

VAGUENESS OF LEGAL NORMS IN ELECTORAL AUTHORITY AND APPOINTMENT OF VILLAGE APPARATUS

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Abstract *The birth of the Village Law with its two ultimate principles, namely Recognition and Subsistence, brought fresh air to the revival of the Village from the slump of various regulations and policies that could be said to be 'malpractice' over him so far. However, improving the existence of the village in the hope of building from the periphery is not as easy as turning the palm of the hand. Because there are still quite a lot of regulations that try to deny and hinder than the big dream of Village Law number 6 of 2014. The study was conducted by normative method. The results of the research are: First, the discovery of a regulation at the level of a ministerial regulation which turns out to have the potential to hold the authority of the village head in determining his helpers in running the village government. Second, it is necessary to rearrange and harmonize rules that try to deny the purpose of the rule itself. Because in fact, the intertwining of various rules that continue to confine and imprison village autonomy in their policies will only make us see villages in various policies that actually have the same substance without having the power to change the direction of real and essential improvement.*

Keywords: *Legal Vagueness; Appointment; Village Apparatus*

Abstrak *Kelahiran Undang-Undang Desa dengan dua asas pamungkasnya yakni Rekognisi dan subsidiaritas membawa angin segar untuk kembali bangkitnya Desa dari keterpurukan atas berbagai peraturan dan kebijakan yang bisa dikatakan 'malapraktek' atas dirinya selama ini. Akan tetapi melakukan perbaikan keberadaan desa dengan harapan membangun dari pinggiran, tidaklah semudah membalikkan telapak tangan. Karena masih cukup banyak peraturan yang berupaya untuk mengingkari dan menghalangi dari pada mimpi besar Undang-Undang Desa nomor 6 tahun 2014. Penelitian ini dilakukan dengan metode normatif. Hasil Penelitiannya adalah: Pertama, ditemukannya sebuah aturan setingkat peraturan Menteri yang ternyata selama ini berpotensi menyandra kewenangan dari kepala desa didalam menentukan pembantunya didalam menjalankan pemerintahan desa. Kedua, perlu dilakukan penataan ulang dan harmonisasi atas aturan-aturan yang mencoba mengingkari tujuan dibentuknya aturan itu sendiri.*

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Karena sesungguhnya berkelindannya berbagai aturan yang terus mengurung dan memenjarakan otonomi desa didalam kebijakannya hanya akan membuat kita melihat desa didalam berbagai kebijakan yang sebenarnya memiliki substansi sama tanpa memiliki daya ubah pada arah perbaikan yang sesungguhnya dan esensial.

Kata kunci: Kekaburan Hukum; Pengangkatan; Perangkat Desa

Introduction

The preamble of the NRI Constitution in 1945 stipulated that the main direction of this nation is to protect the entire Indonesian nation and all Indonesian bloodshed, promote general welfare, educate the nation's life and participate in implementing world order based on independence, lasting peace and social justice. In line with this, national development in all aspects of the life of society, nation and state carried out from time to time is to realize the goals of the country. All of these development efforts are ultimately to realize social justice for all Indonesian people. Village communities, whether referred to as customary law communities or traditional communities, are part of the components of the citizens of the Republic of Indonesia. They had been present in the country long before the Indonesian state was proclaimed on August 17, 1945. Therefore, their rights are recognized, protected and respected, not only used as a testing ground for various legal and policy products whose success is unclear and often even designed to fail at the beginning.

Law No. 6/2014 on Villages has reached its 8th (eight) year since it was passed on January 15, 2014. The birth of the Village Law has brought a special mission in recognizing village sovereignty when implementing governance and managing village resources, finances, and assets. This regulation aims to make the village independent and prosperous. After the Village Law, until now the Government has made various implementing regulations. These regulations include: 5 PPs, 42 ministerial-level regulations, as well as 2 joint decrees of the Minister of Home Affairs, Minister of Villages and Development of Disadvantaged Regions and Transmigration, and Minister of Finance. Within 8 years of the enactment of the Village Law, it was found that many implementing regulations from the Village Law were issued which also often changed every year and seemed patchy. Changes in regulations are very fast and carried out in such a short time and cause various problems, such as the ability of village officials to understand the many changing and overlapping regulations, so that they experience problems in their implementation.

