



Legal Protection for Village Heads in Exercising Government Authority: Analysis of Administrative Limits and Criminal Responsibility

Harmono

Universitas Swadaya Gunung Jati,
Cirebon, Indonesia

***Corresponding author:**

Harmono, Universitas Swadaya Gunung Jati,
Cirebon, Indonesia. ✉harmono@ugj.ac.id

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Abstract

Background: The expansion of administrative authority within the decentralization framework has increased village heads' exposure to legal risks in Indonesia, particularly in village financial management. On the one hand, village heads are required to exercise discretion to respond to community needs quickly and effectively; on the other hand, their administrative decisions are frequently subjected to criminal law enforcement scrutiny.

Objective: This study aims to analyze the structure of legal protection for village heads, identify factors contributing to criminalization, and formulate clear boundaries between administrative errors and criminal liability.

Methods: This research employs a normative juridical method using statutory, conceptual, and case approaches, supported by current national and international literature.

Results: The findings indicate that the existing legal protection framework under Law No. 6 of 2014 on Villages, Law No. 30 of 2014 on Government Administration, and the Anti-Corruption Law remains fragmented, lacks doctrinal coherence, and creates legal uncertainty. The absence of a mandatory administrative review prior to criminal proceedings directly contributes to overcriminalization. Criminalization is driven by four reinforcing structural factors: regulatory disharmony between administrative and criminal law, the dominance of repressive enforcement approaches, limited legal capacity among village officials, and the political instrumentalization of criminal law at the local level.

Conclusion: This study proposes an administrative primacy model, in which an APIP-conducted administrative review serves as a binding prerequisite before any criminal investigation of village heads, thereby operationalizing the principle of *ultimum remedium*. This approach can strengthen legal certainty and prevent overcriminalization without undermining public sector integrity.

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INTRODUCTION

The transformation of village governance in Indonesia following the enactment of Law Number 6 of 2014 concerning Villages has positioned the village as an autonomous entity with broad authority to regulate and manage the interests of its community. This change has simultaneously shifted the position of the village head into a key actor in administering governance, development, and public services at the local level. However, this expansion of authority has not been followed by the strengthening of an adequate legal protection system, creating an imbalance between authority and legal responsibility (Azkiya, 2026; Ridwan, 2018).

Empirical data underscore the urgency of this issue. The Corruption Eradication Commission (*KPK*) reported that between 2015 and 2023, more than 686 village heads across Indonesia were subjected to criminal proceedings related to village fund management, many of which involved discretionary administrative decisions rather than intentional misappropriation (Pemberantasan et al., 2023). Cases in East Java and West Kalimantan document village heads prosecuted for emergency budget reallocation decisions, where law enforcement bypassed the administrative review mechanism established under Law No. 30 of 2014 and proceeded directly with criminal charges. This systemic pattern demands both scholarly and regulatory attention (Sephthian & Ana, 2025).

The significant allocation of village funds in recent years has further increased the complexity of this issue. Village heads are required to make quick and responsive decisions under regulatory conditions that are often not entirely clear. In such situations, the use of discretion becomes inevitable in governance practice. However, as stated in public administration literature, discretion is always closely linked to accountability and legal risk (Berggren et al., 2026; Molander et al., 2012). In practice, many administrative decisions by village heads ultimately enter criminal legal processes, even in the absence of malicious intent or personal gain.

This phenomenon reflects a tendency toward overcriminalization, namely the excessive use of criminal law against administrative actions, which has the potential to hinder governance effectiveness (Dubber, 2019; Putra et al., 2026). Consequently, village heads tend to become overly cautious in decision-making, which ultimately leads to stagnation in village development.

Theoretically, state administrative law provides a protection framework for public officials through the concepts of discretion, proportionality, and good faith. Hadjon (1987) emphasizes that legal protection must encompass both preventive and repressive dimensions (Prayoga et al., 2023). From a broader perspective, public accountability must also be understood as a mechanism that balances control with institutional effectiveness (Bovens, 2007; Wille & Bovens, 2022).

However, in the Indonesian context, there is disharmony between administrative law and criminal law, particularly within the corruption eradication regime. Administrative law provides room for flexibility, while criminal law tends to be rigid and repressive. In comparative legal studies, this condition has the potential to disrupt governance effectiveness if it is not balanced with adequate protective mechanisms (Craig, 2018; Septhian & Ana, 2025).

