

## **The Process of Drafting Village Regulations based on Law No. 3 of 2024 Concerning Villages (Case Study in Prawoto Village, Sukolilo, Pati)**

**Ahmad Alwi Qudsi<sup>1)</sup> & Widayati<sup>2)</sup>**

<sup>1)</sup> Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: [alwiqudsi2297@gmail.com](mailto:alwiqudsi2297@gmail.com)

<sup>2)</sup> Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: [widayati@unissula.ac.id](mailto:widayati@unissula.ac.id)

**Abstract.** *A village is a legal community unit that has territorial boundaries and is authorized to regulate and manage government affairs. The interests of local communities are based on their original rights and/or traditional rights recognized by the Unitary State of the Republic of Indonesia. Villages are regulated in Law no. 3 of 2024 concerning Villages. In making village regulations, it must go through processes and stages according to the applicable laws and regulations. Therefore, this paper examines the existence of village regulations in the statutory system, the process of drafting village regulations in Prawoto Village and the obstacle factors in drafting Village regulations. The results of the research revealed the process of enacting village regulations in the statutory system. Law No. 3 of 2024 concerning Villages in the statutory system has the status of statutory regulations other than the statutory regulations contained in the hierarchy of statutory regulations contained in Article 7 paragraph (1) of Law No. 12 of 2011 concerning Legislation. Law No. 3 of 2024 concerning Villages does not have the status of higher statutory regulations, but rather has the status of recognized statutory regulations. 1) The process of drafting Prawoto Village regulations is in accordance with Law No. 3 of 2024 concerning Villages. 2) Obstacles in drafting village regulations are human resources, lack of community participation in developing the village and the role of the village government is not well developed.*

**Keywords:** *Preparing; Process; Village.*

### **1. Introduction**

Village government is one of the most important parts of the government system in Indonesia. At the village level, village government has a very important role in carrying out various government affairs, development, and services to the

community in the village area. The implementation of village government is based on the principles of autonomy, democracy, and social justice. Law No. 3 of 2024 concerning Villages is the legal umbrella that regulates village government in Indonesia. In the law, there are two important institutions that play a role in village government, namely the village government and the village deliberative body.<sup>1</sup>

Legislation is a written regulation containing generally binding legal norms and is formed and stipulated by a State institution or authorized official through procedures stipulated in legislation made to protect and safeguard the rights of citizens (Article 1 number 2 of Law No. 12 of 2011). In addition, legislation is very important for citizens because it creates order and peace in community life. The preparation of legislation must contain the aim of protecting and safeguarding the community, and in accordance with the principle of *lex generalis derogat lex specialis*, namely that general regulations are weakened by specific regulations. If there is a conflict, then use the principle of *lex superiori derogat lex inferiori*, namely that lower regulations are weakened by higher regulations. Thus, the principle of law has a nature that can handle problems with long-term consequences, namely problems due to contradictions between general and specific regulations.

One form of legislation in question is village regulations. The existence of village regulations has been regulated in the Law on Regional Government, namely Number 32 of 2004, but has not provided a definition or limitation of what is meant by village regulations. The formulation of village regulations is emphasized in Law No. 12 of 2011 concerning the Formation of Legislation, namely legislation made by the village representative body or other name together with the village head and others. Law No. 3 of 2024 which is a further regulation on Villages.<sup>2</sup>

Referring to Law No. 3 of 2024, Article 7, the village government cannot simply form a village regulation to explain higher laws and regulations, if there is no order from laws and regulations or delegation because the original affairs or authorities carried out by the village are very limited. The limitations of the village government were removed with the enactment of Law No. 3 of 2024. Law No. 3 of 2024 concerning villages provides more flexibility to the village government in implementing village autonomy. In the considerations of the law, it is stated 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. In the course of the constitutional system of the Republic of Indonesia, villages have developed in various forms so that they need

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<sup>1</sup>Eni Surasih Maria.(2002) Village Government and its Implementation. Jakarta: Erlangga

<sup>2</sup>Sinar Grafika Editorial. (2024), Complete Village Regulations (Law of the Republic of Indonesia No. 3 of 2024) Jakarta: Sinar Grafika Offset.

to be protected and empowered to become strong, advanced, independent, and democratic so that they can create a strong foundation in implementing governance and development towards a just, prosperous, and prosperous society.

