

## FORMING VILLAGE REGULATIONS IN SUPPORTING GOVERNANCE VILLAGE GOVERNMENT

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### Abstract

Determination of Village Regulations is an elaboration of the various authorities owned by the Village referring to the provisions of higher laws and regulations. To optimize village governance, it is necessary to increase the knowledge and skills of the Village Government regarding the authority and form of village regulations so that they are village regulations. The research method used is normative research with a statutory and conceptual approach. Perdes are a form of legislation which is a further elaboration of laws and regulations with a higher position which are formed in accordance with statutory regulations and taking into account the social conditions of the local village community. Formation of village regulations in support of governance village government through stages. The first step consists of the planning stage, the preparation stage, the discussion stage: the determination and promulgation stage and the socialization stage, then the second step is evaluation and clarification.

**Keywords:** Regulation; Village; Government.

### BACKGROUND OF THE PROBLEM

That Law 6/2014 was drafted in the spirit of implementing the mandate of the 1945 Constitution of the Republic of Indonesia, as stated in the preamble to Law Number 6 of 2014 concerning Villages (hereinafter referred to as Law 6/2014) that villages have origin rights and traditional rights in regulating and managing community interests and play a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia.

The principle of recognition and the direction of subsidiarity are the principles contained in UU 6/2014 as a natural form of the Village can carry out governance, namely the functions of government, finance, the stipulation of village regulations and authorities determined by statutory regulations.<sup>1</sup>

Historically the Village was the forerunner to the formation of political society and government in Indonesia long before this nation-state was formed. Social structures such as villages, indigenous peoples, and so on have become social institutions with significant positions. The Village is a highly autonomous institution with its traditions, customs and laws and is relatively independent. This is shown by the high level of diversity that makes the Village perhaps the most concrete form of the nation.<sup>2</sup>

Only during the reform era did the idea emerge to empower villages through Law Number 22 of 1999 concerning Regional Government replaced with Law Number 32 of 2004 concerning

Regional Government. <sup>3</sup>This law seeks to restore the concept and form of the Village to its origins which needed to be recognized in the previous law. During the validity period of Law Number 32 of 2004, the authority to regulate and manage village-scale government functions was referred to as (remaining) authority which was not or had not been implemented by supra-village (district/city) governments. <sup>4</sup>

Furthermore, the development of village government develops along with the development of the implementation of the regional autonomy system in Indonesia. This is because the principles of regional autonomy are very suitable for developing village governance. Regional autonomy is the right, authority and obligation of an autonomous region to regulate and manage its government affairs and the local community's interests by statutory regulations. Administration village government which enters the round new this is accompanied by the publication of Law 6/2014, which is no longer regulated in Law Number 32 of 2004 concerning Regional Government.

Talking about village development cannot be separated from the existence of problems, namely: <sup>5</sup>

- a. The decline in rural poverty was only 0.3% per year in 2014-2011
- b. Poverty in villages is still 12.85% (15.15 million people) in March 2019
- c. The increase in per capita income for villagers is only 6% per year
- d. Towns with public transportation in 2018, only 64.52%
- e. The education level of workers in villages who do not attend school until they graduate from elementary school is still 69%
- f. Three thousand nine hundred nine rural areas have yet to be developed according to the leading commodities.

The problems faced in the outline Village Government Development Service for Community and Village Empowerment of the Province of South Sulawesi is <sup>6</sup>

- a. The need for more understanding and capacity of village officials regarding the implementation of Law No. 23 of 2014 concerning Regional Government and Law No. 6 2014 concerning Villages. As a result, these laws and regulations cannot be implemented optimally;
- b. Not yet the optimal performance of apparatus (knowledge, attitudes and skills) in carrying out their duties and functions in the village government development, so the goal of village institutional arrangement has yet to be achieved.
- c. The performance of district government officials could have been more optimal in managing and institutionalizing villages and traditional villages.

