



## The Position of the Regent's Circular Letter Regarding Village Regulations in Legislation

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### Article history:

Received: 4 May 2023

| Accepted: 13 September 2023

| Published: 30 September 2023

### Keywords:

*Circular Letter; Legal Implications; Village Regulations.*

### Abstract

The purpose of this study is to determine with certainty the position of the Regent's Circular Letter, and legal implications arising from the Regent's Circular Letter against Village Regulations. This paper study is descriptive analysis in nature, and the type of study is normative juridical with the statutory approach method. The type of data used is secondary data and the method of collecting it uses library study and interviews. The collected data is processed and analyzed qualitatively in order to arrange systematic sentences based on the order of the problem. The research findings reveal that the Regent's Circular is a policy regulation and not a statutory regulation. Although in its implementation it is positioned as an official document containing instructions from the local government to the village government as a subsystem of government. The legal consequence is that it cannot be included as a consideration considering and considering the formation of village regulations.

### A. INTRODUCTION

A legal regulation is said to be legal if it is made by an official who has the authority to make it and is based on legal rules. The concept of legislation emphasizes that regulations are formed on the basis of law of a higher position so that lower (inferior) legal rules can be formulated by higher (superior) legal

rules.<sup>1</sup> The meaning of law is tiered, having the same meaning that the laws are structured, connected to each other or what is usually called a legal system.<sup>2</sup> In general, legal systems are divided into two characteristics, namely Continental European and Anglo-Saxon. The characteristics of the Continental European legal system are that it is

<sup>1</sup> Ni'matul Huda, "Kedudukan Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan," *Jurnal Hukum IUS QUIA IUSTUM* 1, No. 13 (2006): 27-39, doi:<https://doi.org/10.20885/iustum.vol13.iss2>, p. 29.

<sup>2</sup> Yulianis Safrinadiya Rahman, "Perbandingan Sistem Hukum Mengenai Disiplin Hukum," *Al-Adl: Jurnal Hukum* 13, No. 1 (2021): 189-205, doi:<http://dx.doi.org/10.31602/al-adl.v13i1.3855>, p. 190.

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written law and in its application it mostly uses statutory regulations.<sup>3</sup>

Aspects of Indonesian constitutional law apply the Continental European legal system. In Indonesia, this legal system places the 1945 Constitution of the Republic of Indonesia as the highest in the type and hierarchy of legislative regulations, followed by MPR Decrees, Laws/PerPu, and other laws as regulated in Law no. 12 of 2011 which has been amended several times, most recently with Law no. 13 of 2022 concerning the Second Amendment to Law no. 12 of 2011 concerning the Formation of Legislative Regulations. Law No. 12 of 2011 concerning the Formation of Legislative Regulations provides a general explanation regarding the importance of “orderly”, meaning the basic orderly formation of statutory regulations and the orderly formation of statutory regulations. The basic order in question concerns principles, types,

hierarchy and content material, while the formation order concerns planning, preparation, discussion, ratification or stipulation, and promulgation.<sup>4</sup> Apart from that, this law also regulates technical writing formats for drafting statutory regulations.

However, in its development, the central government and regional governments issued many policy regulations in the form of circulars,<sup>5</sup> which were then used as the basis or orders for drafting other laws and regulations. Then, circulars are also used to revoke legislation, and circulars containing provisions.<sup>6</sup> Policy regulations are not substantially different in meaning from statutory regulations, but most legal thinking does not group policy regulations like statutory regulations.<sup>7</sup>

In contrast to village regulations, as a type of statutory regulation, it is characterized by: it is written, contains binding legal norms, is drawn up by

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<sup>3</sup> Novi Eka Saputri and Eny Kusdarini, “Kontribusi Sistem Hukum Eropa Kontinental Terhadap Pembangunan Sistem Hukum Nasional Di Indonesia,” *Masalah-Masalah Hukum* 50, No. 4 (2021): 363-372, doi:<https://10.14710/mmh.50.4.2021.363-372>. p. 363.

<sup>4</sup> Bayu Dwi Anggono, “Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusi,” *Masalah-Masalah Hukum* 47, No. 1 (2018): 1-9, doi:<https://doi.org/10.14710/mmh.47.1.2018.1-9>, p. 1.

