

**LAW NUMBER 6 YEAR 2014 ABOUT VILLAGE REGULATION AS A LEX
SPECIALIST IN INDONESIAN NATIONAL LAW POLITICS**

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Abstract

villages, since the enactment of Law Number 6 of 2014 concerning Villages, are getting stronger and exist as autonomous regions with the authority to regulate and manage their own affairs even down to budget and welfare matters. The law clearly states village regulations as statutory regulations stipulated by the Village Head after being discussed and agreed upon with the Village Consultative Body. This can be thought of as a small constitution where the Village looks like a small state that has its own government, they are ready with a village head who carries out the rules and has the character of an executive and also a deliberative council that looks like a village parliament that enforces these regulations and it is like a legislative body. This can lead to legal uncertainty because of the many interpretations, especially the interpretation of Article 8 of Law Number 12 Year 2011 regarding the status, position and existence of Village Regulations in the hierarchy of statutory regulations in Indonesia. Furthermore, it has an impact on village government, namely the existence of legal uncertainty, on the one hand to carry out the wheels of government, the village government must have a legal basis, namely village regulations, but on the other hand, village regulations are no longer listed in the hierarchy of State statutory regulations.

Key words : Village Law, Legal Number 06 year 2014, Village political

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INTRODUCTION

Village or what is called by another name is the original government structure of the Indonesian nation that has existed since ancient times, even before the Dutch colonialism Village is an embryo for the formation of a political community long before the formation of the Indonesian state which has its own traditions, customs, laws and is relatively independent. So that the legal system applied in the village is originally Indonesian and not a concept adopted from outside.² Before the formation of the Unitary State of the Republic of Indonesia, the affairs managed by the village had been passed from generation to generation as norms or had been institutionalized into a form of binding law and had to be obeyed jointly by the village community, otherwise known as customary law. Apart from that, historically the village area is the oldest autonomous region³. The authority and obligation of a village to exercise its autonomy rights are numerous, except for a few restrictions stipulated in the regulations of higher central and regional powers, so the village holds full autonomy rights.

Constitutionally, the existence of villages and their rights of origin after the proclamation of 17 August 1945, was confirmed in the 1945 Constitution of the Republic of Indonesia (before the Amendment). This can be seen in the explanation of Article 18 of the 1945 Constitution of the Republic of Indonesia (before the Amendment), which reads "In the territory of the Indonesian State there are approximately 250 Zelfbesturende landschappen and Volksgemeenschappen, such as villages in Java and Bali, Nagari in Minangkabau, hamlets and clans in Palembang, and so on. These regions have an original composition and can therefore be considered as special regions. The Republic of Indonesia respects the position of these special regions

² Extracted from Ateng Syafruddin and Suprin Na'a, Village Republic (Bandung: Alumni, 2010), p. 4-6.

³ Kartohadikoesoemo, Soetardjo, Desa, PN Balai Pustaka. Jakarta. 1984. p. 182

and all state regulations regarding these areas will remember the rights of the origin of the area ”.

Through amendments to the 1945 Constitution, recognizing the existence of the village as a customary law community unit is reinforced through the provisions in Article 18B paragraph (2) which reads "The state recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with developments. society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law ”. The administration of village governance underwent a fundamental change through the revision of Law Number 32 of 2004 which was replaced by Law Number 6 of 2014 concerning Villages. The birth of Law Number 6 of 2014 concerning Villages changes the paradigm and political attitudes towards recognition and respect for villages and the state mandating authority and development to villages as well as redistribution of state resources to villages, so that villages have a more sovereign, bigger, and more sovereign position and role. broad in managing and managing the village. The existence of the village as a government entity that is directly related to the community is increasingly experiencing normative strengthening seen from various aspects, namely the position of the village, the type of village, the village authority, the implementation of village government, the rights of the village community, village regulations, finance and village assets, village development and so on. Thus, Law no. 6/2014 is sufficient to provide fresh air for the future of village independence.⁴

Government Regulation Number 43 of 2014 as an implementing regulation for the Village Law places Village Regulations as the main and spearhead instrument in village administration in addition to village head regulations and Joint Regulations for Village Heads and BPD. Ironically, in fact, Law No.12 of 2011 concerning the Formation of Legislative Regulations which is an improvement of Law Number 10 of 2004 does not mention the type and hierarchy of these village regulations in its

⁴ Didik G. Suharto, Building Village Independence (Yogyakarta: Student Library, 2016), p. 25.

articles. In Law no. 12 of 2011 is stated in Chapter III regarding the types and hierarchy of laws and regulations, which consists of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws / Government Regulations in Lieu of Laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulation; and
- g. Regency / City Regional Regulations.

