

THE PRINCIPLE OF DEMOCRACY AND PARTICIPATION IN MAKING VILLAGE REGULATIONS AS AN EFFORT TO DEVELOP A JUST VILLAGE

Muhamad Sadi Is

State Islamic University of Raden Fatah Palembang, Indonesia.

sadiis_nin@radenfatah.ac.id

Sobandi

Supreme Court of the Republic of Indonesia, Indonesia.

ki.sobandi@gmail.com

Khalisa Hayatuddin

University of Muhammadiyah Palembang, Indonesia.

kbalisahfbump@gmail.com

Suharyono

University of Muhammadiyah Palembang, Indonesia.

lawoffice.suharyono@gmail.com

Jemmi Angga Saputra

State Islamic University of Raden Fatah Palembang, Indonesia.

jemmianggasaputra_nin@radenfatah.ac.id

Abdul Basir Bin Mohamad

University Kebangsaan Malaysia, Selangor, Malaysia.

abasir@ukm.edu.my

Abstract

Overall, of course, development was carried out from the village, considering that as a country, Indonesia has thousands of villages, which must be carried out in a just development; of course, this development must be based on applicable laws, both laws on villages and village regulations, as the legal basis for carrying out this development. A good village regulation is certainly based on

democratic principles and the principle of aspirations in making it. Normative legal research was used based on secondary data sources, especially the Law of the Republic of Indonesia Number 6 of 2014 on Villages, and analyzed qualitatively. The results of the study concluded that, first, good village regulations must contain the principles of democracy and aspirations in the process of making them so that they could produce village regulations in line with the mandate of the Pancasila and the 1945 Constitution of the Republic of Indonesia, and what was expected by the local village community, so that they could make a village as the main pillar for the progress of the Indonesian nation and state both in the present and the future. Second, A just village development must be based on village regulations to carry out development in villages, both village infrastructure development and village human resource development, as mandated in the Law of the Republic of Indonesia Number 6 of 2014 on Villages.

Keywords: Democracy, Participation, Village Rules, Justice.

Introduction

As a democratic legal state, Indonesia has a tiered government, from the central government, provincial government, city district government, sub-district government, and village government. The village government, as the lowest government, is even considered a government that is directly in contact with the village community. As in the general explanation of Law of the Republic of Indonesia Number 6 of 2014 on Villages, it is explained that the village, or referred to by other names, existed before the Unitary State of the Republic of Indonesia was formed, especially now that the number of villages in Indonesia is increasing, which has amounted to around 73,000 (seventy-three thousand) villages.

In a democratic rule of law or a democratic state based on law, of course, the highest sovereignty is the power of the people, where the power of this society must be subject to the applicable law. The key to democracy is oriented towards the people's will, as self-restraint with

freedom that is responsible for society¹. In this case, democracy is a democracy implemented by the village community. The village community is a form of eternal alliance between humans and their institutions in the local area, where they live in scattered farmhouses and villages, which are usually the center of joint activities and are often called agricultural communities².

The village is a geographical area with original rights and traditional rights to regulate and manage the interests of the village community and play a role in realizing the ideals of independence based on Pancasila and the 1945 Constitution of the Republic of Indonesia. However, with the development of the Indonesian constitution, villages have developed in various forms that need to be protected and empowered so that they can create a strong foundation in carrying out just development for village communities that can bring prosperity and prosperity to all village communities³.

Even in terms of regulations, the initial village law in Indonesia was regulated in the Law of the Republic of Indonesia Number 19 of 1965 on Villages as revised by the Law of the Republic of Indonesia Number 5 of 1979 concerning Village Government, lastly revised by the Law of the Republic of Indonesia Number 6 of 2014 on Villages. The development of rural development in Indonesia, slowly but surely, has increased because the village government already has the funds and is implementing new methods of infrastructure development efforts in their villages that are environmentally sound⁴. Therefore, the development carried out in the village in an effort to develop the village can be oriented towards sustainable development. Village development is a development that has *grassroots* movements or development from the level of the village community to the

¹ Abdul Ghoffar, Pengisian Kekosongan Jabatan Presiden (Perbandingan Dengan 15 Negara Di Dunia) (RajaGrafindo Persada, 2022).

² Rudy Rudy, *Hukum Pemerintahan Desa* (Bandar Lampung: CV. Anugrah Utama Raharja, 2022).

³ Regi Refian Garis, "Mewujudkan Pemerintahan Desa Yang Berkeadilan Gender," *Jurnal Ilmiah Pemerintahan Moderat* 2 (May 2016).

⁴ Dinda Silviana Putri, Haikal Arsalan, and Mariah Ulfa, "Partisipasi Masyarakat Dalam Kebijakan Investasi Energi Terbarukan Di Indonesia: Perspektif Demokrasi Energi," *Jurnal Rechts Vinding : Media Pembinaan Hukum Nasional* (December 31, 2022).

community. It is because, philosophically, the village is the smallest unit of society in Indonesia, which is implicitly recognized in Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia. The village can be interpreted as the smallest community unit that has its own uniqueness. In the context of holistic development and improvement in Indonesia, the right step is to first develop the village as the smallest community unit in the state structure⁵.

Village development must be aligned with the sociological basis for the birth of the Law of the Republic of Indonesia Number 6 of 2014 on villages. First, sociologically, it is clear that in order to create a just and prosperous society as mandated in the Preamble to the 1945 Constitution, the Indonesian people must start the development paradigm of the village community because most of the Indonesian population and all their problems live in the village. Second, the idea and arrangements for village autonomy in the future are intended to repair damage to the village's social, cultural, economic, and political villages. Third, the regulation regarding village autonomy is intended to respond to the globalization process, which is marked by the process of liberalization (information, economy, technology, culture, etc.) and the emergence of economic players on a global scale⁶.

