

Principles of Participation and Transparency in Drafting Village Regulations

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Abstract

This study examines the implementation of the principles of participation and openness in the process of drafting village regulations. The focus of the study is directed at an in-depth analysis of the application of the principles of good governance, especially community participation and openness of information in the legislative process at the village level, and identifying various factors that inhibit the application of these principles. This study uses a qualitative methodology with an empirical legal approach to obtain a comprehensive understanding of social and legal phenomena in the process of drafting village regulations. The results of the study indicate that the application of the principles of participation and openness in the preparation of village regulations has not yet reached an optimal level. Community participation still tends to be limited to the socialization stage, while information openness has not been fully integrated into each stage of the preparation of village regulations. Various inhibiting factors identified include internal aspects such as limited human resources and infrastructure, as well as external aspects such as socio- cultural conditions and local political dynamics

I. Introduction

Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law". According to HAW Widjaja, a village is an autonomous institution with traditions, customs with its own laws and is relatively independent.¹ According to Y Zakaria, a village is the embodiment of a small state, because a village has all the apparatus of a state, such as territory, citizens, rules and government. In addition, the village government (customary) has village equipment such as the police and courts which have the authority to use violence within its territory or jurisdiction.²

The dynamics of village governance in Indonesia have undergone significant transformation since the enactment of Law Number 6 of 2014 concerning Villages. The paradigm shift in village governance is not only limited to aspects of administration and financial management, but also includes broader dimensions including the legislative process at the village level. Villages as legal community units that have territorial boundaries, the authority to regulate and manage government affairs, and the interests of local communities based on community initiatives, original rights, and/or traditional rights, have a strategic role in national development. One manifestation of village authority that is very important is the ability to draft and establish village regulations as a legal instrument in the implementation of village governance. Village regulations become the formal legal basis for various policies and development programs at the village level, as well as a reflection of the aspirations and needs of the village community. In this context, the process of drafting village regulations becomes very crucial because it will determine the effectiveness and legitimacy of the resulting regulations. The principle of participation and openness in drafting village regulations is an implementation of the concept of good governance which is a demand of reform. These two principles are important parameters in assessing the quality of the legislative process at the village level, as well as being a prerequisite for the creation of village

¹ Andress.D. Bakarbessy. (2017). Peraturan Yang Ditetapkan Oleh Kepala Desa (Kajian Terhadap Pasal 8 Ayat (1) UU No 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan). *Perspektif Hukum*, 17(2), 228–244. <https://doi.org/10.30649/Ph.V17i2.154>

² Bakarbessy, A.D. (2018). Interaksi Antara Negara Dan Desa Adat Dalam Konstruksi Negara Kesatuan Republik Indonesia. *SASI*, 24(1), 59-72. DOI: <https://doi.org/10.47268/Sasi.V24i1.119>

regulations that are responsive and in accordance with community needs. Community participation is not only interpreted as formal involvement in deliberation forums, but also includes substantive involvement in every stage of drafting village regulations, starting from problem identification, draft formulation, to determination and evaluation. While the principle of openness requires transparency of information and public accessibility to the process and documents related to the preparation of village regulations. The village, as a government organizer, is a community association and government organizer that is very important in state governance.³ The village as a legal community unit has the authority to manage and regulate the interests of its own community in the implementation of government, which legal community unit has autonomy.⁴ However, the village autonomy in question is not like the autonomy possessed by the provincial, city, or district governments, but autonomy based on origins and customs.⁵ The Village Government that organizes government affairs and the interests and wishes of the village community in practice must be based on village regulations that are based on the principle of community participation, as a manifestation of the implementation of democracy at the village level, as well as the application. This is in accordance with Article 24 of Law Number 6 of 2014 which stipulates that the implementation of village government is based on the principles of legal certainty, orderly implementation of government, orderly public interest, openness, proportionality, professionalism, accountability, effectiveness and efficiency, local wisdom, diversity, and participation. One of the principles of village government implementation regulated in Article 24 is as Participatory, namely the involvement of the community in the implementation of village government, including community involvement in the formation of Village Regulations. The existence of space for the community to participate in the formation of village regulations is a necessity in a democratic government system that places the community as the holder of rights in the implementation of government. This is in accordance with the provisions contained in Article 28 of the 1945 Constitution of the Republic of Indonesia which states, "Freedom of association and assembly, expressing thoughts verbally and in writing and so on which are stipulated by Law."⁶ Consultation and providing input from the village community in the process of

