

Oversight of Special Regional Autonomy in the Concept of the Unitary State of the Republic of Indonesia

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Article Info	Abstract
Received : 2024-12-10 Accepted : 2026-09-31 Published : 2026-09-31	<i>As a unitary state, all regional laws must be in line with higher-level national laws. The 1945 Constitution states that regional authority to control and manage local affairs is based on the principles of autonomy and co-administration. Inconsistencies and a lack of regulation at the central level increases the likelihood of regional regulations that are also inconsistent with higher-level legislation. Therefore, evaluations of regulations deemed inconsistent should not only focus on inconsistent regional legal instruments but also on the central government. The research questions of this study are: first, how is the authority of regional autonomy regulated in the unitary state of the Republic of Indonesia, and second, how is the supervision of the formation of regional autonomy authority carried out through harmonization, evaluation, and facilitation. The research method used is a normative method employing a conceptual approach and a legal framework approach. The conclusion of this study is that oversight of the formation of regional regulations through harmonization, evaluation, and facilitation constitutes preventive oversight, implemented by analyzing the consistency or alignment between regional regulation drafts and higher-level legislation, as well as by examining the drafting techniques used. All three conduct analysis or assessment to evaluate the conformity of the regional regulation draft with higher-level regulations, both in terms of substance or content and in terms of drafting techniques or legal drafting. This can result in the inefficiency of guidance or oversight in the process of establishing regional regulations, particularly for regional regulation drafts from local governments.</i>
Keywords: <i>Special Regional Autonomy, Regional Regulations, Unitary State of the Republic of Indonesia</i>	

Introduction

Indonesia is a unitary state that uses a decentralized policy in its governance. This is stated in Article 18 of the 1945 Constitution. The article states that provincial, regency, and municipal governments control and manage their own affairs according to the principles of autonomy and co-administration. The same article also states that regional governments carry out of unlimited autonomy in the Unitary State of the Republic of Indonesia, except for government affairs that are determined by law as centralized government affairs, as well as the right of regional governments to establish regional regulations and other regulations to implement autonomy and co-administration. Regional autonomy is a form of decentralization policy implementation. However, decentralization is still apparent in the Indonesian government, where governors as provincial heads still serve as representatives of the central government.

As a unitary state, all regional legal instruments must be formulated in accordance with higher-level national laws. The 1945 Constitution states that the authority of regions to control

and manage their affairs is based on the principles of autonomy and co-administration. To some extent, it's meant to guarantee the freedom/independence of regions to control their affairs. However, it doesn't mean that regions can freely create laws without referring to the national law system. Regulations regarding the authority of regions to control and manage their affairs are contained in the Regional Government Law as the legal framework for the administration of regional government. This law also regulates the guidance and supervision carried out by the central government of the administration of regional government affairs. Guidance and supervision are carried out to ensure that the implementation of regional autonomy is in accordance with the objectives of the legislation.

Jakarta, as the capital city, has been designated as the central government area since the era of Batavia by the Dutch government. This designation was continued by the Indonesian government since independence until the present day. Jakarta, as the capital city, serves as the center of government and also the location of foreign diplomatic representatives in Indonesia, making it necessary to strengthen the efficiency of the Jakarta government. The authority held by Jakarta as a result of administrative asymmetry does not reflect authority for equitable welfare distribution or recognition of its regional customs and culture. The special authority granted to Jakarta constitutes a difference from the regional government structure of other autonomous regions in Indonesia. This is a means to enhance the effectiveness of Jakarta's regional government, which serves as the capital city and the location of foreign diplomatic representatives.

All special regions in Indonesia have the same form of government as other regional governments in Indonesia. There are no differences in the structure of government. However, there are differences in the implementation of regional government from the provincial level to the municipal/regency level in the Special Capital Region of Jakarta. All other special regions in Indonesia, including Aceh, Papua, West Papua, and Yogyakarta, all implement decentralization from the Governor to the Mayor/Regent, allowing regencies and municipalities under their jurisdiction to operate as autonomous regions with full autonomy. In the Special Capital Region of Jakarta, the municipality/regency within its territory is a decentralized entity under the Governor, meaning regional autonomy only applies at the provincial level. The municipality and regency within Jakarta are not autonomous regions.

The authority held by the special regional governments mentioned above. This special authority is compared to the authority of other autonomous regions in the relevant country. The authority of regional governments in special regions in Indonesia is not significantly different from other regional governments in general, which are the result of decentralization. However, it is important to consider the authority of Aceh to implement Qanun or Islamic law in its territory, as well as the authority of the Jakarta government to appoint and regulate municipality and regency governments within its territory.

