in the Customary Village have not systematically codified.

The fact that traditional values and norms have not been codified as Customary Village regulations (Perdes Adat) is strongly suspected at least because: 1) there has been no gap or conflict in the understanding of customary legal norms between local generations of Customary Villages; 2) the unwritten norms of customary law are still well-complied *in* the regeneration process; 3) the impact of the values of modern civilisation is still not strong; 4) codification of customary law norms is considered complex, requires legal experts, especially legislation, takes much time and costs much money; 5) unwritten traditional customary norms are still considered capable of having a positive impact on the village community.

Law 6/2014 which regulates Customary Villages (Article 96 to Article 111) forces synchronicity with what is referred to Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, the Constitution does not regulate villages, nevertheless makes it a norm in the form of respecting and recognising the existence of customary law community units.[39] The issue of legal synchronicity the provisions of Article 18 paragraph (1), Article 18 paragraph (7), Article 18 B paragraph (1), paragraph (2) of the 1945 Constitution of the Republic of Indonesia regarding the regional government system even more clearly show that the institutional position of Customary Village government is in the The state and formal regional government systems in Indonesia are both symmetrical and asymmetrical.[40] Article 18 B paragraph (1), paragraph (2), and paragraph (7) of the 1945 Constitution of the Republic of Indonesia actually show the position, authority, rights, including the principles and mechanisms of village government institutional relations, including Customary Villages in the Indonesian

[38] Constitutional Court. 2011. Basics Consideration Juridical Position Law (*Legal Standing*) Society Law Custom in the Testing Process Law in Court Constitution. *Journal Constitution,* Volume 8, Number 5, October 2011.

[39] AV Dicey, *Introduction to the Study of the Law of the Constitution*, McMillian Education Ltd, London, Tenth Edition, 1959.

[40] Djaenuri A. and Enceng. 2015. Regional Government System. Open University. Basic Material Book. IPEM-4214. 2nd Edition. 6th printing

regional government system. Hybrid Villages, namely Service Villages called UU/2014[41] are no longer placed outside the decentralised regional government system platform. The official village government system is no longer a pseudo-government.[42]

Table 1 illustrates the complex legitimacy profile of customary village arrangements across several regions. The findings reveal that the regulatory framework in Law 6/2014 does not adequately reflect the principles of recognition and subsidiarity as practised within customary village communities. Instead of recognising the autonomous nature of these communities, the law tends to impose uniform bureaucratic structures that often conflict with local governance traditions. This has led to inconsistencies between national and regional regulations, particularly with Bali Provincial Regulation 4/2019 and Qanun 4/2003 jo. Aceh Qanun 9/2008. These regional regulations reflect a stronger acknowledgement of local customs and governance models, highlighting the tension between centralised legal norms and localised customary authority. From a review of the formation of statutory regulations, *illegitimacy* on the *Het beginsel van duidelijke doelstelling principle, the Het beginsel van het juiste organ* principle, the *Het beginsel van duidelijke terminologie principle*, the *Het beginsel van duidelijke systematiek principle*. Meanwhile, the findings from the analysis of the review of the Village Revenue and Expenditure Budget, Village Wealth, Government and Development Activities, Village Social Institutions, and Social and Cultural Life show various legal implications for the institutional status of village-customary government in the observation area.

These inconsistencies contravene core principles of regulatory drafting. For instance, the absence of clear objectives (Het beginsel van duidelijke doelstelling) in national policy toward adat institutions dilutes the coherence of implementation. Similarly, the lack of terminological precision (Het beginsel van duidelijke terminologie) in distinguishing between ‘customary villages’ and ‘customary law communities’ perpetuates normative ambiguity.