³ Moch Musoffa Ihsan, *Ketahanan Masyarakat Desa* (Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal, dan Transmigrasi Republik Indonesia, 2015), 8.

⁴ Ricahard Timotius, "Revitalisasi Desa Dalam Konstelasi Desentralisasi Menurut Undang-Undang Nomor 6 Tahun 2014 Tentang Desa," *Jurnal Hukum dan Pembangunan* 48, no. 2 (2018): 326.

⁵ Utang Rosidin, "Partisipasi Masyarakat Desa Dalam Proses Pembentukan Peraturan Desa Yang Aspiratif," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 169

⁶ Siti Hidayati, *Partisipasi Masyarakat Dalam Pembentukan Undang-Undang (Studi Perbandingan Indonesia Dengan Afrika Selatan)*, *Jurnal Bina Mulia Hukum* Volume 3, Nomor 2, Maret 2019, hlm. 225

forming regulations at the village level is an absolute must as an effort to accommodate the aspirations of the community, as stated in Article 69 paragraph (9) of Law Number 6 of 2014 concerning Villages which states that, "Draft Village Regulations must be consulted with the Village community". There is an obligation to involve the community in the process of forming Village Regulations as regulated in Article 69 paragraph (9) above, in practice, has not been optimally implemented. Based on this, the purpose of this article is to analyze the form of village community participation in the process of forming village regulations, as well as the influence of community participation in the process of forming aspirational village regulations. How to manage and organize its own affairs, villages can compile village regulations. Village regulations have an important function, namely as a description of the village community and the embodiment of the values that exist in society. In addition, village regulations are also used to implement the regulation of power over the community. In accordance with the principles of decentralization and regional autonomy, villages are given the authority to regulate and manage the interests of the local community based on the origin and local customs that are recognized. In order to regulate community interests, the village deliberative body (BPD) together with the village government compile village regulations and the village head compiles implementing regulations, namely village head regulations and village head decisions. Village regulations that regulate village authority based on original rights and local village-scale authority are supervised by the village community and BPD. 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. If there is a violation of the implementation of the village regulations that have been established, the BPD is obliged to remind and follow up on the violation in question in accordance with the authority it has. That is one of the supervisory functions of the BPD. In addition to the BPD, the village community also has the right to carry out participatory supervision and evaluation of the implementation of village regulations. Article 1 of Law No. 6 of 2014 explains that the village government is the organizer of government affairs and the interests of the local community in the government system of the Republic of Indonesia. From this article it can be understood that the village government has the task of organizing government affairs and organizing the will and interests of its community. The village government that organizes government affairs and the interests and will of the village community, in practice, must be based on village regulations that are based on the principle of community participation as the implementation of democracy at the village level. Village communities can provide input in the formation of village regulations as a form of effort to accommodate community aspirations as stated in Article 69 paragraph (9) of Law No. 6 of 2014. Due to the obligation to involve the community in the creation of village regulations

as stated in the article above, the purpose of writing this article is to find out how the process of forming village regulations is. Also what form of community participation is in the preparation of village regulations.

II. Research Method

This research is a mixed normative and empirical research, namely research conducted by looking at legal rules and also on research problems in the field. This research was initially based on references to library materials in the form of theoretical foundations in the form of principles, concepts, doctrines and legal norms related to the problems of indigenous peoples and the responsibilities of local governments related to the management of mineral natural resources in the region based on literature and legal documents both international and national and other important documents belonging to the government which are also used as literature references. After that, this research will collect various data in the field obtained from the community, district government, and also other related institutions. The data can be obtained through interviews with related parties who have the competence for the problem.