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Law No. 6 of 2014 has regulated various village authorities as referred to in Article 19, Article 20, Article 21, and Article 22 consisting of authority in the fields of governance, implementation of development, community development, and empowerment of village communities referring to community initiatives, rights of origin and customs of villagers. As a derivative of the provisions of these articles, several implementing regulations have been issued, namely: PP No. 43 of 2014 concerning the Implementing Regulations of Law No. 6 of 2014 concerning Villages as stipulated in Articles 33, 34, 35, 36, 37, 38, and Article 39, PP No. 47/2015 concerning Amendments to PP No. 43 of 2014 concerning Implementing Regulations of Law No. 6 of 2014 concerning Villages as amending the provisions of Article 34 paragraph (3) and Article 39, PDTT Amendment No. 1 of 2015 concerning Guidelines for authority based on the right of origin and village-scale local authority, Permendagri No. 44/2016 related to Village Authority.

Formally, in terms of ministerial authority that issues the two ministerial regulations related to village authority, namely Amendment No. 1 of 2015 and Permendagri No. 44 of 2016 when related to the main duties and functions of the two ministries in accordance with the Presidential Regulation which each regulates the two ministries, village authority is included in the field of regulating the government system which is the responsibility of the Ministry of Home Affairs. Therefore, the issuance of Amendment No. 1 of 2015 by the Ministry of PDTT villages is not in accordance with its main duties and functions. However, although formally there are problems in terms of the authority of the minister who issues regulations, in this case the village ministry, when viewed from the material or substance side regulated in the ministerial regulation, Article 2 and Article 3 of Amendment No. 1 of 2015 actually describe in more detail about 2 things, namely, authority based on the right of origin of the village and based on the right of origin of customary villages regulated by Article 19 paragraph (1) of the Village Law. Thus, the existence of the PDTT Amendment can be said to be an accelerator (support) of Article 19 and Article 20 of the Village Law. Meanwhile, when viewed in Permendagri No. 44 of 2016 which in terms of ministerial authority has the main task and function of regulating village authority, the elaboration of 4 village authorities as stipulated in Article 19 paragraph (1) of the Village Law is regulated more fully so that the regulations in the Permendagri can be said to be the basis for the rules for accelerating the achievement of goals (accelerators) from the regulation of article 19 of the Village Law.

The narrative of government and the word government have different meanings. Government contains the meaning as an "organ" or instrument of the State that carries out the duties and functions of

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government, while government contains the meaning as a "function" of the government. The term government in the sense of "organ" or tool of the state is divided into two, namely Government in the narrow sense, specifically only concerns executive power. According to the 1945 Constitution, the government is the President, Vice President and is assisted by ministers. Government in a broad sense is all organs of the state including the DPR (executive and legislative) (Kansil 2009).

It is widely understood that what is said to be a "government" is a group of individuals who have a certain authority to exercise power which means exercising legitimate authority and protecting and improving the standard of living of the community through actions and implementation of various decisions. As in Article 1 paragraph (2) of Law no. 30 of 2014 concerning Government Administration, that the function of government is a function in carrying out government administration which includes the tasks of regulation, service, development, empowerment, and protection. Furthermore, in the Law related to Villages, it is said that Village Government is the administration of government affairs and the interests of local communities in the government system of the Republic of Indonesia.

As an organizer, the government is carried out by the village head who is assisted by village officials as an element of government administration. In state life, government is needed to regulate, protect, and meet the needs of the people because the nature of the state has a coercive, monopoly, and includes both. With the government, all regions and boundaries can be controlled and monitored and can be regulated easily. All regions have their own governments and government devices ranging from villages, kelurahan, sub-districts, districts, provinces, and the central government.

However, the existence of Article 26 (Village Law) and Article 4 (Permendagri no 83 of 2015 concerning the Appointment and Dismissal of Village Officials) seems to have a blurring of norms in the issue of the authority to appoint Village officials, so that it has proven to have an impact on problems that occur in the Village. Referring to the background described above, the author finds it interesting and important to study further about the government system in the appointment of village officials with the title: Vagueness of Legal Norms in the Authority to Elect and Appoint Village Officials.

