

Repositioning Village Laws: A Strategic Imperative for Strengthening Local Autonomy

Aji Baskoro¹, Fyna Rahmatika², Andini Firohmatika Wulandari³

¹ *Faculty of Law, Universitas Gadjah Mada, Indonesia. E-mail: ajibaskoro@mail.ugm.ac.id*

² *Faculty of Sharia and Law, UIN Sunan Kalijaga Yogyakarta, Indonesia. Email:*

fynarahmatika.work@gmail.com

³ *Faculty of Sharia and Law, UIN Sunan Kalijaga Yogyakarta, Indonesia. Email:*

andiniteater@gmail.com

Abstract: The implementation of Law Number 12 of 2011 concerning the Formation of Legislation in Indonesia has inadvertently led to the exclusion of village regulations from the national legislative hierarchy. This exclusion has diminished the legal standing of village regulations, thereby undermining the principles of village autonomy. This study, employing a qualitative juridical-normative approach, investigates the urgent need to reposition village regulations within the legislative hierarchy to strengthen local governance and autonomy. Through an analysis of legal documents, academic literature, and relevant legislation, this research identifies three primary justifications for the repositioning of village regulations. Firstly, the formulation process of village regulations reflects the democratic norms and procedures employed by higher levels of government, indicating their inherent legitimacy. Secondly, the authority of village governments to establish norms through regulations constitutes a vital expression of regional autonomy at the grassroots level. Thirdly, the demonstrated effectiveness of village regulations in local implementation underscores their practical significance in community governance. These findings, supported by historical, sociological, and juridical evidence, highlight the urgency of restoring village regulations to their rightful place within the legislative hierarchy. This repositioning is essential not only for bolstering village autonomy but also for promoting effective and responsive governance at the local level, ultimately contributing to a more robust and decentralized governance framework in Indonesia.

Keywords: Village Regulations; Hierarchy of Legislation; Village Government; Village Autonomy.

1. Introduction

The legal regulations in Indonesia encompass a range of complex issues. In recent years, these complexities have become a subject of debate across various segments of society (Huda, 2021). Moreover, the implications of legal issues in Indonesia have given rise to ambiguous legal products and authorities in the context of governance in the country (Lobubun et al., 2022). Significant problems can be observed in quantity and quality (Amin & Achmad, 2020). The obesity of legal regulations stands out as a quantitative issue. There are approximately 42 thousand rules, and this quantity can impede the speed of government decision-making (Fitryantica, 2019). Additionally, inconsistencies, conflicts, and multiple interpretations can be observed in the current legal regulations in Indonesia. Furthermore, the position and hierarchy of legal regulations remain a subject of extensive debate (Ghofur, 2021).

One of the problems within the legislative hierarchy lies in the presence of regulations classified under the types and hierarchy outlined in Article 7 of Law No. 12 of 2011 regarding the Establishment of Laws and Regulations (hereafter referred to as the Law on Laws and Regulations or UU P3), alongside other regulations specified in Article 8 of UU P3 (Huda, 2021). In this context, Article 7 encompasses regulations with higher authority and occupies a more prominent position in the hierarchy, while Article 8 pertains to regulations in a lower position. The discrepancy between the regulations that should be listed in Article 7 and those found in Article 8 can create ambiguity in the implementation of regulations, potentially leading to conflicts or legal uncertainty. One of the regulations I focus on in this paper is the placement of village regulations within Article 8 of the aforementioned law.

So far, scholarly studies on Legislation, particularly regarding village regulations and governance, have focused on three main areas. First, the restructuring and rearrangement of the existing legal hierarchy in Indonesia (Aditya & Winata, 2018; Widiarto & Indonesia, 2017). Second, studies on the position of village regulations within the legal system in Indonesia (Nasution et al., 2023; Wuisang, 2018). Third, the effectiveness of village regulations and the authority of village governance (Akmal, 2021; Cahyaningrum & Setyowati, 2016). These three research areas play a crucial role in understanding the dynamics of Legislation and village governance in Indonesia and provide valuable insights for developing policies and better practices in the village context. However, discussions regarding the urgency of repositioning village regulations within the legal hierarchy are still limited, especially concerning the historical and dynamic aspects of village regulations and village governance in Indonesia.

Therefore, this study is an advanced and complementary research to several existing studies.

