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Harmonization of The Formation of Village Regulations Based on Law Number 6 of 2014 Concerning Deca

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Abstract. *This research aims to discuss the harmonization of the formation of autonomous village regulations based on Law Number 6 of 2014 concerning Villages. The enactment of the Village Law also has an impact on the autonomy of the Village Government and the formation of Autonomous Village Regulations. In practice, the eventual formation of Village Regulations gave rise to various juridical problems. The approach to this legal research is normative legal research. The specifications for this legal research are analytical descriptive. The sources of this legal research are sources of primary legal materials and secondary legal materials. The data collection and retrieval procedure used is a literature study. The results of this research are: 1). The village is the lowest government organization, which is appointed directly by the regent. The village head has the authority and responsibility in village government, in the form of managing his own household which is the main organizer and person responsible in the fields of government, development and society in the context of administering village government affairs. 2) In implementing village autonomy, village regulations have a strategic role in driving the wheels of village governance and development. For this reason, an arrangement is needed that can make village regulations harmonious, namely: First, office holders must convey good communication about village regulations so that harmonization of village regulations is carried out which is autonomous and adheres to the principle of hierarchy of statutory regulations. Second, the Village Government should be given freedom because the village regulations and the position of the village's*

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own regulations to run the government system have been established without any influence from other regulations because the village has been given village autonomy authority by the central government. Third, the community is expected to participate actively in forming village regulations that are aspirational and in line with the hopes and needs of village residents.

Keywords: *Autonomy; Village; Village Government; Village Regulations.*

1. Introduction

The current era of regional autonomy is a challenge faced by the Indonesian government bureaucracy which is quite difficult. The transition period for the regional government system was marked by the issuance of Law no. 32 of 2004 as amended by Law no. 23 years. 2014 has brought some fundamental changes. First, areas that were before the enactment of Law no. 32 years. 2004, the autonomy that regional governments have is only real and responsible autonomy, but with the enactment of Law no. 23 of 2014 to become broad, real and responsible autonomy.¹

According to Abe, what is meant by real autonomy is regional freedom to exercise governmental authority in certain fields that are real and necessary and that grow, live and develop in the region. Meanwhile, what is meant by responsible autonomy is: The realization of accountability as a consequence of giving rights and obligations to regions in realizing the duties and obligations that must be assumed by regions in achieving the goal of granting autonomy, in the form of improving services and better community welfare, developing democratic life, justice, and equality, as well as maintaining harmonious relations between the center and the regions and between regions in order to maintain the integrity of the Unitary State of the Republic of Indonesia.²

Regional autonomy has provided space for community participation in development, which makes the community not only the object of development but also the subject of development and with this level of participation it is hoped that the acceleration of development results can be realized immediately and be effective in improving the quality of community life. Apart from being carried out by non-formal institutions such as the involvement of Non-Governmental

¹Nimatul Huda, "Village Government Law", Setara Press Malang 2015, p. 2

²Alexander Abe, Regional Planning, Strengthening People's Initiatives in Regional Autonomy, Laper Pustaka Utama, Yogyakarta, 2001, p. 26-27

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Organizations (NGOs), other interest groups through demands against the government or forms of approval of government policies, this community participation is also carried out by formal institutions at the regional level through the authority greater in the Regional People's Representative Council (DPRD) and at the village level with the formation of the Village Consultative Body (BPD).

After the enactment of Law Number 6 of 2014 concerning Villages, in Village Governance there is known the existence of village legislative legal products, namely Village Regulations. In practice, these Village Regulations often give rise to various juridical problems because according to Law Number 12 of 2011 concerning the Establishment of Legislative Regulations, in Article 7 Paragraph (1) there is no mention of Village Regulations.³

According to the legal framework, the preparation and implementation of statutory regulations will be effective if they fulfill 3 elements, namely philosophical, juridical and sociological elements. According to Sudikno Mertokuomo, these three elements must work together so that economically and politically, the implementation of these laws and regulations can run well and be accepted by all levels of society. Starting from this view, the thinking in preparing and implementing statutory regulations must be supported by capable human resources.⁴

Referring to practice, the formation of Village Regulations often gives rise to various juridical problems. This is related to human resources in the village government structure which is also an inseparable part in producing good village regulations, so that in the implementation of village regulations there are no multiple interpretations and comparisons with existing regulations above. Villages as autonomous regions that independently form their own regulations for the implementation of village government, in drafting village regulations should be in accordance with the principles of drafting good statutory regulations. Therefore, the preparation of good village regulations is an inseparable part of the implementation of village government, so this research is directed at identifying problems in the preparation of village regulations as well as finding basic answers in the preparation of village regulations.⁵

Based on the background above, the author can describe the problems that will be used as a reference in this research, namely:

³Ateng Syafrudin and Suprin Na'a., *Republika Desa, The Struggle of Traditional Law and Modern Law in Village Autonomy Design.*, PT. 2010 Alumni, Bandung

⁴Ni'matul Huda. *Law....*, Loc Cit, p 19

⁵Moh Fadhli, Jazim Hamidi, Mustafa Lutfi "Formation of Participatory Village Regulations", UB Press, Malang, Second Printing, February, 2013, Pg. 36-37

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1. How are village regulations formed based on Law Number 6 of 2014 concerning Villages?
2. How is the harmonization of the formation of autonomous Village regulations based on Law Number 6 of 2014 concerning Villages?

