

PROBLEMATICS OF LIMITING THE QUANTITY OF VILLAGE HEAD CANDIDATES BASED ON THE PROVISIONS OF ARTICLE 23 PARAGRAPH 1 OF THE REGULATION OF THE MINISTER OF HOME AFFAIRS NUMBER 112 OF 2014 CONCERNING VILLAGE HEAD ELECTIONS

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ABSTRACT

*Village Head Election in Indonesia still has several problems. Not only at the application level, but also from the regulation still has problems. The limitation of the quantity of Village Head candidates will not be found in Law No. 6 of 2014 concerning Villages, but the regulation related to this limitation can be found in its derivative regulations, namely Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections. So that with the limitation regulations regulated in the derivative regulations of Law No. 6 of 2014, there is a potential for a conflict of norms between the Law and the PP. thus causing legal uncertainty regarding the number of village head candidates. This study uses a normative legal research method with a statutory regulatory approach. The results of this study indicate that in the provisions of Law No. 6 of 2014 concerning Village Heads, especially in the section on the requirements for Village Head candidates, there are no regulations related to the limitation of the quantity of Village Head candidates. So this regulation opens up opportunities for village communities who are declared to meet the requirements to be able to participate in the village head election. The regulation relating to the limitation of the number of village head candidates as regulated in the derivative regulation of Law No. 6 of 2014 concerning villages can be categorized as contradictory and inconsistent with the principle of *lex superior derogate legi inferiori* because Law No. 6 of 2014 as its main regulation does not provide a limit on the maximum number of village head candidates .*

Keywords: Problems, Restrictions, Quantity, Permendagri;

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INTRODUCTION

Villages or what are called by other names have existed before the Unitary State of the Republic of Indonesia was formed. The form of the existence of the village itself can be seen in the 1945 Constitution article 18 (before the amendment) where in the territory of the Republic of Indonesia there are approximately 250 *zelfbesturende landschappen* (autonomous villages) and *Volksgemeenschappen* (customary villages).¹

The village in Indonesia was first discovered by Mr. Herman Warner Muntinghe, a Dutch member of the Raad Van Indie during the British colonial period, who was an assistant to the British Governor General who was in power in 1811 in Indonesia. In a report on July 14, 1817 to his government, it was mentioned about the existence of villages in the coastal areas of the north of Java Island. And later on, villages were also found in the islands outside Java which were more or less the same as the villages in Java.²

The terms “Desa”, “dusun”, “desi” (remember the word swa desi), as well as the words “negara”, “negeri”, “negari”, “nigari”, “negory” (from the word *nagarom*) according to Soetardjo Kartohadikoesoemo are originally from Sanskrit words, which means homeland, land of origin, land of birth.³ Furthermore, the term “Desa” etymologically comes from the word “Swadesi” which means an independent and autonomous region, place, or part.⁴ The term “desa” as expressed by Soetardjo is only used in Java, Madura, and Bali. The word *dusun* is used in South Sumatra, in Maluku people know it as *dusun-dati*. In Batak, the term desa is given the name *kuta*, *uta* or *huta*, while the term dusun in Batak is used for hamlets. Unlike the Aceh region, the words *gampong* and *meunasah* are used for the lowest legal areas.⁵

Furthermore, in the Minangkabau region it is called *nagari*, a combined area is called *luha*. While in East Sumatra the lowest area is *suku*. The term village in South Sumatra (Korintji, Palembang, Bengkulu) is called *dusun* and the combined area is called *mendapo* or *marga*. The term marga is also known in Batak, but is usually used for people of the same descent. In the alas area it is known as *margo*. Lampung uses the term *dusun* or *tiuh*, in Minahasa it is known as *wanua*, Makassar with the term *gaukang*, Bugis knows the term *matowa*, while in Maluku the lowest legal area is called *negory*, or pun *dati*.⁶ From the provisions above, it can be said that villages have special characteristics and distinctive features in the original structure of the village itself.

