

LEGALITY OF USING VILLAGE FUNDS FOR HEALTH DEVELOPMENT AND PREVENTION CORONA VIRUS DISEASE 2019 (COVID-19)

Muh Nur Akhsin Ridho, Susanto, Elvira
Email : achseen.elfatich@gmail.com, susanto@unpam.ac.id, elvira_2345@yahoo

ABSTRACT

Village funds are very much needed by the village community for the development and empowerment of the village community in accordance with the mandate of Undang-Undang Number 6 of 2014 concerning Villages. The Village Fund can be used in health development activities and can also be used to overcome Corona Virus Disease 2019 (COVID-19). During the COVID-19 Pandemic, Undang-Undang of the Republic of Indonesia Number 2 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 has been enacted which in article 28 paragraph 8 states that Article 72 paragraph (2) along with its explanation in the Undang-Undang Number 6 of 2014 concerning Villages is declared invalid as long as it is related to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability. The research method that has been used is a normative juridical approach research method. The results of the research obtained are that the Village Fund for Health Development and Corona Virus Disease (COVID-19) management is in accordance with the provisions of the legislation in force in Indonesia. However, the enactment of Undang-Undang Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 in Article 28 paragraph 8 Attachment to Law Number 2 of 2020 has legal consequences for Article 72 paragraph (2) along with its explanation of the Undang-undang Number 6 of 2014 so that there is no legal certainty for the Village Fund. The legal certainty is questioned because a) the Article related to the Village Fund itself does not apply, b) it is not in sync with Article 2 paragraph (1) letter i of Attachment to Undang-Undang Number 2 of 2020, and c) the period of validity is unclear.

Keywords: Village Fund, Health Development, Corona Virus Disease 2019

ABSTRAK

Dana Desa sangat dibutuhkan oleh masyarakat Desa untuk pembangunan dan pemberdayaan masyarakat Desa sesuai amanah Undang-Undang Nomor 6 Tahun 2014 tentang Desa. Dana Desa dapat digunakan dalam kegiatan pembangunan kesehatan dan dapat juga untuk penanggulangan *Corona Virus Disease 2019 (COVID-19)*. Pada saat Pandemi COVID-19, telah diberlakukan Undang-Undang Republik Indonesia Nomor 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 yang didalam pasal 28 ayat 8 menyatakan bahwa Pasal 72 ayat (2) beserta penjelasannya dalam Undang-Undang Nomor 6 Tahun 2014 tentang Desa dinyatakan tidak berlaku sepanjang berkaitan dengan kebijakan keuangan negara untuk penanganan penyebaran *Corona Virus Disease 2019 (COVID-19)* dan/atau dalam rangka menghadapi ancaman yang membahayakan perekonomian nasional dan/atau stabilitas sistem keuangan. Metode penelitian yang digunakan adalah metode penelitian pendekatan yuridis normatif. Hasil penelitian yang didapat yaitu Dana Desa untuk Pembangunan Kesehatan dan Penanggulangan *Corona Virus Disease (COVID-19)* sudah sesuai dengan ketentuan Perundang-undangan yang berlaku di Indonesia. Akan tetapi keberlakuan Undang-Undang Nomor 2 Tahun 2020 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 pada Pasal 28 ayat 8 Lampiran Undang-Undang Nomor 2 Tahun 2020 berakibat hukum kepada Pasal 72 ayat (2) beserta penjelasannya dari Undang-Undang Nomor 6 Tahun 2014 sehingga membuat tidak adanya kepastian hukum terhadap Dana Desa. Kepastian hukumnya dipertanyakan karena a) Pasal terkait Dana Desa itu sendiri tidak berlaku, b) Tidak sinkron dengan Pasal 2 ayat (1) huruf i Lampiran Undang-Undang Nomor 2 Tahun 2020, dan c) tidak jelas masa keberlakuannya.

Kata Kunci: Dana Desa, Pembangunan Kesehatan, *Corona Virus Disease 2019*

1. Student of Law Magister of Pamulang University.
2. Lecture of Law Magister of Pamulang University
3. Lecture of Law Magister of Pamulang University

A. Introduction.

Law Number 6 of 2014 concerning Villages states that villages are given the authority to develop and administer health at the village level. This is solely in the village development effort, namely trying to improve the quality of life and life for rural communities with health. Health development is a series of developments that must be carried out in a sustainable, comprehensive, directed, and integrated manner to achieve national goals. Health issues as a major factor and a valuable investment are based on a new paradigm, namely the healthy paradigm. The healthy paradigm is a health paradigm that prioritizes promotive and preventive efforts without neglecting curative and rehabilitative.

