

LEGAL REVIEW OF THE SITUATION OF VILLAGE REGULATIONS IN THE INDONESIAN LEGAL SYSTEM BY VILLAGE ADMINISTRATIVE AUTHORITIES

**Henny Simarmata *, Altika Mustika Syari, Syaiful
Asmi Hasibuan**

Constitutional Law, Universitas Pembangunan Panca Budi, Indonesia
Corresponding author: hennysimarmata8@gmail.com

ABSTRACT

The position of Village Regulations in the hierarchy of legislation in Indonesia is not explicitly explained, but it is still recognized in a formal juridical existence and has the strength of legal provisions such as other laws and regulations. Villages as the main milestone in the development of the State have the right of origin and traditional rights in regulating and managing the interests of local communities and play a role in realizing the ideals of independence based on the 1945 Constitution of the Republic of Indonesia. Villages in their governance and development arrangements are regulated in Law No. 6 of 2014. The purpose of this research is to understand the role of village regulations in the Indonesian regulatory system, understand the mechanism for the formation of village regulations in Law No. 6 of 2014 and understand the implementation of village authority related to the formation of village regulations in Pakkat Hauagong Village, Humbang Hasundutan Regency. The nature of this research is descriptive qualitative research with the types of research used are. Field Research. The results of this study are the implementation of the formation of village regulations in Pakkat Hauagong Village, Humbang Hasundutan Regency still has many shortcomings in the formation process. In the formation of village regulations in Pakkat Hauagong Village, there are still many inhibiting factors such as people who are still unfamiliar with village regulations, lack of cooperation between the Village Head and the Village Consultative Body (BPD) and Pakkat Hauagong Village as a village where the majority of Batak Toba people are still more dominant in using customary law than village regulations in solving problems.

Keywords: Village, Village Regulation, Village Authority

INTRODUCTION

Historically, the existence of village autonomy dates back to before Indonesia declared independence. The village was recognized as a legal unit based on custom and regulated using the law with the local wisdom of the village, which was formed in 1906 by the Dutch government which was called the Inlandschee Gemeenteordonantie (Abdurrahman, 2014).

The application of village autonomy at that time was very real and was noticed and recognized and did not recognize the existence of other terms or components. Villages are formed from the geologic and territorial association of hamlets. Meanwhile, indigenous villages are communities that apply customary law as the law that applies to the most important part of the village unit and is recognized by the Indonesian State.

The norm of a regulation is the primary or lower content of the regulation itself, with the order as its prototype. (Sukardi, 2010) Every regulation, whoever the maker is, must contain or contain norms in it (Karel E.M Bongenaar, TTH). The norm can be formulated prohibitively or mandatorily. Mandatory formulation requires an action by an obliged party, while prohibitor formulation prohibits an action. In this case, the author conducted research directly into the field and Pakkat Hauagong Village became the object of research located in Pakkat District, Humbang Hasundutan Regency. Through this thesis, it can be seen that the implementation of the formation of village regulations in Pakkat Hauagong Village is still not in accordance with what is stated in Law No. 6 of 2014 concerning Villages. Based on the background of the problem above, the formulation of the problem in this paper is how the position of village regulations in the legal system in Indonesia and the mechanism for the formation of village regulations in Law No.6 of 2014.

LITERATURE REVIEW

Village Regulations, namely village regulations, are passed relating to the consequences of the administration and authority to run one's own household, or the authority to carry out an authority to carry out and manage the interests of the community in the village (Aprilianto, et al, 2018). The village government has independence regarding the implementation of the village

government since it has been given the authority to produce village regulations, which is different from the old order and the new order. The Village Consultative Body (BPD) has the function of working together with the Village Head to implement government in the village and its purpose is to form village regulations together with the village head, observe and channel the aspirations of residents, and determine the income and expenditure budget in the village, as well as decisions by the village head (Hanif Nurcholis , 2011).