Legal protection in state administrative law is an important instrument for ensuring justice in governance. According to Hadjon (1987), legal protection covers both preventive and repressive dimensions (Hadjon et al., 1987; Prayoga et al., 2023).

Discretion is a central concept in understanding the actions of public officials. Ridwan HR (Ridwan, 2018) explains that discretion is an authority that allows officials to make decisions under certain conditions or in specific situations (Azkiya, 2026; Ridwan, 2018). International literature confirms that discretion is an inherent feature of modern governance, but it must be balanced with accountability mechanisms (Berggren et al., 2026; Molander et al., 2012). The concept of abuse of power becomes the intersection between administrative law and criminal law. However, when administrative mechanisms are ignored, criminal law tends to be applied excessively, leading to overcriminalization (Dubber, 2019; Putra et al., 2026).

Bovens (2007) emphasizes that accountability should not be understood solely as a punishment mechanism, but also as a means of improving governance effectiveness (Wille & Bovens, 2022). Meanwhile, Rose-Ackerman and Palifka (2016) warn that disproportionate anti-corruption policies can, in fact, hinder the performance of public officials (Palifka et al., 2026). Previous research in Indonesia has mostly highlighted aspects of corruption and supervision, but has not yet deeply examined the legal protection of village heads as public officials. This represents a gap that this research aims to address.

Specifically, prior studies have addressed corruption supervision (Setiawan & Saleh, 2021; Sholichudin et al., 2024), administrative discretion (Berggren et al., 2026; Molander et al., 2012), and the interface between administrative and criminal law (Craig, 2018; Septhian & Ana, 2025). However, none have systematically proposed a procedural model that positions administrative review as a mandatory pre-criminal filter for village heads. This study contributes the administrative primacy model: a concrete institutional framework that goes beyond

descriptive legal analysis toward a prescriptive institutional design applicable within Indonesian village governance (Wayoi, 2025).

Based on these issues, this research aims to: (1) analyze the fragmented construction of legal protection for village heads under Law No. 6/2014 and Law No. 30/2014; (2) identify structural interrelationships among regulatory, institutional, capacity, and political criminalization factors; and (3) reconstruct the administrative–criminal boundary through an administrative primacy framework by establishing APIP administrative review as a mandatory prerequisite before criminal proceedings, identifying factors contributing to criminalization, and formulating the boundary between administrative error and criminal liability within the Indonesian legal framework.

METHOD

This research was designed within a methodological framework that was not merely technical but also epistemologically reflective, considering that the issue under study lies at the complex intersection between administrative law and criminal law in the context of village governance. Therefore, the approach used had to be capable of capturing normative dimensions while also explaining the practical implications of applying these legal norms. Within this framework, the research employed a normative juridical method, widely recognized in legal studies as the primary approach for analyzing the structure, consistency, and coherence of legal systems (Marzuki, 2017; Rifa'i, 2023).

The normative juridical approach in this research was not understood narrowly as mere textual analysis of laws and regulations, but as an effort to examine law as a dynamic and value-laden system. Thus, the research sought to identify not only the applicable norms (law in books), but also how these norms were understood, interpreted, and applied in practice (law in action), particularly in the context of legal protection for village heads (Jimly, 2021; Tarigan, 2025).

To achieve this objective, the research integrated three main approaches: the statutory approach, the conceptual approach, and the case approach. The statutory approach was used to examine various relevant regulations, including laws governing village governance, government administration, and corruption eradication. Through this approach, the research identified disharmony and overlapping norms that had the potential to create legal uncertainty for village heads in exercising their authority.

The conceptual approach was used to build an analytical framework based on legal doctrine and theory, particularly relating to discretion, abuse of power, legal protection, and the *ultimum remedium* principle. This approach was important because many issues arising in practice could not be adequately explained solely through written norms, but required an understanding of the theoretical constructions underlying them. In this regard, the thoughts of administrative law experts served as an important foundation for assessing whether an action fell within the limits of administrative authority or had transgressed into the criminal realm.

Meanwhile, the case approach was used to examine how legal norms were implemented in judicial practice, particularly in cases involving village heads related to village financial management. Analysis of court decisions allowed the research to identify patterns of legal interpretation by law enforcement officials, including a tendency to use criminal law without prior administrative review mechanisms. Thus, this approach provided an empirical dimension that enriched the normative analysis.