<sup>5</sup> Bayu Dwi Anggono and Nando Yussele Mardika, “Konsistensi Bentuk Dan Materi Muatan Surat Edaran Sebagai Produk Hukum Dalam Penanganan Covid-19,” *Masalah-Masalah Hukum* 50, No. 4 (2021): 351-362 doi:<https://10.14710/mmh.50.4.2021.351-362>, p. 352.

<sup>6</sup> Rio Trifo Inggiz, Toto Kushartono, and Aliesa Amanita, “Kedudukan Surat Edaran Dikaitkan Dengan Undang-Undang Nomor 15 Tahun 2019 Juncto Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan,” *Jurnal Dialektika Hukum* 1, No. 1 (2019): 1-29, doi:<https://doi.org/10.36859/jdh.v1i1.486>, p. 3.

<sup>7</sup> Victor Imanuel W. Nalle, “Kedudukan Peraturan Kebijakan Dalam Undang-Undang Administrasi Pemerintahan,” *Refleksi Hukum: Jurnal Ilmu Hukum* 10, No. 1 (2016): 1-16, doi:<https://10.24246/jrh.2016.v10.i1.p1-16>, p. 2.

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the village head and through joint discussion with the BPD, and can be tested (clarification and evaluation).<sup>8</sup> Apart from that, village regulations are also stated explicitly in Article 8 paragraph (1) of Law no. 12 of 2011 concerning the Formation of Legislative Regulations. This confirms that Law no. 12 of 2011 stated juridical recognition of the position of village regulations as a type of statutory regulation, which was then strengthened by the legal basis of Minister of Home Affairs Regulation No. 111 of 2014 concerning Technical Guidelines for Village Regulations, which states that village regulations are statutory regulations stipulated by the village head after being discussed and agreed upon with the BPD.<sup>9</sup>

In practice, in the jurisdiction of Sambas Regency, circular letters are used as references for the formation of regent regulations, such as Circular Letter from the Director General of Health Services, Ministry of Health of the Republic of Indonesia No. HK.02.02/I/2875/2020 concerning the Highest Tariff Limit

for Rapid Antibody Tests, which was then used as a basis for consideration by Sambas Regency Regulation No. 32 of 2020 concerning the Fourth Amendment to Regent Regulation no. 11 of 2014 concerning Service Tariffs at Community Health Centers of Regional Public Service Agency in Sambas Regency.<sup>10</sup> Apart from that, there is a circular letter from the Regent of Sambas which contains instructions to the village government to form complete village regulations accompanied by an attachment of guidelines for forming village regulations and the format for writing them.<sup>11</sup> This circular letter is even like Law no. 12 of 2011, Minister of Home Affairs Regulation No. 111 of 2014 concerning Technical Guidelines for Village Regulations, and Sambas Regency Regulation No. 7 of 2018 concerning Procedures for Forming Village Regulations, which contains the basic rules for forming legal products, especially in this context are village regulations. In fact, as is known, in Article 1 number 26 of Sambas Regency

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<sup>8</sup> Putera Astomo, "Kedudukan Dan Pengujian Konstitusionalitas Peraturan Desa Dalam Peraturan Perundang-Undangan," *Jurnal Konstitusi* 15, No. 2 (2018): 283-305, doi:<https://doi.org/10.31078/jk1523>, p. 303.

<sup>9</sup> Indonesia, Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 111 Tahun 2014 *tentang Pedoman Teknis Peraturan Di Desa*, Pasal 1 angka 6.

<sup>10</sup> Indonesia, Peraturan Bupati Sambas Nomor 32 Tahun 2020 *tentang Perubahan Keempat Atas Peraturan Bupati Nomor 11 Tahun 2014 tentang Tarif Pelayanan pada Pusat Kesehatan Masyarakat Badan Layanan Umum Daerah Di Kabupaten Sambas*, Konsideran Menimbang.

<sup>11</sup> Indonesia, Surat Edaran Bupati Sambas Nomor: 140/4/PD/DINSOSPMD *tentang Pembentukan Pos Komando Penanganan Corona Virus Disease 2019 Di Tingkat Desa Untuk Pengendalian Penyebaran Corona Virus Disease 2019 (Covid-19)*, Angka 5.

