

# THE AUTHORITY OF THE VILLAGE CHAIRMAN IN DRAFTING VILLAGE REGULATIONS

Teguh Fidiah Wahyudi<sup>1</sup>, Izomiddin<sup>2</sup>, Kun Budianto<sup>3</sup>

**Abstract:** *The issuance of The Constitution Number 6 of 2014 concerning Villages, hereinafter referred to as the Village Law, becomes a starting point for the village's hopes to be able to determine its position, role and authority over itself. The hope is that the village can be socially powerful and politically sovereign as the foundation of village democracy, as well as being economically empowered and culturally dignified as the face of village independence and village development. This hope is even more exciting when the combination of recognition and subsidiarity principles appears as the main principle that becomes the spirit of this law. Village Law Number 6 of 2014 concerning Villages supported by PP. 43 of 2014 concerning Implementation Regulations of Law Number 6 of 2014 concerning Villages, discusses the process of making Village regulations which are also regulated in the Minister of Home Affairs Regulation No. 111 of 2014, the formulation of the research problem wanted to know the process of making Village regulations according to The Constitution Number 6 of 2014 concerning Village, the fund wants to know the authority of the village head in drafting village regulations in Ulak Pandan Village and Tanjung Pinang Village, Kecamatan. West Merapi, Lahat Regency. based on The Constitution Number 6 of 2014 concerning Village, the theory used is the theory of coordination from Inu Dating, the methodology used in this research is descriptive analysis or qualitative research design with a case study model. In conducting this research the author uses a type of field research (Field Research), the result of this research is that the process of drafting village regulations in Ulak Pandan Village and Tanjung Pinang Village, District West Merapi, Lahat Regency is in accordance with The Constitution Number 6 of 2014 on Villages which is supported by PP No. 43 of 2014 and Minister of Home Affairs Regulation No. 111 of 2014, drafting village regulations.*

**Keywords:** *Village, Village Regulation, village authority*

## The Introduction

The issuance of The Constitution Number 6 of 2014 concerning Villages, hereinafter referred to as the Village Law, becomes a starting point for the village's hopes to be able to determine its position, role and authority over itself. The hope is that the village can be socially powerful and politically sovereign as the foundation of village democracy, as well as being economically empowered and culturally dignified as the face of village independence and village development. This hope is even more exciting when the combination of recognition and subsidiarity principles appears as the

---

<sup>1</sup> Fakultas Ilmu sosial dan Ilmu Politik Universitas Islam Negeri Raden Fatah, Email: Teguhfidiah@yahoo.com

<sup>2</sup> Fakultas Ilmu sosial dan Ilmu Politik Universitas Islam Negeri Raden Fatah, Email: izomiddin\_uin@radenfatah.ac.id

<sup>3</sup> Fakultas Ilmu sosial dan Ilmu Politik Universitas Islam Negeri Raden Fatah, Email: kunbudianto\_uin@radenfatah.ac.id

main principle that becomes the spirit of this law. Village Law supported by PP. 43 of 2014 concerning Implementation Regulations of Law Number 6 of 2014 concerning Villages and Government Regulation No. 60 concerning Village Funds sourced from the State Revenue and Expenditure Budget (APBN), has provided the basic foundation related to Village Administration, Village Development, Village community development, and Village community empowerment based on Pancasila, the 1945 Constitution of the Republic of Indonesia, The Unitary State of the Republic of Indonesia, and Bhinneka Tunggal Ika (Silahuddin, 2015: 9).

The existence of a village head official aims to for the implementation of village government in accordance with the provisions of the regulations applicable laws and regulations and obtain legal certainty community in the administration of village government (Sumeru, 2016). Village development is not only the responsibility of the government but is also a shared responsibility between the government and the community, because the community is the object and subject of development (Syaprianto & Prihatin, 2016).