However, there are still many village heads in Indonesia who are unable to make village regulations as a legal basis for carrying out village development, even though village heads carrying out village development refer to the Law of the Republic of Indonesia Number 6 of 2014 on Villages and regional regulations related to villages. However, village regulations are significant for village heads when carrying out just village development. Thus, the focus of this research is, first, the principle of democracy and the principle of participation

⁵ Sri Winarsi, Xavier Nugraha, and Angelica Milano Aryani Wibisono, "Pembangunan Desa Mandiri Energi Melalui Bum Desa: Upaya Mencapai Affordable And Clean Energy Dari Grasroot Movements," *Jurnal Rechts Vinding : Media Pembinaan Hukum Nasional* (December 31, 2022).

⁶ Meri Yarni, "Menuju Desa Yang Maju, Kuat, Mandiri, Dan Demokratis Melalui Undang-Undang No. 6 Tahun 2014 Tentang Desa," *Inovatif: Jurnal Ilmu Hukum* 7, no. 2 (2014).

in the process of making village regulations, and second, Village regulations are used as an effort to develop a just village.

The normative research method was used in conducting library research or secondary data. This study used secondary data from primary legal materials, such as Pancasila, the 1945 Constitution of the Republic of Indonesia, and the Law of the Republic of Indonesia Number 6 of 2014 on Villages. Secondary legal materials use books or legal literature that had something to do with this research, and tertiary legal materials, legal dictionaries, and legal encyclopedias were used⁷. The approaches used in this research were statutory/judicial, philosophical, and conceptual approaches⁸. Meanwhile, the nature of the research used in this study was descriptive-prescriptive⁹. The research aims to solve the proposed legal problems to get a proper description of the results¹⁰.

Discussion

The Principle of Democracy and Participation in Village Regulations

The principle of law is a fundamental rule in making laws and regulations; as explained by Paul Scholten, principles are the basic thoughts contained within and behind each legal system, formulated in statutory rules. Meanwhile, the principle of law is a tendency that is implied by our decency view of law and is a general characteristic with its limitations as a general trait, but it must exist. Legal principles can

⁷ Tohadi Tohadi and Dian Eka Prastiwi, "Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks And Balances," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 30, 2022): 19.

⁸ Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 30, 2022): 153.

⁹ Zico Junius Fernando, "Telaah Pasal Penghinaan Terhadap Presiden Dan Wakil Presiden Di Indonesia (Study On The Article Concerning Contempt Against President Ans Vice President In Indonesia)," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 30, 2022): 135.

¹⁰ Erlina Maria Christin Sinaga and Mery Christian Putri, "Formulasi Legislasi Perlindungan Data Pribadi Dalam Revolusi Industri 4.0," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (August 27, 2020): 237.

be in the form of a highly situated legal norm, and many things depend on it, and principles can only be a norm. This is regulated clearly and firmly in the Law of the Republic of Indonesia Number 10 of 2004 on the Formation of Legislation, which was revised by the Law of the Republic of Indonesia Number 13 of 2022, which distinguishes the principle of forming statutory regulations and the principle of the substance of regulations legislation. The principle of forming statutory regulations regulated in Article 5 is called procedural requirements or formal legal principles. Forming Legislation must be carried out based on the principles of Forming good Legislation, including the principle of openness/participation. Meanwhile, the material principle for the content of laws and regulations regulated in Article 6, the material for the content of laws and regulations must contain legal principles, including kinship/democracy.¹¹

The principles of forming laws and regulations are a guideline or a sign in forming good laws and regulations. Likewise, village regulations are formally formed by two village institutions, the Village Head and the Village Consultative Body (BPD), as emphasized in Article 1 Point 7 of the Law of the Republic of Indonesia Number 6 of 2014 on Villages. Therefore, the Draft Village Regulation must be supervised as a product of village law, especially those governing Village APB, levies, spatial planning, and Village Government organizations. The aim is that these village regulations can provide justice for all people and that they do not conflict with higher regulations or the public interest because if they conflict, they have the potential to be revoked by the Regent/Mayor. It means that the conflicting village legal products cause problems in the process of their formation, which do not comply with legal principles in the formation of statutory regulations.¹²

¹¹ Rokilah Rokilah and Sulasno Sulasno, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (December 29, 2021): 181–182.

¹² Putera Astomo and Pahrudin Pahrudin, "Implementasi Asas-Asas Hukum Dalam Pembentukan Peraturan Desa Yang Baik Di Kabupaten Polewali Mandar Dan Kabupaten Majene Provinsi Sulawesi Barat," *Jurnal Pengabdian Masyarakat: Darma Bakti Teuku Umar* 2, no. 1 (July 30, 2020): 108–109.

Village regulations must, of course, be based on the law on villages and must be in line with the philosophical basis for the birth of the law on villages. The background is due to the diversity of regions in Indonesia, so it forms the basis for the formation of the Law of the Republic of Indonesia Number 6 of 2014 on Villages. The law regulates material regarding Principles of Arrangement, Position, and Types of Villages, Village Management, Village Authority, Administration of Village Administration, Rights and Obligations of Villages and Village Communities, Village Regulations, Village Finance and Village Assets, Village Development and Development of Rural Areas, Business Entities Village Owned, Village Cooperation, Village Community Institutions and Village Traditional Institutions, as well as Guidance and Supervision. Thus, the diversity of characteristics and types of villages, or what is called by other names, is still recognized and guaranteed for their survival within the Unitary State of the Republic of Indonesia. One of these guarantees is contained in the Principle of Recognition and Subsidiarity of the Law. Therefore, in the Indonesian context, the village, or what is called by another name, is very relevant for recognition. There are several fundamental reasons why recognition is very appropriate:

1. The village, or what is called by another name, as a unit of customary law community, is a different entity from a legal community unit called a region.
2. A village or an entity known by another name existed before the birth of the Unitary State of the Republic of Indonesia in 1945. It already has the original structure and carries the rights of origin.
3. Villages are part of Indonesia's diversity or multiculturalism that cannot be uniform.
4. Structurally, the village became an arena for the exploitation of land and people, as well as being treated unfairly by the kingdom, the colonial government, and the Unitary State of the Republic of Indonesia.
5. The constitution mandates that the State recognize and respect villages, or what are sometimes referred to by other names as customary law community units, and their traditional rights¹³.