Based on Health Law Number 36 of 2009 in Article 2, health development is carried out on the basis of humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms. Article 3 states that health development aims to increase awareness, willingness and ability to live healthy for everyone in order to realize the highest degree of public health, as an investment for the development of socially and economically productive human resources.

Village development can be carried out according to its authority with the existence of village income sources. The Village Fund sourced from the APBN is one part of the Village income⁷⁹ Each village in Indonesia has a number of access to income, including Village Original Income, transfers from the City/Regency in the form of 10% Regional Original Income (PAD) and 10% Revenue Sharing Funds (DBH) as well as transfers from the center in the form of General Allocation Funds (DAU). . This income component is also known as the Village Fund Allocation (ADD). In addition to ADD, currently villages also receive direct transfers from the central government which amount can reach up to 10% of aggregate transfers to regions codified in the APBN. This fund is also known as the Village Fund (DD) (Lewis, 2015).⁸⁰ The direct distribution of Village Funds to villages aims to empower villages in carrying out and managing to regulate and manage priorities in the development and empowerment of village communities. The use of the Village Fund is carried out with a participatory development mechanism, namely placing the village community as the subject of development. The plan for the use of the Village Fund must be discussed and agreed upon in the Village Deliberation.

⁷⁹ Kementerian Desa, *Lampiran Permendes No. 6 Tahun 2020, Pedoman Umum Pelaksanaan Penggunaan Dana Desa Tahun 2020*, hlm. 14

⁸⁰ Rully Amirulloh, dkk, *Desa Kontra Urbanisasi Wajah Empat Pelayanan Publik Dasar*, (Jakarta: Ombudsman Republik Indonesia, 2018), hlm. 9

Currently, the world including Indonesia is experiencing an outbreak of Coronavirus Disease 2019 (COVID-19). COVID-19 is a new type of virus that has never been previously identified in humans. At least there are types of coronavirus that are known to cause diseases that cause severe symptoms such as Middle East Respiratory Syndrome (MERS-CoV), Severe Acute Respiratory Syndrome (SARS-CoV), and currently Coronavirus Disease 2019 (COVID-19).⁸¹ The increase in the number of COVID-19 cases is happening quite quickly and has already spread outside the Wuhan area, China and other countries. Globally, as of July 12, 2021, as many as 163,869,893 cases have been confirmed and it is likely that this number will continue to grow. Even in Indonesia itself at this time as many as 1,758,898 were confirmed positive for Corona.⁸² Currently, the corona virus has a new type of variant and has entered Indonesia. The new variants of the COVID-19 virus are B.117 from England, B.1351 from South Africa, and the double-mutated variant from India B.1617.⁸³

The Government of Indonesia has determined that COVID-19 is a Non-Natural National Disaster with the issuance of Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease (COVID-19) as a National Disaster. A number of other policies in mitigating the impact of COVID-19 have also been issued, including the issuance of Law of the Republic of Indonesia Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020, Presidential Regulation of the Republic of Indonesia Number 82 of 2020 concerning the Corona Virus Handling Committee. Disease 2019 (COVID-19) and National Economic Recovery, Instruction of the Minister of Home Affairs Number 03 of 2021 concerning the Enforcement of Restrictions on Micro-Based Community Activities and the Establishment of Corona Virus Disease Handling Command Posts at Village and Sub-District Levels to Control the Spread of Corona Virus Disease 2019, and Regulations Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia (Permendes PDTT) Number 6 of 2020 concerning Amendments to Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 11 of 2019 concerning Priorities for

⁸¹ Isbaniah, dkk, *Pedoman Pencegahan dan Pengendalian Coronavirus Disease (COVID-19)*, (Jakarta: Kemenkes RI, 2020), hlm. 11

⁸² <https://infeksiemerging.kemkes.go.id/> diakses pada tanggal 20 Mei 2021

⁸³ <https://sehatnegeriku.kemkes.go.id/baca/berita-utama/20210504/1737688/virus-corona-varian-baru-b-117-b-1351-b-1617-sudah-ada-di-indonesia/> diakses pada tanggal 26 Mei 2021

Use of Village Funds in 2020 and currently Permendes PDTT Number 13 Year 2020 Concerning the Priority of the Use of Village Funds in 2021.