Regional government is the foundation of a democratic unitary state and its existence is a form of recognition of the characteristics or characteristics of each country's territory, and is a reflection of a democratic rule of law. So great was the gift of Allah SWT to the country which was once known as the archipelago which consisted of tribes and nations which was not given to other countries. In accordance with the word of Allah in the Al-Qur'an Surat al-Hujarah verse 13:

يَتَأْتِيهَا النَّاسُ إِنَّا خَلَقْنَاهُمْ مِّنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاهُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاهُمْ ۚ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

Based on the provisions of Article 136 Paragraph (4) of Law Number 32 of 2004 concerning Regional Government, it is determined that a regional regulation must not conflict with a higher regulation. Based on data from the Ministry of Finance (Kemenkeu) in 2011, of the 14 thousand existing Regional Regulations, there are more than 4,000 problematic Regional Regulations and must be revoked. However, the Ministry of Home Affairs (Kemendagri) only revoked one thousand and eight hundred Regional Regulations from the number that should have been recommended by the Ministry of Finance ([www.hukumonline.com](http://www.hukumonline.com)).

Thus the practice in the village is in implementing Village Government. Furthermore, as a political product, village regulations are processed in a democratic and participatory manner, that is, the drafting process includes the participation of the village community. Village communities have the right to propose or provide input to the village head and village consultative bodies in the process of drafting village regulations. Village regulations that regulate village authority based on rights of origin and village-scale authority are supervised by the village community and village consultative bodies. This is intended so that the implementation of village regulations can always be monitored on an ongoing basis by the local village community, considering that village regulations are set for the benefit of the village community. If there is a violation of the implementation of the

village regulations that have been set, the BPD is obliged to remind and follow up on the violation in accordance with the authority it has.

However, in its implementation, the nature and meaning and objectives and objectives of the implementation of development and general welfare that have been regulated in the statutory regulations have not been fully realized, many village regulations have been canceled or are in contravention of higher and higher laws and regulations. with the life of the community, therefore the writer will examine how the process of the Village Head in drafting village regulations in UlakPandan Village and Tanjung Pinang Village, Kec. West Merapi District. Lahat the two villages have made village regulations, here the author will examine whether there are any violations of the Village Head in the process of making Village Regulations or Village Head Regulations whether it is in accordance with Village Law No. 6 of 2014 and its impact on the village community.

### **The Theoretical Framework**

#### **1. Hierarchy Theory in Legal Norms**

According to Han Kelsen in his explanation, legal norms, rules, patterns, or standards need to be followed. In relation to the hierarchy of legal norms, Hans Kelsen put forward his theory regarding the level of legal norms as cited by Maria Farida in her book *Science of Legislation*, where she argues that legal norms are hierarchical and layered in a hierarchy of structure, in where a lower norm applies, originates from, and is based on a higher norm, a higher norm, applies, originates and is based on an even higher norm, and so on until a norm that cannot be traced further and is hypothetical and fictitious, namely Basic Norms (Soeprapto, 2002: 25).

In some views regarding the hierarchy in making rules or legislation, there must be an authority to make these regulations in accordance with the law, hereby in the formation of laws and regulations, it is often necessary to formulate issues related to the issue of delegation of authority from higher regulations to regulations. the lower one. The formation of laws and regulations can occur because of two things, namely because of the authority of attribution or delegation authority. Attribution authority in the formation of statutory regulations is the granting or creation of the authority to form statutory regulations granted by the Basic Law or Law to a state institution or government institution.

#### **2. Authority Theory**

Authority is often equated with the term authority. The term authority is used in the form of a noun and is often compared to the term "bevoegheid" in Dutch legal terms. According to Phillipus M. Hadjon, if we look closely there is a slight difference between the term authority and the term "bevoegheid". The difference lies in its legal character. The term "bevoegheid" is used in the concept of public law as well as in private law. In our legal concept, the term authority or authority should be used in the concept of public law (Hadjon, 20).

AtengSyafudin argues that there is a difference between the meaning of authority and authority. We must distinguish between authority (authority, gezag) and authority (competence, bevoegheid). Authority is what is called formal power, power that comes from the power given by law,

whereas authority only concerns a certain "onderdeel" (part) of the authority (Syafurudin, 2000: 22).

Philipus M Hadjon argued that authority is obtained through three sources, namely attribution, delegation, and mandate. The authority of attribution is usually outlined through the division of state power by the Constitution, the authority of delegation and mandate is the authority that comes from the delegation. Each authority is limited by the content or material of the area and time. Defects in these aspects can cause defects in authority (Nitibaskara, 2002: 65).

