

The Authority of the Regent to cancel the Village Regulation on Village Revenue and Expenditure Budget based on Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management

Hendro Kusuma Jaya^{1*}, Moh. Muhibbin²

Universitas Islam Malang, Malang, North Java, Indonesia^{1,2}

Email: hendrokj@gmail.com^{1*}, mohammad.muhibbin@unisma.ac.id²

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ABSTRACT

The research aims to investigate the Regent's authority to revoke Village Regulations on Village Revenue and Expenditure Budgets following Minister of Home Affairs Regulation Number 20 of 2018 on Village Financial Management. It employs normative legal research methods, utilizing statutory and conceptual approaches and analyzing primary, secondary, and tertiary legal sources qualitatively. The findings suggest that while Village Regulations lacking an evaluation mechanism, determined solely by the Village Head, contravene Article 69 paragraph (4) of Law Number 6 of 2014 on Villages, the Regent/Mayor cannot annul such regulations under Article 36 paragraph (1) of Minister of Home Affairs Regulation Number 20 of 2018 unless the Village Head disregards the Regent/Mayor's evaluation findings, maintaining the validity of the Village Regulation. The Regent's authority to annul Village Regulations ignoring Regent's evaluations, as per Minister of Home Affairs Regulation Number 20 of 2018, conflicts with Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

INTRODUCTION

Democracy can be interpreted as a government that comes from, by, and for the people; therefore, one of the pillars of democracy is participation (Haluana'a et al., 2020; Kariuki, 2020; MacKenzie & Moore, 2020; Tarverdi et al., 2019; Weinberg & Flinders, 2018). Community involvement is one of the keys to the success of village development. Community involvement in development planning manifests in exercising the right to express opinions in decision-making and access and control over resources. In that order, the community has the right to empowerment so that social transformation can gradually be realized (Avelino et al., 2019; Kunjuraman et al., 2022; Nurhayati, 2022).

The Village Consultative Board, facilitated by the Village Government and supported through the Village Budget for the relevant year, conducted Village deliberations to prepare development plans for the next year (Ayu Purnamawati et al., 2023; Chen et al., 2024; Gong et al., 2023; Hilmawan et al., 2023). These deliberations were participatory and involved elements of the village community and stakeholders related to development plans or programs, both at the village level and beyond the village scale. With community involvement in the development process, it is hoped that there will be a "sense of ownership" of the results of development in the Village area so that in the development planning process, the priority is the proposal of activities or programs that are "needed" by the village community, not activities or programs that are "wanted" by specific individuals or groups (Diah, 2020; Handayani et al., 2023; Memon et al., 2023; Sheng & Ma, 2023). The Village Head held a Village

Development Planning Deliberation to discuss and agree on the draft Village Government Work Plan, including the priority of using Village Funds, which the Village Government, Village Consultative Board, and community elements followed (Huda, 2019; Kaharuddin et al., 2020; Ramli, 2020; Suyatna, 2021).

The Village Fund's priority usage entails selecting programs and activities that take precedence over others for funding. This prioritization is determined annually through regulations set by the Minister of Villages, Development of Disadvantaged Regions, and Transmigration. Establishing these priorities guides the Village government in its development planning, ensuring alignment with the Village Development Plan. This synchronization streamlines the budgeting process, as the Village Government Work Plan documents are based on the outcomes of Village Development Planning Deliberation meetings (Azzahra, 2023; Darwin, 2022; Simbolon et al., 2022).

Furthermore, adherence to relevant laws and regulations is crucial in managing Village finances (Li et al., 2021; Sopiani & Mubaraq, 2020). This means that the Village Government cannot haphazardly plan or budget activities; instead, they must reference the Village Medium-Term Development Plan established by Village Regulations. The Village Revenue and Expenditure Budget is formulated based on this plan, subject to evaluation by the Regent/Mayor to ensure compliance with principles and procedures. This evaluation process confirms that the Village Government Work Plan is a reliable basis for budgeting, preventing allocation of funds to activities not outlined in the plan.

The purpose of studying community involvement in the development planning process, particularly within the context of the Village Consultative Board and the utilization of Village Funds, is to elucidate how democratic principles, such as participation and empowerment, translate into tangible outcomes for local governance. By examining the participatory nature of Village deliberations and the prioritization of programs based on community needs rather than individual interests, the study aims to underscore the importance of fostering a "sense of ownership" among community members towards development initiatives. Additionally, it seeks to understand the regulatory framework surrounding Village finances and budgeting processes, emphasizing adherence to laws and regulations to ensure transparency, accountability, and alignment with broader development plans. Through this investigation, the study intends to provide insights into the effectiveness of community involvement in driving sustainable and inclusive development at the grassroots level, while highlighting the role of regulatory oversight in ensuring governance integrity and preventing misallocation of resources.