The Village Fund is very much needed by the Village community for the development and empowerment of the Village community in accordance with the mandate of the Village Law, which can also be used in health development activities and can also be used to overcome the current Corona Virus Disease 2019 (COVID-19). On the other hand, many village heads are still hesitant and afraid in using village funds. As stated by the Head of the West Java High Prosecutor's Office (Kajati), Raja Nafrizal who said that many village heads were afraid and hesitant to use the village fund budget for legal reasons.⁸⁴ According to the Minister of Villages, Development of Disadvantaged Regions, and Transmigration, Eko Putro Sandjojo, village heads need not be afraid to use village funds. The paradigm of supervising village funds is not to catch the wrong people but how to keep people from making mistakes⁸⁵ The Minister of Home Affairs of the Republic of Indonesia, Tito Karnavian also stated that legal officers such as the police and prosecutors should not immediately process the law of village heads who make mistakes in managing village funds unless they are proven to have committed irregularities to enrich themselves.⁸⁶ In addition to these problems, the Law of the Republic of Indonesia Number 2 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 which in article 28 paragraph 8 states that Article 72 paragraph (2) along with its explanation of Law Number 6 of 2014 concerning Villages are declared invalid as long as they are related to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability.

B. Focus of Problems

Based on the background of the problem and the identification of the problem above, the authors make the formulation of the problem as follows:

1. How is the legality of village funds related to health development and the prevention of Corona Virus Disease 2019 (COVID-19) in Law Number 6 of 2014 concerning Villages?

⁸⁴<https://regional.kompas.com/read/2019/04/10/21054241/kajati-jabar-banyak-kades-takut-gunakan-dana-desa-dan-alokasi-dana-desa> diakses pada tanggal 1 September 2020

⁸⁵<https://news.detik.com/berita/d-4488580/menteri-eko-imbau-kades-tak-takut-kelola-dana-desa> diakses pada tanggal 1 September 2020

⁸⁶<https://nasional.tempo.co/read/1313683/mendagri-jangan-hukum-kepala-desa-yang-salah-kelola-dana-desa/full&view=ok> diakses pada tanggal 1 September 2020

2. What are the legal consequences related to the existence of village funds after the enactment of Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020?

C. Research Methodology

The research method used is a normative juridical approach with descriptive specifications. Normative juridical research is an attempt to bring the problem under study closer to the nature of normative law. The normative juridical approach sees legal issues as rules that are considered in accordance with normative juridical research. This normative juridical research is carried out on theoretical matters, namely an approach that is carried out by studying the legal principles contained in the theory/opinions of experts and applicable laws and regulations related to the problem to be studied. So that in this study the author will seek and analyze legal aspects, legal principles and legal rules relating to the legality of using village funds for health development and overcoming Corona Virus Disease 2019 (COVID-19) as well as the legal consequences of using village funds for development, health and prevention of Corona Virus Disease 2019 (COVID-19) after the enactment of Law Number 2 of 2020.

D. Finding & Discussion

1. **The legality of using village funds is related to health development and the prevention of Corona Virus Disease 2019 (COVID-19) in Law Number 6 of 2014 concerning Villages.**

a. Legality The use of village funds is linked to health development

Law Number 6 of 2014 concerning Villages, in Article 19 states that Villages have several authorities, including: authority based on origin rights, village-scale local authority, authority assigned by the Government, Provincial Government, or Regency/City Regional Government, and other authorities assigned by the Government, Provincial Government, or Regency/Municipal Government in accordance with the provisions of laws and regulations.

Article 19:

“Village authorities include:

1. authority based on the right of origin;
2. village-scale local authority;
3. authority assigned by the Government, Provincial Government, or Regency/Municipal Government; and

4. ther authorities assigned by the Government, Provincial Government, or Regency/Municipal Government in accordance with the provisions of laws and regulations.”

The article above explains that the authority of the Village in addition to the authority based on the right of origin and local authority at the Village scale also includes the authority assigned by the Government. Therefore, Article 74 regulates the priority of Village Expenditures for development needs in accordance with the agreement of the Village Deliberation and the priorities of the Regency/City Government, Provincial Government, and Government.

Article 74:

- 1) “Village Expenditures are prioritized to meet development needs as agreed in the Village Deliberation and in accordance with the priorities of the Regency/City Government, Provincial Government, and Government.
- 2) Development needs as referred to in paragraph (1) include, but are not limited to primary needs, basic services, the environment, and Village community empowerment activities.”

Health is one of the priorities in village development because it is included in basic services. Elucidation of Article 74 Paragraph (2) states that:

“Basic services” means, among others, education, health, and basic infrastructure.”

This is also stated in Article 80 paragraph (4) point a which states that:

“(4) Village development priorities, programs, activities, and needs as referred to in paragraph (3) are formulated based on an assessment of the needs of the Village community which include: “Improving the quality of and access to basic services”;

Health development covers a very broad field. In general, health development is carried out based on the provisions of the applicable laws and regulations. For example, the construction of health centers and hospitals which are also part of the health development. The construction of these infrastructure facilities does not use Village Funds or other Village Revenues but uses the Special Physical Allocation Fund for the Health Sector in accordance with the Regulation of the Minister of Health of the Republic of Indonesia Number 8 of 2021 concerning Operational Instructions for the Use of the Special Physical Allocation Fund for the Health Sector for Fiscal Year 2021 in Article 4 paragraphs (1) and (2). Health development in the Village refers to Law Number 6 of 2014 concerning Villages and its

derivative regulations including the Regulation of the Minister of Villages PDT concerning the priority use of Village Funds.

