

Research Article

# Position and Authority of the Head of Wailapia Hamlet in the Western Seram Government System According to the Minister of Home Affairs Regulation Number 29 of 2010

La Man<sup>1\*</sup>, Marthinus Johaness Saptanno<sup>2</sup>, S. D. Bayanyanan<sup>3</sup>

<sup>1,3</sup>Law Study Program, Postgraduate, Universitas Pattimura, Ambon, Indonesia;  
e-mail: [aman4862@gmail.com](mailto:aman4862@gmail.com)

<sup>2</sup>Law Study Program, Postgraduate, Universitas Pattimura, Ambon, Indonesia;  
e-mail: [saptanno30@gmail.com](mailto:saptanno30@gmail.com)

\*Corresponding Author: e-mail: [aman4862@gmail.com](mailto:aman4862@gmail.com)

**Abstract.** This study aims to analyze the status and authority of the Head of Wailapia Hamlet in the government system based on Permendagri Number 29 of 2010 and the implications of leadership dualism on the community. The research uses an empirical juridical method with a qualitative approach through literature studies, observations, interviews, and documentation. The results of the study show that there is legal uncertainty regarding the administrative status of Wailapia Hamlet which causes an overlap of authority between the local government and the village government. These conditions have an impact on public services, development, population administration, and community rights. Policy harmonization, territorial boundary affirmation, and local government mediation are needed to realize legal certainty and effective governance. Keywords: status, authority, hamlet head, village government, legal certainty. This study aims to analyze the status and authority of the Head of Wailapia Hamlet in the government system based on Permendagri Number 29 of 2010 and the implications of leadership dualism on the community. The research uses an empirical juridical method with a qualitative approach through literature studies, observations, interviews, and documentation. The results of the study show that there is legal uncertainty regarding the administrative status of Wailapia Hamlet which causes an overlap of authority between the local government and the village government. These conditions have an impact on public services, development, population administration, and community rights. Policy harmonization, territorial boundary affirmation, and local government mediation are needed to realize legal certainty and effective governance. Keywords: status, authority, hamlet head, village government, legal certainty.

**Keywords:** Authority; Head of Wailapia Hamlet; Local Government; Position; Village Administration.

Received: February 20, 2026

Revised: April 25, 2026

Accepted: June 26, 2026

Published: August 21, 2026

Curr. Ver.: August 21, 2026



Copyright: © 2025 by the authors.

Submitted for possible open

access publication under the

terms and conditions of the

Creative Commons Attribution

(CC BY SA) license

(<https://creativecommons.org/licenses/by-sa/4.0/>)

## 1. Introduction

Indonesia as a developing country continues to carry out development to improve people's welfare and encourage the creation of innovation in various sectors. In the administration of government, the village has an equal position with the village as a legal community unit that is authorized to regulate and take care of the interests of the community based on the rights of origin, community initiatives, and applicable customs. This authority obtained a constitutional basis through Article 18 paragraph (2) and Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which affirms the implementation of regional autonomy as well as state recognition of the existence of customary law communities and their traditional rights as long as they are alive and in accordance with the principles of the Unitary State of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia).

The recognition and protection of customary law communities is regulated in more detail in Permendagri Number 52 of 2014. This regulation defines customary law communities as a group of citizens who have distinctive characteristics, customary law, genealogical or territorial ties, and strong relationships with land and natural resources. In addition, it is also regulated regarding customary territories and customary rights as the

communal right of indigenous peoples to control, manage, utilize, and preserve their territory in accordance with customary law. The recognition process is carried out through the stages of identification, verification, validation, and determination by the regent or mayor based on the recommendations of the customary law community committee. The regulation also provides space for indigenous peoples to file objections if the verification results are not in accordance (Permendagri No. 52 of 2014).

Permendagri Number 52 of 2014 is a guideline for local governments in providing recognition, protection, and respect for customary law communities. The protection covers five main aspects, namely history, customary territories, customary law, customary property, and customary institutions. Local governments are also obliged to maintain customary rights, protect customary sites and objects, respect customary leadership structures, and implement community empowerment programs according to local wisdom. Thus, the existence of customary law communities is not only recognized administratively, but also receives protection for their traditional rights (Permendagri No. 52 of 2014).

The regulation regarding customary law communities is also distinguished from community groups located in certain areas as stipulated in the Minister of ATR/BPN Number 9 of 2015. Customary law communities must meet the requirements in the form of associations, customary institutions, clear customary jurisdictions, and customary law institutions that are still obeyed. Meanwhile, people in certain areas who obtain communal rights are required to meet the requirements for physical control of the territory continuously, and still utilize the results of natural resources to meet their daily needs. These differences in requirements show that the recognition of customary law communities has a stronger legal character than the community groups receiving communal rights (Permen ATR/BPN No. 9 of 2015).

The legal position of customary law communities is highly dependent on official recognition from local governments. Article 6 paragraph (2) of Permendagri Number 52 of 2014 emphasizes that the recognition and protection of customary law communities is determined through the decision of regional heads. This arrangement provides legal certainty so that the status of indigenous peoples has stronger legitimacy than indigenous groups that only obtain recommendations from local governments (Permendagri No. 52 of 2014).

This legal recognition is also an important requirement in the management of customary forests. Based on Law Number 41 of 1999 concerning Forestry as amended by Law Number 6 of 2023, as well as Regulation of the Minister of Environment and Forestry Number 9 of 2021, the management of customary forests can only be carried out by customary law communities that have obtained official recognition through Regional Regulations or decisions of regional heads. This provision is strengthened by the Decision of the Makassar State Administrative High Court Number 01/B/2016/PT. TUN. Mks jo. Supreme Court Decision Number 248 K/TUN/2016 which emphasizes that the recognition of customary law communities cannot be based on unilateral claims, but must obtain legal recognition so that it has legal standing in filing a lawsuit.