Authority must be based on existing legal provisions (constitution), so that this authority is a legitimate authority. Thus, officials (organs) in issuing decisions are supported by these sources of authority. Stroink explained that sources of authority can be obtained for government officials or organs (institutions) by way of attribution, delegation and mandate. The authority of government organs (institutions) is an authority that is strengthened by positive law to regulate and maintain it. Without authority, a correct juridical decision cannot be issued.

### **Research methods**

The method used in this research is descriptive analysis or qualitative research design with a case study model. Descriptive means that this research is conducted on independent variables, that is, without making comparisons or connecting with other variables. Qualitative means research procedures that produce descriptive data in the form of written or spoken words from people and observable behavior. Case studies are a form of in-depth research on an aspect of the social environment including humans in it. Referring to the purpose of this study, namely to find out and analyze the authority of the village head in drafting village regulations in UlakPandan Village and Tanjung Pinang Village, West Merapi District, Lahat Regency based on Law No. 6 of 2014 concerning the Village.

The approach chosen in this study uses a normative juridical approach, which is carried out by researching field research reinforced by library materials or secondary data related to the making of village regulations, as well as to study and examine legal aspects referring to legal norms contained in statutory regulations. legislation, particularly based on Law no. 6 of 2014 concerning the Village.

### **Discussion and Results**

#### **The process of making Village Regulations according to Law no. 6 of 2014 concerning the Village.**

As a political product, based on Law Number 6 of 2014 concerning Villages, Village Regulations are stipulated by the Village Head after being discussed and agreed upon with the Village Consultative Body as a legal and policy framework in the implementation of Village Government and Village Development. Village regulations are processed in a democratic and participatory manner, that is, the process of drafting them includes the participation of the Village community. The Village Community has the right to propose or provide input to the Village Head and Village Consultative Body in the process of drafting Village Regulations. By referring to the principle of



APB and draft Village Regulations concerning accountability reports for the realization of Village APB implementation which are stipulated as the proposed Ranperdes BPD. The preparation of Regional Regulation Planning is regulated in Article 6 and Article 7.

3. Discussion. The BPD Village Consultative Body conducts discussions by inviting the Village Head which must be mutually agreed upon. So what distinguishes Perda and Perdes is that Perda uses the phrase "By Mutual Agreement, while Perdes uses the phrase" By Mutual Agreement ". The word Agree when seen in the Big Indonesian Dictionary has the meaning of affirming and accepting the things that are agreed upon, agree and are suitable while the word agrees has the meaning of consensus on certain things. So literally the position of the Village Head and the BPD is in the same bargaining position that mutually consensus, not only agreeing, namely affirming and accepting it. This discussion is regulated in Articles, 8, 9 and 10.
4. Determination. After the Village Regulation Draft is mutually agreed upon, the Village Head will sign it so that it will become a Village Regulation. If the Village Head does not sign, the Village Regulation is deemed valid and promulgated in the Village Gazette. If it is related to legal theory, this is in line with what Lord Acton said, "Powers Tends to Corrupt and absolute power corrupts absolutely", which means that power tends to corrupt and absolute power must be corrupt. In order to prevent abuse from the Village Head, the Ranperdes which has gone through a long process of planning, preparation and discussion can still be stipulated as a Village Regulation (Putri, 2016), this is regulated in Article 11.
5. Invitation. The invitation is made by the Village Secretary, where the Village Regulation is promulgated in the Village Gazette and the Joint Village Head Regulation and the Village Head Regulation are promulgated in the Village News. In line with the above, the Regency / City Government should provide assistance on the procedures for enacting regulations in the village. This legislation has been regulated in Article 12.
6. Dissemination. The last stage is dissemination. Dissemination has been carried out since the planning stage, this is related to community participation as stated in Article 96 of Law Number 12 of 2011 concerning the Formation of Legislation, Article 354 of Law Number 23 of 2014 concerning Regional Government, Article 188 of the Presidential Decree Number 87 2014 concerning the Implementing Regulations of Law Number 12 of 2011 concerning the Formation of Legislations, and Article 166 of the Minister of Home Affairs Regulation Number 80 of 2015 concerning the Formation of Regional Legal Products, with community participation it can capture input and legal needs of the village community (Putri, 2016). The dissemination of the determination of village regulations is regulated in Article 13.

