

PARTICIPATION PRINCIPLE ON THE 2014 VILLAGE LAW IN COASTAL VILLAGE

Chomariyah

Faculty of Law, Hang Tuah University
Surabaya, Indonesia
Email: chomariah@hangtuah.ac.id

Nurul Hudi

Faculty of Law, Hang Tuah University
Surabaya, Indonesia
Email: hudi_law@yahoo.co.id

Bambang Ariyanto

Faculty of Law, Hang Tuah University
Surabaya, Indonesia
Email: bambang.ariyanto@hangtuah.ac.id

ABSTRACT

The law No. 6 of 2014 concerning Village, states that around 10 percent of the State Budget transferred to the regions must be allocated to the villages. The villages has the right to their origin and traditional rights to organize and manage the interests of the village community. Village community entitled to control the implementation of the village Government, rural community development, and empowerment village communities. The aim of this research is to analyze the Law No. 6/2014 in its implementation has guaranteed a more equal and equitable distribution of village fund and relating to use of participation principle in budgeting process. Village fund shall be allocated equitably, take into account the population size, poverty rate, area of territory. The purpose of village funds are village empowerment and rural development. The result of research show that participation principle on village government budgeting (Anggaran Pendapatan dan Belanja Desa/ APBDes) process conducted through Village Consultative Body (Badan Permusyawaratan Desa/BPD) and Community.

Key words: Participation principle, village fund, empowerment, village consultative body.

Introduction

In Indonesia, Village has the origin and traditional rights to organize and manage the interests of the local community, that is governed in article 1 of Law No. 6 of 2014 concerning Village.¹ In managing their village, they need funding to take into rural development. In the past, many rural development programs that have failed. One of them is the development program that seeks to eradicate the phenomenon of poverty in village. Therefore, it is necessary empowerment aimed to poor people so they can live better. The Village has developed and they need to be independent and empowered. In implementing village government, they need to manage the finance village. The finance village derived from:²

- a. The locally generated revenue consists of income result of operations, the assets results, self-help and participation, mutual aid, and other income Village;
- b. Allocation of the State Budget;
- c. The part of the local taxes and levies Regency/City;
- d. Allocation of Village Fund, which is a part of the equalization funds received by the District/City;
- e. Financial assistance from the budget of the Provincial and Budget District/ City;
- f. Grants and donations are not binding on third parties and;
- g. The other legitimate revenue village.

Based on explanation above in (d), Village fund is all the rights and obligations of the village which can be valued in money and everything in the form of money and goods. The motivated of the village fund is that government want to make villages more developed and prosperous in the future. The village fund program has been running for some time now. The program was part of the government's large-scale decentralization initiative to, among other things, reduce inequality and poverty. Management of Village Fund aims to improve the welfare of the village community and the quality of human life and reduce poverty through the fulfillment of basic needs, the development of village infrastructure, local economic development potential, as well as the use of natural resources and the environment in a sustainable manner. For example in Malaysia, the village of Kuala Gula, the community take care of nature, for future generation, Kuala Gula is fishing village.³

¹ Law No. 6/2014 concerning Village, acces dated: 12 November 2015,
in <http://www.indolaw.org/UU/Law%20No.%206%20of%202014%20on%20Villages.pdf>

² *Ibid*

³ Bejder, Peter and Kim Boye Holt, *People & Nature, a Fishing Village in Malaysia*, Wetlands International, Malaysia, 2015, Acces dated: 26 May 2016, in <http://malaysia.wetlands.org/Library/tabid/519/mod/1570/articleType/ArticleView/articleId/1571/Default.aspx>

The 2014 Village Law provided the legal framework for the implementation of the program.⁴ Within this program, over 74,000 villages are expected to receive around 20.7 trillion rupiahs (US\$1.4 billion) in grants in 2015. The grants are expected to be used to develop the necessary infrastructure, including agricultural needs. The Village fund shall be calculated based on the data of population size, poverty rate and the level of village geographic difficulty of every district. How the mechanisms of control Village Budget by *Village Consultative Body* (BPD), is there any legal basis? And how *Village Consultative Body* (BPD) can carry out the mandate of the villagers who crave the use of funds is transparency and accountable. The aim of this research is to analyze the Law No. 6/2014 in its implementation has guaranteed a more equal and equitable distribution of village fund and use to participation principle in budgeting process. Village fund shall be allocated equitably take into account the population size, poverty rate, area of territory. The purpose of village funds are village empowerment and rural development.