The process of drafting legislation includes various levels of completion such as the level of preparation, determination, implementation, assessment and re-guidance of finished products. A drafter of legislation is required to have adequate knowledge of the socio-cultural, socio-economic and socio-political conditions of society. The process of determining legislation requires good knowledge and understanding of the procedures and methods outlined in the applicable governance system. The phenomenon that is happening now is that many laws and regulations are not in accordance with the conditions of society.<sup>3</sup>

In accordance with Article 62 of Law No. 3 of 2024, the formation of ideal village regulations contains an order that the guidelines for the formation and mechanism for compiling village regulations are regulated by district/city regional regulations. Pati Regency Regulation Number 2 of 2013 concerning Guidelines for the Formation and Mechanism for Compiling Village Regulations and Pati Regency Regional Regulation Number 4 of 2013 concerning Guidelines for Village Development Planning. The Ministry of Home Affairs supports this by issuing Regulation of the Minister of Home Affairs Number 111 of 2014 concerning Technical Guidelines for Regulations in Villages. However, in reality, the discussion of village regulations often deviates in the drafting process. The government as an organization that runs the country does not carry out its functions properly. This is because the government regulations used as references by the village community are problematic. Village Regulations are Legislation stipulated by the Village Head together with the Village Deliberative Body. This regulation applies in certain village areas. Village Regulations are a further elaboration of higher laws and regulations by taking into account the socio-cultural conditions of the local village community. Village Regulations are prohibited from contradicting the public interest and/or higher laws and regulations. The community has the right to provide input verbally or in writing in the context of preparing or discussing the Draft Village Regulation. To implement the Village Regulation, the Village Head stipulates the Village Head Regulation and the Village Head Decree. The name of the term Village Regulation can vary in Indonesia.

The Village Head and the Village Consultative Body (BPD) need to pay attention to the applicable laws and regulations in order to create village regulations. If the village regulations that are formed do not comply with the applicable laws and regulations, the impact is that there is a conflict with laws and regulations that

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<sup>3</sup>Ni, Matul Huda & Nazriya (2011). Theory and testing of legal regulations. Bandung: Nusa Media p. 7

are higher than village regulations. If the village regulations that are made do not comply with the standards in the laws and regulations, there is the potential for problems in their implementation. For example, the village regulations that have been made are unable to bring order to the community and cannot bring development to the village, thus disrupting the implementation of village government.<sup>4</sup>

## 2. Research Methods

In this study, the researcher did not include this study in the naturalistic/qualitative research type. In this study, the researcher did not carry out special treatment, the results of the study were not based on the views of the researcher himself, but rather the views of the data source or informant. The main subjects were The subjects of this study were the village head, village secretary, BPD Chairperson, Hamlet Head and the Prawoto village community. The objects of the study, then the objects in this study are: 1) the process of drafting village regulations in Prawoto Village based on Law No. 3 of 2024 concerning Villages, 2) obstacles to the process of drafting village regulations in Prawoto Village.<sup>5</sup> Data collection techniques are how the data is obtained or the methods used to obtain appropriate data, in order to obtain answers to the problems being studied. Data collection techniques in this study are observation, interviews, and documentation. In this study, the author uses two types of triangulation, namely source triangulation and technique triangulation.

