

**AUTHORITIES OF VILLAGE HEADS IN REMOVING AND/OR
TRANSITIONING LETTER C PERSPECTIVES *SIYASAH DUSTURIYAH***

(Study of Article 26 of Law Number 6 of 2014 Concerning Villages)

THESIS

BY:

ARINA MANASIKANA FAUZIAH

SIN 19230052



CONSTITUTIONAL LAW DEPARTMENT (SIYASAH)

SYARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

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In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

AUTHORITIES OF VILLAGE HEADS IN REMOVING AND/OR TRANSITIONING LETTER C PERSPECTIVES *SIYASAH DUSTURIYAH*

(Study of Article 26 of Law Number 6 of 2014 Concerning Villages)

Is truly a writer's original work that can be legally justified. If this thesis is proven to result in duplication or plagiarism from another scientific work, it will be stated as legally invalid as a precondition the of degree.

Malang, 24 Mei 2023

Writer,



Arina Manasikana Fauziah
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APPROVAL SHEET

APPROVAL SHEET

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Maulana Malik Ibrahim of Malang entitled :

AUTHORITIES OF VILLAGE HEADS IN REMOVING AND/OR TRANSITIONING LETTER C PERSPECTIVES *SIYASAH DUSTURIYAH*

(Study of Article 26 of Law Number 6 of 2014 Concerning Villages)

The supervisor stated that the thesis has met the scientific requirements to be
proposed and examined dated by the assembly Board of Examiners.

Malang, 24 Mei 2023

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AUTHORITIES OF VILLAGE HEADS IN REMOVING AND/OR TRANSITIONING LETTER C PERSPECTIVES *SIYASAH DUSTURIYAH*

(Study of Article 26 of Law Number 6 of 2014 Concerning Villages)

Has been certified to pass with a mark : A (85)

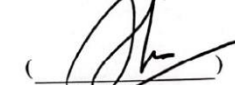
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MOTTO

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۚ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا ۚ

اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

“Hai Orang-orang yang beriman hendaklah kamu jadi orang-orang yang selalu menegakkan (kebenaran) karena Allah, menjadi saksi adil. Dan janganlah sekali-kali kebencianmu terhadap suatu kaum, membuatmu berlaku tidak adil. Berlaku adil lah, karena adil lebih dekat kepada takwa. Dan bertakwalah kepada Allah, sesungguhnya Allah Maha Mengetahui apa yang kamu kerjakan” (Q.S Al-

Maidah : 8)

“The law can't save someone who denies it but it can't serve anyone who doesn't use it either. The history of injustice and inequality is a history of non-use of law.”

ACKNOWLEDGMENT

Alhamdulillahirabbil'alamin, have given His Rahmat and servan, so we can finish this thesis entitled “**AUTHORITIES OF VILLAGE HEADS IN REMOVING AN/OR TRANSITIONING LETTER C PERSPECTIVES SIYASAH DUSTURIYAH** (Study of Article 26 of Law Number 6 of 2014 Concerning Villages) “. Peace be Upon the Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activities correctly in our life. By following Him, may we belong to those who believed and get their intercession on the last day of the end. Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility, the writer will express the gratitude which is unequaled to:

1. Prof. Dr. H. M. Zainuddin, MA. As the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. Sudirman, MA. As the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Musleh Harry, SH, M.Hum. as the Head of Constitutional Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
4. Nur Jannani, S.HI., M.H. as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that she and her family will be blessed by Allah.

5. Nur Jannani, S.HI., M.H. as supervisor lecturer of the writer during my study at Constitutional Law Deaptnent of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
6. All examiners of the author's thesis who have provided input and advice in writing a better thesis. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
7. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
8. The staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
9. To my parents Tamat Zaifudin and Khusnul Khotimah and my sister and brother . They are a supporting system in my life, who has guided and prayed for me every time and given me a spirit.
10. All my Friends class of 2019 Constitutional Law Study Program, whom the author cannot mention one by one, thank you very much for your help and support.
11. To all my friends. That always supporting me and cheer me up when I'm bored of working on this thesis and embrace me in every situation
12. Last but not least. I wanna thank me. I wanna thank me for believing in me. I wanna thank myself for doing all this hard work. I wanna thank

myself for having no days off. I wanna me for never quit. I wanna thank myself for just being me at all times.

With the completion of this thesis report, we hope that the knowledge we have gained during our studies can provide the benefits of living in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for forgiveness, criticism, and suggestions from all parties for future improvement efforts.

Malang, 24 Mei 2023

Writer,



Arina Manasikan Fauziah
SIN. 19230052

TRANSLITERATION GUIDANCE

A. Umum

Transliteration is the transfer of Arabic script into Indonesian (Latin) writing, not the translation of Arabic into Indonesian. Included in this category are the Arabic names of Arab nations, while the Arabic names of non-Arabic nations are written as the spelling of their national language, or as written in the book which is the reference. Writing book titles in footnotes and bibliography still uses this transliteration rule.

The transliteration used by the author is by the Latin Arabic Transliteration Guidelines which are the result of a joint decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1998, Number: 158 of 1987 and Number: 0543b/U/1987, as stated in Arabic Transliteration Guide book (A Guide Arabic Transliteration), INIS Fellow 1992.

B. Konsonan

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Not symbolized	Not symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S a	S	Es (point above)
ج	Jim	J	Je
ح	H{a	H{	Ha (point above)

خ	Kha	Kh	Ka dan Ha
د	Dal	D	De
ذ	Z al	Z	Zet (point above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es dan ye
ص	S{ad	S{	Es (point below)
ض	D}ad	D{	De (point below)
ط	T{a	T{	Te (point below)
ظ	Z}a	Z{	Zet (point below)
ع	‘Ain	‘_____	Inverted apostrophe
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
ء / أ	Hamzah	_____”	Apostrophe

ي	Ya	Y	Ye
---	----	---	----

Hamzah (Á) which is located at the beginning of the word follows the vowel without being given any sign. If it is located in the middle or at the end, then it is written with a sign (').

C. Vocal, long pronounce, and diphthong.

Every Arabic writing is in the form of the Latin vowel letter victory written with "a", *kasrah* written with an "i", *dlommah* written with "u", while long readings are written in the following way:

Vokal	Panjang	Diftong
A = fathah	A	قال become qâla
I = Kasrah	I	قيل become qîla
U = dlommah	U	دون become dûna

Specifically for reading ya' nisbat, it cannot be replaced with "i", but it is still written with "iy" to describe ya' nisbat at the end. Likewise for diphthong sounds, wawu and ya' after victory are written with “aw” and “ay”. Consider the following examples:

Diftong	Contoh
Aw = و	قول become qawlun
Ay = ي	خير become khayrun

D. Ta'marbuthah (ة)

Ta' marbuthah is translated as "t" in the middle of a word, but if Ta' marbuthah at the end of the word, it is translated as "h" e.g. الرسالة becomes *alrisalat li al-mudarrisah*, or in the standing among two words that in the form of mudhaf and mudlaf ilaih, it transliterated as "t" and connected to the next word, e.g. في امان الله become *fi amanillah*.

E. Auxiliary Verb and Lafadh al-Jalalah

The auxiliary verb "al" (ال) is written in lowercase form, except it is located in position and "al" in lafadh al-Jalalah which is located in the middle of two or being or become idhafah, it is removed from writing.

1. Al-Imam al-Bukhariy said.
2. Al-bukhariy in muqaddimah of his book said.
3. *Masyâ Allah kâna wa mâ lam yasya 'lam yakun.*

F. Indonesian Arabic Names and Words

In principle, every word that comes from Arabic must be written using the transliteration system. When the name is the Arabic name of an Indonesian or an Arabic Indonesian, no need to write using the system transliteration.

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ABSTRAK

Arina Manasikana Fauziah, 19230052, 2023. Kewenangan Kepala Desa Dalam Pencoretan Dan/Atau Peralihan Letter C Perspektif Siyasah Dusturiyah (Studi Pasal 26 Undang-undang Nomor 6 Tahun 2014 Tentang Desa). Skripsi. Program Studi Hukum Tata Negara. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Nur Jannani, S.HI., M.H.

Kata Kunci : Kewenangan, Letter C, Siyasah Dusturiyah

Pasal 26 Undang-undang Nomor 6 Tahun 2014 Tentang Desa menjadi dasar segala tindakan pemerintahan Desa. Adapun Kewenangan Kepala Desa terkait pencoretan dan/atau peralihan letter C dalam Undang-Undang Desa tersebut belum diatur secara tegas. Kepala Desa adalah pejabat tata usaha negara di tingkat desa yang mempunyai kewenangan untuk mengeluarkan tindakan hukum berupa Keputusan Tata Usaha Negara (KTUN). Belum diaturnya Kewenangan Kepala Desa dalam Pencoretan dan/atau peralihan letter C dalam peraturan perundang-undangan menimbulkan kebingungan kepada masyarakat desa bahkan Kepala Desa itu sendiri. Konsentrasi penelitian ini adalah untuk mengetahui dan menganalisis tentang kewenangan Kepala Desa dalam pencoretan dan/atau peralihan letter C berdasarkan Pasal 26 Undang-undang Nomor 6 Tahun 2014 Tentang Desa yang ditinjau dengan perspektif *fiqh siyasah dusturiyah* terkait kewenangan Kepala Desa sesuai dengan Undang-Undang Desa.

Jenis penelitian yang digunakan yakni penelitian yuridis normatif dengan pendekatan perundang-undangan, serta pendekatan konseptual. Bahan hukum yang digunakan sebagai pisau analisis penelitian ini yaitu bahan hukum primer, bahan hukum sekunder serta bahan hukum tersier, yang kemudian dianalisis serta menilai kualitas dari bahan hukum yang diperoleh dan dari hasil analisis tersebut dapat menghasilkan jawaban dari kegelisahan di latar belakang.

Hasil penelitian yakni, (1) Kewenangan Kepala Desa dalam Pasal 26 Undang-Undang Nomor 6 Tahun 2014 Tentang Desa belum memuat kepastian dan kejelasan dalam rumusan materi pasal tersebut yang tidak menyebutkan kewenangan Kepala Desa dalam pencoretan dan/atau peralihan letter C. (2) Tinjauan *fiqh siyasah dusturiyah* Pasal 26 Undang-Undang Nomor 6 Tahun 2014 Tentang Desa belum sesuai dengan asas legalitas dalam kewenangan Kepala Desa dalam Pencoretan dan/atau peralihan letter C.

ABSTRACT

Arina Manasasia Fauziah, 19230052, 2023. Authority of the Village Head in Removing and/or Transferring Letter C Perspective of Siyasah Dusturiyah (Study of Article 26 of Law Number 6 of 2014 Concerning Villages). Thesis. Constitutional Law Study Program. Faculty of Sharia. State Islamic University of Maulana Malik Ibrahim Malang. Advisor: Nur Jannani, S.HI., M.H.

Keywords: Authority, Letter C, Siyasah Dusturiyah

The authority of the Village Head in Article 26 of Law no. 6 of 2014 concerning Villages is the basis for all village government actions. The authority of the Village Head regarding the deletion and/or transition of letter C in the Village Law has not been explicitly regulated. The Village Head's Authority has not yet been regulated in deleting and/or transitioning letter C into statutory regulations, causing doubts among the village community and even the Village Head himself. The concentration of this research is to find out and analyze the authority of the Village Head in deleting and/or transferring letter C based on Article 26 of Law no. 6 of 2014 concerning Villages viewed from perspective siyasah dusturiyah related to the authority of the Village Head in accordance with the Village Law.

The type of research used is normative juridical research with statutory and conceptual approaches. The legal materials used as the analytical tool for this research are primary, secondary and tertiary legal materials, which are then analyzed and assessed the quality of the legal materials obtained from the results of this analysis can produce answers to background anxiety.

The results of the research are, (1) The authority of the Village Head in Article 26 of Law Number 6 of 2014 Concerning Villages does not contain certainty and clarity in the material formulation of the article which does not mention the authority of the Village Head in deleting and/or transferring letter C. (2) overview siyasah dusturiyah Article 26 Law no. 6 of 2014 concerning Villages is not in accordance with the principle of legality within the authority of the Village Head in deleting and/or transferring letter C.

ملخص البحث

ارنا مناسكانافوزية ، 19230052 ، 2023 .سلطة رئيس القرية في إلغاء و / أو تحويل رسالة C من منظور سياسة الدستور (دراسة المادة 26 من القانون رقم 6 لسنة 2014 بشأن القرى). أطرُوحَة. برنامج دراسة القانون الدستوري. كلية الشريعة. الجامعة الإسلامية الحكومية مولانا مالك إبراهيم مالانج. المستشار: نور جناني ، M.H. ،S.HI.

الكلمات الدالة :المرجع ، حرف ج ، سياسة دستورية

تشكل المادة 26 من القانون رقم 6 لسنة 2014 بشأن القرى الأساس لجميع الإجراءات الحكومية القروية. لم يتم تنظيم سلطة رئيس القرية فيما يتعلق بحذف و / أو نقل الحرف C في قانون القرية بشكل صريح. رئيس القرية هو مسؤول إدارة الدولة على مستوى القرية ولديه سلطة إصدار الإجراءات القانونية في شكل مراسيم إدارية للدولة .(KTUN) لم يتم تنظيم سلطة رئيس القرية بعد في حذف و / أو تحويل الحرف C إلى لوائح قانونية ، مما تسبب في شكوك بين مجتمع القرية وحتى رئيس القرية نفسه. ينصب تركيز هذا البحث على معرفة وتحليل سلطة رئيس القرية في حذف و / أو نقل الحرف C بناءً على المادة 26 من القانون رقم 6 لعام 2014 بشأن القرى التي يُنظر إليها من منظورالفقه السياسي ذات الصلة بسلطة رئيس القرية وفقًا لقانون القرية.