In explicit terms, the Regional Government Law grants authority to the Ministry of Home Affairs and the Governor, as representatives of the central government, to revoke Regional Regulations and Head of Regional Government Regulations that contradict higher-level laws and regulations, public interest, and morality. The revocation of a regional regulation is a form of executive preview oversight of regions, which is derived from the central government's authority to supervise the administration of regional governments within the framework of the Unitary State of the Republic of Indonesia.

Based on this authority, in 2016, the government revoked 3,143 regional regulations or regional head regulations that were deemed by the central government to be contrary to higher-ranking laws and regulations. In detail, out of the 3,143 regulations that were revoked, 1,267 were Provincial/Regency/Municipal Regulations or Regional Head Regulations revoked by governors;

1,765 were Provincial/Regency/Municipal Regulations or Regional Head Regulations revoked by the Ministry of Home Affairs; and 111 were Ministerial Regulations revoked by the Ministry of Home Affairs. The impact of the inconsistency and lack of organization of regulations at the central level is to increase the likelihood of the issuance of regional regulations that are also inconsistent with the higher-level regulations. Therefore, the evaluation of regulations deemed inconsistent shouldn't only be directed at inconsistent regional legal instruments but also at the central government.

The importance of organizing regulations at the central government level is intended to reduce confusion and misperceptions by regional governments in establishing further regulations in regional regulations. Based on the previously explained, particularly regarding the authority of special regional governments, this study will discuss two main issues: first, how is the regulation of special regional autonomy authority structured in the unitary state of the Republic of Indonesia, and second, how is the oversight of the establishment of special regional autonomy authority carried out through harmonization, evaluation, and facilitation.

The objective of this research is to understand the relationship between the central and regional governments, which is an important issue because it relates to the balance of power and equitable distribution of welfare. The relationship between the two is also closely related to the form of the state itself. This paper aims to provide an analysis of regional autonomy, special autonomy, and special regions in Indonesia based on the principles of a unitary state so that it can serve as a basis for evaluation in the future of Indonesia's constitutional life towards a more effective direction.

Literature Review

Central Government

Law No. 23 of 2014 on Regional Government, which was recently enacted, defines the government as the President of the Republic of Indonesia, holding the executive power of the State of the Republic of Indonesia as referred to in the 1945 Constitution. The President, who holds the executive authority in accordance with his powers under the 1945 Constitution, aligns with Indonesia as a republic. The 1945 Constitution itself regulates the presidential institution with a total of 17 articles and is inseparable from various other regulations related to the presidential institution, such as state ministries and provisions regarding the Indonesian National Armed Forces and the Indonesian National Police. In Indonesia, the presidential institution as the administrator of the presidential system of government has a single executive. The vice president and ministers are assistants to the president and are considered to be part of the president's activities.

The central government will focus on the president as the head of the executive branch rather than on a government system that includes the legislative branch, namely the People's Consultative Assembly, the House of Representatives, and the Regional Representative Council. Therefore, this study discusses the relationship between the regional government and the central government as the relationship between the regional government and the president.

Regional government

Regional government is a component of government on a autonomous region. Autonomous regions refer to the implementation of the transfer of governmental authority or the decentralization of authority from the central government to regional governments. Law No. 23 of 2014 on Regional Government states that an autonomous region is a legal community with defined territorial boundaries that has the authority to control and manage government affairs in

accordance with the aspirations of the community within the system of the Unitary State of the Republic of Indonesia.

Autonomous regions in Indonesia is established based on the law of formation of the region. Autonomous regions in Indonesia are divided into provinces, regencies, and municipalities, each with its own autonomous government. Provinces are headed by governors, municipalities by mayors, and regencies by regents. Similar to the central government. In this study, the local government will focus solely on the relationship between the executive branch at the regional level governors, mayors, or regents and the president as the head of the executive branch at the national level. In accordance with the 1945 Constitution, autonomous regions, provinces, municipalities, and regencies have Regional People's Representative Councils as representatives of the community in regional government. However, this study focuses only on the relationship between the executive and the executive, except in several special regions that are the main focus of this study on regional autonomy.

Regional Autonomy

Regional autonomy is the right, authority, and obligation of regional autonomy to control and manage its own government affairs and public interests in accordance with laws and regulations. Regional autonomy is clearly stated in Article 18 of the 1945 Constitution. This regulation is a form of decentralization with the aim of equitable welfare in Indonesia. Regional autonomy is granted to autonomous provinces and autonomous municipalities and regencies. Regional autonomy is the authority to formulate policies (regulate) and implement (administer) based on self-initiative. Jimly Asshidiqie states that, in principle, regional autonomy policies are implemented by decentralizing authorities that have previously been centralized under the central government.

