

# Participation of Village Community in the Formation of Village Regulation in District Deli Serdang

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**Abstract:** This paper discusses about the participation of the community in the formation of village regulations and the application of legislation process. This paper is based on the results of legal research using the normative juridical approach. Research conducted shows that Law No. 6 year 2014 concerning Villages, village authorities the power to manage their own households (village autonomy) and make village regulations both participatory and responsive in the exercise of village authority. In the formation of village regulations, there is a right and obligation of the village community to participate in determining the direction of the village governance policy, but not being put to good use by the villagers. There are external and internal factor that influence the awareness of the village community.

## 1 INTRODUCTION

Article 18B paragraph (2) of the 1945 Constitution stated that: “States acknowledge and honor the unity of customary law community along with its traditional rights as long as it is still alive and in accordance with the society’s development and the principles of The Unitary State of the Republic of Indonesia, which is regulated in the law.” This certain stipulation is one form of acknowledgement from the State towards the existence of customary law community, including villages with its traditional rights but within the frame of NKRI (Ateng, 2010).

The history of village regulation, regulations regarding village has been settled, which is Law No. 22 year 1948 concerning the Principals of Village Governance, Law No. 1 year 1957 concerning the Principals of Village Governance, Law No. 18 year 1965 concerning the Principals of Village Governance, Law No. 19 year 1965 concerning Village as a Transitional Form to Accelerate the Realization of Third-Level regions throughout the Republic of Indonesia, Law No. 5 year 1974 concerning the Principals of local government, Law No. 5 year 1979 concerning Village Authorities, Law No. 22 year 1999 concerning local government, and last but not least Law No. 32 year 2004 concerning local government.

In Law No. 32 year 2004 concerning local government, the village government positioned as part of the districts / municipalities government, as stated in Article 200 paragraph (1) of Law No. 32 year 2004 that states: “within the districts / municipalities government, village government that consists of village government and Village Consultative Body.” This certain regulation clearly states that village is part of the regency or city government. Therefore, villages do not have the authority to manage their own households. Village authorities merely perform the functions and authority of duties granted by the superior government which is districts / municipalities’ government.

The birth of Law No. 6 year 2014 on the Village brings a new spirit in the implementation of village governance in Indonesia. in the explanatory section of the law No. 6 year 2014 mentioned that the formation of the law itself aims to give recognition and respect for the Village which has already existed before and after the formation of The Unitary State of the Republic of Indonesia, and provides clarity on the status and legal certainty of the Village in the Republic of Indonesia’s constitutional system in order to realize justice for all the people of Indonesia (Act No. 6, 2014).

Village is the oldest indigenous legal entity. Original villages that have existed since ancient times have the right and permission to manage their own

households. The right and authority to administer the household is called the right of autonomy. The main purpose of regulation about the village is provide recognition, respect for the existing village and provide clarity on the status and legal certainty of the village in the constitutional system of the Republic of Indonesia and also to strengthen the village community as the subject of development.

To achieve the purpose of the formulation of Law no. 6 year 2014, the Village Head is also given the authority to establish Village Regulation. Article 1 paragraph (7) of Law no. 6 of 2014 provides a definition that the Village Regulation is a legislation established by the Village Head after being discussed and agreed with the Village Consultative Body. This provision indicates that there are checks and balances in the process of establishing village regulations. The process of formation of village regulations is also requires the existence of public participation in its formation, as mentioned in the Article 69 paragraph (9) and paragraph (10) of Law no. 6 Year 2014 (9) provides that bill of village regulations shall be consulted to the village community, and Villagers are entitled to provide input to a bill of village regulation. (Explanation of Law No 6 Year 2014 on village).

The Law No. 6 Year 2014 on the Village and Law no. 12 Year 2011 concerning the establishment of Laws and Regulations show that the duty of community were to participate, in the formation of legislation, including in the formation of village regulation. Villagers have the right to participate and participate in political decision-making in the village. The problem is the village community really participate in the formulation of village regulation? This paper would like to address the problem of how the community's participation in the formulation of village regulation.