The placement of village regulations in Article 8 constitutes discrimination against the position of village governance compared to other forms of governance. However, in the history of Indonesia's national development, indigenous communities and their governance have long been established (Blesia et al., 2023). Moreover, in the context of Indonesian statehood, the government recognizes the presence of indigenous community groups with local governance, known as village governance, which dates back to Dutch colonialism (Simamora et al., 2019). The evidence of recognition of village governance is regulated in several legislations, historically known as the *Regeeringsreglement* (Simamora et al., 2019). Post-independence, several legislations were enacted, such as Law No. 1 of 1945 concerning the Position of Villages and the Authority of Regional National Committees, Law No. 5 of 1979 concerning Village Governance (after this referred to as the Village Governance Law), Government Regulation No. 76 of 2001 concerning General Guidelines for Village Regulation, and Government Regulation No. 72 of 2005 concerning Villages (Simarmata & Magdalena, 2018). Finally, as of this piece's writing, Law Number 6 of 2014 concerning Villages (after this referred to as the Village Law) exists.

Village governance encompasses the execution of administrative functions by village governmental bodies, in conjunction with the Village Consultative Body (BPD), to manage and address the needs of the local populace. This process is grounded in the established and valued customary practices and traditions of the region, operating within the overarching administrative framework of the Unitary State of the Republic of Indonesia (Asrori, 2014). The administrative territory of a village has the authority to regulate various aspects of governance, including matters that historically were the original rights of the village, matters that initially fell under the jurisdiction of districts/cities but were subsequently delegated for regulation by the village, the execution of delegated tasks provided by higher-level governments, and various other aspects of governance per provisions in Legislation delegated to the village level (Jiwantomo & Riyanto, 2022). The village government is the foremost entity directly responsible for providing governance services and community empowerment efforts (Diamantina & Setiawan, 2023; Maolani, 2019).

Village governance plays a vital role and is a cornerstone in successfully implementing government programs. Enhancing the capacity and quality of village governance is necessary to expedite the attainment of community welfare (Arifin et al., 2020; Oroh, 2014). This is particularly evident during outbreaks like the COVID-19 pandemic, where village governments become the primary defence for communities facing such crises (Hamdani & Fauzia, 2022). Alongside the historical development of statehood in Indonesia, the concept and position of villages and village governance institutions have experienced fluctuations akin to a roller coaster ride (Phahlevy, 2016). Yet, village government intervention has the potential to drive improvements in community welfare (Imron, 2015).

This study delves into the problematic positioning of village regulations within the Indonesian legislative hierarchy, particularly in light of Article 8 of the Village Government Law, which arguably creates a discriminatory framework. This discrimination undermines the spirit of village autonomy and weakens the efficacy of village governance. The research aims to explore the urgent need for repositioning village regulations within the national legislative framework. By analyzing the implications of this repositioning on the status of village regulations, the study seeks to contribute to the discourse on strengthening village governance and promoting genuine autonomy at the village level.

2. Method

This study employs a normative research methodology, specifically a juridical-normative approach, to examine the legal framework governing village regulations and their implications for village governance in Indonesia. This qualitative research design involves the collection and analysis of data from a variety of sources, including legal documents, academic publications, and other relevant materials. Data analysis will be conducted through a qualitative lens, incorporating primary sources (such as legislation and government documents), secondary sources (including academic literature and reports), and tertiary sources (such as legal dictionaries and encyclopedias) to provide a comprehensive understanding of the research topic (Marzuki, 2015).

To achieve a nuanced and thorough analysis, this research will integrate statute, historical, and conceptual approaches. The statute approach will involve a detailed examination of relevant laws and regulations, while the historical approach will trace the evolution of village governance and its legal framework within the broader context of Indonesian legal history. The conceptual approach will draw upon relevant

legal theories and concepts to analyze the complexities of the legal hierarchy and its impact on village autonomy.

Through this multi-faceted approach, the study aims to generate findings that contribute to a deeper understanding of the legal complexities surrounding village regulations and their implications for effective village governance in Indonesia. Ultimately, the insights gained from this research are intended to inform policy development and improve practices related to village governance, fostering stronger and more autonomous villages within the Indonesian legal framework

3. The Historical Context of Village Regulations and the Dynamics of Village Governance in Indonesia

Recognition of village territories has been normatively established in the text of the 1945 Constitution of the Republic of Indonesia (after this, referred to as the 1945 Constitution), even before amendments. Explicitly, Article 18B paragraph (1) of the 1945 Constitution acknowledges the existence of special autonomous regions with the autonomy to conduct local governance. Additionally, the explanation in Article 18 of the 1945 Constitution before amendments states that there were approximately 250 self-governing regions, known as *swapraja* or *zelfbesturende landschappen*, as well as kingdoms or *volksgemeenschappen* before the proclamation, such as villages in Java and Bali, states in Minangkabau, hamlets and marga in Palembang, and others, which had their original structures and were recognized as special regions (1945 Constitution before amendments). In addition to the constitution, the existence of villages is also acknowledged in various laws throughout history, including Article 1 paragraph (1) of Law Number 22 of 1948 regarding the establishment of Fundamental Regulations on Autonomous Governance in Regions Entitled to Organize and Manage Their Own Household Affairs. The Law, as mentioned above, states that the territory of the Indonesian Republic is organized into three levels (Provinces, Regencies (Major Cities), Villages (Small Cities), states, marga, and so forth). Furthermore, Article 2 stipulates that these regions have the right to organize and manage their respective household interests.