The legal system is an order or layer of legal regulations consisting of parts that are related to each other in accordance with the principle of unity that lives in society. Plato stated that law is a system of rules that are formed rhythmically, systematically and are binding. The characteristics of the legal system are that there are orders and prohibitions and there are sanctions if they are violated. There are 5 legal systems in the world, namely: 1. Continental European law; 2. Anglo Saxon law; 3. Customary law; 4. Islamic law; 5. Social communism.

Village Regulations are legal instruments for implementing Village Government in carrying out Village authority. With village autonomy, the Village Head is given unanimous authority to form regulations for his own village. Philipus Meter. Hadjon reported that there are 3 sources of authority, namely attribution, delegation, and mandate (Philipus M. Hadjon, 2008). From these three sources of authority, it can be concluded that authority is the power of a person or group of people/legal entities in a field and only exercises their power in accordance with the authority given.

METHODS

This research uses the nature of empirical juridical research. The research in this thesis is directly connected to legislation, village regulations and is directly linked to direct research that occurs in the field. The data collection method is obtained by interviewing, namely asking the interviewer several questions directly to the respondent, then the respondent's answers can be recorded and recorded to collect data. The next method is documentation, namely data not directly addressed to the subject, but through documents to collect data. Types of empirical research data are classified into 2 data, namely primary data (obtained directly from the community) and secondary data (library material).

RESULTS AND DISCUSSION

A. THE POSITION OF VILLAGE REGULATIONS IN THE LEGAL SYSTEM IN INDONESIA.

With the passing of Law no. 6 of 2014, the position, order and presence of village regulations must be adjusted. This is because several modifications were obtained regarding the substance of village regulations in Law Number 6 of 2014. Analyzing the changes to the regulations in Law Number 6 of 2014 starting from article 5 of Law Number 2014 clearly states that villages are located in the district/city sector. Regulations The village is a form of statutory regulation which is a further elaboration of higher level statutory regulations and is formed in accordance with statutory regulations by taking into account the social conditions of the local village community.

Thus, even though village regulations are not expressly stated in Article 7 paragraph (1) of Law No. 12 of 2011, their existence is formally recognized legally. According to Aristotle "Existence" comes from the Latin word *existere* which means to appear, exist, emerge, have actual existence. *Existere* is a combination of two words, namely *ex*, which means to come out, and *sistere*, which means to appear or appear. There is an understanding of existence which is explained into 4 meanings: First, existence is what exists. Second, existence is something that has actuality. Third, existence is everything that is experienced and emphasizes that something exists. Fourth, existence is perfection.

If village regulations conflict with larger statutory regulations and universal interests, the district/city government can cancel the village regulations based on Article 115 letter e of Law no. 6 of 2014 concerning Villages which states that one of the guidance and supervision carried out by the Regency/City Regional Government is carrying out assessments and supervision of village regulations. And it was also stated that what is meant by supervision includes the cancellation of Village Regulations.

The aim of establishing village regulations is aimed at advancing capabilities in administering government with the aim of improving services for the community commensurate with the level of development and progress in development. The conditions for establishing villages are in line with the function of statutory regulations in general as stated by T. Koopmans that statutory regulations -Legislation is increasingly necessary in a state of law because it is no longer to create codification of values that already exist in people's lives, but to create modifications or changes in people's lives. Village regulations as a form of legislation must respect and prioritize values. existing in the society concerned and the shared value system within the framework of national and state life.

The function of village regulations in their development is not as stated in Article 1 paragraph (2) of Law no. 12 of 2011, namely for the implementation of autonomy, but only as an instrument aimed at implementing the functions of government in the village. Government functions can originate from assistance tasks originating from the government and can originate from the district or city.

Apart from that, the function of village regulations in implementing authority comes from statutory regulations, authority can also come from the district or city. The authority for assistance duties originates from the central government, provincial government, or district or city government and may originate from the village's original rights.