¹ Ni'matul Huda, *Hukum Pemerintahan Desa*, (Malang: Setara Press, 2015), p. 4

² Soetardjo Kartohadikoesoemo, *Desa*, (Jakarta: Pn Balai Pustaka:1984), p. 36

³ Ibid

⁴ Eka. N.A.M. Sihombing, *Hukum Pemerintahan Daerah*, (Malang: Setara Press, 2020) p. 155.

⁵ Ibid

⁶ Ibid

Constitutionally, the regulations regarding the position and existence of villages in Indonesia are based on Article 18 B paragraph 2 of the 1945 Constitution which states that:⁷

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the unitary state of the Republic of Indonesia, as regulated by law."

The implication of the above regulation, presents a derivative regulation on villages as regulated in Law No. 6 of 2014 concerning Villages as amended by Law No. 3 of 2024 concerning the second amendment to Law No. 6 of 2024 concerning Villages. Normatively, the definition of a village based on the provisions of Article 1 paragraph 1 of Law No. 6 of 2014 concerning Villages, provides the understanding that:⁸

"A village is a village and traditional village or what is called by another name, hereinafter referred to as a Village, is a legal community unit that has territorial boundaries that is authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, original rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia."

HAW Widjaja defines that a village is a legal community unit that has an original structure based on special ancestral rights.⁹ Meanwhile, according to Rahardjo, a village is a community that is always associated with simplicity, backwardness, traditionalism, subsistence and isolation.¹⁰

Different from Mashuri Maschab as quoted by Ni'matul Huda, there are 3 (three) kinds of interpretations or understandings of the village. *First*, the village in the sociological sense that describes a form of community unity or community of residents who live and settle in an environment, where they know each other and settle in an environment, where they know each other well and their lifestyle is relatively homogeneous. In this sense, the village can be interpreted as a society that lives simply, generally lives from the agricultural sector, has strong social ties and customs or traditions. *Second*, the village in the economic sense is a village as a community environment that tries to meet its daily needs from what is provided by nature around it. *Third*, the political sense, where the village as a government organization or power organization that politically has certain authority because it is part of the state government.¹¹

⁷ Article 18B paragraph 2 of the 1945 Constitution of the Republic of Indonesia.

⁸ Article 1 paragraph 1 of Law No. 6 of 2014 concerning Villages.

⁹ H.A.W Widjaja, *Pemerintah Desa/Marga*, (Jakarta: Raja Grafindo Persada, 2003), p. 3

¹⁰ Jefri S. Pakaya, *Pemberian Kewenangan Pada Desa Dalam Konteks Otonomi Daerah*, *Jurnal Legislasi Indonesia*, Vol. 13, No. 1, (2016), p. 75.

¹¹ Ni'matul Huda, *Loc. Cit*, pp. 32-33.

Due to the above, then in a village area there is a government system, or what is commonly known as Village Government. Village Government is one of several lowest government structures that directly interact with the community.¹² This is in line with the provisions of Article 1 paragraph 2 of Law No. 6 of 2014 concerning Villages which states that:¹³

"Village Government is the administration of government affairs and the interests of the local community in the government system of the Unitary State of the Republic of Indonesia."

In carrying out village government affairs, and to be able to make a village a success, someone who is able to lead the village is also needed. The Village Head who serves as the head of government in the village submits accountability for the implementation of Village Government at the end of his term of office to the regent/mayor of the city. The Village Head has 29 functions to lead the implementation of government, development and community services. The Village Head has the task of organizing government, development and community affairs as well as other tasks delegated to the village.¹⁴ Therefore, a Village Head must of course be elected through a democratic mechanism in order to ensure the achievement of the ultimate goal of democracy itself, namely the welfare of the village community. Democracy demands active participation from the people in the political policy-making process. The people are involved in making decisions made by the government, so that the interests of the people can be reflected in the policies of its government. Every government policy is a reflection or representative of the interests of the people.¹⁵

In order to determine someone to become a village head, then the candidate for village head must first go through an election mechanism or commonly called the term village head election (pilkades). The election of village heads (Pilkades) is a democratic party at the village level, where village communities can participate by voting to elect a candidate for village head who is responsible and can develop the village. Therefore, the election of village heads is very important, because it greatly supports the implementation of village government. In the implementation of Pilkades, the district government as the organizer must be established in understanding the democratic process at the village level

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¹² Rudi Rohi, Pemerintah Desa Dilema Street Level Bureaucracy dan Otonomi Desa, *Jurnal Civicus*, Vol.10. No.1 (2010), p. 37.