Research design

This research is legal research, Legal research is "the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation."⁵

The processes of legal research vary according to the country and the legal system involved. However, legal research generally involves tasks such as:

1. Finding primary sources of law, or primary authority, in a given jurisdiction (cases, statutes, regulations, etc.).
2. Searching secondary authority (for example, law reviews, legal dictionaries, legal treatises, and legal encyclopedias), for background information about a legal topic.
3. Searching non-legal sources for investigative or supporting information.

Black's Law Dictionary defines legal research as ; a. The finding and assembling of authorities that bear on a question of law. b. The field of study concerned with the effective marshalling of authorities that bear on a question of law.⁶

Legal science has a distinctive character, which by its nature is normative. In this case, the science of law has distinctive features (sui generis), characterized by: a. empirical analysis is to describe and analyze the content and structure of the law; b. conduct systematic symptoms of law; c. undertake the interpretation of the substance of the applicable law; and d. practical meaning of law is closely related to its normative dimension. Legal research was conducted by the method according to the typical character of the science of law (jurisprudence) which is different from social science and natural science. This research method includes the approach of the determination of legal materials and critical analysis therein contained by the thought that is search (Explorative), thorough investigation (inquiry) and interpretation. Based on the nature of the research, this research is a normative legal research and the focus of research aimed at study of legal material, obtained from the legislation.

In this research used one village for example, is Pangkah Kulon village.

Location of the Research

Pangkah Kulon Village is a coastal village in Gresik. In north opposite with Java Sea, in South opposite with Karangrejo Village, and in the East, opposite with Pangkawetan Village. According to the government administrative data in 2013, population of Pangkahkulon Village are 8.305 people of 4.260 men and 4.045 women. Their livelihood majority are fishermen.

Figure 1: Location of Research Studies



Definition of Village Funds

In the Government Regulation No. 60 of 2014 on Village Fund from the State Budget,⁷ "Village Fund is a fund sourced from the State Budget and Expenditure earmarked for the village which is transferred through the Budget of the Regency /City and used to finance governance, implementation of the development, community development, and community empowerment". Furthermore,

⁴Jakarta Post, *The Perfect Storm Preventing misuse village Funds*, Acces dated: 16 November 2015, in www.thejakartapost.com/news/2015/10/15/the-perfect-storm-preventing-misuse-village-funds.html#sthash.HmhSbiGf.dpuf

⁵ Myron Jacobstein and Roy Mersky, *Fundamentals of Legal Research*, 8th Edition, Foundation Press, Mineola, 2002, p. 1

⁶ Garner, Bryan A., *Black's Law Dictionary*, 8th Edition, West Publishing CO. St. Paul, Minn.2004, p. 394

⁷ Government Regulation No. 60 of 2014 on Village Fund from the State Budget Article 1, paragraph 2:

in Article 6 state that the funds are transferred through the village of the district budget / city to transfer to the village APB. Based on Regulation of the Minister of Rural, Rural Development and Transmigration No. 21 of 2015 on preferred setting use of the village funds mentioned that the village fund in 2016 was used to finance the implementation of the programs and activities of Rural Development and Rural Community Empowerment.

The first priority is the use of village funds to build the infrastructure including roads, irrigation, simple bridges, and embankments. The health sector and education also need to be priority including integrated health and early childhood education. The State Budget (APBN) has an important and It was conceived in the transitional government, which is compiled based only on the basic needs of government administration and service to the community. It was intended to provide space for administration of election results 2014 to implement the program in accordance platform, vision, and mission planned. Equally important, the State Budget (APBN) 2015 is the first year allocation of village funds.

