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## **The Construction of Village Regulation Formulation**

Rudy, Yusnani Hasyimzum, Roro Rukmi W P, and Siti Khoiriah

### **Abstract**

Village development has Become the core of Indonesia new direction of development. Law No. 6 the Year 2014 on Village put the cornerstone of that development. For its purpose, almost 1 billion rupiahs has been allocated to every village in Indonesia. This has been regarded as a new direction since the village had been abandoned for a long time. Since 1979, the government using Law No. 5 the Year 1979 on Village Government has been killing the village very softly by altering the structure and limiting the authority. Thus Spake eliminating the autonomy of the village across Indonesia.

The new direction of development, however, runs slowly as many villages are not ready for the changes. This side, the government has enacted many regulations to govern the management of the village and to bring the village back to its foot by giving its autonomy. One of village autonomy is to formulate the village regulation as its development machine. The need for good regulations is very urgent in this new development since Become village regulation is the foundation of village autonomy. Within the analysis above, this paper is trying to construct current formulation village regulation models by analyzing the legal framework of regulation formulation regimes.

**Keywords:** Construction, Village Regulations, Formulation.

## **A. Introduction**

The village is the origin of the formation of society and government in Indonesia. Long before the nation of Indonesia is formed, or other social groups or other indigenous villages, have become an important part of the archipelago. The village is the pioneer of the democratic system of autonomous and sovereign. Since long, the village has systems and mechanisms of governance and social norms respectively. In the past, the village even has the legal establishment of systems and models of nurturing in the form of ancient law books. In Lampung in the past for example, of the Code of Kuntara Raja Niti and the Book of the Law Cepalo.

Ironically, the village is often overlooked in the development of Indonesia as a whole. Since 1979, the government through Law No. 5 1979 Local Administration has conducted a structured and systematic action to turn off village autonomy. Death of village autonomy has long made the villages in Indonesia asleep for a long time, some even die in the long sleep. This makes the ability of the legal establishment be dead in the villages throughout Indonesia.

It was only in 2014, the State through Law No. 6 2014 has stamped footsteps of decentralization in the village. With this law, the village authorities to regulate and manage the affairs of government, the interests of the local community by community initiatives, the right of the origin, and/or customary rights recognized and respected in the governance system of the Republic of Indonesia.

With this authority, the village had a very broad autonomy and have a support of a very large facility. This is evidenced by the village fund transfer obligation by the central government to every village with a number that can be said to be fantastic. Noted, village funds from year to year is constantly increasing. In 2015, the village fund budget is Rp. 20 trillion in 2016 to Rp. 47 trillion, and in 2017 USD. 60 trillion. Lampung Province itself recorded in the Village Fund received disbursements amounting to 1.9 trillion in 2017.

The problems that arise later, with a very broad autonomy of the village, the village and the local government was shocked and looked unprepared. It is evident from the many irregularities and failures that occur in response to the autonomy of the village. The evaluation results of the Village Fund in 2015 and 2016 were released by the finance ministry showed some irregularities that are common throughout Indonesia. Evaluations indicate that the use of village funds much that violates the rules administratively even lead to corruption.

Whereas the Village Fund can be a weapon of comprehensive development. Swift as the village fund as budget decentralization policy to the rural areas is actually an attempt equitable development and a path for the strengthening of rural empowerment. The goal is absolutely to be defenseless villages so as to create a trickle-down effect of development and rural welfare. Problems village fund only a small fraction of problems in development and rural empowerment. Therefore, development of law as commander in rural development should be given a greater role.

I Nyoman Nurjaya explained that the development of national law has put the domination and discrimination of legal regulations state against local communities, neglect, displacing and even "turn off" the values, principles, and norms of the people (customary law / folk law / indigenous law / custom law). Various laws, such as Act No. 5 of 1979 brought as a result of the loss of rights, loss of control over the village of "property rights", including the right to organize a decent life that was previously sourced on and set in the customary law of community-community.