## 2 RESEARCH METHODOLOGY

Based on the background of the problem, this legal research using normative juridical method, which basically examines the rules of law and legal principles (Soerjono, 1985). The data obtained will be analytically by analyzed descriptively. Descriptive research is a study that aims to describe something in a particular area and at a certain moment. To complement and support the data, this study also used questionnaires and depth interview. Determination of informants is done by using purposive sampling technique. The informants were appointed by the Village Head, Secretary and staff from the village head office, community and public figure

## 3 RESULT AND DISCUSSION

Since established in Law no. 6 year 2014 on the Village, the village is given the authority to manage its own household affairs or called the village autonomy. In the beginning, the village is a self-governing community that has its own government.

In the Dutch colonial period, self-governing community was formulated legally through Article 128 IS as *Indlandsche Gementee*, which was divided into 2 forms, which are: Self-help areas/*Swaprajaand Village* or similar to the village (Jimmly, 2015).

Van Vollen Hoven declares that the village as a *republieken* is a democratically administered government, concerned with the welfare of the indigenous and autonomous people. It is a democratically administered government, concerned with the welfare of the indigenous and autonomous people, based on customs and cultural niali system (Nikmatul, 2015).

Talizhidhuhu Ndraha states that in village autonomy there are several important elements, namely: (Talizidhuhu, 1981) first, the existence of certain customs those are binding and adhered to by the village community concerned. Second, land, heritage, and village wealth. Third, the source of village income. Fourth, the affairs of the village household. Fifth, the village government elected by and from the village community concerned. Sixth, representative institutions or representatives of the village or deliberations throughout the implementation of village household affairs hold the governing functions.

Furthermore, the status and position of the village is regulated in various laws and regulations. One of them, Law No. 23 year 2014 on Regional Government, is given the authority and responsibility to organize and manage the interests of the people themselves. Through regional autonomy, local governments should be able to explore and develop the potential of the region for the welfare of its citizens. Villages as part of districts / municipalities given autonomy rights to take care of their own village houses are given some authority. Pursuant to Article 371, the village has authority under the laws and regulations.

After the issuance of Law no. 6 Year 2014 on the Village, then the implementation of village government is specifically subject to the provisions of this Act. Based on Article 18 of Law no. 6 Year 2014, to carry out the duties and functions of the village then the Village is given authority in the field of the implementation of Village Government, the implementation of Village Development, Village

community development, and empowerment of village communities based on community initiatives, village rights and village customs.

Article 26 (1) of Law no. 6 Year 2014 states that the Village Head is in charge of organizing the Village Government, implementing Village Development, Village Community Development, and Village Community Empowerment. To support the implementation of these duties the Act gives authority to the village head, namely: a. proposed the organizational structure and working procedures of the Village Authorities; b. submit a draft and establish Village Regulation; c. receive a fixed monthly income, allowances, and other receipts, as well as health insurance; d. obtain legal protection of the policies implemented; and e. mandate the execution of other duties and obligations to the Village apparatus.

Village regulation as one of the authorities of the village head in the process of formation requires the participation of the village community. The participation of villagers in the formulation of village regulation is a necessity. Without the participation and care of the village community in the formation of village regulation, the purpose of the birth of Law no. 6 year 2014 which wants to create a strong village, advanced, independent, and democratic, so as to create a strong foundation in implementing governance and development towards a society that is fair and prosperous; will not be possible.

The procedures for formulating village regulation are guided by the provisions of Article 69 of Law no. 6 year 2014 and Regulation of the Minister of Home Affairs Number 111 Year 2014 About the Technical Guidelines of Village Regulation. Article 69 of Law No. 6 of 2014 regulates the following matters:

- (1) The types of regulations in the village consist of Village Regulation, village heads and village head regulations.
- (2) The regulations referred to in paragraph (1) shall be prohibited against the public interest and / or the provisions of the higher laws and regulations.
- (3) Village regulation is determined by the Village Head after being discussed and agreed with the Village Consultative Board.
- (4) The draft Village Rules on the Village Revenue and Expenditure Budget, levy, spatial, and organization of the Village Government should get an evaluation from the Regent / Mayor before it is determined to be Village Regulation.
- (5) The results of the evaluation as referred to in paragraph (4) shall be submitted by the Regent / Mayor no later than 20 (twenty) working days

from the date of receipt of the draft regulation by the Regent / Mayor.