The existence of villages was further reinforced with the enactment of Law Number 18 of 1965 concerning the Basic Principles of Regional Governance. As mentioned above, the general provisions of the Law explicitly state that a "Village" or an area equivalent to a village constitutes a territorial boundary with a community and authorities entitled to govern and manage their own households. This provision is grounded in recognizing and respecting regions as stated in Article 18 of the 1945 Constitution before amendments. Furthermore, the Village Governance

Law, in its preamble, asserts that based on the understanding of the crucial role of village governance being closely connected with the community and considered capable of mobilizing the community, it is highly important to strengthen village governance by issuing regulations that govern the form and structure of village governance in a law. As mentioned above, the Law also includes a description in Article 1 stating that a village is an area with inhabitants as a cohesive community possessing governance and the right to manage its household affairs. However, in the course of time, the Village Governance Law was eventually repealed by Law Number 22 of 1999 concerning Regional Governance. This repeal was partly driven by the desire to enhance the recognition and respect for villages, as the initial regulation had focused on standardizing villages in terms of name, form, structure, and position of their governance. It was replaced with an emphasis on recognizing and respecting the original rights of regions deemed special and continues to be implemented up to the enactment of Law Number 23 of 2014 concerning Regional Governance, as well as in the content of the Village Law.

The abundance of regulations in villages signifies the presence of two underlying threads. First, an awareness of the central role of villages in the lives and interests of the community and the recognition of village autonomy to govern its territory and community per its patterns and local wisdom (Tirtamulia, 2019). Secondly, many regulations concerning villages are understood as a dynamic legal-political element aligned with the prevailing regime (Multazam, 2021). This is evidenced by the Central Statistics Agency (BPS) recording that as of 2022, the number of villages and urban neighbourhoods in Indonesia reached 83,794 (Sarnita Sdya, 2023).

Therefore, in Indonesia, the formulation of legislation must be grounded in the philosophical foundation of Pancasila and the constitutional framework of the 1945 Constitution. As articulated in the elucidation of Article 18 of the pre-amended 1945 Constitution, this entails recognizing and respecting the inherent structure and autonomy of villages, along with their traditional governance mechanisms, while ensuring alignment with national legislation and acknowledging regional customary rights. The consistent theme across various legal instruments concerning villages is the recognition of the village as a distinct territorial and administrative entity with the authority to manage local governance and community affairs. This recognition underscores the importance of villages within the Indonesian governance system and highlights their role as fundamental building blocks of the nation.

The inherent right of villages to govern and manage their own affairs necessitates the existence of village regulations as instruments for

exercising this authority. This recognition of village regulations as a vital component of local governance is evident throughout Indonesian legal history. Early acknowledgement of village regulations can be traced back to Law Number 19 of 1965 concerning Desapraja, specifically Article 29, paragraphs (1) and (2), and Article 31, paragraph (1), which outline the authority of villages to establish their own regulations. This recognition was further solidified in subsequent legislation, including the Village Governance Law (Law Number 3 of 2005) and Law Number 22 of 1999 concerning Village Governance. These laws not only acknowledge the existence of village regulations but also provide a framework for their formulation and implementation. The Village Law (Law Number 6 of 2014) further strengthens the position of village regulations within the Indonesian legal system. Various articles within this law, including Article 1, Article 26, paragraphs (2) and (3), Article 69, Article 73, Article 79, Article 110, and Article 115, explicitly address the role and importance of village regulations in local governance.

The recognition and placement of village regulations within Indonesia's legal hierarchy have undergone significant changes over time (Khairul Fahmi, 2017). Initially, their position was defined in the Decree of the Provisional People's Consultative Assembly No. XX/MPRS/1966 concerning the Memorandum of the DPR-GR on the Sources of Law and the Hierarchy of Legislation in the Republic of Indonesia. According to the 1945 Constitution, the hierarchy of legislation in Indonesia at that time was structured as follows:

Table 1. Hierarchy of Legislation in Indonesia

No.	Type of Legal Instrument	Description
1	The 1945 Constitution	The supreme law of Indonesia, serving as the foundation for all legal and governmental structures.
2	Decrees of the People's Consultative Assembly (MPR)	Legal instruments issued by the MPR, which were historically influential in shaping national policies and governance.
3	Laws and Government Regulations in Lieu of Law	Laws enacted by the legislative body (DPR) and emergency regulations issued by the President with the same legal standing as laws.