¹³ Lia Sartika Putri, "Kewenangan Desa Dan Penetapan Peraturan Desa," *Indonesia Journal of Legislation* 13, no. 2 (June 2016): 163–164.

Article 1 number 7 of the Law of the Republic of Indonesia Number 6 Years concerning Villages explains that; "Village Regulations are statutory regulations stipulated by the Village Head after being discussed and agreed with the Village Consultative Body." Village Regulations are laws and regulations made by the Village Consultative Body together with the village head. Village regulations are a form of statutory regulations made by the Village Head together with the Village Consultative Body to regulate and manage the affairs of the local community based on their origins and customs¹⁴.

The legal politics of making village regulations must be based on the State's goals as stipulated in the Pancasila and the 1945 Constitution of the Republic of Indonesia, which serve as an essential framework and plan for legal politics¹⁵. So, the politics of national law, as the lines of law formation, must always be based on:

1. The ideals of the nation are a just and prosperous society.
2. It must be aimed at achieving state goals.
3. It must be guided by the values of Pancasila as the basis of the state, which refers to the basis of morality, religion, human rights, the unity of all elements of the nation, placing power under the rule of the people, and social justice.
4. Legal politics must also protect all elements of the nation from achieving national unity, social justice, democracy, and monocracy and creating tolerance in religious life¹⁶.

In formulating village regulations, three aspects of the national legal system must be realized in their formation: the substance of village regulations, the structure of village regulations, and the legal culture that exists in the village¹⁷. Of course, all three must refer to the 1945 Constitution of the Republic of Indonesia or the constitution because the constitution is the highest law in Indonesia which provides the framework rules for government in Indonesia regarding

¹⁴ Rudy, *Hukum Pemerintahan Desa*.

¹⁵ Abdul Ghoffar, *Dinamika 50 Mahkamah Konstitusi Di Dunia*, 1st ed., vol. 1, 2022.

¹⁶ Zainal Arifin Mochtar, *Politik Hukum Pembentukan Undang-Undang* (Yogyakarta: EA Books, 2022).

¹⁷ Enny Nurbaningsih, *Dinamika Praktik Perencanaan Legislasi Nasional* (RajaGrafindo Persada, 2022).

matters of power that can be obtained, transferred, regulated, limited and ratified¹⁸.

To accommodate the three aspects of the legal system above, M. Solly Lubis explained that in making statutory regulations, there must be a basis:

1. A Philosophical foundation, namely the basic philosophy, or views, or ideas that form the basis of ideals when pouring desires and (governance) wisdom into a plan or draft of laws and regulations, in this case, village regulations.
2. The juridical basis, namely the legal provisions that form the legal basis for making laws and regulations, includes the 1945 Constitution of the Republic of Indonesia as the juridical basis for making laws. Likewise, village regulations must comply with the above regulations and district/city regional regulations.
3. Political basis, namely the line of political policy which becomes the following basis for policies and directives on the management of the state government¹⁹.

A good village regulation must, of course, use two principles, the principle of democracy and the principle of participation, because democracy requires involvement from the community; although sometimes there is a tug-of-war of interests between the communities, through this democratic process, it will give birth to village regulations that were initially not democratic to become democratic²⁰. As in the general elucidation of the Law of the Republic of Indonesia Number 6 of 2014 on Villages, which explains that the principles of democracy, the village community organizing system in a government system carried out by the Village community or with the approval of the Village community and the nobility of human dignity as creatures of God Almighty One is recognized, regulated, and guaranteed, while the principle of participation takes an active role in an activity.

¹⁸ Abdul Ghoffar, *Hukum Lembaga Kepresidenan 30 Negara Di Kawasan Asia, Eropa, Oseania, Dan Afrika (Kekuasaan, Pengisian, Dan Pemberhentian Presiden)* (RajaGrafindo Persada, 2022).

¹⁹ M. Solly Lubis, Eka NAM Sihombing, and Ali Marwan HSB, *Law Science* (Malang: Setara Press, 2021).

²⁰ Daniel Yusmic, *Perpu Dalam Teori Dan Praktik*, 1st ed., vol. 1, 2021.

Participation is a keyword in making laws and regulations, especially village regulations; it is also a keyword in development, and it is also one of the characteristics of good governance. Thus, Mubyarto divided participation into two parts: first, horizontal participation is carried out by fellow villagers, between fellow villagers, or members of associations in the village. Second, vertical participation is carried out by subordinates and superiors, between clients and patrons, or between the community as a whole and the village government²¹.

In the general explanation of the Law of the Republic of Indonesia Number 6 of 2014 on Villages, it has been explained that village regulations are a political product. Village Regulations are processed in a democratic and participatory manner, and the drafting process includes the participation of the Village community. The Village Community has the right to propose or provide input to the Village Head and the Village Consultative Body in the process of drafting Village Regulations. Determination of Village Regulations is an elaboration of the various authorities owned by the Village referring to the provisions of higher laws and regulations. As a legal product, Village Regulations may not conflict with higher regulations and may not be detrimental to the public interest:

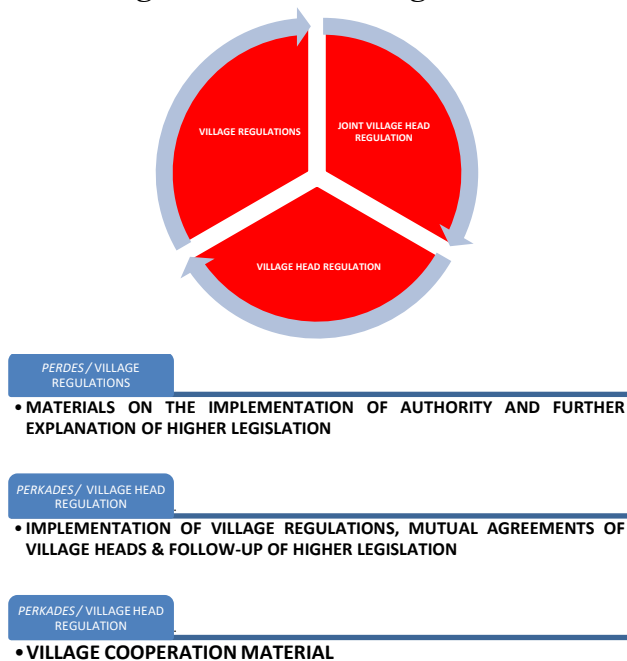
- a. disruption of harmony among members of society;
- b. disruption of access to public services;
- c. disturbing public peace and order;
- d. disruption of economic activities to improve the welfare of the Village community; And
- e. discrimination against ethnicity, religion and belief, race, intergroup, and gender.

