



## FIQH SIYASAH DUSTURIYAH ANALYSIS OF THE PREPARATION OF VILLAGE REGULATIONS

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### **Abstract:**

The purpose of this research is to find out how Siyasa Dusturiyah analyzes the formulation of village regulations. This study uses a normative juridical research method, namely the legal research method of literature which is carried out by examining library materials or only secondary data. The results of the study show that based on the duties and authorities of Ahlu Al-halli wal Aqdi in forming rules according to Islam, which when linked to the stages of drafting village regulations regulated in domestic regulation number 111 of 2014 concerning technical guidelines for villages regulations, the preparation of village regulations cannot be separated from the role of the village government, in this case the village head as the government leader in the village and the Village Consultative Body (BPD) as a forum for channeling the aspirations of the village community . The role of the BPD as a representative of the village community is the same as that of Ahlu Al-halli Wal Aqdi, namely having the right to establish legal rules together with the village head. siyasa dusturiyah fiqh analyzes that, in terms of legislation or forming regulations it is explained in detail how the mechanism for forming regulations. Forming regulations with deliberation by members of Ahlu Al-halli wal Aqdi, in the event that community meetings were involved to be asked for their opinion in forming regulations, the caliph also has the right to propose laws to be adopted by Ahlu Al-halli wal Aqdi has the right to form and stipulate laws that are binding on all people in matters that are not strictly regulated in the Al-Quran and Hadith.

**Keywords:** *Fiqh, Siyasa Dusturiyah, Village Regulations.*

### **INTRODUCTION**

Indonesia as a constitutional state requires that every policy issued by the government in running the government be based on applicable laws and regulations. In the context of the unitary Republic of Indonesia, the implementation of its government is distributed in the form of central government and regional government consisting of provincial, city/district and village governments. The village government as the smallest unit in administering government has had a very strategic position since the enactment of Law Number 6 of 2014 concerning Villages. Villages are given the freedom to organize and manage their own households based on the principle of decentralization which involves the community in administering village government. In governing and managing their households, villages use legal instruments in the form of village regulations stipulated by the village head and agreed together with the BPD.

Every regulation formed by an authorized institution aims to create justice for the community in realizing proportional prosperity. (Yulianto & Rohmah, 2022) Likewise with village regulations. However, in practice, legal products in villages, in this case village regulations, seem



far from the purpose of the form of village regulations, on the other hand, it is not uncommon for village regulations to be made to cause confusion and incongruity in people's lives.

In terms of drafting village regulations, this problem is caused by the lack of maximum understanding of the institutions authorized to formulate village regulations regarding the theory and techniques for drafting legal products. This includes the formation mechanism which often does not refer to the basic guidelines and rules for the formation of statutory regulations. This is understandable, because the scope of village regulations as one of the statutory regulations is very broad. As Burkhardt Krems said, the science of legislation (*Gesetzgebungswissenschaft*) is an interdisciplinary science that is related to political science and sociology. (Razali dkk., 2022)

In the Islamic system of government and state administration, a *siyasah fiqh* is presented which discusses state legislative issues called *Siyasah dusturiyah*. In the *Siyasah dusturiyah fiqh* concept, the concepts of constitution, legislation and *shura* institutions are discussed, which are important pillars in the preparation of a legal product. (Rolando dkk., 2023)

*Fiqh Siyasah Dusturiyah* in the field of legislation covers the issue of the power of the Islamic government in making and enacting laws based on the provisions that have been revealed by Allah SWT in Islamic *Shari'a* which includes the government as the holder of the power to determine the laws that will be enforced in the Islamic society, the Islamic society that will implement them, and the contents of the regulations. or the law must be in accordance with the values of Islamic law. Legislative power is exercised by *Ahlu ahalliwal Aqdi* to make laws that will be enforced in Islamic society for the benefit of Muslims, in accordance with Islamic teachings. (Azkia, 2023)

The principle of drafting a legal product in *siyasah dusturiyah* according to Abdul Wahab Khallaf is respect for human rights. In the context of village regulations, the village head together with the BPD in drafting village regulations must consider respect for human rights such as protection, welfare guarantees and the right to receive equal justice before the law without differentiating between social strata. So that the aim of *fiqh siyasah* is to realize the benefit of the people. (Yulianto & Rohmah, 2022)

Based on the description of the problem above, the author is interested in discussing the process of drafting Village Regulations in Review from *Fiqh Siyasah Dusturiyah*, where the focus of the objective is to find out whether the process of forming village regulations is in accordance with Islamic legislative principles or not.