## 3. Results and Discussion

Village head regulations are an elaboration of the implementation of village regulations that are regulatory in nature. The formation of village regulations will be more effective if they are not only limited by the principle of legality as stated in Law No. 23 of 2014 concerning Regional Government, but also require the completion of extensive research on the topics and legal objects to be regulated and starting from the creation of academic texts (Hamidi, 2010: 66). Among them, the urgency of academic manuscripts in the process of forming village regulations becomes a medium that accommodates community involvement. Academic manuscripts are expected to be able to explain the causes, facts, and background of topics that drive the formulation of problems or issues so that they are very important and urgent to be regulated in village regulations. Academic manuscripts contain research that reviews philosophical, social, legal, political, ecological, economic aspects, and other aspects that are relevant to the creation of village regulations (Mahendra 2007: 71). The formation of village

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<sup>4</sup>Dani Rizana and Marynta Putri Pratama. "Assistance in the Preparation of Village Regulations on Environmental Conservation". JCSE:Journal of Community Vol. 3 No. 4 (2020)

<sup>5</sup>Hamidi.(2010). Qualitative Research Methods. Malang: UMM Press

regulations that will be designed according to the situation and conditions of the village because they take into account various aspects.

The village regulation designers must have a great sense of tolerance so that they are willing to adjust the regulations to the situation and conditions of the village. This great tolerance must also be shown by the willingness not to feel that one is always right, but also to be willing to accept aspirations from the community. The views of the village regulation fighters must be broad, namely not only strong in their own experience, but also willing to listen to the views of the community.

Public participation in the formation of laws and regulations is very important. Laws and regulations based on public participation are expected to have a long validity period and effective implementation in order to solve social problems. The most important aspect of a democratic system is to ensure the widest possible space for participation in all levels of society. This guarantee is accompanied by ongoing efforts to increase public awareness of the need to participate in the governance process.<sup>6</sup>

The second form, decisions are taken in accordance with the protocol that has been jointly established, namely through village development deliberations. Village regulations are the result of a decision-making process carried out by people who are legally entrusted with the task.<sup>7</sup>The formation of village regulations that can adjust to the situation and conditions, and meet the needs of the community is to provide community involvement. In accordance with the principles of democracy adopted by Indonesia.

In detail, the provisions regarding the obligation to consult with the village community regarding draft village regulations are regulated in Article 6 of the Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations in the following stages:

1. The drafting of village regulations was initiated by the Village Government.
2. Draft village regulations that have been prepared must be consulted with the village community and can be consulted with the Sub-district Head to obtain input.
3. The Draft Village Regulations that were consulted as referred to in paragraph (2) priority is given to communities or community groups that are directly related to the substance of the regulatory material.

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<sup>6</sup>Siti Hidayati. "Community Participation in the Preparation of Village Regulations". *Jurnal Bina Mulia Hukum* Vol.1 No.5 (2019)

<sup>7</sup>Setiawan. "The Role of the Village Consultative Body in the Preparation and Determination of Village Regulations". *Journal of Civic Education* Vol.5 No.7 (2028)

4. Input from the village community and the community as referred to in paragraph (2) is used by the village government for follow-up in the process of drafting village regulations.

5. In accordance with paragraph (3), the draft village regulations that have been discussed have been sent to the BPD to be discussed and drafted together. According to the provisions above, the rulesThe method of implementing the relevant village law that must be understood is the existence of public participation through the obligation of the village government to consult with the people regarding the draft village law.<sup>8</sup>

In practice, community participation in the process of changing state laws is relatively weak. So far, the community in general has given trust to the Village Head or Village Consultative Body in their efforts to create regional regulations, as well as other factors that are the main causes of low community participation (Johanes, 2020: 10). In forming village regulations, decision-making is carried out in a participatory manner. As regulated in Article 65 paragraph 1, namely that deliberations are declared valid if attended by at least two-thirds of the total number of members. If deliberations cannot be held, decisions are made by voting. As regulated in the article, a valid vote is if it is approved by at least half plus one of the total number of BPD members present.<sup>9</sup>

The Republic of Indonesia is guided by the principle of democracy, namely that the State guarantees public participation in regulating government and political life. Democracy is the power of government from and for the people so that the people have the right to participate in running and supervising the course of the State. Public participation is a manifestation of democracy so it is necessary to uphold the BPD as a manifestation of democracy at the Village Government level because the BPD is tasked with accommodating community aspirations.

Legal rules will develop better, if integrated with other sciences so that the rules are built holistically. The involvement of experts such as economists, bureaucrats, and others is very necessary to help form village regulations that are beneficial to the village community.

