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**IMPLICATION OF SUPERVISION OF VILLAGE
REGULATIONS IN THE CONCEPTION OF VILLAGE
AUTONOMY BASED ON LOCAL WISDOM**

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ABSTRACT

Village regulations are a product of village law which comprises material for administering village government based on the original autonomy of the village. The mechanism for annulling or examination village regulations due to preventive and repressive supervisory functions by the Regional Government can reduce the village government in regulating and managing its own household. There are two identifications raised in this study, firstly how are the form of supervision of village regulations according to Law Number 6 of 2014 on Villages, secondly what are the implications of local government supervision of village regulations in the perspective of village autonomy according to Law Number 6 of 2014 on Villages. In order to answer the problem identification mention above, the method used is descriptive analytical with normative juridical and empirical juridical approaches from the types of data, both primary data and secondary data. With primary legal materials, secondary legal materials, and tertiary legal materials analyzed juridically qualitatively.

Keywords: village regulations, village autonomy, supervision

INTRODUCTION

The consequences of the concept or legal idea of the Unitary State of the Republic of Indonesia is not only the decentralization of authority to autonomous regions that gave birth to regional autonomy, but more than that, namely the recognition (or protection of) the existence of village autonomy as the original autonomy of the Indonesian nation since before the arrival of the Dutch colonial.(Syafudin & Na'a, 2010) According to Soepomo's speech and description on the Republic of Indonesia which was proclaimed on August 17, 1945, in forming the Republic of Indonesia the Indonesian people based on the state theory "Republik Desa".(Huda, 2015)

Historically, the village was the forerunner of the formation of a political society and government in Indonesia long before this country was formed. Social structures

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such as villages, indigenous peoples, and other name have become autonomous institutions with their own traditions, customs, and laws and are relatively independent. This showed, among other things, by the high level of diversity that makes the village perhaps the most concrete form of the nation.(Aziz, 2016; Widjaja, 2003) According to Mashuri Maschab, the village in the political context is a legal community unit, the village manages their lives independently (autonomous), and the authority to take care of themselves has been owned since the legal community unit was formed without being given by other people or parties.(Hasjimzoem, 2014; Maschab, 2013; Satriawan, 2013)

In contrast to regional autonomy which is owned by provincial and district/city regions, regional autonomy is an autonomy granted to regions based on Article 18 of the 1945 Constitution of the Republic of Indonesia. While village autonomy is not a gift from the government, village autonomy is born based on local wisdom, community initiatives, origins, and customs that grew from the village.(Shanti Dwi dkk., 2018) The enactment of Law Number 6 of 2014 on Villages in a political year, has triggered important changes at the village government level.(Sayuti, 2014) The village regulation previously contained in Law Number 32 of 2004 on Regional Government which made the position of the village as a government organization within the regional government system, was changed to be regulated in a separate law.(Abrianto, 2011)

Village is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia (Article 1 of the Republic of Indonesia Law). Law Number 6 of 2014 on Villages). The legal essence of village autonomy includes the authority to regulate (in addition to managing) the interests of the local village community.(Astuti, 2015; Endah, 2020) The word regulate can be interpreted as the power to form laws and regulations at the village level, one of which is the power or authority to form village regulations.(Syafrudin & Na'a, 2010)

Through village regulations, the village government can carry out its household affairs by developing its potential, both in terms of economic, social, cultural, and local

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values that live and are respected by the local community based on the needs, wishes, and aspirations of the community. (Endah, 2019; Timotius, 2018) The content material regulated in village regulations is all material in the context of administering village government based on the original autonomy of the village but still within the framework of the Unitary State of the Republic of Indonesia. (Marzuki dkk., 2021)

