

The Proliferation of Regional Regulation Cancellation in Indonesia



Abdul Kadir Jaelani^{a*}, Muhammad Jihadul Hayat^b

^aFaculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia.

^bFaculty of Sharia and Law, UIN Sunan Kalijaga, Yogyakarta, Indonesia.

*Corresponding author: jaelaniabdulkadir@staff.uns.ac.id

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ABSTRACT

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The purpose of constitutional amendments is to grant the Supreme Court the authority to review laws and regulations in accordance with the law. However, the arrangement did not function optimally due to the government's persistent assumption of the authority to cancel Regional Regulations. In an era of regional autonomy, the purpose of this study is to examine the implementation of the ranking of laws and regulations regarding the repeal of regional legal products. This is a normative legal study utilizing secondary data. The results demonstrated that the concept of implementing the ranking of laws and regulations on the repeal of regional legal products during the era of regional autonomy was not carried out in accordance with the constitution and should have been limited while it was still in the form of draft regional regulations.



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1. Introduction

Implementation of regional autonomy is closely tied to regional governments' ability to create and implement laws and regulations.¹ This authority is guaranteed by Article 18 of the 1945 Constitution of the Republic of Indonesia. In 1999, following the reform, Law No. 22 of 1999 about the regional government was passed. In 2004, it was replaced by Law No. 32 of 2004 on Regional Government, which was then amended by Law No. 12 of 2008 pertaining to the Second Amendment to Law No. 32 of 2004 about Regional Government. The President issued Government Regulation of Law No. 2 of 2014 regarding Regional

¹Tom S. Clark, B. Pablo Montagnes, and Jörg L. Spenkuch, 'Politics from the Bench? Ideology and Strategic Voting in the U.S. Supreme Court', *Journal of Public Economics*, 214 (2022), 104726 <https://doi.org/10.1016/j.jpubeco.2022.104726>

Government in 2014. In the same year, Regional Government Law Number 23 of 2014 was enacted.²

To achieve regional autonomy, regional regulations (Perda) cannot be separated from the framework of the system of laws and regulations. Since the enactment of regional autonomy in Indonesia, the regions have been granted sufficient autonomy to formulate fiscal policy and local community lifestyle regulations independently. On the other hand, the existence of regional regulations is also the implementation of a representation system in local government policy formulation. Regional Regulations are Indonesian laws and regulations enacted by the Regional People's Representative Council (DPRD) and Regional Heads. The content and production must adhere to the applicable legal and regulatory framework.³

The presence of content with regional characteristics (local content) does not mean that regional regulations can disregard the principles of formal law and regulation formation and their content. Even though there is a spirit of regional autonomy in the formation of regional regulations, the formation of regional regulations cannot be separated from the national statutory system and remains within it.⁴ Regional regulations must take the national interest into account as one of their components. The preceding argument places regional regulations in a prominent position within the system of national legislation. Regional regulations are subordinate to the existing laws and regulations above them due to the material content of regional regulations as regulations that describe higher statutory regulations. The substance governed by the regional regulation has close ties to the regulations that precede it. In addition to frequently excluding other formal juridical and technical problems, regional regulations frequently conflict with higher laws and regulations and have not been designed to solve all problems. Such disregard has resulted in numerous problems with regional regulations.⁵

President Joko Widodo (Jokowi) requested that the Minister of Home Affairs (Mendagri), Tjahjo Kumolo, be able to eliminate 3,000 problematic regional regulations (Perda) without conducting a study, as the problematic regional

² Rayhan Dudayev, Lugas Lukmanul Hakim, and Indah Rufiati, 'Participatory Fisheries Governance in Indonesia: Are Octopus Fisheries Leading the Way?', *Marine Policy*, 147, September 2022 (2023), 105338 <https://doi.org/10.1016/j.marpol.2022.105338>

³ Stefan Voigt, 'On the Optimal Number of Courts', *International Review of Law and Economics*, 32.1 (2012), 49–62 <https://doi.org/10.1016/j.irle.2011.12.008>

⁴ Fabio Padovano and Nadia Fiorino, 'Strategic Delegation and "Judicial Couples" in the Italian Constitutional Court', *International Review of Law and Economics*, 32.2 (2012), 215–23 <https://doi.org/10.1016/j.irle.2012.01.002>