Village funds are funds from the state budget earmarked for the village, which is transferred through the budget of the district / city.⁸ These funds are used to finance the government administration, the implementation of development, social development, and community empowerment. Village funds allocated from the State Budget pursuant to Article 72 Paragraph 1 (b) Law No. 6/2014 on the Village. The Village Fund which has been established in the state budget in 2016 was 46.9 trillion Rupiahs. Village funds will be disbursed in two stages period, namely in March and August. The distribution of the two phases is conducted in accordance with the publication of the Finance Minister Regulation Number 49/PMK.07/2016 on Procedures Allocation, Distribution, Use, Monitoring, and Evaluation of the Village Fund. The legal framework is derived from the Government Regulation (PP) No. 8 of 2016 on the Second Amendment to Regulation No. 60 Year 2014 on the Village Fund from the State Budget (APBN).

State Budget for Fiscal Year 2015 is projected to amount to 2039.5 trillion rupiahs, consisting of central government expenditure 1392.4 trillion rupiahs and a budget transfer stricken area and the village fund of 646.96 trillion rupiahs. Planned of transfer budget of 637.9 trillion rupiahs to Village and the village fund planned 9.06 trillion rupiahs or 0.44 percent of the total State Budget expenditure in 2015. However, if examined from the substancy of the new law absolutly different from previous regulation. First, the village position. In the explanation of its law, implied that village position identical to the third level. Village as local government as the lowest in the Indonesian system government, which located in the regency/city. So the principle used in the recognition and subsidiarity. Second; status or form of village government. This new law not only regulated village as local self government but also as self governing community.⁹

Entering 2015, we have been in a phase of implementation of the budget for the State Budget 2015. Budget execution is the phase when all sources of funding in the State budget is implemented in accordance with the policy, including policies and funds transfer stricken villages. Budget allocation for village funds into postal financial income for the village by effecting a program based on the village equally and equitably. The allocation of village funds are expected to have an impact on improving the welfare of society, especially in strengthening efforts to encourage economic growth more evenly. Given the budget in 2015 was the first year allocation of village funds, it is important for us to jointly oversee the implementation of the budget.

Side of transparency requires that the State budget funds allocated honestly and openly. Budget transparency, among others by improving the quality of budget documentation that describes the purpose of allocation of village funds and how these funds are used. Side of accountability implies how the allocation of funds this village is distributed in the form of goods and services in the public interest. Accountability village fund is not solely how the funds would be channeled to village community, but furthermore is how helpful the village fund for rural communities.

The sides also focused on accountability village funds which are essentially contributions from citizens to State budget spending through tax payments. Side orientation towards society implication that the village fund allocation designed to meet the objectives of rural empowerment in order to become a powerful, advanced, independent, and democratic. By doing so, it is expected to create a strong foundation in implementing governance and development in the village. Villagers be the main target in the management of the allocation of funds this village. Therefore, the use of village funds should facilitate the participation and interaction of villagers in them to the benefit to the rural communities, either directly or indirectly.

Need to Engage Citizens One of the pillars of good governance is stakeholder engagement. In the context of this village fund management, in meeting the principles of good governance, rural communities need to be involved in the implementation of the budget of the village. Community involvement in the management of village funds can be done through village meetings which is a consultative forum and followed by the Village Consultative Body, the village government and village community that are strategic in terms of governance of the village.