## METHODS

The research method used in this research is normative juridical research (normative legal research method). The normative juridical research method is library legal research carried out by examining library materials or secondary data alone. (Ma'had Aly Raudhatul Ma'arif & Fadhli, 2023) This research uses a deductive thinking method, namely a way of thinking in drawing conclusions drawn from something of a general nature that has been proven to be correct and the conclusion is aimed at something of a specific nature. (Ar dkk., 2024) Thus, the object analyzed using a qualitative approach is a research method that refers to legal norms contained in statutory regulations.

## RESULTS AND DISCUSSION

### Overview of Siyasaah Dusturiyah

Siyasaah Dusturiyah is part of Siyasaah Fiqh which relates to state legislation. Among other things, the concepts of state administration (state constitution and the history of the origin of legislation in a country) and legislation (drafting laws) are also discussed. Apart from that, Siyasaah Dusturiyah also discusses the concept of the rule of law from the Siyasaah perspective and the reciprocal relationship between the government and citizens or society as well as the rights of citizens that must be protected. (Rolando dkk., 2023)

The problem in Siyasaah Dusturiyah Fiqh is the formation of relationships between leaders on the one hand and the people and institutions in society on the other hand. Therefore, Siyasaah Dusturiyah Fiqh usually has limitations and only discusses regulations and laws that are necessary for state affairs, which are in accordance with religious principles and are the embodiment of the interests of the people and the fulfillment of their needs. (Ma'had Aly Raudhatul Ma'arif & Fadhli, 2023)

Power in the concept of Islamic Constitutional Law is divided into 3 (three) parts, namely the legislative institution (sultah tasyri'iyah), which exercises the power to make laws, the executive institution (sultah tanfiziyyah) which functions to implement laws, and the Institution judiciary (sultah qada'iyah), this institution is a state institution that exercises judicial power. (Cahyono & Zulkarnain, 2018)

In the context of legislative power or al sultah tashri'iyah which exercises the power to make laws, is exercised by the Ahlu hali wal aqdi institution. The duties and authority of ahlu wal aqd experts are ahlu ikhtiar, namely deliberating in general state matters, controlling general state affairs, making laws, carrying out supervision, and carrying out the constitutional role in



electing the state's highest leader. In other words, they act as legislative authorities that supervise governments and rulers to prevent them from committing acts of abuse.(Azkia, 2023)

Ahlu hali wal aqdi in the legislative process or in carrying out their duties in drafting a legal product try to find the arguments or legal basis related to problems that arise and adjust them to the provisions contained in the text, unless they have to refer to the member's ijthad text, they must refer to the Jalb Al Masalih Wa Dar Al Mafasid or getting benefits and avoiding harm. Ijthad must also pay attention to the situation and social conditions of the community, so that the results of the decisions that will be issued are in accordance with the wishes of the community and do not burden them.(Wafi & Renie, 2021)

Based on the description above, it can be understood that al sultah at tashri'iyah exercises legislative power by Ahlu hali Wal aqdi, which means the power of the Islamic government to determine laws made by the community based on the decrees and commands of Allah SWT given in Islamic law to be implemented. In addition, in carrying out this task, they carry out ijthad reasoning on matters that are not explained explicitly in the Qur'an. The meaning of ahlu expert wal aqd must be fulfilled by mujtahids and fatwa experts as stated by them carrying out ijthad to uphold the law.