Even though, before it was regulated in the law that in making village laws and regulations, the process of democratization was specifically confirmed first of all through the Law of the Republic of Indonesia Number 10 of 2004 on the Formation of Legislation, which was revised by the Law of the Republic of Indonesia Number 13 of 2022. One of the contents of this law is to determine the types of laws

²¹ Pislawati Alfiaurrahman, "Perencanaan Pembangunan Desa Di Desa Bagan Limau Kecamatan Ukui Kabupaten Pelalawan," *Journal Valuta* 2, no. 2 (October 2016): 258.

and regulations, content material, and its hierarchy²². It also refers referring to the Law of the Republic of Indonesia Number 6 of 2014 on Villages. Article 69 paragraph (1) of the Law of the Republic of Indonesia Number 6 of 2014 on Villages explains that: "Types of regulations in the Village consist of Village Regulations, joint Village Head regulations, and Village Head regulations". As shown in the figure below:

Figure I Kinds of Village Rules

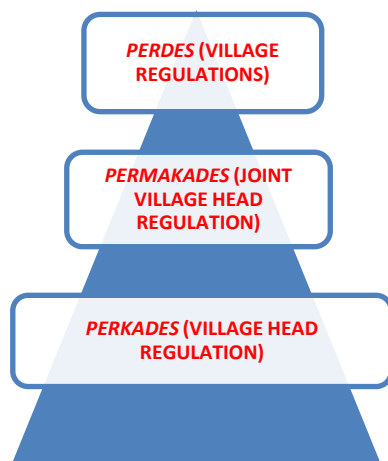


Source: Lia Sartika Putri, "Village Authority and Determination of Village Regulations," in the *Journal of Indonesian Legislation*, Vol. 13 N0. 02 - June 2016, p. 166.

²² Viona Wijaya, "Perubahan Paradigma Penataan Regulasi Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 2 (August 27, 2021): 167.

Meanwhile, the hierarchical position of village regulations can be seen in the figure below:

Figure II: Hierarchical Position of Village Regulations



Source: Compiled from various sources.

Based on the hierarchy above, village regulations are the highest regulations in the village. Thus, this study focuses more on village regulations. However, in general, the drafting of village regulations as a legal product that applies at the village level must have a basis in general for the formation of a statutory regulation that contains philosophical, juridical, and sociological elements as the background for its making. The philosophical element means that every regulation made must be based on truth and a sense of justice and aimed at community welfare, ecosystem sustainability, and the rule of law. The sociological element means that every regulation that is made must originate from hopes and aspirations and be based on the social needs of the community. The juridical element means that the regulations made uphold the supremacy and certainty of law and do not conflict with statutory regulations²³.

²³ Setiawati, "Peran Badan Permusyawaratan Desa (Bpd) Dalam Penyusunan Dan Penetapan Peraturan Desa Dihubungkan Dengan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa (Studi Kasus Di Desa Tegal Kecamatan Kemang Kabupaten Bogor). Masters Thesis, Universitas Pamulang" (2017).

As explained in Article 69 paragraph (2) of the Law of the Republic of Indonesia Number 6 of 2014 on Villages, it is explained that: "Regulations as referred to in paragraph (1) are prohibited from conflicting with the public interest and/or higher statutory provisions". Thus, the implementation of village authority in drafting village regulations must contain the aspirations and participation of the Village Head, the Village Consultative Body as stipulated in Article 3 of the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages, the principles of deliberation, participation, equality, and empowerment.

Ateng Syafrudin and Suprin Na'a explained that the principle of participation means the participation of the village community in every activity and strategic decision-making and in making village regulations, which means wanting to support the democratization process in the village. The ontological foundation of village government justifies that village governance arrangements must pay attention to the diversity and democratization of village communities²⁴.

The democratization of rural communities is motivated by two things. First, in the village arena, democracy is an attempt to redefine the relationship between the village community and the village government elites or administrators (*Kades* and its officials and BPD). Thus, the Village community is the valid owner of power (Village), not the elite or Village Administration administrator. Second, it is related to the progress marked by the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages in view of the position of the Village. One of the most important parts of the Law of the Republic of Indonesia Number 6 of 2014 on Villages is the recognition by the State of the origin rights of the Village (called the principle of recognition) and the establishment of local-scale authorities and decision-making locally for the benefit of the Village community (called the principle of subsidiarity). With these two principles, the Village has enormous authority to take care of itself²⁵.

²⁴ Ateng Syafrudin and Suprin Na'a, *Republik Desa: Pergulatan Hukum Tradisional Dan Hukum Modern Dalam Desain Otonomi Desa*, 1st ed., vol. 1, 2010.

²⁵ Naeni Amanulloh, *Demokratisasi Desa* (Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal dan Transmigrasi, 2015).

Siti Hidayati explained that the implementation of village government must be based on one of the principles of village governance regulated in Article 24, the participative principle, the existence of community involvement in the administration of village government, including community involvement in the formation of Village Regulations. The existence of space for the community to participate in the formation of village regulations is necessary in a democratic government system that places the community as the holder of sovereignty in administering government. It is based on the provisions contained in Article 28 of the 1945 Constitution of the Republic of Indonesia, which affirms, "Independence to associate and assemble, express thoughts verbally and in writing and so on is stipulated by Law²⁶.