- (6) In the event that the Regent / Mayor has provided the evaluation result as referred to in paragraph (5), the Village Head shall revise it.
- (7) The Village Head shall be given a maximum of 20 (twenty) days after receiving the evaluation result to make corrections.
- (8) In the event that the Regent / Mayor fails to provide evaluation results within the time limit referred to in paragraph (5), the Village Regulation shall take effect by itself.
- (9) The draft Village Rules should be consulted with the village community.
- (10) The village community is entitled to give input to the Village Regulation Draft.

Referring to the Regulation of the Minister of Home Affairs No. 111 of 2014 on the Technical Guidelines of Village Regulation, stipulates that the process of formulating village regulation includes several stages:

#### A Planning

The planning of the Village Regulation Draft is determined by the Village Head and the Village Consultative Body in the Village Government's work plan and input from the village community (Article 5 Regulations of Ministry of Home Affairs No. 111, 2014).

#### B Preparation

Village Regulation Draft, pursuant to Article 6 of the Regulation of the Minister of Home Affairs No. 111/2014, mentioned that:

1. The formulation of Village Regulation Draft was initiated by the Village Government.
2. Village Regulation Draft which has been compiled should be consulted to the village community and can be consulted to the sub-district head to get input.
3. Village Regulation Draft consulted as referred to in paragraph (2) shall be prioritized to the community or community groups directly related to the substance of the regulatory matter.
4. The inputs from village communities and sub-district heads as referred to in paragraph (2) are used by the Village Government for the follow-up of the drafting process of the Village Regulation.
5. Village Regulation Draft which has been consulted as referred to in paragraph (3) shall be submitted by the Village Head to the Village Consultative Body () for discussion and mutual agreement.

Regulations of Ministry of Home Affairs No. 111 year 2014 mentioned that the Village Consultative Body is also given the opportunity to compile the

Village Regulation Draft. However, the authority of the Village Consultative Body to draft and propose the Village Regulation Draft is limited by the four contents of village regulation related to: (Article 7, Regulation of Ministry of Home Affairs No. 111 year 2014).

1. Village Regulation Draft on the village's medium-term development plan,
2. Village Regulation Draft on the Village Authorities work plan,
3. Village Regulation Draft on the Regional Income and Expenditure Budgets and
4. Village Regulation Draft regarding the accountability report of the realization of the implementation of the Regional Income and Expenditure Budgets.

From the above provisions, it can be stated the Village Law and Regulations of Ministry of Home Affairs No. 111 year 2014 is sufficiently democratic in providing a balanced function and role for the Village Head and the Village Consultative Body in composing the Village Regulation Draft.

#### C Discussion

In the discussion phase of the Village Regulation Draft either proposed by the village head or submitted by the Village Consultative Body, the discussion is conducted in these following ways (Article 8 Regulations of Ministry of Home Affairs No. 111, 2014):

1. The Village Consultative Body invites the Village Head to discuss and agree on the Village Regulation Draft. In case there is Village Regulation Draft related to the same thing, then draft proposed by the Village Consultative Body should take precedence, and the draft proposed by the Village Head will serve as a match. The Village Regulation Draft which has not been discussed can be withdrawn by the proposer. The Village Regulation Draft which has been discussed shall not be withdrawn, except by mutual agreement between the Village Authorities and the Village Consultative Body.
2. The Village Regulation Draft which has been mutually agreed upon is delivered by the Chairman of the Village Consultative Body to the Village Head to be determined to become a Village Regulation no later than 7 days from the date of the agreement. The Village Regulation Draft shall be stipulated by the village head by signing no later than 15 days from the receipt of The Village Regulation Draft from the Chairman of the Village Consultative Body.

#### D Establishment

The signed Village Regulation Draft is submitted to the Village Secretary for enactment. In the event that the Village Head does not sign the Village Regulation Draft, it shall be enacted in the Village Gazette and legally become Village Regulation (Article 9 Regulations of Ministry of Home Affairs No. 111, 2014).

#### E Enactment

The Village Regulation Draft which has been established and agreed with the Village Head and the Village Consultative Body () shall be enacted by the Village Secretary in the Village Gazette. Since it was enacted in the Village Gazette, the Village Regulation began to have a legal force that binds the village community.

#### F Dissemination,

Dissemination of Village Regulation that have been established by the village head becomes the task of the Village Authorities and the Village Consultative Body. Since the early stage of the Village Regulation Draft formation, the Village Authorities and the Village Consultative Body have been obliged to socialize / disseminate the village regulation. Dissemination is conducted to provide information and / or obtain input from the community and stakeholders (Article no 13 the Ministry Regulation 111, 2014).