Aspirations of the people are absorbed, stored, compiled, and followed up by the Village Consultative Body. Village Consultative Body reserves the right to monitor and inquire about government administration village to village government. They are also entitled to express an opinion on the governance of the village, the implementation of rural development, rural community development, and community empowerment. Rights monitor and inquire about the organization of village governance, including oversight of the allocation of village funds from the State Budget, in accordance with the provisions stipulated in Law No. 6/2014 on the village. From the above explanation can be concluded that the implementation of the village fund allocation in Budget 2015

⁸ Asian Development Bank, (2016) *Toward Mainstreaming And Sustaining Community-Driven Development In Indonesia, Understanding Local Initiatives And The Transition From The National Rural Community Empowerment Program To The Village Law, in* <http://www.adb.org/sites/default/files/publication/178696/mainstreaming-cdd-indonesia.pdf>, p.44

⁹ Ike Wanasmawatie, 2015, *Analysis of Law No. 6/2014 On Village Based On Local Government Perspective*, p.123 acces dated, 12 May 2016, http://www.academia.edu/15068548/Analysis_of_Law_No_6_2014_on_Village_Government_Basen_on_Local_Government_Perspective

needs to be supervised and community participation so that the allocation of funds in the initiation of a new village in the state budget in 2015 in transparency, accountable and community-driven village. Only then, he has had implications for improving the welfare of rural communities.

Definition of Good Financial Governance

According to the UNESCAP,¹⁰ good governance is an indeterminate term used in international development literature to describe how public institutions conduct public affairs and manage public resources. Governance is "the process of decision-making and the process by which decisions are implemented (or not implemented)". The term *governance* can apply to corporate, international, national, local governance or to the interactions between other sectors of society. The concept of "good governance" often emerges as a model to compare ineffective economies or political bodies with viable economies and political bodies. The concept centers on the responsibility of governments and governing bodies to meet the needs of the masses as opposed to select groups in society. Because countries often described as "most successful" are Western liberal democratic States, concentrated in Europe and the Americas, good governance standards often measure other State institutions against these States.

Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and follows the rule of law. Good governance is responsive to the present and future needs of the organization, exercises prudence in policy-setting and decision-making, and that the best interests of all stakeholders are taken into account.¹¹

1. Rule of Law, Good governance requires fair legal frameworks that are enforced by an impartial regulatory body, for the full protection of stakeholders.
2. Transparency, Transparency means that information should be provided in easily understandable forms and media; that it should be freely available and directly accessible to those who will be affected by governance policies and practices, as well as the outcomes resulting there from; and that any decisions taken and their enforcement are in compliance with established rules and regulations.
3. Responsiveness, Good governance requires that organizations and their processes are designed to serve the best interests of stakeholders within a reasonable timeframe.
4. Consensus Oriented, Good governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus of what is in the best interest of the entire stakeholder group and how this can be achieved in a sustainable and prudent manner.
5. Equity and Inclusiveness, The organization that provides the opportunity for its stakeholders to maintain, enhance, or generally improve their well-being provides the most compelling message regarding its reason for existence and value to society.
6. Effectiveness and Efficiency, Good governance means that the processes implemented by the organization to produce favorable results meet the needs of its stakeholders, while making the best use of resources – human, technological, financial, natural and environmental – at its disposal.
7. Accountability, Accountability is a key tenet of good governance. Who is accountable for what should be documented in policy statements. In general, an organization is accountable to those who will be affected by its decisions or actions as well as the applicable rules of law.
8. Participation, Participation by both men and women, either directly or through legitimate representatives, is a key cornerstone of good governance. Participation needs to be informed and organized, including freedom of expression and assiduous concern for the best interests of the organization and society in general.

Figure 2: Element of Good Governance



Good governance is an ideal which is difficult to achieve in its totality. Governance typically involves well-intentioned people who bring their ideas, experiences, preferences and other human strengths and shortcomings to the policy-making table. Good governance is achieved through an on-going discourse that attempts to capture all of the considerations involved in assuring that

¹⁰ United Nations Economic and Social Commission for Asia and the Pacific, "What is Good Governance" acces dated 15 june 2016 from <http://www.unescap.org/sites/default/files/good-governance.pdf>;

¹¹ Soekarwo, 2014, *Hukum Pengelolaan Keuangan Daerah Berdasarkan Prinsip Good Financial Governance*, Erlangga University Press, Surabaya.

stakeholder interests are addressed and reflected in policy initiatives. Based on the explanation above, the principles relating to the management of village fund is participatory and transparent principles.

