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Procedures for Formation Village Law Products in the Conception of Regional Autonomy: Evidence from Indonesia

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Abstract

The current research aims at finding out the techniques for drafting village regulations and village head regulations as a basis for consideration for the implementation of regional autonomy, and to determine the process of evaluating and determining the implementation of village and village head regulations in the regions. This research used the scientific method to obtain and process the data that has been obtained. To obtain these data, the authors applied library research methods. The research results show that the preparation of Village Regulations and Village Head Regulations as a basis for consideration of the implementation of regional autonomy is regulated in the Regional Government Law, namely, No. 32 of 2004, which was later confirmed in Law No. 10 of 2004 concerning the Formation of Legislation namely, laws and regulations made by village representative bodies or other names together with village heads or other names. Furthermore, Law No. 6 of 2014 concerning villages gives more flexibility to the village government in carrying out village autonomy; in the preamble, it is conveyed that villages have original rights and traditional rights in regulating and managing the interests of the local community and play a role in realizing the ideals of independence and the process of evaluating and determining the implementation of regulations village regulations and village head regulations, based on the principle that village regulations governing village authority based on origin rights and village-scale local authority are supervised by the village community and the village consultative body.

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1. Introduction

Villages have an important role in the progress of a country (Rondinelli, 1983). At present, during the administration of Indonesia President Jokowi, he sees that the role and contribution of the village to the success of national development is the key to the success of the government (Ella, S., & Andari, 2018). To support economic activities and improve infrastructure in the village, the village funds budgeted for in the APBN by President Jokowi's government are increasing yearly. Apart from adequate funding, activities in the village must also be supported by complete village and government officials. The implementation of village government is always based on Pancasila (Indonesia philosophy-based foundation) and the 1945 Constitution as the existence of village regulations (Gumbira, S. W., & Wiwoho, 2019).

The process of forming village regulations is in line with the process of forming laws in Indonesia. In the general process, drafting laws and regulations in Indonesia is currently better known as "bureaucrat-oriented law" because, so far, it has dominated the legal system in Indonesia (Adnyana, 2021). It is time to replace it with more democratic laws, which serve and side with the interests of the people at large, and their drafting is participatory. The process of drafting existing laws and regulations in Indonesia, both normatively and in practice, still tends to be elitist and closed and only provides minimal opportunities for wider public participation. Stakeholders often need to catch up in drafting laws and regulations, even though stakeholders are the parties with the most interest in the birth of a statutory regulation.

In the process of forming laws and regulations, the participation of the wider community in the formation process will complement these laws and regulations through various information submitted to the drafters of the regulations as well as the role of the stakeholders, who are the parties most interested in the birth of a regulation. Invitations must be optimal in the process of drafting these laws and regulations.

Set the rules on legislation in Indonesia, particularly the provisions in Law Number 12 of 2011 concerning the Formation of Legislation (UU No. 12 of 2011) in Article 1 paragraph (1) stipulates that the Formation of Legislation is the making of legislation which includes the stages of planning, preparation, discussion, approval or determination, and promulgation (Widarto, 2016). Furthermore, it is emphasized in Article 1 paragraph (2) that Laws and Regulations are written regulations that contain legally binding norms in general and are formed or determined by state institutions or authorized officials through procedures stipulated in legislation. The 1945 Constitution various laws and regulations in force in Indonesia have stipulated that the legal authority to make and stipulate a legal product of statutory provisions in Indonesia is carried out by the executive and legislative bodies, both at the central level and up to the district and city levels, also including village level (Khozen et al., 2021). Thus, the harmonization of roles in determining a legal product in terms of statutory provisions in Indonesia must be carried out by the executive and legislative bodies, both at the central level and up to the district and city level, including the village level, so that the determination of the legal product is expected to be accepted. All parties fulfill the elements of legal certainty for the products produced.

Thus, to provide legal certainty and to implement village regulations, village and head regulations must be prepared correctly following legal principles and preparation techniques. For this reason, it is necessary to have guidelines for drafting and standardizing the form of village and village head regulations in the drafting process.