⁵ Nadia Fiorino, Nicolas Gavaille, and Fabio Padovano, 'Rewarding Judicial Independence: Evidence from the Italian Constitutional Court', *International Review of Law and Economics*, 43 (2015), 56–66 <https://doi.org/10.1016/j.irle.2015.05.002>

regulations exceed 3,000 regional regulations.⁶ The Law, Presidential Regulations (*Perpres*), Government Regulations (*PP*), Ministerial Regulations (*Permen*), and Regional Regulations make up 42,000 of Indonesia's current regulations, according to Jokowi. According to research conducted by the Center for the Study of Law and Policy in Indonesia, as many as 154 regional policies issued at the provincial level, 19 district or city-level policies, and 134 policies at the village level between 1999 and 2013 became a means of institutionalizing discrimination, both intentionally and unintentionally. Approximately 63 of the 154 regional policies discriminate against women through the right to freedom of expression (21 policies governing dress code), the reduction of the right to protection and legal certainty for criminalizing women (37 policies on eradicating corruption), the abolition of the right to protection and legal certainty (1 policy on the prohibition of seclusion), and the neglect of the right to protection. The remaining 82 regional policies govern religion, constituting the central authority.⁷

The Constitutional Court's decisions 137/PUU-XIII/2015 and 56/PUU-XIV/2016 established the Supreme Court as the institution authorized to annul regional regulations. If the community is harmed by the presence of a regional regulation, an objection is filed with the Supreme Court (judicial review). However, according to Chapter XIII, Article 181 of Law Number 11 of 2020 concerning Job Creation, the President regains the authority to cancel regional products. Of course, this provision cannot be separated from the view that the President is the holder of the power to administer the government and establish laws and regulations. The source of the construction was the president and the party that handed over the affairs to the regional government.⁸

In an era of regional autonomy, when regional governments have a greater opportunity to create regional legal products, Perda testing assumes great significance. The formation of regional legal products must adhere to the system of applicable laws and regulations, particularly Article 7 of Law Number 12 of 2011 on the Formation of Laws. Prior to promulgating or enacting a regional regulation, the central government has conducted a preview of the draft regional regulation. After the Perda is enacted, the central government will be able to conduct repressive monitoring or testing. However, the Supreme Court may also

⁶ Ade Paranata, 'Heliyon The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8, February (2022), e11153 <https://doi.org/10.1016/j.heliyon.2022.e11153>

⁷ Khomsin and others, 'A Determination Analysis of Regional Maritime Boundary Based on Regulation of Home Ministry Affair Number 76 in 2012 (Case Study: Dispute of Galang Island Border between Surabaya and Gresik)', *Procedia Earth and Planetary Science*, 14 (2015), 83–93 <https://doi.org/10.1016/j.proeps.2015.07.088>

⁸ Gina Abelló and others, 'Early Regionalization of the Otic Placode and Its Regulation by the Notch Signaling Pathway', *Mechanisms of Development*, 124.7–8 (2007), 631–45 <https://doi.org/10.1016/j.mod.2007.04.002>

examine regional regulations. As a result, testing the Perda is dualistic, with consequences for each supervision.⁹

The dualism of testing and supervising regional regulations is an effort to achieve the regularity of the substance of the law in Indonesia, or, to borrow Siti Fatimah's term, the proliferation of judicial power is one of the efforts to achieve a simple, quick, and inexpensive judiciary. This dualism may result in legal ambiguity and inconsistency for citizens and the administration of state life. The existence of judicial power to exercise control over executive power (*executive power*) and legislative power is the most crucial aspect of a state of law (*legislative power*). Using a judicial review mechanism to examine legislation is an example of the judiciary's control. The Constitution of 1945 grants the Supreme Court and the Constitutional Court the authority to conduct judicial reviews.¹⁰

Then, as an expansion of Article 24 A of the 1945 Constitution, Article 9 Paragraph 2 of Law Number 12 of 2011 concerning the Establishment of Legislation states that the Supreme Court conducts the examination if a statutory regulation under the Act is suspected of being in conflict with the Act. Article 20 paragraph 2, letter c, of Law Number 48 of 2009 pertaining to Judicial Power specifies the Supreme Court's authority to examine statutory regulations that violate the law.¹¹ In addition, Article 138, Paragraph 1, of Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 Concerning the Establishment of Legislation states that the Governor may file an objection with the Supreme Court if the Provincial Government objects to the cancellation of the Provincial Regulation. However, Article 137 of the Regulation of the Minister of Home Affairs Number 80 of 2015 Concerning the Establishment of Regional Legal Products states that the objection mechanism is to be submitted to the President along with reasons for objection to the Decree of the Minister of Home Affairs Concerning the Cancellation of Provincial Regulations and Governor Regulations. Article 139 states that the Presidential Decree mentioned in Subsection (1) is final.¹²

The formation and testing of regional regulations are based on Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation (Hans Kelsen's