As a political product, Village Regulation is processed democratically and participatively, ie the process of compilation involves community participation in the Village. Villagers have the right to propose or provide input to the Village Head and Village Consultative Body () in the process of establishing a Village Regulation. Compared to Article 69 paragraph (9) and paragraph (10) of Law no. 6 Year 2014, with the provisions in Regulations of Ministry of Home Affairs No. 111 Year 2014, it can be seen there are changes related to the role / participation of villagers in the formation of village regulation. If in Law no. 6 Year 2014 requires the village authorities to consult a Village Regulation Draft to villagers and villagers given the right to convey input to the Village Regulation Draft, in Regulations of Ministry of Home Affairs No. 111 Year 2014, community participation in the formation process of the Village Regulation Draft is limited to the planning and preparation only.

Participation can be interpreted as participating, participating in an activity, from planning to evaluation. Community participation in the legislative process can be categorized as political participation (Hamzah Halim, 2009). Therefore, community participation in decision-making and public policy needs to be improved, so that the village

community is not only an object in public policy but as policy actors at each village level. The form of community participation in government, especially in the forming of local regulation were variation, depend on time and place ( Iza Rumesten, 2012).

By placing the village community as policy makers, it is hoped that the resulting village regulation will be able to address the challenges, problems and constraints in running the village administration to create a prosperous, independent and powerful village community. On the other hand, involving the community in the process of public decision-making in the village will foster a sense of responsibility to participate in implementing decisions (village regulation) that have been discussed together and set by the village head.

Determination of Village Regulation is an elaboration of the various authorities owned by the Village refers to the provisions of the higher legislation. As a legal product, Village Regulation should not conflict with higher regulations and should not harm the public interest, ie: a. disruption of community harmony; b. disruption of access to public services; c. disruption of public order and tranquility; d. disruption of economic activities to improve the welfare of village communities; dan e. discrimination against tribe, religion and belief, race, intergroup, and gender.

In order to supervise the village regulation, Law no. 6 of 2014 establishes two monitoring mechanisms namely "evaluation and clarification". Evaluations were made on village draft regulations on which regulatory materials were linked to: Village Revenue and Expenditure Budget, levy, spatial, and organization of Village Government. Evaluation of the Village Regulation Draft related to the four materials is done by Regent / Mayor through subdistrict head or other designation.

Supervision by clarification mechanism by Regent / Mayor through subdistrict head shall be made to village regulation which have been enacted in Village Gazette no later than 7 (seven) since the enactment of the Village Regulation beyond the four items which have been mentioned above. Clarification of Village Regulation is done by Regent / Mayor by establishing a clarification team no later than 30 (thirty) days since received.

The results of clarification as referred to in Article 19 paragraph (1) may be: a. the results of clarification that are in accordance with the public interest, and / or the provisions of the Law of Regulation which is higher; and b. results of clarification that are contrary to the general interest and / or the provisions of the

higher Legislation (Article 20, Ministry Regulation No 111, 2014)

From the research that has been conducted in Deli Serdang District, the results of research that will be discussed are as follows:

1. Participation of Villagers in the Formation of Village Regulations in Deli Serdang with their Indicators:

a. Participation of village communities in village regulation planning activities.

The village formation process begins with the establishment of a Village Government Work Plan by the head in the form of village regulation. The participation of villagers in planning the formulation of village regulation can be seen from the participation of the community in meetings held by the Village Head or the Village Consultative Body which aims to collect proposals, ideas and wishes of the village community on village development plans to be determined in village regulation. From the questionnaires distributed to villagers in Deli Serdang, it was found that the level of public participation to attend in these meetings tended to be low. This is seen in the recapitulation of the questionnaire.

Q: do you attend at the meeting of community aspiration absorption and planning for the village regulation draft?

Table 1: Attendance at meetings of community aspiration absorption and planning to form village regulation draft

No.	Criteria	F	Percentage
1	Never attended	125	47,5 %
2.	Sometimes present	110	41,8%
3.	Always present	24	9,1%
4	No answer	4	1,5%
5	Total number	263	99.9%

b. Community participation in discussion of the village regulation draft.

