

THE URGENCY OF THE ROLE OF THE VILLAGE CONSULTATIVE BODY (BPD) IN THE FORMATION OF PARTICIPATORY VILLAGE REGULATIONS

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ABSTRACT

To realize good governance, one of the main principles of village governance, as stipulated in Article 24 of Law Number 6 of 2014 concerning Villages, is the principle of participation, namely the involvement of the community in every government process, including the development of village regulations. The role of the Village Consultative Body (BPD), as a legislative body at the village level, is crucial as it channels community aspirations in the development of village regulations, thus resulting in participatory village regulations. The purpose of this study is to identify and analyze the urgency of the role of the Village Consultative Body (BPD) in the development of participatory village regulations. This research is normative legal research, as it examines legislation, theories or doctrines, conceptual thinking, and previous research related to the object of this study. The results indicate that the BPD's role in the development of village regulations is crucial, including serving as a means of representing and channeling community aspirations, promoting transparency and accountability in the development of village regulations, strengthening good village governance, and reducing the potential for conflict between the village government and community members during the implementation of village regulations.

Keywords: Urgency, Role, BPD, Village Regulations and Responsiveness

INTRODUCTION

Based on Article 1 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is affirmed that Indonesia is a unitary state in the form of a republic. The consequence of this provision is the existence of a governmental structure divided between the central government and regional governments. These two entities are closely interconnected and synergize with each other in achieving national objectives within the framework of the Unitary State of the Republic of Indonesia. To ensure the continuity of governmental governance, Indonesia adopts the principle of decentralization, which grants regions the space and authority to manage governmental affairs through regional autonomy.

In Article 1 point 6 of Law Number 23 of 2014 concerning Regional Government, regional autonomy is explained as the rights, authority, and responsibilities of autonomous regions to regulate and manage governmental affairs and the interests of local communities within the context of the NKRI. The purpose of this policy is to avoid the concentration of power in the central government and to encourage equitable development across various sectors. In line with this principle, good governance needs to be implemented. Good governance is a system of governmental management that relies on synergy between the government, the private sector, and civil society in realizing governance that is effective, efficient, and accountable. This approach is also intended to minimize irregularities in the implementation of public policies through inclusive and transparent decision-making processes (Nurhidayat, 2023).

As stipulated in Presidential Regulation Number 29 of 2014 concerning the Government Agency Performance Accountability System (SAKIP), the application of good governance principles namely transparency, participation, accountability, orderliness, and discipline constitutes an important foundation for improving governmental governance. These values should ideally be implemented at all levels of government, from the central level to the village level. The village, as the governmental unit closest to the community, holds a strategic role in the implementation of autonomy and public services. The village government serves as the spearhead of the regional government system, because the village government will interact and have direct contact with the community (Wetik, et al., 2021). The success of national development greatly depends on the capacity of village governments to carry out the assistance tasks assigned by the central and regional governments (Istiqlaliyah, 2014). Village governments act as direct implementers in the field, actively interacting with citizens. In this context, the Village Consultative Body (BPD) becomes a strategic partner in administering village governance that is participatory and oriented toward community welfare. The BPD has three main functions: the legislative function, the supervisory function, and the budgeting function (Tjandra & Handayani, 2014).

The legislative function of the BPD is reflected in the drafting of village regulations carried out jointly with the village head. Village regulations, although not included in the hierarchy of laws and regulations as stipulated in Article 8 of Law Number 12 of 2011, still possess valid legal force and are recognized within the national legal system. In this process, the BPD acts as a representative of the community that accommodates citizens' aspirations and integrates them into village policies (Prasetya, 2016). Specifically, the BPD plays a role in discussing and approving draft village regulations together with the village head, as well as conveying community aspirations to the village government. The process of forming village regulations includes the stages of planning, drafting, discussion, ratification, promulgation, and socialization, as stipulated in Article 5

METHODS

This research is a normative legal study, as it examines statutory regulations, theories or doctrines, conceptual thinking, and previous studies related to the object of analysis in this research. Normative legal research is also known as doctrinal legal research, which aims to provide a detailed explanation of the legal issues being addressed. The approach technique used is the statutory approach. In normative legal research, problems are examined based on applicable laws and regulations, and legal concepts or theories are used as analytical tools to find solutions to these problems. This research is descriptive-analytical in nature. It is said to be descriptive-analytical because the results of this study are expected to comprehensively and systematically describe legal principles, doctrines, and statutory regulations. Meanwhile, it is analytical because the data obtained from the research results will be qualitatively analyzed and then described (Zainuddin, 2021).