III. Results and Discussion

Process of Forming Village Regulations

The government at the village level is the smallest order of a country. Moreover, the good and bad of the government at the central level is also determined starting from the government at the village level. Also, a government cannot be separated from the existence of regulations in order to achieve the goals of the government. Village regulations in Law No. 6 of 2014 are one of the bases of village authority to organize interests in realizing village autonomy.

Operationally, the law regarding regional autonomy mandates that governance is directed at providing broader authority to regional governments so that there is increased service and active community participation in development in all fields.⁷ It can be concluded that in the course of the Republic of Indonesia's constitution, villages have developed in various forms. Therefore, it needs to be maintained and empowered so that it becomes strong, advanced, independent and democratic, so that it can create a strong foundation for carrying out government and development towards a just, prosperous and prosperous society.⁸ Village

⁷ I Gede Yusa, *Hukum Tata Negara Pasca Perubahan UUD NRI*

⁸ Anggalana, "Sinergitas Pemerintahan Desa Dalam Pembentukan Peraturan Desa," *Pranata Hukum* 15, no. 1 (2020): 10.

regulations are a form of legal product produced by the government at the village level. Article 69 paragraph (3) of Law No. 6 of 2014 stipulates that village regulations are determined by the village head after being discussed and agreed upon with the BPD. The main function of the BPD is to accommodate, convey, and realize the aspirations and interests of the village community in determining policies implemented by the village government. Village regulations are usually local in nature and related to village or community customs and bind the local community or other villagers who temporarily live in the village.⁹ It has been expressly regulated in Article 32 paragraph (1) of the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 111 of 2014 concerning Technical Guidelines for Village Regulations (Permendagri No. 111 of 2014), provisions concerning the technique of compiling regulations in the village and decisions of the village head in accordance with the provisions of laws on the formation of regulations. Meanwhile, in Article 69 paragraph (1) of Law No. 6 of 2014 it is stated that the types of regulations in the village consist of village regulations, joint regulations of the village head, and regulations of the village head.¹⁰

Based on the provisions of Article 5 of the Minister of Home Affairs Regulation No. 111 of 2014, the mechanism for forming village regulations consists of several stages, namely as follows:

1. Planning, namely the preparation of village regulation plans determined by the village head and BPD in the village government work plan. Community institutions, traditional institutions, and other institutions in the village can provide input to the village government and/or BPD for the draft village regulation plan.
2. Drafting. At this stage, the drafting of the village regulation can be initiated by the village head or BPD. The drafting of the village regulation plan initiated by the village government must be consulted with the village community. In addition, the village regulation plan can also be consulted with the sub-district head to obtain input that will later be used by the village government to further follow up on the draft village regulation.
3. Discussion. In this stage, the BPD invites the village head to discuss and agree

⁹ Dody Jaya Wardana, "Penguatan Kedudukan Peraturan Desa Dalam

Sistem Perundang-Undangan Di Indonesia," *Justiciabelen* 2, no. 1 (2019).

¹⁰ Muhammad Syirazi Neyasyah, "Keberlakuan Yuridis Peraturan Desa Dalam Perspektif Asas Formal Kelembagaan Peraturan Perundang-Undangan,"

on the village regulation plan.

4. Penetration. The draft village regulations that have been mutually agreed upon are submitted by the BPD leadership to the village head to be stipulated as village regulations no later than 7 (seven) days from the date of agreement.
5. Invitation. At this stage, the signed village regulation plan is submitted to the village secretary for invitation.
6. Dissemination. The last stage is the dissemination stage. Dissemination is carried out by the village government and BPD since the determination of the village regulation plan, preparation of the village regulation plan, discussion of the village regulation plan, to the promulgation of the village regulation. Dissemination is carried out to provide information and/or obtain input from the community and stakeholders.