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Regulation No. 14 of 2010 concerning the Administration of Official Documents within the Sambas Regency Government has been regulated legally regarding circular letters which are official documents,<sup>12</sup> and are not classified as statutory regulations but policy regulations.<sup>13</sup>

After in-depth analysis, it turns out that a circular letter is a quick choice to instruct the village government to draw up village regulations. Meanwhile, on the other hand, village regulations can be formed based on provisions or further elaborations of statutory regulations of a higher position.<sup>14</sup> However, in practice, we still find several village regulations that were formed based on the mandate of the regent's circular, but did not include the circular as the legal basis for their formation. When viewed from a normative perspective between the regent's circular letter and village regulations, the position of the regent's circular letter is higher than village regulations, where the regent's circular letter is an element of regional

government, while village regulations are a subsystem of government under the regional government, namely the village government.<sup>15</sup>

Regarding the issue of the position of circulars in general and regent circulars which have a smaller legal area coverage, in fact much has been discussed, but this issue is interesting to research because it can be used as input for positioning circulars as they should be as stated in the applicable laws and regulations. Research conducted by Bayu Dwi Anggoro and Nando Yussele Mardika with the title: "Consistency in the Form and Content of Circular Letters as a Legal Product in Handling Covid-19", the results of their research stated that the circular letters promulgated by the central and regional governments totaled 120 circular letters in format not appropriate and materially the content is also not appropriate, so there is still material in the content of the circular letter which should be the content of statutory regulations.<sup>16</sup>

The issue of circular letters was also researched by Fitriani Ahlan Sjarif

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<sup>12</sup> Indonesia, Peraturan Bupati Sambas Nomor 14 Tahun 2010 *tentang Tata Naskah Dinas Di Lingkungan Pemerintah Kabupaten Sambas*, Pasal 1 angka 26.

<sup>13</sup> Fitriani Ahlan Sjarif and Efraim Jordi Kastanya, "Surat Edaran Sebagai Instrumen Administrasi Negara Di Masa Pandemi Covid-19," *Jurnal Hukum & Pembangunan* 51, No. 3 (2021): 786-802, doi: <http://dx.doi.org/10.21143/jhp.vol51.no3.3135>, p. 789.

<sup>14</sup> Lia Sartika Putri, "Kewenangan Desa Dan Penetapan Peraturan Desa," *Jurnal Legislasi Indonesia* 13, No. 2 (2016): 161-175, doi: <https://doi.org/10.54629/jli.v13i2.115>, p. 166.

<sup>15</sup> Hanif Nurcholis, "Pemerintahan Desa: 'Unit Pemerintahan Palsu' Dalam Sistem Administrasi Negara Republik Indonesia (Kasus Desa Jabon Mekar, Parung, Kabupaten Bogor)," *Politica: Dinamika Masalah Politik Dalam Negeri & Hubungan Internasional* 5, No. 1 (2014): 79-94, doi: <https://doi.org/10.22212/jp.v5i1.337>, p. 79.

<sup>16</sup> Bayu Dwi Anggoro and Nando Yussela Mardika, *op.cit.*, p. 351.

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and Efraim Jordi Kastanya with the title: "Circular Letters as an Instrument of State Administration during the Covid-19 Pandemic". In this article it is stated that circular letters are policy regulations, and in theory state administrative law is used for appeals, and is not a legal norm (regulating). So in practice, the circular letter stipulated is problematic, namely that it is used to regulate the order of the general public.<sup>17</sup> Meanwhile, the thing that differentiates this article is its scope which relates to technical instructions for the formation of statutory regulations, meaning that this article places policy regulations with statutory regulations as one unit of legal hierarchy. Circular letters contain technical instructions for the formation of village regulations and circular letters are assumed to be regulations that have a higher status than village regulations. Departing from the description above, the research problem questions were formulated, namely, 1). What is the position of the Sambas Regent's circular letter in statutory regulations, and 2). What are the legal consequences arising from the position of the Sambas Regent's circular letter regarding village regulations as statutory regulations in the jurisdiction of Sambas Regency?. Based on the formulation of the research problem, the aim of this research is to

analyze the position between the regent's circular letter and village regulations in the basic framework for the formation of statutory regulations, as well as the legal implications in Sambas.

