

FAKULTAS HUKUM UNIVERSITAS AIRLANGGA

Volume 33 No 3, September 2018 DOI: 10.20473/ydk.v33i3.8707

Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252 Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

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Article history: Submitted 25 Juny 2018; Accepted 6 August 2018; Available Online 1 September 2018

Thr Problem with Appointment of Village Administrator Haya-Haya Village, Limboto, Gorontalo

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Abstract

This paper aims to know how the flow of authority of the village head in appointing Village Administrator in the perspective of Law No. 6/2014 on the Village. This research uses descriptive normative research type. This research was conducted to obtain information, explanation and data on the authority of the Village Head in appointment of Village Administrator in accordance with Law No. 6/2014. The result of the research shows that the procedure of appointment of Village Device In Haya Haya Village, Limboto Sub-district, Gorontalo Regency before the enactment of Law No. 6/2014 was to be decided by the Village Head, but after the enactment of Law No. 6/2014 appointment of village apparatus should be consulted with the Regional Administrator given on behalf of the Bupati/Mayor and the constraining factors both experienced by the Village Government and the Village Applicant candidate is the lack of public awareness that the community has not served as Village Government itself, the level of education of Human Resources (HR), age, fees for file management, and the socialization that was done only in certain areas.

Keywords: Village; Village Administrator; Regional Autonomy.

Introduction

Democracy has become a mainstream for modern countries.¹ Democracy stands based on the principle of equality, namely that every citizen has the same rights and position in the government, in this case the people are given the power to participate in determining the government with the authority possessed by the government agencies come from the legitimacy of the people.² The era of regional autonomy in the dynamics of democracy that occurred in Indonesia today, demands the existence of regional regulations to bridge the interests of the community with the acceleration of development in the region. This will be interesting when we highlight the regulations at the level of unique territorial units in Indonesia that is the Village.³ For this, Law must provide assurance of the rights and obligations of the citizen and the law ensures the certainty of an authority to reduce the possibility of an arbitrariness in society.⁴

The term village comes from the word "swadesi" (coming from sanskrit) which means an autonomous region, place or part. Sutardjo Kartohadikoesoemo further posits that the words "desa", "hamlet", "desi" translates the same with the word state, nagari, or negory, which means homeland. In Japanese, village is termed as "mura" and the rule made by the village government is called "hokimura".⁵

Original villages that have existed since ancient times have the right and authority to run their own household which called as their autonomy rights. Villages that have autonomous rights are called autonomous villages. Village Autonomy is based on customary law (hukum adat) and in essence it grows from law that is coming from society. In addition, the implementation of village governance that is carried out under the original autonomy has the meaning that the authority of the village

¹ Janedri M Gaffar, *Demokrasi Dan Pemilu Di Indonesia* (Konstitusi Press 2013).[1].

² ibid.[14].

Bagus Oktafian Abrianto, 'Eksistensi Peraturan Desa Dalam Sistem Ketatanegaraan Dan Perundang Undangan Di Indonesia' (2011) 26 Yuridika.[220].

⁴ Saifullah Bombang, 'Asas Kepastian Hukum Dalam Penyelenggaraan Pemerintahan Yang Baik' (2008) 2 Bilancia.

⁵ Setyo Nugroho, 'Demokrasi Dan Tata Pemerintahan Dalam Konsep Desa Dan Kelurahan' (2013) 1 Cita Hukum.[253].

⁶ Taliziduhu Ndraha, *Dimensi-Dimensi Pemerintahan Desa* (PT Bina Aksara 1981).[16].

administration in regulating and managing the local community estracted from the right of origin and the socio-cultural values contained within the local community. Eitherway, it still needs to be held in the perspective of state administration which always kept abreast of era.⁷

Multi-dimensional national development in its management involves all government apparatus, both at the central level and at the local level even at the village level. Components or apparatus referred to should have the optimal ability in the implementation of their duties. It is appropriate if the village area is the target of the implementation of government and development activities, given that village governance is the lowest government base in the Indonesian government structure that is crucial to the success of the effort in comprehensive national development. The development of village government in Indonesia has been going on since the Dutch colonial administration because the laws governing the Village existed at the time. Legislation regulating the Village has undergone several changes in accordance with the times and needs.⁸