B. MECHANISM FOR FORMING VILLAGE REGULATIONS IN LAW NO. 6 OF 2014.

The Village Consultative Body (BPD) is an institution that accommodates and conveys community aspirations which is the embodiment of democracy in the administration of village government as an element of village government administration. Thus, the Village Consultative Body (BPD) has an equal position and is a collaboration between the government in the village in administering government in the village.

The Village Head is responsible to the village community in terms of procedures and accountability processes which will be conveyed to the Regent/Mayor through the sub-district head. The Head of the Village Consultative Body (BPD) and the Village Head must submit a report regarding their accountability to the village community, conveying information regarding the main points of their accountability must be stable in providing opportunities for the community with the Village Consultative Body (BPD) as an intermediary or as a place to ask questions and hope for further explanation regarding things related to the intended responsibilities (M. Firman Hadi, 2013).

In accordance with the provisions in Article 26 paragraph (1) of Law no. 6 of 2014, the Village Head has the task of administering government in the village, carrying out development for the village, developing community development in the village, and empowering village communities in the context of administering Government in the Village. The Village Consultative Body (BPD) has duties side by side with the Village Head as a channel for the aspirations of the people in the village. The aspirations of the community which have been facilitated or accommodated by the Village Head and the Village Consultative Body (BPD) are then formalized in the form of village regulations. The function of the Village Head and the Village Consultative Body (BPD) in carrying out village development is to form development plans to improve welfare in the village community. Planning for village development is intended to be prepared by the village government in a participatory manner and also involving the community in the village (Aprianus Umbu Reada Ndata Meha, 2012). Therefore, in the context of implementing village government, the village head is given the authority to form village regulations as specified in Law No.6 of 2014.

Authority is an important component of the rights one has

by the village so that it can manage its own household. From this understanding, it is clear that when discussing authority, we do not just pay attention to the power that the ruler already has, but must pay attention to the subject as the person who exercises it and whether they are able to obtain results from that power. (Yuliandri, 2011)

UU no. 6 of 2014 Articles 19 and 103 Villages state that villages and traditional villages have four authorities, including:

1. Authority based on original rights. This is different from previous legislation which stated that existing government affairs were based on village origin rights.

2. Village-scale local authority, where the village has full authority to regulate and manage its village. This is different from previous legislation which states that government affairs which fall under the authority of districts/cities are left to be managed by villages.
3. Authority assigned by the government, provincial regional government, or district/city regional government.
4. Other authorities that have been delegated by the government originate from the provincial government or district/city government as in the provisions.

Furthermore, in article 20 of Law no. 6 of 2014 describes the implementation of authority based on the original rights of village-scale authority as regulated in article 19 in letters a and b and handled by villages. Meanwhile, in article 21 of Law no. 6 of 2014 explains that the village government has the embodiment of authority for other tasks.

Regional governments, provincial governments and village governments as intended in article 19 letter c include implementation of government in villages, implementation of village development, guidance or empowerment carried out for communities in villages and all assignments require costs to implement.

Therefore, it is necessary to look at authority regarding village management and local authority at the village scale. This matter as a village authority or assignment from the government or to organize the village can be considered in article 69 paragraph (3) of Law Number 6 of 2014 which states that village regulations are determined by the village head after being discussed and agreed upon with the Village Consultative Body (BPD).

The Village Consultative Body (BPD) represents the Village population based on area and is carried out democratically. The Village Consultative Body (BPD) has a membership period like a Village Head, namely a period of 6 (six) years from the time of being appointed or taking the oath. The Village Head may be re-elected a maximum of 3 (three) consecutive or non-consecutive times. The Village Consultative Body (BPD) has the task of being a forum and channel for the aspirations of the village community. The Village Consultative Body (BPD) also has another task, namely discussing and agreeing on village regulations together with the Village Head in accordance with the Village Regulations Law. (UU No. 6 of 2014 concerning Villages, Article 55).