FINDINGS

A. Role and Functions of the Village Consultative Body (BPD)

Based on Law Number 6 of 2014 concerning Villages Article 1 paragraph (4) states that the Village Consultative Body (BPD), or other equivalent names, is an institution that carries out governmental functions with members drawn from representatives of village communities according to their regions and selected through democratic

mechanisms. Furthermore, in the Regulation of the Minister of Home Affairs Number 110 of 2016 Chapter I Article 1 point 2, it is emphasized that the village government consists of the village head or other equivalent title, who in carrying out their duties is assisted by village officials as elements administering village governance.

The Village Consultative Body is an institution that performs governmental functions whose members are representatives of village residents based on territorial representation and determined democratically. The Village Consultative Body is a deliberative body at the village level that participates in discussing and agreeing upon various policies in the administration of Village Government. In an effort to improve institutional performance at the village level, strengthen togetherness, and increase community participation and empowerment, the Village Government and/or the Village Consultative Body facilitate the organization of village deliberations. Village Deliberation, or by other names, is a deliberative forum between the Village Consultative Body, the Village Government, and elements of the community organized by the Village Consultative Body to deliberate and agree on strategic matters in the administration of Village Government. The results of Village Deliberation in the form of agreements set forth in deliberation decisions serve as the basis for the Village Consultative Body and the Village Government in determining Village Government policies.

In a position equal to the village government, the BPD becomes a working partner of the village government and can carry out its function as an institution that oversees the course of village governance. Based on this, the BPD essentially has main duties such as formulating regulations (legislating function) needed by the village, which are later ratified by a decree of the village head, jointly with the village head preparing village financial revenues and expenditures (budgeting function), and supervising the village executive (the village head and their apparatus) in the implementation of daily governance (Memesah, 2014).

According to Article 55 of Law Number 6 of 2014 concerning Villages, the Village Consultative Body has several functions including:

1. Discussing and agreeing on Draft Village Regulations together with the Village Head;
2. Accommodating and channeling the aspirations of the village community; and
3. Supervising the performance of the Village Head.

Based on the functions of the BPD above, the BPD has several functions including the legislative function, the function of channeling and accommodating aspirations, and the supervisory function. In the legislative function, the BPD together with the village head prepares and approves draft village regulations, including their academic manuscripts. These legal products are established based on the needs and interests of the village community.

Furthermore, in the function of channeling aspirations, the BPD acts as a forum representing the village community. This institution has the obligation to collect, accommodate, manage, and convey the aspirations of citizens. The membership mechanism based on territorial representation and the involvement of women is intended so that the channel for conveying aspirations becomes more effective. Regulation of the Minister of Home Affairs Number 110 of 2016 also emphasizes that the BPD has the authority to request information from the village head and provide input regarding the implementation of governance, development, community guidance, and community empowerment. The aspirations of citizens that have been successfully collected are then converted into the form of the right to express opinions by members of the BPD.

The final function is the supervisory function. This role is aimed at ensuring that village governance runs according to the principle of accountability while also preventing the emergence of authoritarian practices by the village head. Supervision is carried out through monitoring and evaluation activities of the implementation of the village head's duties. This is in accordance with Article 66 letter a of the Village Law and is strengthened in Article 46 of the Regulation of the Minister of Home Affairs Number 110 of 2016, which emphasizes that supervision is carried out from the program planning stage, implementation of activities, to the preparation of reports. This monitoring and evaluation process ensures that village activities run according to the plans in the Village Revenue and Expenditure Budget (APBDesa) and other documents. The results of supervision then become part of the BPD performance report as a form of accountability to the community.

The function of the BPD as stated in the law, namely establishing village regulations, is a manifestation of the regulatory role of the BPD as a public sector institution. In the formulation and establishment of village regulations, the BPD is positioned as a partner of the village government, tasked with providing contributions in the form of suggestions or input on village regulations that will be established, where these suggestions originate from community aspirations.