### **General Overview of Preparing Village Regulations**

Village Regulations are regulations made by the BPD together with the Village Head to regulate household affairs in the village. The scope of application is only in the village where the village regulations are made.(Rolando dkk., 2023) The preparation of Village Regulations must be in accordance with the legal rules and methods used in forming Legislation as regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations. However, this regulation does not provide further details regarding the techniques for forming Village Regulations.(Yulianto & Rohmah, 2022)

However, after the enactment of Law Number 6 of 2014 concerning Villages, the existence of villages and regulations received a clearer position. Through Government Regulation of the Republic of Indonesia Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, it is ordered to stipulate a Ministerial Regulation concerning Technical Guidelines for Regulations in Villages, the development of which is regulated in Minister of Home Affairs Regulation Number 111 of 2014.



Village Regulations are statutory regulations prepared by the Village Consultative Body (BPD) together with the village head. The aim of the village regulations themselves is to improve the smooth implementation of development and to serve the community. Village regulations are a further development of higher level legal regulations, which in their preparation take into account the socio-cultural conditions of the local village community. (Azkia, 2023)

Based on Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations, it is said that the content of village regulations includes the implementation of village authority and is a further development of higher statutory regulations, so that the content of village regulations must not conflict with the public interest and higher regulations. Meanwhile, the process of drafting Village Regulations starts from the planning, drafting, discussion, stipulation and promulgation, dissemination, as well as evaluation and clarification stages.

- Planning Stage

The first stage in forming village regulations is planning. Planning is the stage where the village head and BPD determine the composition of the Draft Village Regulations which will be stipulated in the Village Government's work plan. In the Planning stage, community institutions, traditional institutions and other village institutions in the village can provide input to the Village Government and/or BPD for plans to prepare draft Village Regulations. (Yulianto & Rohmah, 2022)

- Preparation Stage

After the planning stage, the next step is the preparation stage which in this case can be initiated by the village head or BPD. First, village regulations drawn up by the village head. The preparation of village regulations is initiated by the village government or village head. After the draft village regulations have been prepared, the draft must be consulted with the village community and the sub-district government to obtain responses to the draft village regulations. However, often the problem is that the draft village regulations are often not consulted with the village community who are the parties who will implement the regulations. So the contents of the village regulations do not meet the needs of the community. After the draft village regulations have been consulted and input has been provided, the next step is to submit the draft village regulations to the BPD for discussion and subsequent mutual approval. Second, the preparation of village regulations initiated by the BPD. One of the tasks of the BPD is to accommodate community



aspirations so that the BPD can prepare and propose village regulations. The draft village regulations submitted by the BPD can be in any form except draft village regulations concerning the RPJMDes, draft village regulations concerning the work plan of the village council, draft village regulations concerning the village APB, and draft village regulations concerning the accountability report for the implementation of the village APB.(Cahyono & Zulkarnain, 2018)

- Discussion Stage

Then we enter the stage of discussion and agreement on the draft village regulations that have been completed. In this case, the BPD summons the village head. If there is a draft village regulation whose contents are almost the same as those proposed by the BPD and the village head, then the draft village regulation proposed by the BPD is given priority, while the village head's proposal is used as reference material. Draft village regulations that have not been discussed can be withdrawn by the party who proposed them. On the other hand, draft village regulations that have been discussed cannot be withdrawn unless there is an agreement between the BPD and the village government. The approved draft will then be adopted as a village regulation with an estimated time of no later than 7 (seven) days from the date of agreement and must include a signature with an estimated time of 15 (fifteen) days from receipt of the draft from the BPD leadership.(Wafi & Renie, 2021)

- Determination and Invitation Stage

After being signed, the Draft Village Regulation is then submitted to the Village Secretary for promulgation. If the Village Head does not sign the Draft Village Regulation, then the draft Village Regulation can still be promulgated in the Village Gazette and legally become a Village Regulation.(Razali dkk., 2022) After the Village Secretary promulgates village regulations in the village gazette, the village regulations are declared to come into force and have binding legal force from the moment they are promulgated.