In addition, the state also recognizes the living law that develops in society as affirmed in Article 2 paragraph (1) of the new Criminal Code. The provision states that the enactment of the principle of formal legality does not eliminate the applicability of laws that live in the community, including customary laws applied by customary villages. Therefore, the village head has the authority to regulate local affairs based on the right of origin through regulations that apply after promulgation (New Criminal Code).

Regulations regarding villages and hamlets are regulated in Law Number 6 of 2014 concerning Villages. In this provision, it is explained that villages can form hamlets or other designations according to the origin, customs, and socio-cultural values of the community. This arrangement strengthens the position of the village as a government entity that has an autonomous right based on origin and customs to manage its own household while remaining responsible to the regent or mayor (Law No. 6 of 2014).

Hamlets are part of the administrative area in the village led by the head of the hamlet and function as a working area for the implementation of village government. The formation and number of hamlets are adjusted to the needs of the village, the area area, geographical conditions, the number of population, the financial capabilities of the village, and the socio-cultural characteristics of the local community. Socially, hamlets are also a space that maintains traditional values and the life of rural communities so that they have administrative and cultural functions (Azam Awang, 2010). According to Article 1 number 43 of Law Number 23 of 2014 concerning Regional Government, a village is a legal community unit that has territorial boundaries and the authority to regulate government affairs and community interests based on the rights of origin and traditional rights recognized by the state. In the implementation of village government, the quality of human resources is an important factor

because village officials are the main asset that determines the effectiveness of government organizations (Law No. 23 of 2014).

The organizational structure of village government is regulated in Permendagri Number 84 of 2015 which consists of village heads and village officials, including village secretariats, regional implementers, and technical implementers. The village apparatus functions to assist the village head in running the government according to their respective duties. One of the important elements is the hamlet head as the regional executor who is tasked with maintaining peace and order, providing protection to the community, managing regional potential, supervising development, and carrying out community services and empowerment for the realization of a developed and prosperous village (Trinah Asi Islami & Irnawati, 2021).

The position and authority of the Head of Wailapia Hamlet in Larike Village faces the problem of overlapping authority which gives rise to two leadership authorities in the same jurisdiction. This condition causes confusion in the community, conflicts of authority, and legal uncertainty due to differences in interpretations of the provisions regarding territorial boundaries. This phenomenon is influenced by asynchronous regulatory processes, conflicts of norms, and political interests that have an impact on the implementation of village government. Therefore, a clear division of authority, intergovernmental coordination, and certainty of territorial boundaries are needed in order to create democratic, just governance, and uphold legal values and community rights.

The regulation regarding the territorial boundaries of West Seram Regency is regulated in Law Number 40 of 2003 and clarified through the Regulation of the Minister of Home Affairs Number 29 of 2010. The law establishes the administrative boundaries of the Western Seram Regency, while the Minister of Home Affairs Regulation Number 29 of 2010 affirms the coordinates of the boundaries outlined in the map as an integral part of the regulation. Changes in territorial boundaries, especially in the eastern part, have led to differences in interpretation between local governments and communities, causing disputes over the status of the region and government authority.

The difference in interpretation of the two regulations has an impact on the emergence of horizontal conflicts in Wailapia Hamlet. The unclear administrative boundaries cause the public to experience legal uncertainty which has the potential to hinder the implementation of constitutional rights and trigger conflicts of interest due to political interests in policy implementation. This condition blurs the boundaries of authority between disputed local governments so that legal settlement is very important according to the principle of *lex semper dabit remedium*, which is that the law must always provide a solution to every legal problem.

In practice, the conflict is reflected in the overlap of position and authority between the two parties claiming authority over Wailapia Hamlet. The impact includes the emergence of dual electronic ID cards, dualism of population administration, as well as differences in government policies that affect public services, the management of customary rights of indigenous peoples, and the implementation of development. The dispute also strengthens local political conflicts so as to hinder the effectiveness of the government and reduce public trust in the implementation of village government.

The concept of authority in state administrative law explains that authority is a juridical ability given by law to a body or official to carry out government functions. F.A.M. Stroink distinguishes authority that is *staatsrechtelijk bevoegdheid* from administrative authority (*administratief bevoegdheid*), while together with J.G. Steenbeek places the concept of authority as the core of the study of constitutional law and state administrative law (*Het begrip bevoegdheid is dan ook een kernbegrip in het staats- en administratief recht*). Thus, the exercise of authority must have a clear legal basis so as not to cause abuse of authority or conflicts between authorities (Stroink, 2006).

In addition to the administrative legal aspect, the administration of government must also pay attention to the principles of people's sovereignty, the balance between rights and obligations (human obligations), and the interdependent relationship between freedom and responsibility. The exercise of authority that is not based on these principles has the potential to reduce the protection of people's rights and hinder the creation of a democratic and just government (Asshiddiqie, 1994).

This study uses an empirical normative and qualitative approach through the study of legal norms, interviews, observations, and documentation studies to analyze the position and authority of the Head of Wailapia Hamlet. The results of the study show that dualism of authority has a negative impact on infrastructure development, public services, community welfare, and the certainty of government administration. Therefore, leadership synergy, improved communication between parties, and the active role of local governments in mediating conflicts are needed so that development can run effectively, sustainably, and

provide legal certainty for the community. This study focuses on the analysis of the position and authority of the Head of Wailapia Hamlet in the government system of Western Seram Regency based on Permendagri Number 29 of 2010. The purpose of the research is to examine and analyze the authority of the Hamlet Head in the decision-making process in accordance with the provisions of laws and regulations, as well as to assess the position and implementation of his authority based on Permendagri Number 29 of 2010 as the basis for the implementation of government that provides legal certainty for the community.

## 2. Literature Review

The state of law is a concept of state administration that places law as the main basis in running the government. The government is obliged to provide public services to all citizens regardless of origin, religion, or social status, so that everyone has an equal position before the law. State power is exercised based on authority regulated by law, *rights and liabilities*, as well as various policies aimed at meeting the needs of the community. As society develops and the public interest becomes more complex, the concept of the state of law has also developed to be able to answer the dynamics of the life of the nation and the state (Budiyanto, 2000).