The legal materials used in this research consisted of primary, secondary, and tertiary legal materials. Primary legal materials included relevant laws and regulations, such as those governing villages, government administration, and corruption crimes. Secondary legal materials included scientific literature in the form of books and reputable journal articles, both national and international, relevant to the research theme. Tertiary legal materials were used as complements to provide conceptual clarity on the legal terms used (Marzuki, 2017; Rifa'i, 2023).

The technique for collecting legal materials was carried out through library research, prioritizing sources with high academic credibility, including journals indexed by Scopus and those with official DOIs. The source selection process was carried out critically by considering relevance, novelty, and contribution to the development of the research analysis.

The literature search was conducted using Scopus, Google Scholar, HeinOnline, Garuda,

and Sinta databases, with a reference year range of 2015–2025 to ensure currency. Key search terms included: “village head criminalization Indonesia,” “administrative discretion village governance,” “overcriminalization public official,” “*ultimum remedium* administrative law,” and “APIP administrative review.” Sources were included if they were peer-reviewed and directly addressed the intersection of administrative and criminal law in public governance. Sources predating the reform period initiated by Law No. 6 of 2014 were included only where they provided foundational doctrinal frameworks.

The analysis of legal materials was carried out qualitatively using legal interpretation methods, including grammatical, systematic, and teleological interpretation. Grammatical interpretation was used to understand the textual meaning of legal norms, systematic interpretation was used to examine relationships between norms within a legal system, while teleological interpretation was used to explore the objectives and values intended by the legislators. This interpretative approach allowed the research not only to understand law formally but also substantively, thus producing a more comprehensive analysis (Jimly, 2021; Tarigan, 2025).

With such a methodological construction, the research not only produced a description of applicable legal norms but also offered a critical and prescriptive analysis of the weaknesses of the existing legal system. This methodology was expected to make a significant scientific contribution, both to the development of administrative law theory and to the practice of village governance in Indonesia.

RESULTS AND DISCUSSION

Table 1. Summary of Main Research Findings

Finding Dimension	Key Result
Legal Protection Construction	Fragmentary under Law No. 6/2014 and Law No. 30/2014; no operationalized mechanism protecting village heads from direct criminalization.
Criminalization Factors	Four reinforcing factors: (1) regulatory disharmony; (2) repressive institutional enforcement; (3) limited village official legal capacity; (4) local political instrumentalization of criminal law.
Admin-Criminal Boundary	Three cumulative elements for criminal liability: (1) <i>mens rea</i> ; (2) real and measurable state loss; (3) conscious abuse of authority. Without all three, action remains in the administrative domain.
Proposed Model	Administrative Primacy Model: APIP review as mandatory pre-criminal filter, supported by discretion guidelines, legal capacity building, and regulatory harmonization.

Source: Research data

The Construction of Legal Protection for Village Heads in the Indonesian Legal System

Analysis of the applicable legal framework shows that legal protection for village heads in the Indonesian legal system remains fragmented and has not yet been systemically integrated. Normatively, village heads are granted broad authority through the village governance legal regime, which includes administrative, development, and village financial management functions. However, this expansion of authority has not been accompanied by an adequate legal protection framework, creating an imbalance between delegated power and legal safeguards.

From the perspective of state administrative law, this condition reflects a failure to establish an effective preventive protection mechanism. Hadjon (1987) emphasizes that legal protection should ideally begin with clear norms and procedures capable of preventing disputes (Prayoga et al., 2023). However, in the context of village governance, such clarity is often not operationally available, particularly regarding discretion in village financial management. Consequently, the scope for interpretation becomes excessively wide, ultimately increasing exposure to potential criminal liability.

This phenomenon can also be explained through the framework of public accountability proposed by Bovens (2007), who argues that accountability should not only function as a control mechanism but also as a system that supports institutional effectiveness (Wille & Bovens, 2022). In this context, the Indonesian legal system tends to emphasize accountability in a repressive dimension, without sufficient balance through adequate protection for public officials. As a result, village heads are placed in a dilemmatic position between the demand for swift administrative action and disproportionate legal risk.

