



Simultaneous Election of Head of Custom Village

Andress Deny Bakarbesy¹

Faculty of Law Pattimura University, Ambon, Indonesia.

@ : denyboy64@gmail.com

Corresponding Author *

Submitted: 2022-04-23

Revised: 2022-06-10

Published: 2022-06-30



Article Info	Abstract	
<p>Keywords: Simultaneous Village Head Election, Village, Custom Village</p>	<p>Introduction: The study in this paper is to analyze the involvement of custom villages in simultaneous village head elections.</p> <p>Purposes of the Research: to study and analyze whether custom village head elections can be carried out in conjunction with holding village head elections simultaneously.</p> <p>Methods of the Research: The research method used is normative research with a statutory approach and a conceptual approach.</p> <p>Results of the Research: The results show that simultaneous village head elections in villages and custom villages in SBB Regency can be carried out together. Where, the election process is carried out for villages based on the provisions of the Minister of Home Affairs regulation regarding village head elections, while the appointment of the head of the customary village government can be done if the candidate provided by the clan who has the right to govern is 1 (one) person, while the candidate for the head of the customary village government is more than 1 (one) there are candidates, then elections can be carried out while prioritizing the candidate for the head of government who has the right to govern based on customary rights or rights of origin.</p>	

1. INTRODUCTION

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that: The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.

According to Ateng Syafrudin and Suprin Na'a¹, the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are the principle of recognizing and respecting the unity of indigenous peoples and their traditional rights. Customary law communities are legal communities (*rechts-gemeenschap*) based on customary law or customs, such as; village, clan, nagari, gampong, kampong, meunasah, huta, negroij, and others. This shows that the formulation of Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia is a legal protection for the existence of a

¹ Ateng Syafrudin dan Suprin Na'a, 2010, *Republik Desa – Pergulatan Hukum Tradisional dan Hukum Modern Dalam Desain Otonomi Desa*, PT Alumni, Bandung, h. 44

Traditional Village, namely a village that still maintains customary law and customs in the administration of government and development.

In this regard, according to Article 6 paragraph (1) of Law Number 6 of 2014 concerning Villages (UU Desa) stipulates that Villages consist of Villages and custom Villages. Thus, in addition to the existence of a traditional village, the existence of a village is also recognized, namely a village that no longer has customs in the administration of its government.

The existence of custom villages and villages also has implications for the rights and obligations of custom villages and villages including in the village head election process. According to H.A.W. Widjaja² that the Village as a legal community unit has the right and power to regulate and manage the interests of its community, this right is called village autonomy.

According to Y Zakaria³, the existence of village autonomy is based on the recognition of original rights which are also known as innate rights. Inherited rights include rights to customary areas (hak ulayat), systems of social organization (leadership mechanisms), as well as rules and mechanisms for making rules that regulate residents in the village area.

In terms of the leadership mechanism, traditional villages have a tradition based on customary law in determining their leaders⁴, as in Maluku, especially in the areas of Seram Island, Ambon Island and Leased Island who are appointed and selected from the descendants who have the right to lead so that not all custom village communities can be nominated as candidates custom village head.

This is different from the Village head election system, as regulated in Article 31 paragraph (1) of Law Number 6 of 2014 concerning Villages (Village Law) which states that Village Head Elections are carried out simultaneously in all Regency/City areas. Article 33 letter a of the Village Law states that a Candidate for Village Head must meet the requirements of a citizen of the Republic of Indonesia; and Article 34 paragraph (1) of the Village Law which states that the Village Head is directly elected by the Village residents.

Thus, it can be seen that there are differences in determining the head of village government and customary village. This is the source of the community's rejection of one of the Traditional Villages in West Seram Regency (SBB Regency), namely Kamarian Village in Kairatu District, against the policy of implementing simultaneous village head elections (Pilkades Simultaneous) which includes villages and custom villages in SBB Regency. According to the community, Kamariang village is a custom village, so that the community

² H A W Widjaja, 2004, *Otonomi Desa Merupakan Otonomi yang Asli, Bulat dan Utuh*, PT Raja Grafindo Persada, Jakarta, hl. 165

³ Y Zakaria, 2005, *Pemulihan Kehidupan Desa dan UU No 22 Tahun 1999, Dalam Desentralisasi, Globalisasi, dan Demokrasi Lokal*, LP3S, Jakarta, hl. 332

⁴ Yuningsih, N. Y., & Subekti, V. S. (2016). Demokrasi dalam pemilihan kepala desa? studi kasus desa dengan tipologi tradisional, transisional, dan modern di provinsi Jawa Barat tahun 2008-2013. *Jurnal Politik*, 1(2), 231-261. <http://download.garuda.kemdikbud.go.id/article.php?article=524759&val=10725&title=Demokrasi%20dalam%20Pemilihan%20Kepala%20Desa%20Studi%20Kasus%20Desa%20Dengan%20Tipologi%20Tradisional%20Transisional%20dan%20Modern%20di%20Provinsi%20Jawa%20Barat%20Tahun%202008-2013>

does not accept the system of selecting the custom village head which is carried out through a simultaneous election mechanism⁵.

