



## Formation of Village Regulations in the Administration of Village Administration in Indonesia

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### Abstract

This article aims to determine the formation of village regulations in the implementation of village administration in Indonesia. The problem in this research is focused on the BPD process in preparing and establishing village regulations and the formation of village regulations in terms of the principles of forming good laws and regulations. To approach this problem, a theoretical reference to the statutory approach is used. Data was collected through literature study by examining laws and other references relevant to this research, then the data was analyzed qualitatively. This study concludes that the optimal role of the BPD is not sufficient in establishing village regulations together with the Village Head as an extension of the village community, this is because the village regulations that have been formed in the last 2 (two) years do not reflect community needs and community expectations. The position of village regulations is based on Law No. 23 of 2014 concerning Regional Government, Law No. 6 of 2014 concerning Villages, and Government Regulation No. 43 of 2014. . UU no. 10 of 2004 and Law no. 12 of 2011 view village regulations as legal products, and Law no. 32 of 2004 views village regulations as political products, not legal products. Meanwhile, Law No. 6 of 2014 sees village regulations on two sides, both as a legal product and as a political product.

**Keywords:** Village Regulations; Village Government

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## INTRODUCTION

The Government of the Republic of Indonesia divides the territory within the Unitary State of the Republic of Indonesia into provinces, districts, and cities. Every province, district, and city has a regional government which is regulated by law. Regency/city areas are further divided into sub-districts and sub-districts are divided into sub-districts and/or villages. The village is the lowest government unit regulated by Law Number 6 of 2014 concerning Villages. Village Government has an important role in managing social processes in society. The main task of the Village Government is to create a democratic life and provide good social services so that its citizens can live in a state of prosperity, peace, security, and justice.

The legal basis for the formation of village regulations can be found in Article 1 paragraph (3) of the 1945 Constitution which states that; "Indonesia is a country of law". As a legal state, all actions of the government and citizens must be based on applicable laws or regulations. Thus, the administration of government, both at the center and in the regions, including villages, must be based on applicable law. As a legal state, it is necessary to have an integrated legal order, which covers all aspects of life and reaches all aspects of society, both at the central and regional levels. According to Lawrence Friedman, legal order concerns legal substance, legal structure, and legal culture (Friedman, 2009)

However, the definition of village according to Law No. 6 of 2014 is an area consisting of traditional villages or villages known by other names, which are legally a community unit that has territorial boundaries and has the authority to regulate and manage government affairs and the interests of the local community. This is based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. Apart from that, the village is also described as a legal unit that has its government and is inhabited by a powerful community (Kartohadikoesoemo, 1953).

Village formation aims to improve the ability to administer government efficiently and effectively, as well as to improve services to the community by the level of development and progress of development. However, several conditions must be met for the formation of a village, such as a minimum population of 2500 people or 500 heads of families, an affordable area for services and community development, a location that has a network of connections or communication between hamlets, infrastructure factors, social factors. culture, and factors of community life.

Government can be interpreted broadly or narrowly, broadly, government refers to actions carried out by legislative, executive, and judicial organs or bodies to achieve the goals of state government (Pamudji, 1993). Meanwhile, narrowly, government refers to the actions of governing carried out by executive organs and their staff to achieve government goals. The same opinion was expressed, that government in a broad sense involves 3 main functions (Surbakti, 1992). In the administration of the State, namely the legislative, executive, and judicial functions, whereas in the narrow sense, it only explains the executive function (Solekhan, 2014).

The concept of village autonomy gives villages the freedom to manage their villages, including in making policies. It is on this basis that the Law on Villages and its implementing regulations regulate village authority in making Village Regulations. The existence of village autonomy has existed for a long time, even long before the independence of the Unitary State of the Republic of Indonesia in 1945. During the Dutch East Indies era, villages were recognized as legal units based on customs which were regulated by regulations regarding village households issued by the Dutch East Indies government in 1906 called *Inlandschee Gemeenteordonanti* (Nurcholis, 2011)

The community as an important element in village government can also be involved in forming village regulations. In principle, a village regulation is a village community decision that is used as the basis for the implementation of village government to regulate life together in protecting community rights and obligations based on rules and regulations in administering village government by the wishes and aspirations of the community (Rosidin, U. 2019)

The relationship between the village head and the BPD is a partnership and is based on the principle of checks and balances, namely taking into account the duties and functions of each element of the village government administration. The working relationship implemented in village government is related to the position and authority of the village head as the leader of village government administration, namely internal working relationships, in village government administration, namely the working relationship between the village head and village officials, where the village head has a working relationship within the decision-making authority. decisions, authority to provide direction and motivation, while village officials implement decisions and pay attention to the direction and example of the village head (FA Shabrina, 2014).