- Dissemination Stage:

After the village regulations are promulgated, the next stage is dissemination. Dissemination is carried out by the Village Government and BPD since the determination of the plan for drafting Village Regulations, Preparation of Draft Village Regulations, and Discussion of Draft Village Regulations. The purpose of this dissemination is to provide information and/or obtain input from the public and stakeholders.(Azkia, 2023)

- Evaluation and Clarification Stage



Evaluation and Clarification is the review and assessment of draft village regulations that conflict with the public interest or higher regulations. Regarding the stages in the evaluation, namely the draft village regulations that have reached agreement are then submitted to the Regent/Mayor via the sub-district head with an estimated time of no later than 3 (three) days from the time it is agreed for evaluation. The Regent/Mayor does not have a time limit for submitting the assessment results so that village regulations can apply automatically. However, if the Regent/Mayor provides the assessment results, the village head must correct them no later than 2 (twenty) days after receiving the assessment results. The results of improvements and follow-up actions are conveyed by the Village Head to the Regent/Mayor via the sub-district head. If the Village Head does not follow up on the results of the assessment and continues to enact Village Regulations, then the Regent/Mayor cancels the Village Regulations with a Regent/Mayor Decree. (Rolando dkk., 2023)

Then at the clarification stage, the village regulations that have been promulgated are submitted to the regent/mayor no later than 7 (seven) days after the clarification. Next, it takes at least 30 (thirty) days from the receipt of the village regulations by the Regent/Mayor to complete the clarification stage by forming a team. The results of the clarification team can be clarification results that are in accordance with the public interest and do not conflict with the laws and regulations above, as well as clarification results that conflict with the public interest or laws and regulations above. In the event that the results of the clarification of Village Regulations do not conflict with the public interest, and/or the provisions of higher laws and regulations, the Regent/Mayor issues a letter of clarification results containing the appropriate clarification results. However, in the event that the results of the clarification conflict with the public interest, and/or the provisions of higher laws and regulations, the Regent/Mayor shall cancel the Village Regulation with a Regent/Mayor Decree.

### **Analysis of Siyasaah Dusturiyah Fiqh on the Preparation of Village Regulations**

Village Regulations are regulations prepared by the Village Consultative Body (BPD) together with the village head. The aim of the Village Regulation itself is to improve the smooth development and implementation of community services. Village regulations are a further development of higher statutory regulations that take into account the socio-cultural conditions of local village communities. Village regulations are all village regulations issued



by the village head after deliberation and ratification by the Village Consultative Body (BPD). Countries that adhere to a democratic system in drafting legislative regulations play a very important role in their formation, including village regulations in Indonesia.

The task of the village government is to implement the guidelines created by the village head together with the BPD in the form of policies and instruments contained in village regulations. In accordance with democratic principles, the BPD together with the village head are obliged to report to the buoati or mayor regarding the implementation of village government. The urgency of this village regulation also aims to accelerate the realization of community welfare by increasing regional competitiveness, upholding the principles of democracy, justice, regional privileges and uniqueness within the unitary state of the Republic of Indonesia.

In Islam, the formation of qanun or statutory regulations that hold the authority is in the hands of the caliph or leader in government assisted by the Al Sulthoh Al-Tasyri'iyah institution which has the right to determine legal regulations which are implemented by the ahlu halli wal aqdi institution. Although in principle, the authority to make rules is absolutely in the hands of Allah SWT. However, when there is a social demand in society that requires the caliph or leader together with the ahlu halli wal aqdi to establish a rule that is not yet contained in the Al-Qur'an and hadith.

The preparation of village regulations from the Siyasa dusturiyah perspective, the formation of which cannot be separated from the authority of the Village Head as caliph or government leader in the Village in compiling and enacting village regulations. The BPD or Village Consultative Body is a shuro' assembly, in this case as Ahlu Halli Wal Aqdi which has the authority to form legal regulations.