Autonomous Regions

An autonomous region is a legal community with defined boundaries that has the authority to control and manage regional government affairs and community interests based on its own initiative and the aspirations of the community within the unitary state of the Republic of Indonesia. As mentioned above in the explanation of regional autonomy, autonomous regions in Indonesia are divided into provinces, municipalities, and regencies.

Decentralization is also often referred to as autonomy. In short, autonomy is the authority to establish and implement policies based on self-initiative. The implementation of regional autonomy is equivalent to regional government, which is government from, by, and for the people in a part of a country's territory through local government institutions that are formally separate from the central government. Article 1 and the explanation of Article 18 of the 1945 Constitution serve as a limitation on regional autonomy in Indonesia, stating that autonomous regions are not states.

Authority of Special Autonomous Regions

There are two special regions in Indonesia that are not included in the term "special regions," namely the Special Capital Region of Jakarta and the Special Autonomous Region of Papua. These special regions have their own regulations that differ from other autonomous regions in Indonesia in relation to their history and role in the Indonesian state. The Special Capital Region of Jakarta is regulated by Law No. 29 of 2007 on the Government of the Special Capital Region of Jakarta Province. Additionally, the other region with special autonomy is Papua, which is now divided into Papua Province and West Papua Province, both of which have the same special autonomy status. Papua and West Papua are governed by Law No. 21 of 2001 on Special Autonomy for the Province of Papua, which was amended by Government Regulation in Lieu of Law No. 1 of 2008.

The authority of special autonomy regions is an authority that is unique to those regions. This authority is specifically granted to regions that have been given special or privileged status based on certain considerations, which are not shared by other autonomous regions. This authority is the result of asymmetric decentralization, thereby creating a unique character within the life of the region and the implementation of regional autonomy within a country. Charles D. Tarlton, as quoted by Ronald L. Watts, further states that:

"In these relationships he defined symmetry as "the level of conformity and commonality in the relations of each separate political unit of the system to both the system as a whole and to the other component units." In other words, it relates to the uniformity among member states in the pattern of these relationships within a federal system. He went on to suggest that in an ideal symmetrical federal system each state would maintain essentially the same relationship to the federal authority, the division of powers between the federal and state governments would be virtually the same in every case, representation in the federal government would be on the same basis for each component polity, and support of the activities of the federal government would be equally distributed. Asymmetry in a federal system, on the other hand, refers to a situation where the diversities within the larger society find political expression through component governments "possessed of varying degrees of autonomy and power." A component unit would have about it "a unique feature or set of features" which distinguishes its relationship to the system as a whole, to the federal authority, and to each other state"

This opinion states that a symmetrical relationship is the level of position and equality of different political units in relation to the system as a whole and to each other." Meanwhile, an asymmetrical relationship refers to a situation where there are differences in the components of government that "have different degrees of autonomy and authority." The government components in question have their own uniqueness or a separate system that distinguishes the relationship between these components and the overall system, federal government, and other regional governments.

Methodology

The types of data used in this research are primary and secondary data. In this research, the primary data used are interviews with experts on constitutional law and regional autonomy. The secondary data used in this research include the primary legal materials used are the 1945 Constitution, laws, and other related regulations. The secondary legal materials used are literature on constitutional law and regional government law as well as political science. Also tertiary legal materials such as the Great Dictionary of the Indonesian Language, encyclopedias, cumulative indexes, and so on were used. The type of research used is legal-normative research. It is conducted on reliable legal materials, namely the applicable constitution and regulations, both those currently applicable and those no longer applicable, related to regional autonomy and special autonomy in Indonesia and in other unitary states used as comparisons to illustrate the extent of special autonomy authority in Indonesia compared to other unitary states. In these countries, there are regions that have been granted special authority. These countries are expected to provide an overview of the existence of special autonomy with different economic conditions and political climates, thereby providing a broad and comprehensive overview of the regulation of special autonomy authority in a unitary state as a basis for discussing its application in Indonesia. This research has the following types:

- a. Descriptive, where the phenomenon being studied is the existence of special regions and special autonomy in a region.
- b. The state is related to its form of government. This research is monodisciplinary. It is a legal study focused on the field of law, particularly constitutional law.

Discussion

1. Regulation of the authority of special regional autonomy in the unitary state of the Republic of Indonesia

1.1. The Relationship between the Authority of the Central and Regional Governments

The relationship between the authority of the central government and regional governments can indicate the independence of a region, particularly in regions with special authority. This relationship can also be an aspect that distinguishes a region with special status. The relationship between the central government and regional governments can be seen in the form of government implementation and its alignment with the authority and special status of the region, as well as the division of government affairs with the relevant region.