2. Research Methods

The approach to this legal research is normative legal research or library legal research, namely research carried out by studying library materials or also called secondary data. The specifications of legal research are in line with the nature of legal science itself. This legal research specification is descriptive analytical in nature, which describes problems related to the harmonization of the formation of autonomous village regulations based on Law Number 6 of 2014 concerning Villages. The legal materials used are primary legal materials, namely Law Number 6 of 2014 concerning Villages and secondary legal materials, namely legal books and legal journals. The data collection and retrieval procedure used by the author in writing this scientific work is library research, namely by conducting research on shared literature that is relevant to the problem of this thesis such as books, papers, articles, journals and news with the aim of finding or obtain theories or materials relating to Village Regulations. The data obtained from the research will then be analyzed using qualitative descriptive data analysis techniques, namely by providing an interpretation of the data obtained rationally and objectively.

3. Results and Discussion

3.1. Formation of Village Regulations Based on Law Number 6 of 2014 concerning Villages

The law has requirements to be valid or have valid force. There are 3 (three) types of power that apply, namely juridical, sociological and philosophical power. First, the applicable juridical power (Juristische Geltung). Laws have juridical force if the formal requirements for forming a law are met. Second, power applies sociologically (Soziologische Geltung) with the theory of power (Machtstheorie) when it is enforced by the authorities and the theory of recognition (Anerkennungstheorie) when it is accepted and acknowledged by the citizenry. Third, philosophical power (Filosofische Geltung). Law has philosophical power if the legal rules are in accordance with legal ideals (Rechtsidee), as the highest positive value, namely Pancasila.

The jurisdictional force of Law no. 6 of 2014, namely First, the legal unity of customary communities is mandated in Article 18B paragraph (2) of the 1945 Constitution, the existence of customary legal community units. Then in the general explanation of Law no. 32 of 2004 concerning Regional Government explains that village autonomy will be given the opportunity

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to grow and develop following the development of the village itself. This means that villages as the lowest level of government in Indonesia have different identities and entities and need to be regulated separately in the form of a law. Second, the state's recognition and respect for villages in the Constitution.

In the explanation of Article 18 it is stated that: Within the territory of the State of Indonesia there are approximately 250 zelfbesturende landchappen and volksgetneenschappen, such as villages in Java and Bali, lands in Minangkabau, hamlets and clans in Palembang and so on. These areas have an original structure, and can be considered as special areas. This means that the Republic of Indonesia must recognize the existence of diverse villages in Indonesia. The concept of zelfbesturende landchappen is identical to an autonomous village (local self government) or called a Praja Village which was later recognized in Law Number 19 of 1965, namely a village as a legal community unit that has the right and authority to regulate and manage its own household. Meanwhile, the concept of volksgetneenschappen is identical to the customary law community unit or according to the community it is called a "customary village" or self-governance community. Zelfbesturende landschappen will follow the principle of decentralization (giving) and volksgetneenschappen will follow the principle of recognition/recognition (inheritance). Third, the transfer of affairs/authority from districts/cities to villages is actually unknown in decentralization theory.

If the Village Law is summarized separately from the Regional Government Law, this will further emphasize the mandate and meaning of Article 18 of the 1945 Constitution, as well as clarify the position (position) and authority of Villages or clarify the meaning of Village autonomy. Implementation of recognition of the diversity of village autonomy, namely: First, the village government does not have to use the name of the village. It is permissible to use names according to customs such as dusun, clan, nagari, meunasah, gampong, negorij and so on. Second, recognition of genuine autonomy. Van Vollenhoven argues that autonomy includes activities (chess praja) such as forming one's own laws and regulations (zelfwetgeving), carrying out one's own laws (zelffuitvoering), carrying out one's own justice (zelfrechtspraak), and carrying out one's own police duties (zelf-politie).

Furthermore, from the aspect of power that applies sociologically, Law no. 6 of 2014 can be described as follows. Firstly, sociologically, to create a just and prosperous society as mandated in the Preamble to UIUD 1945, the Indonesian nation must start a development paradigm from the Village because the majority of the Indonesian population lives in the Village. Second, village autonomy arrangements are intended to repair social, cultural, economic and political damages in the village. "Village Autonomy" aims to restore the basis of livelihood of the Village

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community, and sociologically aims to strengthen the Village as a strong and independent community community entity.