Meanwhile, one of the members of the Maluku Provincial People's Representative Council who came from the SBB district election area also expressed his custom villages, because the holding of the simultaneous Pilkades was only intended or carried out by the village. so that the simultaneous Pilkades process cannot be carried out in custom villages⁶. Based on this, this research was conducted to examine whether the implementation of custom village head elections can be carried out simultaneously or not.

2. METHOD

This study uses a normative juridical research method, namely research that examines laws and regulations, as well as legal principles or principles, with a statutory approach and a conceptual approach.

3. RESULTS AND DISCUSSION

3.1 Village in West Seram district

Indigenous peoples are very diverse societies based on customs and culture and can be found all over the world. In a historical perspective, the existence of customary law communities is that people already exist and inhabit a certain area by having certain special characteristics and characteristics that are different from other Indigenous peoples or community groups⁷.

According to Widjaja, The existence of the village existed before the formation of a country, including the Unitary State of the Republic of Indonesia (NKRI) accompanied by their respective customs and culture. This view shows that the village in question is a custom village⁸. This view emphasizes that the village has existed before the formation of a state, including the unitary state of the Republic of Indonesia (NKRI), the beginning of the formation of villages with various customs and cultures.

Explanation of Article 18 of the 1945 Constitution in number II which states that:

"In the territory of the State of Indonesia, there are approximately 250 zelfbesturende landchappen and volksgetneenschappen, such as villages in Java and Bali, the state in Minangkabau, hamlets and clans in Palembang and so on. These areas have an original composition, and therefore can be considered as a special area. The State of the Republic of Indonesia respects the position of these special regions and all state

⁵ Tolak Pilkades, Warga Desa di Pulau Seram Blokade Jalan, : <https://regional.kompas.com/read/2021/10/14/173805978/tolak-pilkades-warga-desa-di-pulau-seram-blokade-jalan-tuntut-bupati-beri?page=all>

⁶ Anggota DPRD Maluku Tolak Pilkades Serentak di Kabupaten SBB <<https://strateginews.co/2021/08/12/anggota-dprd-maluku-tolak-pilkades-serentak-di-kabupaten-sbb/>>

⁷ Laurel Evelyn Dyson, and Jim Underwood. "Indigenous people on the web." *Journal of theoretical and applied electronic commerce research* 1. no. 1 (2006): 65-76. <https://doi.org/10.3390/jtaer1010007>

⁸ Andress Deny Bakarbesy, The Position of the Village in The Terms of the Constitutional Construction of the Unitary State of the Republic of Indonesia in The Implementation of the Regional Autonomy." *International Journal of Advanced Research* 2. no.2 (2014): 1226-1233. <<http://www.journalijar.com/article/872/position-of-the-village-in-the-terms-of-the-constitutional-construction-of-the-unitary-state-of-the-republic-of-indonesia-in-the-implementation-of-the-regional-autonomy/>>

regulations concerning these areas will remember the rights of the origin of these regions.

The explanation of Article 18 of the 1945 Constitution before the amendment emphasized that Indonesia is a country that has a fairly high level of progress, this is motivated by the existence of various customs, ethnicities, cultures that live and grow in the Unitary State of the Republic of Indonesia (NKRI) in the spirit of Unity in Diversity⁹. According to Zudan Arif Fakrulloh's view, the existence of a village according to the idea of the founding fathers of the nation's development in thought at the beginning of the independence of the Republic of Indonesia, is an autonomous community based on the authenticity of customs and origins, which deserves to be respected through various laws and regulations governing the village. This shows that there is awareness of the founders of the nation regarding the existence of the village along with its customs and culture, which existed before the existence of the state so that it needs to be recognized and appreciated in various applicable state legal products.¹⁰

This is regulated in Article 18 B paragraph (2) of the 1945 Republic of Indonesia Law which states that the state recognizes and respects customary law community units and their traditional rights, as long as...., this constitutional provision indicates that there is legal guarantee for customary law community units through recognition and respect for the country.

Article 1 point 1 of the Village Law states that a village is a village and customary village or what is called by another name, hereinafter referred to as a village, is 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, rights origin, and/or traditional rights recognized and respected in the system of government of the Unitary State of the Republic of Indonesia.

According to Article 6 paragraph (1) of the Village Law, the Village consists of Villages and Traditional Villages. Furthermore, Article 6 (2) of the Village Law states that the designation of Village or Traditional Village as referred to in paragraph (1) is adjusted to the designation applicable in the local area.

Thus, the existence of a customary village is a customary law community unit which is a legal community unit that is 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 owned and recognized and respected by the Unitary State of the Republic of Indonesia. Indonesia, so that the development of traditional villages is adjusted to the rights of origin owned in each region in Indonesia.