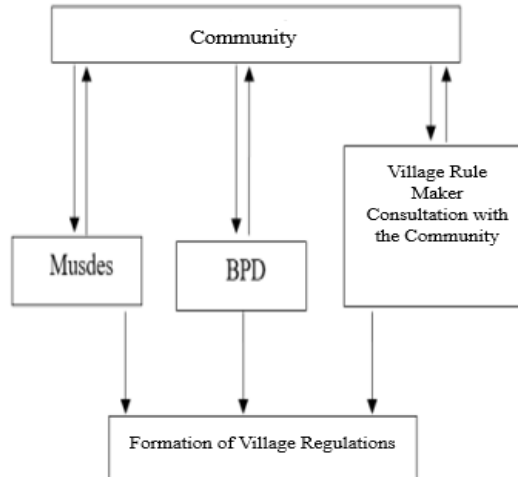
The principle of participation in making village regulations makes the village the central pillar for the future progress of the nation and state. In addition, it is hoped that the stipulation of regulations regarding villages in law and other implementing regulations will elevate the village to the position of an honorable subject in the life of the nation and state because it will determine the format of the village that is appropriate to the context of local diversity and is an instrument for building a vision. Towards a new village life that is independent, democratic, and prosperous. The authority of the village government in regulating and managing village communities since the existence of a community in a village association based on socio-cultural values contained in the village community is held in the perspective of state government administration, which always keeps abreast of the times²⁷.

Good village regulations indeed absorb village community participation. As for the mechanism for absorbing village community participation in forming Village Regulations based on applicable laws and regulations. As in the figure below:

²⁶ Utang Rosidin, "Partisipasi Masyarakat Desa Dalam Proses Pembentukan Peraturan Desa Yang Aspiratif," *Jurnal Bina Mulia Hukum* (2019).

²⁷ Sutoro Eko, *Regulasi Baru, Desa Baru Ide, Misi, Dan Semangat UU Desa* (Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal, Dan Transmigrasi Republik Indonesia, 2015).

Figure III: Mechanism for Making Good Village Regulations



Source: Ayon Diniyanto, Design for the Formation of Democratic and Aspirational Village Regulations, *in the Journal of Indonesian Legislation* Vol. 19 No. 3 - September 2022, p. 357.

The substantive provisions are related to democratic aspects and participation. It is because the establishment of a good Village Regulation, to complying with legislation, must also be democratic. The formation of democratic Village Regulations can be realized by accommodating the community's aspirations. This means that the mechanism for forming democratic village regulations and participation is also important as one of the indicators for forming democratic village regulations and participation. Therefore, making village regulations that are not democratic and participatory can have an impact. First, the formation of Village Regulations becomes undemocratic and aspirational. The existence of a non-democratic and aspirational absorption mechanism for community participation in the formation of village regulations has an impact on the formation of undemocratic and aspirational village regulations. Second, the impact of the non-democratic and aspirational mechanism for absorbing community aspirations in forming Village Regulations is that Village Regulations issued need to be more productive. Third, the impact is

that the formation of Village Regulations is monotonous and not varied²⁸.

Based on the explanation above, the author emphasizes that the principle of democracy and the principle of participation are fundamental in the process of making village regulations. By applying these two principles, the village community can accept the village regulations because their making involves democratic community participation. With this democratic and participatory village regulation, it can become a legal basis for village heads to carry out village development in addition to complying with the Law of the Republic of Indonesia Number 6 of 2014 on Villages, Law of the Republic of Indonesia Number 23 of 2014 on Regional Government and the Law of the Republic of Indonesia Number 13 of 2022 on Making Legislation.

Village Regulations as the Foundation of a Just Village Development

Building village self-sufficiency within the Village Development framework must start with a good village planning process and be followed by good program management. A good village development plan must be supported by sufficient data and information so that the plan drawn up can solve the problems encountered or experienced by the village community through the potential of the village. Then, what is no less important is the regulations in the village in terms of village rules²⁹.

Regulation of the Minister of Internal Affairs No. 114 of 2014 on Village Development Guidelines, it states that village development planning is a process of stages of activities organized by the village government by involving the Village Consultative Body and elements of the community in a participatory manner in order to utilize and allocate village resources in order to achieve village development goals in a participatory manner. Participatory development is a development

²⁸ Ayon Diniyanto, "Desain Pembentukan Peraturan Desa Yang Demokratis Dan Aspiratif," *Jurnal Legislasi Indonesia* 19, no. 3 (September 30, 2022): 353.

²⁹ Wahyudin Kessa, *Perencanaan Pembangunan Desa* (Kementerian Desa, Pembangunan Daerah Tertinggal, dan Transmigrasi Republik Indonesia, 2015).

management system in villages and rural areas that is coordinated by the village head by prioritizing togetherness, kinship, and mutual cooperation in order to realize the mainstreaming of peace and social justice.

A draft village regulation that has been mutually agreed upon between the village head and the Village Consultative Body is submitted by the Village Consultative Council leadership to the village head to be enacted as a village regulation. Submission of the draft village regulation is carried out within a maximum of 7 (seven) days, starting from the date of joint approval, with the aim of the village regulation being determined by deliberation for consensus and must reflect the needs of the village community concerned and must not conflict with public interests, regional regulations, and other laws and regulations. Village regulations that have been completed through the stages mentioned above are submitted by the village head to the regent/mayor through the sub-district head as guidance and supervision material no later than 15 (fifteen) days after being stipulated. Village regulations and implementing regulations must be disseminated to the community by the village government based on those regulated in Permendagri No. 111 of 2014 on Technical Guidelines for Village Regulations. The stages of forming village regulations carried out by the village head together with the Village Consultative Body are explained in detail in Permendagri No. 111 of 2014 on Technical Guidelines for Village Regulations, with the following stages:

1. The first step
 - a. The planning stage
 - 1) The draft is first determined by the village head and the Village Consultative Body in the village government work plan.
 - 2) Community institutions, traditional institutions, and other village institutions can provide input.
 - b. The Compilation Stage
 - 1) The village regulations can be initiated by the village government; the draft must be consulted with the community or related community groups or sub-district heads to obtain input, and then these inputs are consulted with the Village Consultative Body.