METHODS

The research utilizes a descriptive approach and employs the normative juridical method to investigate the cancellation of Village Regulations regarding Village Revenue and Expenditure Budgets, focusing on the legal framework governing the Regent's authority. It encompasses a comprehensive examination of relevant laws and regulations. Legal resources are categorized into primary, secondary, and tertiary sources. Primary legal materials, such as Pancasila, the 1945 Constitution, Laws and Regulations, Jurisprudence, and Treaties, carry legal binding force. Secondary legal materials, including legislative drafts, scholarly articles, and research findings, complement primary sources for analysis and comprehension. Tertiary legal materials, such as bibliographies, legal magazine indices, encyclopedias, directories, and legal dictionaries, serve as supplementary resources to navigate primary and secondary legal documents. The data collection involves meticulous study and documentation of the necessary legal materials.

RESULTS

Status of Village Regulations on Village Revenue and Expenditure Budgets whose determination is carried out without going through the evaluation process of the Regent first

The Minister of Home Affairs Regulation Number 20 of 2018, following Government Regulation Number 43 of 2014 on the Implementation of Law Number 6 of 2014 regarding Villages, and subsequently amended by Government Regulation Number 47 of 2015, outlines the guidelines for village financial management. These guidelines are further detailed in ministerial regulations governing domestic government affairs, representing the Ministry of Home Affairs' significant effort towards advancing the welfare and development of rural communities.

Describing the Minister of Home Affairs Regulation Number 20 of 2018 on Village Financial Management as progressive and forward-thinking would not be an overstatement. This regulation, stemming from Law Number 6 of 2014 concerning Villages, demonstrates adaptability to evolving circumstances. It innovatively merges empowerment principles with financial management practices, reflecting a bold initiative. This regulation's innovative approach in integrating empowerment principles, foundational to the formulation of Law Number 6 of 2014, with financial management principles, notably through the adoption of cash-based reporting accounting standards, marks a significant stride forward.

Village financial management planning, also known as planning, entails the projection of village government revenues and expenditures outlined in the Village Revenue and Expenditure Budget for the upcoming fiscal year. This planning phase serves as the initial step in the village's financial management procedure. The planning process, documented within the Village Revenue and Expenditure Budget, serves as the cornerstone for the village's financial management over a one-year period. It is intricately linked to the annual development planning process regularly conducted within the village, which culminates in the creation of the Village Government Work Plan. Once the Village Regulation pertaining to the Village Government Work Plan is established, the Village Head directs the Village Secretary to oversee the coordination of the Village Revenue and Expenditure Budget preparation.

The Village Government initiates the drafting of the Village Revenue and Expenditure Budget for the upcoming year as early as October of the current year. The Village Regulation pertaining to this budget is mandated to be finalized by the Village Head by the end of December or precisely by December 31 of the current year. This regulatory process necessitates the prior preparation of a draft Village Revenue and Expenditure Budget. The drafting of this budget must align with the previously ratified Village Regulation on Government Work Plan to ensure that funded activities are well-planned and by Article 79, paragraph (4) of Village Law Number 6 of 2014. Subsequently, the completed draft Village Regulation on Village Revenue and Expenditure Budget is presented to the Village Consultative Body for discussion and consensus in their deliberation forum no later than October of the current year. Following agreement between the Village Head and the Village Consultative Body, a draft Village Head Regulation on the Elaboration of the Village Revenue and Expenditure Budget is prepared, coordinated by the Village Secretary.

In accordance with Article 34 paragraph (1) of the Minister of Home Affairs Regulation Number 20 of 2018 regarding Village Financial Management, the next step in preparing the Village Revenue and Expenditure Budget entails the Village Head submitting a draft Village Regulation on this matter to the Regent/Mayor for assessment. This process is mandated by Article 69 paragraph (4) of Law Number 6 of 2014 concerning Villages, which stipulates that various drafts, including those related to revenue, expenditure, levies, spatial planning, and Village Government organization, must undergo evaluation by the Regent/Mayor before being officially enacted as Village Regulations. This underscores the necessity for evaluation by the Regent/Mayor before the Village Head can finalize the regulations, which ultimately become legally binding once promulgated by the Village Secretary in the Village Gazette.