According to Utrecht (1962), the state of law is divided into a formal law state and a material law state. The formal legal state emphasizes written law as the basis for the administration of government, while the material law state not only emphasizes compliance with written regulations, but also contains elements of substantive justice. In line with that, Wolfgang Friedmann differentiated the Rule Of Law in the formal sense as *organized public power* and in the material sense as *the rule of just law*, so that the state of law not only emphasizes legality, but also realizes justice in the practice of state administration (Utrecht, 1962).

In the Indonesian constitutional system, the principle of the rule of law is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The State of Indonesia is a state of law." This provision has the consequence that all actions of the government and citizens must be based on the law to prevent abuse of power. This principle is in line with the concept of The Rule Of Law And Not Of Man and nomocratie, which is that the highest power is in the law, not in individuals or rulers (Jimly Asshiddiqie, 2004).

The State of Law of Pancasila is a synthesis between the universal principles of Rechtsstaat and the Rule Of Law with the values of Pancasila. In this concept, Pancasila functions as a grundnorm, rechtsidee, as well as staatsfundamentálnorm which is the source of all sources of law. All laws and regulations must be formed in accordance with the values of Godliness, Humanity, Unity, Peoplehood, and Social Justice so that the law not only provides certainty, but also realizes justice and benefits for society (Kaelan, 2013).

According to Hans Kelsen (1961), the legal system is a hierarchy of norms in which lower norms gain validity from higher norms until finally they come down to the basic norm as the highest basis. This thought was then developed by Satjipto Rahardjo who emphasized that the state of law is not sufficiently oriented to the Rule of Law procedure, but must also be able to make the people happy. Thus, law must be understood as an instrument that realizes social welfare, not just maintaining formal legality (Hans Kelsen, 1961).

The concept of the Pancasila State of Law places the law as a means of realizing social justice, welfare, and the protection of human rights while still paying attention to the balance between individual rights and the interests of society. In contrast to the concept of the Rule of Law which tends to emphasize individual rights more, the Pancasila Law State emphasizes that every right has a social function. Therefore, law enforcement is not only oriented towards legal certainty, but must also reflect the values of Godliness, People, Humanity, and Social Justice as contained in Pancasila (Irwansyah, 2022).

In the end, the State of Pancasila is a state concept that makes Pancasila the philosophical grondslag and weltanschauung of the Indonesian nation. The entire system of government, law, and community life must be based on the values of the One Godhead, Humanity, Indonesian Unity, Peoplehood, and Social Justice. Therefore, every law and regulation must be sourced from Pancasila and must not contradict the values contained in it as the basis of the state and the source of all sources of law (Kaelan, 2013).

Villages are a form of community organization that has existed long before the formation of the modern Indonesian state. The existence of the village became the initial foundation for the administration of government and the social life of the community. The state's recognition of villages and customary law communities is affirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the state recognizes and respects the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the

principles of the Unitary State of the Republic of Indonesia (Huda, 2014). This constitutional recognition is the basis for the existence of village government as the closest government unit to the community. Along with the development of national development, villages have received greater attention through the Village Fund policy as an effort to improve community welfare and reduce poverty levels, especially in rural areas.

In the implementation of village government, Law No. 6 of 2014 states that village government is the implementation of government affairs and community interests in the system of government of the Unitary State of the Republic of Indonesia (Law No. 6 of 2014). Village government has three main characteristics, namely running government affairs, serving the interests of the local community, and being an integral part of the national government system (Rauf & Maulidiah, 2015). The village government institution consists of the Village Government and the Village Consultative Body (BPD). The Village Government is in charge of running the administration of the government, while the BPD functions as a partner of the village government as well as a representative institution of the community that channels the aspirations of the residents and carries out the function of supervision over the implementation of the village government (Wasistiono & Tahir, 2006).

The values of customary law in Maluku are also reflected in the Larwul Ngabal Customary Law which affirms respect for property rights through the principle of *Hira i ni fo i ni, it did fo it did*, which means that everyone's property rights must be respected as they should be. This principle is the basis for the life of the people of the Kei Islands in maintaining justice, equality, and respect for human dignity (Komaling et al., 2023). In the practice of hamlet government, decision-making is carried out collectively through deliberation involving the Head of Hamlet, *Saniri Hamlet*, traditional leaders, religious leaders, and the community. Therefore, hamlet government in Maluku shows a combination of formal government systems and customary law, so that it functions as an administrative government unit as well as a center for preserving the socio-cultural identity of the community (Amahoru et al., 2025).

Theoretically, government authority is obtained through three main sources, namely attribution, delegation, and mandate. This view is put forward by J.B.J.M. Ten Berge as well as H.D. Van Wijk and Willem Konijnenbelt who explain that every government authority comes from one of the three mechanisms (Ridwan H.R., 2014). This provision is also regulated in Law Number 30 of 2014 concerning Government Administration which defines authority as the power of government agencies or officials in the realm of public law. Attribution is the granting of authority directly by the Constitution or law to a government agency or official. Delegation is the delegation of authority from an official who already has authority to another official with the responsibility shifting to the recipient of the delegation. Meanwhile, the mandate is the delegation of the exercise of authority to other officials, but the legal responsibility remains with the mandate giver (Ridwan H.R., 2014).

According to Irfan Islamy (2000), authority is a formal power given by laws and regulations to state administrative bodies or officials to cause legal consequences in the administration of government. Therefore, every use of authority must have a legal basis so as not to cause arbitrary actions. The exercise of government authority is not only guided by written law, but must also pay attention to *the general principles of good governance* as part of the principle of the state of law. This provision is in line with Law Number 37 of 2008 concerning the Ombudsman which emphasizes that the administration of government must be carried out based on the law and good governance principles in order to realize a democratic, fair, responsible government, and guarantee legal certainty (Peter Mahmud Marzuki, 2014). Thus, authority is essentially a form of formal power that is limited by law so its use must always be directed to achieve the goal of implementing government that is effective, accountable, and oriented to the interests of the community.