Whereas in Article 8, it only mentions regulations stipulated by the Village Head or those at the same level which are ambiguous. The existence of this change can certainly create a dilemma for village government, on the one hand, to carry out the wheels of government, the village government must have a legal basis, namely village regulations, but on the other hand, village regulations are no longer listed in the hierarchy of statutory regulations.⁵ In this paper, we will examine further the status of village regulations as statutory regulations and their position in the hierarchy of statutory regulations in Indonesia. Based on the explanation and predecessors above, the problem examined in this study is how the actual existence or existence and position of village regulations in the national legal system of the Republic of Indonesia.

RESEARCH METHODS

Normative law research uses normative case studies in the form of legal behavior products, for example examining laws. The subject of the study is the law conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal findings in concrete cases, legal systematic, level of synchronization, comparative law and legal history. Based on the

⁵ Ni'matul Huda, Village Government Law in the Indonesian Constitution from Independence to the Reform Era, Setara Press, Malang, 2015, p. 262

explanation above, the writer decided to use normative legal research method to research and write this thesis discussion as a legal research method. The use of normative research methods in the research effort and writing of this thesis is based on the suitability of the theory with the research method required by the author.

RESEARCH APPROACH

In legal / legal research, there are several approaches, with this approach the researcher will get information from various aspects of the issue being tried to find answers. The approach method in this research is the statutory regulation approach (statue approach). A normative research must certainly use a statutory approach, because what will be examined are various legal rules that become the focus as well as the central theme of a study.

PRIMARY DATA SOURCES

Primary legal materials, namely all legal materials / materials that have a legally binding position. Primary legal materials consist of laws and regulations related to research and secondary legal materials, namely in the form of materials or materials related to and explaining the problems of primary legal materials consisting of books and literature related to the main regulations of village regulations.

DATA COLLECTION TECHNIQUE

Legal materials are collected through an inventory procedure and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. Therefore, the data collection technique used in this research is literature study. Literature study is carried out by reading, analyzing, taking notes, making reviews of library materials that are related to village regulations.

DATA ANALYSIS ENGINEERING

In normative legal research, data processing is carried out by means of a systematic method of written legal materials. Systematization means making a classification of these legal materials to facilitate analysis and construction work. 3

Activities carried out in the analysis of normative legal research data by means of the data obtained are analyzed descriptively qualitatively, namely the analysis of data that cannot be calculated. The legal materials obtained are then subject to discussion, examination and grouping into certain parts to be processed into information data. The results of the analysis of legal materials will be interpreted using the interpretation method

(a) systematic;

(b) grammatical; and (c) teleological.

Selection of a systematic interpretation is intended to determine the legal structure in this study. Systematic interpretation (*systematische interpretatie*, *dogmatische interpretatie*) is interpreting by considering other legal texts. If interpreted as articles of a law, the same provisions, especially one principle in other regulations, must also be used as a reference. In this interpretation, looking for the provisions that are in it are interrelated as well as whether the relationship determines the next meaning. However, in an uncodified legal order relationship, referring to the system is possible as long as a systematic character can be assumed (presupposed). Furthermore, grammatical interpretation (what does it linguistically mean?), namely the method of legal interpretation of the meaning of the text in the rule of law.