4	Government Regulations	Regulations issued by the government to implement laws, providing further details on legal provisions.
5	Presidential Decrees	Executive orders issued by the President to regulate specific matters within the executive's authority.
6	Other Implementing Regulations	Additional regulations that provide technical and administrative details for law enforcement and policy implementation.
6a	Ministerial Regulations	Regulations issued by ministries to govern sector-specific policies and administrative matters.
6b	Ministerial Instructions	Directives issued by ministers to guide policy implementation within their respective ministries.
6c	Other Relevant Legal Instruments	Additional legal provisions necessary for policy execution and regulatory enforcement.

Source: compiled by author

The placement and recognition of village regulations within Indonesia's legal framework have evolved over time, reflecting shifts in legislative priorities and governance structures (Khairul Fahmi, 2017). At the time of the enactment of the Decree of the Provisional People's Consultative Assembly No. XX/MPRS/1966, village regulations were not formally codified within the hierarchy of legislation. This exclusion had significant implications, particularly in terms of their non-recognition within the legal framework governing village administration. The absence of village regulations in the legislative hierarchy weakened their status as a formal instrument in village governance. Subsequent legal reforms altered the structure of Indonesia's legislative hierarchy. The replacement of the 1966 decree with the Decree of the People's Consultative Assembly of the Republic of Indonesia No. III/MPR/2000 on the Sources of Law and the Hierarchy of Legislation marked a turning point. Article 3 of this decree explicitly recognized regional regulations as legal instruments derived from higher-ranking legislation, tailored to the specific needs of different regions. This category included Provincial Regional Regulations, Regency/Municipality Regional Regulations, and Village Regulations or

their equivalents, with the procedural framework for their formulation governed by regency/municipality regulations.

Further legal developments, particularly the amendments to the 1945 Constitution, mandated that legislative procedures be regulated by statutory law. This led to the replacement of the 2000 decree with Law No. 10 of 2004 on the Formation of Legislation. This law continued to acknowledge village regulations within the framework of regional legislation, explicitly categorizing them alongside provincial and regency/municipality regulations. Under this law, village regulations were formulated through a collaborative process between the Village Consultative Body (BPD) and the village head, signaling a shift toward strengthening village governance by recognizing the authority of representative institutions in drafting village regulations.

However, this recognition diminished with the introduction of the Law on the Formation of Legislation (UU P3). Unlike Law No. 10 of 2004, which reinforced the role of village regulations, the UU P3 excluded village regulations from the legislative hierarchy, thereby weakening their legal standing. Article 7, paragraph (1) of UU P3 explicitly outlines the types and hierarchy of legislation as follows:

Table 2. Comparison of Legal Recognition of Village Regulations in Indonesia

Aspect	Law No. 10 of 2004 on the Formation of Legislation	Law on the Formation of Legislation (UU P3)
Recognition of Village Regulations	Explicitly recognized as part of the legislative hierarchy.	Excluded from the formal legislative hierarchy, weakening their legal standing.
Position in the Hierarchy of Legislation	Included alongside Provincial and Regency/Municipality Regional Regulations.	Not included in the legislative hierarchy under Article 7, paragraph (1).
Types of Legislation Recognized	1) The 1945 Constitution of the Republic of Indonesia 2) Decrees of the People's Consultative Assembly (MPR) 3) Laws/Government Regulations in Lieu of Law 4) Government Regulations	1) The 1945 Constitution of the Republic of Indonesia 2) Decrees of the People's Consultative Assembly (MPR) 3) Laws/Government Regulations in Lieu of Law 4) Government Regulations

	5) Provincial Regional Regulations 6) Regency/Municipality Regional Regulations 7) Village Regulations	5) Provincial Regional Regulations 6) Regency/Municipality Regional Regulations <i>(Village Regulations are omitted from the hierarchy.)</i>
Legal Implications	Strengthened the role of village regulations by formally incorporating them into the legal hierarchy.	Weakened the position of village regulations by removing them from the hierarchy, making their legal authority less explicit.
Alternative Recognition of Village Regulations	Regulated as part of regional legislation , formulated through a collaboration between the Village Consultative Body (BPD) and the village head .	Indirectly acknowledged in Article 8, paragraph (1) as a form of legislation outside the hierarchy, categorized as regulations issued by the village head or equivalent authority .
Impact on Village Governance	Enhanced the autonomy of village governments in drafting and implementing village regulations.	Created ambiguities regarding the authority and enforceability of village regulations, requiring further legal clarification.

Source: compiled by author

Additionally, UU P3 recognizes Qanun as a special form of regency/municipality regulation applicable in the province of Aceh. Notably, village regulations were omitted from this hierarchy. Nevertheless, Article 8, paragraph (1) of UU P3 acknowledges other forms of legislation beyond those specified in Article 7, paragraph (1), including regulations issued by various institutions such as the MPR, DPR, DPD, MA, MK, BPK, KY, BI, ministers, government bodies, commissions, regional legislative councils (DPRD), governors, regents/mayors, and village heads or their equivalents. This provision situates village regulations outside the formal legislative hierarchy, classifying them as regulations issued by the village head or equivalent authority.