According to Article 97 paragraph (1) of the Village Law that the determination of a Traditional Village fulfills the following requirements:

- a) the customary law community unit and its traditional rights are actually still alive, whether they are territorial, genealogical, or functional;

⁹ Anggoro, Teddy, "Kajian Hukum Masyarakat Hukum Adat Dan Ham Dalam Lngkup Negara Kesatuan Republik Indonesia." *Jurnal Hukum & Pembangunan* 36. no. 4 (2017): 487-498. DOI: <http://dx.doi.org/10.21143/jhp.vol36.no4.1477>

¹⁰ Andress Deny Bakarbesy, "Interaksi Antara Negara Dan Desa Adat Dalam Konstruksi Negara Kesatuan Republik Indonesia." *Sasi* 24. no.1 (2018): 59-72. DOI: <https://doi.org/10.47268/sasi.v24i1.119>

- b) customary law community units and their traditional rights are deemed in accordance with community development; and
- c) customary law community units and their traditional rights in accordance with the principles of the Unitary State of the Republic of Indonesia.

Meanwhile, Article 5 paragraph (2) of the Regulation of the Minister of Internal Affairs Number 52 of 2014 concerning Guidelines for Recognition and Protection of Indigenous Law Communities stipulates that identification of customary law communities is carried out by taking into account:

- a) the history of the Indigenous Law Community;
- b) Indigenous territory;
- c) customary law;
- d) assets and/or customary objects; and
- e) customary government institutions/systems.

Villages in Maluku are generally custom villages, because historically they have a long history of existence which includes origins based on customs and culture. Traditional villages on Seram Island, Ambon Island and Lease Island have the same mention or term, namely Negeri. Negeri in view Ziwari Effendi¹¹, is a territorial alliance which is a combination of several soa¹². Meanwhile, according to several Regional Regulations in the Maluku Province Region, in particular according to the Ambon City Regional Regulation Number 8 of 2017 about Negeri in Article 1 number 12 stipulating that Negeri is a customary law community unit that has territorial boundaries, which is authorized to regulate and manage government affairs, the interests of the community, local 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; and according to Article 1 number 14 of the Regional Regulations of Central Maluku Regency Number 01 of 2006 about Negeri, it is stated that Negeri is a unit of customary law community which is genealogically territorial in nature and has territorial boundaries, which is authorized to regulate the interests of the local community based on the rights of origin and local customs which located in the Central Maluku region which is recognized and respected in the government system of the Unitary State of the Republic of Indonesia. Thus, Negeri is a unit of customary law community that has territorial genealogical ties, and has the right to organize a government based on customs and origin rights.

Negeri in general has a similar history which tells that the origin of the seram island is a place called nunusaku as the beginning of the formation of community alliances. After the war occurred in Nusaku (the inland of the western part of the island of Seram), there was a wave of migration of people who left Nusaku to avoid war, as well as to find a new residence. This migration is carried out individually or individually, which then meet each

¹¹ Ziwari Effendi, *Hukum Adat Ambon-Lease*, (Jakarta, Pradnya Paramita, 1987), p. 31

¹² According to Frank L Cooley that SOA is a collection of house spies which is a genealogical alliance, in Frank L Cooley, *Mimbar dan Tahta- Hubungan Lembaga-lembaga Keagamaan dan Pemerintahan di Maluku Tengah*, (Jakarta, Pustaka Sinar Harapan, 1987), p. 228. Meanwhile, according to Ziwari Effendi, SOA is a genealogical territorial alliance within the territory of the government of Negeri, in Ziwari Effendi, *Hukum Adat Ambon-Lease...Ibid*, p. 29. There is a difference of understanding between the two regarding soa, where Frank.L. Cooley only emphasized the existence of soa which consists in the existence of a genealogical bond between several different lineages. Meanwhile, Ziwari Effendi defines the meaning of soa which is not only related to the association of several different descendants but also emphasizes the existence of a common place of residence, by inhabiting the same area.

other on the way and form groups, or trips are carried out in groups to find a place that is considered worthy and suitable to live in.

This process ultimately creates an alliance of customary law communities that starts from a family alliance, becomes an alliance between families so that a group of customary law communities is formed called Negeri. According to Dewi Wulansari¹³, theoretically the formation of customary law communities is due to the binding factor that binds each member of the customary law community, including;

- a) Genealogical factors (heredity), namely legal community alliances based on similarities in descent. This means that group members are bound because they claim to come from the same ancestor or descent.
- b) Territorial (territorial) factor, is a legal community alliance that has an attachment based on the same place of residence¹⁴. Hilman Hadikusuma¹⁵ explained that the territorial law alliance is a society that is regular and permanent in inhabiting a certain area, so that members of the community have an attachment to that residence.