Gustav Radbruch explained that legal certainty is an integral part of positive law. According to him, there are four main elements that form legal certainty, namely the law must be in the form of positive laws and regulations that are embodied in laws and regulations, composed based on facts that develop in society, formulated clearly so as not to cause differences in interpretation, and have stability so that it is not easy to change. These four elements show that legal certainty aims to create rules that can be understood, applied consistently, and provide guarantees for the community in carrying out legal life (Radbruch, 1973).

Furthermore, Radbruch emphasized that good law must combine legal certainty and justice. Legal certainty serves as a code of conduct that provides clarity regarding rights and obligations, while justice ensures that the rules are applied appropriately and proportionately. Thus, the function of law can only run optimally if the two values run in a balanced manner in the practice of law administration (Radbruch, 1973). The principle of *fiat justitia et pereat mundus* affirms that the law must be upheld for the sake of justice. However, law

enforcement is not only oriented towards legal certainty, but must also pay attention to utility and justice as a unit of values. In practice, these three values are often difficult to realize at the same time, so there are challenges in maintaining a balance between the three. As a result, the public sometimes still feels low legal protection, reduced trust in law enforcement officials, and the suboptimal resolution of various legal conflicts (Radbruch, 1973).

Radbruch also explained that the relationship between legal certainty, justice, and utility is in the condition of *Spannungsverhältnis*, which is that there is tension because each value has different demands. Therefore, the formation and implementation of the law must be able to maintain a balance between these three values. This idea was first introduced by Radbruch in *Einführung in die Rechtswissenschaften*, which placed justice, utility, and legal certainty as fundamental values in the legal system (Radbruch, 1973).

This view is strengthened by Satjipto Rahardjo who explained that the three basic values of law have different foundations, namely justice is rooted in philosophy, usefulness rests on sociology, while legal certainty is based on juridical aspects. These three elements must be combined so that the law is able to provide protection while meeting the needs of the community in a balanced manner (Satjipto Rahardjo).

In line with that, Van Apeldoorn stated that legal certainty has two main dimensions, namely legal clarity in resolving a concrete case and the guarantee of legal security for the community. Thus, every justice seeker (judicial) has the right to know the applicable legal rules before taking legal proceedings. Legal certainty ultimately serves to provide protection against arbitrary actions and ensure that everyone obtains their rights in accordance with the provisions of the applicable law (Van Apeldoorn).

### 3. Research Methods

This study uses a Normative Juridical and Empirical Juridical approach combined with quantitative analysis. This approach views law as a social phenomenon that is reflected in actual behavior, so it does not only focus on written rules (Soerjono Soekanto & Sri Mamudji, 1995). In its implementation, the researcher conducted field research directly on the Central Maluku Regency Government and the West Seram Regency Government, including the Regional Secretariat, various Regional Apparatus Organizations (OPD), the Land Agency, the Luhu Village Government, and Wailapia Hamlet.

The research was carried out in the West Seram Regency Government area, especially in the Regional Secretariat, various agencies and agencies as Regional Apparatus Organizations under the regent, as well as Luhu Village and Wailapia Hamlet. The research is focused on examining the impact of this dualism on the implementation of government, public services, population administration, election implementation, government stability, horizontal conflicts, and community life in Wailapia Hamlet. The location of the research is also supported by a map of the administrative area of West Seram Regency as a reference for data collection (Petatematikindo, 2015).

The subjects of the study include the people of Wailapia Hamlet who are directly affected by leadership dualism, village government officials, and local government employees who face unclear authority in the implementation of duties. This condition can be seen from the existence of dual population administration, especially Electronic ID Cards, as well as the confusion of the apparatus in determining the authority that must be followed, both from the Central Maluku Regency Government, the West Seram Regency Government, the Lareke Village Government, and the Luhu Village Government.

Data collection was carried out through three main techniques, namely in-depth interviews, field observations, and document studies. Data were analyzed using qualitative thematic and descriptive analysis. Thematic analysis is used to identify the main themes that emerge from interviews, observations, and document studies, while qualitative descriptive analysis aims to explain the relationship between leadership styles, policy overlaps, and conflicts that occur.

### 4. Results and Discussion

#### History of the Existence of Wailapia Hamlet and the Appointment of the Head of Wailapia Hamlet

Wailapia Hamlet was originally a Wailapia Village which has a long history as a settlement area for indigenous peoples. Based on the information of the informants, the ancestors of the Wailapia people who came from the Buton Tribe had arrived in the Tanjung Sial area around 1519 through maritime shipping. They then moved to several areas, such as Waisala Village, Wakalo Village, and other areas to open forests as residential areas and agricultural land. After several moves, the community returned to Tanjung Sial and formed Waiputi Village, which later developed into Kampung Baru and later became known as

Wailapia Village. Since its inception, the village has not only become a place for community living, but also a center for the formation of social, customary, cultural, and belief systems that become the identity of the community, as well as functioning as a defense base and strategic area during the royal period.

In the past, Wailapia Village was an autonomous territorial area under the government of Central Maluku Regency led by a village head. The appointment and dismissal of village heads is carried out by Parabela, the highest traditional leader who has the authority to regulate the social, cultural, and customary life of the community. Until now, Parabela's customary institution is still recognized and maintained as part of the customary government system that regulates community social relations.

In the customary government structure, Parabela has a position as the highest leader in charge of maintaining customary law, leading various customary rituals, and preserving customarily protected areas, such as kaombo land and the sasi area. Historically, the position is related to the royal government structure that places Parabela as part of the customary elements that work with kaumu and walaka groups in running traditional government. Therefore, traditional leadership not only functions as a regulator of village government, but also as a guardian of cultural values, environmental sustainability, and public order.