⁹ Abidah B. Setyowati and Jaco Quist, 'Contested Transition? Exploring the Politics and Process of Regional Energy Planning in Indonesia', *Energy Policy*, 165.March (2022), 112980 <https://doi.org/10.1016/j.enpol.2022.112980>

¹⁰ Sandra Dewi Arifiani and others, 'Assessing Large-Scale Violence against Children Surveys in Selected Southeast Asian Countries: A Scoping Review', *Child Abuse and Neglect*, 93.December 2018 (2019), 149–61 <https://doi.org/10.1016/j.chiabu.2019.05.005>

¹¹ Robin Sen and others, "'When You're Sitting in the Room with Two People One of Whom... Has Bashed the Hell out of the Other'": Possibilities and Challenges in the Use of FGCs and Restorative Approaches Following Domestic Violence', *Children and Youth Services Review*, 88.March (2018), 441–49 <https://doi.org/10.1016/j.childyouth.2018.03.027>

¹² Arif Purnama Oktora and Hilaire Tengan, 'Strategy for Implementing Operations to Handle the Crime of Narcotics', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 201–13 <https://doi.org/https://doi.org/10.53955/jhcls.v1i3.18>

theory), namely tiered legal norms (*stufenbau des rechts*), in which legal norms contained in statutory regulations may not conflict with higher regulations above them. A norm is valid because it was formulated in a predetermined manner, as determined by norms above it.¹³ In terms of the structure and hierarchy of the norm system, Jazim Hamidi elaborated that the highest norm (the basic norm) becomes the point of dependence for the norms below it. If fundamental norms are altered, the system of norms below them will be compromised. In this context, the ranking of statutory regulations (*stufenbau theory*) may serve as the basis for a judicial review.¹⁴ In an effort to apply Article 7 of Law No. 12 of 2011 on the Formation of Legislation (*stufenbau theory*) to the testing of regional regulations, the Supreme Court, as the executor of judicial power, can play an objective role in exercising control over the executive and legislative legal actions.

2. Research Method

This study is normative legal research supported by empirical evidence. This legal study employs a literature review that investigates secondary data in the form of primary and secondary legal materials. The objective of normative legal research is to locate a rule of law, legal principles, and legal doctrines in order to resolve legal issues.¹⁵ This study employs multiple methodologies, including the statutory approach, the case approach, and the theoretical approach. Primary legal materials consist of statutory regulations or other documents, such as the 1945 Constitution of the Republic of Indonesia and laws and regulations pertaining to the Job Creation Act, as well as relevant and related laws and regulations.¹⁶ The secondary legal materials pertaining to business licensing consist of research results, study results, books, and scientific journals. In this study, legal materials, including primary, secondary, and non-legal materials, were processed qualitatively. The collected written legal materials have been categorized according to the identified problems and have relevance to the issues studied outside of legal materials.¹⁷

¹³ Utkarsh K Mishra and Abhishek Negi, 'Should Trade Remedies Be Eliminated from WTO : A Response to Tania Voon', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 194–200 <https://doi.org/https://doi.org/10.53955/jhcls.v1i3.20>

¹⁴ Arifin Maruf, 'Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <https://doi.org/10.53955/jhcls.v1i1.4>

¹⁵ Redi Res, 'Implementation of Parate Executie Object of Liability', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <https://doi.org/10.53955/jhcls.v1i1.6>

¹⁶ Syahlan Syahlan, 'Effective and Efficient Synchronization in Harmonization of Regulations Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <https://doi.org/10.53955/jhcls.v1i1.7>

¹⁷ Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <https://doi.org/10.53955/jhcls.v1i1.5>

3. Results and Discussion

Cancellation of Regional Regulations in the Era of Regional Government Law No. 32 of 2004

As a normative control, testing can be conducted either by the regulatory agency itself or by an external agency. If the test is conducted by the institution performing the manufacturing, it is referred to as "internal testing" (internal control); if it is conducted by an institution outside the institution performing the manufacturing, it is referred to as "external testing" or "external supervision."¹⁸ Additionally, supervision is distinguished by the duration of its implementation. A priori control and a posteriori control are the two types of time control. Prioritary control is when oversight is conducted prior to the issuance of a government decision, decree, or other regulation whose issuance is indeed within the government's authority. In contrast, a-posteriori control is implemented if the supervision is only implemented after the issuance of a government decision or after the occurrence of a government action. Regarding the supervision of autonomous government units, Bagir Manan identified two related supervision models: preventive supervision (*preventief toezicht*) and repressive supervision (*repressief toezicht*).¹⁹