This feature is also owned by the countries in the SBB district, including the Kamariang State. History in the land of Kamariang tells that the ancestors of the land of Kamariang had traveled from my homeland and found a hill which is located approximately 4 (four) km north of the present state of Kamarian. This place and community group is at the same time the embryo of the formation of the Kamarian state. The early inhabitants of the Kamariang country consisted of several families who avoided war in the interior of West Nusa Ina (West Seram), including: the Tomatala, Kainama, Tauran, Putirulan, Tuaputimain, Wairata, Terinate, Talapessy, Poceratu and Pariama families, while other families as; the Tupanwael, Tureai, Tuhehay/Pattiasina families, Tuparia, Pessireron, Pentury and others are still living scattered starting on the Ohatuniwei river, Isirwain water, Wairanai water. These families or mataruma-mataruma can then be contacted by Kapitan Marisa (Putirulan) to join the so-called Negeri Lama with the name "SAMALIANE"¹⁶.

The location of the Negeri Lama Kamarian has several relics, including¹⁷:

- 1) a memorial monument consisting of 3 (three) stone pillars and between them is a stone board of natural events;
- 2) There are 6 (six) thick bamboo clumps surrounding the south to withstand wind pressure for the purpose of housing development;
- 3) There is a traditional house (baileo) which at that time was called Leukawa.

In addition to the Negeri Kamarian, there is also Negeri Rumahkay which also declares itself to be a custom village in SBB Regency. The people of Negeri Rumahkay have an original clan belonging to Soa Anakale. Soa Anakele consists of several clans including Corputty, Kakerissa, Halapiry, Akerina, Risamahu, Akisuru, Latupau, and Atapary, which have existed since the people of Negeri Rumahkay were in the mountains until they descended to the coastal areas. Apart from Soa Anakele, there is also Soa Anaueng, which

¹³ Dewi Wulansari, *Hukum Adat Indonesia-Sebuah Pengantar*, (Bandung, PT Refika Aditama, 2010), p. 25

¹⁴ Dewi Wulansari, *Hukum Adat Indonesia-Sebuah Pengantar*Ibid, p.27

¹⁵ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung, cet-kedua, Mandar Maju, 2003), p. 106

¹⁶ <http://juliansoplanit.blogspot.com/2011/12/kamarian-amalohi.html>

¹⁷ Ibid

consists of the Tuasuun, Akyuwen, Wairatta, Salawane and Nusawakan clans, namely those who only joined when the Rumahkay community was already in the coastal area and jointly built Negeri Rumahkay; by remaining in their respective soa determined by the ancestors¹⁸.

Negeri is ruled by a king (head of government) from the mata rumah parentah (marga/clan) of the command, namely the Corputty. In addition to having a government, namely the king and his assistants who carry out executive tasks in Negeri, there is also an institution that carries out the task of making policies in the country, namely the Badan Saniri Negeri.

Based on the historical description of the Negeri Kamarian country and rumahkay, it can be seen that there are characteristics or elements of customary law communities in the two Negeri, as stipulated in Article 5 paragraph (2) of the Regulation of the Minister of Internal Affairs Number 52 of 2014 concerning Guidelines for Recognition and Protection of Indigenous Peoples including :

- a) the history of the Customary Law Community which tells about the long journey that led to the formation of the State (customary village);
- b) Indigenous territory; is an area controlled by a traditional village, which includes land areas (starting from the old country to the coastal areas where the country is currently located) and sea areas;
- c) customary law; that regulates social relations within and between communities
- d) assets and/or traditional objects such as traditional houses; and
- e) customary government institutions/systems, in the form of a king government system based on descendants who come from certain clans.

Based on this description, it can be seen that there are still villages in the West Seram district that still have and maintain the rights of origin and customs known in the Maluku region as Negeri. In this regard, in West Seram district there is a regional regulation Number 11 of 2019 concerning Villages (village regulation), Article 3 of the Village Regulation stipulates that there are 92 (Ninety-two) Villages in the western part of Seram district. This amount is an accumulation of villages located in the west Seram district, both villages and custom villages. With the arrangement in Article 3 of the Village Regulation, it shows that there are no custom villages in the west Seram district, so that all villages in the west Seram district are legally based on the Village Regulations.

Thus, there are 2 (two) views regarding the existence of villages in the west Seram district, namely those who recognize that in the west Seram district there are still custom villages, and the view that recognizes that there are no custom villages in the west Seram district after the enactment of the village regulation in West Seram district.

In the view of Abu daud Busroh¹⁹, there are (two) kinds of Recognition (Erkenning), namely:

- a. De facto (temporary) recognition, namely temporary recognition of the emergence or formation of a new State due to the fact that the new State actually exists but whether the procedure is through law is still debated so it needs to be investigated further. According to Moh Kusnardi and Bintan Saragih as quoted by Husein

¹⁸ E. Titaley, LEMBAGA SANIRI NEGERI PADA MASYARAT ADAT NEGERI RUMAHKAY. *KOMUNITAS: Jurnal Ilmu Sosiologi*, 3, no.2, (2020): 119-128. <https://doi.org/10.30598/komunitasvol3issue2page119-128>

¹⁹ Abu Daud Busroh, *Ilmu Negara*, (Jakarta, cet keenam, PT Bumi Aksara, 2009), p. 46

Alting²⁰ that de facto recognition is temporary and is aimed at the facts regarding the position of a state government. If the situation can then be maintained and continue to progress, then the de facto recognition will automatically turn into a de jure recognition.