In the traditional system of Wailapia Village, the village head is part of the Sara Mancuana (parents' sala) apparatus which is under the leadership of Parabela. His appointment is carried out through traditional stages that are sacred. Prospective leaders are first assessed based on their morals, wisdom, and social influence in the community, then deliberated by customary institutions together with Parabela and other customary apparatus. Before the inauguration, candidates are required to follow a ritual of purification of the body and mind using water from several springs and fragrances as a symbol of readiness to carry out the traditional mandate. After that, the inauguration was carried out through the reading of prayers by the priest, the taking of the oath of office in a sacred place, the inauguration on the Popaua stone by stepping on the sacred stone as a symbol of loyalty to the custom, and the acceptance of community respect at the village hall.

The results of research in the Central Maluku, Western Seram, Seram Island, Lease Island, and Ambon Island regions show that in the past almost all residential areas were known as villages and were led by village heads. According to the informants, the mention is even still listed on official documents, including school diplomas between the 1960s and the 1980s. Most villages have also been registered as villages in the 1983 Register of Names and Village/Village Codes (Alda, 1983). In its development, a number of villages then changed their status to hamlets led by the head of the hamlet in accordance with the village government policy.

Nationally, the mention of villages has been uniformized through Law Number 5 of 1979 concerning Village Government. This provision was later repealed and replaced by Law Number 6 of 2014 concerning Villages, which recognizes that villages can be called by other names, including villages. These provisions are contained in Article 1 number 1, Article 2, and Article 97 which affirm the recognition of the rights of origin of customary law communities in the Indonesian government system. In line with that, Sumardjono (2008) explained that customary law communities have characteristics in the form of community groups that have certain areas, common wealth, and the authority to regulate the lives of their members based on customary law. In addition, the recognition of the law that lives in the community is also affirmed in Article 2 paragraph (1) of the New Criminal Code, which provides space for the enactment of customary law as long as it is still alive and developing in the community.

The appointment of the Head of Wailapia Hamlet is a continuation of the customary government system that previously prevailed during the Wailapia Village period. In the past, the village head was appointed by Parabela as the highest customary leader who had the authority to determine, inaugurate, or dismiss village leaders based on customary law. Until now, this mechanism remains an important part of people's lives because it reflects respect for customs that are inherited from generation to generation.

In practice, the process of appointing the head of the hamlet is carried out through customary deliberation involving Parabela, traditional leaders, and community leaders. The assessment of prospective leaders is not only based on administrative requirements, but also considers the integrity, morals, wisdom, and social influence of the candidate in society. After obtaining the customary agreement, the candidate undergoes a purification ritual before being inaugurated through a traditional procession which includes the reading of prayers, taking the oath of office, inauguration on the Popaua stone, and symbolic acceptance of the mandate from the community. The results of the customary deliberations were then submitted to the Village Government as a form of notification and administrative approval. The mechanism for appointing hamlet heads through customary provides a number of benefits for the

community. Leaders who are elected based on customary agreements generally have strong social legitimacy so that they are more respected and obeyed by citizens. In addition, the existence of hamlet heads who understand customary law makes it easier to resolve social disputes and customary issues at the hamlet level. This system also plays an important role in maintaining local values, preserving traditions, and maintaining the continuity of customary institutions that have developed since the time of Wailapia Village (Sumardjono, 2007).

The objections of the people of Wailapia Hamlet are rooted in the problem of the lack of legal certainty regarding the status of customary law communities, customary territories, and applicable government authorities. Constitutionally, the 1945 Constitution of the Republic of Indonesia through Article 18 paragraph (2) gives authority to local governments to conduct government affairs based on the principle of autonomy, while Article 18B paragraph (2) affirms the state's recognition and respect for the unity of customary law communities and their traditional rights as long as they are alive and in accordance with the principles of the Unitary State of the Republic of Indonesia (1945 Constitution).

The recognition of customary law communities is then regulated in more detail in Permendagri Number 52 of 2014. This regulation defines customary law communities as groups of people who have customary law, ties of origin, customary territories, and value systems that are inherited from generation to generation. The regulation also recognizes the existence of customary territories and customary rights as communal rights to control, manage, utilize, and preserve natural resources based on local customary law (Permendagri No. 52 of 2014). In addition, the recognition process must be carried out through the stages of identification, verification, validation, and determination by the regent/mayor by involving indigenous peoples, as well as giving the right to the community to file objections if the results of the verification are considered inappropriate (Permendagri No. 52 of 2014).

Permendagri Number 52 of 2014 also provides protection for the five main elements of customary law communities, namely community history, customary territories, customary law, customary property, and customary institutions. These protections include recognition of rights to land, water, natural resources, customary objects, as well as respect for the leadership system and customary dispute resolution. In addition, local governments are obliged to provide socio-cultural empowerment and protection programs in accordance with the local wisdom of indigenous peoples (Permendagri No. 52 of 2014).

The regulation is in line with the Minister of ATR/BPN Regulation Number 9 of 2015 which distinguishes between customary law communities and communities located in certain areas as recipients of communal rights. Customary law communities must meet the requirements in the form of associations, customary institutions, clear customary jurisdictions, and customary law institutions that are still obeyed. On the contrary, the community in a certain area is quite qualified for the physical control of the area continuously and the use of natural resources to meet the needs of life (Permen of ATR/BPN No. 9 of 2015). This difference has implications for the strength of the legal position, because customary law communities that have obtained official recognition have a stronger legal position than community groups that only receive recommendations from local governments.

In the context of customary forest management, legal recognition is the main requirement. Law Number 41 of 1999 concerning Forestry as amended by Law Number 6 of 2023, as well as Regulation of the Minister of Environment and Forestry Number 9 of 2021, emphasizes that customary forests can only be managed by customary law communities that have obtained recognition through Regional Regulations or Regional Head Decrees. This approach is also strengthened by the Decision of PT TUN Makassar Number 01/B/2016/PT. TUN. Mks jo. Supreme Court Decision Number 248 K/TUN/2016, which emphasizes that the recognition of customary law communities cannot be based on unilateral claims, but must obtain legal recognition first in order to have legal standing in filing a lawsuit.