- 2) The Village Consultative Body can submit draft village regulations being proposed by members of the Village Consultative Council to the leadership of the Village Consultative Body.
- c. The Discussion Stage
 - 1) After the draft has been finalized as a draft, the Village Consultative Body must discuss the draft by inviting the village head.
 - 2) If there are two proposals for draft village regulations, proposals from the village head and the Village Consultative Council, then the priority for discussion is the proposal for draft village regulations from the Village Consultative Council.
 - 3) The village head's draft proposal is used as a comparison
- d. The Determination and Promulgation Stage
 - 1) After the draft village regulations have been agreed upon and enacted, the village regulations are administratively ratified by the village administration.
 - 2) Then promulgated in the Village Gazette.
- e. The Socialization Stage
 - 1) Socialization is intended to provide information and/or obtain community and stakeholder input.
 - 2) This socialization was carried out by the village administration and *BPD*.
 - 3) It is carried out from the determination of the plan for drafting and discussion of the draft to the promulgation of village regulations to provide information and/or obtain input.

Regulation of the Minister of Home Affairs No. 111 of 2014 on Technical Guidelines for Village Regulations is a guideline for village heads in making village regulations, in addition to referring to the Law of the Republic of Indonesia Number 13 of 2022 on Making Laws and Regulations, Law of the Republic of Indonesia Number 6 of 2014 on Villages, as well as referring to the Law of the Republic of Indonesia Number 23 of 2014 on Regional Autonomy. In making village regulations, of course, they may not conflict with laws and

regulations that are at a higher level than village regulations as in the hierarchy of laws and regulations in Article 7 of the Law of the Republic of Indonesia Number 13 of 2022 on Laws and Regulations.

Village regulations must be in line with the objectives of establishing Village arrangements in the Law of the Republic of Indonesia Number 6 of 2014 on Villages, which is a further elaboration of the provisions referred to in Article 18 paragraph (7) and Article 18B paragraph (2) of the Constitution of the Republic of Indonesia of 1945: to promote the economy of rural communities and overcome national development gaps, and to strengthen the Village community as the subject of development.

Although juridical, the existence of village regulations in its development is not to carry out autonomy but only as an instrument to carry out government functions in the village. This government function comes from co-administration tasks that come from a higher level of government, the district/city, while the position of village regulations is under a higher regulation according to the hierarchy of Article 7 paragraph (1) of the Law of the Republic of Indonesia Number 13 of 2022, or village regulations can be formed as long as they are ordered by higher laws and regulations or they can also be formed based on authority³⁰.

Village regulations are very important for the village government, village administration, and village communities. Considering that administratively, villages are at the lowest level in this republic, quantitatively, there are more of them than *kelurahan*. Even though development activities have been carried out in the village, there are still a large number of underdeveloped villages seen from the availability of facilities and infrastructure. Besides that, qualitatively the level of socio-economic welfare in rural areas is lower than in urban areas³¹.

The village, as an organization (public) or government institution and a legal community unit entity with certain territorial boundaries, has a very important and strategic position and function in

³⁰ Bagus Oktafian Abrianto, "Eksistensi Peraturan Desa Dalam Sistem Ketatanegaraan Dan Perundang-Undangan Di Indonesia," *Yuridika* 26, no. 3 (September 15, 2011): 245.

³¹ Umar Nain, "Pembangunan Desa Dalam Perspektif Sosiohistoris," *Garis Khatulistiwa* (Anggota IKAPI Sulsel) (2019): 23.

order to strengthen the government structure of the Unitary State of the Republic of Indonesia (NKRI). However, the existence of regulations regarding villages through various existing laws and regulations has not been able to accommodate all the interests and needs of the village community. Therefore, village regulations are a basic tool for the legitimacy of administering village governance; in other words, village regulations are structured as a reference in implementing governance and development in the village. The village government has independence in running the wheels of government in the village compared to the old order and the new order because it has been given the authority to form a village regulation³².

Good village regulations can undoubtedly become a legal basis for the village head to carry out fair village development, among others:

- a. Development, utilization, and maintenance of Village infrastructure and environment, including residential roads, Village roads between settlements to agricultural areas, micro hydro power plant, village community settlement environment, and other Village infrastructure according to Village conditions.
- b. Development, utilization, and maintenance of health facilities and infrastructure, including Village-scale clean water environment sanitation.
- c. Village health services such as *posyandu*, and other health facilities and infrastructure according to village conditions.
- d. Development, utilization, and maintenance of educational and cultural facilities and infrastructure, including community reading parks, early childhood education programs, training center/community learning activities, developing and fostering art galleries, and other education and training facilities and infrastructure according to village conditions.
- e. Development of productive economic enterprises as well as construction, utilization, and maintenance of economic

³² Hanif Nurcholis, *Pertumbuhan Dan Implementasi Tata Kelola Desa*, 1st ed. (Jakarta : erlangga, 2011).

facilities and infrastructure, including village markets, formation and development of BUM of village, strengthening village-owned enterprises capital, food plant nurseries, rice mills, village granary, clearing of agricultural land, village forest business management, fish ponds and fish hatcheries, fishing vessels, cold storage (refrigerated warehouse), fish auction, salt mines, cattle pen, biogas installation, animal feed machines, other economic facilities and infrastructure according to village conditions.

- f. Environmental preservation including greening, terracing, and maintenance of mangrove forests, spring protection, cleaning of watersheds, coral reef protection, and other activities according to village conditions.
- g. The field of Community Development, including the development of social institutions, maintenance of peace and order, fostering religious harmony, procurement of sports facilities and infrastructure, development of customary institutions, fostering the arts and social culture of the community, and other activities according to village conditions.
- h. The field of Community Empowerment, including training in economic, agricultural, fishery, and trade businesses; training on appropriate technology; education, training, and counseling for the Village head, Village apparatus, and the Village Consultative Body; community capacity building, including Village community empowerment cadres; productive economic business groups; women's groups, farmer groups, poor community groups, fishermen groups, craftsmen groups, observer groups, and child protection, youth groups; and other groups according to village conditions³³.