نوع البحث المستخدم هو بحث قانوني معياري ذو نهج قانوني ، بالإضافة إلى نهج مفاهيمي. المواد القانونية المستخدمة كأداة تحليلية لهذا البحث هي مواد قانونية أولية ، ومواد قانونية ثانوية ومواد قانونية من الدرجة الثالثة ، والتي يتم تحليلها وتقييم جودة المواد القانونية التي تم الحصول عليها ومن نتائج هذا التحليل يمكن أن تنتج إجابات عن قلق الخلفية. .

نتائج البحث هي: (1) سلطة رئيس القرية الواردة في المادة 26 من القانون رقم 6 لسنة 2014 بشأن القرى لا تحتوي على يقين ووضوح في الصياغة المادية للمقال والتي لا تذكر سلطة رئيس القرية. في حذف و / أو نقل الحرف ج (2) نظرة عامة/فقه السياسي المادة 26 من القانون رقم 6 لسنة 2014 بشأن القرى لا تتفق مع مبدأ الشرعية ضمن سلطة رئيس القرية في حذف و / أو نقل الحرف ج.

CHAPTER I

INTRODUCTION

A. Research Background

Good continuity in running good governance for a country is the existence of a government system that is structured according to the performance of each who is in charge of a region. It is not enough to just rely on a government system that has a structure, but also based on a constitutional and legal sovereign government. According to Aristotle, who took the idea from his teacher, Plato, said that there are three elements of constitutional government, namely a government that is implemented with the aim of public interest, based on laws made with general provisions not because of personal or group interests, and for the support and will of the people.¹ Structured government means that it includes a government system that has an area or an order of division of powers according to its function, this can be said as *distribution of power* or power sharing.

The division of powers and the separation of powers have differences in meaning, if the separation of powers focuses on the power of a country or region which has separate parts regarding its persons and functions, while the division of powers is power in a country whose

¹ Rika Marlina, "Pembagian Kekuasaan Dalam Penyelenggaraan Pemerintahan Di Indonesia," *Jurnal Daulat Hukum* 1, no. 1(2018): 172 <http://dx.doi.org/10.30659/jdh.v1i1.2631>.

powers are divided into several but inseparable.² The core part in the formation of

a country must be a province or a large city, then the province is divided into several more areas which are called villages. Implementation in the village government system requires an organization or institution as well as a leader who is able to direct the village community and also the village administration.

Law Number 6 of 2014 concerning Villages states "Village Government is the implementation of government affairs and the interests of the local community in the system of government of the Unitary State of the Republic of Indonesia". Similar to the state government, the village government system has officials who are authorized to take care of village interests, namely the village head who is assisted by village officials. The village head has a great responsibility, one of his duties is to run village government by fostering peace and order in the village community.³ In accordance with the duties and functions carried out by the Village Head who is also called in the category of State Administrative Officer because he takes part in carrying out state order, the decision of the Village Head can be said to be a State Administrative Decision.

² Marlina, 172.

³ Arief Sumeru, "Kedudukan Pejabat Kepala Desa dalam Penyelenggaraan Pemerintahan Desa," *JKMP (Jurnal Kebijakan dan Manajemen Publik)* 4, no. 1 (2016): 52 <https://doi.org/10.21070/jkmp.v4i1.198>.

The authority of the Village Head has been fully regulated in Article 26 Paragraph (2) of Law No. 6 of 2014 concerning Villages (State Gazette Number 7), hereinafter referred to as the Village Law, namely "in carrying out the tasks referred to in paragraph (1), the Village Head has the authority to: a. lead the implementation of Village Government, b. appoint and dismiss village officials, c. holds the authority to manage village finances and assets, d. establish Village Regulations, e. determine the Village Revenue and Expenditure Budget (APBD), f. fostering village community life, g. foster peace and order in the village community, h. fostering and improving the village economy as well as integrating it in order to achieve a productive scale economy for the greatest possible prosperity of the village community, i. develop village income sources, j. propose and accept the delegation of part of the state's wealth to improve the welfare of the village community, k. develop the socio-cultural life of the village community, l. utilizing appropriate technology, m. coordinate village development in a participatory manner, n. represent the village inside and outside the court or appoint a legal representative to represent it in accordance with the provisions of the laws and regulations, and o. carry out other authorities in accordance with the provisions of the legislation.

The authority of the Village Head regarding land is also stated in Article 13 Paragraph (3) of Government Regulation No. 24 of 1997 (State Gazette Number 59) hereinafter referred to as the Government Regulation concerning Land Registration "In the event that a Village/Kelurahan has

not been designated as a systematic land registration area as referred to in paragraph (2), the registration shall be carried out through sporadic land registration"⁴.

Decisions, actions and responses given by the Village Head can be responded to or received with negative fictitious⁵ and also positive fictitious.⁶ n article 53 of Law no. 30 of 2014 (State Gazette Number 292) hereinafter referred to as the Government Administration Law, the occurrence of positive fictitious is if the Government Agency and/or Officials do not stipulate and/or carry out decisions and/or actions within a maximum period of 10 (ten) working days or if the basic regulations do not stipulate otherwise, then the application is considered legally granted after the application is received in full by the government agency and/or official.⁷ positive fictitious conception according to Enrico Simanjuntak in the Law on Government Administration is a legal fiction which requires the administrative authority to respond to or issue a decision/action proposed to him within the specified time limit and if these prerequisites

⁴ Berdasarkan Pasal 1 PP Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, Pendaftaran secara sporadik adalah kegiatan pendaftaran tanah untuk pertama kali mengenai satu atau beberapa obyek pendaftaran tanah dalam wilayah atau bagian wilayah suatu desa atau kelurahan secara individual atau massal.

⁵ Fiktif Negatif adalah permohonan masyarakat kepada pelayan public dalam hal ini Badan/Pejabat Tata Usaha Negara yang kemudian tidak mendapatkan sesuai dengan permohonannya. Selengkapnya lihat Budiain Rodding tentang "Keputusan Fiktif Negatif Dan Fiktif Positif Dalam Peningkatan Kualitas Pelayanan Publik" sesuai ketentuan Pasal 3 Undang-undang Nomor 5 tahun 1986 tentang Peradilan Tata Usaha Negara, 28.

⁶ Fiktif Positif adalah sebuah fiksi hukum yang mensyaratkan otoritas administrasi untuk menanggapi atau mengeluarkan keputusan/tindakan yang diajukan kepadanya dalam limit waktu sebagaimana yang ditentukan dan apabila prasyarat ini tidak terpenuhi otoritas administrasi dianggap mengabulkan permohonan penerbitan keputusan/tindakan yang dimohonkan kepadanya (Enrico Simanjuntak: 2018).

⁷ Enrico Simanjuntak, "Perkara Fiktif Positif dan Permasalahn Hukumnya," *Jurnal Hukum dan Peradilan* 6, no. 3 (2017): 389-390 <https://doi.org/10.25216/jhp.6.3.2017>.

are not met the administrative authority is deemed to grant the request for issuance of a decision/ the action requested by him.⁸

The village head's actions in deleting and/or transferring can be carried out with an application from the parties who have made a sale and purchase or transfer of ownership of land rights. An application submitted to the Village Head must comply with the provisions of Article 37 paragraph (1) of Government Regulation No. 24 of 1997 (State Gazette Number 59) hereinafter referred to as the Government Regulation concerning Land Registration, furthermore if the application submitted has been received by the Village Head and is accepted then it can be referred to as a positive fictitious application whereas if the application is rejected it is classified as negative fictitious. One example of a case that occurred in the community which resulted in a positive fiction, namely in a court decision with case number 4/P/FP/2020/PTUN.Sby. the application that was proposed in the letter c was deleted and/or transferred by the Village Head was only accepted and did not carry out the deletion or action being applied for causing harm to the community or the applicant.

Furthermore, related to land problems in village communities, in general, often occur due to the absence or lack of proof of ownership of land rights. Prior to the existence of Law Number 5 of 1960 (State Gazette

⁸ Surya Mukti Pratama, "Pengaturan Baru Keputusan Fiktif Positif Dalam Undang-undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dan Kaitannya Dengan Kompetensi PTUN," 2020, 4, https://rechtsvinding.bphn.go.id/jurnal_online/PENGATURAN%20BARU%20KEPUTUSAN%20FIKTIF%20POSITIF%20.pdf.

Number 104), hereinafter referred to as the Law on Basic Agrarian Regulations which regulates the basics and provisions for mastery, ownership, use and utilization of national agrarian resources in Indonesia, which has the right to change ownership rights to a land due to a transfer to another party due to sales, grants, exchanges or grants on wills carried out by the lurah⁹ who is domiciled in the area of the land, but currently in the issuance of certificates of land ownership rights carried out by the Land Deed Making Officer (PPAT) who is given the authority to make authentic deeds regarding certain legal actions, and regarding land rights or ownership rights to apartment units.¹⁰ This change was made by crossing out the letter c of the village book. The role of the village letter c used to be as a replacement before there was a certificate of ownership of land rights issued by the BPN (National Land Agency).

The formation of a regulation that is used for government and public order must be prepared in accordance with the content contained in Article 6 Paragraph (1) letter (i) of Law No. 12 of 2011 (State Gazette Number 82) hereinafter referred to as the Law on the Establishment of Legislation "order and legal certainty ...", but in the articles mentioned above regarding the authority of the Village Head it has not fully

⁹ Muhammad Romzul Islam dan Tamsil Rahman, "Analisis Yuridis Pencoretan Buku Kerawangan/Letter C Oleh Kepala Kelurahan Tanpa Dasar Peralihan Hak Atas Tanah Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah" No. 05 (2018): 86.

¹⁰ Hendry Dwicahyo Wanda, "Prinsip-Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah Dalam Pengurusan Peralihan Tanah Letter C" *Masalah-Masalah Hukum* 46, no. 2 (24 Februari 2018): 112, <https://doi.org/10.14710/mmh.46.2.2017.112-124>.

explained specifically regarding the deletion and/or or the transfer of letter c by the Village Head so that it can be said that in the content material of the laws and regulations made there is no legal certainty , although in Article 26 letter d of Law no. 6 of 2014 concerning having given authority to the Village Head in making village regulations but this has not been fully understood by the Village Head.

Then in draft *Siyasah dusturiyah*, the formation of a law must be based on the principles of the form of government, and the rules relating to the rights of the people and how the division of power. *Siyasah dusturiyah* is a science *fiqh* Islam which discusses the issue of state legislation regarding basic principles related to forms of government, rules relating to people's rights, and regarding the distribution of power.¹¹

The authority of the Village Head was previously regulated in Law Number 6 of 2014 (State Gazette Number 7) here in after referred to as the Law on Villages, only the Village Head's Authority regarding Land has not been regulated in it, then there are guidance regulations related to land issues contained in Article 13 Government Regulation Number 24 of 1997 (State Gazette Number 59) here in after referred to as Government Regulation concerning Land Registration, and stated in Article 8 of Sidoarjo Regent Regulation Number 54 of 2016 (Regional Gazette of Sidoarjo Regency of 2016 Number 54) here in after referred to as Regent

¹¹ Jubair Situmorang, *Politik Ketatanegaraan Dalam Islam (Siyasah Dusturiyah)*, cet-1 (Bandung: Pustaka Setia, 2012), 20.

Regulation concerning Guidelines for the Organizational Structure and Working Procedures of the Village Government. There is no mention of the authority of the village head mentioned in the entire regulation above regarding the deletion and/or transition of letter C by the village head. Based on Permendagri No. 84 of 2015 concerning the Organizational Structure and Administration of Village Administration (SOTK) only allude to land development. Land development is a social activity that is planned regularly to provide an understanding of the community in land issues.

The object of the land dispute is letter c, which is often used as ownership of land rights, which is understood by most village people. the meaning of letter c itself is a proof of payment of tax on land in a village or village which has been used since the Dutch colonial era with bookkeeping in the village letter c book. This form of traditional letter has been used as proof of land ownership for generations. In issuing land ownership certificates using evidence of old rights, it can be carried out on condition that the ownership of certificates for the land in question has been owned for 20 years or more, hereditary. This is stated in Article 24 paragraph (2) of Government Regulation Number 24 of 1997.¹²

The legal uncertainty of Article 26 of Law Number 6 of 2014 concerning Villages regarding the authority of the Village Head as a State Administrative Officer in deleting and/or transferring Letter C makes this

¹² Pasal 24 Ayat 2 Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah

matter interesting to discuss because it causes harm to the community. If in the formulation of regulations related to the authority of the Village Head, it is specified again in the elimination and/or transition of letter c or the drafting of Village regulations by the Village Head in accordance with Article 26 letter (d) of Law No. 6 of 2014 concerning Villages, it can create order for village communities. The authority of the village head has been stated in its entirety but is general in nature, related to the actions of the village head in land disputes that have not been mentioned in the regulation, this causes the village head to be confused in its implementation. The author is interested in conducting research by examining the authority of the Village Head regarding land issues with the title "Authorities of the Village Head in Abolishing and/or Transitioning Letter C Perspective *Political politics* (Study of Article 26 of Law Number 6 of 2014 Concerning Villages)".

