

## The Position and Legal Authority of Village Regulations within the Hierarchy of National Legislation

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**Abstract.** *Village Regulations are legal instruments that play an essential role in the administration of village governance as a manifestation of the principle of village autonomy. However, the position of Village Regulations within the hierarchy of national legislation has been a matter of debate, particularly following the enactment of Law No. 12 of 2011 on the Formation of Laws and Regulations, which does not include Village Regulations in the legal hierarchy. This study aims to analyze the status and legal force of Village Regulations within the national legal system and its implications for village autonomy. The research method employed is normative juridical with statutory and conceptual approaches. The analysis shows that although Village Regulations is not explicitly mentioned in the legislative hierarchy, it retains legal legitimacy under Law No. 6 of 2014 on Villages. Village Regulations has binding legal force within village jurisdictions as long as it does not conflict with higher-level regulations or the public interest. However, the ambiguity of Village Regulations' position within the legal hierarchy creates potential normative conflicts and legal uncertainty. Therefore, clearer regulations are needed to explicitly define the position of Village Regulations within the national legal system to strengthen the effectiveness of village autonomy.*

**Keywords:** *Village Regulation, hierarchy, legislation, village autonomy, legal force.*

### 1. INTRODUCTION

The transformation of Indonesia's governmental structure in the post-reform era introduced a new paradigm of governance that is more decentralized. One concrete manifestation of this decentralization is the recognition of village autonomy as stipulated in Law No. 6 of 2014 concerning Villages. Villages are no longer viewed merely as administrative territories but as legal entities possessing the authority to manage and administer governmental affairs based on their original rights and local-scale authority. In this context, *Village Regulations (Peraturan Desa or Perdes)* serve as legal instruments that enable villages to function independently and sovereignly within the framework of national law (Iswanto, 2020; Deliarnoor, 2011).

During the implementation of Law No. 10 of 2004 concerning the Establishment of Laws and Regulations, *Perdes* was explicitly included in the hierarchy of legislation as part of local regulations, equal in status to regent/mayor regulations, with the Village Consultative Body (*Badan Permusyawaratan Desa* or BPD) as the legislative body responsible for its formulation. Thus, *Perdes* possessed formal legitimacy as part of the national legal system and became one

of the essential instruments in implementing village autonomy (Deliarnoor, 2011). This position provided legal certainty and prevented potential conflicts of authority among different levels of government.

According to Sapitri and Saputra (2020), a legal *repositioning* occurred when Law No. 12 of 2011 replaced Law No. 10 of 2004. In Article 7 of this new law, *Perdes* was no longer included in the legislative hierarchy. The hierarchy now ends at the level of Regency/Municipal Regulations, with no mention of *Perdes*. This omission raises serious concerns, as it implies that *Perdes* formally lacks a position within the national legal system. The absence of *Perdes* in the hierarchy has led to various interpretations regarding its binding legal force and its relationship with higher-level regulations (Rahmahani & Wardhani, 2021; Simamora et al., 2019).

However, Article 8 of Law No. 12 of 2011 provides normative recognition for regulations issued by authorized institutions or officials, including *Perdes*, as long as they have a clear legal basis. Consequently, even though *Perdes* is not explicitly mentioned in the formal hierarchy, it remains valid and binding, provided it is established based on the attribution or delegation of authority from higher laws and regulations. This provision indicates that *Perdes* is substantively recognized, despite its absence from the formal legislative structure (Wijayanto et al., 2020; Luthfy, 2021).

The distinction between substantive recognition and exclusion from the formal hierarchy creates both academic and practical challenges. On one hand, villages retain the authority to regulate community affairs through *Perdes*; on the other, the lack of hierarchical inclusion weakens its position when conflicts of norms arise with higher-level regulations. Several scholars argue that the paradigm of Law No. 12 of 2011 is no longer aligned with the post-Village Law era, which emphasizes recognition of village autonomy. This situation calls for regulatory harmonization to ensure that the implementation of village autonomy is not hindered by legal uncertainty regarding *Perdes* (Deliarnoor, 2011; Jayadi, 2023).

The urgency to reposition *Perdes* within the legislative hierarchy has also been underscored by legal scholars and practitioners. Wuisang (2018) emphasizes the need for a clear legal status for *Perdes* to prevent inconsistencies in its implementation. Without formal recognition in the hierarchy, *Perdes* remains vulnerable to annulment by regional governments or judicial review, potentially disrupting village governance and development processes.