One of the ways that Law Number 6 of 2014 concerning Villages intends to achieve this goal is by accommodating community participation in various articles in Law Number 6 of 2014 concerning Villages. Law Number 6 of 2014 concerning Villages provides a large portion of village communities in managing and developing their villages, including the role of the community

in village governance and in village development. Given the very strategic role of village regulations in the framework of village autonomy, the parties involved in the formation of village regulations (Village Head, BPD and village communities) must understand the position of village regulations as statutory regulations (legal products) and as political products. By understanding the position of the village regulation, simultaneously the parties mentioned above should increase their capacity in the technique of forming village regulations based on Law no. 12 of 2011 concerning the Formation of Legislation and the process of forming village regulations based on Law no. 6 of 2014 in conjunction with PP No. 111 of 2014 and understand the authority that the village has in order to realize village autonomy.

**Analysis of the authority of the village head in drafting village regulations in UlakPandan Village and Tanjung Pinang Village, West Merapi District, Lahat Regency based on The Constitution No. 6 of 2014 concerning the Village**

So from that here the author will analyze the success of the village head's authority in the formulation of Village regulations in UlakPandan Village which issued Village Regulation Number 4 of 2016 concerning Narcotics Abuse and Tanjung Pinang Village Head Regulation of Tanjung Pinang Village Number 2 of 2018 concerning Organizing Single Orgen, Orkes, Bands and Entertainment using Electronic Musical Instruments, West Merapi District, Lahat Regency based on Law No. 6 of 2014 concerning Villages, without any conflict in the making and implementation of the stipulated village head regulations. This is inseparable from mutual coordination and deliberation to reach a consensus in formulating the Village Head Regulation Draft, so the author will analyze it through the coordination form theory from InuKencana's opinion in his book entitled Government Management. Form of coordination consists of: Horizontal Coordination, Vertical Coordination and Functional Coordination (Syafie, 35). The author will analyze them one by one, including:

**1. Horizontal Coordination**

Horizontal coordination is where between the coordinating and the structurally coordinated there is a hierarchical relationship. It can also be said that coordination is hierarchical in nature, because one another is on a line of command (life of command). harmonious and synchronous alignment of cooperation between equal institutions, for example between the District Muspika (Camat, Kapolsek, Danramil), between District Muspida (Regent, Danramil, Kapolres), and Provincial Muspida (Governor, Pangdam, Kapolda).

Horizontal Coordination theory will look at how the coordination is carried out by the village head, UlakPandan Village and Tanjung Pinang Village through observations and interviews as well as documents obtained in the field. The results of the author's interview with the Head of the West Merapi Sub-District, Lahat Regency, the Head of the West Merapi Sub-District, Lahat Regency, confirmed and approved the UlakPandan village regulation which issued Village Regulation Number 4 of 2016 concerning Narcotics Abuse and Tanjung Pinang Village Head of Tanjung Pinang Village Regulation Number 2 of 2018 concerning Organizing Orgens Tunggal, Orchestra, Band and Entertainment that use electronic musical instruments,

because according to the Head of West Merapi Sub-district, Lahat Regency, the coordination carried out by the two village heads is in accordance with the guidelines and is in accordance with statutory regulations, which are regulated in Article 5 to Article 15 in the Minister of Home Affairs Regulation No. 111 of 2014 as the implementing derivative of the Village Law No. 6 of 2014 concerning Villages, and Village Regulations are types of laws and regulations that are the authority and issued by village government organizations. The village's authority to make regulations is a manifestation of granting power to the village to regulate and manage itself. The Village Law regulates the types, preparations for making, and the mechanism for discussing Village Regulations.

According to Hans Kelsen, a legal norm always originates and is based on the norms above it, but below the legal norms it also becomes the source and becomes the basis for the lower norms. In terms of the structure / hierarchy of the norm system, the highest norm (basic norm) becomes the place where the norms depend on it, so that if the basic norm changes, the existing norm system will be damaged. This means that in making village rules, apart from having a high level of legislation, coordination must also be seen in their formulation so that village regulations issued can be accepted by other institutions (soeprapto, 2010: 41).