In order to maintain the consistency of the position of the village government which is under the central government within the Unitary State of the Republic of Indonesia, the central government carries out supervision. In order to avoid that supervision does not weaken autonomy, the supervision system is specifically determined both in scope and in the procedures for its implementation. (Eko dkk., 2014; Marit dkk., 2021). The Central Government gives authority to Regional Governments to oversee village regulations by evaluating and clarifying village regulations. (Astomo, 2018; Gonibala, 2019) On the day of the evaluation and clarification, the Regional Government may annul the village regulation by a decision of the regent/mayor. (Ayunita, 2016) This means that the regent/mayor is given the authority by the central government to determine the legality of a village regulation. (Astomo, 2018)

In the perspective of a unitary state (*eenheidstaat*) it is logical to develop an understanding that the superior government has the authority to control subordinate government units. (S. H. Ni'matul Huda & Nazriyah, 2019) With the provision of village regulations that can be annulled by the regent/mayor, it will create the perception that the village is an inseparable part of regional government and as a government unit that is not autonomous. (Permana, 2016)

In fact, this is the origin of the almost eternal tension between the state on the one hand and society (communities and/or villages) on the other. (Huda, 2017) This tension concerns how the state realizes village autonomy which is politically and legally accommodated in existing laws and regulations. (Huda, 2015) Thus, so that supervision does not lessen village autonomy in the relationship between the Central Government and the Village Government, supervision must be carried out on a juridical basis and a

clear mechanism to support the achievement of overall national goals.(Kumalasari & Riharjo, 2016; Roza & Arliman, 2017)

METHODOLOGY

This research is descriptive analytical using qualitative methods. Therefore, this research tries as much as possible to describe the object under study as a whole and in depth through organization, classification, systematization, and data analysis.(Gunawan, 2013) The research uses a normative juridical approach and is assisted by empirical juridical or sociological juridical. Literature studies and field studies were conducted to obtain the necessary data, both primary and secondary data. Secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials obtained through library studies. Primary legal materials include statutory regulations. Secondary legal materials include explanations, articles or journals, research results, books relevant to the object being researched. Tertiary legal material is a dictionary. Primary data is data obtained from direct sources through field studies conducted through observations and interviews with related parties. The method of analysis is done by qualitative juridical.(Adi, 2021)

RESULTS AND DISCUSSION

1. Forms of Supervision of Village Regulations

Prior to the formation of the modern state, the village was a social entity that had the identity and completeness of various indigenous cultures, traditions, or local institutions, a democratic government, and once had distinctive (original) autonomy in regulating its own life (self governing community). Between villages, kingdoms, or the state are both forms of organization with different regions, but the object and subject of the perpetrators are the people.(Didik, 2013)

In contrast to regional autonomy which is owned by provincial and district/city regions, village autonomy is not an autonomy granted to regions based on the provisions of Article 18 of the 1945 Constitution of the Republic of

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Indonesia, village autonomy is based on local wisdom and customs that grow from the village. Village autonomy is genuine, unanimous, and complete autonomy based on local wisdom, community initiatives, origins, and customs that grow and live in the village, not based on the delegation of authority from the government and the government is obliged to respect the original autonomy owned by the village.(Shanti Dwi dkk., 2018)

In the context of the current regional autonomy policy, the system of supervision or control of regional legal products, especially regional regulations (including village regulations) by the central government has a very significant influence on the implementation of local governments that are obedient and obedient to the system of enforcing applicable laws and regulations.(Sulaiman, 2017) The supervisory system in the context of regional autonomy, according to Sir William O. Hart and JF Garner cited by Bagir Manan stated that Supervision is a "binding" of unity, so that the pendulum of autonomy does not move so far as to lessen and even threaten unity, if it is "binding". is pulled so tightly, the breath of freedom of decentralization will be reduced and maybe even cut off. When that happens,

The realities of villages with genuine autonomy have changed. One of the most prominent forms of political pressure on villages, in the context of the state, was when the New Order regime enacted Law Number 5 of 1979 on Village Administration which uniformed village institutions. This rule defines the village in an administrative sense, which is a government unit located directly under the sub-district. The law also makes the village government structure uniform, as a strategy to control the village. Thus, the village is officially at the bottom of the bureaucratic hierarchy of the national government system. As a result, the village becomes part of the state structure, which negates the original autonomy of the village.(Didik, 2013)