This statement is reinforced by Zen Zanibar MS, that villagers had had a scope broad authority, financial resources and more independent, in the era before the reforms has been degraded position and authority, so that the dependence of the autonomous regions of higher stood out even likely to reach its nadir, One of the keys to restoring the spirit of village autonomy in order to power is through laws that protect development in the village.

Satjipto Rahardjo, Confirms that many positive roles that can be played by the law, namely:

1. The creation of new legal institutions that expedite and encourage development;
2. Securing the results diperdapat by labor and business;
3. Development of justice for development;
4. Giving legitimacy to these changes;
5. Usage-overhaul law to overhaul;
6. Dispute resolution; Setting power of government.

The role of the law, in this case, are in all stages of development ranging from the planning, implementation of the legislative, decision making in the executive and administrative, drafting arrangements that are civil, even the settlement of disputes.

Researchers Publications Legislation Development Law based Pengayoman found that the process of formation and the substantive law determined by the ability of legal drafter and stakeholders in the development of the law. The involvement of stakeholders and expert multidisciplinary important to get legal models aegis formula.

## **B. Discussion**

### **1. Village Law and Rural Development Prospects**

Historically the village is the origin of the formation of political society and government in Indonesia long before the nation-state is formed. The social structure of a type of village, indigenous peoples and others has become a social institution that has a very important position.

Proclamation of independence held on 17 August 1945. 1945 was passed on August 18, 1945. When approved, the 1945 Constitution has no memory of explanation. Chapter VI, Article 18 only regulates large autonomous regions and autonomous regions and direct small autonomous regions (*zelfbestuurende landschappen*) and the government of the indigenous communities (*volksgemeenschappen* or *Inlandsche gemeente*) is converted to a special autonomous region / asymmetrical.

Mohammad Yamin on May 29, 1945, BPUPKI Assembly speech that Dutch policies that govern rural communities in indirect rule overburden and duty rather than empower them. The Netherlands, which only recognizes indigenous communities (*Inlandsche gemeente*) as a legal entity (*rechtspersoon* or corporation) does not affect the increase in capacity of the institution to enhance the welfare of the village. Therefore, the village must be reformed and rationalized in accordance with the spirit of the age to be a foot rule.

In the same session, Soepomo on 15 July 1945 addressed autonomous regions (*zelfbestuurende lanschappen*) and *volksgemeenschappen* or *dorfgemeinschaften* such as villages in Java, villages in Minangkabau, clans in Palembang, huta and kuria in Tapanuli, gampong in Aceh converted into autonomous regions special small because it has an original arrangement (Yamin, 1971; State Secretariat, 1995).

Moh. Yamin and Supomo idea forth in Article 18. Article 1945 is then followed up by Law No. 22/1948 and Law No. 19/1965. UU no. 22/1948 alter the indigenous community governance (Inlandsche gemeente) became an autonomous region called Village (Small Town). UU no. 19/1965 change Inlandsche gemeente be based autonomous indigenous region called Desapraja.

Article 18 later amended to become Article 18, 18A, 18B. Article 18, 18A, and 18B paragraph (1) governs the autonomous regional government of regular and non-regular government of the autonomous regions / asymmetrical. The regular autonomous region consisting of autonomous regional administration of provincial and district/city. The local government non-regular / asymmetrical consist of a special autonomous regional administration and special autonomous regional administration. As for Article 18B (2) organize, the State recognizes and respects units of indigenous and tribal peoples who are still alive. Customary law community unit instead of the village government.

Meanwhile, the village is set in the Act No. Law No. 5/1979 Juncto Law No. 22/1999 Juncto Law No. 32/2004 Juncto 6/2014. This village is a state organization formed by states, not the formation of indigenous customary institutions. So, country village formed under Law No. Law No. 5/1979 Juncto Law No. 22/1999 Juncto Law No. 32/2004 Juncto 6/2014 has nothing to do with the unity of indigenous peoples. Customary law community unit described in Law No. 41/1999, UU no. 18/2004, UU no. 32/2009, UU no. 21/2001, And the Decision of the Constitutional, ie organic community that is bound and abide by customary law. Characteristics are members of the community has the feeling of a group (in-group feeling), indigenous governance institutions, indigenous objects, customary law norms, and specific area as shelter and livelihoods. The concept of customary law community unit together with the concept of indigenous peoples in the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