LITERATURE REVIEW

Before answering the position and existence of the Village Regulation as a legal instrument in the implementation of village governance in the hierarchy of Indonesian legislation, beforehand it is necessary to know the position of the village, the history of village regulation and the objectives of village regulation as part of Indonesian National development in line with the *Nawacita* Concept in the RPJMN. Indonesian constitutional administration, Regulation on Village has undergone several changes since the Colonial Period, namely the *Regeeringsreglement* which was the forerunner of village governance. The history of village regulation before the issuance of Law Number 6 of 2014 concerning Villages, which starts from:

1. Law Number 22 Year 1948 concerning Stipulation of Basic Rules Regarding SelfGovernment in Regions That Have the Right to Manage and Manage Their Own Household;
2. Law Number 1 of 1957 concerning the Principles of Regional Government;
3. Law Number 18 of 1965 concerning the Principles of Regional Government;
4. Law Number 19 Year 1965 concerning Desapraja as a Transitional Form to Accelerate the Realization of Level III Regions throughout the Territories of the Republic of Indonesia;
5. Law Number 5 of 1974 concerning the Principles of Regional Government;
6. Law Number 5 of 1979 concerning Village Government;
7. Law Number 22 Year 1999 regarding Regional Government; and
8. Law Number 32 of 2004 concerning Regional Government.

The birth of Law number 6 of 2014 concerning Villages has changed the paradigm and political attitudes towards recognition and respect for villages and the state mandating authority and development to villages as well as redistribution of state resources to villages, so that villages have a more sovereign, greater position and role. and broad in regulating and managing the village. The birth of Law Number 23 of 2014 concerning Regional Government replacing Law Number 32 of 2004 further strengthens the existence of the village as a government unit that is directly related to the community. Law Number 23 of 2014 defines the village as a legal community unit that has territorial boundaries, which is authorized to regulate and manage the interests of the local community, based on local origins and customs which are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. Thus, strengthening the village is something that cannot be negotiated and becomes a unity in the development of the nation as a whole.

Desa and kelurahan are the two lowest government units with different status. The village is a government unit that is given the right to customary autonomy so that it is a legal entity while the kelurahan is an administrative government unit which is

only an extension of the district / city government. So, the kelurahan is not a legal entity but only as a place for the operation of government services from the district / city government in the local kelurahan. Whereas a village is an area with certain boundaries as a legal community unit (customary) which has the right to regulate and manage local community affairs based on its origin.

In the current reformation era, the position of the village is autonomous, so that it is no longer subordinate to the sub-district. Law Number 32 Year 2004 states that as an autonomous region, villages have the following powers: (1) Authorities already based on the right of village origin, (2) Governmental affairs which fall under the authority of a Regency / City which are given the regulation to the village, (3) Co-administered Tasks from the Government, Provincial Government, and / or Regency / City Government, and (4) Other governmental affairs which by the statutory regulations are submitted to the village.⁶

ChangeThis fundamental regulation related to village governance has implications for the development and dynamics of the village, especially in terms of village governance, from changing the form of a village to a sub-district to issues of regulations regarding rights of origin and village authority. The development of this village regulation also has implications for the level of regional readiness in village development and increasing community participation in the framework of governance in the village.

Based on the description above, it can be seen that legally the village exists as an autonomous region from a legal community unit that has territorial boundaries and is authorized to regulate and administer (autonomous): a. government affairs; and b. interests of the local community, based on:

- 1) community initiatives;

⁶ Moch. Solekhan, Village Administration, Setara, Malang, 2012, p. 79

2) right of origin; and / or

3) traditional rights, which are recognized and respected in the government system of the Republic of Indonesia.

The General Elucidation of Law No. 6/2014, clearly states the objectives of regulating villages, are:

- 1) Provide recognition and respect for the existing Village with diversity before and after the formation of the Republic of Indonesia.
- 2) Provide clarity of status and legal certainty for the Village in the system the state administration of the Republic of Indonesia for the sake of realizing justice for all Indonesian people.
- 3) Preserving and promoting adat

DISCUSSION

The position of Village Regulations in Indonesian Legislation can be analyzed based on the approach to the laws that have been in effect and are currently in effect. UU no. 6 of 2014 concerning Villages states that the establishment of Village Regulations is a description of the various powers that the Village has referring to the provisions of higher laws and regulations. Thus the content of village regulations consists of: the elaboration of the various powers that the village has; and refers to higher laws and regulations.