In addition, the BPD as an independent institution within the village governance structure, as a legislative body and as a village parliament, brings a new nuance in mobilizing the participation of village people in democratic life. This will be reflected in the emergence of community awareness of their responsibility for the sustainability of the future of their village, even though differences among them may occur.

In the making of village regulations that will later become village public policies, the most important process is policy formulation. If the formulation stage is not carried out properly and correctly, then the results of the policy in the form of village regulations cannot achieve optimal outcomes. If village regulations are less than optimal, automatically the problems underlying the formulation of those regulations cannot be answered and resolved properly. Therefore, the existence of the BPD in village governance is very important. The BPD as the mouthpiece of the community must be able to accommodate the interests of the village community, so that the resulting policies truly correspond to the essence of the problems and the priority needs of the community.

In carrying out its functions and duties, the Village Consultative Body has rights in performing those functions and duties. According to Article 61 of Law Number 6 of 2014 concerning Villages, the Village Consultative Body has the right to:

1. Supervise and request information regarding the administration of Village Government from the Village Government;
2. Express opinions regarding the administration of Village Government, the implementation of Village Development, village community guidance, and village community empowerment; and
3. Receive operational funding for the implementation of its duties and functions from the Village Revenue and Expenditure Budget.

B. The Urgency of the Role of the Village Consultative Body (BPD) in the Formation of Participatory Village Regulations

Village regulations are a form of legislation created by the Village Head together with the Village Consultative Body (BPD) in regulating and managing the affairs of the local community in accordance with their origins and customs. In line with the principles of decentralization and regional autonomy, villages or other equivalent

designations are granted the authority to regulate and manage the interests of the local community based on their recognized origins and local customs (Nurcholis, 2011). According to Law Number 6 of 2014 concerning Villages, village regulations are rules established by the Village Head after being discussed and mutually agreed upon with the Village Consultative Body in the context of administering village governance. Thus, the village government must further elaborate higher-level laws and regulations and must not conflict with public interests and/or higher regulations, and must also consider the socio-cultural conditions of the local village community in order to achieve the goals of governance, development, and community services in the long term, medium term, and short term.

In order to realize good village governance, the formation of village regulations must involve the community. The aim is to ensure that community interests can be properly accommodated. In addition, this is intended to ensure that the formation of village regulations complies with the principles governing the formation of legislation. Community participation in channeling aspirations in the formulation of village regulations requires democratic political relations in village governance supported by the Village Head, the Village Consultative Body, and the village community within a village deliberation forum. Village deliberations are held as a medium to discuss and agree on strategic matters. Village legal products are formulated democratically so that peaceful management of village resources can be achieved in order to realize social justice. The Village Government together with the BPD is obliged to formulate village regulations based on strategic village decisions that have been established in the Village Deliberation (Musdes) (Ihsan, 2015).

Based on the explanation of Law Number 6 of 2014 concerning Villages, it is stated that the establishment of Village Regulations constitutes an elaboration of the various authorities possessed by the Village referring to the provisions of higher laws and regulations. As a legal product, Village Regulations must not contradict higher regulations and must not harm public interests, namely:

1. Disruption of harmony among community members;
2. Disruption of access to public services;
3. Disruption of public peace and order;
4. Disruption of economic activities for the welfare of village communities and efforts to improve village community welfare;
5. Discrimination based on ethnicity, religion and belief, race, intergroup relations, and gender.

As a political product, a Village Regulation is processed democratically and participatively, meaning that the drafting process involves the participation of the village community. The village community has the right to propose or provide input to the Village Head and the Village Consultative Body in the process of drafting Village Regulations. Village Regulations that regulate village authority based on original rights and local-scale village authority are supervised in their implementation by the village community and the Village Consultative Body. This is intended so that the implementation of Village Regulations can always be continuously supervised by local village residents, considering that Village Regulations are established for the interests of the village community. If violations occur in the implementation of Village Regulations that have been established, the Village Consultative Body is obliged to remind and follow up on these violations according to the authority it possesses. This is one of the supervisory functions held by the Village Consultative Body. In addition to the Village Consultative Body, the village community also has the right to conduct participatory supervision and evaluation of the implementation of Village Regulations.