The removal of village regulations from the formal legislative hierarchy appears contradictory, especially given the broader effort to strengthen village governance. Despite their exclusion from the legislative hierarchy, village regulations remain crucial in village administration, particularly in managing local affairs and addressing the needs of village

communities. This inconsistency can be attributed to the chronological gap between UU P3 (enacted in 2011) and the Village Law (enacted in 2014). However, this misalignment in legal provisions should not be overlooked, as it creates ambiguities and potential misinterpretations of legislative norms, necessitating a review of UU P3 to ensure consistency and coherence in the legal framework.

The inconsistencies between UU P3 and the Village Law extend beyond their respective legislative hierarchies. The Village Law itself does not fully reinforce the legal status of village regulations as instruments deriving directly from village government authority. Article 3 of the Village Law outlines the fundamental principles of village governance but does not include the principle of decentralization of village authority. Instead, the highest principle recognized in the law is the principle of recognition, followed by the principle of subsidiarity. The absence of a decentralization principle suggests that while villages retain significant autonomy in managing local affairs, they remain subordinate to broader administrative structures.

A detailed examination of village authority reveals two primary classifications (Pakaya, 2016): First, original Authority. This includes regulatory rights inherited through long-standing traditions and community initiatives, sustained by social dynamics. Second, attributive Authority. This refers to the localized regulatory powers that enable village governments to manage internal affairs and address community interests based on evolving social and economic conditions. The omission of the decentralization principle and the inconsistent recognition of village regulations within different legal frameworks raise concerns regarding the clarity and coherence of Indonesia's village governance structure. Given these ambiguities, a comprehensive legal review is necessary to harmonize the Village Law and UU P3, ensuring that village regulations are accorded appropriate legal recognition within Indonesia's legislative system.

Furthermore, the presence of other authorities mentioned in Article 19, paragraphs c and d, which involve carrying out delegated tasks from the government, contradicts the principles of recognition and subsidiarity. Normatively, the delegation of authority may be intended to balance the original and attributive authorities as an implication of the village being the smallest and lowest level of governance. However, in practice, the touted village autonomy merely manifests as granting the village authority to manage village land, which often has diminished economic value (Suwaryo, 2011). Additionally, the weakening of village governance is indicated by the absence of regulations regarding the content of village regulations in the Village Law. This seems to depict a loss of responsibility

on the government's part for village development. The government should acknowledge its existence, provide guidance, development, and empowerment for villages, and monitor against corruption, collusion, and nepotism. One way to do this is by regulating the content of village regulations.

Indeed, the original autonomy of villages existed as a form of village self-reliance even before the Dutch and Japanese colonial influences in Indonesia, although it was not yet hierarchically structured (Djaenuri, n.d.). However, it is regrettable that when village governance began to be integrated into the Indonesian state system, its position seemed to weaken, and its autonomy diminished.

4. **Repositioning Village Regulations in the Hierarchy of Legal Regulations**

As the village is the lowest, smallest, and closest form of government to the community (Putri, 2016), normatively, village regulations formed by the village head together with the Village Consultative Body (BPD) should not contradict the higher-level legal regulations. This agrees with the widely accepted theory of legal hierarchy, such as the *Stufenbau* Theory by Hans Kelsen and the theory of legal hierarchy by Hans Nawiasky, which categorizes norms into further levels (Sihombing, 2016). The village government is an institution with the authority to manage governance affairs and the interests of its community. Theoretically, all regulations that are binding and universally applicable should be arranged hierarchically to determine their position and the implications of testing each regulation. Studies in state administrative law have concurred that the theory of legal hierarchy in Indonesia follows Hans Kelsen's theory but with details as developed by Hans Nawiasky. The most famous theory of Hans Nawiasky regarding legal hierarchy is grouped into four positions as follows (Khairul Fahmi, 2017):