## **B. RESEARCH METHODS**

This research is descriptive analysis and this type of research uses normative juridical with a statutory approach. This study uses secondary data. In this secondary data, researchers used primary, secondary and tertiary legal materials. The secondary data and legal materials in question were obtained through library study searches. Apart from using library studies, researchers also used interviews to support secondary data and in determining the sample, researchers used purposive sampling. The data that has been collected is processed and analyzed qualitatively so that the data can be broken down into systematic and easy to understand sentences.

## **C. RESULTS AND DISCUSSIONS**

### **1. The Position of the Sambas Regent's Circular Letter is Based on the Applicable Laws and Regulations**

Talking about regulations, it must be understood that not all regulations

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<sup>17</sup> Fitriani Ahlan Sjarif and Kastanya, *op.cit.*, p. 786.

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fall into the classification of statutory regulations. In the Indonesian constitutional system, the government in carrying out the government system always uses government instruments which are used as the legal basis in every legal action. In general, government instruments are grouped into 6 (six), namely: 1) statutory regulations, 2) state administrative decisions, 3) policy regulations, 4) plans, 5) permits, 6) civil legal instruments.<sup>18</sup>

The six government instruments above are all regulations and only one of them is statutory regulation. In the context of the discussion in this paper, namely regarding the regent's circular letter, this is included in the policy regulations. Philipus Hadjon explained that policy regulations are in line with or tied to *freies ermesen*, which means a state administration agency/official determines its policies which are contained in regulations, circulars, guidelines and others.<sup>19</sup> Then, policy regulations are also known as pseudo-legislation, which means the creation of legal regulations by state administrative officials who have authority with the aim of implementing policies, providing

instructions/guidelines in carrying out a legal order, and publishing them widely.<sup>20</sup>

Policy regulations have several characteristics, one of which is that they are generally binding and the public cannot avoid them, they cannot but follow them. In addition, policy regulations set by the government are based on the absence of strict rules in legislation, and policy regulations contain material regarding making decisions, acting on aspects of private law, and making plans in government institutions.<sup>21</sup> A different explanation regarding policy regulations as stated by Van Der Vlies, namely that policy regulations are not generally binding regulations from the perspective of administrative law legislation, because these regulations do not originate from an institution which, based on law, has the authority to make these policy regulations.<sup>22</sup>

Then, V. Immanuel W. Nalle provides several characteristics of policy regulations so that they are easy to identify. The characteristics are as follows:

- a. The basis for forming policy regulations is based on discretion;

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<sup>18</sup> HR. Ridwan, *Hukum Administrasi Negara* (Depok: Rajawali Press, 2014), p. 129.

<sup>19</sup> Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2011), p. 152.

<sup>20</sup> Prajudi Atmosudirjo, *Hukum Administrasi Negara* (Jakarta: Ghalia Indonesia, 1995), p. 103.

<sup>21</sup> HR. Ridwan, *op.cit.*, p. 181.

<sup>22</sup> L.C. Van der Vlies, *Buku Pegangan Perancang Peraturan Perundang-Undangan*, Terjemahan Linus Dolujdawa (Jakarta: Direktorat Jenderal Peraturan Perundang-Undangan Departemen Hukum dan Hak Asasi Manusia, 2005), p. 202.

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- b. The contents of policy regulations bind administrative officials vertically, from top to bottom;
  - c. The format of policy regulations is not like statutory regulations;
  - d. Policy regulations are not statutory regulations as intended by Law No. 12 of 2011; And
  - e. Because they are not statutory regulations, policy regulations cannot be tested materially.<sup>23</sup>

Sequentially, the legal basis for the Sambas Regent's circular letter is regulated in Minister of Home Affairs Regulation No. 54 of 2009 concerning Service Documents in the Regional Government Environment and Sambas Regency Regulation No. 14 of 2010 concerning the Administration of Official Documents within the Sambas Regency Government. Juridically, a circular is an official document that contains notifications, explanations, and/or instructions on how to carry out certain things that are considered important and urgent.<sup>24</sup> What is meant by official document is written information as a means of official communication created and/or issued by authorized officials within the Sambas Regency Government.<sup>25</sup> Then, official documents

are grouped into 2, namely legal product service documents and letter service documents. Included in official documents are legal products consisting of statutory regulations in the context of regional government, such as regional regulations, regent regulations, joint regulations with regents, and regent's decisions, while official documents or what are known as policy regulations consist of instructions, circulars and etc.<sup>26</sup>