2. Materials and Methods

This paper applied the scientific method to obtain and process the data that has been obtained.

To obtain the data, the authors used library research method (Cf. Wildemuth, 2016). Furthermore, the data that has been collected is processed using data processing methods consisting of the following.

1. Induction Method
2. Deduction Method; And
3. Comparison Method

These methods are used following the needs of their use to obtain results that can be accounted for scientifically and scientifically.

3. Results and Discussions

Techniques for Drafting Village Regulations and Village Head Regulations as a Basis for Considerations for the Implementation of Regional Autonomy

Following the principles of decentralization and regional autonomy, villages or other designations are given the authority to regulate and manage the local community's interests based on recognized local origins and customs. In the context of regulating community interests, the village consultative body, together with the village government, draws up village regulations, and the village head draws up implementing regulations, namely village head regulations (Dhimas et al., 2022; Haning et al., 2022).

Village Regulations are a relatively new form of legislation (Kato, 1989); in reality, they are not very popular in the field compared to other forms of legislation. Because it is still relatively new in governance practices at the village level, this regulation is often ignored in the process of making it and its implementation. In fact, many of the government and even people in the villages ignore this Village regulation as the basis for administering governance and development affairs at the village level. Such a fact impacts the lack of attention from the village, sub-district and district or city, and provincial governments in drafting and implementing a Village Regulation.

Village regulations have been regulated in the Law on Regional Government, namely Number 32 of 2004 (Suastika, 2017). However, it has not provided a definition or definition of what village regulations mean. The formulation of village regulations is confirmed in Law Number 10 of 2004 concerning the Establishment of Laws and Regulations, namely laws and regulations made by village representative bodies or other names together with village heads or other names. This definition is also used by Law No. 6 of 2014, which further regulates Villages. Law No. 6 of 2014, article 7 states that the village government cannot simply form a village regulation to elaborate higher statutory regulations if there is no order from statutory regulations or delegation because the original affairs or authority held by the village are very limited.

The village government boundaries were abolished with the passing of Law No. 6 of 2014. Law no. 6 of 2014 concerning villages provides more flexibility to the village government in carrying out village autonomy (Temenggung, 2016). Considering the law, it is stated that the village has the right of origin and traditional rights to regulate and manage the local community's interests and play a role in realizing the ideals of independence. In the course of the constitutional administration of the Republic of Indonesia, the village has developed in various forms so that it needs to be protected and empowered so that it becomes strong, advanced, independent, and democratic so that it can create a strong foundation in carrying out governance and development towards a just, prosperous and prosperous society.

Matecontents that are specifically mentioned in Law No. 6 of 2014 to be stipulated by village regulations are the formation of hamlets or by other names (Article 3), the organizational structure and working procedures of the village government (Article 12), APBDes (Articles 61 and 73) Village Medium-Term Development Plans (Article 64), Management Village Finance (Article 76), Formation of Village-Owned Enterprises (Article 78), and Establishment of Community Institutions (Article 89) (Salim et al., 2017).

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 must have adequate knowledge of society's socio-cultural, socio-economic, and socio-political conditions. Establishing laws and regulations requires good knowledge and understanding of the procedures and procedures outlined in the applicable governance system. The phenomenon happening now is that many laws and regulations are not following the conditions in society.

Law No. 6 of 2014 stipulate that the formation of an ideal village regulation contains an order that district or city regional regulations regulate the guidelines for the formation and mechanism for preparing village regulations. The Ministry of Home Affairs supports this by issuing Minister of Home Affairs Regulation Number 29 of 2006 concerning Guidelines for Forming and Mechanisms for Compiling Village Regulations. However, discussions on village regulations often occur as deviations in the drafting process. The government does not carry out its functions properly. This is because government regulations used as a reference by village communities have problems.

The formation of village regulations requires community participation because this is intended so that the result of the prepared village regulations can fulfill aspects of legal validity and can be implemented according to the purpose for which they were formed (Patten et al., 2015). Community participation can be in the form of input and brainstorming in formulating the substance of village regulations because the power of law and the effectiveness of legislation will occur if it fulfills three main principles, including philosophical, juridical, and sociological. Non-fulfillment of these five elements will result in the inability to apply laws and regulations effectively. Most of the existing legal products only apply legally but do not apply philosophically and sociologically.