Finally, from the aspect of power, the philosophy of Law no. 6 of 2014. First, philosophically, before the above governance existed, the village existed first. Therefore, it is best for the Village to become the basis for governance arrangements and be the spearhead in all administration of government, development and social affairs. Second, that the Village legal building is fundamental to the Indonesian state structure. This means that the nation and state are actually located in the Village, so the regulation of Villages in the Law becomes urgent. Third, the Village Government Law is an instrument for building a vision towards a new village life that is independent, democratic and prosperous. Thus, strong local initiatives are a local foundation for village independence.

Village Government according to the provisions of Law Number 6 of 2014 concerning Villages is the village head or what is called by another name and village officials or what are called by other names who are assisted by Village officials as elements of the Village Government. The village government, which consists of the village head and village officials, is tasked with carrying out the village government system, development, community empowerment, providing village community services and training. Therefore, Village Government is the administration of government affairs and the interests of local communities in the government system of the Unitary State of the Republic of Indonesia.⁶

Referring to the provisions of Article 26 Paragraph (3) of Law Number 6 of 2014, the authority of the Village Head as administrator of government at the village level is aimed at giving power to the village head in an effort to create an independent, professional and proportional village governance system for the sake of creating independence and prosperity. for village communities. Therefore, in the public law system, authority is synonymous with power because power is the ability of a person or group of people to influence the behavior of another person or group in such a way that the behavior is in accordance with the desires and goals of the person or institution. In this context, the main objective of implementing village government is to create a system of service and welfare for village communities.⁷

Article 69 of the Village Law explains that regulations in the Village include Village Regulations, Joint Village Head Regulations and Village Head Regulations. These regulations are stipulated by the Village Head after being discussed and agreed upon with the BPD as a legal and policy

⁶Article 1 number 2 Law Number 6 of 2014 concerning Villages

⁷Miriam Budiardjo, Basics of Political Science, Jakarta: Gramedia Pustaka Utama, 1998, p. 35.

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framework for administering village government and village development. The preparation of aspirational and participatory regulations should reflect the joint commitment between the Village Head (Kades), the Village Consultative Body (BPD) and the village community. It is hoped that this joint commitment will become a good democratization process in social life. Moreover, village communities have been given permission by the government to regulate themselves, namely through Village Regulations which aim to improve community welfare.

3.2. Harmonization of Autonomous Village Regulations Based on Law Number 6 of 2014 concerning Villages

Based on the implementation of village autonomy, village regulations have a strategic role in driving the wheels of village governance and development. The role of this strategy is a reflection of the content of the village regulations themselves which contain the amount of village authority, especially authority based on rights of origin and local authority that measures the village.

The concept of village government is similar to Law Number 6 of 2014, so within the framework of realizing accelerated development and village independence, each village is given the authority to manage and carry out autonomous government for the welfare of the community. Therefore, in order to create order and order in the administration of village government, the village itself is also given the authority to regulate its government affairs and establish village regulations as guidelines for the administration, management and administration of village government.

Based on the context of the formation of village regulations, there is no element of village government administrators who is obliged to formulate and establish a number of policies within the framework of village regulations. There are also types of village regulations as intended, namely village regulations, joint village head regulations, and village head regulations as formulated in the provisions of Article 69 of Law Number 6 of 2014.⁸

Referring to the description above, in the context of formulating, discussing and enacting village regulations, the village government and village officials as elements of village government, together with the Village Consultative Body, taking into account village community proposals are the basic elements in forming village regulations. Therefore, with regard to the authority to form village regulations, there are three main components which substantially have the rights

⁸See Law Number 6 of 2014 concerning Villages, article 69

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and authority in preparing, discussing and adhering to village regulations, namely the role of the Village Government, BPD and Village Community.⁹

However, the strategic role of village regulations cannot realize village autonomy optimally if it is not supported by the quality of the village government, village officials and the village community itself, especially in the formation of village regulations. In other words, all parties involved in forming village regulations should understand the formation of village regulations based on Law no. 12 of 2011 and Law no. 6 of 2014 and understand the authority that villages have in order to realize village autonomy.