### **The Legal Position of the Head of Wailapia Hamlet in the Western Seram Government System**

The results of the study show that the legal position of the Head of Wailapia Hamlet still faces the problem of non-conformity, *rechts vacuum*, and *wet vacuum*, because there is no regulation that expressly regulates its administrative status and authority. From the results of the interview with the West Seram Regency Land Agency, it is known that based on the administrative map that is part of Law Number 40 of 2003, the Wailapia Hamlet (Tanjung Sial) area is still within the administrative area of Central Maluku Regency. The West Seram Regency Government has also not submitted an official notification to the Land Agency or received confirmation from the Geospatial Information Agency (BIG) regarding the change in the boundaries of the area.

This condition is strengthened by the attitude of the West Seram Regency KESBANPOL which only issues research permits for Luhu Village, but refuses to issue



research permits in Wailapia Hamlet on the grounds that the area is still included in the administration of Central Maluku Regency. This policy is in line with Permendagri Number 3 of 2018 which states that the issuance of Research Certificates is based on the scope of the research implementation area (Permendagri No. 3 of 2018).

The results of interviews with the West Seram Regency Government Section show that there is a discrepancy between the Constitutional Court Decision Number 123/PUU-VII/2009, Permendagri Number 29 of 2010, and Law Number 40 of 2003 regarding the determination of territorial boundaries. Although various coordination meetings have been held between the West Seram Regency Government, Central Maluku Regency, Maluku Provincial Government, and the Ministry of Home Affairs in 2022, the settlement of Tanjung Sial territorial boundaries, including Wailapia Hamlet, has not yet obtained legal certainty because there are still objections and territorial boundary conflicts, so BIG has not yet established an official administrative map.

The research also found that the appointment of the Head of Wailapia Hamlet was carried out based on the Decree of the Huamual Sub-district Head Number 140/03/KPTS/KEC-HML/I/2014 and then strengthened by the Decree of the Head of Luhu Village Number 141/472/SK/2022. However, the appointment is considered to not have an adequate legal basis because it has not been supported by Regional Regulations, Regent Regulations, or special regulations that regulate the position of Wailapia Hamlet in the West Seram Regency area. In addition, the village government has also not been able to comprehensively explain the boundaries of the territory, customary rights, and the legal basis for the appointment of hamlet officials based on the provisions of applicable laws and regulations.

The problem of the legal standing of the Head of Wailapia Hamlet is closely related to the unclear status of the administrative area of Wailapia Hamlet. Based on the results of field research, various government agencies, including the Land Agency, KESBANPOL, and the West Seram Regency Government Section, are still guided that the area is administratively located within Central Maluku Regency. On the other hand, the Luhu Village Government argues that since the enactment of Law Number 40 of 2003, Wailapia Hamlet has become part of the administrative area of Luhu Village, although it has not been able to explain definitively the boundaries of customary territory and the historical basis of customary rights ownership. The difference in interpretation causes the legal status of the Head of Wailapia Hamlet to not have obtained adequate certainty so that the authority of his government is still being debated.

Hamlets are part of the village administrative area led by a Hamlet Head and are formed based on the history, customs, and social conditions of the community. Based on the results of the research, the appointment of the Head of Wailapia Hamlet was carried out twice, namely through the decision of the Huamual Sub-district Head in 2014 and the decision of the Head of Luhu Village in 2022. This condition shows the dualism of authority because the Hamlet Head is initially responsible to the Sub-district Head, while based on the village government system, the village apparatus should be under the Village Head. Because there is no derivative regulation in the form of a Regional Regulation or Regent Regulation that specifically regulates the implementation of Permendagri Number 29 of 2010, the appointment is considered not to meet the principle of legal certainty and has the potential to be an act of abuse of power, considering that the sub-district only has the function of coaching and administrative recommendations, not the authority to appoint village officials.

#### **Abuse of Authority of the Wailapia Hamlet Chief**

Abuse of power or *detournement de pouvoir* is the act of an official who uses his authority for personal interests or acts deviated from the goals set by laws and regulations. These forms of abuse include acts of exceeding authority, mixing authority, or acting arbitrarily. In the context of this study, the appointment and implementation of the authority of the Head of Wailapia Hamlet who does not have a clear legal basis is considered to have the potential to cause abuse of authority if carried out outside the jurisdiction or without a valid regulatory basis (Law No. 30 of 2014).

Various legal provisions have regulated sanctions against abuse of authority. Law No. 6 of 2014 prohibits Village Heads and village officials from abusing their duties, rights, and obligations and provides administrative sanctions in the form of reprimands and dismissals (Law No. 6 of 2014). Furthermore, Law No. 30 of 2014 emphasizes that government officials are prohibited from abusing their authority, including acting outside the boundaries of their area of authority (Law No. 30 of 2014). If the abuse results in state losses, the perpetrator can be subject to criminal sanctions based on Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes and the provisions of Article 423 of

the Criminal Code. In addition, acts that cause losses to other parties can also give rise to civil liability based on Article 1365 and Article 1366 of the Civil Code.

Conceptually, the practice of abuse of power reflects weak governance and law enforcement. Jerry Massie explained that abuse of authority arises when officials ignore legal and ethical procedures for personal or group interests. This condition has an impact on increasing corrupt practices, declining the quality of government, and the need for strict law enforcement without distinguishing the position of the perpetrators so that the principle of the rule of law can be realized (Jerry Massie).

### **Analysis of the Ineffectiveness of the Implementation of the Authority of the Head of Wailapia Hamlet, West Seram**

The implementation of the authority of the Wailapia Hamlet Head (Kadus) has not been effective because it is influenced by several basic problems, namely legal uncertainty, the unfulfilled principles of usefulness and justice, as well as the imbalance between duties, responsibilities, and social conditions of the community. The situation is increasingly complex because a small part of the population is recorded as holders of the Electronic ID Card of West Seram Regency (SBB), while most of the population is still registered as residents of Central Maluku Regency. This condition gives rise to administrative dualism which has an impact on the implementation of government authority at the hamlet level.