Legal Framework

The legal framework of the research is based on Law No. 6/2014 on village, Village is a unit of community to regulate and manage owned government under supervision of Village Consultative Body, in Article 55 state :¹²

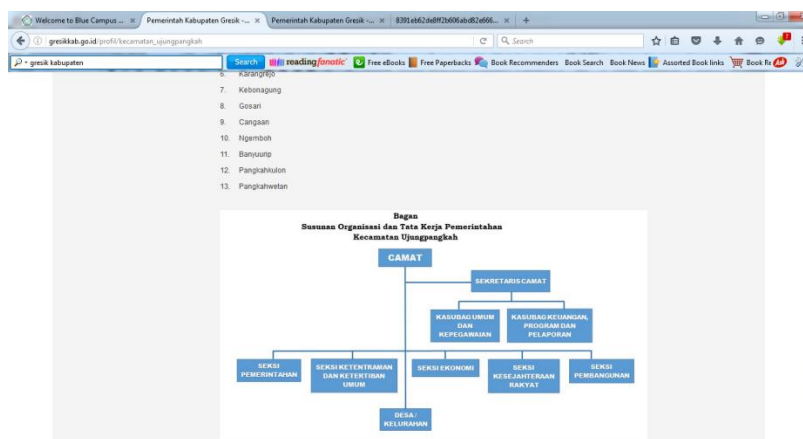
“ Village Consultative Body has the function :

- a. Discuss and agree on Draft of Village Regulation along with the Head of the Village;
- b. And share thier aspiration of village community;
- c. To control the performance of Village Head.”

The provisions of article 55 c which says that the Village Consultative Body has the function of monitoring the performance of the head of the village is the entry point that will discuss here. Based on Government Regulation No. 47 of 2015 regarding amendment to Government Regulation No. 43 of 2014 on the Implementation of the Village Law, Article 48 state :

“In performing their duties, authorities, rights and obligations, village heads must: a. submit the report of the Government village of the end of each fiscal year to the regent / mayor; b. submit the report of the Government village at the end of the term of office to the regent / mayor; c. convey information governance report in writing to the Village Consultative Body end of each fiscal year.”

Figure 3: Organizational structure in Pangkah Kulon Village



According, Article 51 state:

- “1). Village Head of the Government to submit a report description Village as referred to in Article 48 c of each end of the fiscal year to the Village Consultative Body in writing at least three (3) months after the end of the fiscal year.
- 2). Rural information report of the Government referred to in paragraph (1) shall at least contain the implementation of the rules villages.
- 3). Rural information report of the Government referred to in paragraph (1) is used by the Village Consultative Body in carrying out the function of supervising the performance of the head of the village.”

Into the aforementioned there are at least three crucial points are: 1. Article 48 c which state that the Village Head is obliged to submit information governance report in writing to the Village Consultative Body end of each fiscal year. 2. Article 51 paragraph 2 that the report of the Government statement Into the aforementioned there are at least three crucial points are: 1. Article 48 c which state that the Village Head is obliged to submit information governance report in writing to the Village Consultative Body end of each fiscal year. 2. Article 51 paragraph 2 that the report of the Government statement Village referred to in paragraph (1) shall at least contain the implementation of the rules villages.