The assessment performed by the Regent/Mayor serves as a means of overseeing the fiscal management of the village government following its jurisdiction. When examining the situation where the Village Head determines the Village Revenue and Expenditure Budget Regulation without undergoing an evaluation process, several potential reasons emerge: Firstly, the Village Head may

intentionally skip the evaluation phase if the activities outlined in the proposed regulation are either non-existent or not aligned with the Village Government Work Plan for the year as stipulated by the Village Regulation. Secondly, the Village Head might consistently argue that the sub-district has not issued instructions for evaluation, leading them to perceive the evaluation stage as non-obligatory in preparing the Village Revenue and Expenditure Budget Regulation. Lastly, the sub-district head, tasked with evaluating as per the authority delegated by the Regent/Mayor, may not consider the evaluation activity as a crucial step that must be undertaken.

The Village Regulation on Village Revenue and Expenditure Budget, determined by the Village Head without undergoing an evaluation mechanism, violates Article 69 paragraph (4) of Law Number 6 of 2014 regarding Villages. However, the Regent/Mayor is unable to nullify the Village Regulation following Article 36 paragraph (1) of Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management. This is because the stipulations of that article can only be invoked if the Village Head fails to act upon the evaluation findings of the Regent/Mayor, thereby allowing the Village Regulation to retain its legal standing.

A regulation earns merit when it effectively addresses the interests of diverse stakeholders in accordance with the community's needs it governs. Furthermore, it must adhere to pertinent laws and regulations, ensuring conformity in both its structure and formation mechanism, thus fostering acceptance and proper implementation in society. Village Regulations, integral to village governance, must adhere to the standards of sound and lawful regulation formation to be efficacious in people's lives. Should any regulations be deemed unsuitable or result in community detriment due to conflicts with higher laws and regulations, recourse can be sought through a judicial review or constitutionality examination as per Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, overseen by the Supreme Court through a judicial review process.

The authority of the Regent to cancel the Village Regulation on Village Revenue and Expenditure Budget was determined by ignoring the results of the Regent's evaluation based on the Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management

In Law Number 12 of 2011 regarding the Formation of Laws and Regulations, there is no mention of the term "cancellation of regulations" or "cancellation of laws." However, the term "void" is explicitly referenced in the Explanation to Article 5 letter b of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which states:

What "appropriate institutional principles or forming officials" means that a state institution or an authorized law-forming official must make every type of legislation. Such laws and regulations can be cancelled or null and void if made by state institutions or unauthorized officials.

A mechanism commonly known as legal norm control can be utilized to oversee various types of legal regulations. This control can be implemented through political supervision, administrative oversight, or judicial review. The supervision of legal norms essentially involves examining laws and regulations to ensure their coherence and compliance. This process aims to uphold justice and promote the welfare of society by ensuring that laws do not contradict one another and serve the community's interests.

The Supreme Court holds the authority to scrutinize laws and regulations in accordance with Article 24A paragraph (1) of the Basic Law, which grants it the power to adjudicate at the cassation level, review laws and regulations for compliance with the law, and possess other legal powers. This provision is further elaborated in Article 20 paragraph (2) point b of Law Number 48 of 2009 regarding Judicial Power, affirming the Supreme Court's role in testing laws and regulations against the law. Additionally, the principles outlined in Article 24A paragraph (1) of the Constitution are echoed in Law Number 12 of 2011 concerning the Formation of Laws and Regulations, with subsequent amendments including the most recent Law Number 13 of 2022. Notably, Article 9 paragraph (2) of the latter law specifies that

disputes between regulations and laws are subject to the Supreme Court's examination. Thus, the Supreme Court possesses absolute authority to assess the conformity of laws and regulations with legal standards.

The constitution empowers the Supreme Court with the authority to execute judicial power, particularly through the practice commonly known as judicial review. This grants the Supreme Court the pivotal role of examining laws and regulations. The primary objective behind entrusting the Supreme Court with the responsibility to scrutinize laws and regulations as part of its judicial functions is to reinforce and fortify its roles and obligations. This aims to ensure that the Supreme Court oversees all governmental actions or decisions, enabling the judiciary to exercise control over the actions of the government. Within the framework of this judicial review, judges are entitled to prohibit and annul governmental actions that: (a) Are carried out in an arbitrary, capricious, or abusive manner, deviating from the legal framework; (b) Contravene constitutional rights, authority, powers, privileges, or immunities; (c) Exceed the boundaries of authority as defined by law or lack legal foundation; (d) Are conducted without adherence to prescribed legal procedures; (e) Lack substantial evidence to support the factual basis of the government's actions.