According to Van der Vlies as cited by A. Hamid S. Attamimi, two categories of principles for proper legislative drafting (beginselen van behoorlijk regelgeving) are distinguished, namely formal principles and material principles. The formal principles include (Handoyo, 2008):

1. The principle of clear objectives (Het beginsel van duidelijke doelstelling);
2. The principle of the proper institution (Het beginsel van het juiste orgaan);
3. The principle of the necessity of regulation (Het noodzakelijkheid beginsel);
4. The principle of implementability (Het beginsel van uitvoerbaarheid);
5. The principle of consensus (Het beginsel van de consensus).

The material principles include:

1. The principle of clarity of terminology and systematics (Het beginsel van de duidelijke terminologie en duidelijke systematiek);
2. The principle that legislation must be easily recognizable (Het beginsel van de kenbaarheid);
3. The principle of equality (Het rechtsgelijkheidsbeginsel);
4. The principle of legal certainty (Het rechtszekerheidsbeginsel);
5. The principle of law enforcement in accordance with individual circumstances (Het beginsel van de individuele rechtsbedeling).

These principles are more normative in nature, although they are not legal norms, because they involve ethical considerations that enter the realm of law. These principles of legislative drafting are important to implement because in the era of broad autonomy, it may occur that Village Regulations are formed based on momentary intuition rather than actual community needs. In principle, the principles of legislative drafting are highly relevant to the general principles of good public administration. In general, the process of making Village Regulations goes through three stages, namely:

1. Initiation Stage

At the initiation stage, ideas or proposals for making Village Regulations can come from two parties, either from the Village Government or from the BPD. If the proposal comes from the BPD, then the draft is submitted to the Village Head; likewise, if the proposal comes from the Village Head, the draft Village Regulation is submitted to the BPD. This means that both have the right to propose Village Regulations. The BPD holds a meeting attended by the heads of sectors (community affairs or governance and development) to discuss the proposal. If the proposal is agreed upon and it is deemed necessary to have a Village Regulation, the results of the meeting become the preliminary draft of the Village Regulation.

Proposals for Village Regulations may come from input from community members either directly or through the BPD, then from the BPD they are discussed in a small committee. If approved, a full meeting is held to discuss whether the Village Regulation is appropriate, after which a draft Village Regulation is made. An idea or proposal for drafting a Village Regulation must first be discussed through a plenary session to determine whether the proposal is approved to become a Draft Village Regulation or not.

After obtaining approval from the BPD meeting that the proposal becomes a Draft Village Regulation, the Secretary of the BPD prepares the Draft Village Regulation in written form to be submitted to the Village Head for approval to become a Village Regulation. After the Village Head receives the Draft Village Regulation, the Village Head holds a meeting with the village apparatus to discuss the draft submitted by the BPD. The results of this meeting will be discussed in a joint meeting attended by the BPD, the Village Head, and the village apparatus. As known, the village apparatus as referred to in Article 12 Paragraph (3) of Government Regulation Number 72 of 2005

concerning Villages consists of the Village Secretary, Technical Field Implementers, and Territorial Elements.

2. Socio-Political Stage

The Draft Village Regulation that has been received by the Village Government is discussed in a joint meeting between the BPD, the Village Head, and the village apparatus. The role of the village apparatus is intended to accommodate community aspirations so that in its implementation the Village Regulation can be accepted.

In the discussion meeting, the Chairperson of the BPD provides an explanation regarding the background and objectives of the creation of the Village Regulation. In the meeting, a question-and-answer session is held. The Village Head is given the Draft Village Regulation before the discussion meeting is held. During the meeting, the issues contained in the Draft Village Regulation are discussed one by one, read by the Chairperson of the BPD, and the one who ultimately establishes the Village Regulation is the Village Head.

The Draft Village Regulation initially originates from an opinion or viewpoint from the BPD, after which it is discussed with the Village Head, the Village Secretary, and other village officials so that a joint agreement is reached. As a result, the proposed Village Regulation usually undergoes changes aimed at refining the content and substance of the regulation. The hope is that the resulting Village Regulation can fulfill community aspirations and address public interests. After in-depth discussions are conducted, a decision can be made regarding whether the draft can be accepted as a Village Regulation or not. Decision-making regarding Village Regulations is usually carried out through deliberation for consensus, although voting is also possible.

3. Juridical Stage

After the draft receives approval from all parties to be made into a Village Regulation, the next step is for the Village Head together with the BPD to formally establish the draft Village Regulation as a Village Regulation in accordance with the provisions of Law Number 6 of 2014 concerning Villages.