It is related to the preceding supervisory model with the implementation of regional regulation supervision as one of the products of autonomous government administration, then this preventive supervision model is implemented by ratifying or not ratifying regional regulations drafted by the regional government. Whereas, in this preventive supervision, a regional regulation can only take effect if it has been ratified by the authorities with the authority to ratify it. In the meantime, repressive supervision is conducted in two ways: by suspending the implementation of a regional regulation or by repealing a regional regulation.²⁰

In general, there are two ways to annul regional legal products in Indonesia: executive review and judicial review. Executive review is the power of an executive agency to examine a statutory regulation and repeal it if it is deemed to be in conflict with higher laws and regulations or to be against the public interest. In the meantime, judicial review refers to the judiciary's authority to examine a statutory regulation and nullify it if it is deemed inconsistent with higher regulations.²¹ In other words, judicial review is the "right to examine"

¹⁸ Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>

¹⁹ Nuno Garoupa and Peter Grajzl, 'Spurred by Legal Tradition or Contextual Politics? Lessons about Judicial Dissent from Slovenia and Croatia', *International Review of Law and Economics*, 63 (2020), 105912 <https://doi.org/10.1016/j.irle.2020.105912>

²⁰ Jan Fałkowski and Jacek Lewkowicz, 'Are Adjudication Panels Strategically Selected? The Case of Constitutional Court in Poland', *International Review of Law and Economics*, 65 (2021) <https://doi.org/10.1016/j.irle.2020.105950>

²¹ Nuno Garoupa, Marian Gili, and Fernando Gómez Pomar, 'Loyalty to the Party or Loyalty to the Party Leader: Evidence from the Spanish Constitutional Court', *International Review of Law and Economics*, 67 (2021) <https://doi.org/10.1016/j.irle.2021.105999>

(toetsingsrecht) that judges are granted to examine a statutory regulation. The mechanism for repealing regional regulations can be found in each of the regional government statutes and regulations listed below. In the context of regional supervision, Law No. 32 of 2004 concerning the Regional Government regulates the cancellation procedure for executive-owned regional regulations. Article 136, paragraph 4, of Law No. 32 of 2004 addresses the mechanism for the annulment of regional regulations.²²

Then, Article 145, Paragraph 2, of Law No. 32 of 2004 emphasized that the government may annul regional regulations that are contrary to the public interest and/or higher statutory regulations. The regional head may file an objection with the Supreme Court if the province, agency, or city cannot accept the decision to revoke a regional regulation for reasons that can be supported by laws and regulations. In accordance with Article 2 Paragraph 4 of the Regulation of the Supreme Court of the Republic of Indonesia, the Supreme Court provides a grace period of one hundred eighty (180) days from the enactment of the relevant laws and regulations.²³

Article 145, subsection (7), of Law No. 32 of 2004 specifies a presidential regulation as the legal mechanism for the repeal of regional regulations. In practice, however, regional regulations are canceled by a decree issued by the Minister of the Interior. Legally speaking, the cancellation of regional regulations by the Minister of the Interior is an error. This is a legal error because the legal instrument to revoke a regional regulation must be a presidential regulation, not a Minister of Home Affairs decree. Even worse, a decision in the *beschikking* field nullifies the regional regulation included in the *regeling* field. In other words, the Decree of the Minister of Home Affairs to cancel the Regional Regulation is not yet legally binding as a decision by the government to cancel the Regional Regulation, as the decision must be in the form of a Presidential Regulation (*Perpres*).²⁴

In accordance with Article 186 of Law No. 32 of 2004, the draft regency/municipal Perda pertaining to the jointly approved APBD and the draft regent/mayor regulation pertaining to the elaboration of the APBD shall be submitted to the Governor for review. The Governor submits the results of the evaluation to the Regent or Mayor within fifteen (15) days of receiving the draft regency or city perda and the draft bupati or mayor regulation regarding the elaboration of the APBD. If the Governor declares that the results of the evaluation of the draft Perda on APBD and the draft Regulation of the Regent or Mayor

²² Paola Bertoli, Adriana G. Garcia, and Nuno Garoupa, 'Testing an Application of the Political Insurance Model: The Case of the Mexican State-Level Administrative Courts', *Journal of Economic Behavior and Organization*, 195 (2022), 272–87 <https://doi.org/10.1016/j.jebo.2022.01.021>

²³ Danko Tarabar and Andrew T. Young, 'What Constitutes a Constitutional Amendment Culture?', *European Journal of Political Economy*, 66, September 2020 (2021), 101953 <https://doi.org/10.1016/j.ejpoleco.2020.101953>