Based on this, the view of the de facto existence of the village shows that the existence of customary law community units or customary villages in the west Seram district is recognized because it is based on the fact that the customary system still exists, is maintained and supported by the people, so that it still remains applies in the life of indigenous peoples or custom villages.

- b. De jure recognition (Juridical Recognition), namely a wider and permanent recognition of the emergence or emergence or formation of a State because it already has legal legitimacy. Meanwhile, according to Husein Alting²¹ that de Jure recognition is the recognition of a State against another State which is followed by certain legal actions, for example the opening of diplomatic relations and the ability to enter into agreements with other States.

Based on this concept, the de jure (juridical) recognition of the customary law community unit or customary village in the west Seram district is still maintained and its customary values are maintained and maintained by the supporting community, so that the State recognizes it and regulates it in the provisions of laws and regulations. laws that apply or are regulated and guaranteed in positive law. This de jure recognition of customary villages is a problem in the west Seram district, although according to Article 18B of the 1945 Constitution of the Republic of Indonesia and the Village Law, it has recognized and guaranteed the existence of customary law community units in the Republic of Indonesia, but at the level of regional legal products in the west Seram district, it regulates On the other hand, the village regulation of the West Seram Regency states that there are 92 villages in the West Seram district, so that there are no custom villages.

Thus, there is a dualism of views in the community related to the existence of villages in West Seram district because; First, that the villages in the west Seram district are custom villages because of the existence and historical background custom villages. Second: the view which states that in the west Seram district there are no custom villages because the provisions of Article 3 of the village regulations of the west Seram district have determined that there are 92 villages in the west Seram district.

As a result of the conflict between the two understandings in the community, public statements emerged that rejected the simultaneous village head elections in the west Seram district, including in Negeri Kamarian.

3.2 Election of Head of Custom Village

Article 1 point 5 Regulation of the Minister of Internal Affairs of the Republic of Indonesia Number 112 of 2014 concerning Village Head Elections stipulates that village head elections are the implementation of people's sovereignty in the village in order to elect village heads that are direct, general, free, confidential, honest and fair. Article 31 paragraph (1) of the Village Law states that the Village Head Election is carried out simultaneously in all Regency/City areas.

²⁰ Husein Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah (Masa Lalu, Kini dan Masa Mendatang)*, (Yogyakarta, LaksBang PressIndo, 2010), p. 63

²¹ Husein Alting, *Dinamika Hukum.....Ibid*, p. 63

Based on these provisions, it can be seen that the simultaneous village head elections is carried out through an electoral system, which means that every villager can be nominated as a village head, and the implementation process is carried out simultaneously in each region as a manifestation of democratic values as according to R. Rudiadi, and R. Herawati²² who states that community involvement in elections, post-conflict local elections and pilkades shows the implementation of the value of people's sovereignty through democratic instruments that are realized through involvement or political participation of the community in exercising political rights as voters or those who are elected.

The issue that arises is what about the customary village election, whether it is based on customary law or is subject to the provisions set by the government. According to Article 111 (1) of the Village Law that the special provisions regarding Traditional Villages as referred to in Article 96 to Article 110 only apply to Traditional Villages. Article 111 paragraph (2) of the Village Law stipulates that provisions regarding Villages also apply to custom Villages as long as they are not regulated in special provisions concerning Traditional Villages. Thus, matters relating to customary villages, as long as they have not been specifically regulated, are based on provisions regarding villages.

In this regard, the regulation regarding the mechanism of the simultaneous election of traditional village heads is not specifically regulated in the special provisions on Custom Villages. According to Article 103 of the Village Law that the Authority of Custom Villages based on origin rights includes:

- a) governance arrangements and implementation based on the original structure;
- b) regulation and management of ulayat or customary territory;
- c) preservation of the socio-cultural values of the Traditional Village;
- d) settlement of customary disputes based on customary law applicable in Traditional Villages in areas that are in line with human rights principles by prioritizing settlement by deliberation;
- e) holding a peace session for the customary village court in accordance with the provisions of the legislation;
- f) maintenance of peace and order in the Traditional Village community based on customary law applicable in the Traditional Village; and
- g) development of customary law life in accordance with the socio-cultural conditions of the Indigenous Village community.

Letter a of the provision states that the regulation and implementation of the government is based on the original structure. Furthermore, Article 107 of the Village Law states that the regulation and administration of Traditional Village Administration is carried out in accordance with the rights of origin and customary law in force in the surviving Traditional Villages and in accordance with community development and does not conflict with the principles of administering Traditional Village Government in the principle of a Unitary State Republic of Indonesia.