Tabel 3. Legal Hierarchy and the Position of Village Regulations in Indonesia

Aspect	Theoretical Framework	Application in Indonesian Legal System
Village as the Closest Government to the Community	Villages are the lowest and smallest governmental units, responsible for managing local affairs and community interests (Putri, 2016).	The Village Consultative Body (BPD) and the village head collaborate to form village regulations, which must not

		contradict higher-level laws.
Legal Hierarchy and Village Regulations	The Stufenbau Theory (Hans Kelsen) and the Legal Hierarchy Theory (Hans Nawiasky) argue that legal norms should be arranged hierarchically to determine their authority and validity (Sihombing, 2016).	In practice, Indonesian law follows Hans Kelsen's hierarchy but incorporates details from Hans Nawiasky's classification .
Hans Nawiasky's Legal Hierarchy	Legal norms are divided into four levels (Khairul Fahmi, 2017): 1) Staatsfundamentalnorm (<i>Fundamental Norms of the State Constitution</i>) 2) Staatsgrundgesetz (<i>Constitutional Law</i>) 3) Formell Gesetz (<i>Formal Law</i>) 4) Verordnung Satzung and Autonome Satzung (<i>Regulations and Autonomous Regulations</i>)	Indonesia's legal structure applies this hierarchy as follows: Position I: The 1945 Constitution as the fundamental norm. Position II: Laws and People's Consultative Assembly (MPR) Decrees as constitutional law. Position III: Government Regulations as formal law. Position IV: Regional and Village Regulations , categorized as autonomous regulations.
Implications for Village Regulations	All binding regulations must follow the hierarchical structure to ensure legal certainty and validity.	Village regulations fall under Position IV as autonomous regulations, meaning they are legally recognized but must conform to higher-level laws .

Source: compiled by author

Hans Nawiasky's theory of legal hierarchy is a reference for the arrangement of legal regulations. Grouping them according to this theory can be detailed by understanding that Position I is occupied by Pancasila and the Preamble of the 1945 Constitution as the source of all state legal resources. The body of the 1945 Constitution occupies Position II as the state's fundamental Law or constitutional rule; Position III is occupied by the laws, and autonomous regulations and implementing regulations occupy Position IV. The provisions contained in the Law, from which implementing regulations derive from delegated authority and autonomous regulations derive from attributive authority (Maria Farida Indrati S, 2007)..

From the perspective of the Village Law, the village possesses both these authorities, namely delegated authority as reflected in Article 19 points c and d, which state:

“c. Authorities delegated by the Government, Provincial Government, or District/City Government; and

d. Other authorities delegated by the Government, Provincial Government, or District/City Government in accordance with the provisions of laws and regulations.”

The subsequent authority pertains to attributive authority, as stipulated in Article 18 and Article 19 (points a and b), Article 69, and the explanatory notes of Article 19 (points a and b) of the Village Law. This authority grants villages the power to administer governance, implement village development, facilitate community development, and empower the village community, all of which are rooted in local community initiatives. The recognition of village governance is enshrined in Article 18 of the 1945 Constitution, reinforcing its constitutional legitimacy. Village regulations serve as a legal instrument derived from both delegation and attribution of authority. However, when analyzed through Hans Nawiasky's theory of norm hierarchy, the legal hierarchy outlined in Article 7 of the Village Law appears to be inaccurate. This calls for a reassessment and restructuring of the legal framework, with one possible approach being the formal integration of village regulations into the national legal hierarchy. Under this approach, village regulations could be categorized as part of the regulatory framework of local government institutions operating below the district level.

The regulation of village regulations, as defined in the Village Law currently in force, outlines a bipartite legislative process involving two key actors:

- 1) The Village Head, who is not only responsible for proposing and discussing regulations but also possesses the authority to enact

them, as stipulated in Article 26, paragraphs (1) and (2) of the Village Law.

- 2) The Village Consultative Body (BPD), an institution responsible for executing governmental functions and composed of representatives from the village population. The Village Law provides a legal basis for the BPD's role, duties, and powers, ensuring a shared governance model in the formation of village regulations.

The functions of the BPD are as follows:

Article 55:

"The Village Consultative Body has the function of:

- a. Discussing and agreeing on Draft Village Regulations together with the Village Head;*
- b. Collecting and channelling the aspirations of the village community; and*
- c. Overseeing the performance of the Village Head."*

Article 62:

"Members of the Village Consultative Body have the right to:

- a. Propose draft village regulations;*
- b. Raise questions;*
- c. Present proposals and/or opinions;*
- d. Vote and be elected; and*
- e. Receive allowances from the Village Revenue and Expenditure Budget."*

The relationship between the village head and the Village Consultative Body (BPD) can be understood as the representation of the village community in achieving a democratic government, as long as this relationship is based on the interest of checks and balances, where each party has functions of oversight and assistance, rather than being separate entities or institutions that provide internal benefits to each other (Wuisang, 2018). Village regulations, which serve as one of the instruments for administering village governance, are explained in the general provisions of the Village Law. It states that Village Regulations are legal regulations established by the village head after being discussed and agreed upon with the Village Consultative Body. The regulation regarding parties' involvement in forming village regulations signifies a democratic process, as it includes both the executive branch (the village head) and the legislative branch (BPD). This regulation highlights a similarity between the process of creating national laws, regional regulations, and village

regulations. While national laws involve the president and the DPR (People's Consultative Assembly), regional regulations involve governors/mayors and DPRD (Regional People's Representative Council), village regulations involve the village head and BPD.