In practice, villages have autonomy in a broad sense but with limited content. Such restrictions may be logical, including one due to colonialism. In Regeringsreglement (RR) Article 71 and in Indische Staatsregeling (IS) Article 128 3 it is not regulated under a clear autonomy terms, but the regulation implies that village autonomy is not granted by the Dutch Government to the Village, but the Article recognizes the existence of village autonomy with a broad sense, in the sense of customary law. This means that Indonesia has acknowledged and implemented autonomy since the ancient times.⁹

Village administration is the smallest unit in the structure of local government, village government has its own duties and authorities as regulated through Law

⁷ Bambang Trisantono Sumantri, *Pedoman Penyelenggaraan Pemerintahan Desa* (Fokusmedia 2011).[3-4].

⁸ Daeng Sudirwo, *Pokok-Pokok Pemerintahan Di Daerah Dan Pemerintahan Desa* (Angkasa 1981).[41].

⁹ Bayu Surianingrat, *Pemerintahan Administrasi Desa Dan Kelurahan* (Aksara Baru 1985).[141].

Number 6 Year 2014 on the Village (Law No. 6/2014). In Law No. 6/2014 Article 1 Section 1 it is mentioned that village consists of village and an adat village or so-called with other terms, as a legal community with a territorial boundary that is authorized to regulate and administer government affairs, local communities based on community initiatives, rights of origin and/or traditional rights recognized and respected within the system of government of the Unitary State of the Republic of Indonesia. Villages have authority, as defined in the provisions of legislation regarding the village. In

Villages also have the same autonomy as those held by districts/cities called village autonomy. Village Autonomy is a genuine, round and whole autonomy, and is not a gift from the government. Instead the government is obliged to respect the original autonomy possessed by the village. In carrying out its autonomy, the village is led by a Village Head. To run the government in the village and provide services to the community and in carrying out the duties and functions of the Village Head, he will be assisted by the Village Administrator (*Perangkat Desa*). Given the complexity of the existing government in the village and in order for the village administration to proceed smoothly, one of the first aspects that needs to be built is the upgrading of the village government officials through the acceptance of new Village Administrator. This is very important, because the village government and its officials are the administrators of the main organizers of government, development and social activities as well as the builder of peace and order in the territory of his power. Therefore, their role is so important and much determines the reversal of a unit of government. Therefore it is necessary that village officials are really capable and able to cooperate in the implementation of tasks that are his responsibility.¹²

Abide to Law No. 6/2014, Village is no longer an administrative level, no

¹⁰ Sri Ulina, 'Tugas Dan Fungsi Kepala Desa Beserta Perangkat Desa Dalam Meningkatkan Kinerja Pada Kantor Desa Namo Bintang Kecamatan Pancur Batu Kabupaten Deli Serdang' (2014) 7 Perspektif.[392].

¹¹ Law Number 6 Year 2014 on the Village. Article 1 Section 1.

¹² H.A.W. Widjaja, *Otonomi Desa Merupakan Otonomi Yang Asli, Bulat Dan Utuh* (Rajawali Pers 2010).[165].

longer a subordinate of the Region, but an independent community, whose people has the right to speak for their own interests and not determined from the upper stream to the lower stream. Village that previously has been positioned as an extras and objects, now positioned as actor. Based on Law No. 6/2014 Article 26 Section 2 letter b states that the Village Head is authorized to appoint and dismiss the Village Administrator. Article 48 states that the Village Administrator consists of the village secretary, regional assistant and technical executive. The Village Administrator was chosen by the Village Head and served to assist the Village Head in carrying out his duties and authorities as mentioned in Article 49 Section 1 of Law No. 6/2014.

To be a Village Administrator, it is required to comply with the requirements set forth in Article 50 of Law No. 6/2014 that states the agency shall-in minimum-finished High School/equivalent and at the time of appointment shall be at least 20 years old and maximum be aged 42 year and fulfills other requirements as determined by local regulations under the government regulations. Furthermore, the Law specifies that an agent shall be dismissed when it has reached the age of 60 years.¹⁵

This arrangement is set forth in Law No. 6/2014, Permendagri Number 67 Year 2017 concerning Removal and Dismissal of Village Administrator and Regent Regulation of Gorontalo Number 40 Year 2017 on Village Administrator (Regent Regulation of Gorontalo No.40/2017); whose scope only applies in administration area only. Every citizen within the scope of a village whom applying for the appointment of Village Devices, of course begins with the formation of a team by the Village Head and then followed with oral or written socialization, but this is less applicable because the Head of Haya Haya Village, Limboto Sub-district, Gorontalo District often takes its own initiative in appointing village apparatus.