Law No. 6 of 2014 provides a space for villagers to participate in determining the direction of village governance policies and instructing village heads and the Village Consultative Body to consult with the community in discussing village regulation. To see if the village government conducts consultation activities to the community in discussing the draft village regulation then in the questionnaire the question is asked.

Table 2: Implementation of village head consultation, the Village Consultative Body to the community during the discussion phase of the village regulation drafts.

No.	Criteria	<i>F</i>	Percentage
1	Never	198	75.3 %
2.	Ever	37	14.18%
3.	No answer	10	3.8%
	Total Number	263	93.2%

Table 2 above shows the stages of consultation in the discussion phase of the draft village regulation. This phenomenon is an important issue for researchers, what causes the stage of consultation to the community is ignored by the village authorities and the Village Consultative Body. To get answers to these conditions, the researcher searched for answers by conducting interviews with the Village Community Empowerment Office of Deli Serdang Regency represented by head of sub departemen who handles the community's participation stating that before reaching the level of discussion of the Village Regulation design by the village head and the Village Consultative Body, named Village Deliberation conducted by each hamlet. The head village have to increase the welfare of his village citizen which develop the quality improvement role (Ita, 2009). Every year when the village head is going to propose a draft of the Village Revenue and Expenditure Budget, the Head instructs the heads of the hamlet to propose plans, proposals and needs of the community that the village government must meet promptly. Thus, consultation to the community in the discussion phase of village unity design is considered merely a formality.

- c. The citizen understanding about the Law No. 6 Year 2014 on the Village.

The allocation of large amount of village funds causes the village authorities to submit a work plan/ village needs allocation that will be the target of village funds as outlined in the village regulation on the Village Government Work Plan. Without the Village Government Work Plan, village funds will not be disbursed by the central government. Therefore, in the present situation and conditions participatory village regulation must be met in the sense that each stage of its formation must include the participation of the village community.

Q: Do you know about the village regulation Law No. 6 Year 2014 on the Village?

Table 3: Village Community Knowledge about Law no. 6 Year 2014

No.	Criteria	<i>F</i>	Percentage
1	Familiar	63	23.95
2.	Do not know	196	74.52
	No answer	4	1.5
	Total number	263	99.97%

From the table above, it can be seen that 74% of people who become respondents of this research states that they do not know the existence of Law no. 6 Year 2014 on the Village. The ignorance of the community regarding the existence of the law has implications for the ignorance of the villagers about their right to participate in the determination of the direction of political policy in the village.

## 2. Supporting and inhibiting factors of Community Participation

From the results of research and deepening conducted to the respondents that have been determined, it was obtained that there are supporting and inhibiting factors in community participation in the formation of village regulation. The high level of participation of villagers in the process of establishing village regulation is caused by several factors. The results of the study were found from the first factor, can be referred to as external factors where the constraints in using political rights to participate in the formulation and decision-making of village governments is due to the lack of opportunities provided by the Village Authorities to the community to participate in conveying ideas and proposals related to the establishment of village regulation.

The second factor, which is a barrier to community participation is the internal factor within the villagers themselves. Internal factors are the lack of willingness of the villagers to participate in the planning, preparation, discussion and decision making of the village regulation. Lack of public interest uses political rights in the process of formulating the village regulation because of the community: a. not knowing political rights and obligations as villagers, b. the community has no desire to participate in the formulation and making decisions of village political policy c. the community lacks sufficient knowledge in relation to the

mechanisms for the establishment of the village regulation.

The good law is the law that suits to the needed of social legal basic of community, law as a great anthropological document or law as a great anthropological monument. That why, to identification the form and the law that community need, important to know the historis and the community conditions (Jurnal Pemilu dan Demokrasi, 2003).

#### 4 CONCLUSIONS

Based on the description of the research results above, it can be concluded that the participation of villagers in the formulation of the village regulation in Deli Serdang regency tends to be still low. which is 75,3 percent, never came attendance. Where there is still a large part of society which does not want to participate in determining the political and policy direction in the process of formation of village regulation. Some are aware of the importance of community participation in the formulation of village regulation to obtain responsive village regulation. There is a significant correlation of public knowledge about the existence of Law No. 6 year 2014 where there is a level of community participation. Opportunity factors that are not provided by the village government to the community to participate in determining decisions in the formation of village regulation becomes an obstacle factor and the low level of participation of villagers in the formation of village regulation, in addition to other factors derived from the community itself.

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