Indonesia is a unitary state that uses a decentralized policy in its governance. This is stated in Article 18 of the 1945 Constitution. The article states that provincial, regency, and municipal governments regulate and manage their own affairs according to the principles of autonomy and co-administration. Furthermore, the same article states that regional governments carry out unlimited autonomy, except for government affairs determined by law as central government affairs, and regional governments have the right to establish regional regulations and other regulations to implement autonomy and co-administration duties. Regional autonomy is a form of decentralization policy implementation. Nevertheless, decentralization is still apparent in the Indonesian government, where governors as provincial heads still serve as representatives of the central government.

The granting of special status and authority to certain regions in Indonesia is part of a decentralization policy known as asymmetric decentralization. This asymmetric decentralization is implemented through legislation and recognized by the 1945 Constitution. The policy of granting special status is still part of the general policy of governance that is also applied to other regions. The relationship between special regions in Indonesia and the central government is the same as the relationship between other autonomous regions in Indonesia and the central government. This is due to the fact that the root of the policy of granting special status is not the main focus of the special status granted.

All special regions in Indonesia, namely the Special Capital Region of Jakarta, the Special Autonomous Regions of Papua and West Papua, the Special Region of Yogyakarta, and the Special Region of Aceh, do not have any special advantages in the division of government affairs in general. The division of government affairs between the central government and regional governments is generally the same as the division in special regions in Indonesia. There are no specific special provisions in this regard. In fact, there are some government affairs in these special regions that are not found in other regions, such as Aceh, which has additional government affairs related to the implementation of Islamic law. However, this is a logical consequence of the implementation of Islamic law in Aceh and is not a prominent special provision. The same applies to other special regions in Indonesia. The division of government affairs is regulated by Law No. 23 of 2014 on Regional Government.

This law divides government affairs into absolute government affairs, which are the authority of the central government; concurrent government affairs, which are divided between the central government and provincial and regency/municipal governments and form the basis for the implementation of regional autonomy; and general government affairs, which are the authority of the President as the head of government. Concurrent government affairs are further divided into mandatory government affairs and optional government affairs. Mandatory government affairs are further divided into mandatory government affairs related to basic services and mandatory

government affairs not related to basic services. The division of concurrent government affairs is based on the principles of accountability, efficiency, and externalities, as well as national strategic interests. The mapping of optional government affairs is carried out to determine regions that have optional government affairs based on potential, labor absorption projections, and land utilization.

1.2. Regulations on Special Autonomous Regions in the Perspective of a Unitary State

1.2.1. Regulations on Regional Autonomy Authority

Regarding regional government authority, Kranenburg, states that regions in a unitary state do not have constituent *pouvoir* or the authority to form their own constitution. This is complemented by C.F. Strong's theory, which states that in a unitary state, the highest legislative authority lies with the central government. Thus, it can be said that in an ideal unitary state, regional governments do not have the authority to form a constitution, nor do they have legislative authority.

Legislative authority remains with the central government. The authority held by these special regions remains under the authority of the central government, including in the form of regulations. Indonesia is an ideal country according to this theory. Neither the Special Capital Region of Jakarta, the Special Autonomous Region of Papua, the Special Region of Yogyakarta, nor the Special Region of Aceh have the authority to form their own constitutions, nor do they have legislative authority. Legislative authority is still centralized in the central government parliament of Indonesia. Regional regulations, which are the authority of the regional government to issue, are still under the central government's legislation and are not allowed to contradict the law.

Government and Regional Government Authority

The relationship between the central government and regional governments in an ideal unitary state can be seen in the opinion of Eko Prasodjo, who states that in a unitary state, regional governments are formed by the central government through laws, so they can be expanded, reduced, or even dissolved. Jimly Asshidiqie, also stated that regional power in a unitary state is delegated by the central government as the original holder of power, which is clearly defined. Therefore, in a unitary state, the central government has primary power and can manage its regions, including expanding, reducing, and even dissolving them.

Indonesia regulates its four regions specifically through laws that are the output of the central government's legislative branch. Thus, the central government of Indonesia can regulate the organization of its regions, including expanding, reducing, and dissolving them. This relationship is also a policy relationship between the central government and regional governments, namely decentralization. The granting of special authority to special regions in Indonesia is in line with the decentralization policy adopted in accordance with the 1945 Constitution.

Regarding decentralization, Benjamin Hoessein, states that decentralization is the establishment of autonomous regions and the transfer of certain governmental authority by the government. Then, Brian C. Smith's theory, states that decentralization is regional power granted through legislative provisions to a regional government or allocated by the central government and regional governments based on the constitution.