¹³ Article 1 paragraph 2 of Law No. 6 of 2014 concerning Villages.

¹⁴ Muyusna, Peranan Kepemimpinan Kepala Desa Dalam Pengelolaan Program Pemberdayaan Desa Menuju Desa Mandiri. *Jurnal Administrasi Publik dan Birokrasi*. Vol.1. No.2, (2014) hlm 101. p. 101

¹⁵ Muslim Mufti dan Durrotun Didah, *Teori-Teori Demokrasi*. (Bandung : Pustaka Setia, 2013). p. 44

¹⁶ Alfrid Jaya Sentosa dkk. Analisis Penyelenggaraan Pemilihan Kepala Desa Serentak. *Jurnal Sociopolitico*, Vol. 3 No. 1, (2021), p. 44 .

The election of the Village Head is also a reflection of how democracy is implemented at the village level. On the other hand, the election of the village head is a means of elite circulation and transfer of power at the local level. In this context, the village head election is expected to directly make the community understand their rights and obligations. The village head election is a moment where the community understands their position as citizens in the political arena in the village. There is a process of interaction between the community and the government as a manifestation of democracy from the people, by the people and for the people.¹⁷

The process of electing a village head requires three stages consisting of nomination, voting and determination, so at the nomination stage it is necessary to pay attention to several provisions to be able to become a village head candidate. There are at least 13 (thirteen) things that are requirements as a village head candidate, namely:¹⁸

- a. *Citizens of the Republic of Indonesia;*
- b. *Fearing God Almighty;*
- c. *Uphold and practice Pancasila, implement the 1945 Constitution of the Republic of Indonesia, and maintain and preserve the integrity of the Unitary State of the Republic of Indonesia and Bhinneka Tunggal Ika;*
- d. *Minimum education: Junior High School graduate or equivalent;*
- e. *Minimum Age of 25 (Twenty Five) Years at the Time of Registration;*
- f. *Willing to be nominated as Village Head;*
- g. *Registered as a resident and residing in the local village for at least 1 (one) year prior to registration;*
- h. *Not currently serving a prison sentence;*
- i. *Never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime that is punishable by a minimum prison sentence of 5 (five) years or more, except 5 (five) years after completing the prison sentence and honestly and openly announcing to the public that the person concerned has been convicted and is not a repeat offender;*
- j. *Not having had their voting rights revoked in accordance with a court decision that has permanent legal force;*
- k. *Healthy Body;*
- l. *Never Been a Village Head for 3 (Three) Terms of Office; And*
- m. *Other Requirements Stipulated in Regional Regulations*

The provisions of the above rules have undergone several changes as stated in Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages. In Law No. 3 of 2024, the provisions of Article 33 letter g of Law No. 6 of 2014

¹⁷Mona. *Undang Undang Republik Indonesia Nomor 6 Tahun 2014 tentang Desa dan Peraturan Pelaksanaanya*. (Yogyakarta: Penerbit Pustaka Mahardika, 2015), p. 24 .

¹⁸ Article 33 of Law Number 6 of 2014 concerning Villages.

concerning Villages have been removed, which reads " *Registered as a Resident and Residing in the Local Village for at Least 1 (One) Year Before Registration*". Removal This is because the provisions of Article 33 letter g have been declared unconstitutional and contrary to the 1945 Constitution by the Constitutional Court through decision Number 128/PUU-XIII/2015. ¹⁹So that every candidate for village head does not have the obligation as a registered resident and residing in the local village for approximately 1 (one) year.