In carrying out its legislative function, the BPD, namely the process of making Village Regulations, is by existing Legislation but the BPD's legislative function has not been able to run optimally, this is shown by the lack of comprehensiveness of the BPD in Wanasari District in framing village regulations which are still conventional or habits into the form of unwritten rules. The steps taken to overcome obstacles are internal and external. So the suggestion put forward in this thesis is that there needs to be special attention from the Regional Government and there needs to be training on how to prepare and design Village Regulations for the Village Government (Fauzan, 2010).

This research aims to determine the formation of village regulations in the implementation of village government in Indonesia. This research focuses on the BPD process in preparing and enacting village regulations and the formation of village regulations in terms of the principles of forming good laws and regulations.

## **RESEARCH METHODS**

The approach used in this research is Normative Juridical, namely this research examines data based on existing norms regarding the position of village government in the legal system of laws and regulations in Indonesia. Analyzed based on applicable laws and using legal principles relevant to the problem. In this research, the primary legal material for statutory regulations is Law Number 6 of 2014 concerning Villages, Law No. 23 of 2014 concerning Village Government, Law No. 10 of 2004 concerning the Formation of Legislative Regulations, PP No. 47 of 2015 concerning Amendments to Government Regulation no. 43 of 2014 concerning Implementing Regulations of Law no. 6 of 2014 concerning Villages, as well as related laws and regulations in Indonesia and literature relevant to this research. Other laws and regulations relating to the position of village government in the legal system of laws and regulations in Indonesia. The documentation method is looking for data about things or variables in the form of notes, transcripts, books, and so on.

This method is used when searching for information sourced from documentation of related laws and regulations which has relevance to research objectives and field interviews. There are several approach methods known in normative legal research, namely the statutory approach, the conceptual approach, the comparative approach, the analytical approach, the comparative approach, and the historical approach. (historical approach), philosophical approach (philosophical approach), and case approach (case approach)(Marzuki, 2005).

In this research, several approaches will be used to analyze problems, as stated by Cambell and Glasson; "There is no single technique that is magically "right" for all problems"(Ibrahim, 2006). The approach method used in this research is the statutory approach, which is carried out by examining statutory regulations relating to legislative issues, including Law No. 6 of 2014 and Law No. 12 of 2011. The legal analytical conceptual approach is carried out by examining concepts related to Village Regulation issues.

## RESULTS AND DISCUSSION

### BPD Process in Preparing and Determining Village Regulations

The development of government, especially regional government, does not stop, because it follows developments in society and the country. These developments give rise to new tasks for government officials in the regions. The Village Consultative Body is a form of democracy at the village government level. The function of the village consultative body is to establish village regulations together with the village head and accommodate and channel the aspirations of the village community. In this case, the role of the Village Consultative Body is to create village regulations together with the Village Head in building a Village civilization that is good socially, economically, and culturally.

Based on Law No. 32 of 2004 concerning Regional Government as amended by Law No. 12 of 2008 concerning Regional Government, villages are no longer administrative regions and are no longer subordinate to the Region but instead become Independent Regions, where the community has the right to speak in their interests. itself and not determined from the top down. To support fundamental changes regarding Village Government, Government Regulation no. 43 of 2014 concerning Amendments to Government Regulation no. 72 of 2005 concerning Villages.

Village Government and BPD are the lowest government structures that directly interact with the community. Implementation and development in villages is aimed at improving the standard of living and welfare of the community through the establishment of policies, programs, and activities that are the main problems and priority needs of the community. It can be concluded that the rationale for regulating the Village Government is diversity, participation, genuine autonomy, democratization, and community empowerment (Sarundajang, 2002).

The position, duties, and functions of the Village Head are as head of government in the village, who is directly under the Regent and is responsible to the Regent through the Camat. The Village Head has the function of leading the administration of government, development, and community services. The Village Head has the task of carrying out government, development, and community affairs as well as other tasks delegated to the village.