2. Supervision of the establishment of special regional autonomy through harmonization, evaluation, and facilitation

2.1. Regulation of Problematic Regions and Revocation of Regional Regulations as a Form of Supervision

2.1.1. Revocation of Regional Regulations as a Form of Supervision of Regional Regulations by the Central Government through the Ministry of Home Affairs

The Ministry of Home Affairs, as the coordinator of supervision over the implementation of regional government, has an important role in providing guidance and supervision over legal instruments issued by regional governments. As explained in the previous chapter, the Ministry of Home Affairs has two forms of oversight over regional regulations: preventive oversight (executive preview) and repressive oversight (executive review). The repressive oversight or executive review conducted by the Ministry of Home Affairs involves revoking regional regulations deemed to contradict higher-level laws, public interest, or morality. This authority is derived from the Regional Government Law, which regulates that the central government, in this case the Ministry of Home Affairs and the governor, may revoke regional regulations if the central government deems such regulations to be inconsistent with higher-ranking laws, public morality, and/or the public interest. One form of repressive oversight carried out by the Ministry of Home Affairs and a significant aspect of overseeing regional regulations when the Ministry of Home Affairs carries out mass revocations of regional regulations enacted by regional governments.

In the explicit way, the Local Government Law grants authority to the Ministry of Home Affairs and the governor, as the representative of the central government, to revoke local regulations and regional head regulations that are contrary to higher laws and regulations, the public interest, and public morality. The revocation of a regional regulation is a form of executive oversight of regions, arising from the central government's authority to oversee the administration of local governments within the framework of the Unitary State of the Republic of Indonesia.

Based on this authority, in 2016 the government revoked 3,143 regional regulations or regional head regulations that were deemed by the central government to be in contrary to higher-ranking laws and regulations. In detail, out of the 3,143 regulations revoked, 1,267 were provincial/recency/municipal regulations revoked by governors; 1,765 were provincial/recency/municipal regulations revoked by the Ministry of Home Affairs; and 111 were ministerial regulations revoked by the Ministry of Home Affairs.

When examined by the regulatory topics of the revoked regional regulations, 1,066 were related to fees, 224 to taxes, and 179 to licensing. The revocation of these regional regulations was carried out because their implementation was deemed to hinder economic growth and prolong bureaucratic processes. On average, the revoked local regulations were those related to licensing and investment regulations. The revocation of the 111 Ministerial Regulations is also linked to the economic policy package issued by President Jokowi, as stipulated in the Presidential Decree.

Additionally, between November 2014 and May 2015, the Ministry of Home Affairs revoked 139 regional regulations. The revocations were carried out due to the regulations being deemed contrary to laws as higher-ranking legislation or the principles of the Unitary State of the Republic of Indonesia. One of the revoked regulations was related to prohibiting women in Aceh from leaving their homes at night. In addition, as of March 2010, there were 1,024 regional regulations submitted by regional governments for evaluation that had been revoked. The reason for the revocation was that the regional regulations in question were deemed to incur high economic costs, thereby hindering the pace of investment in the region.

As a result of the mass revocation of these regional legal instruments, 47 regional heads affiliated with the Association of Indonesian Regencies filed a judicial review with the Constitutional Court regarding Article 251 of the Regional Government Law, which grants the Governor and the Ministry of Home Affairs the authority to revoke provincial and regency/municipal regional regulations. In 2017, through Decision No. 137/PUU-XIII/2015, the Constitutional Court revoked the provision granting governors the authority to revoke regency/municipal regulations. Furthermore, through Decision No. 56/PUU-XIV/2016, the Constitutional Court also revoked the provision granting the Ministry of Home Affairs the authority to revoke provincial regulations.

Some of the legal considerations used by the Constitutional Court in its decisions were:

- 1) Granting the authority to revoke regional regulations to the Ministry of Home Affairs and the Governor was deemed contrary to the principle of the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution.
- 2) Affirming the Supreme Court as the sole institution authorized to review regulations under the law, in accordance with Article 24(1) of the 1945 Constitution.
- 3) The assessment in revoking a regional regulation on the basis of violating public morality or public interest lies within the jurisdiction of the Supreme Court as the judicial branch. Additionally, revoking a regional regulation through an executive decision is deemed inappropriate, as it does not align with the principle of the hierarchy of regulations adopted in Indonesia. A decision in the form of a *beschikking* cannot revoke a regency/municipal regional regulation in the form of a regulation or *regeling*.
- 4) The potential for dualism in court decisions between the State Administrative Court decisions that examine the legality of the governor's/Ministry of Home Affairs' decisions and the Supreme Court's decisions on the substance/content of the same case, but with different legal outputs. The Constitutional Court considers that this could create legal uncertainty that violates Article 28D paragraph (1) of the 1945 Constitution.