According to Vine Deloria, Jr as quoted by Siegfried Wiessner that the claim of customary law communities to the existence of self-government based on the diversity of

²² R. Rudiadi, and R. Herawati, "PEMILIHAN KEPALA DESA SERENTAK DALAM PERSPEKTIF OTONOMI DESA (Studi Kasus Pelaksanaan Pemilihan Kepala Desa Serentak Tahun 2016 di Kabupaten Rokan Hilir, Provinsi Riau)," *LAW REFORM*, vol. 13, no. 1, Mar. 2017: pp. 132-151, <https://doi.org/10.14710/lr.v13i1.15956>

different customs and cultures owned by each customary law community unit is a guarantee of the highest and sovereign protection through the constitution²³.

In explanation of Article 18 of the 1945 Constitution of the Republic of Indonesia, before the amendment, it was stated that there were 2 (two) concepts regarding the privilege of a legal community association, namely the terms *Zelfbesturende landschapen* and *Volksgemeenschappen*. The term *Zelfbesturende landschapen* is an original legal alliance in running the government based on custom or customary law itself²⁴.

In this regard, one of the practices in administering customary government on the islands of Seram, Ambon and Lease is related to the right of leadership in the country. Where, those who have the right to lead the country are certain clans which based on customary law have been given the right to lead. This right is called parental rights, known as *teon Raja*, and the election process according to Paramita Abdurrachman, R.Z. Leirisa and C.P.F. Luhulima²⁵ carried out by head of SOA together with religious leaders, so that the process of determining the head of state government does not involve the community. Meanwhile, Ziwar Effendi²⁶ also has the same view, that the right to rule in Negeri comes from certain clans who have parental rights, and are elected by the *saniri lengkap* as the legislative body authorized to formulate regulations and various policies in the Negeri consisting of the *saniri rajapatti*²⁷, SOA representatives, customary heads and the elders of the Negeri, as regulated in *Staatsblad 1824 no 19a*.

Based on the two views of Paramita Abdurrachman, et al and Ziwar Effendi, it shows that there are similarities in views about who has the right to be the head of the government of Negeri, namely someone who comes from a clan who has parental rights, but regarding who has the right to choose the head of the government of Negeri, in Ziwar Effendi's view in specifically mentions a *saniri lengkap*, while according to Paramita Abdurrachman, R.Z. Leirisa and C.P.F. Luhulima is the head of SOA and religious leaders, in principle the head of SOA and religious leaders are also part of the membership of the *Saniri Lengkap*.

This shows that the election system for the head of state government (customary village head) in the areas of Seram, Ambon and lease islands is based on origin rights/traditional rights/customary law which gives special rights to clans holding parental rights to be appointed as heads of state government. Meanwhile, the process of selecting the head of state government is only carried out by the *saniri lengkap*.

²³ Siegfried Wiessner, *Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples*, 41 *Vanderbilt Law Review* 1141 (2021) Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol41/iss4/4>

²⁴ Sabardi, Lalu. "Konstruksi Makna Yuridis Masyarakat Hukum Adat dalam Pasal 18B UUDN RI Tahun 1945 untuk Identifikasi Adanya Masyarakat Hukum Adat." *Jurnal Hukum & Pembangunan* 44. no.2 (2014): 170-196. DOI: <http://dx.doi.org/10.21143/jhp.vol44.no2.19>

²⁵ Paramita Abdurrachman, R.Z. Leirisa dan C.P.F. Luhulima, *Bunga Rampai Sejarah Maluku* (1), (Jakarta, Lembaga Penelitian Sejarah Maluku, 1973), p.38

²⁶ Ziwar Effendi, *Hukum Adat Ambon-Lease*.....Op.cit, p. 42&44

²⁷ *Saniri rajapatti* is the administrator of state government headed by the King and assisted by the heads of SOA, as regulated in *Landraad Amboina Decree No. 36/1920* and *Landraad Saparua Decree No. 30/1919* which states *negroijbestuur* is regent en de kepla soa's. *negroijbestuur* in customary terms it is *saniri rajapatti* in Ziwar Effendi, *Hukum Adat Ambon-Lease*,....ibid, p.41

3.3 The Relevance Of The Election Of Village Heads Simultaneously With The Election of Custom Village Heads

Election of village heads according to Article 1 number 5 of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 112 of 2014 concerning Village Head Elections (Minister of Home Affairs regulation regarding village head elections) as amended by Regulation of the Minister of Home Affairs Number 65 of 2017 concerning amendments to Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 112 of 2014 concerning Election of Village Heads , as well as the Minister of Home Affairs Regulation Number 72 of 2020, the second amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 112 of 2014 concerning Village Head Elections that Election of village heads is the implementation of people's sovereignty in the village in order to elect a village head that is direct, general, free , confidential, honest, and fair. Furthermore, Article 21 letter a stipulates that a Candidate for Village head must meet the following requirements: a citizen of the Republic of Indonesia. This provision shows that the Pilkades process is carried out directly by the community and every citizen has the right to be nominated as village head.