In line with this, in principle the delegation of authority in the formation of legislation can be divided into 2 (two) forms, namely: Delegation of delegation authority; and Delegation of attribution authority. Delegation of delegation of authority is the delegation of authority to form statutory regulations given by a higher level statutory regulation to similar or lower legislation, whether the delegation is expressly stated or not. Meanwhile, the delegation of attribution authority is the granting of authority to form laws and regulations given by the constitution or law to a state / government institution.

By paying attention to the description above, it can be concluded that the content of village regulations is inseparable from the attribution authority in the form of a description of the various powers that the village has based on Law No. 6 of 2014 concerning Villages and delegation authority with reference to higher laws and regulations. Based on Article 19 of Law no. 6 of 2014 concerning Villages, village authorities include: authority based on rights of origin, village-scale local authority; authorities assigned by the government, provincial governments, district / city governments; and other authorities assigned by the government, provincial government, district / city government. Village authority can be spelled out in village regulations.

Law Number 6 of 2014 concerning Villages states that the district / city government shall carry out identification and inventory of authority based on the rights of origin and local authority at the Village scale by involving the Village. Based on the results of the identification and inventory, the regent / mayor shall stipulate a regent / mayor regulation concerning a list of authorities based on origin rights and village-scale local authority in accordance with the provisions of statutory regulations. The regent / mayor regulation is followed up by the Village Government by stipulating Village regulations concerning authority based on origin rights and village-scale local authority in accordance with local situations, conditions and needs. If the Regency / City Government has not stipulated a regent / mayor regulation regarding village authority based on rights of origin and village-scale local authority, then the village government shall refer to Law no. 6 of 2014 concerning the Village.

The village authority based on the rights of origin is owned by the customary village. Article 103 Law no. 6 of 2014 concerning Villages states that the authority of the basic rights includes: Government Regulation and Implementation based on the original composition. Arrangement and management of ulayat or customary territories. Preservation of the socio-cultural values of the Traditional Village. Customary Dispute Resolution. Implementation of a customary village court peace trial in accordance with

the Legislation. Maintenance of peace and order of customary village communities based on customary law; and Development of customary law life in accordance with the socio-cultural conditions of indigenous peoples.

Article 19 of Law no. 6 of 2014 concerning the Village-scale local authority is the authority to regulate and manage the interests of the village community that have been run by the Village or are capable and effectively run by the Village or that have emerged due to the development of 17 villages and village community initiatives, including boat moorings, village markets, public baths, irrigation canals, environmental sanitation, integrated service posts, art and learning studios, village libraries, village reservoirs, and village roads. Based on Article 22 of Law no. 6 of 2014 concerning Villages, the authorities assigned by the government, provincial government, district / city governments to villages include: Village administration, Village Development Implementation, Village Community Development and Village Community Empowerment.

Fees are provided by the Central Government, Provincial Government, Regency / City Government can assign part of government affairs which become their authority to the Village. Funding for carrying out government affairs assigned to the village by the central government is borne by the APBN. Funding for carrying out Government affairs assigned to the Village by the Provincial Government is borne by the Provincial APBD. Funding for carrying out Government affairs assigned to the Village by the Regency / City Government is borne by the Regency / City APBD.

CONCLUSION

The regulation of village regulations specifically in the Village Law and the mechanism for its formation which is also specifically regulated in the implementing regulations have provided *lex specialis* for village regulations so that their presence is now a necessity in a village government. The legal construction of Village Regulations is regulated in three laws, namely Law Number 22 of 1999 concerning Regional

Government, which was later revoked and replaced by Law Number 32 of 20014 concerning Regional Government, then Law Number 6 of 2014 concerning Villages .

Regulatory Position

Village during the validity period of Law Number 22 Year 1999 regarding

Regional Government, is very strong, where the village has a democratic political institution, namely the Village Representative Body. Village Regulations reemerged in Law Number 6 of 2014 concerning Villages, seeing that village regulations are at once two-sided, both as a legal product and as a village political product, given the authority to carry out the interests of village development in realizing village autonomy.

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