Thus, the current construction of legal protection is more formal-normative than substantive and has not yet provided effective legal certainty in practice. This condition indicates an urgent need to reconstruct a more comprehensive and integrated legal protection framework.

The empirical basis for the following analysis is drawn from documented judicial records. The Bengkulu District Court Decision No. 12/Pid.Sus-TPK/2020/PN.Bgl and the Pontianak District Court Decision No. 15/Pid.Sus-TPK/2021/PN.Ptk both involved village heads prosecuted for budget reallocation decisions made in response to urgent community needs, without evidence of personal enrichment or *mens rea*. KPK monitoring data shows that over 60% of village fund-related criminal cases between 2018 and 2022 originated from administrative decisions later reclassified as criminal violations (Pemberantasan et al., 2023).

Structural Factors of Criminalization of Village Heads

The research results indicate that the criminalization of village heads cannot be understood as an isolated phenomenon, but rather as the outcome of complex interactions among normative, institutional, and cultural factors. One of the main contributing factors is regulatory disharmony between administrative law and criminal law, particularly in the context of corruption eradication. Administrative law provides space for discretion, whereas criminal law tends to adopt a more rigid and repressive approach.

From a global perspective, this phenomenon aligns with the concept of overcriminalization introduced by Dubber (2019), who criticizes the tendency to extend criminal law into domains that should be governed by other legal frameworks (Putra et al., 2026). In the Indonesian context, this tendency is evident in law enforcement practices that directly apply criminal instruments without prior administrative review mechanisms.

Beyond normative factors, institutional dynamics also play a significant role. The working patterns of law enforcement officials, which tend to focus on proving criminal elements without adequately considering the administrative context, reflect the dominance of a repressive paradigm within the legal system. This condition contributes to legal uncertainty and weakens the principle of proportionality in law enforcement.

Capacity-related factors are also important determinants. Many village heads lack adequate legal understanding, particularly in village financial management. Under such conditions, technical administrative errors are often interpreted as criminal violations. This finding is consistent with the view that governance quality is strongly influenced by institutional capacity (Palifka et al., 2026).

These four factors do not operate in isolation but instead form a mutually reinforcing cycle of criminalization risk. Regulatory disharmony creates normative ambiguity that enables repressive institutional enforcement. Such enforcement exploits the capacity gap among village officials who lack sufficient legal literacy to challenge prosecutorial overreach. Local political dynamics then instrumentalize both normative ambiguity and capacity limitations to deploy criminal law as a political tool. This cyclical interaction explains why incremental reforms addressing only one factor have historically failed to reduce the overall rate of village head criminalization (Hidayatullah et al., 2025; Septhian & Ana, 2025).

Furthermore, local political dynamics complicate the situation. Conflicts of interest at the village level often encourage the use of criminal law as an instrument of political pressure, thereby obscuring the function of law as a mechanism of justice. Empirical evidence supporting this is found in the Indonesian Ombudsman's 2021 report, which documented criminal complaints against village heads filed by rival political factions immediately after contested village elections, with charges relating to administrative decisions that predated the electoral dispute (Halawa, 2023). A study by the Center for Indonesian Law and Policy Studies documented 23 cases across

Java and Kalimantan in which criminal reports against village heads were withdrawn following political settlements, indicating that criminal law was at times used as a bargaining instrument (*PSHK*). These cases underscore the need for a mandatory administrative review filter that depoliticizes the initial assessment of village head actions.

Reconstruction of the Boundary between Administrative Error and Criminal Responsibility

One of the main findings of this research is the blurring of the boundary between administrative error and criminal responsibility in Indonesian legal practice. Theoretically, administrative law has provided sufficiently clear parameters for assessing abuse of power, which should serve as an initial filter before an action is qualified as a criminal act.

However, in practice, administrative mechanisms are often ignored; consequently, criminal law is applied directly. This condition not only contradicts the *ultimum remedium* principle but also creates significant legal uncertainty. In this context, an outcome-based legal approach, without adequate consideration of administrative procedures, becomes a major source of distortion.

The conceptual novelty of this research is the administrative primacy model as a mandatory procedural prerequisite before criminal proceedings, which is distinct from the general *ultimum remedium* principle in three specific ways: (1) it designates APIP as the competent review body with a defined 30-day review period; (2) it assigns binding legal effect to APIP findings, making classification determinations obligatory for prosecutors; and (3) it proposes a joint Presidential Regulation as the implementing instrument. Prior research has invoked *ultimum remedium* as a general principle without specifying how it is triggered, who applies it, or what legal effect it carries. This research addresses that operational gap.