Regarding the timing of the village head elections, according to Article 2 and Article 3 of the Minister of Home Affairs regulation regarding village head elections that the Village Head Election is conducted simultaneously once or it can be in waves, and is carried out on the same day in all villages in the Regency/City area. Based on this, according to the Head of the SBB Regency Community and Village Empowerment Service (PMD), that on October 20, 2021 a simultaneous village head election will be held which will be attended by 42 villages in West Seram Regency (SBB)²⁸, including several custom villages that determined to take part in the simultaneous village head election, namely the negeri Kamarian and the Negeri Rumahkay.

In this regard, there is a rejection from the two custom villages, because it is based on the assumption that as a custom village, the selection process must be based on the customary rights or origin rights of the two of Negeri. Custom villages in Maluku are generally familiar with the customary government system which is based on parental rights owned by certain clans and the selection process is carried out through the appointment or appointment of clans with parental rights through deliberation of clans with parental rights.

An illustration of this practice can be seen in the practice of electing the head of state government in Ambon City as regulated in Article 27 paragraph (1) of the Ambon City Regional Regulation on the State (Ambon City State Regulation) which states that the position of Head of Government of Negeri is a parental right from the eyes of the parental house. This provision implies that in order to occupy the position as head of government of Negeri, one must come from an eye-house parental clan in accordance with the origin rights of each country.

Furthermore, in Article 27 paragraph (2) of the Ambon City Regional Regulation which states that the position of the Head of the Government of Negeri is determined based on appointment and election. These provisions indicate that the process of appointing the head of the government of negeri can be carried out through an appointment or election mechanism.

²⁸ 42 Desa Di SBB Siap Melaksanakan Pilkades Serentak 2021, <https://rri.co.id/ambon/info-publik/1220384/42-desa-di-sbb-siap-melaksanakan-pilkades-serentak-2021?utm_source=terbaru_widget&utm_medium=internal_link&utm_campaign=General%20Campaig>

The process of determining the head of the government of negeri is carried out if in the deliberations of the eye of the house of parents only recommends 1 (one) candidate for the head of the government of negeri, the mechanism for determining the head of the state government is through appointment, or in other words that the condition for nomination of the head of state government is only 1 (one) candidate from the parental rights holder clan. However, in reality there are several problems in the nomination process for the head of the government of negeri so that the appointment process cannot be carried out for the candidate for the head of the government of Negeri.

Some of the problems that cause direct appointments cannot be carried out because a number of negeri there are several clans that have the right to be nominated as head of state government or as holders of parental rights or there are still conflicts between several clans related to the right to rule in negeri, for example in negeri Liliboi on North Ambon Island, Central Maluku Regency, between the Hetarion and Kastanya²⁹ clans. In addition, in the central part of Negeri Soahoku, Central Maluku district, there are also 2 (two) clans that claim to have the right to be heads of state government, namely the Ruhupessy and Tamaela clans.

In addition, there are also a number of negeri that only have 1 clan holding parental rights but have more than 1 (one) candidate for head of state government. In this condition or situation, the mechanism used to determine who has the right to occupy the position as head of the government of negeri is through an election process. This shows that the election mechanism to determine the head of government of negeri is something that cannot be ruled out and can be applied in the process of selecting the head of government of negeri. However, in the process of electing the head of government of negeri through elections, it must still be guided by customary rights and origin rights that are still valid in each negeri that the person who has the right to be nominated in the process of electing the head of government of negeri is everyone who has parental rights.

Based on this, the process of selecting village heads simultaneously to determine the head of the village administration and the head of the customary village administration in the SBB district can be carried out jointly. Where, the election process is carried out for villages that do not have customary rights or origin rights based on the provisions that govern them, while the appointment of the head of custom village or Negeri can be carried out through an appointment process if the candidate provided by the clan who has the right to govern is 1 (one) person, while for a negeri that has more than 1 candidate for the head of state government, an election may be held while prioritizing the candidate for the head of government who has the right to govern based on customary rights and origin rights. Thus, the election time for the custom village head can be carried out together with the simultaneous village head election process, as long as it is still based on the customary and cultural values prevailing in the custom village.

4 CONCLUSION

The mechanism for selecting village heads and customary village heads can be carried out simultaneously, but specifically for traditional villages it is required to be carried out based on customary rights and origin rights.

²⁹ Pelantikan Raja Liliboi Cacat Hukum <<https://www.kabartimurnews.com/2018/12/28/pelantikan-raja-liliboi-cacat-hukum/>>