All stages of drafting village regulations mentioned above require active involvement from the community so that the resulting legal product has legitimacy and can be implemented in accordance with the purpose of its formation. Community participation can take the form of providing opinions or proposals related to the content and material that will be regulated in the village regulation. Village regulations can be effectively implemented if they meet the requirements of legal validity, namely philosophical, juridical, and sociological foundations, and must also consider their economic and political applicability, including (Pamuji, et al., 2017):

- a. The philosophical foundation requires that every legal product issued by the village government must not conflict with fundamental values that live within society, such as religious teachings and local customs.
- b. The juridical foundation means that a regulation must be aligned with prevailing legal principles and be drafted according to the legislative mechanisms that have been determined. General legal principles used as references include the non-retroactive principle, *lex specialis derogat legi generali*, *lex superior derogat legi inferiori*, and *lex posterior derogat legi priori*.
- c. The sociological foundation emphasizes the importance of considering the conditions and needs of society so that the regulation enacted can be rationally accepted even without coercion by the community.

- d. The economic foundation implies that regional regulations must adapt to the economic needs of the community and be able to cover important aspects of social life, for example the forestry sector or natural resource management.
- e. The political foundation requires that the resulting regulation can be implemented in accordance with governmental objectives without causing conflict or unrest in society.

In order to realize village regulations that are participatory and oriented toward the interests of the community, the role of the Village Consultative Body is greatly needed as an institution that channels aspirations in the formation of village regulations. The position of the BPD in the formation of village regulations has several urgencies, including:

1. A means of representation and channeling community aspirations

Members of the BPD come from elements of the community, thus having legitimacy to bring forward the interests of citizens. This makes the BPD play an important role so that village legal products do not lean toward the interests of certain elites but truly represent collective interests. Community participation accommodated by the BPD also strengthens the sense of ownership toward the rules that are implemented. Community participation is an activity carried out by the community to be involved in the decision-making process carried out by the government. This participation becomes important because it relates to the rights and obligations of the community in using all social resources to influence decision-making processes in governance (Kusmanto, 2013).

2. Encouraging transparency and accountability in the formation of village regulations

The involvement of the BPD in formulating regulations makes the process more open and subject to public supervision. Through village deliberation forums facilitated by the BPD, the community can participate in overseeing the course of governance so that the resulting regulations are relevant to real needs and can be accounted for.

3. Strengthening the principles of good village governance

Values of good governance such as openness, participation, fairness, and accountability can be realized through the active role of the BPD in drafting village regulations. Thus, the existence of the BPD becomes an important instrument in creating an inclusive and responsive village government.

4. Reducing the potential for conflict between the village government and the community

Village regulations drafted through community participation tend to be more accepted and obeyed. Citizens will feel directly involved in their creation, thereby reducing the potential for rejection and social conflict.

The Village Consultative Body, as an institution granted authority by legislation to design village regulations based on aspirations from the community, should therefore carry out its functions based on regionally representative membership established democratically. Optimizing the role and function of the BPD is very important in realizing good village governance, so that the strength or weakness of village government will, to some extent, depend on the BPD.

CONCLUSION

The Village Consultative Body (BPD) has a very important role in the formation of village regulations. BPD plays a role in formulating and agreeing on village regulations, including channeling community aspirations in the process of

forming village regulations, so that participatory village regulation products can be produced. The role of BPD in forming participatory village regulations includes: First, BPD acts as a means of representation and a channel for community aspirations, so that the village regulations produced truly represent common interests rather than the interests of certain groups only. Second, with the involvement of BPD as a channel for community aspirations in the formation of village regulations, the community will be able to easily participate in overseeing the running of the village government, especially related to the implementation of the village regulations that are established. Third, a good role of BPD will be able to realize optimal community representation so that transparency and accountability in the formation of village regulations can be achieved. Fourth, with the role of BPD as a legislative institution and as a channel for community aspirations at the village level in the formation of village regulations, BPD plays a role in reducing the potential for conflict in the future between the village government and its community members. If the village regulations that are formed have involved community participation in their making through BPD, then the community will feel that their participation has been accommodated and that they are involved in the formation of those village regulations. On this basis, the potential for rejection and social conflict arising from the implementation of village regulations can be prevented.

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