According to Abu ala al-Maududi, Ahlu Halli Wal Aqdi as a legislative institution in an Islamic government has several tasks, including:(Ma'had Aly Raudhatul Ma'arif & Fadhli, 2023)

- Formulate legislation that is binding on all people regarding matters regulated in the Al-Quran and Al-Sunnah and enforce it strictly.
- When the instructions of the Koran and Sunnah have more than one possible interpretation, the legislative body has the right to decide which interpretation should be included in the law.
- When there are no clear instructions in the Qur'an and Sunnah, the task of this institution is to enforce the rules relating to the same, while maintaining the spirit of Islamic law. If there are already laws in the same field listed in the book of Fiqh, then this institution is





obliged to follow one of them, and if the Qur'an and Sunnah do not provide basic instructions at all, then we must interpret that God has given us the freedom to solve this problem as best as possible. Therefore, in such cases, this institution is free to formulate rules as long as they do not conflict with the spirit of sharia.

From the above tasks, the authority for Ahlu Al-halli wal Aqdi is given birth, namely:

- Providing advice and considerations to the Caliph in various activities and practical matters such as government, education, health, economics, business, etc.
- The caliph has the right to request the opinion of the popular assembly on matters requiring investigation and analysis, as well as disciplinary, economic, group and foreign policy matters.
- The Caliph has the right to propose laws or regulations to the Assembly for approval, the Assembly has the right to provide responses in the form of suggestions or evaluations, but this is not binding.
- The Assembly has the right to correct the Caliph's actions.
- The assembly also has the right to limit candidates for caliph as a form of succession to government power
- The Assembly has the right of interpolation, namely the right to request information from the caliph regarding strategic policies related to public representation. It has the right of inquiry, meaning the Assembly has the right to investigate various policies of the caliph that are considered anti-Sharia. and have the right to express opinions.

Based on the duties and authority of Ahlu Al-halli wal Aqdi above, which when linked to the stages of drafting village regulations as regulated in domestic regulation number 111 of 2014 concerning technical guidelines for village regulations, the preparation of village regulations cannot be separated from the role of the village government, in this case the head the village as the leader of the village government and the Village Consultative Body (BPD) as a forum for channeling the aspirations of the village community. The role of the BPD as representatives of the village community is the same as the role of Ahlu Al-halli Wal Aqdi, namely having the right to determine legal rules together with the village head.

The explanation above in fiqh siyasah dusturiyah analyzes that, in terms of legislation or forming regulations, it is explained in detail how the mechanism for forming regulations is. Forming regulations by deliberation by members of Ahlu Al-halli wal Aqdi, in the event that community deliberation is involved to ask for their opinion in forming regulations, the caliph also has the right to propose laws that will be adopted by Ahlu Al-halli wal Aqdi. He has the



right to form and enact laws that are binding on all people in matters that are not expressly regulated in the Al-Quran and Hadith.

## CONCLUSIONS

Based on the duties and authority of Ahlu Al-halli wal Aqdi in forming rules according to Islam, which when linked to the stages of drafting village regulations as regulated in domestic regulations number 111 of 2014 concerning technical guidelines for village regulations, the preparation of village regulations cannot be separated from the role of the village government. In this case the village head as the head of government in the village and the Village Consultative Body (BPD) as a forum for channeling the aspirations of the village community. The role of the BPD as representatives of the village community is the same as the role of Ahlu Al-halli Wal Aqdi, namely having the right to determine legal rules together with the village head. Siyasaah dusturiyah fiqh analyzes that, in terms of legislation or forming regulations, it is explained in detail how the mechanism for forming regulations is. Forming regulations by deliberation by members of Ahlu Al-halli wal Aqdi, in the event that community deliberation is involved to ask for their opinion in forming regulations, the caliph also has the right to propose laws that will be adopted by Ahlu Al-halli wal Aqdi. He has the right to form and enact laws that are binding on all people in matters that are not expressly regulated in the Al-Quran and Hadith.

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