Based on this background, the present study focuses on analyzing the status and legal force of *Perdes* within Indonesia's legislative system following the enactment of Law No. 12 of 2011 and Law No. 6 of 2014. This analysis aims to provide a comprehensive understanding

of *Perdes*' position, identify the legal implications of its omission from the hierarchy, and propose normative solutions for its harmonization within the national legal framework. Such harmonization is expected to uphold the principles of village autonomy and legal certainty in the administration of local governance

## **2. METODE**

This study employs a normative juridical approach with a library research method, enriched through a systematic literature review. This approach was chosen because the research focuses on analyzing the status and legal strength of Village Regulations (*Perdes*) within Indonesia's regulatory hierarchy, based on applicable legal norms and prior academic studies. The research data are entirely secondary, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include relevant legislation such as Law No. 6 of 2014 on Villages, Law No. 10 of 2004, Law No. 12 of 2011 on the Formation of Legislation and its amendments, and Minister of Home Affairs Regulation No. 111 of 2014 on Technical Guidelines for Village Regulations. Secondary legal materials are derived from scientific journals, previous research findings, legal articles, and books discussing the legal status of Village Regulations, such as the works of Deliarnoor (2012), Imelda et al. (2020), and Wuisang (2018). Tertiary materials include legal dictionaries and encyclopedias, which serve to clarify specific legal terminology.

The literature review process was conducted through several stages, including the identification of keywords such as *"legal status of village regulations," "hierarchy of laws and regulations," "Law No. 6 of 2014,"* and *"Law No. 12 of 2011."* Literature was then retrieved from national journal databases such as Garuda, Neliti, and Google Scholar. Inclusion criteria were established, encompassing peer-reviewed journal articles published between 2010 and 2024 that were relevant to the research topic. Subsequently, a selection and thematic synthesis process was carried out to identify patterns, similarities, and differences across previous studies. Data analysis employed both the statutory approach to examine the legal position of Village Regulations within Indonesia's legislative framework and the conceptual approach to explore the Stufenbau Theory of legal hierarchy and the principle of regional autonomy. All data were analyzed using qualitative-descriptive methods, interpreting positive legal provisions and connecting them with literature review findings. The results are presented in a systematic narrative that addresses the research questions concerning the formal status, binding force, and the urgency of repositioning Village Regulations within Indonesia's legal system

### 3. RESULT AND DISCUSSION

#### a. Result

**Table 1. Literatur Review**

<b>Title of Study</b>	<b>Focus of Study</b>	<b>Main Findings</b>
The Position of Village Regulations in the Hierarchy of National Legislation (Deliarnoor, 2012)	Analysis of the position of village regulations (Perdes) under Law No. 10 of 2004 and Law No. 12 of 2011	Village regulations are not included in the formal hierarchy of laws and regulations but are recognized as part of the broader legal framework.
Village Regulations in the Perspective of Village Autonomy (Wuisang, 2018)	Relationship between village regulations and the principle of village autonomy	Village regulations have binding local legal force in accordance with village authority but do not have a formal position within the hierarchy of Law No. 12 of 2011.
Analysis of the Legal Status of Village Regulations in the Legislative System (Sapitri et al., 2020)	The position of village regulations in relation to Law No. 6 of 2014 and the principle of <i>lex superior derogat legi inferiori</i>	Village regulations must align with higher laws; if they conflict, they may be annulled by the Regent or Mayor.
The Status of Village Regulations in Indonesia's Legal System (Rahmahani & Wardhani, 2021)	Examination of the promulgation of village regulations under Law No. 6 of 2014, Article 69(1)	Before the enactment of Law No. 6 of 2014, village regulations were promulgated in the Regional Gazette, classifying them as statutory regulations under Article 81 of Law No. 12 of 2011. However, after Law No. 6 of 2014, they are promulgated in the Village Gazette and Village News, which no longer meet the criteria of Article 81, thus village regulations are not categorized as formal legislation.
The Legal Position of Village Regulations in Indonesia's Legislative System (Simamora et al., 2019)	The legal standing of village regulations in Indonesia's legislative system	The study concludes that village regulations serve as legal instruments for village governance in exercising village authority. According to Law No. 6 of 2014, village regulations function as a means of administering local authority based on original rights and local-scale interests, within the framework of Indonesia's legislative hierarchy.
The Construction of Village Regulations in the Hierarchy of	Review of Law No. 12 of 2011 concerning the types	The formation of laws and regulations is a fundamental element in establishing a legal state.