Determination of Village Regulations is an elaboration of the various authorities owned by the Village referring to the provisions of higher laws and regulations. As a legal product, Village Regulations may not conflict with more increased rules and may not be detrimental to the

public interest, namely:<sup>7</sup>

- a. disruption of harmony among members of society;
- b. disruption of access to public services;
- c. disturbing public peace and order;
- d. disruption of economic activities to improve the welfare of the Village community; And
- e. discrimination against ethnicity, religion and belief, race, intergroup, and gender.

The village authorities refer to Article 19 of Law 6/2014 covering:

- a. Authority based on origin rights;
- b. Village-scale local authorities;
- c. Officer assigned by the Government, Provincial Regional Government, or Regency/City Regional Government; And
- d. Other authorities are assigned by the Government, Provincial Regional Government, or Regency/City Regional Government per the provisions of laws and regulations.

It further says in Article 20 of Law 6/2014 that the exercise of authority based on origin rights and village-scale local authority as referred to in Article 19 letters a and b is regulated and managed by the Village, while letters c and d Article 19 Law 6/2014 only managed by the Village, so that it can be said that village authority which is the object of regulation of village regulations is authority based on origin rights and village-scale local authority, this is then emphasized in Articles 21 and Article 24 of the Regulations of the Minister of Villages, Development of Disadvantaged Regions, and Republican Transmigration Indonesia Number 1 of 2015 concerning Guidelines for Authority Based on Origin Rights and Village-Scale Local Authority (hereinafter abbreviated as Permendes 1/2015) that authority based on origin rights and Village-scale local authority is stipulated by Village Regulations which then become the basis for policies, programs and Village administration in the field of Village Government administration, implementation of Village Development, Village Community Development, and Village Community Empowerment.

In such a position, it is undeniable that village regulations have an important role. Not only because it is the most important juridical instrument for the village government to carry out its functions and duties but because it has an ideal position in realizing the implementation of village governance. Village regulations are also assumed to be not only a collection of norms but an actualization of the will of community groups so that they have a strategic position.

To optimize village governance, it is necessary to increase the knowledge and skills possessed by the Village Government regarding the authority and form of village regulations so that village regulations, on the other hand, the accountability of local scale policymakers must be qualified so that the stipulated Village Regulations can make villages become independent, innovative and prosperous and touches all levels of the village community.

## RESEARCH METHOD

The research conducted in this research is normative legal research. The approach used in this paper is the statutory approach *and* the conceptual *approach*.

## RESULTS AND DISCUSSION

The basis for the authority to form legislation includes two foundations of authority, namely:<sup>8</sup>

### 1) The foundation of formal authority

The foundation of this formal authority is that the formation of laws and regulations must be based on provisions that give power to the authorized institution or official to form these laws and regulations.

### 2) The foundation of material authority

The basis of this material authority is that the formation of laws and regulations must be based on the provisions of laws and regulations that are higher or equivalent, which give authority to form such laws and regulations from the point of view of the content material.

In the study of law, there are at least 3 factors that become parameters for a law to apply properly, namely having a basis for juridical, sociological, and philosophical validity.<sup>9</sup> The process of drafting legislation includes various stages of completion, such as the level of preparation, determination, implementation, evaluation and reintegration of finished products. A drafter of legislation is required to have adequate knowledge of the socio-cultural, socio-economic and socio-political conditions of society. The process of establishing laws and regulations requires good knowledge and understanding of the procedures and procedures outlined in the applicable governance system. The phenomenon that is happening now is that there are many laws and regulations that need to be in accordance with the conditions of society.<sup>10</sup>

A. Hamid S. Attamimi first introduced the term law content material as a translation of *het onderwerp* in Thorbecke's expression *het eigennarding onderwerp* into Indonesian with the term content material. Attami says:<sup>11</sup>

"... in this paper, the author introduces for the first time the term content material. The word content material was first introduced by the author as a substitute for the Dutch word *het onderwerp* in Thorbecke's expression *het eigennarding der were*. The author translates it with specific content material from the law, namely explicit regulatory material, which is only and solely contained in the law so that it becomes the content material of the law.

Bagir Manan defines content material as content that is in accordance with the form of certain laws and regulations.<sup>12</sup> Bagir Manan further stated that until now, there had never been a single provision or teaching that confirmed the content of a statutory regulation. The education regarding content material is more general principles than material rules. According to Permendagri Number 111 Year 2014 concerning Technical Guidelines for Regulations in Villages, it is determined that the types of laws and regulations at the village level include: a.)