Sambas Regent's Circular Letter Number: 140/4/PD/DINSOSPMD concerning the Establishment of a Command Post for Handling Covid-19 at the Village Level to Control the Spread of Covid-19, in outline contains efforts to control the spread of Covid-19, the village government in Sambas Regency is to establish a village-level Covid-19 Handling Post, to carry out its functions a team is formed and for the continuity of the implementation of the Village Command Post in the context of enforcing the discipline of village community health protocols, village regulations must be established. Apart from that, the Circular Letter of the Regent of Sambas Number: 440/16/Dinkes concerning the Implementation of a Community-Based Total Sanitation

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<sup>23</sup> V. Immanuel W. Nalle, in Bayu Anggono and Nando Yussela Mardika, *op.cit.*, p. 353.

<sup>24</sup> Indonesia, Peraturan Menteri Dalam Negeri Nomor 54 Tahun 2009 *tentang Tata Naskah Dinas di Lingkungan Pemerintah Daerah*, Pasal 1 angka 30.

<sup>25</sup> Indonesia, Peraturan Bupati Sambas Nomor 14 Tahun 2010 *tentang Tata Naskah Dinas di Lingkungan Pemerintah Kabupaten Sambas*, Pasal 1 angka 11.

<sup>26</sup> Biro Hukum Kementerian PPN/Bappenas, *Mendudukan Produk Hukum Tata Pengaturan Dan Penetapan* (Jakarta: Kementerian PPN/BAPPENAS, 2021), p. 6.

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Program which also broadly aims to accelerate sustainable access to decent sanitation. One of the main activities is to create an open defecation free (ODF) village in which the village government take steps to create regulations in the form of village regulations.<sup>27</sup>

Judging from the two circular letters from the Regent of Sambas above, they basically instruct or direct the village government in Sambas Regency to make/establish village regulations. In fact, circular letters only have the capacity to act as policy regulations for technical implementation instructions.<sup>28</sup> Policy regulations are based on the existence of space for consideration (*beoordelingsruimte*).<sup>29</sup> Then it is based on the freedom that according to law is permitted for government institutions to make decisions which can be distinguished from the perspective of freedom of discretion and freedom of judgment.<sup>30</sup> Circular letters are not

included in the category of statutory regulations because in Law no. 12 of 2011 juncto Law no. 15 of 2019 juncto Law no. 13 of 2022 there is no provision that states circular letters are included in the group of types of statutory regulations,<sup>31</sup> rather, a circular is an official document in the form of a letter to the local government.

As is known, the circular letter from the Regent of Sambas was issued by the Regent of Sambas as an official document in the administration of regional government and as an administrative area in his working area. If the district/city regional government issues regulations including policy regulations/circular letters, then it has a position or level in the district/city area and oversees its work area, namely sub-districts and villages, so that in practice the Sambas Regent's circular letter has a higher position than the regulations stated issued by the sub-district or village government, as a result of interviews conducted by researchers.<sup>32</sup>

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<sup>27</sup> Tamrin Muchsin and Sri Sudono Saliro, "Open Defecation Free in Kartiasa Village in The Era of Regional Autonomy: Implementation and Barriers," *Syariah: Jurnal Hukum Dan Pemikiran* 20, No. 2 (2020): 121-134, doi: 10.18592/sjhp.v20i2.4061, p. 129.

<sup>28</sup> A. Hamid S. Attamimi, *Hukum Tentang Peraturan Perundang-Undangan Dan Peraturan Kebijakan (Hukum Tata Pengaturan)*, Pidato Purna Bakti Guru Besar Tetap pada Universitas Jakarta, (Jakarta: UNJA, 1993), p. 12.