In carrying out his duties, the Village Head has the authority to: Lead the implementation of village government based on policies determined by the BPD; Submit draft Village Regulations; Establish Village Regulations that have been approved by the BPD; Prepare and submit a draft Village Regulation regarding the Village APB to be discussed and adopted with the BPD; Fostering village community life; Fostering the village economy; Coordinating village development in a participatory manner; Represents his village inside and outside the court and can appoint a legal representative to represent him by statutory regulations; and Carry out other authorities by statutory regulations.

BPD serves as an element of village government administration. The BPD has the functions of: Formulating and enacting Village Regulations together with the Village Head; Accommodating and channeling community aspirations; and protecting and preserving the traditions that live and develop in the village. The BPD has the authority to: Discuss draft village regulations with the village head; Carry out supervision over the implementation of Village Regulations and Village Head Regulations; Propose the appointment and dismissal of the village head; Form a village head election committee; Explore, accommodate, collect, formulate and channel community aspirations; and Developing BPD rules and regulations.

To implement the authority it has to regulate and manage the interests of the community, a Village Consultative Body (BPD) was formed in the Village as a legislative institution and forum that functions to accommodate and channel community aspirations. This institution is essentially a working partner of the Village Government which has an equal position in carrying out government affairs, development, and community empowerment.

In establishing village regulations, the BPD and the village head both have very important roles, including the BPD approving the issuance of village regulations, the village head signing the village regulations, the BPD making an official report regarding the village regulations that have

been determined and the BPD socializing the village regulations that have been approved. to the community through the Head of the RT to be known and obeyed and also to determine the start date for implementation (Rodhiyah, S., & Harir, M. 2016)

The Village Consultative Body (BPD) can draft Village Regulations which together with the Village Government are determined to become Village Regulations. In this case, the BPD as a supervisory institution must control the implementation of village regulations, the village income and expenditure budget (APBDes), and the running of the village government.

The results that will be presented are an analysis of the Village Consultative Body, Village Government, and the community in the Village. The data obtained was based on interviews with informants, key informants, and complementary informants. The results of this research will include characteristics of informants, community observations regarding the role of the Village Consultative Body in carrying out its supervisory duties over the Village government, more specifically the Village government, which relates to the obstacles experienced by the Village Consultative Body in carrying out its duties of accommodating community aspirations, designing and determining Village income and expenditure budget, as well as establishing Village regulations.

In implementing village regulations, the Village Consultative Body (BPD) also carries out control or supervision of village regulations. The implementation of supervision of Village Regulations referred to here is the implementation of supervision of the APBDes and RPJMDes which are used as village regulations and also supervision of Village Head decisions.

In establishing village regulations, the BPD and village head both have very important roles, including the following:

- a) BPD approves the issuance of Village Regulations;
- b) The Village Head signs the Village Regulation;
- c) BPD prepares minutes regarding newly established Village Regulations; And
- d) The BPD socializes the Village Regulations that have been approved by the community through the Head of the Neighborhood Unit (RT) so that they are known and obeyed and also determines the start date for implementation.

However, in the implementation in the field, the authors examined carefully from interviews with BPD members in Jaranguda Village that only the Chairman of the Village Consultative Body carried out his role, namely making visits to the community to accommodate aspirations and even then only face to face, so it can be concluded that the collection of community aspirations was not comprehensive and mature so The channeling of community aspirations which will be stated in village regulations is not fully representative of the needs of the entire community.

In forming a village regulation, it must not conflict with the public interest, higher laws and regulations, or with other similar village regulations. This is intended to harmonize and synchronize these norms. Harmonization and synchronization of Village Regulations is necessary so that the Village Regulations are obeyed by the community concerned, therefore the formation of Village Regulations must also pay attention to the principles/principles of good laws and regulations.

### **The Formation of Village Regulations is Viewed from the Principles of Formation of Legislative Regulations**

The birth of Village Law Number 6 of 2014 was a breath of fresh air for the development of village government. The authority and role of villages become more autonomous, in general, village laws have great implications for the function and management of resources owned by villages, such as budget sources, village income, and other sources that are potentially owned by villages. One of the most important authorities possessed by the village as a government structure is the formulation of village regulations. The village head and the Village Consultative Body (BPD) jointly discuss the draft and establish village regulations which are part of the policy and

regulatory framework for governance and village development. Where this can be referred to in Law No. 23 of 2004 and Minister of Home Affairs Regulation No. 110 of 2016.