Furthermore, in the provisions of Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages, one article is inserted between Article 34 and Article 35, namely Article 34 A. This article reads:²⁰

1. *There must be at least 2 (two) candidates for Village Head.*
2. *In the event that the number of Village Head candidates as referred to in paragraph (1) is not met and there is only 1 (one) registered Village Head candidate, the Village Head election committee will extend the registration period for Village Head candidates for 15 (fifteen) days.*
3. *In the event that there is no increase in the number of registered Village Head candidates after the extension of the registration period as referred to in paragraph (2) ends, the Village Head election committee will extend the registration period for another 10 (ten) days.*
4. *In the event that the extension of the registration period for Village Head candidates as referred to in paragraph (3) ends and there is only 1 (one) registered Village Head candidate, the Village Head election committee together with the Village Deliberative Body will determine the registered Village Head candidates through deliberation to reach a consensus.*
5. *Further provisions regarding the procedures for electing 1 (one) candidate for Village Head are regulated by Government Regulation.*

At first glance, it seems that the above regulation has no problems, but the derivative regulation of this Law is suspected to be problematic, which causes legal uncertainty. That Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages as a derivative regulation of Law. No. 6 of 2014 concerning Villages contains provisions related to the limitation of the number of village head candidates. This can be seen in Article 41 paragraph 3 letter c of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages. which states that ²¹" *the determination of*

¹⁹ Irwansyah & Ali Marwan, Problematika Pembatasan Calon Kepala Desa, *Grondwet Jurnal Hukum Tata Negara dan Hukum Administrasi Negara*, Vol 2. No. 2, (2023), hlm 240. p. 240.

²⁰ Article 34 A of Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages

²¹ Article 41 paragraph 3 letter c of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages

village head candidates as referred to in letter b is at least 2 (two) people and at most 5 (five) candidates ". So that the provisions of this regulation are contradictory to the higher regulation, namely Law No. 6 of 2014 concerning Villages. .

Not only in the provisions of Government Regulation Number 43 of 2014 concerning the Implementing Regulations of Law Number 6 of 2014, but at the level of the Minister of Home Affairs Regulation also provides regulations related to the limits on the number of village head candidates. This can be seen in the provisions of Article 23 paragraph (1) of the Minister of Home Affairs Regulation Number 112 of 2014 concerning the Election of Village Heads which states that " *In the case where the number of prospective village head candidates who fulfill the requirements as referred to in Article 21 is at least 2 (two) people and at most 5 (five) people, the Village Head Election Committee shall determine the prospective village head candidates to become village head candidates .* " So the provisions of this regulation are suspected of not being in accordance with applicable legal knowledge.

Due to the regulation regarding the limitation of the number of village head candidates, many people have failed to nominate themselves as village heads. As happened in one of the North Sumatra Provinces, namely Asahan Regency, based on information conveyed by Rahmat Aris Munandar, head of the village government division at the community and village empowerment office , in the simultaneous village head candidate election in 2022, registration of prospective village head candidates reached 445 people. Aris further stated that most villages have more than 5 (five) prospective village head candidates.²²In addition to Asahan Regency, in Garut Regency there are 12 villages that have more than 5 (five) prospective village head candidates . This was conveyed by Erwin Rianto Nugraha, Secretary of the Community and Village Empowerment Office of Garut Regency.²³Bintan also has the same problem . Acting Regional Secretary of Bintan, Ronny Kartika said that there are 3 villages that have more than 5 (five) prospective village head candidates, namely Ekang Anculai Village with 6 people, Sebong Perih Village with 6 people and Lancang Kuning Village with 6 people.²⁴

The above phenomenon is certainly a problem in itself for the implementation of the democratic system in the village. In addition to the above problems, of course this is also related to the implementation and fulfillment of human rights. Article 28 D paragraph

²² Perdana Ramadhan, "Tinggi Peminat, 445 Orang Mendaftar Sebagai Balon Kades di Asahan", <https://www.detik.com/sumut/berita/d-6104809/tinggi-peminat-445-orang-mendaftar-sebagai-balon-kades-di-asahan>, diakses tanggal 19 Maret 2025.

²³ Public Relations of Garut Regency Government, "Pilkades Serentak Tahun 2023, ada 12 Desa memiliki lebih dari 5 calon", <https://jabarprov.go.id/berita/pilkades-serentak-tahun-2023-ada-12-desa-miliki-lebih-dari-5-bakal-calon-8829>, diakses 19 Maret 2025.