The district head is the official who has the authority to cancel village regulations (Dewi et al., 2022). Village regulations should be made, considering the needs and capabilities of the community. Therefore, the process of drafting village regulations should take into account the aspirations of the local village community. For this reason, village and head regulations must be properly drafted following legal principles and preparation techniques. For this reason, it is necessary to have guidelines for drafting and standardizing the form of village regulations and village head regulations.

Village and head regulations must be properly drafted following legal principles and preparation techniques. For this reason, it is necessary to have guidelines for drafting and standardizing the form of village and village head regulations. Antlöv (2003) proposed the framework for the structure of village regulations and village head regulations consists of the following.

a. Naming or title

1. Every village regulation, village head regulation has a name or title;
2. The naming or title of the village regulation, village head regulation, contains information regarding the type, number, year, and name of the regulation or decision being regulated;
3. Names of village regulations and village head regulations are kept short and reflect the contents of village regulations and village head regulations;
4. The title is written in capital letters without ending with punctuation. Example of writing naming or title:

b. Opening

1. The preamble to village regulations consists of the following:
    a. The phrase "By the Grace of God Almighty."
    b. The position of forming village regulations;
    c. Considerations
    d. Legal basis;
    e. The phrase "With the joint approval of the Village Consultative Body and the Village Head."
    f. Decicion
    g. Set

2. The opening of the village head regulation consists of the following;
    a. Phrase "By the Grace of God Almighty."
    b. The position of forming village head regulations;
    c. considerations
    d. Legal basis;
    e. Decicion
    f. Set

c. Body

The body contains all the material formulated in the articles or dictums. The bodies formulated in the articles are types of village and village head regulations that are regulatory *(retelling)*. Description of each body is as follows:

1. Body of village regulations
2. General provisions
3. Regulated material
4. Transitional provisions; (if any) and
5. Closing provisions

If the village regulation has material that has a very broad scope and many articles, then these articles can be grouped into chapters, sections, and paragraphs. The grouping of material into chapters, sections, and paragraphs is done based on similar categories or the scope of the regulated material. The order of group use is as follows:

1. Chapters with chapters, without paragraph sections
2. Chapters with sections of articles without paragraphs
3. Chapters with sections and paragraphs consisting of chapters

The procedure for writing chapters, sections, paragraphs, articles, and paragraphs is written as follows:

1. Chapters are numbered sequentially with Roman numerals, and chapter titles are written in capital letters
2. Sections are given unit numbers with numbers written in capital letters and given titles. The initial letter of the word section, number sequence, and section title are written in capital letters, except for the initial letter of the word particle, which is not at the beginning of the phrase.
3. Paragraphs are numbered sequentially with Arabic numerals and given a title. The first letter of the paragraph title is capital letters, while the other letters after the first letter are lowercase.

4. Article is a unit of rule containing one norm and formulated in one sentence. Village regulation material is better formulated in many short and clear articles than in several long articles containing several paragraphs unless the material which contains several articles forms a series that cannot be separated. Articles are given unit numbers with Arabic numerals, and the word article's initial letter is capital letters.
5. Paragraphs are details of the article; writing is given a unit number with Arabic numerals between brackets punctuation without ending with punctuation. One verse only regulates one thing and is formulated in one sentence.

d. Closing

Closing a village regulation and village head regulation contains the following matters:
1. Formulation of place and date of determination, placed on the right;
2. The position name is written in capital letters, and a comma is marked at the end of the word;
3. Full name of the signing official, written in capital letters without title and rank;
4. Determination of village regulations, village head regulations signed by the village head.