B. Limitation of the Problem

The research that will be carried out by the author is to limit the problems studied in the regulations discussed, so that the discussion in the research can focus on one problem point. The legal issues raised are related to the authority of the Village Head in deleting and/or transferring letter C which has not been regulated in writing and is legal in Indonesian laws and regulations in terms of *siyasah dusturiyah*.

C. Statement of Problem

1. How is the authority of the village Head in deleting and/or transferring letter C based on article 26 of Law Number 6 of 2014 concerning Villages?
2. Survey *Siyasah Dusturiyah* Article 26 of Law Number 6 of 2014 concerning Villages regarding the deletion and/or transition of letter C by the Village Head?

D. Objective

1. To find out and analyze the Village Head's Authority in deleting and/or transitional letter C based on Article 26 of Law Number 6 of 2014 concerning Villages.
2. To find out and analyze Article 26 of Law Number 6 of 2014 concerning Villages in removal and/or transitioning letter C by the Village Head from a perspective *siyasah dusturiyah*.

E. Benefits of Research

As for the formulation of the problem and research objectives that have been mentioned, several benefits can be taken. As follows :

- a. Theoretical Benefits

Increasing knowledge about the concrete authority of the Village Head in land affairs in the village, especially in writing out and/or transferring letters c, and it is hoped that this research can become material for study for future researchers to understand and care about the problems

with writing off and/or transferring Letter C. It is hoped that this can be a motivation to add insight to other researchers and academics to better understand the importance of deleting and/or transferring Letter C by the Village Head as a State Administrative Officer.

b. Practical Benefits

To the community and academics, this research is useful to add insight regarding the authority of the Village Head in Article 26 of Law Number 6 of 2014 concerning Villages which have not yet discussed concretely related to land issues, namely regarding the deletion and/or transition of letter c by the Village Head as a form of anticipation by elements who use village letters that have not been written off by the village head. Then it is hoped that this research can be used as material for consideration for State Administrative Officials, especially Village Heads, in deleting and/or transferring letter c. It is hoped that the results of this research can be used as learning material in the context of resolving cases of State Administrative Decisions.

F. Operational Definition

In order to make it easier for readers to understand the terms written in the title, it is necessary for the author to explain the meaning of each keyword in the title.

1. Authority

Authority comes from the word authority which means something that is authorized, the rights and powers that are owned to do something. There is a difference between authority and authority according to Ateng Syarfrudin, authority (*authority authority*) is what is called formal power, power that comes from the power granted by law, while authority (*competence competence*) only concerns a certain part of the authority.¹³

2. Letter C

Letter C is a letter or document that has been owned by a person for generations as proof of payment of taxes on land he has controlled for more than 20 years and letter c is currently considered proof of old rights, this is in accordance with what is meant in Article 24 of Government Regulations No. 24 of 1997 concerning Land Registration. Letter c is proof in the form of a note located at the village/kelurahan office.¹⁴ During the Dutch colonial period, letter c was used as proof of legal ownership of land being controlled.¹⁵ The letter c book is a book or collection of tax payment records which at that time was called the Regional Development Fee (IPEDA) which was kept at the Kelurahan Office, while the one held by the taxpayer

¹³ Ateng Syafrudin, "Menuju Penyelenggaraan Pemerintah Negara Yang Bersih dan Bertanggungjawab," *Jurnal Pro Justisia edisi IV*, (Universitas Parahyangan, Bandung, 2000): 22.

¹⁴ Muhammad Iqbaal, "Kekuatan Hukum Letter C Sebagai Alat Bukti Kepemilikan Tanah Berdasarkan PP Nomor 24 Tahun 1997 (Studi kasus di Desa Sedati, Kecamatan Ngoro, Kabupaten Mojokerto)" (Malang, UNIVERSITAS ISLAM MALANG, 2020), 4.

¹⁵ Annisa Oktaviani dan Harjono, "Kekuatan Pembuktian Surat Letter C Dalam Pemeriksaan Sengketa Tanah di Persidangan," *Jurnal Hukum Acara Verstek* 7 No 1 (2019): 4 <https://doi.org/10.20961/jv.v7i1.30038>.

was called Petok D. The letter c book contains data on the names of taxpayers and their tax objects for a particular area, and not for a specific tax object or subject. So it cannot be qualified as a written determination that is individual in nature.¹⁶

3. *Siyasah Dusturiyah*

Fiqh Siyasah Dusturiyah aid to be the political science of government and statecraft in Islam that studies aspects related to general arguments in the Qur'an, Hadith and the purpose of Islamic law. *Siyasah Dusturiyah* issues of state legislation, regarding basic principles relating to forms of government, rules relating to people's rights, and regarding the distribution of power.¹⁷

4. Legal Certainly

The big Indonesian dictionary (KBBI) explains the meaning of clear law that is about conditions, fixed or certain, provisions, decrees, while in terms of law is a legal instrument of country that is able to guarantee the rights and obligatiobns of every citizen, so that legal certainty is provisions or provisions made by the legal instruments of a country that are able to provide guarantees for the rights and obligations everyb citizen.¹⁸

¹⁶ Putusan Pengadilan Tata Usaha negara Nomor 78/G/2012/Ptun.Sby, 10-11.

¹⁷ Situmorang, *Politik Ketatanegaraan Dalam Islam (Siyasah Dusturiyah)*, 20.

¹⁸ Bagir Manan dan Kuntanan Magnar, *Beberapa Masalah Hukum Tata Negara* (Bandung: PT. Alumni, 2017), 23.

G. Method of Research

In the research that will be conducted by the author, the method to be used is based on:

1. Type of Research

The type of research that the writer uses is normative juridical research which is qualitative in nature. This type of normative legal research is research aimed at examining the quality of the legal norms themselves which apply and are used in all actions of a person or group.¹⁹ This type of research aims to look at the quality of the legal norms that apply to State Administrative Officials whose actions cause legal uncertainty for the community, where research concentrates on various forms of laws and regulations and court decisions, normative juridical research focuses on Article 26 of the Law Number 6 of 2014 concerning Villages

2. Research Approach

The approach used in this study is the *statute approach*, and *conseptual approach*. The *statute approach* is a research approach that refers to the legal basis or legal material in the form of statutory regulations in which there are deviations or inaccurate norms in its application. In this statutory approach, this is done by studying the Constitution with other laws.

conceptual approach is an approach to understanding the problem object practically from a knowledge point of view. In this research, the authors

¹⁹ Meray Hendrik Mezak, "Jenis, Metode dan Pendekatan Dalam Penelitian Hukum," 3, V (Maret 2006): 14.

examine the concept of the Village Head's authority in deleting and/or transferring letter C based on Law Number 6 of 2014 concerning Villages and reviewed it with *fiqh siyasah dusturiyah*.

3. Law Materials

This research was conducted by reviewing literature research, namely using library materials as primary legal materials. Because normative legal research focuses on literary materials such as court decisions and also legislation. Then the legal material obtained from news publications and legal journals as well as comments or interviews is called secondary legal material.

a. Primary legal materials

Primary legal material is legal material which is the main source in normative legal research. Primary legal materials consist of legislation, official records or treatises in making laws and judges' decisions.²⁰ In this study, primary legal materials are used as follows:

1. The 1945 Constitution of the Republic of Indonesia
2. Law Number 5 of 1960 Concerning the Basic Agraria Law (UUPA)
3. Law Number 6 Of 2014 Concerning the Village

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum.Ed. Revisi* (Jakarta: Prenada Meda Group, 2005), 181.

4. Law Number 30 of 2014 Concerning Government Administration
5. Law Number 12 of 2011 concerning Formation of Legislation
6. Government Regulation Number 24 of 1997 Concerning Land Registration
7. Decision Number 4/P/FP/2020/PTUN.SBY
8. Decision Number 194/G/2018/PTUN.SBY
9. Decision Number 78/G/2012/PTUN.SBY

b. Secondary legal material

Secondary legal material is legal material as a complement to primary legal material, because the existence of secondary legal material helps in analyzing and understanding the legal issues raised. Secondary legal material consists of text books, legal dictionaries, legal journals and comments on court decisions.

c. Tertiary legal materials

Tertiary legal materials are a complement to the required legal materials because they have explanatory properties and additional instructions for primary and secondary legal materials. Tertiary legal materials consist of the Big Indonesian Dictionary (KBBI) and legal dictionaries.

4. Methods of Collection of Law Materials

In research, it is necessary to have guidelines or instructions in the collection of legal materials to be taken. This was done in order to facilitate the research carried out. The data collection method to be used is adjusted to the type of normative juridical research, which uses *library research* or library research. This method is carried out by studying, analyzing, understanding and finding solutions to the problems faced.

The method of collecting legal materials is based on primary legal materials taken from statutory regulations and also the decisions of judges from the Surabaya state administrative court, while the collection of legal materials in secondary legal materials is carried out by looking at news or publications related to relevant legal issues. will be discussed.

5. Methods of Processing Law Materials

The method of processing legal materials carried out is related to the type of approach taken, namely the statutory approach and also the case approach and the legal materials obtained in this study. The research that will be carried out uses a statutory approach by collecting laws and regulations that are in accordance with the authority of the Village Head as the Village Government, especially in dealing with land affairs. Furthermore, the research also uses a case approach, so it is necessary to collect trial files at the Administrative Court. Surabaya No. 4/P/FP/2020/PTUN.Sby and Decision Number 194/G/2018/PTUN.Sby, which are then supported by legal books related to the issues raised. In

collecting it, it can go through the following stages: data checking (*editing*), classification (*classifying*), verify (*verifying*), analysis (*analysing*), and conclusion (*concluding*).²¹

a. (*Editing*)

Before examining the legal material used in a study, the first step taken is to adjust the legal material obtained with the legal issues discussed, whether the source of the legal material obtained is sufficient to solve a problem which also has an impact on the quality of the legal material to be studied.

b. (*classifying*)

Classification is a grouping of all legal materials obtained from the results of literature studies. Obtained legal material, carefully studied and then grouped according to needs so that the legal material owned can be understood and read as well as providing information purposes, then the legal material is grouped based on similarities and differences between one legal material and another.

c. (*verifying*)

Verification is the adjustment of legal materials and the truth with legal materials that have been collected to ensure validity. This verification is carried out by studying and analyzing legal material from Law Number 6 of 2014 concerning Villages and court

²¹ Tim Penyusun Pedoman Penulisa Skripsi fakultas Syariah Uin Maulana Malik Ibrahim Malang, "Pedoman Penulisan skripsi Tahun 2019," 2019, 21.

decisions which are used as additional legal material in the problems raised.

d. (*Analysing Law Materials*)

The analysis used by the author in this study is descriptive qualitative. Qualitative descriptive is an analysis that describes the legal materials that have been collected and looks at the quality of all the legal materials. These legal materials are collected and analyzed by verifying them first, so that later the issues raised contain scientific, academic and social values. *First*, The researcher analyzed the authority of the Village Head in deleting and/or transferring letter C based on Article 26 of Law Number 6 of 2014 concerning Villages. *Second*, analyze the regulation by concept *siyasah dusturiyah* based on the principle of legality in *siyasah dusturiyah*.

e. (*concluding*)

The final stage of processing legal materials is the conclusion. The conclusion is the essence of the legal materials obtained after an analysis has been carried out which produces answers to the concerns presented in the background. The conclusion is a summary of the legal materials analyzed by editing, classifying, verifying, and analyzing legal materials.

H. Previous Research

The thesis research conducted by the author requires reference material from several other studies which are almost the same as examining the discussion that will be studied in this writing.

1. Muhammad Romzul Islam and Tamsil Rahman, journal *Novum* Volume 05 Number 03 July 2018 with the title "Juridical Analysis of Deleting the Kerawangan Book/Letter C by the Head of Sub-District Without Basis for Transfer of Land Rights in View of Government Regulation Number 24 of 1997 Concerning Land Registration."²² the research conducted focused on the problem of deleting and/or transitioning by the Village Head without a clear basis for the transition which was carried out in Manukan Kulon, Tandes District, Surabaya City. The main problem described in the research studied is the action of the village head as a State Administrative Officer who wrote off the Kerawangan/Letter c book without any basis for transferring land rights. Circumstances or reasons that make the transfer of land rights can be carried out according to Article 37 of Government Regulation Number 24 concerning Land Registration stipulates that there are sales and purchases, exchanges, grants, income

²² Islam dan Rahman, "Analisis Yuridis Pencoretan Buku Kerawangan/Letter C Oleh Kepala Kelurahan Tanpa Dasar Peralihan Hak Atas Tanah Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.", No. 03 (2018).

within the company and other legal disputes over the transfer of rights.²³

The deletion carried out by the Head of the Manukan Kulon Sub-District resulted in losses for the community because they could not register their land if they did not have ownership rights to the land which had previously been crossed out by the Kelurahan Head without a clear transitional basis. in deleting and/or transferring letter c with the legal norm in article 37 of Government Regulation Number 24 of 1997 because it is not based on the transfer of land rights. The legal consequence of the judge's consideration in decision number 176/Pdt.G/2013 PN.Sby is the return of ownership of the land rights belonging to the plaintiff and is null and void due to the actions of the Head of the Manukan Kulon Village in deleting and publishing names in the letter c book from the plaintiff to Perumnas.²⁴ The difference with the research that will be studied is in the authority of the Village Head in deleting and/or transferring letter c which discusses how the regulations govern concretely in the applicable law.