Additionally, alongside judicial review conducted by judicial institutions, there exists administrative/executive review performed by executive bodies. A prime example of this is the examination of Village Regulations. The scrutiny of Village Regulations, as stipulated in Law Number 6 of 2014, follows an administrative/executive review model, wherein the District/City Government, represented by the Regent/Mayor, holds the authority to conduct such reviews. Technically governed by Article 14 paragraph (1) in conjunction with Article 19 paragraph (1) of the Regulation of the Minister of Home Affairs Number 111 of 2014 concerning Technical Guidelines for Regulations in Villages, the process includes:

1. Evaluation Stage: Here, the Regent/Mayor evaluates draft Village Regulations deliberated and agreed upon by the Village Head and Village Consultative Body, pertaining to aspects such as Village Revenue and Expenditure Budget, levies, spatial planning, and Village Government organization. The Regent/Mayor possesses full authority at this stage to nullify draft Village Regulations conflicting with superior laws and regulations. Notably, this evaluation occurs before ratification/determination by the Village Head.
2. Clarification Stage: At this phase, the Regent/Mayor clarifies Village Regulations that have been promulgated. Similar to the Evaluation Stage, the Regent/Mayor can cancel Village Regulations that clash with higher laws and regulations. However, this stage involves a review of already ratified/stipulated Village Regulations.

Essentially, incorporating Village Regulations into the legal framework, despite their placement beneath Regional Regulations rather than within the hierarchy of primary laws and regulations, holds significant legal implications. Particularly, it pertains to the Supreme Court's jurisdiction to conduct judicial reviews, with such reviews falling under the competence of the Supreme Court as stipulated in Article 24A paragraph (2) of the Constitution of the Republic of Indonesia Year 1945, in conjunction with Article 20 paragraph (2) point b of Law Number 48 of the Year 2009 concerning Judicial Power, and Article 9 paragraph (2) of Law Number 12 of the Year 2011 concerning the Establishment of Laws and Regulations. With over 74,000 villages in Indonesia, this inevitably leads to a surge in cases within the judiciary, posing challenges to its functioning. Emphasizing the cornerstone of the rule of law, the principle of legality underscores that governmental authority is derived from adherence to laws and regulations. Judicial review, a hallmark of a nation committed to the rule of law, is imperative for its establishment, asserting that legislative enactments must undergo scrutiny by judicial bodies to validate their legality. Thus, the validation of legal products is contingent upon their assessment by the judiciary, reinforcing the principle of legality and the rule of law.

The Law Number 6 of 2014 regarding Villages introduces an executive preview mechanism, particularly emphasized in Article 69 paragraph (4). This mechanism mandates that drafts of Village Regulations pertaining to Village Revenue and Expenditure Budgets, levies, spatial planning, and village government structures undergo evaluation by the Regent/Mayor before formal enactment. The authority for this executive preview, delegated to the Regent/Mayor, is explicitly outlined in Article 34 paragraph (1) of the Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management. According to this regulation, the Village Head submits the draft Village Regulation to the Regent/Mayor through the Sub-district Head or equivalent within three days of approval by the Village Consultative Body and Village Head, for evaluation. During this process, the Regent/Mayor may involve the Village Head and relevant village officials for assessment. Should the evaluation reveal non-compliance with higher laws, regulations, public interest, or the Village's Financial Plan (RKP), the Village Head, along with the Village Consultative Body, must rectify the issues within twenty working days. Failure to address these concerns may lead to the Regent/Mayor's issuance of a decree, in accordance with Article 36 paragraph (1) of the Minister of Home Affairs Regulation Number 20 of 2018, rescinding the Village Regulation.

According to the current legal framework in Indonesia, as outlined in Article 8 paragraph (1) and Article 8 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, decisions made by the Regent/Mayor do not hold the same status or hierarchical position as laws and regulations. Consequently, these decisions cannot serve as legal instruments to annul Village Regulations. Village Regulations, being legal products classified as regulations, cannot be invalidated by decisions issued by the Regent/Mayor, which are considered legal products of a different nature, specifically in the form of decisions.