During the reform period, global values with the keywords democratization and decentralization were re-adopted by the state in Law No. 22/1999 on Regional Government. Law Number 22 of 1999 on Regional Government replaced Law

Number 5 of 1974 on Principles of Regional Government and Law Number 5 of 1979 on Village Administration. The mention of the term village head decision in this law turns into a village regulation. In contrast to Law Number 5 of 1979, Law Number 22 of 1999 on Regional Government only applies repressive supervision, with a normative supervision system, namely executive review.

Unlike the regulation of regional regulations in Law Number 22 of 1999 on Regional Government which regulates judicial review efforts to the Supreme Court against objections to the annulment of regional regulations, on village regulations judicial review efforts are not regulated in Law Number 22 of 1999 on Regional Government.

Law Number 32 of 2004 on Regional Government comes to replace Law Number 22 of 1999 on Regional Government, which confirms that regional regulations are provincial regional regulations and/or district/city regional regulations. This arrangement has implicitly issued village regulations of the types and hierarchies of statutory regulations as regulated in Article 7 paragraph (1) of Law Number 10 of 2004 on the Establishment of Legislation. This causes the position of village regulations in the type and hierarchy of statutory regulations to be blurred.

Over time, Law Number 12 of 2011 on the Establishment of Legislations replaced Law Number 10 of 2004 on the Establishment of Legislations. Village regulations are not included in the type and hierarchy of statutory regulations as regulated in Article 7 paragraph (1) of Law Number 12 of 2011 on the Establishment of Legislative Regulations. However, in the provisions of Article 8 paragraph (1) of Law Number 12 of 2011 on the Establishment of Legislations, it turns out that the term or nomenclature of "Village Regulations" is not found but "Village Head Regulations". It means, The legislators besides not explaining the hierarchy of "Village Head Regulations" for the types of regulations above also do not explain explicitly whether the meaning of "Village Head Regulations" has the same meaning and refers to the meaning of "Village Regulations". The unfamiliarity of the term "Village Regulations" in Law Number 12 of 2011 on the

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Establishment of Legislation reminds the same situation during the enactment of Law Number 5 of 1979 on Village Administration, namely the term "Village Regulations" is not known but only known the term "Village Decision".

The position of village regulations is not yet clear in their placement in the hierarchy of laws and regulations, this will make it difficult to implement and test them in the judiciary. The village regulations (village head regulations) in Article 8 paragraph (1) of Law Number 12 of 2011 on the Establishment of Legislation are categorized as statutory regulations, because they receive an attribution of authority from Law Number 32 of 2004 on Regional Government which its existence is recognized and has binding power as long as it is ordered by a higher statutory regulation or is formed based on authority.

Thus, the position of village regulations that have been identified in Article 8 of Law Number 12 of 2011 on the Establishment of Legislations becomes the object of the right to judicial review in the Supreme Court. This means that if a village regulation is deemed to be in material or formal conflict with the provisions of the law, based on Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, a constitutional mechanism is available to test its legality based on the law at the Supreme Court. If the law is being tested because it is deemed untrue and unfair in the public interest, then the constitutional review is carried out by the Constitutional Court. Therefore, Supervision of village regulations through judicial review is carried out after village regulations are passed, so it is a form of repressive supervision.

In further developments, namely with the presence of Law Number 6 of 2014 on Villages, the position of village regulations as a product of village law has a stronger and clearer position. From the provisions of Article 69 and Article 70 of Law Number 6 of 2014 on Villages, it is regulated, among others: the types of village regulations and the process of forming village regulations. In fact, in the provisions of Article 110 of the law, the term "Traditional Village Regulations" is introduced, in which the position of Customary Village regulations is adjusted to

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customary law and customary norms that apply in Traditional Villages as long as they do not contrary with statutory provisions.