Legislation (Tirtamulia, 2019)	and hierarchy of legislation and its implications for village regulations	A unified legal order requires that lower norms derive from higher norms, ensuring that every legal rule's validity is based on superior legislation. Therefore, the hierarchy of laws, particularly Article 8(1) of Law No. 12 of 2011, needs to be revisited with regard to the inclusion of village regulations.
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Research conducted by Deliarnoor (2012) focused on analyzing the position of Village Regulations (Perdes) within the framework of Law No. 10 of 2004 and Law No. 12 of 2011. The findings indicate that Perdes are not included in the formal hierarchy of legislation as defined in Law No. 12 of 2011; however, their existence is still recognized as a form of regulation in a broader sense, as they possess binding legal authority at the local level. Subsequently, Wuisang (2018) examined village regulations from the perspective of village autonomy. The study emphasizes that Perdes represent a tangible expression of village autonomy, granting villages the authority to manage their own affairs. Nevertheless, Perdes do not have a formal position in the legislative hierarchy as outlined in Law No. 12 of 2011, even though their binding legal force remains valid within the village jurisdiction.

Sapitri et al. (2020) concentrated their research on the legal position of Perdes in relation to Law No. 6 of 2014 and the application of the *lex superior derogat legi inferiori* principle. The study found that Perdes must conform to higher-level legislation; if they contradict superior laws, the Regent or Mayor holds the authority to annul them. This underscores that the validity of Perdes is highly dependent on their consistency with higher legal norms. In contrast to the previous studies, Rahmahani and Wardhani (2021) focused on the status of Perdes based on their promulgation process. Before the enactment of Law No. 6 of 2014, village regulations were promulgated in the Regional Gazette and Regional News, thereby classifying them as formal legislation. However, following the enactment of Law No. 6 of 2014, village regulations are promulgated in the Village Gazette and Village News, as stipulated in Article 69(1). This arrangement does not fulfill the provisions of Article 81 of Law No. 12 of 2011, meaning that Perdes are no longer categorized as formal legislation. Simamora et al. (2019) explored the legal standing of Perdes within Indonesia's legislative system and concluded that they function as legal instruments used by village governments to exercise authority based on original rights and local-scale powers. Perdes serve to facilitate village governance as mandated

by Law No. 6 of 2014, even though they are not explicitly included in the legislative hierarchy outlined in Law No. 12 of 2011.

Meanwhile, Tirtamulia (2019) highlighted the need to restructure the hierarchy of legislation, particularly concerning Article 8(1) of Law No. 12 of 2011, which pertains to the existence of village regulations. The study underscores that the formation of legislation must adhere to the Stufenbau Theory, where lower-level norms derive their validity from higher-level norms. Therefore, an in-depth review is necessary to clarify the position of Perdes to prevent legal uncertainty in practice. Overall, the position and legal force of Village Regulations (Perdes) within Indonesia's national legislative system remain complex and somewhat ambiguous. Although Perdes are recognized as legally binding at the village level, their explicit status within the legislative hierarchy is not clearly defined. This ambiguity raises uncertainty regarding their legality and the mechanisms for constitutional review. The following discussion elaborates on three main aspects: the legal status of Perdes, the authority and autonomy involved in their formation, and recommendations for integrating Perdes into the national legal system.

## **b. Discussion**

### **1) Legal Status of Village Regulations**

The legal status of village regulations (Peraturan Desa or Perdes) in Indonesia represents a complex issue shaped by the interaction of multiple legislative frameworks. Although not explicitly listed in the hierarchy of laws following the enactment of Law No. 12 of 2011 on the Formation of Laws and Regulations, village regulations are still recognized as legitimate legal instruments under Law No. 6 of 2014 on Villages. This recognition provides a strong juridical foundation for the existence and implementation of Perdes within local governance.

Law No. 12 of 2011 does not explicitly include Perdes within the formal legislative hierarchy, leading to ongoing debates regarding their legal standing and conformity with national legal principles. Nevertheless, Perdes continue to be acknowledged as operational legal instruments, serving as derivative regulations from higher laws, particularly in matters concerning the implementation of village authority. Thus, even though Perdes are not formally part of the legislative hierarchy, they retain normative recognition within the practice of local governance (Ananda & Ma'ruf, 2024; Wardana et al., 2021).

Village regulations are formally recognized as legal products that support the exercise of village authority. Law No. 6 of 2014 reinforces the principle of village

autonomy, granting local governments the authority to establish rules that reflect local needs. While not part of the formal legislative hierarchy, Perdes function as elaborations of higher legal norms and therefore retain binding legal force (Sundry et al., 2023; Wardana, 2020).