Village Regulations; b.) Rules with the Village Head; and c.) Village Head Regulation.

Law Number 12 of 2011 concerning the Formation of Invitation Laws has been stipulated to realize an orderly order in the field of Laws and Regulations in Indonesia. The level of laws and regulations can be seen based on Article 7 paragraph (1) of Law Number 2011, which states that the types and hierarchy of laws and regulations consist of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), Decree of the People's Consultative Assembly (TAP MPR). ), Laws/Government Regulations instead of Laws (UU/PERPPU), Government Regulations, Presidential Regulations, Provincial Regulations and Regency Regional Regulations.

Perdes born as a result of dominating or subordinated relationships will give birth to repressive Perdes. A repressive Perdes is a Perdes that serves power or a repressive social order; it does not pay attention to the people's interests. Repressive law shows its character as follows (Nonet and Selznick, 1978;13):

1. Legal institutions can be directly accessed by political power; the law is identified with the state and used as a tool to achieve state goals;
2. Lasting power;
3. Control and law enforcement agencies become autonomous centers of power, isolated from social facts;
4. The mushrooming of two-faced laws, institutionalizing classes in the socio-economic order of society;
5. Criminal law and court decisions reflect the dominant values of a class.

Based on this, the formation of regional regulations needs to pay attention to the requirements of a good law regarding its formation's principles, substance and technique. According to Pantja Astawa, the things that need to be considered in forming Perdes are:<sup>13</sup>

1. Requirements that must be met juridically, philosophically or sociologically.
2. Substance regulated in Perdes.

Technically, the formation of village regulations must also meet the technical requirements for their formation, as stipulated in the Minister of Home Affairs Regulation Number 29 of 2006 concerning Guidelines for the Formation and Mechanism of Compiling Village Regulations.

The thing that must be maintained in the administration of village administration in the process of forming village regulations is the realization of democratization in village communities; as stated by Muhammad Hatta that the democracy developed does not imitate Western democracy as a whole but a democracy that is rooted in the character of indigenous Indonesian people. Namely, family democracy based on deliberation. The implementation of participation in the performance of village meetings is guaranteed at a very technical level. This is in accordance with the provisions contained in Article 3 paragraph (3) letter e of Permendesa Number 2 of 2015, stipulating that "every element of society has the right to receive shelter and protection

from disturbances, threats and pressure during village meetings. The aspect of community participation in making a decision in the administration of village government must be involved; this is as stipulated in Law Number 6 of 2014, that a "Village Consultative Body is an institution that shows a representation of village residents." Based on this, the Village Consultative Body as a representative of the village community in the process of forming village regulations, should pay attention to community participation.<sup>14</sup>

The Village Consultative Body in carrying out its legislative functions at the village level in preparing Village Regulations, namely:<sup>15</sup>

- 1) Resource factors include not all BPD members having the ability to draft Village Regulations, there being no special training for drafting Village Regulations, and there being no budget or funds allocated for drafting Village Regulations. These resources can take many forms, and competitive relationships can vary; an organization or institution emphasizes the acquisition or appropriation of the resources needed appropriately to produce maximum results.
- 2) Innovation factors include the low creativity of the BPD and village officials in exploring community aspirations in drafting Village Regulations. Innovation is part of management policies and practices that can expedite all activities with reasonable policies and ideas toward the targets.
- 3) Organizational adaptation factors, which include the lack of outreach to the community at each stage of drafting Village Regulations and the BPD, still need to be closer to the community. Found that adaptation requires organizations to be able to adapt to their environment for the success and effectiveness of their organization.