The preparation of village regulations is a form of elaboration of the authority inherent in the village, of course, based on the conditions and needs of the local village community, apart from that, it also refers to positive law or higher statutory regulations. Therefore, as a legal product, village regulations must not conflict with higher regulations and must not conflict with the values of decency and public order.

Government affairs which are the authority of the village include existing government affairs based on the village's original rights, government affairs which are the authority of the district/city whose regulation is handed over to the village, assistance tasks from the government, provincial government and/or district/city government and other government affairs which according to statutory regulations is handed over to the village (Wijayanto, DE 2014).

As a binding legal product, village regulations should be formed in a good and correct legal drafting process so that the implementation of these village regulations can bring benefits to the local community, it is important to accommodate community aspirations and proposals as a form of community participation in the process of drafting village regulations (Sitorus, 2007).

**Table 2. The Position of Village Regulations is Viewed from the Related Legislation**

No	Legal basis	Position of Village Regulations
1.	Law No. 10 of 2004*) (Article 7 paragraph (2) letter c)	Including the types and hierarchy of statutory regulations, and parts of regional regulations.
2.	UU no. 32 of 2004 *) (Articles 209, 211 and 212)	It is acknowledged that there are village regulations made by the Village Consultative Body together with the village head but does not explain the position of village regulations.
3.	UU no. 12 of 2011 (Article 8)	It is not included in the hierarchy of statutory regulations but is one of the statutory regulations whose existence is recognized and has binding legal force as long as it is ordered by higher statutory regulations or is formed based on authority.
4.	UU no. 6 of 2014 (Article 1 number 7)	As a statutory regulation stipulated by the village head after discussion and approval by the BPD.
5.	UU no. 23 of 2014	Not accommodated, only regulations regarding villages.
6.	PP No. 43 of 2014 Articles 83 to Article 84	It is not accommodated, it only regulates the procedures for drafting village regulations.

\*) is no longer valid.

From the table above, it can be seen that village regulations can be seen from 2 (two) aspects, namely as a legal product and a political product. Law Number 10 of 2004 concerning the Formation of Legislative Regulations and Law Number 12 of 2011 concerning the Formation of Legislative Regulations views village regulations as legal products, Law no. 32 of 2004 concerning Regional Government views village regulations as political products, not legal products.

Meanwhile, Law Number 6 of 2014 looks at village regulations at the same time as having two sides, both as a legal product and as a political product. UU no. 23 of 2014 concerning Regional Government does not accommodate the position of village regulations. As a derivative of Law no. 6 of 2014, PP 43 of 2014 concerning Implementing Regulations of Law no. 6 of 2014 concerning Villages views Village Regulations as legal products but focuses more on village regulations as political products (procedures for drafting village regulations).

Based on the concept of the principles of forming statutory regulations and Article 5 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the Community Service

Team inventoried these legal principles as legal principles in the process of forming Village Regulations with a description as follows:

- a) Clarity of Goals; The formation of Village Regulations has a clear objective, namely to regulate all matters relating to village life.
- b) Authorized Institution/Official; Village Regulations are formed by the Village Head and the Village Consultative Body through a formation mechanism including planning, drafting, discussing, determining, promulgating, and disseminating information.
- c) Correspondence between Type, Hierarchy (Order), and Content; Village regulations in essence must not conflict with higher laws and regulations (*lex superior derogat lex inferior*) in the context of the hierarchy (order) of laws and regulations. Apart from that, the preparation of each norm (article) in the Draft Village Regulations must be systematic and related to each other.
- d) Executable; Village regulations that have been promulgated in the Village Gazette must be implemented and enforced in the administration of village government and community life.
- e) Utility and Usability: The purpose of establishing Village Regulations is that their existence is very necessary and beneficial for the administration of the village government and the community.
- f) Clarity of Formulation; The formation of Village Regulations must fulfill the stages of forming a statutory regulation.
- g) Openness; Public participation in the formation of laws and regulations is a manifestation of the implementation of the principle of openness which is one of the principles in the formation of good laws and regulations (National Legal Development Agency-Ministry of Law and Human Rights Jalan Mayjen Sutoyo Number & Timur, 2012). The formation of Village Regulations starting from the planning, drafting, discussion, determination, promulgation, and dissemination of information must be transparent (openness) by involving the participation of the village community.