²³ Pasal 37 Peraturan Pemerintah Nomor 24 Tahun 1997, “peralihan hak atas tanah dan hak milik atas satuan rumah susun melalui jual beli tukar menukar, hibah, pemasukan dalam perusahaan dan perbuatan hukum pemindahan hak lainnya, kecuali pemindahan hak melalui lelang hanya dapat didaftarkan jika dapat dibuktikan dengan akta yang dibuat oleh PPAT yang berwenang menurut ketentuan peraturan perundang-undangan yang berlaku”

²⁴ Islam dan Rahman, “A Analisis Yuridis Pencoretan Buku Kerawangan/Letter C Oleh Kepala Kelurahan Tanpa Dasar Peralihan Hak Atas Tanah Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.” Nomor.3(2018): 85, <https://doi.org/10.2674/novum.v5i3.36062>.

2. Irsyadilla Hafizh Heru Sadjarwo, *Journal Notaire* Vol. 3 No. 1 February 2020 with the title "The Legitimacy of Old Evidence in the Form of Village Letter C in Land Rights Ownership."²⁵ the author examines how the legitimacy or legality of ownership of land rights was before the enactment of the UUPA. It is written in UUPA Article 19 paragraph (2) letter c regarding land registration procedures according to the regulations in force in Government Regulation No. 24 of 1997 concerning land registration is that there are letters of evidence of rights that apply as a strong means of proof called certificates, while the basis for letter c as proof of ownership of land rights has been regulated in Article 24 paragraph Government Regulation No. 24 of 1997 concerning proof of old rights. Registration of land rights with old evidence can be submitted on the condition that there is written evidence, witness statements and/or a statement from the village government that controls the area. If in the event that evidence is not available, the means of proof as mentioned above can be obtained by controlling the land parcel in question for more than 20 years or more from generation to generation. There is a striking difference from previous research, where this research focuses on the legal power of ownership of land rights before the enactment of the UUPA, while the research that will be studied discusses the authority of the village head in land matters.

²⁵ Irsyadilla Hafizh Heru Sadjarwo, "Keabsahan Bukti Lama Berupa Letter C Desa Dalam Kepemilikan Hak Atas Tanah," *Notaire* 3, no. 1 (2020): 107 <https://doi.org/10.20473/ntr.v3i1.19024>.

3. Muhammad Iqbal, 2020 Islamic University of Malang thesis entitled "Legal Strength of Letter C as Proof of Land Ownership Based on Government Regulation Number 24 of 1997 (Case Study in Sedati Village, Ngoro District, Mojokerto Regency)."²⁶ the same as previous research on legal power of letter c as proof of ownership of land rights. From a juridical point of view, a letter c can be regarded as proof of ownership of land rights which is not as strong as a certificate. However, one of the conditions for issuing land is ownership of old evidence that has existed for generations, if letter c is not changed as soon as possible in the form of a certificate, it can cause legal consequences for land disputes. With a land certificate that has been issued by the BPN, the boundaries of each piece of land will be clear who owns the funds and what limits they control, thereby preventing land disputes and in accordance with the current UUPA. The difference in the research conducted by the authors can be seen in the research method used, namely empirical juridical, while the research studied uses normative juridical research methods.
4. Khanifan, Journal of LEX Renaissance Vol. 5 No. 3 Universitas Islam Indonesia, 5 July 2020 with the title "Issuance of Certificates of Property Rights by the Land Office Based on Letter C (Case Study on Certificates of Property Rights Number 2092/Margosari at the Land

²⁶ Iqbaal, "Kekuatan Hukum Letter C sebagai Alat Bukti Kepemilikan Tanah Berdasarkan PP Nomor 24 Tahun 1997 (Studi kasus di Desa Sedati, Kecamatan Ngoro, Kabupaten Mojokerto)." (Undergraduate thesis Universitas Islam Malang, 2020), <http://repository.unisma.ac.id/handle/123456789/648>.

Office of Kulonprogo Regency).²⁷ This study examines the mechanism for the issuance and legal certainty of ownership certificates Number 2092/Margosari at the Kulon Progo Land Office. The conclusion from the research discussed is that the issuance of certificates carried out at the Land Office in Kulon Progo Regency must be in accordance with the procedures stated in the applicable laws and regulations I of Indonesia, however, many of the legal requirements for registration applications are manipulated and there are indications of illegal acts. The difference in the research conducted by the authors can be seen in the research method used, namely empirical juridical, while the research studied uses normative juridical research methods.

5. Abdul Wahid, Rohadi, Court: Journal of Islamic Law Study 6.2 of 2021 with the title "Digitalization of Village Registration (Letter C) of Land in Optimizing Services in the Middle of the Covid 19 Pandemic in the Village Government of Susukan District, Cirebon Regency".²⁸ This research examines how village government officials carry out their roles in village land registration services (Letter C) by carrying out simple services, service efficiency, service certainty, service security, and fair service. Then related to the efforts that can be made

²⁷ Khanifan Khanifan, "Penerbitan Sertipikat Hak Milik Oleh Kantor Pertanahan yang Berdasarkan Letter C (Studi Kasus pada Sertipikat Hak Milik Nomor 2092/Margosari di Kantor Pertanahan Kabupaten Kulonprogo)," *Jurnal Lex Renaissance* 5, no. 3 (2020), <https://doi.org/10.20885/JLR.vol5.iss3.art9>.

²⁸ Abdul Wahid dan Rohadi Rohadi, "Digitalisasi registrasi Desa (Letter C) Tanah Dalam Optimalisasi Pelayanan Di Tengah Pandemi Covid 19 di Pemerintah Desa Kecamatan Susukan Kabupaten Cirebon," *Mahkamah: Jurnal Kajian Hukum Islam* 6, no. 2 (2021): 226 <https://doi.org/10.24235/mahkamah.v6i2.9162>.

for village government land registration services (letter C) in Susukan District, Cirebon Regency, namely adding facilities, restoring village registration (Letter C) land and digitizing village registration (Letter C) land.[2] The difference in previous research can be seen where the village apparatus provides services on land issues, whereas in the research that will be studied, it discusses the authority of the village head in land issues that arise among the community.

Table 1.1 Previous Research

No	Title	Problem formulation	Results	Equality	Difference
1.	Muhammad Romzul Islam dan Tamsil Rahman, "Analisis Yuridis Pencoretan Buku Kerawangan/Letter C Oleh Kepala Kelurahan Tanpa Dasar Peralihan Hak Atas Tanah Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran	The case studied is related to the actions of the Head of the Mankan Kulon sub-district, Tandes District, Surabaya City, who crossed out names in the Kerawangan Book/Letter c without a basis for transferring land rights in Decision No. 176/Pdt.G/2013/PN.Sby.	Legal Consequences of the write-off which was carried out without any basis for the transfer of ownership of land rights in the PN Decision No. 176/Pdt.G/2013/PN.Sby the return of ownership of land rights belonging to the plaintiff then the deletion by the Village Head was null and void.	The similarities in the previous research and those that will be carried out lie in the deletion and/or transfer of Letter C carried out by the Kelurahan/Village Head.	The author's research specifically examines the removal and/or transfer of Letter C by the Village Head without a clear basis for the transition, while this research examines the authority of the Village Head in deleting and/or transferring letter C in Article 26 of Law Number 6 of 2014 concerning Villages.

	Tanah”, (03 Juli 2018).				
2.	Irsyadilla Hafizh Heru Sadjarwo, “Keabsahan Bukti Lama Berupa Letter C Desa Dalam Kepemilikan Hak Atas Tanah”, (Februari 2020)	<p>1. What is the position of the old evidence in the form of a village letter in ownership of land rights?</p> <p>2. What is the legal protection for holders of old evidence in the form of village letters in ownership of land rights.</p>	The results of this study are that letter c Village is old evidence of ownership of land rights that can be used in land registration activities and legal protection for holders of old evidence can be carried out by deliberation for consensus by the head of the Adjudication Committee in sporadic land registration activities.	The equations made by previous researchers with the research that will be carried out on the object in the problem raised are related to Village Letter C.	The problem discussed by Irsyadilla Hafizh Heru Sadjarwo is only on the legal power of letter C as proof of ownership of land rights, while the research that will be studied by the author focuses on regulations governing the village head's authority in deleting and/or transferring letter c.
3.	Muhammad Iqbal, “Kekuatan hukum Letter C Sebagai Alat Bukti Kepemilikan Tanah Berdasarkan PP Nomor 24 tahun 1997”, (2020)	<p>1. What is the legal power of Letter C as proof of land ownership?</p> <p>2. How to solve the problem of Letter c as proof of land ownership in Sedati Village, Ngoro sub-district, Mojokerto</p>	There are several stages in resolving land dispute cases that must be carried out, while in determining the evidence in the decision of the Supreme Court Number 636K/Pdt/2005 it is in the	The equation raised in the research conducted lies in the statutory regulations which are used as the basis or basis in the sources of law to be studied.	The difference in the research that will be discussed is in the research method used by Muhammad Iqbal's brother, namely empirical juridical in Mojokerto Regency, while the research that will be carried out uses the normative juridical

		Regency?	evidence of the applicant who submitted it to trial.		research method in article 26 of Law Number 6 of 2014 concerning Villages.
4.	Khanifan, "Penerbitan Sertipikat Hak Milik Oleh Kantor Pertanahan Yang Berdasarkan Letter c (Studi Kasus pada sertipikat Hak milik Nomor 2092/Margo sari di Kamtor Pertanahan Kabupaten Kulonprogo)", (5 Juli 2020)	What is the mechanism for the issuance and legal certainty of Certificate of Ownership Number 2092/Margosari based on Letter c?	The results of the study concluded, <i>First</i> , the issuance of ownership certificates by the Kulon Progo Regency Land Office went through stages based on the laws and regulations in force in Indonesia, however, many of the legal requirements for registration applications were manipulated and there were indications of illegal acts. <i>Second</i> , legal certainty SHM No. 2092/Margosari its legality can still be contested.	The similarity between the previous research and the research that will be carried out is on the question of the transfer of land ownership.	In the previous research, it examined the issuance of certificates of land ownership rights using evidence of old ownership rights at the Kulonprogo district land office, while the research that will be carried out at this time examines the write-off and/or transfer of letter c by the Village Head where certificates have been issued on land. after transferring to another party.

5.	<p>Abdul Wahid, Rohadi, “Digitalisasi Registrasi Desa (Letter C) Tanah Dalam Optimalisasi Pelayanan Di Tengan Pandemi Covid 19 Di Pemerintah Desa Kecamatan Susukan Kabupaten Cirebon”, (2 Desember 2021)</p>	<p>1. What is the role of the Village Government in providing village registration services (Letter C) in Susukan District, Cirebon Regency.</p> <p>2. How are the Village Government's efforts in providing village registration services (Letter C) related to Presidential Instruction Number 3 of 2003 concerning National Development Policy and Strategy <i>e-government</i>.</p>	<p>The Village Government in Cirebon Regency in providing village registration information (letter C) still uses a land master book which is prone to damage because it is in an old condition and has not been updated. The land registration process for the conversion of customary land rights into property rights requires evidence, one of which is village registration (Letter C). This requires that the Village Government in the Subdistrict of Susunan, Cirebon Regency be able to innovate by utilizing</p>	<p>The equation studied in the research discussed is the management of the village government in handling village Letter C for the people in their area.</p>	<p>In the previous research that was studied by brothers Abdul Wahid and Rohadi regarding village administration in the recapitulation of land ownership rights using digital registration in the midst of the Covid 19 pandemic, while the research that I will be conducting focuses on the administrative performance of the Village Head as the Village Government in Deleting and/or The transfer of Letter C is in accordance with the applicable regulations.</p>
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			technological advances in providing village registration services (Letter C) with the concept of digitization in order to create good governance (<i>good governance</i>).		
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I. Structure of Discussion

It is hoped that the writing of this thesis can be well organized and understood by the readers, this thesis is organized in a systematic which consists of several sub-chapters. Each chapter is expected to help readers understand the contents of this research.

The first chapter begins with an introduction which contains the background of the issues to be raised in this study. The background is adjusted according to the objectives and benefits that will be achieved from the results of this research. Then explained the research methods that will be used in collecting data and information that will be used as reference material for this research.

Furthermore, in the second chapter, this chapter contains the concepts used as the theoretical basis related to *Siyasah Dusturiyah*, the theory of Authority and the principle of legal certainty in deleting and/or

transferring Letter C by the Village Head as the authorized State Administrative Officer, as well as certainty law from Article 26 Number 6 of 2014 concerning Villages relating to the authority of the Village Head.

The third chapter, this chapter discusses the legal certainty of the village head's authority in deleting and/or transferring letter C based on Article 26 of Law Number 6 of 2014 concerning Villages and progress *siyasah dusturiyah* Article 26 of Law Number 6 of 2014 concerning Villages regarding the deletion and/or transition of letter C by the Village Head.

The last chapter is the fourth chapter, this chapter describes the conclusions from the discussion discussed in the previous chapters and also the problems analyzed by the author and the suggestions of researchers related to the research results.

CHAPTER II

LITERATURE REVIEW

A. Authority Theory

1. Definition of Kewenangan

Authority or authority are two words that have different meanings.