Forms of Community Participation in the Preparation of Village Regulations

Community participation is the involvement of the community in the process of identifying problems and potentials that exist in the community, selecting and making decisions about alternative solutions to deal with problems, implementing efforts to overcome problems, and community involvement in the process of evaluating changes that occur.¹¹ Community participation emphasizes direct citizen participation in policy-making and decision-making in government institutions and processes that affect the lives of citizens. Community participation as proactive and reactive involvement in development and program implementation, by making an agreement, action, and sharing authority and responsibility in an equal position.¹²

According to Indonesian, the word "participation" means to participate, to participate, or to play a role. When associated with state administration, participation can be interpreted as a form of community involvement in various forms of state administration activities. The process of policy making, policy implementation, and evaluation of the implementation of a policy are some forms of community participation. The existence of community participation will be greatly determined by the involvement or not of the community in the government activities of a country, especially in the legislative realm.¹³

¹¹ I. R. Adi, *Perencanaan Partisipasi Berbasis Aset Komoditis* (Depok: FISIP UI Press, 2007).

^{12 12} S. I. A. Dwiningrum, *Desentralisasi Dan Partisipasi Masyarakat Dalam Pedidikan* (Yogyakarta: Pustaka Pelajar, 2015).

¹³ Yuliandri, *Laporan Akhir Pengkajian Hukum Tentang Partisipasi Masyarakat Dalam Penentuan Arah Kebijakan Prioritas Penyusunan Peraturan Perundang-Undangan* (Jakarta: Pusat Penelitian dan

There is another term used to refer to the term “participation”, namely “role and participation”. According to Muin Fahmai, role and participation is a term that is often interchanged with the term “participation”. In Dutch literature, role and participation (*inspraak*) is one form of participation. The elements of role and participation are: (1) the availability of an opportunity (organized) for the community to express their opinions and thoughts on the main points of government policy; (2) the opportunity for the community to have discussions with the government; and (3) within reasonable limits, it is expected that the results of the discussion can influence decision-making.¹⁴

Community involvement or participation has become a concept that has developed in the modern political system. As an effort to democratize, the process of forming and ratifying regulations is no longer the absolute authority of officials and legislative bodies.¹⁵ Therefore, participation can be interpreted as active community participation if there is provision of participation space for the community, both individually and in groups, to realize participation in an absolute demand.

Talking about participation, it means that it will always be related to efforts for the active participation of all components of society in various planned activities. This active participation is the energy that drives the wheels of development or community activities in order to achieve goals or to solve a problem. Community participation is defined as the active involvement of community members, either individually, in groups, or as a community unit in the process of making joint decisions, planning, and implementing programs and community development, which are carried out inside or outside the community environment on the basis of a sense of awareness and responsibility.¹⁶ Contextually, community participation is a tool and goal of community development, so that it functions as a driver and director of the process of social change.¹⁷

Meanwhile, the participation of village communities in channeling their aspirations for the preparation of village regulations, ensures that there are democratic political relations in village governance supported by the village head,

Pengembangan Sistem Hukum Nasional, Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2014), 15.

¹⁴ Lihat, Arif Hidayat, “Analisis Politik Hukum Partisipasi Masyarakat Dalam Sistem Penganggaran Daerah Di Indonesia Pasca Reformasi,” *Pandecta* 6, no. 1 (2011): 28.

¹⁵ Yurika Maharani, “Sistem Pembentukan Peraturan Desa Berdasarkan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa,” *Kerthanegara* 3, no. 3 (2015): 8.

¹⁶ Holil Soelaiman, *Partisipasi Masyarakat Dalam Pembangunan Berencana* (Bandung: BSSW, 1985), 6.

¹⁷ Iza Rumesten RS, “Strategi Hukum Dan Penerapan Partisipasi Masyarakat Dalam Penyelesaian Sengketa Batas Daerah Di Sumatera Selatan,” *Jurnal Hukum Ius Quia Iustum* 20, no. 4 (2013): 619.