In the process of appointment of village apparatus that took place in Haya Haya Village, West Limboto Subdistrict, the Village Head took his own initiative in appointment of village apparatus so that this became the trigger of the problem

¹³ Sunanro Siswanto, *Hukum Pemerintahan Daerah Di Indonesia* (Sinar Grafika 2008).[8].

¹⁴ Law Number 6 of 2014 on the Village. Article 26 section 2. letters b, 48 and 49 section 1.

¹⁵ *ibid*. Article 50 and 53.

which caused various kind of problem due to the fact that most of the appointees still have family ties with the village head. This study uses a descriptive normative research type that is a study that emphasizes the real conditions in the field and are synchronized to legal rules, the opinions of scholars and regulations related to the research. This research was conducted to obtain information, explanation and data on the authority of Village Head in appointment of Village Administrator in accordance with Law No. 6/2014, Regulation of Gorontalo Regent No. 40/2017, and Permendagri Number 67 Year 2017 about Appointment and Dismissal of Village Administrator (Permendagri No 67/2017). Whilst the subject of the research is Kabupaten Gorontalo.

The Authority of the Village Head in Appointment of Village Administrator

The Village Head is the highest leader of the Village Government. The tenure of the Village Head is six years, and may be extended for the next three consecutive terms. Aside from the changes in village relations with the government, the Village Head power also relationed to the political issues within the village level. The Village Head is not accountable to the subdistrict head, but his position is closely coordinated by subdistrict head. The village head is responsible to the assistant of the regional head of the second level (known as *wedana*). The position of the village head may be called by another name, for example *wali nagari* (West Sumatra), *pambakal* (South Kalimantan), *hukum tua* (North Sulawesi), *kuwu* (Cirebon, Brebes, Tegal, Pemalang and Indramayu), *ayah handa* (Gorontalo), or *Perbekel* as refered in Bali. 16

According to Kamal Hidjaz, the term *wewenang* is equated with the word *kewenangan*, which is defined as the right and power to act, the power to make decisions, rule and delegate responsibility to other people/bodies. Bagir Manan's opinion for this refer authority as a legal language that is not the same as power. Power represents only the right to do and not to do. Whlist, the authority at the same

¹⁶ I Gede Parimartha, Silang Pandang Desa Adat Dan Desa Dinas Di Bali (Udayana University Press 2013).[33].

time means rights and obligations. H. Stout posits that authority is an understanding derived from the laws of governmental organization, which can be explained as all the rules pertaining to the acquisition and use of governmental powers by the subject of public law in public law relation.¹⁷

Indroharto posits that authority is obtained by attribution, delegation and mandate, each of which is described as follows: The authority gained by attribution, namely the granting of authority of the new government by a provision in the legislation. So, here it creates a new government authority. In the delegation there is a delegation of an existing authority by the State Administration Body or Office that has obtained a governmental authority attributively to the Agency or other State Administration Office. Thus, a delegation is always preceded by an attribution of authority. On the mandate, there does not occur a new authorization or delegation of authority from the Agency or Government Administration Office to one another.¹⁸

Head of Village tasked to organize Village Government, implement Village Development, Village community development and empowerment of village community. In carrying out the task, the Village Head has the authority that one of them raised and dismissed the Village Authority. According to Philipus M. Hadjon²⁰ the source of such authority may be attribution, delegation, and mandate. Attribution was derived from the word *ad tribuere* which means giving to. The technical concepts of constitutional law and administrative law mean that attribution authority is the authority granted or assigned to a particular position. Thus the authority of attribution is an inherent authority in a position. Delegates are derived from the word *delegare* which means delegate. Thus the concept of delegated authority is an authority of delegation. Mandate comes from the word

¹⁷ Ridwan HR, *Hukum Administrasi Negara* (PT Raja Grafindo Persada 2013).[71].

¹⁸ Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara* (Pustaka Harapan 1993).[68].