²⁴ Khudzaifah Dimiyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 <https://doi.org/10.1016/j.heliyon.2021.e07865>

concerning the Elaboration of the APBD are in accordance with the public interest and higher laws and regulations, the Regent or Mayor shall stipulate the drafts as Perda and Regulation. If the Governor says something different, the Regent/Mayor and the DPRD will make changes no later than seven days after getting the results of the evaluation.²⁵

In conclusion, Law No. 32 of 2004 adopts a model of preventive (limited) and punitive supervision. In addition, the Minister of Home Affairs and the Governor are authorized to evaluate mutually agreed upon regional, municipal, or provincial raperdas. Objections submitted to the Supreme Court through a judicial review mechanism are not directed at the regional regulations issued by the regional government but rather at the presidential regulations that cancel the regulations.

Cancellation of Regional Regulations in the Era of Law no. 23 of 2014

Regional Government Law Number 23 of 2014 regulates the cancellation of regional regulations owned by the executive (government). Article 251 of Law Number 23 of 2014 is pertinent here. Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 80 of 2015 Concerning the Formation of Regional Legal Products Article 137 stipulates an objection mechanism by the governor and/or provincial DPRD to the Minister's Decree Concerning the Cancellation of Regional Regulations. Provincial and Governor Regulations accompanied by objections to the President Article 152 (1): If the regent/mayor and/or regency/city DPRD cannot accept the decision to cancel the regency/city regional regulation and the regent/mayor cannot accept the decision to cancel the regent/mayor regulation with reasons that can be justified by provisions of laws and regulations, the regent/mayor may submit an objection to the Minister of Home Affairs through the Director General of Regional Autonomy no later than 14 (fourteen) days after the issuance of the decision.²⁶

In addition to its repressive function in terms of the repeal of regional regulations under Law No. 23 of 2014, the government also has a preventative function. This law grants the government greater authority than the previous regional government laws, Law No. 22 of 1999 and Law No. 32 of 2004. In the context of executive review, the government exercises two types of supervision: repressive supervision and preventive supervision. Article 251 of Law No. 23 of 2014 governs repressive supervision, while Article 245 governs preventive supervision in relation to the RPJPD, RPJMD, APBD, APBD amendments,

²⁵ Rodd Myers and others, 'Claiming the Forest: Inclusions and Exclusions under Indonesia's "New" Forest Policies on Customary Forests', *Land Use Policy*, 66.April (2017), 205–13 <https://doi.org/10.1016/j.landusepol.2017.04.039>

²⁶ Martin Roestamy and others, 'A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest', *Land Use Policy*, 120.February 2020 (2022), 106275 <https://doi.org/10.1016/j.landusepol.2022.106275>

accountability for the implementation of the APBD, regional taxes, regional levies, and spatial planning.²⁷

The executive review authority is intended to establish a system of oversight in regional government administration, particularly with respect to regional legislative products. This monitoring is conducted while the Perda, Pergub, Perbup, and Perkot are in draft form and have been enacted. Preventive oversight or in the form of a draft has regulated the mechanism in the provisions of Article 242, Article 243, Article 246, and Article 249 of Law Number 23 of 2014, specifically since the obligation of the Regent or Mayor to submit plans and regulations of the City/Regency or Regent/Regency/The Mayor to the Governor, as well as the obligation of the governor to submit the draft and Provincial Regulations or the Governor to the Minister. Draft city or regency regional regulations, or regent or mayor regulations, and draft provincial regulations, or governor regulations, cannot be published in regional gazettes or regional news if this requirement is not met.²⁸

Article 249 (1) of Law No. 23 of 2014 requires the governor to submit provincial regulations and governor regulations to the minister within seven (seven) days of promulgation. The submission of the Perda should be evaluated within 30 days. Articles 132 and 145 Paragraph 3 of the Regulation of the Minister of Home Affairs of the Republic of Indonesia, Number 80 of 2015, on the Formation of Regional Legal Products states that the study referred to in paragraph (1) must be conducted within thirty (30) days of its receipt by the Team. Among all the explanations in Law No. 23 of 2014 concerning Regional Government regarding the mechanism for canceling regional regulations, the government's authority is the most expansive; in addition to a repressive function (executive review) on testing regional regulations (Perda), the government also has a preventive function (executive preview) on evaluating regional regulation drafts.²⁹

Cancellation of Regional Regulations in the Era of Law Number 11 of 2021

Regional regulations (*Perda*) are the manifestation of a region's "regulatory authority." In contrast, the national legal system classifies regional regulations as one of the legislative products. In accordance with Law No. 12 of 2011 and Law No. 15 of 2019 concerning the Formation of Regulations, regional regulations occupy a position in the regulatory hierarchy. In this hierarchical context, the