Authority means rights or powers in certain matters or parts while authority is rights or powers that are limited to one part of authority.²⁹

The terms authority and authority are often heard in State Administrative Law. Authority According to Mirriam Budiarjo is power that has a legal entity, competence in carrying out legal actions, in which this action is carried out with the intention of causing legal consequences, and includes things that disappear and the emergence of certain legal consequences. Rights which mean freedom to do or not to take certain actions or demand other parties to carry out certain actions.³⁰

Bagir Manan argues that in legal language authority is different from power, power only describes the right to act or not act while authority means rights and obligations that must be carried out. S.F Marbun has a different opinion regarding authority which implies the ability to carry out a public legal action, or legally is the ability to act

²⁹Ateng Syafrudin, "Menuju Penyelenggaraan Pemerintah Negara Yang Bersih dan Bertanggungjawab,"

Jurnal Pro Justisia edisi IV, Universitas Parahyangan, Bandung, 2000., 22.

³⁰ Miriam Budiarjo, Dasar-Dasar Ilmu Politik (Gramedia Pustaka Utama, 2003), 63.

that is granted by law to carry out legal relations.³¹ Government authority has characteristics, among others :

- a) Express implied
- b) Clear intent and purpose
- c) Bound at a certain time
- d) Subject to written and unwritten restrictions
- e) The contents of authority can be general.³²

In the opinion of Henk van Maarseveen as quoted by Philipus M. Hadjon in sadjiono³³ the theory of authority is often used in the application of public law because it consists of 3 (three) components including: influence, legal basis and legal conformity. The influence component means being able to control the behavior of a legal subject with the authority given. Furthermore, the second component with a legal basis, the authority given must be based on the applicable legal basis, and the last component of legal conformity aims to ensure that the authority given has a standard, where the general standard is for all forms of authority and the special standard is specific to certain authorities. On the concept of government authority(*management competence*) not all components of authority in public law are used,

³¹ Ali Rahman, "Tinjauan Hukum Administrasi Negara Tentang Kewenangan Wakil Menteri Di Indonesia" (Undergraduate Thesis, Universitas Hasanuddin Makassar, 2013), 15-16, <https://core.ac.uk/download/pdf/25494184.pdf>.

³² S.F Marbun, *Peradilan Administrasi Negara dan Upaya Administratif Di Indonesia* (Yogyakarta: Liberty, 1997), 155.

³³ Paisol Burlan, *Kewenangan Kepala Daerah Menurut Undang-undang*, 1 ed. (Palembang: NoerFikri, 2014), 20.

because public legal authority has a broad scope including authority in carrying out government tasks.³⁴

Authorities and legal products such as laws and regulations are interrelated in a rule of law state. According to Van Wijk and Konijnenbelt,³⁵ basically a rule of law is stated with the following insights :

- a. Rule by law (*wetmatig bestuur*), with sections on authority that are expressly stated regarding equal treatment and legal certainty;
- b. Protection of fundamental rights;
- c. The division of powers, with its sections on the structure of authority or decentralization and on supervision and control;
- d. Oversight by the judiciary.

The difference in understanding between authority or authority with the term "**bevoegdheid**" lies in its legal character, this was stated by Philipus M. Hadjon. a basis in government to carry out a public act requires authority related to a position.

³⁴ Sadjjono, Memahami Beberapa Bab Pokok Hukum Administrasi (Yogyakarta: LaksBang Pressindo, 2008), 52.

³⁵ A. Hamid Attamimi, "Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintah Negara, Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Kurin Waktu Pelita I - Pelita IV" (Disertasi, Jakarta, Universitas Indonesia, 1990), 311.

2. Source of Authority

Authority based on laws and regulations is obtained in three ways, namely attribution, delegation and mandate, according to H.D Willem Koninjenbelt defines it as follows :

- a. *Atributie : toekenning van een bestuursbevoegdheid door een wetgever aan een bestuursorgaan*, (Attribution is the granting of government authority by the law maker to a government organ).
The authority obtained by attribution is original, because it comes from statutory regulations. Elements of government get authority directly from the text of certain articles in a statutory regulation. The recipient of authority can create new authority or expand existing authority with internal and external responsibilities for the implementation of authority that is fully attributed to the recipient of authority.
- b. *Delegatie : overdracht van een bevoegdheid van het ene bestuursorgaan aan een ander*, (Delegation is the delegation of government authority from one government organ to another government organ). In delegation there is no creation of authority, but only delegation of authority. Philipus M. Hadjon explained that there are conditions for delegation, namely: the delegation must be

definitive and the delegation can no longer use the authority that has been delegated himself.³⁶

- c. *Maandat : een bestuursorgaan laat zijn bevoegdheid namens hem uitoefenen door een ander*³⁷ (Mandate is when an organ of government permits its authority to be exercised by another organ on its behalf). In the mandate, the recipient of the authority can only act for and on behalf of the giver of the mandate.

Positions obtain authority through three sources, namely: attribution, delegation and mandate will give birth to authority (*bevoegdheid, legal power, competence*). According to Suwoto Mulyosudarmo³⁸, the delegation of authority in state positions uses the term power, because power has a broader nature than authority. The power given can be divided into 2 (two) types, namely power that is attributive and derivative. Power gained by attribution causes the formation of power, because it comes from a situation that does not yet exist and causes a new power. Then the derivative power (*afgeleid*) is power or authority that is distributed or passed down from one party to another.³⁹ Henk van Maarseveen⁴⁰ argues that the form of delegating

³⁶ Rasya Suhaila dan Wais Alqarni, "Analisis Kewenangan Pemerintah Kota Banda Aceh Dalam Bidang Pertanahan," *Jurnal Ilmiah Mahasiswa Fakultas Ilmu Sosial & Ilmu Politik* 7. 4 (2022), <https://jim.usk.ac.id/FISIP/article/view/22288>.

³⁷ H.D Willem Koninjenbelt, "Hoofdstukken van administratief recht, ngende druk," Utrecht: Uitgeverij Lemma, 1994, 56.

³⁸ Suwoto Mulyosudarmo, *Peralihan Kekuasaan, Kajian Teoritis dan Yuridis Terhadap Pidato Nawaskara* (Jakarta: PT. Gramedia Pustaka Utama, 1997), 39.

³⁹ Burlian, *Kewenangan Kepala Daerah Menurut Undang-undang*, 22.

⁴⁰ Mulyosudarmo, *Peralihan Kekuasaan, Kajian Teoritis dan Yuridis Terhadap Pidato Nawaskara*, 42-44.

authority to other legal subjects consists of *delegation* and *mandate*. Delegation by *delegation* by exercising their power or authority independently and bearing on their own behalf, what is meant by self-responsibility is from the internal and external aspects.

Accountability from the internal aspect is a form of accountability with a report on the exercise of power or position, while from an external aspect, namely accountability to a third party, if there is an imbalance in the implementation and causes harm to the public or other parties. Then delegate with *maandat* namely the delegation of power with *maandat* or voice, so that in the exercise of such power or authority he does not act in his own name, but in the name of the giver *maandat* or power, so that if there is a loss and accountability then he does not have to have his own responsibility.

In the formation of a government system and legal entities within it, it is necessary to have the authority granted, both general authority and special authority. Authority itself is an important component in administrative law, because a government (administration) can run according to its functions on the basis of the authority it has obtained, meaning that the legitimacy of governmental actions is based on the applicable laws and regulations.⁴¹ To make it easier to understand the

⁴¹ Ali Rahman, "Tinjauan Hukum Administrasi Negara Tentang Kewenangan Wakil Menteri Di Indonesia" (Makassar, Universitas Hasanuddin, 2013), 15.

difference between attribution, delegation and mandate authority, the following table shows the difference between the three:

Table 1.2 Authority Theory

Aspect	Attribution	Delegation	Mandate
Method of acquisition	Legislation	Delegation	Delegation
Its binding power	Remains attached before there is a change in laws and regulations	Can be withdrawn or withdrawn when there is opposition or deviation	It can be withdrawn or used at any time by the authorizing agent
Responsibility and accountability	The recipient of authority is absolutely responsible for the consequences arising from the authority	Authorizer (delegating) delegate responsibility and accountability to the recipient of authority (delegate)	Being on the giver of the mandate
Authority relationship	The legal relationship of law formation with government bodies	Based on the attribution authority delegated <i>todelegate</i>	Internal relationship between subordinates and superiors

B. Siyasah Dusturiyah

1. Definition of Siyasah Dusturiyah

Siyasah dusturiyah part of *political jurisprudence* which discusses issues related to state legislation.⁴² By Language *siyasah* has several meanings, namely to regulate, manage, govern, lead, make policies,

⁴² Muhammad Iqbal, *Fiqh Siyasah, Konstektualisasi Doktrin Politik Islam*, Cet. ke-1 (Jakarta: Prenadamedia Group, 2014), 4.

government and politics.⁴³ In terminology *siyasah* is the science of government to control domestic and foreign tasks, namely domestic politics and foreign and social politics, namely regulating public life on the basis of justice and *istiqomah*.⁴⁴ *Dusturiyah* comes from “*dustur*” which originates from Persian and then absorbs it into Arabic which develops its meaning to become the basic principle/guidance. Abu A’la al-Maududi interprets *dusturi* as “a document that contains the basic principles that form the basis of a country's governance”.⁴⁵ it can be concluded that what is meant by *dustur* as well as *constitution* in the meaning of English, or referred to as the Constitution in the sense of Indonesian. *Siyasah dusturiyah* is part of *siyasah fiqh* which examines issues of state legislation so that it remains in line with shari'at values, meaning that this law refers to its constitution which is reflected in Islamic principles in shari'at laws that have been mentioned in the basis of Islamic law.⁴⁶ Not only examines the issue of the law so that it remains in line with Islamic values, but also regarding the basic law and its contents regarding the form of government, state bodies and the rights and obligations of citizens.

⁴³ Dimas Nur Kholbi, “Analisis Fikih Siyasah Dusturiyah Terhadap Proses Pembentukan Peraturan Perundang-undangan di Indonesia” (UIN Sunan Ampel Surabaya, 2019), 24.

⁴⁴ Suyuthi Pulungan, *Fiqh Siyasah* (Jakarta: Raja Grafindo Persada, 1994), 127.

⁴⁵ Yusuf Al-Qordhawi, *Fikih Daulah dalam Prespektif Al-qur'an dan* (Bandung: Bulan Bintang, 2003), 46-47.

⁴⁶ Merliani Selfi, “Pandangan Siyasah Dusturiyah terhadap pelaksanaan strategi Dinas Perhubungan Kota Bandar Lampung Dalam Menertibkan Parkir Liar (Studi di Dinas Perhubungan Kota Bandar Lampung)” (Diss, Uin Raden Intan Lampung, 2021).

Siyasah dusturiyah is a branch of *fiqh siyasah* which discusses constitutional politics in the era of Rasulullah SAW based on the Qur'an and its Sunnah with the main goal of achieving benefit. Apart from realizing the benefit, there is a role for those in power, namely the government, *ulil amri or wulatul amr*.⁴⁷ Therefore the form of laws, regulations and political policies made by those in power are binding and must be obeyed as long as they are in line with Islamic Shari'ah.

According to Abdul Wahab Khallaf, *fiqh siyasah* divided into 3 types, including: 1) *siyasah dusturiyah*, 2) *siyasah maliyah*, 3) *siyasah kharijiyah*. However, Abdurrahman Taj argues that *fiqh siyasah* divided into 7 types: 1) *siyasah dusturiyah*, 2) *siyasah tasyri'iyah*, 3) *siyasah qadha'iyah*, 4) *siyasah Maliyah*, 5) *siyasah idariyah*, 6) *siyasah tanfidziyah*, dan 7) *siyasah kharijiyah*.⁴⁸ *Siyasah dusturiyah* part of *fiqh siyasah* related to legislation (constitutional concepts, legislation, democratic institutions, and shura).⁴⁹ Study form *siyasah dusturiyah* namely regarding the relationship between the leader and the people and the institutions in the country according to the needs of the people for the benefit and fulfillment of the needs of

⁴⁷ Jubair Situmorang, *Politik Ketatanegaraan Dalam Islam (Siyasah Dusturiyah)*, cet-1 (Bandung: Pustaka Setia, 2012), 25.

⁴⁸ Mujar Ibnu Syarif dan Khamami Zada, *Fiqh Siyasah; Doktrin dan Pemikiran Politik Islam* (Jakarta: Erlangga, 2008).

⁴⁹ Ali Akhbar Abai Mas Rabbani Lubis, *Ilmu Hukum Dalam Simpul Siyasah Dusturiyah (Refleksi atas Teori dan Praktek Hukum Tata Negara di Indonesia)* (Yogyakarta: Semesta Aksara, 2019), <http://repository.iainponorogo.ac.id/615/1/Ilmu%20Hukum%20dalam%20Sampul%20Siyasah%20Dusturiyah.pdf>.

the people themselves.⁵⁰ The needs and rights of the people are directly protected by applicable laws and these are supervised by the government and authorized state institutions.

As for sources *siyasah dusturiyah* in the opinion of H.A Djazuli⁵¹ among other :

- a. Al-Qur'an, which covers the principles of social life, arguments *dude* and the spirit of the teachings of the Qur'an
- b. Hadits, which relates to the Imamate and the policies of Rasulullah SAW in implementing the law
- c. Policy *khulafa al-Rasyidin*, which relates to government control in which each Khalifah has a pattern and color in each of his leadership, but both have the same goal in providing policy. That is, policies that are oriented to the benefit of the people.
- d. Ijtihad 'ulama, which relates to the benefit of the ummah because it is deep *fiqh formula* that the results of ijtihak 'ulama are very helpful in understanding the spirit and principles *legal jurisprudence*.
- e. Customs, which relate to laws that apply in a nation that do not conflict with the principles of the Qur'an and Hadits.