Laws that regulate a special set of the latest village now has none. The government has enacted Law No. 6 of 2014 on the Village (Village Law). Interest enactment village setting in this Act is a further elaboration of the provisions referred to in Article 18 paragraph (7) and Article 18B (2) of the Constitution of the Republic of Indonesia Year 1945, namely:

- a. give recognition and respect for the existing village with diversity before and after the formation of the Republic of Indonesia;

- b. provide clarity and legal certainty on the status of the village in the constitutional system of the Republic of Indonesia in order to realize justice for all Indonesian people;
- c. preserve and promote the customs, traditions, and culture of the village;
- d. encouraging initiative, movement, and the participation of the village community to the development potential and assets together for the welfare of the village;
- e. Village Government establish a professional, efficient and effective, transparent and accountable;
- f. improve public services for the people of the village in order to accelerate the realization of the general welfare;
- g. increase social resilience village culture in order to realize the village communities are able to maintain social cohesion as part of national security;
- h. improve the economy of the village community and address the disparity of national development; and
- i. strengthen the village community as a subject of development.

The preamble of the Act confirms the enactment of the Law Rural background with the words "... in the course of constitution of the Republic of Indonesia, the Village has evolved in various forms that need to be protected and empowered in order to be powerful, advanced, independent, and democratic so as to create a solid foundation in implementing governance and development towards a just, prosperous, and prosper "

The village that has grown need protection and empowerment so that it becomes:

- a. Strong village;
- b. Advanced villages;
- c. Independent village; and
- d. Democratic village.

The implications of the establishment of the village with such properties are expected to be a solid foundation in implementing governance and development towards a just, prosperous, and prosper. Strong impression that can be seen from consideration in the formation of the Village Law is the desire of countries to establish institutions more advanced villages, protecting, and nurturing.

The village authority includes:

- a. authorized under the right origin;
- b. Village-scale local authority;
- c. authority assigned by the Government, the Provincial Government, or the Government of Regency / City; and
- d. other powers assigned by the Government, the Provincial Government, or the Government of Regency / City in accordance with the provisions of the legislation.

In the village of the new regulatory regime. Namely, Act No. 6 of 2014 on the village found a conception of recognition on village autonomy embodied in village-scale local authority arrangements contained in the provisions of Article 19. Then, the recognition of village autonomy is then able to be key to the village to implement development.

The exercise of authority by right of the origin and village-scale local authority as referred to in Article 19 letters a and b are set and maintained by the village.

The provisions of article 20 further strengthens the conception of village autonomy, due to the implementation of local authority-scale village fully in the hands of the village without having to make a report hierarchically to the district as well as the higher government, as reflected in the regulatory regime prior to Act No. 6 of 2014 on The village passed.

Meanwhile, the Government Regulation No. 47 of 2015 on the amendment of Government Regulation No. 43 the Year 2014 concerning the Implementation Regulations of Law No. 6 of 2014 on the village of Desa Authority ruled that Article include:

- a. authorized under the right origin;
- b. Village-scale local authority;
- c. authority assigned by the government, provincial government, or local government district/city; and
- d. other powers assigned by the government, provincial government, or local government district/city in accordance with the provisions of the legislation.

The village authority is based on the right of origin as referred to in Article 33 letter the least consist of:

- a. a system of indigenous organizations;

- b. institution building society;
- c. fostering institutions and customary laws;
- d. Rural land management cash; and
- e. Rural community development role.

While the local authority of the village scale as referred to in Article 33 letter b at least consist of the authority:

- a. boat moorings management;
- b. The village market management;
- c. management of public baths;
- d. management of irrigation networks;
- e. The village community settlement environmental management;
- f. development of public health and management of integrated health posts;
- g. development and cultivation of art galleries and learning;
- h. management of village libraries and reading centers;
- i. bombings Village;
- j. Village-scale water management; and
- k. Rural road construction between settlements to agricultural areas.