In carrying out village government affairs which are under the authority of the village, the village head, and the village consultative body as the organizer of the village government make village regulations as the legal basis for the village in implementing village autonomy in accordance with the conditions and aspirations of the community and the uniqueness of the village. Village regulations made by the village government only apply within the jurisdictional boundaries of the village concerned. However, the village regulations set by the village head may not conflict with the provisions of the higher-level legislation in accordance with the hierarchy of laws and regulations. Besides that, village regulations as part of the statutory system must not conflict with the public interest as regulated in the rules of drafting village regulations.

The measurement of village regulations is considered contrary to higher laws and regulations, the measurement is with the hierarchy of laws and regulations, while the size of village regulations that are considered contrary to the public interest includes disruption of harmony between community members, disruption of access to public services, disruption of peace and public order, disruption of economic activities to improve the welfare of rural communities, and discrimination against ethnicity, religion and belief, race, intergroup, and gender.

The mechanism for monitoring village regulations is regulated in Law Number 6 of 2014 on Villages, namely supervision through political institutions (political review) and administrative institutions (administrative/executive review). Executive review is the authority to evaluate the laws and regulations owned by the government (executive power). Meanwhile, supervision through judicial review is not regulated in this law.

Supervision of village regulations through administrative institutions is carried out by district/city governments based on the authority granted by the central government. Village regulations regarding APBDs, levies, spatial planning, and organization are carried out through a preventive supervision

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pattern, namely that village regulations before being promulgated are evaluated first by the regent/mayor. If the village government does not make improvements based on the results of the evaluation carried out by the regent/mayor, then the supervision is carried out repressively, namely the annulment of village regulations with the decision of the regent/mayor.

Supervision of village regulations in general, in addition to those that regulate APBDes, levies, spatial planning, and organization is carried out through a repressive supervision pattern after village regulations are promulgated with a clarification mechanism by the regent/mayor if they are deemed contrary to higher legislation and/or interests. In general, the village regulation is annulled by the decision of the regent/mayor.

If we look at the Constitutional Court Decision Number 137/PUU-XIII/2015 and the Constitutional Court Decision Number 56/PUU-XIV/2016 that the annulment of regional regulations through the Decree of the Minister of Home Affairs and the Governor as the representative of the central government as regulated in Law Number 23 of 2014 on Regional Government, according to the Constitutional Court, the regional regulations is not in accordance with the statutory regime adopted in Indonesia. Article 7 paragraph (1) and Article 8 of Law Number 12 of 2011 on the Establishment of Legislation do not recognize ministerial decisions and governor decisions (including decisions of regents/mayors) as one type and hierarchy of laws and regulations. Thus the position of ministerial decisions and governor decisions is not part of the statutory regime, so that it cannot be used as a legal product to annul regional regulations (as well as village regulations). (Bayu Dwi Anggono, 2020).

Law Number 6 of 2014 on Villages does not regulate the efforts that can be made by the village government who object to the decision to annul the village made by the regent/mayor. This means that the law does not regulate an administrative appeal mechanism for the issuance of a decision by an authorized official to a higher level official, namely the governor or the minister of home affairs.

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According to the author, due to the absence of an administrative appeal, the decision to annul a village regulation set by the regent/mayor was submitted to the State Administrative Court on the basis that the decision could be overturned by: 1) the government official who made the decision; 2) the superior of the official who makes the decision; 3) on the decision of the State Administrative Court. In addition to the 2 (two) efforts above, if we look at the provisions of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 20 paragraph (1) of Law Number 48 of 2009 on Judicial Powers that the Supreme Court has constitutional authority to examine regulations legislation under the law. The enumerative powers of the Supreme Court include: a. adjudicate at the level of cassation against decisions given at the last level by courts in all judicial circles under the Supreme Court, unless the law provides otherwise; b. examine the legislation under the law against the law; and c. other powers granted by law.