<sup>29</sup> Ni Luh Gede Astariyani and Bagus Hermanto, "Paradigma Keilmuan Dalam Menyoal Eksistensi Peraturan Kebijakan Dan Peraturan Perundang-Undangan: Tafsir Putusan Mahkamah Agung," *Jurnal Legislasi Indonesia* 16, No. 4 (2019): 751-764, doi: <https://doi.org/10.54629/jli.v16i4.533>, p. 441.

<sup>30</sup> Githa Angela Sihotang, Pujiyono, and Nabitatus Sa'adah, "Diskresi Dan Tanggung Jawab Pejabat Publik Pada Pelaksanaan Tugas Dalam Situasi Darurat," *Law Reform* 13, No. 1 (2017): 60-69, doi:<https://doi.org/10.14710/lr.v13.i1.15951>, p. 63.

<sup>31</sup> Rio Trifo Inggiz, Toto Kushartono, and Aliesa Amanita, *op.cit.*, p. 22.

<sup>32</sup> Awang Alrizki, Kedudukan Surat Edaran Bupati terhadap Peraturan Desa dalam Peraturan Perundang-Undangan di Kabupaten Sambas, Decision interviewed by Sri Sudono Saliro, 19 December 2022.



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This is in line with Article 2 paragraph (2) CHAPTER II division of state territory Law no. 23 of 2014 concerning Regional Government which states that district/city areas are divided into sub-districts and sub-districts are divided into sub-districts and/or villages. From the perspective of Article 7 paragraph (1) and Article 8 paragraph (1) of Law no. 12 of 2011, where these articles are statutory regulations, and which include district/city level statutory regulations, namely district/city regional regulations and regent regulations,<sup>33</sup> while the regent's circular does not include statutory regulations.

Therefore, ideally a legal product of statutory regulations is tiered, non-conflicting, and systematic,<sup>34</sup> or based on orders from existing laws and regulations.<sup>35</sup> For example, Minister of Home Affairs Regulation no. 111 of 2014 concerning Technical Guidelines for Village Regulations, which states in Article 32 that provisions regarding techniques for drafting village regulations are technically further regulated in regent/mayor regulations. Then the Sambas Regency Regional Government established Sambas Regent Regulation

No. 7 of 2018 concerning Procedures for Preparing Village Regulations. In theory, this is what is meant by tiered legislation from the central government which establishes higher regulations to give a mandate to regional governments with lower positions to enact statutory regulations.

In its implementation, Sambas Regency Regulation No. 32 of 2020 concerning the Fourth Amendment to Regent's Regulation no. 11 of 2014 concerning Service Tariffs at Community Health Centers for Regional Public Service Agencies in Sambas Regency, promulgated based on considering considerations which are essentially a follow-up to the Circular Letter of the Director General of Health Services of the Indonesian Ministry of Health No. HK.02.02/I/2875/2020 concerning the Highest Tariff Limit for Rapid Antibody Tests. This shows that the circular letter originating from the Indonesian Ministry of Health has a higher position than the Sambas Regent's regulations. Apart from that, the researcher conducted an interview with Risiko Syakirin as the District Village Assistant, who related to the research, namely the circular letter

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<sup>33</sup> Indonesia, Undang-Undang RI Nomor 12 Tahun 2011 *tentang Pembentukan Peraturan Perundang-Undangan*, Pasal 7 ayat (1) dan Pasal 8 ayat (1).

<sup>34</sup> Stanley. L Paulson, "Hans Kelsen on Legal Interpretation, Legal Cognition and Legal Science," *Jurisprudence* 10, No. 2 (2019): 186-197, doi:<https://doi.org/10.1080/20403313.2019.1604887>, p. 189.

<sup>35</sup> Daniel Samosir, "Faktor-Faktor Yang Menyebabkan Materi Muatan Undang-Undang Bertentangan Dengan UUD 1945," *Jurnal Konstitusi* 12, No. 4 (2016): 774-794, doi:<https://doi.org/10.31078/jk1246>, p. 775.