⁵⁰ Fatahullah Jurdi, Politik Islam; Pengantar Pemikiran Politik Islam (Yogyakarta: Calpulis, 2016).

⁵¹ H.A Djazuli, Fiqh Siyasah; Implementasi Kemaslahatan Umat dalam Rambu-rambu Syariah, 53-54.

2. Object of *Siyasah Dusturiyah*

Government officials have to do within *siyasah dusturiyah* namely in making laws that give birth to ruler policies that contain various rules for people's lives in the state. Society which incidentally is a legal object as well as a subject in the implementation of state and government life. The law that is built and implemented in a constitutional life in Islam is to regulate the interests of the state and organize the affairs of the people in line with the soul of Islamic law, and in accordance with its universal foundations to realize its societal goals.⁵² *Siyasah dusturiyah* studies the relationship between leaders in an area or region and the people, as well as state institutions in society. The things studied in *siyasah dusturiyah* among others include:

- a. A study of *imamah, khilafah, imarah, mamlakah*, the following rights and obligation
- b. The study of the people, their position, rights, and obligations;
- c. A study of *bai'ah* from time to time;
- d. A Study of *waliyul ahdi*;
- e. A study of representation and *wakalah*;
- f. A study of *ahl al-halli wa al-aqd*;
- g. A study of *wuzarah*, presidential and parliamentary government system;

⁵² Jubair Situmorang, *Politik Ketatanegaraan Dalam Islam (Siyasah Dusturiyah)*, cet-1 (Bandung: Pustaka Setia, 2012), 23.

h. Studies on general elections.⁵³

The things studied in *siyasah dusturiyah* This refers to the argument *kully* namely the Qur'an and As-Sunnah as well as maqashid sharia which are the legal basis for the study *siyasah dusturiyah*. Not only the Qur'an and As-sunnah are used as the basis of law, but the fatwas and ijtihad of the scholars are used as a reference in supplementing the discussion of studies *siyasah dusturiyah*. *Siyasah dusturiyah* examines in detail related to government officials, the relationship between Muslims and non-Muslims in a state government, political parties, general elections, and the system of government adopted by a country. The problem of leadership in a country is related to the existence of promises from leaders who are sworn in bai'ah,⁵⁴ while the system of government and cabinet as well *waliyul ahdi* referred to as *siyasah tanfidiyah*.⁵⁵

Siyasah dusturiyah studies the origins of the country in the view of Islamic history, how it developed in society, organization, function, and its role in the lives of the people. Studies from *siyasah dusturiyah* concentrate on the relationship between power holders or leaders with their people within the scope of a particular state or government. So

⁵³ Situmorang, 23.

⁵⁴ Bai'ah secara terminologi ialah berjabat tangan atas jual beli, dan untuk berjanji setia dn ta'at, atau berjanji untuk taat.

⁵⁵ Situmorang, 24.

another term for *industrial politics* is the politics of statecraft and governance in Islam.⁵⁶

3. Principles of *Siyasah Dusturiyah*

Government was created to serve the people, not for self-interest. The main purpose of power and leadership in government and the state is to maintain an orderly system so that people can lead a safe and peaceful life. In general, the main task of the government is to guarantee equal justice for all its citizens, and to provide services in the fields of society. To carry out these basic tasks, it is necessary to have a constitution that regulates it so that it remains in line with the goals it aspires to.

A leader or ruler in carrying out his duties as a state administration official must be based on principles and principles that are upheld, among others, namely: Legality Principle, all forms so that the principle of legality is the most important thing in every government action.⁵⁷ The legality that applies depends on the system of government, therefore the enforceability of the regulations that are applied depends on the laws and regulations passed. In Islam, the political concept that has long been aspired to is to become the commander-in-chief for the life of society and the state.⁵⁸

⁵⁶ Situmorang, 26.

⁵⁷ Situmorang, 29.

⁵⁸ Lois Ma'luf, *Al-Munjid fi Al-Lughat wa Al-A'tam* (Bairut: Dar Al-Masyriq, 1986), 591.

C. Basis of Legal Certainty

One of the foundations of laws and regulations in a rule of law country is the principle of legal certainty. All forms of state legal products are based on the principle of legal certainty because they have the objective of providing certainty between community relations and avoid legal irregularities that are carried out. In every decision made by a judge, one of the basic values used is the principle of legal certainty. Legal certainty is certainty, clarity and firmness regarding the enactment of law in society.⁵⁹ The definition of legal certainty is the existence of clarity from scenarios of behavior that are general in nature and binding on all citizens, including the legal consequences.⁶⁰

The definition of legal certainty in Van Apeldoorn's book says legal certainty can also mean things that can be determined by law in concrete matters.⁶¹ Legal certainty is a law that is carried out with a guarantee, according to law the right to obtain its rights, and with the existence of a decision that has been legal can be carried out. Today, it is not only justice and the interests served by law that are needed by society, but also regulations that guarantee certainty in dealing with each other between a person and a group or fellow individuals.

Legal certainty according to Apeldoorn also means things that can be determined by law in concrete matters. This means that legal certainty

⁵⁹ Tata Wijayanta, "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga", *Jurnal Dinamika Hukum* 14, no. 2 (2014): 291, 219 <https://doi.org/10.20884/1.jdh.2014.14.2.291>.

⁶⁰ Wijayanta, 219.

⁶¹ Van Apeldoorn, *Pengantar Ilmu Hukum*, ke-24 (Jakarta: Pradnya Paramita, 1990), 24-25.

is a guarantee that the law is implemented, that those entitled according to law can obtain their rights and that decisions can be carried out.⁶² In fact, the existence of this principle is as a situation where the law is certain because there is concrete power for the law in question.

In principle, a law that applies cannot deviate from what is written, that is with term *fiat Justitia etpereat mundus* (even though the world is collapsing the law must be upheld).⁶³ Legal certainty wants this to be achieved so that laws are created to protect arbitrary actions from someone who gets something that is expected in certain circumstances. The law is also involved in ensuring order for society from any group, because everyone has the right to benefit from implementing or enforcing laws that apply in their country or region. The law is general, binding on everyone, and generalizing. Law must be fair, justice itself is the highest goal of law, but legal certainty is the most important part and is needed by everyone to seek justice.⁶⁴

Indonesia has included legal certainty in several laws and regulations as a form of implementing the General Principles of Good Governance (AAUPB) in order to create "*general principles of good*

⁶² Siti Halilah dan Mhd Fakhurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *siyasah: jurnal Hukum Tata Negara* 4 (II) (2021), 61, <https://www.ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/334>.

⁶³ Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan kemanfaatan," *Jurnal Warta*, Edisi: 59, 13, No.1 (2019), 7 <https://doi.org/10.46576/wdw.v0i59.349>.

⁶⁴ Suwari Akhmaddhian, "Asas-Asas dalam Penyelenggaraan Pemerintahan yang Baik untuk Mewujudkan Good Governace," *Journal of Multidisciplinary Studies* 09 (2018): 9, 31. <https://doi.org/10.25134/logika.v9i01.2198>

governance” or “*Algemene beginselen van behoorlijk bestuur*”⁶⁵ in the state government system, among others stated in Articles 2 and 3 of Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion, and Nepotism (State Gazette Number 75), hereinafter referred to as the act of corruption crime.

In addition, it is stated in Article 10 of Law Number 30 of 2014 concerning Government Administration (State Gazette Number 292), hereinafter referred to as the State Administration and Administration Law, explaining the principle of legal certainty is the principle in a rule of law that prioritizes the basis of provisions of laws and regulations. -statute, decency, constancy, and fairness in every government administration policy.⁶⁶ And there are many other laws and regulations that include the principle of legal certainty in the General Principles of Good Governance (AAUPB) as a real form of the need for legal certainty in seeking justice for society.

⁶⁵ Akhmaddhian, 32.

⁶⁶ Akhmaddhian, 33.

CHAPTER III

DISCUSSION OF RESEARCH

A. Authority of the Village Head according to Indonesian Laws and Regulations.

Authority is always associated with state administrative law. The term authority is a right or power in certain matters.⁶⁷ This authority can be obtained in several ways, namely attribution, delegate and mandate. Not necessarily the authority given can be misused because all of these powers are based on the law and the desired goals are for the common good.

The definition of Village Head in Government Regulation Number 72 of 2005 concerning Villages (State Gazette Number 158) hereinafter referred to as Village Government Regulations, explains "Village Heads are high-ranking Village Government leaders who are assisted by village officials in carrying out their duties. The Village Head is appointed and appointed by the Regent through direct election by villagers who are citizens of the Republic of Indonesia with a term of 6 (six) years and can be re-elected only for 1 (one) next term of office. According to the Big Indonesian Dictionary (KBBI) the meaning of the word village head is a person who heads a village or lurah."⁶⁸

⁶⁷ Syafrudin, "Menuju Penyelenggaraan Pemerintah Negara Yang Bersih dan Bertanggungjawab."

⁶⁸ Kamus Besar Bahasa Indonesia (KBBI), <https://kbbi.kata.web.id/kepala-desa/>.

The Village Head or Lurah is further stated in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 84 of 2015 concerning the Organizational Structure and Working Procedures of the Village Government (Supplement to State Gazette Number 6 of 2016) "The Village Head or other designations are Village Government officials who have the authority, duties and the obligation to run the village household and carry out the tasks of the government and regional government."

The authority granted by attribution ⁶⁹ by law makers to the Village Head has been regulated in its entirety in Law Number 6 of 2014 (State Gazette Number 7) here in after referred to as the Village Law explained in Article 26 which contains "Village Head tasked with administering Village Administration, carrying out Village Development, Village Community Development, and Village community empowerment." The authority of the village head, among others :

- a. Leading the administration of Village Government;
- b. Appoint and dismiss Village officials;
- c. Holding the authority to manage Village finances and assets;
- d. Establish Village Regulations;
- e. Determine the Village Revenue and Expenditure Budget;
- f. Build the life of the Village community;

⁶⁹ Ridwan HR dalam karangan bukunya "Hukum Tata Negara" menjelaskan kewenangan atribusi adalah pemberian wewenang pemerintah oleh pembuat undang-undang kepada organ pemerintahan, 74.

- g. Fostering peace and order in the Village community;
- h. Fostering and improving the Village economy as well as integrating it in order to achieve a productive scale economy for the greatest prosperity of the Village community;
- i. Develop Village income sources;
- j. Propose and accept the delegation of part of the state's wealth to improve the welfare of the Village community;
- k. Developing the socio-cultural life of the Village community;
- l. Utilizing appropriate technology;
- m. Coordinate Village development in a participatory manner;
- n. Representing the Village inside and outside the court or appointing a legal representative to represent it in accordance with the provisions of the laws and regulations; And
- o. Carry out other authorities in accordance with the provisions of laws and regulations.

The authority of the Village Head is further explained in Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette Number 59) hereinafter referred to as the Agrarian, Land and Spatial Planning Regulations, in Article 7 paragraph (2) “For villages in remote areas the Minister may appoint a temporary PPAT”. These provisions are meant to make it easier for people in remote areas where there is no PPAT to carry out land affairs related to the law. The PPAT appointed temporarily is the village head or lurah in the remote area. In

Article 7 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, the village head has the authority to issue land certificates or land declaration letters ⁷⁰ for people in remote areas who wish to obtain legal certainty over a plot of land.

Previously, it was explained about the meaning of the Village Head in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 84 of 2015 concerning the Organizational Structure and Working Procedures of the Village Government (Supplement to State Gazette Number 6 of 2016). With the enactment of this regulation, it will clarify the position of authority and the implementation of technical services in the Village Government.⁷¹ The powers and functions of the Village Head are mentioned in Article 6, among others :

- a. Organizing Village Government, such as governance procedures, establishing regulations in the village, fostering land issues, fostering peace and order, carrying out efforts to protect the community, population administration, and structuring and managing areas.
- b. Carry out development, such as the construction of rural infrastructure, and the development of education and health.

⁷⁰ Fransmini Ora Rudini, "Analisis Yuridis Surat Pernyataan Tanah Yang Dikeluarkan Oleh Kepala Desa Sebagai Dasar Penguasaan Atas Tanah Negara Berdasarkan Pasal 7 Ayat (2) Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah (Studi Kasus Di Desa Asam Besar Kecama)," *E-jurnal Gloria Yuris Prodi Hukum UNTAN* Vol. 3, No 3 (2015), 2, <https://jurnal.untan.ac.id/index.php/jmfh/article/view/9350>.

⁷¹ Arif Zainudin, "Model Kelembagaan Pemerintahan Desa," *JIP (Jurnal Ilmu Pemerintahan)* : 1(2), no. Kajian Ilmu Pemerintah dan Politik Daerah (2016), 342, <https://doi.org/10.24905/jip.1.2.2016.338-351>.

- c. Community development, such as the implementation of community rights and obligations, community participation, community social culture, religion, and employment.
- d. Community empowerment, such as socialization tasks and community motivation in the fields of culture, economy, politics, environment, family empowerment, youth, sports, and youth organizations.
- e. Maintain partnership relations with community organizations and other institutions.

Legislation that discusses the authority of the Village Head as an additional authority, namely contained in the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 1 of 2015 concerning Guidelines for Authorities Based on Origin Rights and Village-Scale Local Authorities (State Gazette Number 158), hereinafter referred to as Regulations regarding Village Guidelines or Standards.