From the perspective of state administrative law, the implementation of government authority is related to the concept of delegation and mandate as stipulated in Law Number 30 of 2014 concerning Government Administration, especially Article 13 concerning delegation and Article 1 concerning mandate. The regulation emphasizes that if the exercise of authority causes ineffectiveness in the administration of government, then the authority giver can withdraw the authority. According to Bagir Manan (1994), authority is different from power because authority has a legal legitimacy basis and is limited by rights and obligations determined by laws and regulations. Meanwhile, M. Kamal Hidjaz (2010) explained that the effectiveness of the implementation of regional authority is highly dependent on the clarity of the division of government affairs, bureaucratic certainty, and adequate supervision mechanisms so that the goal of decentralization can be achieved.

In practice, the authority of the Head of Wailapia Hamlet in moving the community often faces social, cultural, and administrative obstacles. Although authority is a form of power that is legitimate according to the law, its implementation becomes less optimal when it is not supported by regulatory certainty and public awareness of the applicable government structure.

One of the main inhibiting factors is the lack of administrative certainty regarding the jurisdiction of Wailapia Hamlet, including the Tanjung Sial area. Until now, there are no regulations in the form of Regional Regulations (Perda), Regent Regulations (Perbup), or Village Regulations (Perdes) as a follow-up to Permendagri Number 29 of 2010 and Law Number 40 of 2003 concerning the establishment of West Seram Regency. As a result of the vacancy in the arrangement, the appointment of the Head of the Hamlet was carried out through the Decree of the Huamual Sub-district Head Number 140/03/KPTS/KEC-HML/I/2014, then continued with the Decree of the Head of Luhu Village Number 141/472/SK/2022 and the Decree of the King of Luhu Number 141/005/2023. This condition shows that there is no comprehensive legal basis regarding the status of the government of Wailapia Hamlet.

Another problem is the limited administrative capacity because the Hamlet Head does not have special administrative staff. As a result, the management of population data and administrative services is often incomplete and inaccurate. Theoretically, this is contrary to the principle of division of labor, which emphasizes the division of tasks by specialization in order for the organization to work efficiently. When administrative work is carried out part-time by officials who have other duties, the quality of recording and service decreases. This view is in line with The Liang Gie who emphasizes the importance of division of labor, coordination, and unity of movement in administration. In addition, Dwight Waldo places the decision-making process as the core of public administration that must be supported by adequate information and administrative systems so that the resulting decisions are more effective.

The ineffectiveness can also be seen from the involvement of Hamlet Heads in social conflicts that develop in the community. In general, the life of the people of Wailapia Hamlet still upholds the values of family, mutual cooperation, tolerance, and depends on the agriculture, plantation, and fisheries sectors. However, differences in views on the status of the regional government led to conflicts between community groups that supported the administration of West Seram Regency and groups that supported Larike Village, Central Maluku Regency. According to Soerjono Soekanto (2006), social conflicts can be triggered by

differences in the character of society, cultural differences, differences in interests, and rapid social changes. In the context of Wailapia, the conflict is influenced by administrative, political, and territorial status interests, thereby disrupting public order.

Ideally, the Hamlet Head plays the role of a mediator or justice of the peace in resolving community disputes. This principle is in line with the concept of *lex semper dabit remedium*, which is that the law must provide a solution to every problem that arises. This role can be attributed to the spirit of Law Number 30 of 1999 concerning alternative dispute resolution and Law Number 48 of 2009 concerning Judicial Power. Historically, similar functions have been known through the institution of *dorpjustitie*, i.e. village justice of the peace as regulated in Article 3a of the *Reglement op de Rechterlijke Organisatie* (RO). According to Samuel Dharma Putra Nainggolan (2018), the village head essentially has the function of maintaining community harmony through peaceful dispute resolution.

The next problem is related to the unclear administrative boundaries of Wailapia Hamlet. The unclear boundaries trigger conflicts regarding customary rights, territorial control, natural resources, and political interests. Although Law Number 40 of 2003, especially Article 7 paragraph (2) letter d, states that the area of Western Seram Regency borders the Buru Sea to the west, the provision has not specifically explained the administrative boundaries of the Tanjung Sial area which includes Wailapia Hamlet. The absence of these norms has led to the emergence of various territorial claims that have the potential to disrupt legal certainty and community harmony.

In addition, the recognition of the Hamlet Head as the "Head of the SBB Hamlet" also caused differences in perceptions in the community. In administrative law, the Hamlet Head is a village apparatus that is under and responsible to the Village Head, not an official who has independent authority at the sub-district level. Law Number 6 of 2014 concerning Villages, especially Article 26 paragraph (2), emphasizes that the appointment and dismissal of village officials is the authority of the Village Head. Therefore, the appointment of the Hamlet Head by the Sub-district Head in 2014 shows that there is a vacancy in the arrangement influenced by the unclear status of the regional administration. This condition further strengthens the need for regulations that provide certainty regarding territorial boundaries, government authority, and administrative relations between West Seram Regency and Central Maluku Regency.

Overall, the ineffectiveness of the implementation of the authority of the Head of Wailapia Hamlet is not only caused by internal factors of the apparatus, but also influenced by the unclear legal basis, weak administrative system, limited resources, socio-political conflicts, and uncertainty of territorial boundaries. Therefore, it is necessary to strengthen regulations, affirm administrative boundaries, increase institutional capacity, and coordinate between governments so that the implementation of hamlet government can take place effectively, provide legal certainty, and realize justice for the community.

## 5. Conclusion

Based on the results of the research, it can be concluded that the existence of Waelapia Hamlet is in a complex condition due to the inconsistency of the regulation regarding the territorial boundaries based on the Minister of Home Affairs Regulation No. 29 of 2010 as a regulation for the implementation of Law No. 40 of 2003 concerning the Establishment of the Regency of Western Seram, Eastern Seram, and Aru Islands in Maluku Province. The unclear status of the area caused Waelapia Hamlet to face problems in the implementation of government duties, functions, and authorities. Although hierarchically within the administrative area of the Larike Customary State Government, the Head of Waelapia Hamlet does not have full authority to make government decisions because every policy must be in accordance with the boundaries of the administrative area that have been determined through Permendagri No. 29 of 2010 and Law No. 40 of 2003. As a product of sectoral law in the field of regional administration, these provisions are the main basis for determining government jurisdiction. This condition is in line with Gustav Radbruch's thinking which places legal certainty and justice as fundamental elements in the legal state (*rechtsstaat*).