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from the Regent of Sambas as mentioned above, which contained an order for the village government to form village regulations.<sup>36</sup>

Therefore, as many as 195 villages in the working area of Sambas Regency have established and promulgated village regulations as mandated by the Sambas Regent's Circular Letter Number: 140/4/PD/DINSOSPMD concerning the Establishment of a Covid-19 Handling Command Post at the Village Level to Control the Spread of Covid -19 as a regional level regulation. The researchers got this from the results of an interview with Jumli as Plt. Head of Tebas Subdistrict in 2021. There are 3 village regulations sampled, including:

- a. Tebas Kuala Village Regulation Number 3 of 2021 concerning Implementation of the Covid-19 Handling Command Post in Tebas Kuala Village, Tebas District, Sambas Regency;
- b. Serindang Village Regulation Number 4 of 2021 concerning Implementation of the Covid-19 Handling Command Post in Serindang Village; and
- c. Sepuk Tanjung Village Regulation Number 2 of 2021 concerning Implementation of the Covid-19

Handling Command Post in Sepuk Tanjung Village.<sup>37</sup>

Based on the three village regulations above, it shows that the circular letter from the Regent of Sambas has a higher position in the perspective of the government system because the circular letter from the Regent is issued by the regional government which has a higher position than the village government, so that the circular letter can give a mandate or order to the village government. in the Sambas Regency working area to establish and promulgate village regulations.

## **2. Legal Effects of the Position of the Sambas Regent's Circular Letter on Village Regulations**

A regent's circular letter is a type of policy regulation that is identical with notifications, explanations, and/or instructions for carrying out certain things that are considered important or urgent. The position of the Sambas Regent's circular letter is not one of the statutory regulations, but rather as an official document in the form of a letter within the Sambas Regency Regional Government. When policy regulations provide a mandate/command/instruction to establish village regulations, this will

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<sup>36</sup> Risiko Syakirin, Kedudukan Surat Edaran Bupati terhadap Peraturan Desa dalam Peraturan Perundang-Undangan di Kabupaten Sambas, Decision interviewed by Sri Sudono Saliro, 19 December 2022.

<sup>37</sup> Jumli, Kedudukan Surat Edaran Bupati terhadap Peraturan Desa dalam Peraturan Perundang-Undangan di Kabupaten Sambas, Decision interviewed by Sri Sudono Saliro, 19 December 2022.

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give rise to legal consequences for these village regulations.

In the juridical context, Article 8 paragraph (1) of Law no. 12 of 2011 states that village regulations are firmly established as a type of statutory regulation, where village regulations are drafted by the village head based on the authority of the village head in the context of carrying out village government.<sup>38</sup> The content of village regulations must be in accordance with village authority and/or the provisions of higher laws and regulations.<sup>39</sup> This shows that village regulations are formed based on mandates/orders from a type of higher statutory regulation.

In the context of a unitary state, the position of the central government is higher than regional government, and regional government is higher than village government.<sup>40</sup> Likewise, in the context of regulations set by the regional government, they have a higher position than regulations at the village government level. On this basis, it is natural for the village level government to form village regulations referring to instructions/directions from regional

level regulations. The researchers found this as a result of an interview with Awang Alrizki as the Legal Division of the Sambas Regional Government.<sup>41</sup>

On the basis of the higher position of the Sambas Regent's Circular Letter Number: 140/4/PD/DINSOSPMD concerning the Establishment of a Command Post for Handling Covid-19 at Village Level to Control the Spread of Covid-19 compared to village regulations, several legal consequences arise. The legal consequences are as follows:

- a. The inclusion of the Sambas Regent's circular letter as the legal basis for the "consideration" provisions in the preparation of village regulations. For example, considering: that as a follow-up to the circular letter from the Regent of Sambas, it is necessary to establish a Village Regulation regarding the Implementation of Covid-19 Handling Command Posts in Villages;
- b. The inclusion of the Sambas Regent's circular letter as the legal basis for the "remembering" provisions in the preparation of village regulations; And

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<sup>38</sup> Putera Astomo, "Kedudukan Dan Pengujian Konstitusionalitas Peraturan Desa Dalam Peraturan Perundang-Undangan," *Jurnal Konstitusi* 15, No. 2 (Juni 2018): 282-305, <https://doi.org/10.31078/jk1523>, p. 287.

<sup>39</sup> Indonesia, Peraturan Bupati Sambas Nomor 7 Tahun 2018 tentang *Tata Cara Penyusunan Peraturan Di Desa*, Pasal 3.