In Law No. 3 of 2024 concerning Villages, Village Regulations are laws and regulations stipulated by the village head after being discussed and agreed upon with the BPD. Village Regulations (Perdes) are the legal framework for policies in the implementation of government and development within the village. The stipulation of Village Regulations is an elaboration of the various authorities held

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<sup>8</sup>Yurika Mahrani, Ibrahim and Nengah Suharta. "Village Regulation Formation System Based on Law No. 3 of 2024 Concerning Villages" *Journal of Government Law, Faculty of Law* Vol. 1 No. 5 (2019)

<sup>9</sup>Johannis E. Kaawoan. "The Role of Community Leaders in Making Village Regulations" *politico* Vol. 4 No. 6 (2020)

by the village with reference to the provisions of higher laws and regulations. As a legal product, Village Regulations must not conflict with higher regulations and must not harm the public interest. Perdes are processed democratically and participatively. Village communities have the right to propose or provide input to the Village Head and BPD in the process of drafting Village Regulations. Village Regulations that regulate village authority based on original rights and local-scale authority in their implementation are supervised by the village community and BPD. BPD can prepare and propose draft Village Regulations, except for draft Village Regulations on the Village Medium-Term Development Plan (RPJMDes), draft Village Regulations on the Village Government Work Plan (RKPDDes), draft Village Regulations on the Village Budget (APBDDes), and draft Village Regulations on the Accountability Report for the Realization of the Implementation of the APBDDes. Draft Village Regulations can be proposed by BPD members to the BPD leadership to be determined as draft Village Regulations proposed by the BPD.<sup>10</sup>

Drafting of Village Regulations is the drafting of Village Regulations which aims to:

1. To be a guideline for the Village Government, namely the BPD and Village Head in the context of compiling legal products stipulated in the village based on standardization in accordance with applicable laws and regulations.
2. To be a work guideline for all parties in organizing activities in the village.
3. To be the basic tool for legitimizing the implementation of village government and as a reference in implementing government and development in the village.
4. Accelerating the realization of community welfare through improving services, empowerment, community participation and increasing regional competitiveness.
5. Creating uniformity in the preparation of legal products in the form of regulations.

The objectives of this activity are:

1. Understanding of Village Regulations, Joint Regulations of Village Heads, and Village Head Regulations.
2. Improving the quality of legislation in accordance with the constitutional basis for the formation of legislation, the principles for the formation of good legislation, and in line with the aspirations and interests of the community.

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<sup>10</sup>Dani Putra Dirgantara, (2009) The Relationship and Role of the Village Consultative Body (BPD) and the Village Government in the Implementation of Village Government. Solo: Sebelas Maret University Thesis

### 3. The creation of national legal order in the formation of legislation

The legal basis for drafting Village Regulations is:

1. Law No. 12 of 2011 concerning the Establishment of Statutory Regulations, Article 8 Paragraph (1).
2. Law No. 25 of 2009 concerning Public Services
3. UU no3 of 2024 concerning Villages
4. Minister of Home Affairs Regulation No. 111 of 2014 concerning Technical Guidelines for Village Regulations,
5. PP No. 43 of 2014 concerning the Position, Role, and Authority of Villages
6. Minister of Home Affairs Regulation No. 114/2014 concerning Village Development Guidelines
7. Ministerial Regulation No. 1 of 2015 concerning Local Authority at Village Scale
8. Ministerial Regulation No. 1 of 2017 concerning Village Arrangement
9. Minister of Village Regulation No. 2 of 2017 concerning Guidelines for Decision Making in Village Deliberations.

There are 3 (three) different methodologies applied in the preparation of Village Regulations, namely the preparation of Village Regulations initiated by the village head, the preparation of village regulations initiated by the BPD, and the preparation of regulations together with the village head.<sup>11</sup>

The Process of Drafting Village Regulations in Prawoto Village Based on Law No. 3 of 2024.