e. Explanation

Sometimes a village regulation or village head regulation requires either a general explanation or an explanation article by article (Wijoyo et al., 2017). The general explanation section usually contains the legal politics behind the issuance of the village regulations or regulations of the village head concerned. In the elucidation section, article by article explains the material of the norms in each article in the body. Things that need to be considered in the Explanation are as follows.
1. Making village regulations, village head regulations so as not to rely on arguments on explanations, but must try to make village regulations, village head regulations that can eliminate doubts in interpretation;
2. The explanatory text is prepared (made) together with the relevant village regulation draft;
3. Explanation functions as an interpretation of certain material;
4. An explanation cannot be used as a legal basis for making other regulations;
5. The title of the Explanation is the same as the title of the village regulations and regulations of the village head concerned;
6. Explanations consist of general explanations and article explanations, the division of which is detailed with Roman numerals;
7. The general Explanation contains a systematic description of the rationale, intent, and purpose of the preparation and the main points or principles set out in village regulations and village head regulations;
8. Parts of the general Explanation can be numbered with Arabic numerals if that provides more clarity;
9. Must not conflict with what is regulated in the village regulation materials or village head regulations;
10. Not allowed to expand or add to the norms that already exist in the body;
11. May not include terms or definitions that have been contained in the general provisions;
12. Several articles that do not require Explanation are separated and given clear explanations.

Thus, village regulations should be made, considering the needs and capabilities of the community. Therefore, the process of drafting village regulations should take into account the aspirations of the local village community. Besides that, making village regulations and village head regulations so as not to rely on arguments on explanations, but must try to make village regulations,

village head regulations that can eliminate doubts in interpretation so that village regulations and village head regulations can be implemented properly without any doubts from the executors.

Evaluation and Determination Process for the Implementation of Village Regulations and Village Head Regulations in the Regions

The process of evaluating and determining the implementation of Village Regulations and Village Head Regulations in the regions is currently important and is expected to become the main concern of all elements of society (Zhou et al., 2019). Whereas Village regulation should really be drafted based on the principles of democracy and participation so that it really can be used as a reference for administering government and development at the village level.

Likewise, in the current era of regional autonomy, it is important to strengthen village institutions and civil society organizations in administering village governance. Strengthening village institutions and community organizations is necessary so that there are restrictions on the dominance of the village head in administering governance in the village so that the process of establishing and implementing Village Regulations and Village Head Regulations can run well.

The meaning of Village Regulations in the structure of Indonesian laws and regulations, especially in Article 7 paragraph (2) of Law no. 10 of 2004 that Village Regulations are categorized as Regional Regulations. So that in this way, in terms of the legal structure between village regulations and provincial and district or city, regional regulations are the same and equal to regional regulations.

Looking at the provisions in Article 59 paragraph (1) PP No. 72 of 2005 that in order to implement Village Regulations, the Village Head establishes Village Head Regulations and or Village Head Decrees. Then in paragraph (2), it is stipulated that Village Head Regulations and/or Village Head Decisions are prohibited from conflicting with public interests and higher statutory regulations.

Legally based Article 13 of Law No. 10 of 2004 stipulates that the contents of Village Regulationsorequals are all materials for implementing village affairs or those at the same level and further elaborating on higher laws and regulations. Based on Article 4 paragraph (1), Permendagri No.29 of 2006 stipulates that the contents of Village Regulations as referred to in Article 3 letter a are all contents in the framework of administering Village Government, village development, and community empowerment, as well as further elaboration from the provisions of higher laws and regulations.

Based on Article 7 of Law no. 10 of 2004 stipulates that government affairs which are the authority of the village, include:

a. Government affairs that already exist are based on village origin rights;
b. Government affairs which are the authority of the regency municipality, are handed over to the village;
c. Assistance affairs from the Government, Provincial Government, and RegencyorCity Government; And;
d. Other government affairs that are left to the village by law and regulations.