²⁴ Diskominfo, "18 Prospective Village Head Candidates in 3 Bintan Villages, Undergo Additional Selection", <https://diskominfo.bintankab.go.id/read/18+Bakal+Calon+Kepala+Desa+di+3+Desa+Bintan%2C+Jalani+Seleksi+Tambahan+System+CAT.phtml#>, accessed March 19, 2025.

3 of the 1945 Constitution states that "*every citizen has the right to receive equal opportunities in government*". This means that the limitation on the maximum number of village head candidates also has the potential to violate the human rights of the community.

Regarding the limitation of village head candidates to a maximum of 5 (five) people, coupled with the absence of domicile requirements for village head candidates and one of the factors used in the screening of village head candidates is the level of education, in practice it causes several problems. Where, there is a village that has five village head candidates and all of them are residents of other villages. In addition, this provision also has the potential to be used by village head candidates who have a higher level of education to reduce their competitors who have a lower level of education. This is done by inviting their friends from other villages who have a higher level of education to run in the village where they are running so that village head candidates from that village who have a lower level of education cannot become village head candidates.²⁵

METHOD

The research that will be used is normative legal research. This means the activity of identifying legal problems, analyzing legal problems, conducting legal reasoning, analyzing the problems faced and then providing solutions to the problems, where the problems studied in this normative legal research are caused by the existence of problematic norms or rules either because of conflicts in the norms, the existence of unclear meaning in the norms, the existence of contradictions in the norms or the existence of legal vacuums.²⁶

The approach method used in this study is the statute approach. This statute approach is an approach carried out by examining all laws and regulations related to the legal issue being handled.²⁷

DISCUSSION

Legal Regulations Regarding Village Head Candidates in Village Head Elections in Indonesia

Democracy places the process of civilized replacement of rulers (elections) as the most important thing in organizing national life. Even Miriam Budiarjo assessed that in most democratic countries, general elections are one of the symbols and benchmarks of the implementation of democracy.²⁸ The succession of democratic replacement of rulers will realize the implementation of a relatively stable state administration compared to the

²⁵ Irwansyah & Ali Marwan, *Op Cit* . p. 248

²⁶ Peter Mahmud Marzuki, *Legal Research* (East Jakarta: Prenadamedia Group, 2019).

²⁷ Ibid.

²⁸ Miriam Budiarjo, *Basics of Political Science* (Jakarta: Gramedia Pustaka Utama, 2008), p.461.

succession of replacement of rulers through revolution or violence. On the other hand, general elections function to provide the widest possible opportunity for the community to choose leaders according to their respective choices. The implementation of general elections is a benchmark for the extent to which the state life is steered on the rails of people's sovereignty and democracy.

Long before the fourth amendment to the 1945 Constitution of the Republic of Indonesia in 1999-2022²⁹, the founders of the nation such as Soepomo at the Session of the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI) had idealized the appointment of a head of state (ruler) that was not carried out hereditarily. Likewise after independence, according to Saldi Isra and Khairul Fahmi, the succession of the election had been prepared since after Indonesian independence, August 17, 1945. This was marked in the government's political manifesto issued on November 1, 1945, which stated that the meaning of the election for a constitutional government. However, due to the unstable political situation and conditions in Indonesia, the election could only be held in 1955.³⁰

After the fourth amendment to the 1945 Constitution of the Republic of Indonesia, there are two forms of elections in Indonesia that are expressly stated in the constitution, namely general elections and regional head elections. General elections and regional head elections are a form of actualization of the mandate of Article 22E paragraph (2) and Article 18 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. In principle, general elections are held to elect the President and Vice President and members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council. Unlike regional head elections, in principle this election is to elect the Governor, Regent, and Mayor.

Along with the development of democratization in Indonesia, the implementation of Village Head Elections (Pilkades) is also carried out in the village area. The legal basis for the implementation of village head elections is regulated in Law Number 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections as last amended by Regulation of the Minister of Home Affairs Number 72 of 2020 concerning Amendments to Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections, and is regulated in the Regional Regulations of each district. However, in practice, Pilkades is not considered as one of the election regimes in Indonesia. In fact, the practice of Pilkades is real and is carried out by village communities as the most concrete form of implementing democracy in the village.