Of the overall powers and duties of the Village Head mentioned above, there is no concrete regulation regarding the authority of the Head in land matters in the Village community. The land issue in question is the deletion and/or transition of letter C⁷² by the Village Head which often creates conflicts and confusion for the Village Head in its implementation, due to doubts and there are no regulations governing it. In the regulations

⁷² Letter C adalah surat atau dokumen yang dimiliki seseorang secara turun menurun sebagai bukti pembayaran pajak atas tanah yang telah dikuasainya selama lebih dari 20 tahun lebih dan letter c saat ini dianggap sebagai pembuktian kepemilikan hak lama atas tanah.

listed above, the authority of the Village Head in managing land is not included in the erasing and/or transition of letter C, but related to the socialization of understanding of land to the village community.

The material content of making laws includes certainty, benefit and justice. An important aspect in making laws is the principle of legality. Positive law in Indonesia applies this in the formulation and ratification of a law product. Furthermore, according to Jubair Situmorang in his book "State Politics in Islam (*Siyasah Dusturiyyah*), Islam applies principles that are used as the foundation in running a good government system in accordance with applicable regulations, one of which is the principle of legality.⁷³ In line with positive law in Indonesia which applies this principle as the formation of laws with Islam in principle *Siyasah dusturiyah*. The legality principle aims as an evaluation of a law that has legal certainty, applies justice, and is beneficial for the common good.

B. Authority of the Village Head in Removing and/or Transferring Letter C Based on Article 26 of Law Number 6 of 2014 concerning Villages.

The authority attribution to the Village Head in Village government, both in terms of community service administration and Village management administration, has been written in Law Number 6 of 2014 concerning Villages (State Gazette Number 7), hereinafter referred to as the Law concerning Villages, discussing the whole related Village

⁷³ Situmorang, *Politik Ketatanegaraan Dalam Islam (Siyasah Dusturiyyah)*, 29.

administration, Village head Authority, as well as Village Apparatuses who help the success of Village administration as assistants to the Village Head in serving village community problems.

The Village Head and Village Officials play a role in the process of assessing juridical certainty regarding land parcels in the village area concerned. This is done as an important role in land registration for the first time which is the initial source of data or information about land to support the implementation of land registration. The need for a letter in land registration for the first time is regarding proof of rights or Letter C which is a certificate of land ownership from the village. In accordance with article 7 letter b Government Regulation No. 72 of 2005 states that government affairs, especially land which is under the authority of districts/cities, are handed over to the Village Head, this is confirmed by the Minister of Home Affairs Regulation No. 30 of 2006 concerning Procedures for Handing Over District/City Government Affairs to Villages in Article 2 paragraph (1) letter u that government affairs handed over to the Village are the land sector, in the annex to the regulation it is stated details of tasks in the land sector, which include; determination of target areas and locations of land development activities; provide a certificate of land rights; facilitating settlement of village-level land disputes; structuring and mapping of land use.⁷⁴

⁷⁴ Herman Putra Dinata, "Pembangunan Administrasi Pertanahan Desa (Studi di Desa Larangan Tokol Kecamatan Tlanakan, Kabupaten pamekasan)," 2021, 2, <https://repository.stpn.ac.id/1185/1/HERMAN%20PUTRA%20D.pdf>.

The authority of the Village Head is stated in Article 26 of Law Number 6 of 2014 concerning Villages, "The Village Head is tasked with administering Village Government, carrying out Village development, fostering and empowering village communities". The explanation above only refers to the authority of the Village Head in general, regarding the authority of the Village Head in land affairs, especially regarding letters or requests for deletion and/or transition to letter c, this has not been discussed in the Village government law.

Looking at Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette Number 59) Deleting and/or transferring letters c carried out by the Village Head must have written regulations, because they aim to provide legal certainty and legal protection for people who are still hold on to old letters or letters c. Based on the Decision of the Surabaya State Administrative Court with case number 4/P/FP/2020 PTUN.Sby, on the judge's consideration, deleting and/or transferring letter C by the Village Head aims at Land Registration and providing legal certainty and legal protection to rights holders , providing information to interested parties and the implementation of orderly land administration.⁷⁵

Furthermore, in the previous year, in 2018 to be precise in the same Court regarding legal considerations from the Decision with case number

⁷⁵ Putusan PTUN Surabaya No. 4/P/FP/2020/PTUN.Sby, 37, <https://putusan3.mahkamahagung.go.id/direktori/putusan/d5e5fbacb1f5abd6ea06f383b297f3a9.html>.

194/G/2018/PTUN.Sby, the Village Head's authority in deleting and/or transferring letter c is linked to Article 1 number 8 of the Law Number 51 of 2009 concerning the State Administrative Court (State Gazette Number 160), "Officials who carry out government affairs based on applicable laws and regulations" therefore the Village Head has the authority to record or write off letter c.⁷⁶ According to the judge, this authority is in line with the authority obtained from the law or attribution authority. According to Gustav Radbruch's theory, every act of state administrative officials must be based on philosophy, normative and empirical, which in contemporary thinking are legal certainty, justice and expediency.⁷⁷

Gustav Radbruch's three legal principles aim to create the value of justice and legal interests by requiring regulations that guarantee legal certainty. The authority of the Village Head as a state administration official based on Article 26 of Law Number 6 of 2014 Concerning Villages does not yet contain an element of legal certainty regarding the authority to write off and/or transfer letter C. certainty means a claim from the law regarding regulations or positive laws that apply with certainty and guaranteed. Legal certainty aims to protect the interests of each individual regarding what is prohibited and permissible so that it is protected from arbitrary actions by the government.

⁷⁶ Putusan PTUN Surabaya Nomor 194/G/2018/PTUN.SBY, 50, <https://putusan3.mahkamahagung.go.id/direktori/putusan/c63a3b29d909a4ff29aef1bf142628bc.html>.

⁷⁷ Wijayanta, 220.

Then legal certainty means how an applicable law provides legal protection for justice seekers. Regulations that are guaranteed legal certainty, then justice can be realized and provide benefits to society. Judging from some of the phenomena that have occurred, the village head's authority in deleting and/or transitioning letter c is still commonly found in communities that submit applications to the village head, but the village head is silent on the request, rejects it or even feels that this is not integration of its territory.

The Court's decision No. 78/G/2012/PTUN.Sby, stated in the exception of the defendant, namely the Manukan Kulon Village Chief who felt that the authority over the recording and deletion of taxpayer records along with the Regional Development Contribution tax object (IPEDA) in the book letter C was not his authority but the authority from the Directorate General of Taxes which is currently referred to as the Directorate of Land and Building Taxes in accordance with Republic of Indonesia Law no. 12 of 1985 concerning Land and Building Tax.⁷⁸

The scientific journal by Muhammad Romzul Islam and Tamsil Rahman raised issues related to the actions of the Village Head who carried out deletion and/or transfer without any basis for transferring land rights in Court Decision number 176/Pdt.G/2013/PN.Sby, in practice it is inversely proportional to the requirement in the applicable regulations,

⁷⁸ Putusan PTUN Surabaya Nomor 78/G/2012/PTUN.Sby, 14, <https://putusan3.mahkamahagung.go.id/direktori/putusan/94dc8d3cb6a4fff8df02f7d5a167790d.html>.

there must be administrative sanctions for the Village Head as a state administration official. Indonesia as a constitutional state that implements all governmental actions must be based on the existence of legal provisions governing "*rechtmatig van het bestuur*", which has the core of the application of the principle of legality in every legal action of the government.⁷⁹

Philipus M. Hadjon's concept of authority says that there are 3 components in the theory of authority, namely: influence, legal basis, and legal conformity. In terms of influence can control the behavior of legal subjects with the authority given, then there is a legal basis that applies to the authority being exercised, as well as legal conformity so that the authority given has standards, both general and special standards.

Government affairs carried out by State Administrative officials are a form of legal action. State Administrative legal action is the legal action of a person from a State Administrative body or official⁸⁰ based on public law which creates, creates, determines, binds, abolishes a State Administrative legal relationship in line with the Village Head's actions in deleting and/or transitioning letter c as a form of State Administrative legal action by issuing letters or crossing out letter c from one party to another. The village head's legal action is called a State Administrative Decree (KTUN) in accordance with Article 8 of Law Number 30 of 2014

⁷⁹ Islam dan Rahman, 90, <https://doi.org/10.2674/novum.v5i3.36062>.

⁸⁰ Pasal 1 Angka 8 menjelaskan Badan atau Pejabat Tata Usaha Negara adalah badan atau pejabat yang melaksanakan urusan pemerintahan berdasarkan peraturan perundang-undangan yang berlaku.

concerning Government Administration, the conclusion from the article is that all state administrative decisions are said to be valid or legality if issued by an authorized agency/official. Authorized bodies/officials are given power either by attribution, delegation or mandate.

The principle of legality or legitimacy of the State Administrative Decree (KTUN) includes authority, procedure and substance. Authority and procedure as a foundation in formal legality that gave birth to principles *praesumptio iustae causa/vermoden van rechtmatig* or the legitimacy of government actions, while the substance will give birth to material legality. In decisions of government bodies/officials it must contain the three main elements above, if not fulfilled it will result in a juridical defect in an action or government decision.⁸¹

Deleting and/or transferring letter c by the Village Head can be done on the grounds that there is a transfer of ownership or rights to a land. Transfer of land rights can be caused by buying and selling, exchange, grants, income in companies and other legal actions for transferring rights, except for transferring rights through auctions, this is explained in Article 37 Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette No. 59). Then in its implementation, there must be a transitional basis between the parties accompanied by administrative supporting documents for deleting letters

⁸¹ Islam dan Rahman, 91, <https://doi.org/10.2674/novum.v5i3.36062>.

in the book as well as changes to the village block map, this applies in the form of buying and selling, grants, inheritance and others.

The implementation of registration of land certificates with a document letter c from the village is used as a sporadic form of land registration for the first time. Article 13 paragraphs (3) and (4) of Government Regulation Number 24 of 1997 concerning Land Registration (State Gazette Number 59) explains regarding sporadic registration "(3) In the event that a village/kelurahan has not been designated as a systematic land registration area as referred to in paragraph 2 the registration is carried out through sporadic land registration, (4) sporadic land registration is carried out at the request of interested parties. The role of the village head in sporadic registration in connection with letter c lies in the identity form for a land that has not been certified which is requested in the form of a blank application for recognition of rights by the village head or the lurah where the land to be registered is located.⁸²

Regulations related to land issues, especially in the removal and/or transition of letter C handled by the Village Head have not been elaborated in Law Number 6 of 2014 concerning Villages, then the deletion and/or transition of letter C relates to the land registration process for the first time, and matters This is related to Government Regulation Number 24 of 1997 concerning Land Registration, but does not mention the authority of

⁸² Ananta Rizal Wibisono, "Pelaksanaan Pendaftaran Tanah Pertama Kali Secara Sporadik Menjadi Sertikat Hak Milik Berdasarkan Surat Segel (Studi di Desa Sumberkradenan Kecamatan Pakis Kabupaten Malang)," *garuda.kemdikbud.go.id*, 2012, 10.

who is responsible for implementing it and does not mention letter C in the regulation. even though in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 84 of 2015 concerning the Organizational Structure and Working Procedures of the Village Government (SOTK) it has been mentioned, although only in the implementation of "development of land issues". Socialization and understanding to village communities regarding land issues, then how to issue land certificates for ownership of land rights, is referred to as fostering land issues by the Village Head, this is different from the authority of the Village Head in deleting and/or transferring letter C.

In article 26 letter d of Law Number 6 of 2014 concerning Villages, it has the authority to stipulate Village Regulations. This is in line with Article 1 number (6) of Law Number 23 of 2014 which states that regional autonomy is the right, authority and obligation of an autonomous region to regulate and manage its own government affairs and the interests of the local community within the Unitary State of the Republic of Indonesia. The autonomous region in question must be able to innovate, formulate regional policies, be able to formulate plans, have its own capable implementation tools, be able to make its own regulations with regional regulations, and be able to explore its own financial sources.⁸³

⁸³ Suhaila dan Alqarni, "Analisi Kewenangan Pemerintah Kota Banda Aceh Dalam Bidang Pertanian"

This is what creates legal uncertainty for the community, especially in the request to cancel and/or transfer letter c by the Village Head. When referring to court decisions regarding the removal and/or transition of letter c, many judges' considerations are based on Regional Regulations (PERDA) in each region. There are also several judges' considerations that refer to the regulations of the State Administrative Court. The Village Head acts as a State Administrative official whose actions are referred to as State Administrative Decisions (KTUN).

The authority of the village head in question must be in line with Philipus M. Hadjon's theory of authority in terms of legal basis and legal conformity where the village head's authority must have standards and statutory regulations which serve as the main basis for the village head's actions which contain the principle of legal certainty. As a result of the legal uncertainty of Article 26 of Law Number 6 of 2014 concerning Villages regarding the authority of the Village Head in deleting letter C, it causes anxiety and confusion for the community and the Village Head.

C. Review of *Siyasah Dusturiyah* Article 26 of Law Number 6 of 2014 concerning Villages Related to Deleting and/or Transferring Letter C by the Village Head.

Siyasah dusturiyah generally learn about the origins of the state in the history of Islamic views, its development, organization, function, role in the life of the people, and all forms of laws, regulations and policies

made by the authorities.⁸⁴ Regulations made in all forms of law and policy are adjusted to those in power that are in line with Islamic law to realize the common good. *Siyasah dusturiyah* In principle there are 8 principles that must be adhered to, one of the principles that implements legal certainty is the general principles of good governance. Good governance in carrying out state power must be based on; order and legal certainty in government.