According to Sukimin et al. (2023), from a supervisory perspective, the constitutionality of Perdes may be evaluated through executive preview and administrative review mechanisms carried out by regional officials, such as regents or mayors. These mechanisms aim to ensure that Perdes are consistent with higher laws and aligned with the public interest. However, the unclear legal position of Perdes within the national legal hierarchy creates enforcement challenges and potential conflicts with higher-level laws. This condition underscores the need for clearer guidelines to affirm the legal status of Perdes and ensure their effectiveness within the national legal framework (Ananda & Ma'ruf, 2024; Moonti, 2018; Wardana, 2020).

The legal status of Perdes in Indonesia, therefore, occupies a complex and somewhat ambiguous position within the national legislative system. This ambiguity arises because Law No. 12 of 2011 omits Perdes from the formal hierarchy, while Law No. 6 of 2014 provides normative recognition and juridical legitimacy for their existence. As legal instruments, Perdes play a vital role in supporting village autonomy and the implementation of local authority, thereby maintaining binding power despite their absence from the formal legislative structure.

Findings from the literature review reveal that Perdes act as elaborations of higher-level legal norms, particularly in implementing local authority. However, the lack of a clear framework regarding their formal status has created potential norm conflicts and enforcement difficulties. Oversight mechanisms by local governments, such as executive previews and administrative reviews, may reduce inconsistencies but also risk undermining the principle of village autonomy.

## **2) Authority and Autonomy in the Formation of Village Regulations**

The formulation of village regulations represents the implementation of the principle of village autonomy as stipulated in Law No. 6 of 2014 on Villages. This process involves both the Village Head and the Village Consultative Body (Badan Permusyawaratan Desa) as the primary holders of local authority. However, this autonomy is not absolute. Regents or mayors possess the authority to review and annul village regulations (Perdes) that conflict with higher-level laws or are considered inconsistent with the public interest (Sukimin et al., 2023). This oversight mechanism creates a dilemma: while it safeguards

legal harmony at the national level, it may also restrict the independence of villages in managing their own affairs (Nasution et al., 2023).

The formulation of *Perdes* in Indonesia reflects a dynamic interaction between authority and autonomy at the village level. These regulations serve as legal instruments that embody the principle of self-governance, enabling villages to address local needs while remaining aligned with the broader national legal framework. The authority to enact *Perdes* is legally grounded in Law No. 6 of 2014, which provides the foundation for villages to manage governance and development activities (Damayanti & Saravistha, 2023). Local governments, in turn, play a crucial role in providing supervision and guidance to ensure that village regulations comply with higher legal standards (Masyithah & Rani, 2021).

Despite the existence of a robust legal framework supporting village autonomy, its implementation remains challenging. Many villages suffer from limited human resources and inadequate technical capacity, often resulting in poorly drafted *Perdes* that fail to reflect community aspirations (Rahmi et al., 2023). Furthermore, insufficient political and technical support from regional governments hampers the effectiveness of these regulations, as shown by several case studies highlighting village-level failures in regulatory formulation (Trimurni et al., 2021).

Therefore, although *Perdes* are designed to strengthen village autonomy, practical issues such as limited capacity and dependence on regional supervision underscore the need for ongoing training and technical assistance for village officials. Nevertheless, excessive oversight from higher levels of government risks undermining the essence of village autonomy. A balanced governance approach is therefore essential—one that ensures compliance with national law while respecting local needs, priorities, and characteristics.

#### **4. CONCLUSION**

The position and legal force of Village Regulations (*Perdes*) within Indonesia's national legislative hierarchy constitute a unique and complex issue. Although *Perdes* are not explicitly listed in the hierarchy established by Law No. 12 of 2011 on the Formation of Laws and Regulations, they nonetheless possess formal legitimacy and binding authority under Law No. 6 of 2014 on Villages. *Perdes* serve as legal instruments that embody the principle of village autonomy, granting village governments the authority to regulate local interests in accordance with community needs while remaining subordinate to higher-level regulations. However, the



unclear status of Perdes within the national legal hierarchy has sparked debate concerning their constitutionality, oversight mechanisms, and potential conflicts of norms. In practice, the legal force of Perdes is operational in nature, functioning as a derivative regulation that implements higher-level laws. Consequently, Perdes hold legally binding power within the jurisdiction of the village, provided that they do not contradict superior laws or the public interest. This situation underscores the need for more explicit derivative regulations clarifying the status of Perdes within Indonesia's legal system. Such clarity would prevent legal uncertainty and strengthen the effectiveness of village autonomy within the framework of a unitary state.

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