Based on the explanation above, the contents of village regulations are all material in the context of implementing village autonomy and accommodating village special conditions. The draft Perdes can come from the BPD and the village head. The Perdes drafting program is carried out in a village legislation program, so it is hoped that there will be no overlapping in the preparation of Perdes

³³ Wahyudin Kessa, *Op, Cit*, p. 21-23.

material. There are several types of *Perdes* stipulated by the Village Government, including (1) Village Retribution, (2) Management of Community Forests Areas, (3) Village Conservation Plans, (4) Village Spatial Planning, (5) Village Income and Expenditure Budget (*APBDes*), (6) Village Officials, (7) Village Owned Enterprises (*BUMDes*), and other general regulations³⁴.

A just village development can aim to increase the ability to administer government in an efficient and effective manner and improve services to the community based on the level of development and progress of development³⁵.

Kushandajani explained that the importance of fair village development means that the existing legal construction in the Law of the Republic of Indonesia Number 6 of 2014 on Villages contains something new. First, this Law on villages was born earlier than the Law of the Republic of Indonesia Number 23 of 2014 on Regional Government. Second, the birth of the new Village Law reflects the spirit and respect for villages or what are called by other names, which are recognized to have existed before the Unitary State of the Republic of Indonesia was formed. Third, the diversity of characteristics and types of villages; although it is realized that in a unitary state, there needs to be homogeneity, the Unitary State of the Republic of Indonesia still provides recognition and guarantees for the existence of legal community units and customary law community units along with their traditional rights³⁶.

The economic constitution, as the basic foundation in the formation of legal political policies in the economic field, cannot be separated from the processes and programs set by the government in power; therefore, the economic law policy within the framework of the economic constitution is a legal and constitutional approach in the

³⁴ Agustin, Muh. Sabaruddin Sinapoy, dan Kamaruddin Jafar, *Op, Cit*, p. 90.

³⁵ Jendi Taraja Simamora, Haposan Siallagan, and Hisar Siregar, "Kedudukan Peraturan Desa Dalam Sistem Hukum Peraturan Perundang Undangan Di Indonesia," *Jurnal Hukum Patik* (August 12, 2019): 88.

³⁶ Kadek Wijayato, Lusiana Margareth Tijow, and Fence M. Wantu, "Kedudukan Peraturan Desa Dalam Sistem Pembentukan Peraturan Perundang Undangan Nasional," *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 4, no. 2 (November 3, 2020).

economic field due to the uncertainty of the implementation of the national economy in realizing social welfare³⁷.

Just village development is, of course, a development that is carried out as a whole regarding infrastructure and human resources in the village; a just development is, of course, a development that can be used, felt, and enjoyed by all levels of village society without exception which is in line with the mandate of the Pancasila, the Constitution Republic of Indonesia of 1945, Law of the Republic of Indonesia Number 6 of 2014 on Villages, and Law of the Republic of Indonesia Number 23 of 2014 on Regional Government.

Closing

Based on the explanation above, the conclusions in this study were as follows: first, every village regulation must contain the principles of democracy and aspirations in the process of making it, so it produced village regulations in line with the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, and what was expected by the local village community to make the village the main pillar for the progress of the Indonesian nation and state both in the present and in the future. Second, just village development must be based on village regulations to carry out development in villages, both village infrastructure development and village human resource development, as mandated in the Law of the Republic of Indonesia Number 6 of 2014 on Villages.

³⁷ Fuqoha Fuqoha, "Arah Politik Hukum Nasional Terhadap Kesejahteraan Sosial Dalam Kerangka Konstitusi Ekonomi Di Indonesia," *Ajudikasi : Jurnal Ilmu Hukum* 5, no. 2 (December 31, 2021): 191–206.

Bibliography

- Abrianto, Bagus Oktafian. "EKSISTENSI PERATURAN DESA DALAM SISTEM KETATANEGARAAN DAN PERUNDANG-UNDANGAN DI INDONESIA." *Yuridika* 26, no. 3 (September 15, 2011): 245.
- Alfiaturrahman, Pislawati. "PERENCANAAN PEMBANGUNAN DESA DI DESA BAGAN LIMAU KECAMATAN UKUI KABUPATEN PELALAWAN." *Journal Valuta* 2, no. 2 (October 2016): 258.
- Amanulloh, Naeni. *Demokratisasi Desa*. Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal dan Transmigrasi, 2015.
- Astomo, Putera, and Pahrudin Pahrudin. "Implementasi Asas-Asas Hukum Dalam Pembentukan Peraturan Desa Yang Baik Di Kabupaten Polewali Mandar Dan Kabupaten Majene Provinsi Sulawesi Barat." *Jurnal Pengabdian Masyarakat: Darma Bakti Teuku Umar* 2, no. 1 (July 30, 2020): 108–109.
- Diniyanto, Ayon. "Desain Pembentukan Peraturan Desa Yang Demokratis Dan Aspiratif." *Jurnal Legislasi Indonesia* 19, no. 3 (September 30, 2022): 353.
- Eko, Sutoro. *Regulasi Baru, Desa Baru Ide, Misi, Dan Semangat UU Desa*. Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal, Dan Transmigrasi Republik Indonesia, 2015.
- Fernando, Zico Junius. "TELAAH PASAL PENGHINAAN TERHADAP PRESIDEN DAN WAKIL PRESIDEN DI INDONESIA (STUDY ON THE ARTICLE CONCERNING CONTEMPT AGAINST PRESIDENT AND VICE PRESIDENT IN INDONESIA)." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 30, 2022): 135.