Meanwhile, in Law No. 12 of 2011 concerning the arrangement of laws and regulations, village regulations are not spelled out in general, so the proposal for making village regulations contained in the provisions of the Minister of Home Affairs Regulation Number 66 of 2007 concerning Village Development Planning has been stipulated standard procedures and mechanisms for village development planning as well as content material which is used as a reference in village

development programs drawn up over a 5 (five) year period which constitutes the Village Medium-Term Development Plan (RPJM-Desa) which contains village financial policy directions, village development strategies, and the village work program (Article 2) stipulated by village regulations (Article 4 paragraph (1)) and its preparation is carried out in the village development planning deliberation forum following Article 8 paragraph (2) jo. Article 1 paragraph (10) consists of (Article 8 paragraph (3).

a. The Village Community Empowerment Baga (LPM-Desa) assists the village government in preparing the RPJM-Desa and RKP-Desa;
b. Community Figures and Religious Leaders as resource persons;
c. Community members or neighborhood associations, hamlet heads, village heads, and others as members; And
d. Citizens as members.

In general, the process preparation of village regulations that can be implemented based on Law Number 6 of 2014 is as follows. (a). Village regulations are set by the village head together with the BPD. Village Regulations are village-level legal products stipulated by the Village Head together with the Village Consultative Body in the framework of administering village governance. This is in accordance with Law no. 6 of 2014 concerning Villages Article 1 paragraph (7), namely village regulations are statutory regulations stipulated by the Village Head after being discussed and agreed with the Village Consultative Body. Village regulations are a further elaboration of higher laws and regulations by taking into account the socio-cultural conditions of the local village community.

Sake is increasingly the case that can be implemented by the village government as part of the district and district government. Village regulations will be stipulated by the Village Head, assisted by the Village Consultative Body.

(b). Village regulations are formed in the framework of administering village government. This is following Law no. 6 of 2014 concerning Villages Article 1 General Chapter Provisions paragraph (2), which explains that Village Administration is the implementation of government affairs and the interests of the local community within the system of government of the Unitary State of the Republic of Indonesia. What is meant by the village government here is that the Village Government is the Village Head or what is referred to by another name assisted by the Village apparatus as an element of Village Administration. Village regulations are formed in an effort to achieve long, medium, and short-term government, development, and community service goals.

(c). Village regulations are a further elaboration of higher laws and regulations by taking into account the socio-cultural conditions of the local community. Village regulations governing village authority are based on origin rights and village-scale local authority, the implementation of which is overseen by the village community and the village consultative body. This is intended so that the implementation of Village Regulations can always be monitored on an ongoing basis by members of the local Village community, bearing in mind that Village Regulations are stipulated for the benefit of the Village community.

(d). Village regulations are prohibited from conflicting with public interests and other laws and regulations. Village Regulations are prohibited from conflicting with public interests indoor higher statutory provisions. If there is a violation of the implementation of the Village Regulations that have been stipulated, the Village Consultative Body is obliged to remind and follow up on the said violation in accordance with its authority. That is one of the supervisory functions of the Village Consultative Body. Apart from the Village Consultative Body, village communities also have the right to carry out participatory monitoring and evaluation of the implementation of village regulations.

(e). Rural villages are formed based on the principle of establishing statutory regulations. The preparation of Village Regulations must be in accordance with the rules of the applicable laws and regulations. Explicitly regulated in Law Number 10 of 2004 concerning Formation of Legislation.

Village authority is regulated in Law Number 32 of 2004, which at the implementation level must be carried out by Government Regulation No. 72 of 2005 concerning villages. Through the regional autonomy policy regulated in Law No. 32 of 2004 concerning Regional Government, each village in the region is given the authority and responsibility to regulate and manage the local community's interests according to their own initiative based on the community's aspirations in accordance with statutory regulations.

(f). People have the right to provide input verbally or in writing in the framework of preparing or discussing draft village regulations. Village regulations are formed based on community aspirations. The starting point of drafting a regional regulation is effectiveness and efficiency in society. In other words, the implementation of a regional regulation must be effective and effective, not only regulating the interests of certain groups of people, by producing more interests in other groups. So that it has a direct or indirect link to the policy to be taken must be involved. The basic objective of public participation is to generate useful input and perceptions for citizens and interested communities (public interest) in order to improve the quality of decision-making because by involving people who are potentially affected by the policy and interest groups, decision-makers can capture the views, needs, and expectations of these communities and groups, and then translate them into a concept.