The Village Head as one of the State Administrative officials has the authority, duties and responsibilities granted by law. The Village Head as the leader of the Village Government in fostering peace and order in the Village community, all authorities related to the Village Head have been explained in general in Article 26 of Law Number 6 of 2014 concerning Land Registration (State Gazette Number 7) hereinafter referred to as law regarding the village, the authority given comes from 3 sources. First Authority attribution of legislators to organs of government, second the authority of the delegation originating from one organ of government to another organ of government, and third mandated authority is the authority granted when an organ of government permits its authority to be exercised by another organ on its behalf.

In terms of attribution, the authority of the Village Head is listed in several laws and regulations, namely in Law no. 6 of 2014 concerning Villages and in Government Regulation no. 24 of 1997 concerning Land

⁸⁴ Situmorang, 25.

Registration. Furthermore, regarding the delegation of authority and mandate to the Village Head, there are no regulations that mention it. After the enactment of Law Number 23 of 2014 concerning Regional Government, structurally the Village Head is not subordinate to the Camat and vice versa. The sub-district head and the village head only have a relationship as coordinating partners.⁸⁵ The relationship between sub-district heads and vertical agencies and sub-districts is a coordinative and facilitative relationship. This is stated in Article 154 paragraph (1) of Government Regulation Number 43 of 2014 concerning Regulations for implementing Law No. 6 of 2014 concerning Villages, however the Camat does not have the authority to delegate authority or mandate to the Village Head, this is stated in Article 222 of Law No. 23 of 2014 concerning Regional Government (LN No. 244).

Correlation between the authority of the Village Head in Article 26 of Law Number 6 of 2014 concerning Villages and *industrial politics* is that there is no legal basis that applies and clarity regarding their authority in deleting letter C. Islamic law applies the principle of legality, where all actions of a leader or government must be based on written and valid law.

The implementation of government in Islam refers to the Qur'an, the Sunnah of the Prophet SAW, as well as through the *ijtihad* of the

⁸⁵ Muhammad Amirul Muadz, "PERAN CAMAT DALAM PEMBINAAN PENYELENGGARAAN PEMERINTAHAN DESA DI KECAMATAN WIRADESA, KABUPATEN PEKALONGAN, PROVINSI JAWA TEGAH," 2021, https://eprints.ipdn.ac.id/6142/1/3.%20Ringkasan%20LA_Muhammad%20Amirul%20Muadz_28.0681_Peran%20Camat%20Dalam%20Pembinaan%20Penyelenggaraan%20Pemerintahan%20Desa%20Di%20Kecamatan%20Wiradesa%20Kabupaten%20Pekalongan%20Provinsi%20Jawa%20Tengah.pdf.

Prophet's companions. One of the bases or bases for the formation of rules in Islam is the rules *fiqh*. *Fiqh* have branches of knowledge that are classified according to their respective needs. In the application of constitutional law and politics, it is needed *fiqh siyasah*, and one branch of science for *fiqh siyasah* is *siyasah Dusturiyah*. Rules *fiqh siyasah* which is used as a guideline in the Islamic constitutional system, one of which is the rule of "*Tasharrafu Al-Imam 'ala Raiyati Manutun Bil Maslahah*".

This was found by the *ijtihad* of the scholars who were worried about how the policies of a state leader and community leader would be. Therefore, this rule is expected to be the right solution in limiting and expanding the authority of an official or a leader who must be oriented towards achieving the benefit of everyone's life as determined by each leader of the country or region.⁸⁶

Islamic Sharia teaches that everything that is done by leaders of countries or regions is realized for the common good. The meaning of the rule *Tasarrafu Al-Iman 'ala Ra'iyati Manutun Bil Maslahah* as all actions or policies of an imam (leader) towards legal subjects and objects under his leadership must refer to the realization of benefits in his policies, both in the form of worldly benefits and *ukhrawi* benefits.⁸⁷ The definition of these rules according to Abdul Mujib is "Actions and policies taken by

⁸⁶ Achmad Musyahid Idrus, "Kebijakan Pemimpin Negara Dalam Perspektif Kaidah Fikih : Tasarruf Al-Imam Manutun Bil Maslahah." *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 1, no. 1 (29 Desember 2021): 123, 124, <https://doi.org/10.24252/ad.v1i1.26278>.

⁸⁷ Idrus, 125-126.

leaders or authorities must be in line with the public interest, not for the group or for oneself".⁸⁸

Say Tasharruf is the meaning of turning away,⁸⁹ while another meaning is exchanging.⁹⁰ The term has no meaning, but the Arabs interpret the word with an act or word. Definition of the word *Al-Imam* is a leader who must be followed,⁹¹ or can be interpreted as a role model.⁹² Book with the title "*al-Ta'rifat*" essay by al-Jurjani means *Al-Imamas* someone who holds a public position in religious affairs and world affairs at the same time.⁹³ As for the meaning *It's a ra'yyati* have synonyms *Al-Imam* Namely the leader but comes from the word *Ra'* which means a shepherd, but in a human context *It's a ra'yyati* means the general public who have a leader whose job is to manage all affairs and pay attention to their benefit.⁹⁴

While said *Manutun* has the meaning of being attached or dependent on an action or policy of a leader with the benefit of those under his leadership.⁹⁵ Then the last word *No problem* is not having danger, or the opposite of danger.⁹⁶ Imam al-Ghazali argues that the meaning of *Maslahah* is to protect the maqashid sharia'ah or what is the purpose of the

⁸⁸ H. Abdul Mudjib, *Kaidah-Kaidah Ilmu Fikih* (Jakarta: Kalam Mulia, 2005), 61.

⁸⁹ Al-Thahir Ahmad al-Zawi, *Tartib Al-Qamus al-Muhith 'ala Thariqat al-Misbah al-Munirwa Asas al-Balaghah* (Riyadh: Dar 'Alam al-Kutub, 1996), 816.

⁹⁰ Muhammad bin Abi Bakr bin Abd al-Qadir Al-Razi, *Mukhtar al-Shihah* (Beirut: al-Maktabah al-Ashriyyah, 2004), 346.

⁹¹ Al-Razi, 39.

⁹² Ahmad al-Zawi, *Tartib Al-Qamus al-Muhith 'ala Thariqat al-Misbah al-Munirwa Asas al-Balaghah*, 181.

⁹³ Ali bin Muhammad bin Ali Al-Jurjani, *al-Ta'rifat* (Beirut: Dar al-Kutub al-Arabi, 1405), 53.

⁹⁴ Abd al-Halim Muntashir Ibrahim Anis dll, *al-Mu'jam al-Wasith* (Beirut: al-Maktabah al-Ashriyyah, 1972), 380.

⁹⁵ Idrus, 127

⁹⁶ Ibrahim Anis, *al-Mu'jam al-Wasith*, 545.

existence of the sharia'a, he also added that there are 5 (five) maqashid sharia'a on humans, namely, taking care of their religion, soul, intellect, lineage, lineage, and property, so everything that includes care for these five basic things is maslahat, and everything that ignores these basic problems is mafsadah and rejecting or eliminating them is part of maslahat.⁹⁷

Rule *fiqh* from *Tasarraf Al-Imam 'ala Ra'iyyah Manutun Bil Maslahah* in line with the authority of the village head in running the village governance system. The structure of the executive institutional government system that is responsible and has the power to implement laws, administer government affairs and maintain order and security, one of which is the village head. In the executive hierarchy, the village head is at the lowest level in the constitutional system according to the concept of rule of law. The Village Head as a leader must carry out his duties within the scope of the Village Administration in accordance with definite and clear laws for the common good. Seeing his authority in deleting and/or transferring letter C, a problem was found, namely the Village Head's anxiety or indecision in its implementation. As in the example of court decision Number 4/P/FP/2020/PTUN.Sby which requested a decision to delete or transfer letter C from the panel of judges, because there were no clear regulations stated in the matter. The concept similarity between the theory of authority according to Philip M. Hadjon and the principle of

⁹⁷ Muhammad bin Muhammad Al-Ghazali, *al-Mushtashfa fi Ushul al-Fiqh* (Beirut: Muassah al-Risalah, 1997), 378-379.

legality is that on the legal basis that underlies the authority given there must be regulations that apply and these regulations are written and valid.

The village head's doubts about the authority do not only appear in land issues, but there are several court decisions stating that the village head has crossed out and/or transferred letter C without a clear basis, this has caused anxiety and losses for the village community, if the regulations made regulate about how the Village Head responds to or implements land-related issues in the Village community, so that uncertainty can be avoided and the administration of sanctions for Village Heads who violate these regulations can be avoided. For example, the village head who crossed out and/or transferred the letter C, namely in court decision No. 1713/K/Pdt/2015.

Jubair Situmorang⁹⁸ in his book on Principles *siyasah dusturiyah*, describes how a leader runs his government well. The principle of legality⁹⁹ and Philips M.Hadjon's theory of authority have in common with positive law in Indonesia as a rule of law according to Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One of the political figures of Islamic constitutionalism, Ibn Taimiyah orientated political thinking on the basis of the word of Allah SWT in the Qur'an Surah An-Nisa': 58 *"Truly, God told you to deliver the mandate to those who deserve it, and when you set the law between people you should set it justly, Truly, God is the best who teaches you. Indeed, Allah is All-*

⁹⁸ Situmorang, 27.

⁹⁹ Dalam buku karangan Jum Anggriani, Asas Legalitas dalam keputusan administrasi negara adalah keputusan yang harus diambil berdasarkan ketentuan undang-undang, 124.

Hearing, All-Seeing", Ibn Taimiyah's interpretation of the verse was intended for leaders. For the sake of creating a harmonious state life, they (Village Heads) should convey the mandate (statutory authority) to those who are entitled to it, and act fairly in making decisions on disputes between people.¹⁰⁰ The context of a leader in Islam here is the Village Head who leads the government system in the Village so that his authority is in deleting and/or transferring letters C which have not been written explicitly in Law Number 6 of 2014 concerning Villages which creates legal uncertainty for the community.

The village head's authority has been granted by law in attribution, but his authority in deleting letter C has not been discussed concretely. The village head as the leader of the village government has rights in the village government system, even though it is recognized in writing out letter C even though the regulation is only the norm and not written, this is what causes problems among village communities in writing out letter C for land ownership with an old letter or letter C. , therefore a law is needed that contains legitimacy or legality as the main thing in legal certainty for the actions of the Village Head as a state administration official.

All actions of the Village Head are meant to be permanent State Administrative decisions, because the Village Head is a leader in the village community and is held accountable for all his decisions. However, all decisions of the Village Head must also have legal certainty that aims

¹⁰⁰ Situmorang, 350-351.

for the common good and not harm the community, therefore the making of laws containing the three main principles of law is needed in order to provide mutual benefit and legal certainty for the village community, and there is no indecision between Village head and community to get justice.

CHAPTER IV

CLOSING

A. Conclusion

1. The authority of the Village Head in deleting and/or transferring letters C based on Article 26 of Law Number 6 of 2014 concerning Villages has not provided legal certainty to the community. This is corroborated by the legal materials above, such as the decisions of the state administrative court, where there are still many problems related to the authority of the village head. The village head's authority in deleting and/or transferring letter C causes uncertainty for the village head who feels that this is not his authority and the Law on villages has not explicitly regulated the authority of the village head in deleting and/or transferring letter C so that it does not yet contain Philipus M. Hadjon's concept of authority.
2. It can be concluded Overall that general review *Political politics* the authority of the Village Head in Article 26 of Law Number 6 of 2014 concerning Villages does not cover the legality principle regarding the deletion and/or conversion of letter C. this can be proven by the absence of deleting and/or transition of letter C by the village head and in accordance with legality principle. The Village Head has the task of making decisions based on statutory regulations, if in writing letter C there are no written regulations, then this can lead to legal uncertainty and the existence of a Law on Villages so that the authority of the

Village Head can be clearly identified and provides legal certainty for the community.

B. Suggestion

As for suggestions from the author regarding the authority of the Village Head are:

1. Government and Institutions

The legislative institution, namely the DPRD, with the joint approval of the president in granting the authority given to the village head, must be accompanied by a system of legal certainty in the form of a regional regulation that is realized within the authority of the village head and proposes to the village head together with the local government to make village regulations according to their authority in the law. -Law Number 6 of 2014 concerning Villages concerning written and explicit authority to the Village Head in deleting and/or transferring letter C, so that the rights of village communities can be protected and provide legal certainty for the actions of the Village Head as a state administration official.

2. Academia

Academics should be able to take advantage of this research as study material, additional legal material for further researchers, especially the authority of the village head in deleting and/or transferring letters C. An academic should provide legal education to ordinary people about the certainty of the village head's authority so as to create

certainty law and justice. Make the Village Head aware that the authority related to land issues in the Village is the integration of his territory.

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No	Day/Date	Subject of Consultation	Paraf
1	Friday, 7 October 2022	Konsultasi Bab I	
2	Monday, 10 October 2022	ACC Bab I	
3	Monday, 17 October 2022	Revisi Metpen	
4	Wednesday, 9 November 2022	Acc Latar Belakang	
5	Wednesday, 18 January 2022	Konsultasi Bab 2	
6	Monday, 30 January 2023	BAB III	
7	Thursday, 16 February 2023	ACC Bab III	
8	Monday, 20 March 2023	Konsultasi Bab IV	
9	Tuesday, 28 March 2023	ACC Bab IV, Abstrak	
10	Thursday, 6 April 2023	ACC Abstrak	

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