Although the Village Fund for health is legal and in accordance with laws and regulations, its use is still very small compared to the allocation for infrastructure as research conducted by Turnaji and Gurendro Putro concluded that the utilization of the Village Fund for health development is still quite low. Of the two regencies, namely Pasuruan and Sampang, East Java Province which became the object of the study, it was found that the utilization of the Village Fund for health development was an average of 4.17%. When detailed, the use of Village Funds for community development and empowerment in Posyandu activities is 0.50%, Polindes/Poskesdes activities are 0.63%, health promotion activities and clean and healthy living movements are 2.46%, and other activities 0.58 %. This shows that the Village Fund is still widely used for infrastructure development (non-health).⁸⁷ Another study stated that the Village Fund had a positive impact on development in Banyuates Village, Banyuates District, Sampang Regency both in the field of physical development and in the field of community empowerment. However, for health, it is only a small part, as in 2015 it was only 6 percent and in 2016 it was only 5 percent.⁸⁸

b. The legality of village funds is linked to the handling of COVID-19

Indonesia reported its first case of COVID-19 on March 2, 2020 and the number continues to grow until now⁸⁹ A number of policies have been issued by the Government in an effort to overcome this. Such policies are the issuance of Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19).

Since April 13, 2020, the President of the Republic of Indonesia has determined that the Spread of Corona Virus Disease 2019 (COVID-19) is a Non-Natural Disaster on a National Scale with Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19).) as a National Disaster and in order to suppress its spread from spreading further, Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social

⁸⁷ Turnaji, Gurendro Putro, *Pemanfaatan Dana Desa untuk Pembangunan Kesehatan di Kabupaten Pasuruan dan Sampang*, Jurnal, Buletin Penelitian Sistem Kesehatan – Vol. 21 No. 3 Juli 2018: 141–151, hlm 150

⁸⁸ Moh Sofiyanto, dkk, *Pengelolaan Dana Desa dalam Upaya Meningkatkan Pembangunan di Desa Banyuates Kecamatan Banyuates Kabupaten Sampang*, e – Jurnal Riset Manajemen PRODI MANAJEMEN Fakultas Ekonomi Unisma Hlm 33-35

⁸⁹ Kemenkes, op.cit, hlm. 21

Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) has been issued.

Several months have passed, many of the impacts caused by COVID-19, including the economy. Therefore, the handling of COVID-19 is accompanied by economic recovery that must go hand in hand. Health issues are an integral component of the country's economic landscape. Handling the two sectors, especially in the midst of the current Covid-19 pandemic, must go hand in hand and be integrated⁹⁰ This is the basis for the issuance of Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (COVID-19) and National Economic Recovery which was later updated with Presidential Regulation of the Republic of Indonesia Number 108 of 2020 concerning Amendments to Presidential Regulation Number 82 of 2020 concerning Committees. Handling Corona Virus Disease 2019 (COVID-19) and National Economic Recovery.

The problem of the spread of COVID-19 is increasing, so it is necessary to accelerate the prevention and handling of COVID-19. Taking into account this matter, the Minister of Home Affairs asks the Governor to encourage Regency/City Governments to facilitate and encourage Village Governments to refocus the Village Budget by using budgets sourced from Village revenues, especially Village Funds for handling the COVID-19 pandemic through providing assistance to the poor and vulnerable in the Field of Disaster Management, Emergency Situations and Village Urges in accordance with Article 16 paragraph (1) letter e of the Minister of Home Affairs Regulation No. 20 of 2018 concerning Village Financial Management.⁹¹

Policies that directly touch the village include the following:

1. Circular Letter Number 8 of 2020 concerning Villages Responding to COVID-19 and Confirmation of Village Cash Intensive Work
2. Circular Letter Number 11 of 2020 concerning Amendments to Circular Letter of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 8 of 2020 concerning Villages Responding to COVID-19 and Affirmation of Village Cash Intensive Work.
3. Letter of the Minister of Home Affairs Number 440/2703/SJ dated April 2, 2020 regarding the Mitigation of the Impact of COVID-19 in the Village;

⁹⁰<https://www.presidentri.go.id/siaran-pers/perpres-nomor-82-tahun-2020-untuk-pastikan-keseimbangan-penanganan-kesehatan-dan-pemulihan-ekonomi/> diakses pada tanggal 15 Juni 2021