On the other hand, the community's views and reactions will help decision-makers to determine priorities, interests, and definite directions from various factors. In addition, community participation is also a fulfillment of political ethics that places the people as a source of power and sovereignty. On the other hand, the community's views and reactions will help decision-makers to determine priorities, interests, and definite directions from various factors. In addition, community participation is also a fulfillment of political ethics that places the people as a source of power and sovereignty. On the other hand, the community's views and reactions will help decision-makers to determine priorities, interests, and definite directions from various factors. In addition, community participation is also a fulfillment of political ethics that places the people as a source of power and sovereignty.

(g). Village regulations are conveyed by the village head to the regent or mayor through the sub-district head as supervision or coaching material no later than seven days after being enacted to implement village regulations or the village head. Draft village regulations regarding village income and expenditure budgets, levies, spatial planning, and village government organizations must receive an evaluation from the regent before being enacted into village regulations.\

The evaluation is submitted no later than 20 (twenty) working days from the receipt of the draft regulation by the regent. The draft Village Regulation must be consulted with the village community. The village community has the right to provide input on the draft of village regulations. Village regulations and village head regulations are promulgated in village gazettes and village news by the village secretary.

In the process of drafting village regulations, until now, there are still many obstacles that become obstacles in the drafting process. The obstacles that arose in the process of drafting the village regulations included the following. (1) At the beginning of the enactment of Government Regulation Number 72 of 2005 concerning Villages, it was not followed immediately by the elaboration of the government regulations under it. As a result, the village government does not understand Government Regulation Number 72 of 2005 concerning Villages. This is also caused by the lack of socialization from the local government to the village government. (2) The performance of BPD Desa members is generally less than optimal due to the busyness of the members in their daily work activities as their primary activities. In cases like this, there are usually several members of the BPD

who, besides working as members of the BPD, also do side jobs such as farmers, traders, and other businesses, causing the performance of these members to be less than optimal. This side job has forced several BPD members to reduce their working hours or often have permission to leave to take care of this side job. (3) There are still technical constraints in the field that cannot be implemented, especially concerning the issue of levies that are charged to the community every year.

Terms levies, referred to in Article 69 paragraph (4) of Law Number 6 of 2014 concerning Villages, are related to the design or composition of village regulations. Based on this article, the Draft Village Regulation concerning the Village Income and Expenditure Budget, levies, spatial planning, and Village Government organizations must obtain an evaluation from the regent before being enacted into a Village Regulation.

Efforts that can be made by the Village Government and the Village BPD to resolve the obstacles that arise in the process of drafting the Village Regulations include, among others: (1) Coordinates on an ongoing basis with members of the BPD in the village regulation drafting process. The village government consists of the village government and BPD. This means that the village government is held jointly by the village government and the BPD. Without communication between the village government and the BPD, the village administration will not run optimally.

(2) Holding meetings on an ongoing basis once a week, for example, every Monday night, to raise public awareness in implementing the results of village regulations related to Sudan issues; the Village Government takes a persuasive approach through outreach. The meetings are usually held to discuss the levies made yearly. The community often complains about the levies imposed on residents, which are seen as regional income taxes, because they are considered to add to the burden on society in its implementation.

4. Conclusion

The conclusions of this study are as follows. First, formulation of Village Regulations and Village Head Regulations as a basis for consideration of the implementation of regional autonomy in the Regional Government Law, namely No. 32 of 2004, which was later confirmed in Law No. 10 of 2004 concerning the Formation of Legislation, namely laws, and regulations made by village representative bodies or other names together with village heads or other names. Furthermore, Law No. 6 of 2014 concerning villages gives more flexibility to the village government in carrying out village autonomy; in the preamble, it is conveyed that villages have original rights and traditional rights in regulating and managing the interests of the local community and play a role in realizing the ideals of independence.

Second, the process of evaluating and determining the implementation of village and village head regulations is based on the principle that village rules governing village authority are based on origin rights and village-scale local authority, which is overseen by the village community and the village consultative body. This is intended so that the implementation of Village Regulations can always be monitored on an ongoing basis by the local Village

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