²⁹ Mohammad Fajrul Falaakh, *Models and Growth of the Constitution* (Yogyakarta: Gadjah Mada University Press), 81-83

³⁰ Saldi Isra and Khairul Fahmi, *Democratic General Elections: Principles in the Indonesian Constitution* (Jakarta: Raja Grafindo Persada, 2019), p.2

The implementation of Pilkades is basically the most real manifestation of the sovereignty of the village community. This means that the village is not an empty geographical space that is far from the socio-culture of the people who live in it, on the contrary, the village is a territorial or regional unity that is attached and bound to the lives of the people above it along with the traditions and customs that drive that life. Pilkades as a democratization of the village means an effort to drive democracy in the uniqueness of the village with the spirit of recognizing the uniqueness and distinctiveness of village traditions.³¹

Pilkades is carried out directly in the Village by local villagers to elect their leader in the Village called the Village Head. The election of the Village Head in the democratic system in Indonesia is carried out based on the principles of direct, general, secret, honest and fair in accordance with the provisions of Article 34 paragraph (1) of Law Number 6 of 2014 concerning Villages. The implementation of the election of the Village Head consists of 3 (three) stages which are regulated in Article 34 paragraph (3) of Law Number 6 of 2014 concerning Villages, namely the Nomination, Voting and Determination stages.

Furthermore, regarding the nomination of Village Head, prospective Village Head must meet the requirements that must be met. This is regulated in the provisions of Article 33 of Law No. 6 of 2014 concerning Villages. In the provisions of this article there are no regulations regarding the number of prospective Village Heads. And if viewed from the provisions of Article 34 A of Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages, paragraph 1 states that the number of Candidates for Village Head is at least 2 (two) people. And for the number of Candidates for Village Head amounting to one person, it can be applied with several requirements that must first be carried out.

Furthermore, Article 36 paragraphs 1 and 2 of Law No. 6 of 2014 concerning Villages states that *"(1) Prospective Village Head candidates who have fulfilled the requirements as referred to in Article 33 are determined as Village Head candidates by the Village Head Election Committee. (2) Village Head candidates who have been determined as referred to in paragraph (1) are announced to the Village community in a public place in accordance with the socio-cultural conditions of the Village community."*

This means that from all the rules above, at the nomination stage, there are several requirements for every person or village community who wants to become a village head. And from all the rules above, regarding the number of candidates for Village Head, there is no maximum number. So that everyone without any number limit at least has the opportunity to contribute and participate in the Village Head election contest.

³¹ Naeni Amanulloh, *Village Democratization* (Jakarta: Ministry of Villages, Development of Disadvantaged Regions and Transmigration of the Republic of Indonesia, 2015), pp. 10-11.

Legal Problems Restricting the Quantity of Village Head Candidates Based on the Provisions of Article 23 paragraph (1) of the Regulation of the Minister of Home Affairs Number 112 of 2014 Concerning Village Head Elections

The limitation on the number of candidates for Village Head is a separate problem in the Village Head election system in Indonesia. If we refer to the provisions of Article 34 of Law No. 6 of 2014 and Article 34 A of Law No. 3 of 2024 concerning Villages, it does not mention that there is a limitation on the maximum number of Village Heads. Regarding the limitation on the number of Village Heads, it can be seen in the provisions of Article 41 paragraph 3 letter c of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, which states that ³² "the determination of Village Head candidates as referred to in letter b is at least 2 (two) people and a maximum of 5 (five) candidates ". Furthermore, Article 23 paragraph (1) of the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections also provides regulations regarding the maximum number of Village Head candidates. The article states that " In the case where the number of prospective village head candidates who fulfill the requirements as referred to in Article 21 is at least 2 (two) people and at most 5 (five) people, the Village Head Election Committee shall determine the prospective village head candidates to become village head candidates . "

If it is connected with Law No. 6 of 2014 concerning Villages which in principle does not provide any restrictions on the number of Village Head Candidates, so that with the provisions of Article 41 paragraph 3 letter c of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages and Article 23 paragraph (1) of the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning the Election of Village Heads, it creates legal uncertainty. It can be seen that there is an inconsistency between Law No. 6 of 2014 which is the main regulation and the derivative regulations below it. Whereas in relation to the requirements for Village Head candidacy in Law No. 6 of 2014, it states that other requirements can be regulated in regional regulations.