The village chief shall make a report on the implementation of the rules affidavits village means the village head shall make a report on the implementation of Village Budget. 3. Further, in Article 51 paragraph (3) explained that the information report of the Village Government referred to in paragraph (1) is used by the Village Consultative Body in carrying out the function of supervising the performance of the head of the village. Village Consultative Body has been very difficult to access on the implementation Village Budget because according to the provisions of law that the village head Village Budget only obliged to

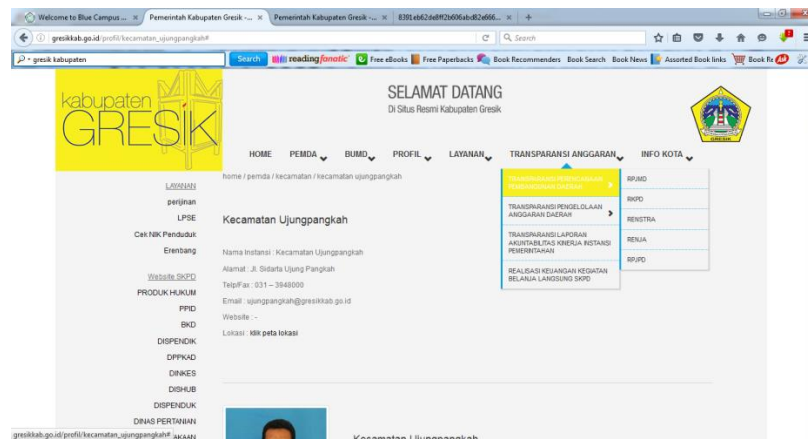
¹² Law No. 6/2014 and Government Regulation No. 47 of 2015 regarding amendment to Government Regulation No. 43 of 2014 on the Implementation of the Village Law, Village Head and BPD discuss and agree together with village regulations (Article 1 paragraph 7 of Law Village) The village head and village status changes BPD initiated into the village through village meetings (Article 11 (1)) The village head gives governance report in writing to BPD (Article 27 of the Village Law c) BPD tell the village chief about the expiration of the term of office Village Head in writing 6 (six) months before his term expires (Article 32 paragraph (1) of the Village) Village Head filed a Draft Budget of the village, and to deliberate together BPD (Article 73 paragraph (2))

report the implementation of the Regent/Mayor while people demand oversees governance Village Consultative Body participate Village. With this clear legal framework will facilitate the task of Village Consultative Body to participate in supervising the performance of the head of the village including the use of the Village Fund that integration in Village Budget. Village referred to in paragraph (1) shall at least contain the implementation of the rules villages. Let us underline the words of at least contain the implementation of the rules villages. We still remember that Village Budget is one example of Village Regulations. This means that if the village chief shall make a report on the implementation of the rules affidavits village means the village head shall make a report on the implementation of Village Budget. 3. Further, in Article 51 paragraph (3) explained that the information report of the Village Government referred to in paragraph (1) is used by the Village Consultative Body in carrying out the function of supervising the performance of the head of the village.

Village Consultative Body in Pangkah Kulon has been very difficult to access on the implementation Village Budget because according to the provisions of law that the village head Village Budget only obliged to report the implementation of the Regent / Mayor while people demand oversees governance Village Consultative Body participate Village. The task of Village Consultative Body to participate in supervising the performance of the head of the village including the use of the Village Fund and integration in Village Budget.

Accountability of Village Consultative Body members in Pangkah Kulon are regulated explicitly, so that village community could control their representatives performance. Society has a right to participate in the village governance process from the formulation, implementation and control of village policies execution, however the society participation is still influenced by other regulations that can support the degree of participation.

Figure 4: Transparency Budgeting in digital programe in Pangkah Kulon Village



In Pangkah Kulon village also set up a digital application contains details of budgetary funds received by each village headman. Head of Community Empowerment Board and Village Government Gresik said digital application that is provided to the community to control the realization of village funds, so that funds are not diverted village. Digital information Budget village used for the benefit of public participation in follow oversees village. This application is expected to prevent the misappropriation of village funds. Because, if there is a program of rural development has been listed in the digital applications and not being implemented, the public can directly question to the head of the village, so the village fund perceived benefits to society. In 2015, Pangkah Kulon village received funds from the state budget of 1.77 billion Rupiahs.