REFERENCES

Journal Article

- Anggoro, Teddy. "Kajian Hukum Masyarakat Hukum Adat Dan Ham Dalam Llingkup Negara Kesatuan Republik Indonesia." *Jurnal Hukum & Pembangunan* 36.4 (2017): 487-498. DOI: <http://dx.doi.org/10.21143/jhp.vol36.no4.1477>
- Bakarbessy, Andress Deny. "The Position of the Village in The Terms of the Constitutional Construction of the Unitary State of the Republic of Indonesia in The Implementation of the Regional Autonomy." *International Journal of Advanced Research* 2.2 (2014): 1226-1233. <<http://www.journalijar.com/article/872/position-of-the-village-in-the-terms-of-the-constitutional-construction-of-the-unitary-state-of-the-republic-of-indonesia-in-the-implementation-of-the-regional-autonomy/>>
- Bakarbessy, Andress Deny. "Interaksi Antara Negara Dan Desa Adat Dalam Konstruksi Negara Kesatuan Republik Indonesia." *Sasi* 24.1 (2018): 59-72. DOI: <https://doi.org/10.47268/sasi.v24i1.119>
- Dyson, Laurel Evelyn, and Jim Underwood. "Indigenous people on the web." *Journal of theoretical and applied electronic commerce research* 1.1 (2006): 65-76. <https://doi.org/10.3390/jtaer1010007>
- R. Rudiadi, and R. Herawati, "PEMILIHAN KEPALA DESA SERENTAK DALAM PERSPEKTIF OTONOMI DESA (Studi Kasus Pelaksanaan Pemilihan Kepala Desa Serentak Tahun 2016 di Kabupaten Rokan Hilir, Provinsi Riau)," *LAW REFORM*, vol. 13, no. 1, pp. 132-151, Mar. 2017. <https://doi.org/10.14710/lr.v13i1.15956>
- Sabardi, Lalu. "Konstruksi Makna Yuridis Masyarakat Hukum Adat dalam Pasal 18B UUDN RI Tahun 1945 untuk Identifikasi Adanya Masyarakat Hukum Adat." *Jurnal Hukum & Pembangunan* 44.2 (2014): 170-196. DOI: <http://dx.doi.org/10.21143/jhp.vol44.no2.19>
- Siegfried Wiessner, *Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples*, 41 *Vanderbilt Law Review* 1141 (2021) Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol41/iss4/4>
- Titaley, E. (2020). LEMBAGA SANIRI NEGERI PADA MASYARAT ADAT NEGERI RUMAHKAY. *KOMUNITAS: Jurnal Ilmu Sosiologi*, 3(2), 119-128. <https://doi.org/10.30598/komunitasvol3issue2page119-128>

Book

- Busroh, Abu Daud, *Ilmu Negara*, cet keenam, Jakarta, PT Bumi Aksara, 2009
- Wulansari, Dewi, *Hukum Adat Indonesia-Sebuah Pengantar*, Bandung, PT Refika Aditama, 2010
- Cooley, Frank L. *Mimbar dan Tahta- Hubungan Lembaga-lembaga Keagamaan dan Pemerintahan di Maluku Tengah*, Jakarta, Pustaka Sinar Harapan, 1987,
- Effendi, Ziwari, *Hukum Adat Ambon-Lease*, Jakarta, Pradnya Paramita, 1987
- Hadikusuma, Hilman, *Pengantar Ilmu Hukum Adat Indonesia*, cet-kedua, Bandung, Mandar Maju, 2003,

Husein Alting, *Dinamika Hukum Dalam Pengakuan Dan Perlindungan Hak Masyarakat Hukum Adat Atas Tanah (Masa Lalu, Kini dan Masa Mendatang)*, Yogyakarta, LaksBang PressIndo, 2010

Paramita Abdurrachman, R.Z. Leirisa dan C.P.F. Luhulima, *Bunga Rampai Sejarah Maluku (1)*, Jakarta, Lembaga Penelitian Sejarah Maluku, 1973

Widjaja, H A W *Otonomi Desa Merupakan Otonomi yang Asli, Bulat dan Utuh*, Jakarta, PT Raja Grafindo Persada, 2004

Syafrudin Ateng dan Suprin Na'a, *Republik Desa – Pergulatan Hukum Tradisional dan Hukum Modern Dalam Desain Otonomi Desa*, Bandung, PT Alumni, 2010

Zakaria, Y *Pemulihan Kehidupan Desa dan UU No 22 Tahun 1999, Dalam Desentralisasi, Globalisasi, dan Demokrasi Lokal,,* Jakarta, LP3S, 2005,

Thesis, Web Page, and Others

Anggota DPRD Maluku Tolak Pilkades Serentak di Kabupaten SBB
<https://strateginews.co/2021/08/12/anggota-dprd-maluku-tolak-pilkades-serentak-di-kabupaten-sbb/>

<http://juliansoplanit.blogspot.com/2011/12/kamarian-amalohi.html>

Pelantikan Raja Liliboi Cacat Hukum
<https://www.kabartimurnews.com/2018/12/28/pelantikan-raja-liliboi-cacat-hukum/>

Tolak Pilkades, Warga Desa di Pulau Seram Blokade Jalan, : <https://regional.kompas.com/read/2021/10/14/173805978/tolak-pilkades-warga-desa-di-pulau-seram-blokade-jalan-tuntut-bupati-beri?page=all>

42 Desa Di SBB Siap Melaksanakan Pilkades Serentak 2021, https://rri.co.id/ambon/info-publik/1220384/42-desa-di-sbb-siap-melaksanakan-pilkades-serentak-2021?utm_source=terbaru_widget&utm_medium=internal_link&utm_campaign=General%20Campaig