The potential for conflicting court rulings arises from the cancellation of Village Regulations, particularly when executive bodies and judicial institutions both wield authority in this regard. If a Village Regulation is nullified by a decision from the Regent/Mayor, the recourse lies in the State Administrative Court. However, if the appeal is successful, the Regulation reinstated by the Regent/Mayor's decision becomes valid once more. Conversely, Village Regulations classified as laws and regulations are subject to review by the Supreme Court, which, if granting the appeal, renders the Regulations void. This situation presents a dualism wherein the same issue is adjudicated differently, depending on whether it is handled by the State Administrative Court or the Supreme Court, resulting in legal uncertainty. Despite constitutional guarantees of legal certainty outlined in Article 28D paragraph (1), which ensures equal treatment before the law, the discrepancy between these legal processes jeopardizes such certainty.

Conducting a judicial review of Village Regulations could potentially overwhelm the Supreme Court with a flood of cases due to the vast number of villages in Indonesia. From the perspective of a unitary state, it seems reasonable to assert that the central government holds ultimate authority over subordinate government units, including provincial, district, and city levels. Consequently, district and city governments might be granted certain powers to oversee village governance, possibly through executive review mechanisms. Therefore, it is advisable that Village Regulations, as legislative outputs of villages, undergo scrutiny by superior government authorities while still in the draft stage, before becoming legally binding. Legally, these regulations reflect the specific needs and characteristics of each village, established through the exercise of people's sovereignty via the Village Head and the local Village Consultative Body, with input from the community. This input can be provided both verbally and in writing during the drafting process. If the content of these regulations conflicts with higher laws, administrative review alone may not suffice; judicial review should ideally be available to address such discrepancies. Despite being considered a form of legislation, Village Regulations are unique as village

governments craft them under the oversight of regional authorities. Therefore, the authority to assess them should not be limited to the Supreme Court alone.

With many Village Regulations being cancelled by the Regent/Mayor because they are contrary to the provisions of higher laws and regulations, public interest and/or decency, the steps that the Government should take before carrying out repressive supervision should also be to optimize in guiding the Village, especially the making of Village Regulations. Inappropriate draft Village Regulations are immediately returned for revision, so that the possibility of errors in making Village Regulations can be minimized as far as possible.

According to the explanation provided earlier, pursuant to Article 8 paragraph (2) of Law Number 12 of 2011 regarding the Establishment of Laws and Regulations, as Village Regulations are considered a form of legislation, and in accordance with Article 87 of Government Regulation Number 43 of 2014 regarding Regulations for the Implementation of Law Number 6 of 2014 concerning Villages, together with Article 17, particularly Article 20 paragraph (3) of Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Regulations in Villages, the annulment of Village Regulations by the Regent/Mayor is deemed to violate the Fundamental Law, specifically Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Indonesia, 2009). Hence, internal supervision remains applicable for Village Regulations that contravene general provisions and/or higher laws and regulations, and preventive oversight is maintained during the draft stage of Village Regulations to ensure compliance. However, should a promulgated Village Regulation be found to contradict general provisions and/or higher laws and regulations, according to Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the matter is subject to judicial review by the Supreme Court for annulment.

CONCLUSION

Based on the study's findings, the author concluded two main points: First, the validity of Village Regulations regarding Village Revenue and Expenditure Budgets, established without undergoing evaluation by the Regent, remains intact. Although such regulations, determined solely by the Village Head without undergoing evaluation, violate Article 69 paragraph (4) of Law Number 6 of 2014 concerning Villages, the Regent/Mayor lacks the authority to annul these regulations under Article 36 paragraph (1) of Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management. This is because the mentioned article's provisions are applicable only if the Village Head fails to heed the Regent/Mayor's evaluation, thus maintaining the status of the Village Regulation. However, it may be subject to judicial review or constitutional scrutiny under Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which the Supreme Court conducts through a judicial review process. Second, the Regent's authority to revoke Village Regulations on Village Revenue and Expenditure Budgets, disregarding the Regent's evaluation as per Regulation of the Minister of Home Affairs Number 20 of 2018 concerning Village Financial Management, contradicts Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia. According to relevant laws and regulations, such as Law Number 6 of 2014 concerning Villages, Government Regulation Number 43 of 2014 concerning Regulations for the Implementation of Law Number 6 of 2014 concerning Villages, Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Regulations in Villages, and Minister of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management, the annulment of Village Regulations is executed through executive review. Nonetheless, this conflicts with Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, in alignment with these provisions, considering Village Regulations as laws and regulations under the Law, their annulment should proceed via judicial review before the Supreme Court.

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