Thus, based on the provisions of Article 20 paragraph (2) number 2 of Law Number 48 of 2009 on Judicial Power, Article 31 paragraph (1) of Law Number 3 of 2009 on the Supreme Court, and Article 9 paragraph (2) of the Law Number 12 of 2011 on the Establishment of Legislations, clearly and unequivocally the authority of the Supreme Court to examine statutory regulations against laws is attributive authority which, apart from being sourced from various laws, also comes from constitutional authority.

Apart from the policies adopted as in Law Number 6 of 2014 on Villages which do not regulate the mechanism for reviewing village regulations through judicial review at the Supreme Court, but based on a systematic interpretation of the provisions of other laws and regulations, as well as the constitutional authority of the Supreme Court to examine laws and regulations the invitation to the law, the legal testing room for village regulations apart from internal mechanisms (executive preview and executive review) is also still possible and justified externally through the submission of a judicial review to the Supreme Court.

However, it should be noted here that the judicial review facility is only open and can be used when a lower government structure raises an objection to the

results of an executive review in the form of a decision to annul village regulations carried out by a higher government structure or vice versa. cannot accept the decision to annul village regulations made by the regent/mayor, thus submitting legal steps for submitting an application for judicial review rights to the Supreme Court.

Thus, the Supreme Court functions as the final decision maker on a case that is disputed by the parties, both citizens and the government or between local governments and village governments. The parties have an equal standing before the law and the decision must be obeyed and implemented by all parties without exception. Judicial review serves as the last terminal for the people to fight for their rights in the face of power, both for the issuance of general abstract, general concrete regulations, as well as the implementation of legislation at the concrete individual level (Firdaus, 2019).

2. **Implications of Regional Government Supervision of Village Regulations in the Perspective of Village Autonomy**

The existence and role of the village, which is very essential in the constitutional life of the Republic of Indonesia, has been realized since the founding fathers in drafting the Constitution of the Republic of Indonesia. Soepomo explicitly stated the need to use the village as a model in formulating the government system of the Republic of Indonesia, because the leader must be able to unite with his people as in the tradition of village government at that time. Soepomo also wanted the recognition of village autonomy (*zelfbesturende landschappen*) in the constitutional system of the Republic of Indonesia (Marsilam Simanjuntak, 1994).

The desire to form a self-governing community that relies on villages has existed since the preparation of the original text of the 1945 Constitution of the Republic of Indonesia, calling it a *zelfbesturende landschappen*. If this thinking is followed, what is really desired to become the character of the Indonesian state is a multicultural country. In a government system with people's sovereignty, the local government (district/city) is referred to as the local self-government and the village as the self-governing community. From a historical perspective, the village as an autonomous community is even older than the sub-district, district/city,

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province and state. This is the basis for giving a strong and autonomous position to the village in a democratic system (Didik Sukriono, 2013).

The village as the smallest legal community unit that has genuine autonomy based on local wisdom must be managed by village officials with the support of the community to realize the village development goals. However, in practice, regional autonomy and village autonomy are often confused, namely village autonomy starting from 3 (three) functions of power and government affairs, namely the main function is in the central government, while in the village it is traditional which is integrated nationally; there is a service function in the form of services, among others, education, health, land, and water, while this village autonomy is real and the responsibility is related to the potential of the village, the ability of the village to manage its potential, taking into account the traditional village which is given full autonomy; development gives rise to a distribution ordered from above,

With autonomy, villages can manage their villages independently, make their own policies, make their own rules in order to fulfill the needs of community life. The form of implementing village autonomy has been stated in Law Number 6 of 2014 on Villages, including those relating to village funds, village regulations, including making village development plans as contained in village regulations (Shanti Dwi Kartika, 2018).