Method

This type of research is normative legal research. The use of normative research is closely related to the desire to put law as a structure of a norm system based on the rules of legal regulations and doctrines or teachings. This research is a search for truth about the positive legal provisions that apply to the field of appointment of village officials. This research is prescriptive and applied with the intention of providing ideas about what should be done referring to opinions for solving targeted legal problems. With the aim of clarifying scientific analysis, the UU approach is used (Fajar and Achmad 2015)(*statute approach*) (Marzuki 2001), conceptual approach (*conceptual approach*), Case approach. As has been stated earlier that this type of research is juridical normative (*doctrinal research*), The types of legal materials are primary, namely laws and regulations, including: Law number 6 of 2014 related to Villages and Permendagri no 83 of 2015 concerning the Appointment and Dismissal of Village Apparatus.

Procedures in collecting legal materials through the stages of learning documents and literature through reading, recording, and making reviews related to legal materials. The system used is the system of investing into application media (*quarto system*), Then it is systematized and analyzed to be interpreted according to the research objectives. To get answers to legal problems that have been formulated, post-inventory materials are processed using deduction reasoning, namely legal issues that become problematic are analyzed and reviewed by applicable laws to find regulatory bases that can be used for problematic problems. Legal analysis using the method of societal interpretation (*de maatschappelijke interpretatie*) (Hadjon and Djatmiati 2005), and legal construction *rechtverwijning*. (Mertokusumo and A. Pitlo 1993).

Discussion and Results

A. Terms and Definitions of Village

The village is etymologically derived from Sanskrit, *deca* which means homeland, homeland or homeland. Based on KBBI, (B. Indonesia 2013). A village is an area inhabited by several families with a self-government system (led by a village head), or a village consisting of a collection of houses outside the city and one part. This village was

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founded by several groups of heads of families who settled there, taking into account the origin of the region and the language, traditions, economy and social welfare of the local community, so that a village was born. A village is a piece of land inhabited by many families, supported by the surrounding natural resources, which is inhabited in the hope of supporting life and ensuring development.

A village is a unit of power under a regency/city. Villages are not the same as kelurahan whose leadership is under the sub-district. Kelurahan is only a sub-district working area to carry out sub-district administration and does not have the right to regulate and take care of the interests of local residents, while the village or referred to by other names, as a cultural, economic and political entity that existed before the legal products of the colonial period and afterwards, was implemented, already has the principle of original self-government, in accordance with social and economic characteristics, as well as the needs of its citizens. The concept of a village is not only limited to a territorial unit with a certain population, but also as a territorial unit occupied by a group of people with cultural completeness including a sovereign political and economic system. In addition, it also has characteristics that are generally accepted throughout Indonesia, while traditional villages or referred to by other names have characteristics that are different from villages in general, this is due to the thick influence of adat on the local government system, local resource management, and socio-cultural life of village communities.

The village has a certain territorial boundary layout and has legal force, and is headed by the village head. This can be said to be a result of a combination of the activities of a group of humans with their environment. The result of this combination is a form or appearance on earth arising from physiographic, social, economic, political and cultural elements related to these elements and also in their attachment to other regions. Examples such as naming traditional villages in Java and Bali, Nagari in Minangkabau, hamlets and clans in Palembang, and so on. Such an area has an original structure and therefore can be considered a special area. Thus, its existence must still be recognized and guaranteed its survival within the framework of the Republic of Indonesia.

H.A.W. Widjaja wrote in his book entitled "Village Autonomy" stating that, the village is a unit of legal society that has an original structure based on special rights of origin. The rationale of village governance is diversity, participation, native autonomy, democratization and community

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empowerment. Villages are villages and customary villages or referred to by other names, hereinafter referred to as villages, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, the interests of local communities based on community initiatives, rights of origin, and/or traditional rights that are recognized and respected in the government system of the Republic of Indonesia. (Widjaja 2003).