If viewed from the provisions of Article 7 paragraph 1 of Law No. 12 of 2011 concerning the Formation of Legislation, the types and hierarchy of legislation can be clearly seen. Among them:

1. 1945 Constitution
2. Decree of the People's Consultative Assembly
3. Laws/Government Regulations in Lieu of Laws

³² Article 41 paragraph 3 letter c of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages

4. Government regulations
5. Presidential decree
6. Provincial Regional Regulations
7. Regency/City Regional Regulations.

The provisions of the above rules are in line with Hans Nawiasky's theory known as *theorie von stufenaufbau der rechtsordnung*. The structure of norms according to this theory is:³³

1. State fundamental norms (*Staatsfundamentalnorm*);
2. Basic rules of the state (*staatsgrundgesetz*);
3. Formal law (*formell gesetz*); and
4. Implementing regulations and autonomous regulations (*verordnung en autonome satzung*)

From the hierarchy of norms above, it can be seen that the position of the Ministerial Regulation is not included in the hierarchy of norms but is still recognized as part of the legislation. This is in accordance with the provisions of Article 8 paragraph 1 and 2 of Law No. 12 of 2011 which states that:

1. *Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions or commissions of the same level which are established by Law or by the Government on the orders of Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or equivalent.*
2. *The statutory regulations as referred to in paragraph (1) are recognized as existing and have binding legal force as long as they are ordered by higher statutory regulations or are formed based on authority.*

In the explanation of Article 8 paragraph 1 of Law No. 12 of 2011, it is stated that what is meant by "*Ministerial Regulation*" is a regulation stipulated by the minister based on the material content in the context of organizing certain affairs in government . This means that even if there must be a regulation issued by each state institution, it is still not allowed to conflict with the rules above it. This is in line with the provisions of the principle of *Lex Superior derogate Legi Inferiori* , which is one of the principles known in laws and regulations, which means that higher regulations can override regulations of

³³ Bivitri Susanti, Questioning the Types and Hierarchy of Legislation in Indonesia, *Jentera Journal* , Vol 1 No 2 (2017), p 130.

lower standing. This also means that lower regulations must not conflict with higher ones.³⁴

The principle of *lex superior derogate legi inferiori* applies to all statutory regulations. More clearly, laws must not conflict with the 1945 Constitution, Government Regulations must not conflict with Laws, and so on. This means that if the provisions of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections provide a limit on the number of village head candidates, which clearly the regulation above it, namely Law Number 6 of 2014 concerning Villages, does not provide regulations related to the maximum limit on the number of Village Head candidates, then it can be categorized that the derivative regulations of Law Number 6 of 2014 concerning Villages have the potential to conflict with the legal regulations above it.

CONCLUSION

The village head election is a form of village democratization to elect a village head as the leader of the village. In the Village Head election stage, there are 3 stages that are carried out, namely the nomination stage, voting and determination. At the nomination stage, a person can become a candidate for village head if they meet the requirements stipulated in Article 34 of Law No. 6 of 2014 concerning Villages and 34 A of Law No. 3 of 2024 concerning the Second Amendment to Law No. 6 of 2014 concerning Villages. From the provisions of the rules above, there are no rules regarding the maximum number of Village Head candidates. So it should open up opportunities for everyone who is declared to meet the requirements to be involved in the Village Head Election contest.

The problematic limitation of the quantity of village head candidates can be seen in the provisions of Article 41 paragraph 3 letter c of Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages and Article 23 paragraph (1) of the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Village Head Elections. These two regulations are essentially derivative regulations of Law Number 6 of 2014 concerning Villages. However, with the existence of regulations limiting the number of village head candidates in the provisions of the government regulations and ministerial regulations, legal uncertainty has occurred. It can even be categorized as a conflict between the two regulations.

³⁴ Diah Ratu Sari Harahap, The Principle of Lex Superior Derogate Legi Inferiori in the Arrangement of Handling the Poor. *National Seminar of P4M Unas*, April 3, 2018.

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