¹⁹ Law Number 6 of 2014 on the Village. Article 26 section 1 and section 1 letters b.

²⁰ Philipus M. Hadjon,[et.,al.], Hukum Administrasi Dan Good Governance (Universitas Trisakti 2010).[20-21].

mandare which means ordered.

The legal basis which guides the appointment of the Village Administrator is Law No. 6/2014, Permendagri No. 67/2017 and Regents Regulation Gorontalo No. 40/2017. The Village Administrator is the staffs that obliged to assists the Village Head in preparing the policy and coordinate with Village Secretariat, and the supporting elements within Village Head's duties in implementing the policy contained in the form of technical and territorial elements.²¹ Village Administrator consists of:

- a. Village secretariat;
- b. Regional executive; and
- c. Technical implementer who is positioned as an assistant element of village head.

 Here are the requirements to be appointed as Village Administrator:²²
- a. Finished high school or equivalent;
- b. Aged 20 years up to 42 years;
- c. Registered as a resident of the Village and resides in the Village at least one year prior to registration; and
- d. Fullfil administrative requirements.

Village Administrator is a major support unit in terms of succeeding all the programs in the village so that in the process of recruitment must be through a mechanism set forth in the applicable legislation. The other requirements are found in Gorontalo Regent Regulation No. 40/2017. In Article 3 Section 1 it declares that the Village Administrator appointed from the resident of the village who meet the requirements:

- a. Deity to God Almighty, stated in the sealed statement;
- b. Loyal and obedient to Pancasila, the 1945 Constitution, the State and Government of the Republic of Indonesia, declared in a sealed statement;
- c. Good manners proven by certificate of police records;
- d. Never been imprisoned or confinement based on a decision of the Court having a permanent legal power proven by a letter from the competent authority;
- e. Never be punished for committing a criminal offense with a minimum sentence of five years as evidenced by a certificate from an authorized official;
- f. Willing to be appointed as a Village Administrator, as stated in stamped statement

²¹ Permendagri Number 67 Year 2017 on the concerning Amendments to the Minister of Home Affairs Regulation Number 83 Year 2015 on the concerning the Appointment and Dismissal of Village Devices. Article 1 point 5.

²² Permendagri Number 83 Year 2015 on the concerning the Appointment and Dismissal of Village Devices. Article 2 section 1.

letter;

- g. Physically and mentally healthy as evidenced by a health certificate from a district government doctor;
- h. Drug-free as evidenced by a Certificate from an authorized official;
- i. Educated from a public high school or equivalent, as evidenced by photocopy of diploma from elementary school education up to the level of education which become the basis of appointment and has been authorized by the authorized official:
- j. 20 years old and 42 years old at the time of registration, as evidenced by a copy of birth certificate or other supporting documents authorized by the county authorities:
- k. Has no blood relation with the Village Head, as evidenced by a copy of the family card authorized by the county authorities;
- I. Indonesian Citizen as evidenced by a letter from a competent authority at the district level;
- m. Indonesian residents as evidenced by photocopy of Identity Card or other official documents which has been endorsed by district authorities.

Conditions stipulated in the Regents Regulation is a requirement that was born from the region and adapted to the existing culture in the area so that the regulation can not be contrary to the existing rules on it. Special Village Administrator as the executor of the region/hamlet must live in the local village.²³ The following requirements are made by the Executing Committee in appointment of Village Devices in Haya Haya Village, Limboto Subdistrict, Gorontalo Regency which is of course not separated from the previous regulation namely Regent Regulation of Gorontalo No. 40/2017 about Village Device:

- 1. Deity to God Almighty, stated in the sealed statement;
- 2. Loyal and obedient to Pancasila, the 1945 Constitution, the State and Government of the Republic of Indonesia, declared in a sealed statement;
- 3. Good manners proven by certificate of police records;
- 4. Never been imprisoned or confinement based on a decision of the Court having a permanent legal power proven by a letter from the competent authority;
- 5. The statement is never punished for committing a criminal offense with a maximum of 5 years imprisonment as stated in the letter of the Limboto District Court;
- 6. Letter of appointment willing to be appointed as Village Administrator;
- 7. Certificate of good health both physically and spiritually from Doctor of Government Hospital;
- 8. Drug-free statements from the National Narcotics Board;

²³ Gorontalo Regent Regulation Number 40 Year 2017 on the Village Administrator.Article 3 Section 2.