Therefore, it can be concluded that, based on the two Constitutional Court judgments, the authority to revoke regional regulations is now delegated to the Supreme Court, or in other words, the only institution authorized to revoke regional regulations is the Supreme Court. Consequently, the supervisory function over regional regulations carried out by the Ministry of Home Affairs as the central government is focused on preventive oversight during the formulation of regional regulations (specifically, regional regulation drafts). As for the form of repressive oversight that can be carried out by the central government (as the executive institution) over regional regulations that are already applicable but are in opposition, whether it be a opposition between legal norms or a authority conflict, it is through mediation. Mediation is an effort to resolve regional regulations that are in opposition outside of court. Mediation is carried out by the Director General of Legislation, Ministry of Law and Human Rights.

2.1.2. Supervision Regulations by the Ministry of Home Affairs

Supervision of regional government administration is aimed at ensuring that regional governments run in accordance with applicable plans and regulations. Supervision of regional governments is carried out by the central government, including:

- 1) General supervision of the implementation of regional government affairs; and
- 2) Supervision of regional legal instruments.

Law No. 23 of 2014 on Regional Government is the legal basis for the implementation of regional government, including supervision of the implementation of regional government. The central government's guidance and supervision of local governments are carried out to ensure that

the implementation of regional autonomy is in accordance with the objectives established by laws and regulations. The existing guidance and supervision by the central government are due to the fact that, as a unitary state, the central government retains responsibility for the administration of regional governments. Over time, the Local Government Law has been amended several times, including through:

- 1) Law No. 2 of 2015 on the Declaration of Government Regulation in Lieu of Law No. 2 of 2014 on Amendments to Law No. 23 of 2014 on Regional Government into Law;
- 2) Law No. 9 of 2015 on the Second Amendment to Law No. 23 of 2014 on Regional Government;
- 3) Law No. 17 of 2019 on Water Resources;
- 4) The Government Regulation No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic or in the Context of Facing Threats that Endanger the National Economy and Financial System Stability; and lastly
- 5) Law No. 11 of 2020 on Omnibus Law on Job Creation.

The central government's guidance and supervision of regional governments is regulated in Article 373 of the Regional Government Law. The central government provides guidance and supervision of the administration of provincial governments. Meanwhile, for regency/municipal governments, supervision is carried out by the governor as the representative of the central government. Such guidance and supervision are coordinated by the Minister of Home Affairs. In carrying out the authority to manage the affairs of the regional community, regional governments establish regional regulations. Regional regulations are also a main pillar in the realization of regional autonomy. The characteristic of regional regulations is regulatory in nature, governing the relationship between the regional government, the regional community, and regional stakeholders such as the business world. Therefore, regional regulations are an important instrument in improving regional welfare and economy.

Basically, regional autonomy is developed in order to maintain the integrity of the nation and state as well as to encourage the implementation of democracy between the central and regional governments. Granting authority to regions to create legal instruments at the regional level is also a manifestation of the development of the national legal system. Thus, regional legal instruments cannot be separated from national legal policy and will always be related to it. As part of the national legal subsystem, regional legal instruments must be based on higher-level laws and regulations.

2.1.3. Supervision by the Ministry of Law and Human Rights

As a unitary state, the central government is required to ensure the alignment of regional legal instruments with those of the central government. Regional legal instruments cannot contradict higher-level laws and regulations, as it is necessary for regional legal instruments to be created within the scope of a unitary state. One form of supervision carried out by the central government to ensure that regional regulations are effective and aligned with higher-level laws and regulations is through a harmonization process. The harmonization of a draft regulation can serve as a preventive measure to ensure that the local regulation is effective and does not conflict with higher-level regulations.

The harmonization of laws and regulations is a requirement in order to achieve a national legal system, both vertically and horizontally. Vertically, the Regional Office of the Ministry of Law and Human Rights has a role as a legal advisor and coordinator in the armonization and synchronization of regional laws and regulations. Article 58 Paragraph (2) of Law Number 12 of 2011 concerning the establishment of Legislation (UUP3), as amended by Law Number 15 of

2019, emphasizes that for regional regulation drafts originated from local governments, harmonization, finalization, and consolidation of the concept of the Regional Regulation Draft shall be carried out by the ministry/agency responsible for government affairs in the field of the establishment of legislation. In the case where a specialized ministry/agency responsible for government affairs in the field of the establishment of legislation has not yet been established, the tasks and functions of harmonization, consolidation, and strengthening of the concept of the Regional Regulation Draft are still carried out by the Ministry of Law and Human Rights.