⁹¹ Kemendagri, *Penanggulangan Corona Virus Disease 2019 (COVID-19) di Desa melalui Anggaran Pendapatan dan Belanja Desa*, (Jakarta: Kemendagri, 2020), hlm 3

4. Instruction of the Minister of Home Affairs Number 3 of 2020 concerning the Prevention of Corona Virus Disease 2019 (COVID-19) in the Village through the Village Revenue and Expenditure Budget (APB Desa);
5. Instruction of the Minister of Home Affairs Number 3 of 2021 concerning the Enforcement of Restrictions on Micro-Based Community Activities and the Establishment of Command Posts for Handling Corona Virus Disease 2019 at the Village and Sub-District Levels to Control the Spread of Corona Virus Disease 2019 on February 5, 2021.
6. Regulation of the Minister of Finance of the Republic of Indonesia Number 17/PMK.07/2021 concerning the Management of Transfers to Regions and Village Funds for the 2021 Fiscal Year in the Framework of Supporting the Handling of the 2019 Corona Virus Disease (COVID-19) Pandemic and Its Impacts.
7. Minister of Finance Regulation Number 40 of 2020 concerning Amendments to Minister of Finance Regulation Number 205/PMK.07/2019 concerning Village Fund Management.
8. Minister of Finance Regulation Number 50/PMK.07/2020 concerning Second Amendment to Minister of Finance Regulation Number 205/PMK.07/2019 concerning Village Fund Management.
9. Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management.
10. Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia Number 6 of 2020 concerning Amendments to Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 11 of 2019 concerning Priorities for Use of Village Funds in 2020.
11. Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia Number 7 of 2020 concerning the Second Amendment to the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 11 of 2019 concerning Priorities for the Use of Village Funds in 2020`

12. Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia Number 13 of 2020 concerning Priorities for Use of Village Funds in 2021

The above regulation serves as a reference for the Village Head in handling COVID-19 using village funds.

2. The legal consequences related to the existence of village funds after the enactment of Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020.

a. The Village Fund Regulation does not contain legal certainty

The enactment of Law Number 2 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2020, of course, still leaves various legal issues. The author provides an analytical limitation on the validity of this Law, especially Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020 which contains Article 72 paragraph (2) along with its explanation of Law Number 6 of 2014 concerning Villages which is declared invalid as long as it relates to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability.

Law Number 6 of 2014 concerning Villages, Article 72 paragraphs (1) and (2) contains Village income sources. Article 72 paragraphs (1) and (2) are as follows:

Article 72:

“(1) Village income as referred to in Article 71 paragraph (2) comes from:

- a. Village original income consists of business results, asset results, self-help and participation, mutual cooperation, and other Village original income;
- b. allocation of the State Revenue and Expenditure Budget;
- c. part of the results of regional taxes and regional levies on the Regency/City;
- d. Village fund allocation which is part of the balancing fund received by the Regency/City;
- e. financial assistance from the Provincial Revenue and Expenditure Budget and the Regency/City Regional Revenue and Expenditure Budget;
- f. non-binding grants and donations from third parties; and
- g. other legitimate village income.

(2) The budget allocation as referred to in paragraph (1) letter b shall be sourced from Central Expenditures by making Village-based programs more effective and equitable.”

Article 72 paragraph (1) contains sources of Village income where there are 7 sources of Village income. One of them is sourced from the APBN, which is then called the Village Fund. Furthermore, in paragraph (2) it is explained that the source of the APBN comes from Central Expenditures by making Village-based programs more effective and equitable. However, with the enactment of Law Number 2 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 in Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020 stating that Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages, as long as it relates to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability.

The invalidity of Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages makes village funds have no legal certainty. This is because: a) the article related to the Village Fund itself does not apply, b) it is not in sync with Article 2 paragraph (1) letter i of Attachment to Law Number 2 of 2020, c) how long the village fund will not apply.

1) The article regarding the Village Fund itself does not apply

In implementing Law Number 6 of 2014 concerning Villages, the President has stipulated Government Regulation of the Republic of Indonesia Number 60 of 2014 concerning Village Funds Sourced from the State Revenue and Expenditure Budget. Where in the preamble of the Government Regulation it is stated that Article 72 paragraph (1) letter b and paragraph (2) of Law Number 6 of 2014 concerning Villages is the basis of one source of Village income originating from the allocation of the State Revenue and Expenditure Budget. The enactment of Law Number 2 of 2020 makes Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages invalid. This means that currently the Village Fund is not valid until the handling of the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability is completed.