- (1) In addition to the authority referred to in paragraph (1) and (2), the minister who held government affairs in the field of domestic governance specifies the type of village authority in accordance with the circumstances, conditions and local needs.

Government Regulation (PP) No. 47 the Year 2015 on the Amendment Regulation No. 43 of 2014 provides elaboration on village autonomy embodied in the local authority of the village scale.

Technical level, the Regulation of the Minister of Rural, Rural Development and the Transmigration Republic of Indonesia Number 1 Year 2015 on Guidelines for the Authority Based Origins Rights and the Local Authority Village Scale set that scale local authority of the village include:

- a. Rural areas of government,
- b. Rural development;
- c. The village community; and
- d. The village community empowerment.

Village autonomy in the form of village-scale local authority is divided into four categories. The village-scale local authority in the field of village government include the following:

- a. determination and demarcation Village;
- b. administrative and information systems development Village;
- c. spatial development and social map of the village;
- d. labor data collection and classification of the village;
- e. working population census on agriculture and non-agricultural sectors;
- f. population census according to the number of working-age population, labor force, job seekers, and the labor force participation rate;
- g. data collection on population aged 15 years and over who worked by employment type of work and employment status;
- h. data collection working for population abroad;
- i. establishment of village government organizations;
- j. the establishment of the Village Consultative Body
- k. establishment of village officials;
- l. BUM determination Village;
- m. APBDesa determination;
- n. establishment of village regulations;
- o. establishment of cooperation between the village;
- p. licensing the use of the convention center or village hall;
- q. Village potency data;
- r. granting permission management rights over village land;

- s. Village determination in an emergency such as an occurrence of disasters, conflict, food insecurity, disease, disorder and other exceptional events in the scale of the village;
- t. Village records management; and
- u. the establishment of security posts and other preparedness posts in accordance with the needs and social conditions of the villagers.

The village-scale local authority in the fields of village development as referred to in Article 8 b letter:

- a. A village of basic services;
- b. Rural infrastructure;
- c. Local economic development of the village; and
- d. utilization of natural resources and the environment Village.

The village-scale local authority in the field of infrastructure the village as referred to in Article 10 letter b include:

- a. development and maintenance of office and village hall;
- b. Rural road construction and maintenance;
- c. construction and maintenance of farm roads;
- d. construction and maintenance of village ponds;
- e. development of new and renewable energy;
- f. construction and maintenance of places of worship;
- g. The village cemetery management and ruins;
- h. development and maintenance of environmental sanitation;
- i. development and management of large-scale clean water Village;
- j. development and maintenance of tertiary irrigation;
- k. construction and maintenance of village courts;
- l. construction and maintenance of village parks;
- m. development and maintenance as well as channel management for aquaculture; and

n. the development of production facilities in the village.

The village-scale local authority areas of local economic development of the village as referred to in Article 10 letter c include the following:

- a. development and management of village markets and stalls Village;
- b. development and management of the fish auction belonged to the village;
- c. The village-based micro-enterprise development;
- d. utilization of village-based microfinance;
- e. development and management of fish kerambajaring buoyancy and charts;
- f. development and management of barns and determination of village food reserves;
- g. determination leading commodity farming and fishing village;
- h. implementation arrangements pest and diseases in an integrated agriculture and fisheries;
- i. determination of the type of fertilizer and organic feed for agriculture and fisheries;
- j. development of local seed;
- k. collectively livestock development;
- l. development and management of energy-independent;
- m. BUM establishment and management of the Village;
- n. development and management of boat moorings;
- o. pasture management;
- p. Rural tourism development beyond tourism development master plan of the district/city;
- q. management of fish breeding centers;
- r. the development of appropriate technology for the processing of agricultural and fishery products; and
- s. development of agricultural production systems that rely on resources, institutional and local culture.

especially agro-tourism business activities.

## **2. Regulation of the village as a Tool for Development**

After nearly seventy years of independence, the Republic of Indonesia now has a law that specifically regulates the village government administration after passage of Act No. 6 of 2014 on the village on January 15, 2014. One very important part of the Law on the Village is the setting of the Village Regulations. The existence of Village Regulations now has a clear legal basis and strong.