In addition, based on the provisions of Permendagri No. 29 of 2010, the position of the Head of Waelapia Hamlet is not included in the administrative area of the West Seram Regency Government because it is geographically located within the territory of Central Maluku Regency. Although administratively the Head of Waelapia Hamlet is under the Larike Customary Government, juridically the area is not part of the Western Seram Regency government system. As a result, the Head of Waelapia Hamlet experiences limitations in carrying out government duties, functions, and responsibilities in accordance with the provisions of applicable laws and regulations.

## References

- Ali, A. (2002). *Menguak tabir hukum: Suatu kajian filosofis dan sosiologis*. Ghalia Indonesia.
- Alda, B. P. (1983). *Daftar nama dan kode desa/kelurahan*. Penerbit Almanak Republik Indonesia.
- Amahoru, R. G., Tutuarima, F., & Litualy, J. R. (2025). Implikasi hukum tata negara terhadap peran Saniri Negeri dalam pemerintahan adat di Maluku (Studi Negeri Sameth). *Jurnal Pengabdian Masyarakat dan Riset Pendidikan*, 3(4), 2802–2811. <https://doi.org/10.31004/jerkin.v3i4.784>
- Asshiddiqie, J. (1994). *Gagasan kedaulatan rakyat dalam konstitusi dan pelaksanaannya di Indonesia*. Ikhtiar Baru-Van Hoeve.
- Asshiddiqie, J. (2004). *Konstitusi dan konstusionalisme Indonesia*. Universitas Indonesia.
- Awang, A. (2010). *Implementasi pemberdayaan pemerintahan desa*. Pustaka Pelajar.
- Budiyanto. (2000). *Dasar-dasar ilmu tata negara*. Erlangga.
- Fardian, A. (2014). Gaya manajemen konflik: Jenis-jenis konflik dan manajemen konflik. 8(1), 38–47. <https://doi.org/10.29210/141000>
- Hidjaz, K. (2010). *Efektivitas penyelenggaraan kewenangan dalam sistem pemerintahan daerah di Indonesia*. Pustaka Refleksi.
- Islamy, I. (2000). *Prinsip-prinsip perumusan kebijaksanaan negara*. Bumi Aksara.
- Islami, T. A., & Irnawati. (2021). Analisis penyelesaian pemberhentian kepala dusun Kedung Cangkring dalam perspektif hukum acara tata usaha negara. *Jurnal Civic Hukum*, 6(1).
- Kaelan. (2013). *Negara kebangsaan Pancasila: Kultural, historis, filosofis, yuridis, dan aktualisasinya*. Paradigma.
- Kelsen, H. (1961). *General theory of law and state*. Russell & Russell.
- Komaling, L., Kastanya, A., & Tjoa, M. (2023). *Buku penetapan hutan adat di Maluku*. Deepublish.
- Marzuki, P. M. (2014). *Pengantar ilmu hukum* (Edisi revisi). Kencana Prenadamedia Group.
- Soekanto, S., & Mamudji, S. (2006). *Penelitian hukum normatif*. PT RajaGrafindo Persada.
- Stroink, F. A. M. (2006). *Pemahaman tentang dekonsentrasi* (A. Syafrudin, Trans.). Refika Aditama.
- Sumardjono, M. S. W. (2007). *Definisi dan ciri masyarakat hukum adat*. Fakultas Hukum Universitas Atma Jaya Yogyakarta.
- Sumardjono, M. S. W. (2008). *Tanah: Dalam perspektif hak ekonomi, sosial, dan budaya*. Kompas.
- Utrecht. (1962). *Pengantar hukum administrasi negara Indonesia*. Ichtiar.
- Wasistiono, S. (2006). *Prospek pengembangan desa*. CV Fokus Media.
- Peraturan Menteri Agraria dan Tata Ruang/Badan Pertanahan Nasional Nomor 9 Tahun 2015.*
- Peraturan Menteri Dalam Negeri Nomor 29 Tahun 2010 tentang Pedoman Pemerintah Daerah dalam rangka rangkaian pengakuan dan perlindungan masyarakat hukum adat.*
- Peraturan Menteri Dalam Negeri Nomor 52 Tahun 2014 tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat.*
- Peraturan Menteri Lingkungan Hidup dan Kebutanan Nomor 9 Tahun 2021 tentang Pengelolaan Perbutanan Sosial.*
- Peraturan Pemerintah Nomor 11 Tahun 2019 tentang Perubahan Kedua atas Peraturan Pemerintah Nomor 43 Tahun 2014 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2014 tentang Desa.*
- Peraturan Pemerintah Nomor 43 Tahun 2014 tentang Peraturan Pelaksanaan Undang-Undang Nomor 6 Tahun 2014 tentang Desa.*
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.*
- Undang-Undang Republik Indonesia Nomor 6 Tahun 2014 tentang Desa.*

*Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 tentang Pemerintahan Daerah.*

*Undang-Undang Republik Indonesia Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.*

*Undang-Undang Republik Indonesia Nomor 40 Tahun 2003 tentang Pembentukan Kabupaten Seram Bagian Timur, Kabupaten Seram Bagian Barat, dan Kabupaten Kepulauan Aru di Provinsi Maluku.*

*Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 tentang Kebutuhan.*

*Undang-Undang Republik Indonesia Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang.*

*Mahkamah Agung Republik Indonesia. (2016). Putusan Mahkamah Agung Nomor 248 K/TUN/2016.*

*Pengadilan Tinggi Tata Usaha Negara Makassar. (2016). Putusan Pengadilan Tinggi Tata Usaha Negara Makassar Nomor 01/B/2016/PT.TUN.Mks.*