Based on Minister of Home Affairs Regulation Number 111 of 2014 regarding technical guidelines for the formation of village regulations, it describes the mechanism for issuing village regulations. The stages consist of planning, preparation, discussion, determination, and dissemination. At the planning stage, the village head and the BPD express the planning in the village government's work plan. Where community institutions, traditional institutions, youth groups, and other village institutions can provide input to the village government and/or BPD to enter the planning stage of drafting village regulations.

Article 1 number 1 of Law no. 12 of 2011 concerning the Formation of Legislative Regulations states that the formation of statutory regulations is the creation of statutory regulations which include the stages of planning, drafting, discussing, ratifying or determining, and promulgating. Furthermore, village regulations are in the process of being formed as political products based on Law No. 6 of 2014 concerning Villages in conjunction with PP No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages as follows:

- 1) Planning Stages; Proposals for village regulations can be submitted by the Village Head (article 26 paragraph (2) Law No. 6 of 2014) and the Village Consultative Body (BPD) (Article 62 letter a Law No. 6 of 2014 in conjunction with Article 83 paragraph (1) and paragraph (2) PP 43 of 2014); Draft village regulations must be consulted with village communities (article 69 paragraph (9) Law No. 6 of 2014) and village communities have the right to provide input on draft village regulations (article 69 paragraph (10) Law No. 6 of 2014 in conjunction with Article 83 paragraph (3) PP No.43 of 2014).
- 2) Discussion Stages; The draft Village Regulations are discussed by the village head and BPD (article 55 letter a of Law NO. 6 of 2014 in conjunction with Article 83 paragraph (4) PP No. 43 of 2014).

- 3) Determination Stage; Village regulations are stipulated by the village head (Article 69 paragraph (3) Law No. 6 of 2014) in conjunction with Article 84 paragraphs (1) and (2) PP No. 43 of 2014).
- 4) Invitation Stages; Village Regulations are promulgated in the Village Gazette and Village News by the Village Secretary (Article 69 paragraph (11) Law No. 6 of 2011 in conjunction with Article 84 paragraph (3) PP No. 43 of 2014).

By paying attention to the description above, it can be concluded that the content of village regulations cannot be separated from the attribution of authority in the form of a description of the various authorities that villages have based on Law No. 6 of 2014 concerning Villages and delegation authority concerning higher laws and regulations.

Based on Article 19 of Law no. 6 of 2014 concerning Villages, village authority includes authority based on rights of origin, village-scale local authority, authority assigned by the government, provincial government, district/city government; and other authorities assigned by the government, provincial government, district/city government.

These four village authorities can be described in village regulations. In other words, the content of village regulations includes a description of the four village authorities. To determine normatively, the village secretary's village regulations are then promulgated in the village gazette. Village regulations are declared to come into force and have binding legal force from the moment they are promulgated. After promulgation, dissemination was carried out by the village government and BPD to provide information and/or obtain input from the community and stakeholders.

The stages of planning village regulations and planning regional regulations have comparisons due to the following differences, namely: a) planning regional regulations named Propemperda is planned for 1 (one) year, while Planning Village Regulations named Village Government Work Plan does not have a period. This can be determined through village deliberations, b) Draft Regional Regulation proposals can come from the initiative of the DPRD and the Legal Bureau/Section through the SKPD Pemrakarsa, while proposals for Ranperdes come from the BPD in consultation with the community and the Village as well as proposals from Community Institutions, Village Institutions, and other Community Institutions through the Village Head and/or BPD (Putri, LS 2018).

## **CONCLUSION**

The role of the Village Consultative Body is to establish village regulations together with the Village Head and accommodate and channel community aspirations, however, the role of BPD Krandon is not optimal enough as an extension of the village community because the village regulations that have been formed in the last two years do not reflect community needs and community expectations in building sustainable prosperity. equally. The position of village regulations can be seen from 2 (two) aspects, namely as a legal product and a political product. Law Number 10 of 2004 and Law Number 12 of 2011 view village regulations as legal products, and Law No. 32 of 2004 views village regulations as political products, not legal products. Meanwhile, Law number 6 of 2014 looks at village regulations at the same time as having two sides, both as a legal product and as a political product. UU no. 23 of 2014 concerning Regional Government does not accommodate the position of village regulations. As a derivative of Law no. 6 of 2014, PP 43 of 2014 concerning Implementing Regulations of Law no. 6 of 2014 concerning Villages views Village Regulations as legal products but focuses more on village regulations as political products (procedures for drafting village regulations).

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