Act No. 6 of 2014 About the village Village Regulations stipulates that the legislation is set by the Head of Village along Village Consultative Body. This rule applies in particular rural areas and is a further elaboration of the legislation which is higher by taking into account the social and cultural conditions of local villagers. Therefore, the Village Regulations prohibited contrary to public interest and/or legislation are higher. Society has the right to provide input orally or in writing or discussion to prepare a draft Regulation village.

Village Regulations specifically set out in Article 69 governing the provision of the following conditions:

- a. Type of regulation in the village consists of a village regulation, together with the village chief rules, and regulations of the chief.
- b. Village Regulations prohibited contrary to public interest and/or laws and regulations are higher.
- c. Village regulations set by the Village Head as discussed and agreed on Village Consultative Body.
- d. The draft Regulation of the village on the village budget, levies, layout, and organization of village government must obtain an evaluation of the Regent / Mayor before setting into village regulations.
- e. The draft Regulation shall be consulted to the community village Village.
- f. Rural communities have the right to provide input to the draft Regulation of the village.
- g. Village regulations and rules promulgated in the Gazette of the village chief and the village secretary village Village News.

- h. In the implementation of village regulations referred to in paragraph (1), the village head as a village chief Regulation establishes rules of procedure.

In particular, Article 26 paragraph (2) d of the Law on Rural stipulates that "the mayor is authorized to determine Village Regulations. Then Article 55 letter a Law on the village set that has the function Village Consultative Body "to discuss and agree with draft Regulation village together". Furthermore, under Article 69 of the Law on the Village that "Rule Type village consists of Village Regulations, together with the village chief rules, and regulations of the Village Head". Also provided for in Article 69 that "The draft Regulation shall be consulted to the community village Village" and "Rural communities have the right to provide input to the Draft Regulation of the village". This indicates that the formation of Village Regulation holds the principle of participatory and responsive as it involves the community in the process of formation.

At the macro level, the ability of the village and the community in building laws that underpin planning and implementation is very minimal. Discussions with many heads of villages, including the village head winner of the national village at findings that the village head and the village has a minimal knowledge in terms of the formation of village regulations. This could lead to potential legal violations and failure to achieve widespread rural development that protect and nurture.

Why is the law of development? The answer is none other than the law and other activities that have a relationship interrelated to create a protective and nurturing development. Amartya Sen, in his work is phenomenal stressed that the development of the legal sector will impact the general development so that the legal reform and the development of legal institutions is the key to accelerated development. Therefore, the Act village with various arrangements has the potential to reduce poverty, improve public health and social inequality through the mechanism of community empowerment.

Moreover, because of the use of village funds as the backbone of rural development must be preceded by the establishment of regulations and preparation of village development plans so that it can be measured. Failure and incompetence in the preparation of legal documents and documents of development planning have led to the failure of development in the village as a whole.

The success of rural development in the framework of regional autonomy as a national strategic issue then rely on the strength of accountability and the power of the

powerless rural communities. Therefore, community development which is supported by law enforcement in the countryside becomes an important key to the success of the rural development. The village needs to be legislation that is good, and the fact that the village does not have Traffic shaping regulations and the development of document ignited researchers to think about the legal development models is right for the village. At this point investigators then offer legal development model shelter in the village as a model village protection and empowerment.

Legal development in this study is defined as the development of improvement strategies village regulations both from the aspect of process and substance. In the aspect of the process, which need attention are planning the construction of village regulations systematic and synchronous, transparency and stakeholder involvement in the establishment of laws and regulations, including models and their implications for the formulation of norms of justice and protection. While the substance aspect is to make sure that the village regulation can be tools of social engineering for the success of rural development in accordance with the characteristics of their respective villages. The main focus is on how villagers could take more of a role in producing the law that would regulate, protect, and nurture herself.

Therefore, the research team consists of researchers from academia multidisciplinary legal, academic sociology of law, academic medical health, and academia rural areas. It is the mandate of the model law itself requires the aegis of forming multidisciplinary and law to work with multiple stakeholders.

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