The position of village funds has lost its legal certainty because in Law Number 2 of 2020 it does not state information that in the presence of a pandemic condition, the central government will eliminate village funds, but on the other hand the article that states the APBN as a source of Village Opinions is declared invalid as long as it relates to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability. Based on the legal principle, it is stated that the applicable laws and

regulations then override the previous laws and regulations as long as they regulate the same object (*lex posterior derogat lex priori*). The old laws and regulations automatically do not apply if there are new laws and regulations. This means that Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages does not apply after the enactment of Law Number 2 of 2020.

Another legal principle is also known as *lex specialis derogat legi generali*, namely laws (legal norms/rules) that specifically do not apply general laws (legal norms/rules). Bagir Manan in his book "Indonesian Positive Law" as quoted by A.A. Oka Mahendra in his article entitled Harmonization of Legislations conveys several things that can be used as guidelines in the application of the *lex specialis derogat legi generali* principle, namely as follows: 1) the provisions found in the general legal rules remain valid, except those specifically regulated in the legal rules. the special; 2) *lex specialis* provisions must be equal to *lex generalis* provisions (for example, law with law); and 3) the provisions of the *lex specialis* must be in the same legal environment (regime) as the *lex generalis*, for example: the Commercial Code (KUH Dagang) is *lex specialis* from the Civil Code (KUH Perdata) because it is in the the same law, namely the civil law environment⁹²

The author is of the opinion that Law Number 2 of 2020 becomes *Lex Specialis* because the Law was issued specifically with regard to handling COVID-19 and/or in the context of dealing with threats that endanger the national economy and/or financial system stability. Meanwhile, Law Number 6 of 2014 concerning Villages becomes a general *Lex Generalis* regarding one of the Village Revenues, namely the Village Fund sourced from the APBN. The problem of legal certainty arises when *Lex Specialis*, namely Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020 states that it does not apply as long as the handling of COVID-19 against Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages (*Lex Generalis*).

This is in line with the opinion of the Petitioners Triono and Suyanto as the Village Head when they filed their lawsuit in the Constitutional Court. His party really understands the condition of COVID-19 so that the transfer until the delay by the central government is not a problem. However, it will be a problem if the village fund provisions are declared

⁹² Nurfaqih Irfani, *Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum*. Jurnal Legislasi Indonesia Vol 16 No. 3 - September 2020, hlm. 313-314

invalid as long as they are related to state financial policies for handling COVID-19 and/or in the context of dealing with threats that endanger the national economy.⁹³

2) Not in sync with Article 2 paragraph (1) letter i Attachment to Law Number 2 of 2020.

Article 2 paragraph (1) letter i Attachment to Law Number 2 of 2020 contains:

"i. prioritizing the use of budget allocations for certain activities (refocusing), adjusting allocations, and/or cutting/delaying the distribution of budget transfers to the Regions and Village Funds, with certain criteria;

The quote from the paragraph above explains that the Village Fund still exists but it could be a specific activity (refocusing). This is different from Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020 which contains Article 72 paragraph (2) along with its explanation of Law Number 6 of 2014 concerning Villages which is declared invalid as long as it relates to state financial policies for handling the spread of the Corona Virus. Disease 2019 (COVID-19) and/or in the context of facing threats that endanger the national economy and/or financial system stability.

The author is of the opinion that the two articles above, namely Article 2 paragraph (1) letter i of the Attachment of Law Number 2 of 2020 and Article 28 paragraph 8 of the Attachment of Law Number 2 of 2020 are mutually contradictory. If one article is judged to be contradictory to another article, then these articles must be subject to a judicial review to the Constitutional Court. The existence of conflicting articles in one regulation will result in legal uncertainty. Which article must be obeyed by the community. Therefore, it is the Constitutional Court that will assess the validity of an article⁹⁴

The case applicants (Triono and 26 other Petitioners who serve as village heads and members of the village consultative body) to the Constitutional Court Number 47/PUU-XVIII/2020, arguing that they understand the conditions of the COVID-19 outbreak very well so that the transfer, delay of village funds does not become an issue. problem. This becomes a problem when the village fund provisions are declared invalid as long as they are related to state financial policies for handling the spread of COVID-19 as specified in Article 28 paragraph 8 Attachment to Law Number 2 of 2020. In Article 2 paragraph (1) letter i Attachment Law Number 2 of 2020, there is no information that in the conditions of the

⁹³ <https://www.mkri.id/index.php?page=web.Berita&id=16435&menu=2> diakses pada tanggal 17 Juni 2021

⁹⁴ <https://www.hukumonline.com/klinik/detail/ulasan/lt530073486c2fc/beberapa-pasal-dalam-satu-peraturan-saling-bertentangan--mana-yang-berlaku/> diakses pada tanggal 19 Juni 2021

COVID-19 pandemic, the central government will eliminate village funds. Regulation is only on the government's authority to make adjustments, cuts, and delays, not abolishing it⁹⁵

3) It is not clear how it applies

Article 28 paragraph 8 Attachment to Law Number 2 of 2020 which states Article 72 paragraph (2) along with its explanation of Law Number 6 of 2014 concerning Villages does not apply as long as it is related to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19). 19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability, it contains legal uncertainty in terms of how long it will expire.