- 9. Photocopy of Primary School Certificate, Junior High School, and Senior High School which is legalized by authorized official;
- 10. A photocopy of birth certificate or other supporting documents authorized by the competent authority;
- 11. Copy of family card certified by authorized official;
- 12. Certificate of Citizenship;
- 13. Copy of identity card certified by authorized officer;
- 14. Statement of approval of husband/wife/parent;
- 15. Integrity; and
- 16. Color photo sized 4x6 and 3x4 provided each 3 pieces.

The requirements made by the implementing committee in the appointment of village apparatus is a binding regulation for all the people who live in the village so that if there is a candidate who then does not obey it then automatically can not meet the requirement. For the procedure of appointment of Village Administrator before Law No.6/2014 concerning Village decided by Village Head, in Law No. 6/2014, procedure of appointment of village apparatus one of them is Village Administrator appointed by Village Head after consultation with Head of Sub-district on behalf of Bupati/Mayor.²⁴

Based on the interview result of the writer with Haya Haya Village Head (Yasin Ingo) who is represented by Haya Haya Village Secretary (Nasir Puhi), he said that:²⁵ "the authority of the Village Head in the case of appointment of Village Administrator prior to the enactment of Law No. 6/2014, where appointment of Village Administrator applies the system of written examination and interview and decided by the Village Head without any recommendation from the subdistrict head. In contrast to after the enactment of Law No. 6/2014, where the appointment of Village Device was preceded by the process of selecting and screening Prospective Village Applicants and then consulted by the Village Head to the subdistrict head. Subsequently, the subdistrict head gave written recommendations on whether the appointment of the Candidates should be continued or not and *Allhamdulillah* it received a recommendation from the Head of Sub-district that the appointment of Village Device Candidate in Haya Haya Village was continued to the next stage".

²⁴ Law Number 6 Year 2014 on the Village Article 49 section 2.

²⁵ Interview with Secretary of the Village (Nasir Puhi) dated 5 february 2017, 10.00. WITA.

Then he added that "The authority of the Village Head in appointing the Village Administrator is not up there, where the Implementing Team established by the Village Head after submitting the names of the Village Applicant Candidates who passed by the administration and written examination and interview to the Village Head, for the determination of the Village Device as the authority of the Village Head to decide what position will be obtained by Village Administrator because this is the board under the leadership of a Village Head so that it becomes the policy of the Village Head".

Besides based on interviews above, the authority of the Village Head in appointment of Village Administrator can be seen in the mechanism of Appointment and Dismissal of Village Administrator based on Gorontalo Regent Regulation No. 40/2017 Article 6 Section 1, that appointment of Village Device implemented through the following mechanism.²⁶ The Village Head may form a Team consisting of a chairman, a secretary and a member;

- 1. The Village Head performs the selection and screening of the Village Applicant Candidate conducted by the Team;
- 2. Implementation of screening of candidates for Village Administrator shall be held no later than two months after the village office position is vacant or dismissed;
- 3. The result of the selection and screening of candidates of Village Administrator shall be consulted by the Village Head to the subdistrict head;
- 4. The Sub-district Head shall give written recommendation on the Village Applicant candidate no later than seven working days;
- 5. Recommendations given by the Head of Sub-district in the form of approval or rejection based on specified requirements;
- 6. In the case of the District Head grants his approval, the Village Head shall issue a Village Head Decree on the Appointment of Village Devices; and
- 7. In case the subdistrict head recommendation contains rejection, the Village Head conducts screening and re-screening of village apparatus candidates.

However, in fact the appointment of Village Administrator in Haya Haya Village, West Limboto Sub-district still often contains fraud or mistake especially regarding the administrative completeness either caused by negligence from the candidate of Village Agency or from the executing committee. For example, the lack of

²⁶ Gorontalo Regent Regulation Number 40 Year 2017 on the Implementation of District Regulation number 10 of 2017 concerning Village Devices.Article 6 section 1.

administrative requirements as a candidate for village apparatus, they will still be forced to participate in selection and more severely passed and be eligible to become village apparatus.

What should be done by the village head is at the time of appointment and dismissal of Village Administrator, he should consult first to the subdistrict head. Therefore, the village head as the party authorized to appoint and dismiss the Village Apparatus must act in accordance with the mechanism set forth in the legislation.