Based on Article 24 of Law No. 3 of 2024 concerning Villages, the implementation of village governance is carried out based on the principles of legal certainty, orderly government administration, orderly public interest, openness, proportionality, professionalism, accountability, effectiveness and efficiency, local wisdom, diversity, and participation. The principle of legal certainty refers to the application of clear, permanent, and consistent laws where the

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<sup>11</sup>Ellya Rosana' "Legal Compliance as a Form of Public Legal Awareness" TAPIs Journal Vol. 2 No 8 (2020)

circumstances surrounding their application are not susceptible to subjective interpretation.

Article 68 Paragraph 1 point e of Law No. 3 of 2024 concerning Villages states that village communities have the right to receive protection and protection from disturbances to peace and order in the village. If the village does not have legal certainty that guarantees legal protection for every village community, then the village cannot provide legal protection because the applicable law does not have clear certainty. An example of the absence or weak legal certainty is regarding land rights. A person's land rights, if there is no legal certainty that guarantees their rights, will be disputed by other legal subjects. If the implementation of village government does not guarantee the rights of people who own land, the implication is that the rights of village communities are not protected. This means that legal protection for village communities cannot be realized because there is no legal certainty.<sup>12</sup>

Position of village regulations in Prawoto Village, Sukolilo District, Pati. Existing village regulations are statutory regulations stipulated by the Village Head after being discussed and agreed upon with the Village Consultative Body. Village regulations are part of regional regulations made by the Village Consultative Body together with the Village Head where the procedures for their formation are regulated by the relevant district/city Regional Regulations. Village regulations are usually local in nature and are usually related to village/community customs that bind the local community or other villagers who temporarily live in the village. Village regulations are also a further elaboration of higher regulations by taking into account the conditions and culture of the local community.

The process of drafting Village Regulations in Prawoto Village Based on Law No. 3 of 2024 concerning Villages, as follows:

a. Village regulations are determined by the village head together with the BPD. Village regulations are village-level legal products determined by the village head together with the Village Consultative Body in order to organize village government. This is as in accordance with Law No. 3 of 2024 concerning Villages, Article 1 paragraph (7), namely that village regulations are statutory regulations stipulated by the Village Head after being discussed and agreed upon with the Village Deliberative Body. Village regulations are a further elaboration of higher statutory regulations by taking into account the socio-cultural conditions of the local village community.

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<sup>12</sup>Rahmat Ramadhani. "Guarantee of Legal Certainty Contained in Land Rights Certificates". *De Lega Lata* No. 3 pg 139 (2018)

This is what happened in Prawoto Village, Sukolilo District, Pati Regency. Village regulations are determined by the Village Head assisted by the Village Consultative Body (BPD).

b. Village regulations are formed in order to organize village government. This is in accordance with Law No. 3 of 2024 Article 1 Chapter General Provisions paragraph (2), which explains that Village Government is the administration of government affairs of the Republic of Indonesia. What is meant by village government here is that the Village Government is the Village Head or referred to by another name assisted by village officials as elements of village government administration. Village Regulations are formed in an effort to achieve long-term, medium-term and short-term government, development and community service goals.

c. Village regulations are further elaboration of higher laws and regulations by taking into account the socio-cultural conditions of the local community. Village Regulations that regulate village authority based on original rights and local village-scale authority are supervised by the village community and the Village Consultative Body. This is intended so that the implementation of Village Regulations can always be monitored continuously by local village residents considering that Village Regulations are established 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 and/or provisions of higher laws and regulations. If there is a violation of the implementation of Village Regulations that have been determined, the Village Consultative Body is obliged to remind and follow up on the violation in accordance with the authority it has. That is one of the supervisory functions of the Village Consultative Body. In addition to the Village Consultative Body, the village community also has the right to carry out participatory supervision and evaluation of the implementation village regulations.<sup>13</sup>

e. Village regulations are formed based on the principles of the formation of statutory regulations. The preparation of village regulations must be in accordance with the applicable statutory regulations. Explicitly regulated in Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 concerning the Formation of Statutory Regulations. Village authority is regulated in Law No.3 of 2024 Concerning Villages. Through the regional autonomy policy regulated in Law No. 32 of 2004 Concerning Regional Government, each village in the regions is given the authority and responsibility to regulate and manage the