Legal harmonization of statutory regulations can be interpreted as a process of aligning or harmonizing the statutory regulations that are to be or are being drafted, so that the resulting statutory regulations comply with good legal principles and statutory regulations. Regarding legal harmonization arrangements in statutory regulations in Indonesia, formal legality is regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations.¹⁰

Testing of Village Regulations is carried out using an executive preview and executive review testing mechanism. Executive Review is all forms of executive legal products tested both by institutions and by the authority given to certain organs hierarchically. The executive review examines legal products both *regeling* (regulation) and *beschikking* (decision). The executive preview and executive review mechanism is the authority of the regent/mayor which is born from the process of preventive or repressive supervision of legal products in the village.¹¹

To carry out legal harmonization, this can be done by means of evaluation and clarification. Based on Article 1 point 10 of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 111 of 2014 concerning Technical Guidelines for Village Regulations, evaluation is the study and assessment of draft Village Regulations to determine if they conflict with the public interest and/or higher statutory regulations. Evaluation is carried out at the stage of designing Village Regulations before being invited into the Village Gazette. Evaluation is

⁹Widjaja, HAW, Village/Clan Government. Jakarta: PT. Raja Grafindo Persada, 2003., p.34

¹⁰Syahbudin, et al. 2018. Harmonization of Authority Relations Between Village Heads and Village Representative Bodies (BPD) in the Formation of Village Regulations, in Horlev Journal, Volume 2 2018

¹¹Umarwan Sutopo, Position and Function of the Village Representative Body according to Law no. 6 of 2014, UIN Sunan Ampel, 2015, Surabaya

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carried out as a way to harmonize Village Regulations with Regional Regulations or other Legal Products.¹²

The regulations and technical implementation of evaluations as one way to harmonize Village Regulations with Regional Regulations are Article 14 paragraphs 1 and 2, Article 15 paragraphs (1 and 2), Article 16 paragraphs (1 and 2), Article 18 paragraphs (1 and 2) Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations.

The preparation of village regulations is the main basis for organizing, administering and administering village government, so the preparation of village regulations is a fundamental part in the implementation of professional and proportional village government so that it is able to realize village independence for the welfare of the village community. Therefore, the formation of village regulations must involve three main components which substantially have rights and authority in preparing, discussing and adhering to village regulations, namely the Village Government, BPD and village community.

To prevent the emergence of disharmonization in the preparation of village regulations, it is necessary to have a scientific study that provides a juridical and rational view regarding the rights and authority in the village government system, especially in the preparation of village regulations, as well as providing a basis for the village government regarding the mechanisms and procedures for drafting village regulations. well in accordance with the principles of drafting statutory regulations, so that the determination and implementation of village regulations in the community do not conflict with the regulations above and can be implemented well in the community.

4. Conclusion

Based on the description of the results of the previous discussion, the author draws a conclusion, that the Establishment of Village Roles based on Law Number 6 of 2014 concerning Villages is regulated in Article 69 of Law Number 6 of 2014 concerning Villages which explains that regulations in Villages include Village Regulations, Joint Village Head Regulations and Village Head Regulations. These regulations are stipulated by the Village Head after being discussed and agreed upon with the BPD as a legal and policy framework for administering village government and village development. The preparation of aspirational and participatory regulations should reflect the joint commitment between the Village Head (Kades), the Village

¹²Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 111 of 2014 concerning Technical Guidelines for Village Regulations, article 1 point 10

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Consultative Body (BPD) and the village community. Village Regulations include the stages of Planning, Preparation, Discussion, Determination, Promulgation and Dissemination. To prevent the emergence of disharmonization in the preparation of village regulations, it is necessary to have a scientific study that provides a juridical and rational view regarding the rights and authority in the village government system, especially in the preparation of village regulations, as well as providing a basis for the village government regarding the mechanisms and procedures for drafting village regulations. well in accordance with the principles of drafting statutory regulations, so that the determination and implementation of village regulations in the community do not conflict with the regulations above and can be implemented well in the community. In the process of forming village regulations, the Village Head and BPD have equal authority, especially in terms of proposing drafts and in terms of discussing plans for village regulations to be adopted as village regulations. However, in order for there to be harmonization in Village Regulations, the village regulation plan needs to be agreed upon by the Village Head and BPD and established as a village regulation, and needs to be consulted with the community so that suggestions and input from the community become an inseparable part of the process and planning of the village regulation plan. village regulations. So, in its implementation there will be no obstacles in society. So that in the formation of Autonomous Village Regulations there will be harmonization between the Village head, BPD and the Village community. So that it can be better, the recommendation that can be given is for the Village Government to be given freedom in running its government system because the village regulations and the position of village regulations to run the government system are independent without any influence from other regulations because the village has been given village autonomy authority by Central government. The community is expected to have active participation in forming village regulations that are aspirational and in line with the hopes and needs of village residents.

5. References

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Regulation:

Law No. 6 of 2014 concerning Villages

Law Number 12 of 2011 concerning the Formation of Legislative Regulations in Indonesia

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 111 of 2014 concerning Technical Guidelines for Village Regulations