The handling of COVID-19 so far, which has been more than 1 year, continues and we don't know how long it will last. Village funds are needed by the village community for the development and empowerment of the village community. According to Margarito, Village is the smallest government unit in Indonesia. If there is no village government, of course, there will be no district/city government and no provincial government. Villages are specifically regulated in the 1945 Constitution. Therefore, it is necessary to open minds and hearts in assessing the lives of villagers and the message of the constitution. Moreover, the COVID-19 pandemic is not clear when it will end. If this pandemic lasts until 2023, then for the next three years, the village community will not receive the Village Fund⁹⁶

b. The use of the Village Fund is not in accordance with the Village Principles

The basic norm in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia requires the state to recognize (recognize and respect) the customary law community units (village, gampong, nagari, kampung, nagari, and others) along with their rights. traditional rights. Article 18B paragraph (2) of the 1945 Constitution states as follows⁹⁷

- The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

Furthermore, Law Number 6 of 2014 concerning Villages in Article 3 states that Village Regulations are based on recognition, subsidiarity, diversity, togetherness, mutual

⁹⁵ <https://www.mkri.id/index.php?page=web.Berita&id=16737> diakses pada tanggal 17 Juni 2021

⁹⁶ <https://www.jawapos.com/nasional/politik/29/06/2020/margarito-gugatan-parade-nusantara-ke-mk-sudah-tepat/> diakses pada tanggal 18 Juni 2021

⁹⁷ Anom Surya Putra, *Badan Usaha Milik Desa: Spirit Usaha Kolektif Desa*, (Jakarta: Kemendes PDT, 2015), Hlm 13

cooperation, kinship, deliberation, democracy, independence, participation, equality, empowerment, and sustainability.

The two main principles that make the village role as a subject are the principles of recognition and subsidiarity. With these two main principles, the Village Law mandates a revolutionary spirit that is different from the principles of decentralization and residuality. The principles of decentralization and village residuality only become part of the region, because decentralization only stops at the district/city. In addition, the village only received a partial delegation of authority from the district/city. Villages only receive remnants of regional excess, both remaining authority and remaining finances in the form of Village Fund Allocations⁹⁸

Normatively with the two main principles of recognition and subdiarity, the Village Law contains a very basic spirit of change, in contrast to the principles of decentralization and residuality which are currently still entrenched in the village, where the village is seen as only being part of the district area.⁹⁹ The principle of recognition and subsidiarity in the Village Law gives a different meaning to the village before. Village is defined as a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia.¹⁰⁰

Recognition and subsidiarity in the Elucidation of Law Number 6 of 2014 concerning Villages are as follows:

“1) recognition, namely the acknowledgment of the right of origin;

2) subsidiarity, namely the determination of local-scale authority and local decision-making for the benefit of the Village community;

This means that the village has the authority based on the right of origin, namely the authority of the surviving inheritance and on the initiative of the village or the initiative of the village community in accordance with the development of community life. Meanwhile, village-scale local authority is the authority to regulate and manage the interests of the village community that has been carried out by the village or is able and effectively carried out by the village or which arises because of the development of the village and village community

⁹⁸ M. Silahudin, *Kewenangan Desa dan Regulasi Desa*, (Jakarta: Kemendes PDT, 2015), Hlm 11

⁹⁹ Kushandajani, *Implikasi UU Nomor 6 Tahun 2014 Tentang Desa Terhadap Kewenangan Desa*, Yustisia. Vol. 4 No. 2 Mei – Agustus 2015, hlm 393

¹⁰⁰ *Ibid*

initiatives. These two principles make the Village have the authority to realize the hope that the village becomes sovereign, independent, and has personality.¹⁰¹

The legal rule of Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages is indeed what legitimizes the spirit of the Village Fund as the Right of Village People. The legal principles are clear recognition and subsidiarity. When Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020 states Article 72 paragraph (2) along with its explanation of Law Number 6 of 2014 concerning Villages does not apply as long as it is related to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19). -19) and/or in order to face threats that endanger the national economy and/or financial system stability, the Village Fund as stipulated in the Village Law does not apply during the handling of COVID-19.