The harmonization of legislation is a process of aligning the substance and drafting techniques of a legislative drafters to create legislation that is integrated into the national legal system. Harmonization is carried out by the Legislator for legislative drafters formulated at the regional level. Harmonization is carried out on:

- 1) Provincial Regional Regulation Drafts;
- 2) Regency/municipal Regional Regulation Drafts;
- 3) Governor Regulation Drafts;
- 4) Regent/Mayor Regulation Drafts;
- 5) Village Regulation Drafts or equivalent; and
- 6) Village Head Regulations or equivalent regulations.

To accommodate the above amendments to the UUP3, the Ministry of Law and Human Rights issued Ministerial Regulation No. M.HH-01.PP.04.02 of 2019 on Procedures and Processes for Harmonization, Finalization, and Consolidation of Regional Regulation Drafts. The stages of harmonization, consolidation, and consolidation referred to are as follows:

- 1) The initiator or regional government submitted a request for harmonization to the Head of the Regional Office of the Ministry of Law and Human Rights, accompanied by the required documents, including an academic paper, a decision on the formation of an inter-regional committee, a regional regulation draft that has been approved by all members of the inter-regional committee, and permission to form a regional regulation draft in cases where the draft is not included in the regional regulation program.
- 2) Administrative review. This review is conducted by the legal and human rights division of the Regional Office of the Ministry of Law and Human Rights, and is completed within a maximum of 5 (five) days from the date the application is received.
- 3) Analysis of the regional regulation draft conducted by the legislative drafters of the Ministry of Law and Human Rights regional office in order to examine the clarity of the substance and technical aspects of the regional regulation draft.
- 4) Harmonization meeting to achieve agreement and consensus on the regional regulation draft, involving representatives from the regional apparatus that submitted the harmonization request, related regional apparatus, relevant vertical agencies, and researchers or experts from universities.
- 5) Approval signatures by the Head of the Regional Office of the Ministry of Law and Human Rights, followed by the submission of the approved draft regional regulation to the provincial and regional/municipal heads, who have obtained approval signatures on each page of the regional regulation draft from the representatives of the harmonization meeting participants, as well as the consolidation and finalization of the regional regulation draft conducted by the Regional Office of the Ministry of Law and Human Rights.
- 6) A letter of completion of harmonization from the Director General of Legislation or the head of the Regional Office of the Ministry of Law and Human Rights stating that it has been synchronized with legislation and court decisions and can be followed up to the next stage. This letter of completion of harmonization is submitted to the Minister of Law and Human Rights and the Director General of Legislation as a copy or report.

2.2. Binding Force of Harmonization, Evaluation and Facilitation

2.2.1. Obligation of Regions to Through Facilitation/Evaluation Stages and Facilitation/Evaluation Results as Basis for Verification

Evaluation, as a form of oversight conducted by the Ministry of Home Affairs, is a mandatory stage in the formulation of a Regional Regulation. As stated in Article 245 of the Regional Government Law, a draft Regional Regulation that has been determined must undergo evaluation by the Ministry of Home Affairs before being enacted. Similarly, following the amendment of PM 80/2015, facilitation is a mandatory stage in the formulation of a Regional Regulation. This is emphasized in Article 88 of Regulation No. 120/2018, which states that guidance in the form of facilitation of regional regulation drafts is mandatory, except for those that have already been evaluated. Therefore, local governments cannot overlook the evaluation or facilitation stages in the process of forming regional regulations.

The legal implication of non-compliance with the evaluation or facilitation stages for a draft regional regulation is that the regional regulation will not be granted a Noreg law. This is due to the fact that the results of the evaluation or facilitation are the basis for the Ministry of Home Affairs to conduct a verification, which is the comparison of the results of the facilitation and evaluation with the regional regulation before granting a Noreg law. After verification of the revised regional regulation draft, which is not in accordance with the results of the evaluation and facilitation, the regional regulation draft will not be granted a Noreg.

As referred to in the explanation above, it is apparent that the supervision carried out by the Ministry of Home Affairs in the form of evaluation and facilitation is mandatory. Similarly, the results of such supervision are also binding on local governments. Therefore, even though it is not explicitly regulated, regional governments are required to revise regional regulations that have been evaluated and facilitated, in accordance with the results of the evaluation and facilitation. In addition, if a regional regulation is enacted without going through the evaluation and facilitation stages, it can be considered legally invalid due to formal defects in the process of its formation.