BPD, and village communities in a village deliberation.¹⁸ By implementing this village deliberation, it can be used as a means to discuss and agree on strategic matters. Village legal products formulated in a democratic manner are expected to realize peaceful management of village resources and create social justice. The village government together with the BPD in drafting village regulations must be based on decisions that have been determined in the village deliberation.¹⁹

The concept of community participation in the formation of regulations has been written in the Republic of Indonesia Law Number 12 of 2011 concerning the Formation of Legislation (Law No. 12 of 2011). In accordance with the law, in the concept of village government, village communities in the preparation of regulations have the right to provide suggestions and input on the draft village regulations. The draft village regulations must be consulted with the village community.²⁰

The form of community participation in the preparation or formation of regulations and legislation is stated in Article 96 paragraph (1) of Law No. 12 of 2011 which states that the community has the right to provide input verbally and/or in writing in the formation of regulations and legislation. Then continued in paragraph 2, input verbally and/or in writing can be done through meetings with public opinion, work visits, socialization and seminars, workshops, and discussions. This regulation can be used as a basis for forms of village community participation in the formation of village regulations.

The form of community participation in the formation of regulations depends on the situation and conditions of the community and its environment. In this case, there is an opportunity for community participation in the formation of village regulations which can be carried out in the form of the following activities:

1. Submitting or preparing a community initiative plan. Each community member, either individually or together, prepares a regulation plan through a valid method which is then discussed with the village head, BPD, and the village community in a village meeting.
2. Provide input on the village regulation plans that have been prepared.
3. When the draft village regulations have entered the discussion stage, community participation is carried out by overseeing the discussion process.

¹⁸ Baharudin, "Analisis Kedudukan Peraturan Desa Dan Pembentukan Peraturan Desa Yang Demokratis Partipatoris," *Jurnal Keadilan Progresif* 10, no. 2 (2019): 128.

¹⁹ Ihsan, *Ketahanan Masyarakat Desa*, 24.

²⁰ Marhum and Meronda, "Partisipasi Masyarakat Dalam Pembentukan Peraturan Desa Menurut Undang-Undang Nomor 6 Tahun 2014: Studi Kasus Desa Wawosanggula, Kecamatan Puriala, Konawe, Sulawesi Tenggara," 144– 145

4. Carry out control and evaluation of the implementation of village regulations that have been established and approved.

In a democratic system, community participation is essentially a means to avoid the protection of power by leaders, channel community aspirations, involve the community in public decision-making, and uphold sovereignty. In this case, village regulations have parameters, so that the regulations can be said to be participatory if:

1. The preparation of village regulations should be carried out with the aim of implementing good governance.
2. Participation, openness and supervision to ensure that there is no support for village development are the basis for drafting village regulations.
3. Participation in the preparation of village regulations is the right and obligation of the community.
4. There is empowerment of the parties.
5. All aspirations are taken into account without exception.
6. Decision making through an honest, open and fair process.
7. There is broad access to various information which is a public right.

Similarly, according to Alexander Abe, direct community participation in the formation of regulations, including village regulations, brings 3 (three) important impacts. First, it avoids the opportunity for interaction of people's participation and clarifies what the community wants. Second, it adds value to the legitimacy of planning formulations. Third, it improves the health and political skills of the community.

IV. Conclusion

Based on the existing discussion, several conclusions can be drawn as follows: This study shows that the implementation of the principles of participation and openness in the preparation of village regulations presents complex and diverse dynamics. Community participation in village deliberations, socialization, and public consultations affects the quality of regulatory outcomes. Factors such as time and place of implementation, relevance of the agenda, level of education, and legal awareness are the main determinants of the level of participation and quality of community contributions. Villages with better infrastructure tend to be more optimal in utilizing technology for information transparency. However, there are

still significant obstacles, such as limited human resources, minimal budget allocation, community business, and the complexity of the legal material discussed. A more structured training program is needed for village officials and the community to improve understanding and skills in preparing regulations. This will encourage higher quality participation. Villages that have initiated innovative programs must continue to develop and share best practices with other villages. This includes developing human resource capacity, budget efficiency, and strengthening synergies with external resources. More consistent and innovative implementation of the principles of participation and openness will improve the quality of participatory, responsive, and transparent village governance.

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