The elaboration above strengthens the belief that village regulations should rightfully be reinstated within the hierarchy of legal regulations, as explicitly stated in Law Number 10 of 2004. Considering that the village is the smallest and closest administrative unit to the community, per the expression "ubi societas ibi ius" (where there is society, there is Law), village regulations are indeed appropriate to be considered as regulations that are generally binding force, and their formation stems from the delegation of authority from the constitution and laws.

5. The Implications of Repositioning Village Regulations and Strengthening Village Governance

5.1 Empowerment of Village Government Authority in Formulating Village Regulations

In the study of local government law, repositioning village regulations in the hierarchy of Legislation has implications for several aspects. *Firstly*, from a juridical perspective, the repositioning of village regulations will strengthen these regulations' position within Indonesia's legal system. This is because the current position of village regulations, which is not included in the hierarchy according to Article 7 of Law No. 10/2004, represents a weakening of their standing compared to other legal provisions and is inconsistent with the Law on Villages. The repositioning of village regulations in the hierarchy of Legislation is a form of strengthening village autonomy in line with the mandate for regional autonomy as stated in Article 18 paragraph (6) of the 1945 Constitution and the spirit of developing the welfare of regional communities (Agus Dwiyanto, 2017).

Furthermore, based on a legal political review, there are differences in the regulation of village regulations in the Legislation that has been in effect in Indonesia. Village regulations are regulated both explicitly and implicitly. For example, village regulations are explicitly stated in the types and hierarchy of Legislation as stipulated in Law Number 10 of 2004. However, legal products mention it implicitly through its articles, such as the provisions in the current Law on Villages (UU P3). This means that the regulation of village regulations aligns with the intentions of its drafters. Their position becomes stronger when village regulations are explicitly regulated through its articles. If village regulations are implicitly regulated, their position is weaker. Similarly,

if other Legislation or legal products do not regulate village regulations, their position is likely to be very weak (Luthfy, 2021).

Secondly, from a political standpoint, repositioning village regulations will strengthen village autonomy. This is because village regulations will become an effective legal instrument in managing the interests of the village community. This effectiveness is expected to be achieved through an increased sense of ownership and responsibility for village development among the community, with provisions formulated through jointly established village regulations (Deliar Noor, 2018).. Concrete evidence of this can be seen in several effective village regulations, including:

- 1) *First*, Village Regulation No. 004/IX/GERHAN/2004 concerning the Conservation of Mangrove Forests in Surodadi Village, Sayung District, Demak Regency. This village regulation was established as a follow-up and legal basis for Law Number 41 of 1999 concerning Forestry. No data is proving any violations of this regulation by residents (Dian Cahyaningrum & Endah Setyowati, 2011). The effectiveness of this village regulation is attributed to various factors such as legal, law enforcement, and community factors. This regulation's effectiveness in law enforcement is due to the democratic process of its creation, which involved the village community, as well as the substance and sanctions within the regulation that hold significant benefits. Another factor influencing the effectiveness of this village regulation is the law enforcement factor, where, in this case, law enforcement is carried out by village officials and the police. Village officials handle violations of the village regulation committed by members of the Surodadi Village community, while the police handle violations committed by external parties or non-residents of Surodadi Village. The third indicator of effectiveness in implementing this village regulation is the community factor, where a high level of awareness enables them to express their aspirations by attending socialization events and reaching agreements to protect the mangrove forest with the authorities. Additionally, there is a willingness to comply with the village regulations.
- 2) *Second* is the village regulation on child marriage prevention in Mallari Village, Awangpone District, Bone Regency. This village regulation aims to protect the village community, especially in Mallari Village, from the potential impacts of underage marriage. Establishing this village regulation demonstrates the lack of

effectiveness of national and regional laws in line with the norm prohibiting child marriage. In its initial stages, data obtained from the field indicates that the Mallari Village community in Awangpone District, Bone Regency, rejected the proposed village regulation to preserve the beliefs of parents who did not accept proposals for their children's marriages. They believed that if they accepted the proposals, no one would be left to propose to their children, resulting in a lifetime of being unmarried. However, after receiving explanations from the authorities, the community responded positively, leading to the enactment of the village regulation. Surprisingly, after the regulation came into effect, there were no more cases of underage marriage in Mallari Village. However, it cannot be denied that the effectiveness of village regulations may be hindered by the effectiveness of law enforcement officers and the availability of facilities and resources to support law enforcement (Akmal, 2020).

- 3) *Third*, the effectiveness of implementing the village regulation on the use of village funds in the 2015 fiscal year in Gunung Pring Village, Muntilan District, Magelang Regency. The effectiveness of implementing this village regulation encompasses the accuracy in allocating the village budget to develop community interests, including managing community activities and constructing physical infrastructure (Rini Listiyani, 2016). This effectiveness is attributed to several factors, including the readiness of the village government as the entity managing the stages of village fund implementation, external oversight by the village community, and local community institutions, such as Islamic boarding schools (pondok pesantren), which also monitor the development projects funded through the village regulation.