<sup>40</sup> Juwita Putri Pratama, Lita Tyesta ALW, and Sekar Anggun Gading Pinilih, "Eksistensi Kedudukan Peraturan Menteri Terhadap Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan," *Jurnal Konstitusi* 19, No. 4 (2022): 866-885, doi:<https://doi.org/10.31078/jk1946>, p. 879.

<sup>41</sup> Awang Alrizki, Kedudukan Surat Edaran Bupati terhadap Peraturan Desa dalam Peraturan Perundang-Undangan di Kabupaten Sambas, Decision interviewed by Sri Sudono Saliro, 19 December 2022.

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c. As a form of harmonization of statutory regulations, so that the existence of village regulations is basically in accordance with the mandate and orders of the regulations set by the regional government.

These three legal consequences must essentially be contained in the “considering” and “remembering” considerations in village regulations regarding the implementation of Covid-19 handling posts in villages. The legal consequences of including the regent’s circular in the consideration of “considering” and “remembering” in a village regulation create a conflict with the basic order of the legal hierarchy. Village regulations as a type of statutory regulation should refer to the principle of statutory regulations, namely regulations of a higher position become the legal basis for statutory regulations of a lower position.<sup>42</sup> The meaning of this principle is that the type of statutory regulation must be compared with the type of statutory regulation. Another conflict can be seen in the context of the regent’s circular being a policy regulation, not a statutory regulation, while the village regulations are statutory regulations. Therefore, the principles of statutory

regulations are irrelevant and counter-productive for the regent’s circular which is the legal basis for the formation of village regulations.

Apart from that, in the context of legal harmonization on the legislative side, it is also stated that the importance of legal harmonization of the statutory regulatory system is a legal subsystem within the framework of the domestic legal system, so that the legal rules contained in statutory regulations do not conflict and do not occur repetition of legal rules.<sup>43</sup>

The results of the researcher’s interviews also found a lack of uniformity of opinion as stated above, namely the opinion of the Sambas Regency Regional Government, especially in the village government sector, stated that the Sambas Regent’s Circular Letter Number: 140/4/PD/DINSOSPMD concerning the Establishment of a Command Post for Handling Covid-19 at the Village Level for Controlling the Spread of Covid-19 does not need to be included as a “considering” and “remembering” consideration in the preparation of village regulations, because the Attachment to the Sambas Regent’s Circular Letter C contains the format for village regulations regarding the implementation of the

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<sup>42</sup> Ni’matul Huda, *Hukum Pemerintahan Desa: Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi* (Malang: Setara Press, 2015), p. 251.

<sup>43</sup> Kusnu Goesniadhie Slamet, “Harmonisasi Hukum Dalam Perspektif Perundang-Undangan,” *Jurnal Hukum IUS QUIA IUSTUM* 11, No. 27 (2016): 82-96, doi:<https://doi.org/10.20885/iustum.vol11.iss27.art8>, p. 84.

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Covid-19 handling post so that the village government simply adjusts the attachment the circular.<sup>44</sup>

#### D. CONCLUSIONS

This research found that: first, the circular letter from the Regent of Sambas is a policy regulation, not a statutory regulation. Second, the Sambas Regent's circular letter has a higher position than village regulations from the perspective of those who stipulate these regulations. The Sambas Regent's circular letter is stipulated by the regional government, and village regulations are determined by the village government as the lowest government subsystem. Therefore, it can be concluded that the circular letter from the Regent of Sambas has a higher position and can give a mandate or order to establish village regulations to the village government. Even though the circular letter from the Regent of Sambas has a higher status, it cannot be used as a legal basis for the "considering" and "remembering" provisions in the formation of village regulations. These legal consequences are due to the circular letter from the Regent of Sambas being formally interpreted as a policy regulation containing technical implementation instructions by the regional government (higher) to the village government

(lower). Policy regulations may not be used as a legal basis for the formation of laws and regulations as a form of legal harmonization.

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<sup>44</sup> Alkap, Kedudukan Surat Edaran Bupati terhadap Peraturan Desa dalam Peraturan Perundang-Undangan di Kabupaten Sambas, Decision interviewed by Sri Sudono Saliro, 17 Januari 2023.

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