Related to Article 48 (c), which state that the Village Head is obliged to submit information governance report in writing to the Village Consultative Body end of each fiscal year. Article 51 paragraph 2 that the report of the Government statement, Village referred to in paragraph (1) shall at least contain the implementation of the rules villages. Village Budget (APB Desa) is one example of Village Regulations. This means that if the village chief shall make a report on the implementation of the rules affidavits village means the village head shall make a report on the implementation of Village Budget. Further, in Article 51 paragraph (3) explained that the information report of the Village Government referred to in paragraph (1) is used by the Village Consultative Body in carrying out the function of supervising the performance of the head of the village.

Priority Use of Village Fund

According to Regulation of Minister of Villages Number 21 of 2015, the first priority of Village Fund is developing infrastructure, Rural Ministry issued Ministerial Regulation No. 03 Year 2015 About the Companion Village. There explained clearly that the Companion Village is not a manager of development projects in the village. Mentoring Task Village focused on empowering rural communities through the process of social learning. Thus, village assistant is not burdened with the tasks of financial administration and rural development under the Act Village is the duty and responsibility of village government. Interest Rural Assistance to Enhance the capacity, effectiveness and accountability of village government and village development.¹³

¹³ Infrastructure To Be Priority in Village Fund 2016, Ministry of Finance of Indonesia, acced date : 2 July 2016, in <http://www.kemenkeu.go.id/en/Berita/infrastructure-be-priority-village-fund-2016>

Increase initiatives, public awareness and involvement in Pangkah Kulon village of participatory rural development. Rural development program to increase the synergy between sectors in village community.¹⁴ In Pangkah Kulon village community Scope of assistance implemented in stages to empower and strengthen the village. Mentoring Village community in accordance with the requirements based on the geographical conditions of the region, the value of APB village, and the scope of the activities accompanied by, and government, provincial government, local government districts / cities, and Village Government to empower the village community through mentoring Village community sustainable , including the provision of human resources.

In Pangkah Kulon Village assistant must oversee all planning and budgeting that favor the interests of the poor, the disabled, women, children and marginalized groups. Village assistant must help the village through APBDesa financial consolidation. Village revenue sources, ranging from locally-generated revenue (Pendapatan Asli Desa), Village Fund from the State budget, the revenue share of taxes and levies, as well as various other revenue sources should be managed in a transparent and accountable through APBDesa.

Conclusion

In 2015, Ministry of Villages, Disadvantaged Regions and Transmigration issued Ministerial Regulation No. 21 Year 2015 on Priority Setting Use of the Village Fund Year 2016. This regulation is the legal basis and guidelines for the use of village funds sourced from the State Budget (APBN). In general, the priority use of the Village Fund in 2016 aimed at two areas: rural development and community empowerment. Based on Village Minister Regulation No. 5 of 2015, in Pang Kulon Village of Gresik also implementing rural development priorities based on these guidelines. The development priorities agreed in the Council participatory village. Results of deliberation Pangkah Kulon village that became a reference in the Village Government Work Plan (RKPDesa) and Budget Village (APBDesa).

In Pangkah Kulon village setting construction priorities on rural development aims to improve people's welfare, improved quality of life, as well as poverty reduction. And The village administration sued to govern in a transparent and accountable. Village Consultative Body which is an institution that has the function of oversight is expected to perform its role seriously, especially in terms of the use of the budget. The participation principle can push Pangkah Kulon village apparatuses to be transparent in managing and utilizing village funds. And also set up a digital application can be preventing the misuse of the village funds.

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National Regulation

¹⁴ JAC. Vel, and AW Bedner. 2015. "Decentralization and village governance in Indonesia: the return to the nagari and the 2014 Village Law." *The Journal of Legal Pluralism and Unofficial Law* 47 (3):493-507; and see <http://www.hmars.com/admin/pics/963.pdf>

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Government Regulation No. 8 of 2016 regarding second amendment to Government Regulation No. 60 of 2014 regarding village fund originating from State revenue and expenditure budget;
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