On the other hand, Article 2 paragraph (1) letter i Attachment to Law Number 2 of 2020 states that the Village Fund still exists and prioritizes its use, among others as Village Cash Direct Assistance and handling the COVID-19 pandemic. The contents of the Elucidation of the Article are as follows:

“4. adjustment of the Village Fund budget ceiling.

What is meant by "prioritizing the use of the Village Fund" is that it can be used, among others, for direct cash assistance to the poor in the village and activities to handle the Corona Virus Disease 2019 (COVID-19) pandemic.”

The author's analysis states that the Village lost the village spirit in the form of Village Funds for activities based on recognition and subsidiarity after the non-enactment of Article 72 paragraph (2) of Law Number 6 of 2014 concerning Villages and the use of Village Funds as direct cash assistance to the poor in the village. and activities to handle the Corona Virus Disease 2019 (COVID-19) pandemic. Furthermore, the author also states that the use of Village Funds for BLT is not in accordance with the principles of independence and sustainability which is also the principle of village regulation. The community will tend to be dependent on aids that are not sustainable and do not make them independent. Even if the community needs it, it should be able to optimize the existing community social assistance and develop a revolving fund program.

¹⁰¹ *Ibid*

G. Conclusion

1. The Village Fund for Health Development and Corona Virus Disease (COVID-19) Management is in accordance with the provisions of the legislation in force in Indonesia. The legality of Village Funds for Health Development and Corona Virus Disease (COVID-19) Management includes Law Number 6 of 2014 concerning Villages, Article 19 concerning Village Authorities, Article 74 concerning Village Expenditure Priorities. Furthermore, the derivative regulations of the Village Law include; Government Regulation Number 43 of 2014 concerning Villages in Article 34 of health including village-scale local authorities, Government Regulation Number 60 of 2014 concerning Village Funds, Article 19 states that Village Funds are used to finance government administration, development, community empowerment, and society and are prioritized for finance community development and empowerment. Priority for the use of Village Funds is regulated in the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration of the Republic of Indonesia (Permendes PDT); Permendes PDT Number 19 of 2017 concerning Priority Determination of the Use of Village Funds in 2018, Permendes PDT Number 16 of 2018 concerning Priority Determination of the Use of Village Funds in 2019, Permendes PDT Number 11 of 2019 concerning Priority Determination of the Use of Village Funds in 2020, Permendes PDT Number 6 of 2020 concerning Amendments to the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 11 of 2019 concerning Priorities for the Use of Village Funds in 2020, Permendes PDT Number 7 of 2020 concerning the Second Amendment to the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 11 of 2019 Regarding the Priority of Use of Village Funds in 2020, and for this year it refers to Permendes PDT Number 13 of 2020 concerning Priorities of Use of Village Funds in 2021.
2. The enactment of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 in Article 28 paragraph 8 Attachment to Law Number 2 of 2020 has legal consequences for Article 72 paragraph (2) along with its explanation of the Law Number 6 of 2014 concerning Villages after being declared invalid as long as it is related to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability. This

makes no legal certainty to the Village Fund. The legal certainty is questioned because a) the Article related to the Village Fund itself does not apply, b) it is not in sync with Article 2 paragraph (1) letter i of Attachment to Law Number 2 of 2020, and c) the period of validity is unclear. In addition, the use of village funds as stated in Law Number 2 of 2020 is not in accordance with the village principles, namely recognition and subsidiarity.

H. Recommendation

1. The Village Fund for Health Development and Corona Virus Disease (COVID-19) Management is in accordance with the provisions of the legislation in force in Indonesia. The author is of the opinion that the Ministry of Health together with the relevant Ministries/Institutions make a Guide to the Use of Village Funds for the Health Sector to follow the Permendes PDT every year. This is very important in order to make it easier for Village Heads to implement their activities.
2. The enactment of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 (especially Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020) has legal consequences for Article 72 paragraph (2) along with its explanation of the Law - Law Number 6 of 2014 concerning Villages after being declared invalid as long as it is related to state financial policies for handling the spread of Corona Virus Disease 2019 (COVID-19) and/or in the context of dealing with threats that endanger the national economy and/or financial system stability. The author is of the opinion that Article 28 paragraph 8 of the Attachment to Law Number 2 of 2020 needs to be submitted to the Supreme Court for a judicial review in order to obtain legal certainty regarding the Village Fund. Material test points on legal certainty related to a) Article related to the Village Fund itself does not apply, b) Synchronization with Article 2 paragraph (1) letter i Attachment to Law Number 2 of 2020, and c) Clarity of its validity period. In addition, it is also necessary to examine the Village fund policy for Village Fund BLT that is not in accordance with the village principles, namely recognition, subsidiarity, independence, and sustainability to the Constitutional Court on the subject of conformity with Article 18B paragraph (2) of the 1945 Constitution.

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