²⁷ Nicolas Suzor, 'A Constitutional Moment: How We Might Reimagine Platform Governance', *Computer Law and Security Review*, 36 (2020), 2018–21 <https://doi.org/10.1016/j.clsr.2019.105381>

²⁸ Giacomo Giorgini Pignatiello, 'Countering Anti-Lgbti+ Bias in the European Union. A Comparative Analysis of Criminal Policies and Constitutional Issues in Italian, Spanish and French Legislation', *Women's Studies International Forum*, 86.September 2020 (2021), 102466 <https://doi.org/10.1016/j.wsif.2021.102466>

²⁹ Stefano Osella, 'The Court of Justice and Gender Recognition: A Possibility for an Expansive Interpretation?', *Women's Studies International Forum*, 87.April (2021), 102493 <https://doi.org/10.1016/j.wsif.2021.102493>

material content of local regulations is clearly bound and subject to the principle of *lex superiori derogat legi inferiori*; therefore, it is not permissible for the regulation's content to conflict with higher regulations. Law No. 23 of 2014 authorizes the Central Government (Minister of Home Affairs) to nullify provincial regulations in the event of a violation (problematic local regulations).³⁰

In the meantime, the governor, as the representative of the central government, has the authority to revoke regency or city regional regulations. This provision was invalidated by the Constitutional Court during its development. The decisions 137/PUU-XIII/2015 and 56/PUU-XIV/2016 of the Constitutional Court designate the Supreme Court as the institution authorized to annul regional regulations. If a regional rule hurts a person, they can file a complaint with the Supreme Court (called "judicial review").³¹

Article 181 of Chapter XIII of the Job Creation Law, however, returns the authority to repeal regional regulations to the government. These provisions designate the President as the official authorized to nullify local ordinances and regional head ordinances. This option is inextricably linked to the notion that the president has the authority to administer the government and create laws and regulations. The structure that was erected served as a source from which the regional government received information. The president has the authority to withdraw from affairs and repeal their governing regulations. This change's direction elicited both pros and cons from the community. On the one hand, this provision contradicts the Constitutional Court's binding decision from a legal-judicial standpoint.³²

In contrast, since the decision of the Constitutional Court, numerous problematic regional regulations have continued to be enforced in the regions. The litigation process at the Supreme Court necessitates substantial financial resources and negatively affects the relationship between the regional government and the plaintiff. This empirical evidence demonstrates that granting Supreme Court cancellation authority has no effect on reducing or eliminating problematic regional regulations. Faced with these realities, the government reverted to Law No. 23 of 2014 by elevating the level of annulment to the President (via Presidential Decree) as part of the local government's supervisory function. On the other hand, this provision also allows the Supreme Court to overturn regional

³⁰ Frank Louwen and others, 'European Journal of Obstetrics & Gynecology and Reproductive Biology The United States Supreme Court Ruling and Women ' s Reproductive Rights – A Position Statement Issued by The European Board and College of Obstetrics and Gynaecology (EBCOG)', 279.October (2022), 130–31 <https://doi.org/10.1016/j.ejogrb.2022.10.012>

³¹ Emre Mumcuoğlu and others, 'Natural Language Processing in Law: Prediction of Outcomes in the Higher Courts of Turkey', *Information Processing and Management*, 58.5 (2021), 102684 <https://doi.org/10.1016/j.ipm.2021.102684>

³² Fernando A. Correia and others, 'Fine-Grained Legal Entity Annotation: A Case Study on the Brazilian Supreme Court', *Information Processing and Management*, 59.1 (2022), 102794 <https://doi.org/10.1016/j.ipm.2021.102794>

regulations based on lawsuits filed by parties with legal standing (individuals and groups).³³

According to the provisions listed above, there is no mention of "test" or "cancel." However, the terms "harmonization" and "synchronization" are encountered. As cited by Erik Sepria in the Big Indonesian Dictionary published by Balai Pustaka, the term "harmonization" derives from the word "harmony," which means harmony and peace. While the term "harmonization" refers to an effort to achieve harmony, "harmonization of laws and regulations" is an effort or process to achieve harmony and harmony of principles and legal systems in order to create harmonious regulations.³⁴