For the Aceh region (Gampong/Bureaucratic Village and Mukim/Customary Village) there is an institutional status of Mukim-Customary Village government which is integrated with the Gampong/Bureaucratic Village and is guaranteed on a legal basis through Qanun 4/2003 jo. Aceh Qanun 9/2008. For the Bali area (Tenganan Pegringsingan Village and Pecatu Village), there is an institutional status of the Pakraman-Customary Village government, which is integrated with the Bureaucratic Village and is guaranteed by the legal basis of the Bali Provincial Regulation 4/2019. In the Tengger area (Tosari Village), the institutional status of traditional village government does not exist. Traditional institutions are integrated into Bureaucratic government institutions, and there is no legal basis for Regional Regulations. For the Baduy area (Kanekes Village), since the publication of Lebak Regency Regulation 38/2023, Kanekes Village has become a completely Customary Village. From the perspective of the

[41] DPD RI Committee. 2017. *Returning to the Mandate - Results of DPD RI Supervision of the Implementation of Law Number 6 of 2014 concerning Villages.* Committee I DPD RI. First Printing. Senayan Parliament Complex Gd. B DPD RI.

[42] Kridasakti. SW 2019. Village Government Institutional Arrangements. Dissertation. Faculty of Law, Brawijaya University. 2019. See also Nurcholis, H. et al. 2017. *Village Government – Pseudo and Unconstitutional Government Unit.* Paper Presented in the Book Review "Village Government: Pseudo-Government Units in the Republic of Indonesia Government System". Surgeon: Prof. Bagir Manan and Prof. Dede Mariana. Pajajaran University. Bandung. Open University Publishers. 131.

territorial extent of customary law community units, Kanekes Village is one of the villages that fulfils the requirements of being a Customary Village.

These findings collectively suggest that Law 6/2014, while progressive in intent, has yet to construct a coherent framework for accommodating Indonesia's rich diversity of legal traditions. The lack of alignment between national and regional legal instruments results in a fragmented governance landscape. A more deliberate incorporation of local customary governance into statutory frameworks through asymmetrical legal design and the codification of living law principles can ensure both legal certainty and cultural sustainability.

CONCLUSION

The legitimacy profile of customary village regulations, as regulated in Law No. 6 of 2014, demonstrates clear issues of illegitimacy in the formulation of norms, specifically in Article 98(2), Article 100(1–2), Article 102, Article 103, Article 104, Article 105, and Article 111(2). These legal inconsistencies result in vertical disharmony with the 1945 Constitution (especially Article 18B(2)) and horizontal disharmony with regional legal frameworks such as Qanun No. 4/2003 jo. Qanun Aceh No. 9/2008 and Bali Provincial Regulation No. 4/2019. Empirical findings in the observed customary villages show that codification of living customary norms is often unnecessary. These norms are already deeply internalised and practised in everyday life as living law. The insistence on codification and institutionalisation without sensitivity to local context contributes to legal vacuums and disconnections between formal legal structures and indigenous realities. This includes ambiguities in the regulation of *Masyarakat Hukum Adat* (Indigenous Community Legal Units), which further compounds the issue of illegitimacy and legal asynchrony. Moving forward, the institutional architecture of customary villages must be fundamentally restructured to fulfil both legality and legitimacy. Customary villages should be formally recognised as autonomous governance units within the regional government structure, aligned with the principle of asymmetric decentralisation. This recognition must guarantee equal status with bureaucratic villages and must not reduce customary institutions into pseudo-government bodies. The principle of "no intervention" should be constitutionally guaranteed recognition without assimilation or subordination as long as customary authority remains within the bounds of a unified and civilised legal order. Therefore, it is recommended that Law No. 6/2014 be amended to explicitly acknowledge customary villages as a distinct legal category, supported by clear provisions on authority, diversity, and local law-making. At the same time, local regulations such as the Qanun in Aceh and *Perda* Adat in Bali should be strengthened as *lex specialist* that express constitutional recognition (Article 18B(2)). These regional regulations must be allowed to flourish as legitimate instruments of legal pluralism that uphold indigenous self-governance in harmony with the national legal system.

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