## 2. Vertical Coordination

Vertical Coordination is the harmonious and synchronous alignment of cooperation from an institution with a higher degree to other institutions with a lower degree. For example, between Heads of Units of an agency to Heads of other Sub Units outside of them, Head of Divisions (Kabag), an Agency to Head of Subdivisions (Kasubag) other than their division, Head of Bureau of an Agency to Head of other Sub-Bureau outside their bureau. So here the writer will analyze vertically by looking for data by interviewing the village secretary and the Village Consultative Body. From UlakPandan Village and Tanjung Pinang Village, West Merapi District, Lahat Regency.

### 1. UlakPandan Village, West Merapi District, Lahat Regency,

From the results of the interview with the village secretary of UlakPandan, it was stated that Village Regulation Number 4 of 2016 concerning Narcotics Abuse issued by the village head is the authority of the UlakPandan village head, legally compliant based on article 5 paragraph 1 and paragraph 2 in the Minister of Home Affairs regulation No. . 111 of 2014 as the implementing derivative of the Village Law No. 6 of 2014 concerning Villages has also been regulated in article 55 paragraph 1. Discussing and agreeing on the Draft Village Regulation with the Village Head in the Village Law, and has carried out vertical coordination of the head of UlakPandan Village, West Merapi District, Lahat Regency with the UlakPandan Village Consultative Body. So the point is the vertical coordination of the head of UlakPandan Village, West Merapi Subdistrict, Lahat Regency with the UlakPandan Village Consultative Body in making these village regulations legally correct and Indonesian legislation, this is in accordance with the concept of coordination, which is the arrangement of the relationship between joint efforts to obtain unity of action in an effort to achieve common goals as well. Coordination is a process that regulates the division of labor of various people or groups into an integrated unanimity in the most efficient way possible.



From the results of observations and interviews conducted by the author with the Head of the Village Consultative Body and the Village Secretary, in UlakPandan Village and Tanjung Pinang Village, it can be concluded that in the activities of the two village heads in vertical coordination with the Village Consultative Body, it runs well in coordination with one another. and the vertical coordination that they carry out is in accordance with Article 5 paragraph 1. Planning for drafting the Village Regulation draft is stipulated by the Village Head and BPD in the Village Government work plan and paragraph 2 Community organizations, customary institutions and other village institutions in the village can provide input to the Village Government and or BPD for plans for drafting the Village Regulation draft in the Minister of Home Affairs Regulation No. 111 of 2014 as the implementing derivative of the Village Law No. 6 of 2014 concerning Villages and Article 55 paragraph 1 discusses and agrees to the Draft Village Regulation with the Village Head.

### 3. Functional Coordination

Functional Coordination is the harmonious and synchronous alignment of cooperation between institutions that have similarities in work functions, for example among heads of public relations, a head or a leader who is always in touch with or associated with other agencies which he deems to be related or also their relationship with development problems carried out in a working area.

In essence, coordination can be done both formally and informally. Formal coordination is manifested in the form of impersonal efforts, such as in the life of the bureaucracy, making regulations or guidelines, appointing joint officials or committees and other official documents (Mulyasa, 2012: 219-220). Meanwhile, formal methods can be carried out through discussion and consultation when meeting outside the interests of the office

So the Functional Coordination theory and article 70 paragraphs 1 and 2 of Law No.6 of 2014, are the approaches used to discuss two or more village heads to jointly make Village regulations that will be applied equally in their respective villages, thus the theory Functional coordination and article 70 paragraph 1 and 2 of Law No. 6 of 2014 concerning villages, there is nothing related or related to the process of the formation of the UlakPandan Village Regulation which issued Village Regulation Number 4 of 2016 concerning Narcotics Abuse and Tanjung Pinang Village Head Regulation of Tanjung Pinang Village Number 2 of 2018 concerning the Implementation of Sole Organizations, Orchids, Bands and Entertainment using Electronic Musical instruments.