Based on legal experts' explanations of the terms "harmonization" and "synchronization," The conclusion is that these two activities can be performed both during the formation of regulations and for regulations that are already in effect. According to the Draft Government Regulation on Harmonization and Synchronization of Legislation Under the law, this mechanism applies only to statutory regulations, not draft statutory regulations. Is this why the presence of Article 181 paragraph (2) of Chapter XIII of Law No. 11 of 2020 regarding job creation is interpreted as an effort to reformulate the substance of the norms for testing regional regulations using an executive review model? Why can regional harmonization and synchronization be considered a model for executive review? In the formulation related to harmonization and synchronization, the researchers drew three conclusions: First, these activities are not limited to a draft regional regulation but also to existing regional regulations. Second, the government is responsible for carrying out these activities (executive field). This is evident from the Minister's formation of the working group. Thirdly, the regional regulation amendment or repeal is based on a letter from the Minister of the Interior.³⁵

Implementation of Ranking of Legislation Against Cancellation of Regional Regulations

In addition to harmonizing one regulation with another, the ranking of statutory regulations serves as a means of disciplining the formation of regulations by describing the regulations it creates in relation to those that delegate or assign them. This process of alignment and discipline may be easier if there are fewer regulations. In the case of Indonesia, however, the number of regulations tends to

³³ Philipp Meyer, 'Transparency and Strategic Promotion: How Court Press Releases Facilitate Judicial Agenda-Building in Germany', *Public Relations Review*, 48.4 (2022), 102228 <https://doi.org/10.1016/j.pubrev.2022.102228>

³⁴ Adriana A. Dragone Silveira, 'The Role Played by Courts in Promoting Equal Educational Opportunity Reforms: New York and São Paulo Cases', *International Journal of Educational Development*, 87.September (2021), 102495 <https://doi.org/10.1016/j.ijedudev.2021.102495>

³⁵ Daud Rismana and Hariyanto, 'Dualism Of Review Model On Regional Regulations Post Act Number 11 Of 2020 On Job Creation', *Jurnal IUS Kajian Hukum Dan Keadilan*, 9.1 (2021), 96-111 <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/818>

be excessively high, making the process difficult to implement. According to Maria Farida, legal standards have dual aspects (*das doppelte rechtsantlitz*). According to this concept, upward legal norms are derived from and based on norms above them, whereas downward legal norms are derived from and based on norms below them.³⁶

Hans Kelsen's theory of "*stufenbau des Rechts*," or "the hierarchy of law," gave rise to *stufentheorie*. Hans Nawiasky expanded on Kelsen's theory in *Die Theorie Von Stufentordnung*. Indonesia began determining the ranking of its statutory regulations in 1966 using MPRS Decree No. XX/MPRS/1966 regarding the DPR-GR Memorandum on the Sources of RI Law Order and Order of Legislation, which was based on these two theories. The purpose of the MPRS was to bring order and consistency to the various legal products that were chaotic at the time due to the president's dominance. Even though it aims to harmonize and regulate different legal products, until the MPRS Decree was repealed and replaced by MPR Decree No. III/MPR/2000, the dream of forming a harmonious and unified system of legal products was never realized. Even its successor, Article 7 of Law No. 12 of 2011, has failed to achieve these goals.³⁷

In the Indonesian legal system, legislation is organized hierarchically or in tiers. This organizational structure has implications for its legal force. The greater the degree of regulation, the greater the legal authority. Moreover, regulations below it must not deviate from those above it. Regional Regulations are arranged hierarchically in accordance with Article 7 Paragraph 1 of Law No. 12 of 2011. Provincial regulations and regency or city regional regulations are the two types of regional regulations in the hierarchy. Pancasila is the source of state law within the Indonesian legal system. Pancasila occupies the highest level of legal norms as a *staatsfundamental* norm in Hans Nawiasky's framework but as a ground norm in Hans Kelsen's *stufenbau des Rechts* theory. The Republic of Indonesia's Constitution of 1945 serves as the foundation for statutory regulations. In accordance with Article 7 Paragraph 1 of Law No. 12 from 2011.³⁸

As a system, the hierarchy of laws and regulations confirms that the legal authority of lower laws and regulations cannot conflict with those of higher laws and regulations, as specified in Article 7 paragraph 1 of Law No. 12 of 2011. This is emphasized in Article 7, paragraph 2, which states that the legal force of legislation conforms to the hierarchy described in paragraph 1. The provisions of

³⁶ Iswantoro Iswantoro, 'Strategy and Management of Dispute Resolution , Land Conflicts at the Land Office of Sleman Regency', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 1–17. <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>

³⁷ Siti Rahma Novikasari, Duc Quang Ly, and Kerry Gershaneck, 'Taxing Micro, Small and Medium Enterprises in Yogyakarta: Regulation and Compliance', *Bestuur*, 9.1 (2021). <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>