Democracy is not only an election made for those who are eligible to vote, but democracy must also be followed with respect for human rights and must be carried out freely, honestly, and openly. In a government there is a structure that will later be held by elected staff to run the wheels of government. The governance that must be filled by his position in the village government is the Village Head as the leader. The village government itself is the motor of driving civilization in the region. If a leader properly carries out his obligations as a leader and the wheels of his government, it will have a real influence on progress in various activities in society. (Sulistiowati 2017)

The theories used to analyze the status of villages are Chema and Rondinelli's decentralization theory and Gerry Stoker's local government. According to Chema and Rondinelli, power at the top level can hand over some government affairs to five organizations: vertical agencies; administrative region; semi-autonomous organizations; autonomous regions; and nongovernmental organizations. Decentralization takes four forms: deconcentration; devoluisi; delegation; and handover of government functions to private institutions or privatization. Decentralization material is the handover of planning, decision-making, or administrative authority from the central government to its branch government units, local administrative units, semi-autonomous and parastatal organizations, local governments, and non-governmental organizations. Stoker explained that local government consists of government agencies outside the head office whose officials are elected or unelected. Local governments are formed by the central government through law. Local governments, both elected and appointed, are fully financed by the central government: infrastructure, budget, employment status and employee salaries, operational activities, equipment, and technology.

Village governance contains the following weights and aspects : Village administration, village development administration, community development administration, village management, and village leadership (Sari and Neta 2007).

B. Order of Government

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A rural area is generally headed by a village chief. The village head is directly elected by Indonesian villagers, who meet the requirements with a term of office of 6 (six) years from the date of inauguration. Village heads are allowed to carry out the mandate for a maximum of three consecutive or non-consecutive terms.

As for the filling and tenure of the head of customary villages, customary law provisions apply in customary villages as long as they are alive and in accordance with the development of the community and the principles of the Republic of Indonesia stipulated in the district/city bylaws based on the PP. In the district or city area, customary villages can be formed that have authority in accordance with the provisions of laws and regulations, regarding villages and the central government, provincial regional governments and district / city regional governments can assign some government affairs that are the authority of the village head.

Referring to Permendagri no 84/2015 concerning the Organizational Structure and Work Procedures (SOT) of Village Government has been issued as a follow-up to the village law. Pemdes is a village head who is assisted by village officials consisting of village secretariat, regional executive, and technical implementer. The composition of village government work procedures in accordance with Permendagri No. 84 of 2015 concerning the Organizational Structure and Work Procedures (SOT) of Village Government, among others:

1. The village secretary is assisted by the village secretary staff consisting of at most three affairs, namely administrative and general affairs, financial affairs, planning affairs, and at least 2 (two) affairs, namely general affairs and planning and financial affairs. Each affair is headed by a head of affairs (Kaur);
2. The regional executive is the auxiliary element of the village head as a regional task force. The total number is determined proportionally between the regional executors needed and the village's financial capacity and takes into account the area of work area characteristics, geography, population density, and task supporting infrastructure. Regional implementation is carried out by the head of the hamlet or other designation. Regional duties include, government administration, development implementation, community development, and village community empowerment; and

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3. Technical executor. Referring to Permendagri No. 84 of 2015, Article 5 paragraphs (1), (2), and paragraph (3), the technical executor is an auxiliary element of the village head as the executor of operational duties. Technical implementers consist of at most 3 sections, namely the government section, welfare section, service section, and at least 2 sections, namely the government section, welfare and service section.
4. The village government is headed by the village head, assisted by the village secretary and village officials. The village apparatus consists of the heads of affairs, namely the executor of affairs and the head of the hamlet. The heads of affairs assist the village secretary in providing information data and providing services. The implementation of affairs is the official who carries out the household affairs of the village in the field. The head of the hamlet is the deputy village chief in his territory. Village household affairs are affairs that have the right to be regulated and taken care of by the village government. To regulate, manage, and manage its affairs, the village government makes a *perdes*. Village regulations are made by the village head together with the Village Consultative Body. Village regulations are carried out by the village head and accountable to residents through BPD

C. Duties and Functions of Village Government

a) Tufuksi village chief

In his position as the head of the village government who leads the administration of the village. The village head is in charge of organizing village government, carrying out development, community development, and community empowerment. Referring to Permendagri No. 84 of 2015, to carry out his duties, the village head has the following functions:

1. Implementing village government, including governance, setting regulations in the village, fostering land issues, fostering peace and order, carrying out community protection efforts, population administration, and structuring, and area management;
2. Carrying out development, consisting of the construction of rural infrastructure facilities and the field of health education;

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3. Community development, including the implementation of rights and obligations, participation, socio-cultural, religious, and employment of citizens;
4. Community empowerment, such as socialization tasks and community motivation in the fields of culture, economy, politics, environment, family empowerment, youth, sports, and cadet reefs; and
5. Maintain social relations with institutions in the community.

b) Secretary tufuksi

The village secretary in the position as the leading element of the village secretariat is tasked with assisting the village head in the field of government administration. To carry out the duties as referred to in paragraph (2), Permendagri Number 84 of 2015, namely:

1. Carry out administrative matters such as paperwork and administration;
2. Carrying out general affairs consists of structuring village apparatus administration, providing infrastructure and offices, preparing meetings, administering assets, inventory, official travel, and general services;
3. Carry out financial affairs including the management of financial administration, administration of sources of income and expenditure, verification of financial administration, and administration of income of the village head, village officials, BPD, and other village government institutions; and
4. Carry out planning matters, such as preparing village income and expenditure budget plans, inventorying data in the context of development, monitoring and evaluating programs, and preparing reports.

c) Tufuksi head of affairs

The head of affairs is tasked with assisting the village secretary in matters of administrative services supporting the implementation of government duties. Furthermore, to carry out the duties of the head of affairs has the following functions:

1. The administrative and general affairs have functions such as carrying out administrative affairs such as manuscript administration, correspondence administration, village apparatus administration arrangement, infrastructure and office

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provision, meeting preparation, asset administration, inventory, official travel, and general services;

2. Kaur finance has functions such as carrying out financial affairs, such as managing financial administration, administering sources of income and expenditure, verifying financial administration, administering village head income, village apparatus, BPD, and other village government institutions; and
3. The planning officer has the task of coordinating planning matters, such as preparing village income and expenditure budget plans, inventorying data in the context of development, monitoring and evaluating programs, and preparing reports.

d) Section chief tufuksi

The section head has the task of assisting cadres as operational task executors. To carry out the duties of the section head has the following functions:

- a. The head of government has the function of carrying out governance management, drafting village regulations, fostering land issues, fostering peace and order, implementing community protection efforts, population, regional arrangement and management, as well as data collection and management of village profiles;
- b. Kasi welfare has the function of carrying out the development of rural infrastructure, development in the fields of education, health, and socialization tasks and community motivation in the fields of culture, economy, politics, environment, family empowerment, youth, sports, and cadet reefs;
- c. Service kasi has the function of carrying out counseling and motivation for the implementation of community rights and obligations, community participation, community socio-culture, religion, and employment.

e) Tufuksi of the head of the region

The Regional Head in another naming is positioned as an element of the Regional Task Force which has the task of assisting the Village Head in the implementation of duties in his area. To carry out the duties as intended, the regional head has the following functions:

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- I. Fostering peace and order, implementing community protection efforts, population mobility, and regional arrangement and management;
- II. Supervise the implementation of development in its territory;
- III. Carry out community development in increasing the ability and awareness of the community in protecting their environment; and
- IV. Carry out community empowerment efforts in supporting the smooth administration of government and development.

A village is a small community that exists all over the world as it does in our country. Most Indonesians live in rural areas. The village is legally made the smallest unit of government in the country. Such facts are stipulated in official state regulations and are used as the smallest areas of development targets. The form of village government is uniform throughout Indonesia, although actually not a few still hold the customary leadership model. Although the government remains, the highest influence and decisions related to the community remain with the rulers in the village community. The village is run by a village head who will then carry out all his duties and obligations in governance. The village head is a village leader who runs and regulates all activities in the village government and is also able to accept the aspirations of the community and is able to carry out his duties and obligations in his government. The Village Head himself based on the Law on Villages in article 26 paragraph (1) has the task of organizing Government, carrying out Development, community development and empowering the Village community. When carrying out village government, it is assisted by village officials as an element of village government administration. (Sulistiowati 2017) (Sugiman 2018).