Village regulations will provide legal certainty for villages to develop their values, culture, comparative advantage, which are local wisdom to become global in nature. This is certainly an opportunity that the village has to become more useful and dignified, both regionally, nationally, and globally. Village regulations based on principles aim to provide legal certainty and provide enormous opportunities for village governments for the growth and development of village autonomy. With this autonomy, the village government is expected to be able to realize the goals of village autonomy, including preserving local culture, customs, forming social and cultural resilience of the community, empowering the

community's economy, and the end is the welfare of the village community as a whole.

However, village autonomy is not a process of village liberation in the sense of independence (separate sovereignty). This means that the implementation of village autonomy must continue to uphold the values of responsibility for the Unitary State of the Republic of Indonesia and the responsibility for realizing the welfare of the people which is carried out in the corridor of applicable laws and regulations through the formation of village regulations that contain authority based on origin rights and local authority on a local scale. village. Therefore, it is important to supervise village regulations, considering that Indonesia is a state of law that makes legal norms fundamental in the process of state administration.

Thus, the system of monitoring village regulations by the central government which is delegated to regents/mayors has a significant influence on the implementation of a village government that is law-abiding and obedient to the system of enforcing laws and regulations in force within the framework of the Unitary State of the Republic of Indonesia.

As the author has stated previously, the mechanism for monitoring village regulations that are currently in effect as regulated in Law Number 6 of 2014 on Villages, only uses 2 (two) models of supervision, namely preventive supervision and repressive supervision. Preventive supervision is defined as supervision of village regulations by the regent/mayor in the form of approval (approval) or annulment (vernietiging) of each draft village regulation on APBDesa, spatial planning, management, and organization that have been mutually agreed upon between the village head and the village consultative body but has not been officially enacted or enforced as a village regulation, which is carried out in the form of an evaluation of village regulations.

In this context, it is still interesting to investigate further the mechanism for annulment or testing village regulations through executive preview and executive review models by local governments of village regulations. The local government, based on the mandate from the law and from government regulations, has ordered

the local government to stipulate regional regulations or regent/mayor regulations regarding the mechanism for forming village regulations.

The supervisory authority given by the central government to regional governments is generally delegated again to regional apparatus in charge of village government, and can even be delegated again to the sub-district head. The problem that occurs is that there is no standard model (mechanisms and methods) for both evaluation and clarification of systematically designed village regulations.

The concept of authority to supervise village regulations given to a higher government, namely the district/city government, can lead to a tendency to make the district/city government more powerful over village government. This has the potential to obscure the autonomous authority of the village government in the formation of village regulations. In addition, it can also lead to the perception that the village is an inseparable part of regional government and as a government unit that is not autonomous and is under the regional government.

The domination of the district/city government over the village administration in the formation of village regulations, is seen when the district/city government annuls village regulations that are considered contrary to higher laws and/or contrary to the public interest. In addition, there are no arrangements related to efforts if the village government objected to the decision to annul village regulations set by the regent/mayor in Law Number 6 of 2014 on Villages. This means that the decision of the Regent/Mayor on the annulment of village regulations is final. This can erode the authority possessed by the village, because of the frequent intervention of the local government in the village.

Thus, the process of monitoring village regulations that does not open up efforts for village governments who object to the decision to annulled village regulations made by the regent/mayor may lessen the authority in village autonomy, especially the original authority that has been passed down from generation to generation as the original authority as part of village autonomy which is older than the Republic of Indonesia.

CONCLUSION

The form of supervision of village regulations based on Law Number 6 of 2014 on Villages is carried out through 2 (two) supervisory mechanisms, namely executive preview supervision (preventive supervision) and executive review (repressive supervision). Such supervision, including the annulment of village regulations. There is no regulation, if there are objections to the annulment, but testing of village regulations through judicial review is still possible based on the attributive authority of the Supreme Court which derives from various laws and also comes from constitutional authority.

The annulment of village regulations by the regional government which is final in nature can lessen village autonomy and can create uncertainty for the village government in implementing village autonomy. This can affect and limit the independence of the village and can create a perception that the local government views the village as part of the regional government, so that the meaning of village autonomy becomes blurred.

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