³⁸ Sri Wahyuni, Dian Luthviati, and Muhammd Hayat, 'The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen', *Bestuur*, 10.1 (2022), 12–21. <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>

Article 7 of Law No. 12 of 2011 are consistent with the principle of *lex superior derogat legi inferiori*, which states that a regulation may also be declared invalid if it is manifestly in conflict with a higher standard. Viewed from "Theory of the Degree Order of the Legal Norm".³⁹

Commonly referred to as "toetsingrecht," a testing mechanism with the authority to examine institutions is required to maintain and discipline the hierarchy of laws and regulations. In Indonesia, three institutions have the right to test (toetsingrecht): legislative review, executive review, and judicial review. Legislative review is the examination authority granted to legislative institutions, and these institutions conduct activities to examine statutory regulations. Executive review is the examination authority granted to executive agencies and institutions in order to conduct testing of laws and regulations. The Constitutional Court reviews laws in conflict with the Constitution, while the Supreme Court reviews legal products under laws in conflict with the law. In the era of regional autonomy, however, the implementation of the ranking of statutory regulations for the cancellation of the 2016 Regional Regulations occurred out of sync with the Staatsgrundgesets (1945 Constitution), Formal Gesets (Laws), and Verordnung en Autonome Satzung (Beginning with Government Regulations and Regional Regulations).⁴⁰

The provisions of Article 251 paragraphs 7 and 8 of Law Number 23 of 2014 and Articles 136 to 139 of Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 80 of 2015 concerning the formation of legal products grant governors and ministers authority based on this ranking. The regions are in opposition to the higher hierarchy of laws and regulations because the Supreme Court reviews and nullifies regional regulations. In the opinion of the author, it is preferable for the Supreme Court to cancel legal products in the form of regional regulations. The author bases his argument on historical and functional methods. The historical method, also known as original intent or original history, is a decision-making process based on words that are less actual in written texts than the concepts that emerge from an examination of history or the ratification of the Constitution. While the functional method is based on an analysis of the constitution's structure and how it is directed to operate as a coherent and harmonious system.⁴¹

³⁹ Nabiyla Risfa Izzati, Mas Muhammad, and Gibran Sesunan, "Misclassified Partnership" and the Impact of Legal Loophole on Workers', *Bestuur*, 10.1 (2022), 57–67. <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>

⁴⁰ Awaludin Marwan and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <https://doi.org/https://doi.org/10.20961/bestuur.v10i1.59143>

⁴¹ Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68–83 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>

Article 251 paragraphs (1) and (2) of Law No. 23 of 2014 are in conflict with Article 24A paragraph (1) of the 1945 Constitution. At a minimum, Law Number 23 of 2014 grants governors and ministers the authority to annul regional regulations that violate higher laws and regulations, public interest, and/or morality at the regency, city, or provincial level, as well as regulations of governors, regents, or mayors. As a result of the amendment to Article 24 A, Paragraph 1, of the 1945 Constitution, which emphasized that the Supreme Court has the authority to review statutory regulations under the law, the government (executive) is no longer responsible for reviewing regional regulations; instead, the Supreme Court has this responsibility. Thus, the regulation enacted by the government pursuant to Law No. 23 of 2014 contradicts Article 24 A of the 1945 Constitution and is incompatible with Law No. 4 of 2004 in conjunction with Law No. 5 of 2004 in conjunction with Law No. 3 of 2009 pertaining to the Supreme Court, Law No. 12 of 2011 pertaining to the formation of legislation, and Law No. 48 of 2009 pertaining to judicial power.⁴²

4. Conclusion

Based on the descriptions discussed in the previous section, the following conclusions can be drawn from this paper: First, the regulatory model for the repeal of regional regulations in the era of Law 32 of 2004 adheres to a preventive (limited) and punitive supervision model. Furthermore, the Minister of Home Affairs and the Governor are empowered to assess the mutually agreed-upon district, city, or provincial Raperda. The submission of an objection to the Supreme Court via a judicial review mechanism is not directed at a regional regulation issued by the regional government but rather at a presidential regulation that nullifies the regional regulation. In addition to a repressive function (executive review) on the testing of regional regulations (Perda), the government also has a preventive function (executive preview) on the evaluation of draft regional regulations under Law Number 23 of 2014 concerning regional government (Perda). Third, Paragraph 2 of Article 181 of Chapter XIII of Law No. 11 of 2020 Concerning Job Creation returns an article that has been ruled unconstitutional because it is similar to the executive review provision of Law No. 32 of 2004.

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⁴² Rismana and Hariyanto.

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