Furthermore, as stipulated in Article 26 paragraph 2 letter b (Law on Villages) explains that, one of the authority of the village head is to appoint and dismiss village officials. (Desa 2014)

- 1) The Village Head is in charge of organizing Village Government, implementing Village Development, Village community development, and empowering Village communities.
- 2) In carrying out the duties as referred to in paragraph (1), the Village Head has the authority:

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1. leading the administration of Village Government;
2. appoint and dismiss Village officials;

Meanwhile, in the derivative rules in Article 4 paragraph 1 (Permendagri no 83 of 2015 concerning the Appointment and Dismissal of Village Apparatus), it is explained that there is a consultation process to the Sub-District, so that it appears that there is a process of denial of the mandate of the Law on the authority of the Village Head himself, because in terms of legal formality, the results of the recommendations that come out should not be binding rules and have the effect of renovating on the authority of the Village Head and further have the potential to make The authority of the village for the issue of its organizational structure is intervened by the sub-district.

The appointment of village officials shall be carried out in the following manner:

1. The Village Head may form a Team consisting of a chairman, a secretary and at least one member;
2. The Village Head conducts screening and screening of candidates for Village Equipment carried out by the Team;
3. The selection and screening of prospective Village Apparatus candidates shall be carried out no later than 2 (two) months after the position of village apparatus is vacant or dismissed;
4. The results of the selection and screening of prospective Village Apparatus candidates are at least 2 (two) candidates consulted by the Village Head to the Sub-District;
5. The sub-district head shall provide written recommendations to candidates for Village Apparatus no later than 7 (seven) working days;
6. The recommendation given by the sub-district head is in the form of approval or rejection based on specified requirements;
7. In the event that the sub-district head gives approval, the village head issues a village head's decree on the appointment of village officials; and
8. In the event that the Sub-District's recommendation contains rejection, the Village Head conducts screening and re-screening of candidates for Village Apparatus.

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(2) Further arrangements regarding the duties and functions of the Team as referred to in paragraph (1) point a shall be regulated in the Village Head Regulation.

The blurring of legal norms creates legal uncertainty in the appointment of village officials by a village head, thus appearing to negate the authority and rights of the village head himself. Because at any time a sub-district head has the potential to hinder the desired person from being able to cooperate with him with a letter of recommendation as stipulated in Permendagri No. 85 of 2015. Even though the recommendation itself in KBBI has a meaning as well as mentions, the recommendation is a kind of recommendation, not a decision that is cancel.

Then as we generally know in law, there is the term regulation (*Regeling*) and there is another decision (*Beshiking*). Referring to its types and characteristics, it is very clear that the recommendation is in the family of decisions because it is a recommendation, he does not have the binding legal force to cancel or even annul from the authority of the village head in appointing village officials in particular, because of course in principle recommendations should be considerate, not decide beyond the authority of the person who made it, because politically, Surely the village chief himself who best understands who he can work with, will have a contribution to help his work and build progress in his village, not others outside the village.

In fact, as we understand one of the actors from the three main positions that have an important role in the implementation of village authority, namely the Village Government (Village Head and Village Apparatus), so without solidity in the internal village government, how can the implementation of village government be achieved properly. If the specified person works with the village chief alone, it does not align politically. (Irawati 2021)

Conclusion

The discovery of a regulation at the level of a ministerial regulation that has the potential to hold the authority of the village head in determining his helpers (read: village apparatus) in running the village government. Permendagri No. 85 of 2015 contradicts the higher rules above it, namely Law No. 6 of 2014 concerning Villages, so this will be a portrait of how many

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regulations at the legal level are robbed or circumvented by the rules below even at the level of ministerial regulations.

It is necessary to rearrange and harmonize rules that try to deny the purpose of the establishment of the rules themselves. So that there is hierarchical legal harmony and does not cause legal uncertainty when implemented. For matters that do not have emergency urgency, it should not need to be regulated in the Ministerial regulation, this will actually lead to more obsessis of regulation in this country.

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