To address this problem, this research proposes three main parameters for distinguishing administrative errors from criminal acts:

- 1) The element of *mens rea* as the primary indicator in criminal law;
- 2) The existence of real and measurable state financial losses;
- 3) Abuse of power committed intentionally and exceeding the limits of authority.

Without fulfillment of these three elements, an action should remain within the realm of administrative law. This approach aligns with the principles of proportionality and reasonableness in modern administrative law (Craig, 2018; Senthian & Ana, 2025). Thus, the reconstruction of this boundary is not only conceptual but also has practical implications for preventing overcriminalization of public policy at the village level.

An Ideal Model of Legal Protection Based on Administrative Primacy

Based on the overall analysis, this research proposes a legal protection model based on the principle of administrative primacy, which places administrative law as the primary instrument for assessing the actions of public officials, while criminal law functions as *ultimum remedium*.

This model consists of four main pillars. First, strengthening preventive protection through the development of clear technical guidelines regarding the use of discretion by village heads. Second, institutionalizing administrative review mechanisms as a prerequisite for initiating criminal proceedings. Third, enhancing the legal capacity of village heads through training programs and legal assistance. Fourth, harmonizing regulations to eliminate inconsistencies between legal regimes.

In operational terms, the administrative primacy model functions through five steps: (1) Trigger, a criminal report involving a village head is received by law enforcement; (2) Mandatory Referral, law enforcement notifies APIP within 14 working days, temporarily suspending the criminal investigation pending APIP assessment; (3) APIP Review, APIP conducts an administrative audit within 30 working days, classifying the act as either (a) a pure administrative error, (b) an administrative irregularity warranting administrative sanctions, or (c) an act with criminal indications; (4) Legal Effect, only classification (c) permits referral to a criminal investigation; and (5) Override Condition, cases of *in flagrante delicto* or those with clear evidence of personal enrichment may bypass APIP review, subject to judicial oversight (Abduh et al., 2025).

This model aims not only to protect village heads from the risk of criminalization but also to improve the overall quality of village governance. With a balanced approach between accountability and legal protection, village heads can exercise their authority more effectively and responsibly.

CONCLUSION

This study shows that legal protection for village heads in the Indonesian legal system has not been developed in a comprehensive and coherent manner. Although, normatively, village heads are granted broad authority within the decentralization framework, the existing legal system has not yet provided protection mechanisms capable of ensuring legal certainty in practice. This imbalance between the expansion of authority and weak legal protection places village heads in a vulnerable position, exposing them to the risk of criminalization. The findings reveal that the phenomenon of criminalizing village heads results from interactions among various structural factors, including regulatory disharmony between administrative law and criminal law, the dominance of repressive approaches in law enforcement, limited capacity within village apparatus, and local political dynamics. In this context, criminal law tends to be applied prematurely, without adequate administrative review mechanisms, thereby blurring the boundary between administrative error and criminal responsibility.

Furthermore, this study affirms that the blurred boundary between the administrative and criminal domains is the primary root cause of overcriminalization in public policy at the village level. Conceptually, administrative law provides clear parameters for assessing abuse of power, which should function as an initial filter before an action is classified as a criminal offense. This lack of clarity not only creates legal uncertainty but also undermines the effectiveness of village governance. As a key contribution, this research proposes the concept of administrative primacy, an approach that positions administrative law as the main framework for evaluating the actions of public officials, with criminal law serving as the last resort (*ultimum remedium*). This concept provides both a theoretical and practical foundation for developing a more proportional and just legal protection system. Therefore, future research is recommended to integrate empirical approaches, such as field case studies or interviews with village heads and law enforcement officials, to obtain a more comprehensive understanding of legal protection practices at the village level. Furthermore, comparative studies with other countries are also important to enrich perspectives and strengthen theoretical contributions to the global discourse on the relationship between administrative law and criminal law.

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AUTHOR CONTRIBUTION STATEMENT

Harmono is solely responsible for the conceptualization, data collection, analysis, and writing of the manuscript. The author has read and approved the final version of the manuscript and agrees to be accountable for all aspects of the work.

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