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<sup>13</sup>Putra Kurnia Mahendra, (2007). Guidelines for Academic Manuscripts for Participatory Regional Regulations. Yogyakarta: Total Media Creation

interests of the local community according to its own initiative based on the aspirations of the community in accordance with laws and regulations. Through the authority it has to regulate and manage the interests of the community, the village government will strive to improve the economy according to the conditions of needs and capabilities it has, thus providing opportunities and chances to achieve the goal of improving the welfare of the people in the local village.

f. The community has the right to provide input verbally or in writing in the context of preparing or discussing draft village regulations. Village regulations are formed based on community aspirations. The preparation of regional regulations is effectiveness and efficiency in the community. In other words, the implementation of a regional regulation must be appropriate and effective, not regulating the interests of certain groups of people only, by producing the interests of other groups that are greater. The role of the community is to produce input and perceptions that are useful for citizens and interested communities (public interest)

g. Village regulations are submitted by the village head to the regent or mayor through the sub-district head as a material for supervision or guidance no later than 7 days after being determined to implement the village or village head regulations. Draft village regulations on the village income and expenditure budget, spatial planning levies and village government organizations must be evaluated by the regent/mayor no later than 20 working days from the date the draft regulation is received by the regent/mayor. Draft village regulations must be consulted with the village community. The village community has the right to provide input on draft village regulations and village head regulations are promulgated in the village gazette and village news by the village secretary.

In the preparation of Village regulations, it can also be a criminal act (*het strafbaar feit*) which has been translated into Indonesian, which means, among other things:

- a) Acts prohibited by law
- b) Punishable acts
- c) Criminal acts
- d) Criminal Events
- e) Criminal Act
- f) Offense

Regarding the definition of criminal acts, scholars provide different understandings. Simons formulated a criminal act as an action or deed that is

threatened with punishment by law, contrary to the law, carried out with a mistake by someone who is able to take responsibility. Then he divided it into two elements, namely:

- a) Objective elements in the form of prohibited or required actions.
- b) Subjective elements in the form of mistakes and the ability to take responsibility

Obstacles in the process of drafting village regulations in Prawoto Sukolilo Village, Pati based on Law No. 3 of 2024 concerning Villages

The obstacles that emerged in the process of drafting village regulations in Prawoto Village, Sukolilo District, Pati Regency are:

- a. At the beginning of the enactment of Law no.3 of 2024 concerning Villages which is not immediately followed by the elaboration of government regulations under it. The village government does not understand Law No. 3 of 2024 concerning Villages. This is due to the lack of socialization from the local government.
- b. The performance of BPD members of Prawoto village is less than optimal because the members are busy with their daily work activities as their respective primary activities. There are several BPD members who, in addition to working as BPD members, also do side jobs such as being farmers, traders and having other businesses, so that the performance of these BPD members is less than optimal. These side jobs make several BPD members reduce their working hours or often ask for permission to go out to take care of these side jobs.
- c. The inhibiting factors experienced by the village head in making village regulations are human resources, namely the knowledge of the village head himself and the staff in the village, that this can be overcome with guidance from the Sub-district and Regency. Other inhibiting factors are the lack of participation of the village community in developing the village and the role of the village government is not well developed. With guidance from the Sub-district and Regency governments, these inhibiting factors can be overcome and in the end the obstacles are only challenges in developing the village.

#### **4. Conclusion**

The creation of village regulations must involve community participation as a manifestation of a democratic village. Regulated in Article 60 paragraph 1 of Law No.3 of 2024 concerning Villages, namely that village communities have the right to request and obtain information from the village government, supervise village government activities, their implementation, village development, village

community development, and village community empowerment. In accordance with the consideration of the section in Law No. 3 of 2024 concerning Villages. Village regulations must be designed with community participation because if not, the rules designed can be rules that do not favor the community.

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