Obstacles in the Appointment of Village Administrator in Accordance with Village Law No. 6/2014

As explained above that prior to the enactment of Law No. 6/2014, the appointment of Village Administrator directly applies the system of written examination and interview. This is in contrast to the enactment of Law No. 6/2014, where the appointment of Village Administrator should be preceded by the process of screening through Village Deliberation (*musyawarah desa*). In this deliberation the candidates will be nominated and selected who is entitled to pass to the stage of writing test. From this deliberation, it shall result in at least two candidates for one position of Village Administrator. If less than that then the process should be repeated from the initial start.

Stages of village deliberation clearly obstruct the prospective village apparatus, may not be able to proceed to the next stage because it is not elected.

Here are the factors that hamper the appointment of Village Administrator, based on the results of interviews with some of the authors:

1. Lack of public awareness to serve the Village Government itself²⁷

It is the main factor that hampers the appointment of Village Administrator. Progress of a Village is the responsibility of the whole community, for that, it requires the participation or support from the village community. The existence of appointment of Village Administrator is one of the opportunity for society

²⁷ Interview with head of the village (Yasin Ingo) dated 12 february 2017, 10.00-15.30. WITA.

especially the youth to give participation for the progress of Village, but society still assume that Village Administrator has no benefit especially for society which have high education. So that in appointment of Village Administrator in Haya Haya Village had experienced lack of candidate of Village Administrator. Whlist becoming a Village Administrator will result in an allowance in accordance with result of performance and also can become stepping stone or add work experience.

2. Level of education of Human Resources (HR)

Education is the most important thing in our life, education can make it easier for us to get a job. The higher the education, the better the working conditions. As much as being a Village Administrator, candidate must meet the requirements set forth in Law No. 6/2014, one of which is the lowest is public high school or equivalent. This is certainly an obstacle for Haya Haya Village community whose level of education is only up to an equivalent junior high school diploma.

3. Age

Similarly with education, age is also an obstacle for Haya Haya Village community who wants to be Village Administrator, it could be because the age of the Village Applicant Candidate is not enough or the age of the Village Applicant Candidate is past the specified age limit. In Law No. 6/2014, it is stated that one of the requirements to become a Village Device is 20 years old up to 42 years old.²⁸

4. Fees for the file required²⁹

The number of files that became requirements to become a Village Administrator which in principle is managed to the District level, of course, result in the high fees that must be spent by Candidates of Village Administrator to take care of the file.

²⁸ Interview with committee of the Village Administrator Selection (Mustapa Umaiya, Ratman Pobi and Irawati Marta) dated 13-14 february 2017, 10.00-15.30. WITA.

²⁹ Interview with candidate that pass the selection (Ismail Harun) dated 15 february 2017, 10.00. WITA.

5. Socialization is done only in certain circles³⁰

Initial stages undertaken by the Village Government to attract the community in order to become the Village Administrator is to conduct socialization either written or unwritten which of course is done openly to the community. However, based on a statement from one of the Village Candidate Members, the socialization done by the Village Government is only in certain circles, so that many people are not aware of any new village appointments, and some Village Candidates have been informed of the appointment of Village Devices only from the mouth to the mouth. So that the appointment of Village Devices in Haya Haya Village had experienced lack of registrants or not enough quota.

Conclusion

The authority of appointment of Village Administrator in Haya Haya Village, West Limboto District before the enactment of Law No. 6/2014 was decided by the Village Head, but after the issuance of Law No. 6/2014 appointment of village apparatus should be consulted with the subdistrict head on behalf of the Bupati/ Walikota and automatically a village head can not act alone. As for the inhibiting factors both experienced by the Village Government and the candidate of Village Administrator in appointment of Village Devices in Haya Haya Village, West Limboto District, Gorontalo Regency are:

- 1. Lack of public awareness to serve the Village Government itself;
- 2. Level of education of Human Resources (HR);
- 3. Age;
- 4. Fees for file maintenance; and
- 5. Socialization is done only in certain circles.

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HOW TO CITE: Roy Marthen Moonti, 'The Problem With Appointment Of Village Agency In Haya-Haya Village, Limboto, Gorontalo' (2018) 33 Yuridika.