Because from the process of making the regulations of the two villages individually and the village regulations only apply to each village, they do not apply to other villages. This is in accordance with the guidelines in Law No. 6 of 2014, guided by Law No. 6 of 2014 on villages and derivatives of the Village Law PP 43 of 2014 concerning Implementation Regulations and regulations of the Minister of Home Affairs No. 111 of 2014, which consists of Planning, Compilation, The discussion, stipulation, promulgation and dissemination are all regulated from Article 5 to Article 13 as the implementer of PP 43 of 2014 concerning techniques for making village regulations. As well as paying

attention to the types and hierarchy of laws and regulations as stated in Article 7 of Law no. 12 of 2011 concerning the Establishment of Legislation.

But in this case, the Head of UlakPandan Village and the head of Tanjung Pinang Village still coordinate and inform that in their respective villages they already have village regulations that they have made, so that the respective village heads can inform their respective residents that in the village UlakPandan and Tanjung Pinang Village have village regulations made and applicable in their respective villages, so that when residents of UlakPandan and Tanjung Pinang villages visit one of these villages they can maintain order and peace in the village they come to.

### **Conclusion**

As a political product, based on the Constitution No. 6 of 2014 concerning Villages, Village Regulations are stipulated by the Village Head after being discussed and agreed upon with the Village Consultative Body which is a legal and policy framework in the implementation of Village Government and Village Development. Village regulations are processed in a democratic and participatory manner, that is, the process of drafting them includes the participation of the Village community. The process of making Village regulations according to Law no. 6 of 2014 concerning Villages is regulated in Article 26 paragraph (2) letter d, which stipulates that "The Village Head has the authority to stipulate Village Regulations, Law No. 6 of 2014 concerning Villages is clarified in the Minister of Home Affairs regulation No.111 of 2014 concerning the Technical Formation Stage of Village Regulations consisting of: a Planning b. Compilation c. Discussion d. Determination e. Invitation f. Dissemination.

Analysis of the authority of the village head in drafting village regulations in UlakPandan Village and Tanjung Pinang Village, West Merapi District, Lahat Regency based on Law No. 6 of 2014 concerning Villages in a coordinated manner from InuKencana's opinion in his book entitled Government Management, Forms of Coordination consisting of: Horizontal Coordination, Vertical Coordination and Functional Coordination, Author of Minister of Home Affairs Regulation No. 111 of 2014 as the implementing derivative of the Village Law No. 6 of 2014 concerning the Village. As well as Law No. 12 of 2011 concerning the Making of Legislative Regulations.

## References

- Hadjon, Philipus M. *Tentang Wewenang, Makalah*, Universitas Airlangga.
- Mulyasa. (2012). *Manajemen dan Kepemimpinan Kepala Sekolah*. PT Bumi Aksara.
- Nitibaskara, Tubagus Ronny Rahman. (2002). *Paradoksal konflik dan otonomi daerah, sketsa bayang-bayang konflik dalam prospek masa depan otonomi daerah*. Sinar Mulia.
- Putri, Lia Sartika. (2016). Kewenangan desa dan penetapan peraturan desa. *Jurnal Legislasi Indonesia*, 13(2), 161-175.
- Sumeru, Arief. (2016). Kedudukan pejabat kepala desa dalam penyelenggaraan pemerintahan desa. *JKMP Jurnal kebijakan & Manajemen Publik*, 4(1), 47-56. <http://doi.org/10.21070/jkmp.v4i1.198>
- Syafrudin, Ateng. (2000). Menuju penyelenggaraan pemerintahan negara yang bersih dan bertanggung jawab. *Jurnal Pro Justisia*, Edisi IV.
- Syaprianto & Prihatin, Panca Setyo. (2016). Peranan lembaga pemberdayaan masyarakat dalam membantu kepala desa menyusun rencana pembangunan desa. *WEDANA: Jurnal Kajian Pemerintahan, Politik dan Birokrasi*, 2(1), 59-70.
- Syafiie, Inu Kencana. (2008). *Ekologi pemerintahan*. Pustaka RekaCipta.
- Silahuddin, M. (2015). *Buku 1 Kewenangan Desa dan Regulasi Desa, Kementerian Desa, Pembangunan Daerah Tertinggal, dan Transmigrasi Republik Indonesia*.
- Soeprapto, Maria Farida Indrati. (2002). *Ilmu Perundang-undangan Dasar-dasar dan Pembentukannya* (11th ed.). Kanisius