Based on the examples of effectiveness in implementing various village regulations mentioned above, it can be concluded that they are effective in realizing the legal aspirations agreed upon by the local community in the areas where these regulations are established. This aligns with the legal system theory proposed by Roscoe Pound, which suggests that in certain cases, Law can be effectively used as a tool for social change within a society.

Thirdly, from a development perspective, this repositioning has an impact on promoting more equitable and sustainable village development. This is because village regulations can serve as a more flexible legal instrument to accommodate the specific legal needs of

village development that may not be addressed by higher-level Legislation (Arief Budiman, 2014). The flexibility in the formation and adaptation of legal requirements for the village community through village regulations will broaden the interests of villages in harnessing their potential for development.

5.2 Influence of Village Regulations within the Framework of Normative Review

The repositioning of village regulations has implications for the shift in authority for testing these regulations against higher-level Legislation, in this case, district/city-level regulations. The authority for testing village regulations is held by regents/mayors through executive review. The shift in authority for testing village regulations through the judiciary provides greater legal certainty (Iswanto, 2020). This is because the judiciary holds a more independent and impartial position in exercising its authority to test Legislation, as the judicial body fundamentally is not a political entity like regents/mayors when conducting executive reviews of village regulations. This shift in testing authority significantly impacts efforts to ensure legal certainty and protection for the village community.

Furthermore, it prompts village governments to exercise caution in using their authority to formulate village regulations, ensuring compliance with higher-level Legislation and the interests of the village community (Khelda Ayunita, 2016). As stipulated in Article 24A(1), "The Supreme Court has the authority to test regulations below laws against the constitution." Therefore, when the repositioning of village regulations occurs, the status of these regulations changes to that of Legislation below the constitution. Consequently, the testing of village regulations through the Supreme Court implies the repositioning of village regulations in the hierarchy of Legislation. Through this repositioning, village regulations will hold a position in the hierarchy, and the authority for testing automatically shifts to the Supreme Court.

6. Conclusion

The exclusion of village regulations from Indonesia's legislative hierarchy under Law Number 12 of 2011 on the Formation of Legislation (UU P3) has created regulatory ambiguity and weakened the legal standing of village governance. Historically, villages have been recognized as autonomous governance units since the Dutch and Japanese colonial periods due to their proven ability to foster community prosperity and administer local affairs effectively. This study has demonstrated that

village regulations serve a fundamental role in village governance, functioning as legal instruments for managing village affairs and protecting local interests. Empirical evidence further underscores that some village regulations are highly effective, even outperforming regulations at higher levels of the legislative hierarchy.

The high effectiveness of village regulations is closely linked to the democratic principles embedded in the Village Law, which emphasizes the involvement of the village head and the Village Consultative Body (BPD), as well as direct oversight by the village community. Given that villages are constitutionally recognized governance units, their regulations should be formally included in the national legislative hierarchy as legal instruments issued by an authorized local government entity within the regional government framework. This proposal aligns with Hans Nawiasky's theory of legal hierarchy, which categorizes norms based on their legal authority and function.

Repositioning village regulations within the legislative hierarchy would not only affirm their legal validity but also enhance the objectivity of their judicial review. At present, village regulations are subject to executive review by regents or mayors, which raises concerns over political interference. However, by formally recognizing them as a legitimate category of legislation, their legal scrutiny would shift to the Supreme Court—an independent judicial institution—thereby ensuring a more impartial and accountable review process. This structural adjustment is essential to fortifying village autonomy, strengthening governance at the grassroots level, and fostering a more equitable and democratic legal framework for village communities.

From a theoretical perspective, this study suggests that revising the legal hierarchy to accommodate village regulations aligns with the principles of legal pluralism and decentralized governance, thereby reinforcing Indonesia's commitment to regional autonomy as enshrined in the 1945 Constitution. Practically, policymakers should reform legislative frameworks to ensure that village regulations receive equal recognition alongside other regional regulations, while also strengthening institutional capacity at the village level to draft, implement, and oversee these regulations effectively. Despite these contributions, this study has limitations, particularly in its reliance on normative legal analysis without extensive empirical fieldwork on village governance dynamics across diverse regions. Future research should explore comparative case studies on village regulation implementation, assess the socio-political challenges of integrating village regulations into the legislative hierarchy, and examine the potential impacts of judicial review mechanisms on village

governance. A multidisciplinary approach—combining legal, political, and socio-economic perspectives—would further enrich the discourse on strengthening village autonomy and governance in Indonesia.

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