Village community participation in village meetings and the preparation of village regulations are a form of community service and obligation to their Village, as well as a form of community obligation and service to the nation and state through voluntary actions. The participation of village communities in administering village governance, in terms of law enforcement as an effort to create the sovereignty of the Unitary State of the Republic of Indonesia, is part of strengthening national resilience, especially in the context of protecting the nation's wealth of resources as well as strengthening the ideology of Pancasila in the practice of living as a nation and state. In detail, the arrangements regarding the obligation to consult the draft village regulations with village communities are regulated in Article 6 of Permendagri Number 111 of 2014 concerning Technical Guidelines for Village Regulations in the following stages:

1. The Village Government initiated the drafting of Village Regulations.
2. The draft Village Regulations that have been prepared must be consulted with the village community and can be consulted with the sub-district head for input.
3. As referred to in paragraph (2), the draft Village Regulations that were consulted prioritize the community or community groups that are directly related to the substance of the regulatory material.

4. Input from the village community and the sub-district head, as referred to in paragraph (2), is used by the Village Government to follow up on the drafting of Village Regulations .
5. The draft Village Regulations that have been consulted, as referred to in paragraph (3), are submitted by the Village Head to the BPD for discussion and mutual agreement. Based on these arrangements, the process of forming village regulations that must be considered is the existence of community participation through the obligation to consult the draft village regulations by the village administration to the community. However, in practice, community participation in the process of forming village regulations still needs to be improved. This happened because so far, the community generally trusted the Village Head and the Village Consultative Body in forming village regulations and other things that were the main reason for the low participation of village communities. After all, there was still a lot of work that had to be done by village communities to meet the economic needs of their families. , compared to participating in the formation of village regulations.

The stages of forming village regulations carried out by the village head together with the Village Consultative Body are explained in detail in Permendagri No. 111 of 2014 concerning Technical Guidelines for Village Regulations, with the following stages:

1. First step.

a. Planning Stage:

- 1) The draft is first determined by the village head and the Village Consultative Body in the village government work plan.
- 2) Community institutions, customary institutions, and other village institutions can provide input.

b. Compilation Stage:

- 1) Village regulations can be initiated by the village government; the draft must be consulted with the community or related community groups or sub-district heads to obtain input, then these inputs are conferred with the Village Consultative Body.
- 2) The Village Consultative Body can submit draft village regulations being proposed by members of the Village Consultative Council to the leadership of the Village Consultative Body.

c. Discussion Stage:

- 1) After the draft has been finalized as a draft, the Village Consultative Body must discuss the draft by inviting the village head.
- 2) Suppose there are two proposals for draft village regulations, namely proposals from the village head and the Village Consultative Council. In that case, the priority for discussion is the proposal for draft village regulations from the Village Consultative Council.
- 3) The village head's draft proposal is used as a comparison

d. Determination and Promulgation Stage:

- 1) After the draft village regulations have been agreed upon and enacted, the village regulations are ratified administratively by the village administration.
- 2) Then promulgated in the Village Gazette.

e. Socialization Stage:

- 1) Socialization is intended to provide information and/or obtain community and stakeholder input.
- 2) The village administration and BPD carried out this socialization.
- 3) It is carried out from the determination of the plan for drafting, discussing the draft to the promulgation of village regulations to provide information and/or obtain input

1. Second step:

a. Evaluation:

- 1) The draft village regulation that has been discussed and agreed upon by the village head and the BPD is submitted to the Regent/Mayor through the cam.
- 2) The village regulation applies automatically if the Regent/Mayor does not provide evaluation results within a certain time limit.
- 3) If the Regent/Mayor has provided evaluation results, the village head is obliged to correct them by inviting the BPD.
- 4) If the village head does not follow up on the evaluation results of the Regent/Mayor, then the Regent/Mayor can cancel the village regulations with a Regent/Mayor decision.

b. Clarification:

- 1) The Regent/Mayor can form a clarification team;
- 2) This clarification includes whether the draft village regulation is by the public interest and higher statutory provisions or not;
- 3) If appropriate, the Regent/Mayor can issue a letter of clarification results. However, if it needs to be corrected, the Regent/Mayor can cancel it.

## CONCLUSION

Perdes are a form of legislation which is a further elaboration of laws and regulations with a higher position which are formed by statutory regulations and taking into account the social conditions of the local village community. Formation of village regulations in support of governance village government through stages. The first step consists of the planning stage, the preparation stage, the discussion stage: the determination and promulgation stage and the socialization stage. The second step is evaluation and clarification



**Footnotes:**

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