UU no. 6 of 2014 concerning Villages, Explanation of Article 19. Meanwhile, village-scale local authority is also an authority used to manage and regulate the interests of the village community which have been implemented or are effective for implementation by the Village or which may arise due to the development and initiative of the village community. Examples are village libraries, village reservoirs, village markets, village art studios, and others.

The process of forming village regulations starting from the planning, drafting, discussion and promulgation stages is specifically regulated by referring to Law no. 6 of 2014 concerning Villages. Even in Article 115 letter b of Law no. 6 of 2014 states that Regency/City Regional Governments provide guidance and supervision over the implementation of Village Government, including providing guidelines for the preparation of Village Regulations.

CONCLUSION

Village regulations that are not explicitly mentioned in Article 7 paragraph (1) of Law no. 12 of 2011 still has its existence formally recognized legally and has binding legal force like other statutory regulations. The position of Village Regulations is located below the hierarchy of statutory regulations which are the implementation of the regulations above them. The article that shows the location of village regulations is Article 8 paragraph (1) of Law no. 12 of 2011. Village regulations are formed by the Village Head together with the Village Consultative Body (BPD). Draft Village Regulations can come from the Village Government or from the community directly. Village regulations are formed according to the needs of the village. Therefore, community aspirations are needed in its formation.

REFERENCES

- Abdurrahman, 2014, *Peradilan Adat Dalam Perspektif Sistem Peradilan di Indonesia*, Majalah Hukum Nasional, Jakarta
- Abrianto, Bagus Oktafian, 2011, *Eksistensi Peraturan Desa Dalam Sistem Ketatanegaraan*

- dan Perundang-undangan Di Indonesia*, Yuridika, Surabaya
- Asshiddiqie, Jimly, 2011, *Perihal Undang-Undang*, Rajawali Pers, Jakarta
- Bongenaar, Karel E.M, TTH, *Beberapa Aspek Mengenai Sifat Normative Dari Peraturan Perundang-Undangan*, Yuridika, Jakarta
- Dasril Rajab, 2005, *Hukum Tata Negara Indonesia*, Rineka Cipta, Jakarta
- Farida, Maria, 2007, *Ilmu Perundang-Undangan*, Kanisius, Yogyakarta
- H.R., Ridwan, 2013, *Hukum Administrasi Negara*, PT. Raja Grafindo, Jakarta
- Laatif, Abdul, dan Hasbi Ali, 2010, *Politik Hukum*, Sinar Grafika, Jakarta
- Lubis, M. Solly, 2009, *Ilmu Pengetahuan Perundang-undangan*, Mandar Maju, Bandung.
- M. Hadjon, Philipus, 2008, *Hukum Administrasi Dan Good Governance*, Universitas Trisakti, Jakarta
- Muljadi, Arief, 2005, *Landasan Dan Prinsip Hukum Otonomi Daerah Dalam Negara Kesatuan RI*, Prestasi Pustaka, Jakarta
- Nurcholis, Hanif, 2011, *Pertumbuhan dan Penyelenggaraan Pemerintahan Desa*, Penerbit Erlangga, Jakarta
- Sadjijono, 2008, *Seri Hukum Kepolisian, Polri dan Good Governance*, Laksbang Mediatama, Surabaya
- Sarman dan Mohammad taufik Makarso, 2012, *Hukum Pemerintahan Daerah di Indonesia*, Rineka cipta, Jakarta
- Soekanto, Soerjono dan Sri Mamuji, 2009, *Penelitian Hukum Normatif suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta
- Sukardi, 2014, *Buku Ajar Teknik Perancangan Perundang-Undangan*, Fakultas Hukum Universitas Airlangga.
- Susiadi, 2015, *Metode Penelitian*, Pusat Penelitian dan Penerbitan LP2M Institut Agama Islam Negeri Raden Intan, Lampung
- Yuliandri, 2011, *Asas Asas Pembentukan Peraturan Perundngan Yang Baik*, PT RajaGrafindo, Jakarta