- Fuqoha, Fuqoha. “Arah Politik Hukum Nasional Terhadap Kesejahteraan Sosial Dalam Kerangka Konstitusi Ekonomi Di Indonesia.” *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (December 31, 2021): 191–206.
- Garis, Regi Refian. “Mewujudkan Pemerintahan Desa Yang Berkeadilan Gender.” *Jurnal Ilmiah Pemerintahan Moderat* 2 (May 2016).
- Ghoffar, Abdul. *Dinamika 50 Mahkamah Konstitusi Di Dunia*. 1st ed. Vol. 1, 2022.
- . *HUKUM LEMBAGA KEPRESIDENAN 30 NEGARA DI KAWASAN ASIA, EROPA, OSEANIA, DAN AFRIKA (Kekuasaan, Pengisian, Dan Pemberhentian Presiden)*. RajaGrafindo Persada, 2022.
- . *Pengisian Kekosongan Jabatan Presiden (Perbandingan Dengan 15 Negara Di Dunia)*. RajaGrafindo Persada, 2022.
- Kessa, Wahyudin. *Perencanaan Pembangunan Desa*. Kementerian Desa, Pembangunan Daerah Tertinggal, dan Transmigrasi Republik Indonesia, 2015.
- Lubis, M. Solly, Eka NAM Sihombing, and Ali Marwan HSB. *Law Science*. Malang: Setara Press, 2021.
- Mochtar, Zainal Arifin. *Politik Hukum Pembentukan Undang-Undang*. Yogyakarta: EA Books, 2022.
- Nain, Umar. “PEMBANGUNAN DESA DALAM PERSPEKTIF SOSIOHISTORIS.” *GARIS KHATULISTIWA (Anggota IKAPI Sulsel)* (2019): 23.
- Nurbaningsih, Enny. *Dinamika Praktik Perencanaan Legislasi Nasional*. RajaGrafindo Persada, 2022.

Muhammad Sadi Is, Sobandi, Khalisa Hayatuddin, Suharyono, Jemmi Angga Saputra,
Abdul Basir Bin Mohamad
*The Principle Of Democracy And Participation In Making Village Regulations As An Effort
To Develop A Just Village*

Nurcholis, Hanif. *Pertumbuhan Dan Implementasi Tata Kelola Desa*. 1st ed.
Jakarta : erlangga, 2011.

Putri, Dinda Silviana, Haikal Arsalan, and Mariah Ulfa.
“PARTISIPASI MASYARAKAT DALAM KEBIJAKAN
INVESTASI ENERGI TERBARUKAN DI INDONESIA:
PERSPEKTIF DEMOKRASI ENERGI.” *Jurnal Rechts Vinding :
Media Pembinaan Hukum Nasional* (December 31, 2022).

Putri, Lia Sartika. “KEWENANGAN DESA DAN PENETAPAN
PERATURAN DESA.” *Indonesia Journal of Legislation* 13, no. 2
(June 2016): 163–164.

Rokilah, Rokilah, and Sulasno Sulasno. “Penerapan Asas Hukum
Dalam Pembentukan Peraturan Perundang-Undangan.”
Ajudikasi : Jurnal Ilmu Hukum 5, no. 2 (December 29, 2021):
181–182.

Rosidin, Utang. “Partisipasi Masyarakat Desa Dalam Proses
Pembentukan Peraturan Desa Yang Aspiratif.” *Jurnal Bina Mulia
Hukum* (2019).

Rudy, Rudy. *Hukum Pemerintahan Desa*. Bandar Lampung: CV.
Anugrah Utama Raharja, 2022.

Saifulloh, Putra Perdana Ahmad. “Penafsiran Pembentuk Undang-
Undang Membentuk Kebijakan Hukum Terbuka Presidential
Threshold Dalam Undang-Undang Pemilihan Umum Yang
Bersumber Dari Putusan Mahkamah Konstitusi.” *Jurnal Rechts
Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 30,
2022): 153.

Setiawati. “Peran Badan Permusyawaratan Desa (Bpd) Dalam
Penyusunan Dan Penetapan Peraturan Desa Dihubungkan
Dengan Undang-Undang Nomor 6 Tahun 2014 Tentang Desa (

Studi Kasus Di Desa Tegal Kecamatan Kemang Kabupaten Bogor). Masters Thesis, Universitas Pamulang” (2017).

Simamora, Jendi Taraja, Haposan Siallagan, and Hisar Siregar. “KEDUDUKAN PERATURAN DESA DALAM SISTEM HUKUM PERATURAN PERUNDANG UNDANGAN DI INDONESIA.” *Jurnal Hukum PATIK* (August 12, 2019): 88.

Sinaga, Erlina Maria Christin, and Mery Christian Putri. “FORMULASI LEGISLASI PERLINDUNGAN DATA PRIBADI DALAM REVOLUSI INDUSTRI 4.0.” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 2 (August 27, 2020): 237.

Syafrudin, Ateng, and Suprin Na’a. *Republik Desa : Pergulatan Hukum Tradisional Dan Hukum Modern Dalam Desain Otonomi Desa*. 1st ed. Vol. 1, 2010.

Tohadi, Tohadi, and Dian Eka Prastiwi. “Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks And Balances.” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (April 30, 2022): 19.

Wijaya, Viona. “PERUBAHAN PARADIGMA PENATAAN REGULASI DI INDONESIA.” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 2 (August 27, 2021): 167.

Wijayato, Kadek, Lusiana Margareth Tijow, and Fence M. Wantu. “KEDUDUKAN PERATURAN DESA DALAM SISTEM PEMBENTUKAN PERATURAN PERUNDANG UNDANGAN NASIONAL.” *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* 4, no. 2 (November 3, 2020).

Winarsi, Sri, Xavier Nugraha, and Angelica Milano Aryani Wibisono. “PEMBANGUNAN DESA MANDIRI ENERGI MELALUI

Muhammad Sadi Is, Sobandi, Khalisa Hayatuddin, Suharyono, Jemmi Angga Saputra,
Abdul Basir Bin Mohamad
*The Principle Of Democracy And Participation In Making Village Regulations As An Effort
To Develop A Just Village*

BUM DESA: UPAYA MENCAPAI AFFORDABLE AND
CLEAN ENERGY DARI GRASROOT MOVEMENTS.”

Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional
(December 31, 2022).

Yarni, Meri. “Menuju Desa Yang Maju, Kuat, Mandiri, Dan
Demokratis Melalui Undang-Undang No. 6 Tahun 2014
Tentang Desa.” *Inovatif: Jurnal Ilmu Hukum* 7, no. 2 (2014).

Yusmic, Daniel. *Perpu Dalam Teori Dan Praktik*. 1st ed. Vol. 1, 2021.