2.2.2. Binding Power of Harmonization in the Context of Preventive Oversight Conducted by the Ministry of Law and Human Rights

The Ministry of Law and Human Rights' authority to conduct harmonization is regulated in the P3 Law, specifically for regions regulations draft from local governments. When examining Article 58(1) of the P3 Law before and after the amendment, the authority of the Ministry of Law and Human Rights to harmonize regional regulations from local governments becomes more explicit. Unlike the authority for evaluation and facilitation carried out by the Ministry of Home Affairs, there is no phrase “must” or “shall” in the provisions regarding harmonization conducted by the Ministry of Law and Human Rights. Furthermore, this harmonization provision only applies to regional regulation drafts from local governments, not to those from regional legislative councils.

There are no implementing regulations that further regulate the harmonization authority of the Ministry of Law and Human Rights. Therefore, the Ministry of Law and Human Rights issued Ministry of Law and Human Rights Official Letter 2019 as a guideline for the implementation of harmonization by the Regional Offices of the Ministry of Law and Human Rights. The result of the harmonization process conducted by Ministry of Law and Human Rights is a harmonization completion letter from the Director General of Legislation or the Head of the Regional Office of Ministry of Law and Human Rights stating that the regional regulation draft is synchronized, which is submitted to the Minister of Law and Human Rights and the Director General of Legislation as a reference or report.

From the results of this harmonization, there are no further actions that can ensure that local governments refine the draft regional regulations that have been harmonized. Unlike harmonization, regional regulations that have been evaluated and facilitated are re-verified based on the results of the evaluation and facilitation. Therefore, it is common for regional governments to view harmonization as merely an administrative process or a “mere requirement.” In this case, the researcher observes that there is a difference in the binding force of harmonization conducted by the Ministry of Law and Human Rights and evaluation and facilitation conducted by the Ministry of Home Affairs. Especially since the results of harmonization do not have binding force as a basis for local governments to make improvements to the harmonized draft regional regulations.

2.3. Central Government Oversight to Create Harmonious Regional Regulations

2.3.1. Dualism in the Regulatory System Related to the Formation of Regional Regulations in Legislation

As part of the national legal system, legislation aims to create national laws that are in line with Pancasila and the 1945 Constitution. Legislation in the Indonesian legal system is structured in a hierarchy, often referred to as the hierarchy of legislation. The hierarchy of legislation is defined as the classification of each type of legislation based on the principle that lower-level regulations do not contradict higher-level regulations. This is in line with the theory of hierarchical legal norms or *stufenbau* theory, as well as the legal principle of *lex superior derogat legi inferiori*.

According to Enny Nurbaningsih, as a unified national legal system and to ensure the creation of good legislation, principles are needed to guarantee that the hierarchy of legislation aligns with these principles and that both the process and content of legislation remain within the scope of the authority of its drafters. Currently, regulations regarding the formation and hierarchy of legislation in Indonesia are contained in the P3 Law. Regulations regarding the form of legislation aim to encourage greater legal consistency, which is expected to become a technical reference for the formation of all legislation, including through harmonization.

In order to achieve legality, as well as to guarantee legal certainty and protection, harmonious legislation is a necessity. This includes local regulations as part of the national legal system, where regional regulations as legal instruments formed by the regions must be harmonious or in line with higher legislation. Therefore, the harmonization process for regional regulations during their implementation is a necessity, ensuring that the regional regulations to be enacted are aligned or harmonized, both in terms of their technical formulation and their content, with higher-level regulations.

In the P3 Law, both prior to and after the amendment, it is stipulated that every draft regional regulation must be harmonized before being enacted. As previously explained, there has been a change in the agency/institution responsible for harmonizing draft regional regulations from local governments, which was previously coordinated by the local government's legal bureau and is now carried out by the regional office of the Ministry of Law and Human Rights. However, despite being clearly stipulated in the P3 Law, in practice, there are still regions that overlook this harmonization process. One reason for this is that the “harmonization” process is also carried out at the facilitation or evaluation stage by the Provincial Government (Governor). In some cases, the harmonization process conducted by the regional office of the Ministry of Law and Human Rights is merely “overlooked” as an administrative formality, and the results of the harmonization are not utilized as a basis for refining the regional regulation draft.

Referring to the previous discussion, when comparing the elements that are analyzed/reviewed in the harmonization process with those in the facilitation/evaluation process,

it cannot be ignored that there are similarities in the form and type of analysis conducted between these stages. This, according to the researcher, is the main reason why regions often bypass the harmonization process. Additionally, the lack of binding force from the harmonization results is another factor contributing to the ineffectiveness of the harmonization process conducted by the Regional Office of the Ministry of Law and Human Rights.

The biggest factor causing this issue is the dualism in regulations governing the formation of local regulations. The first regulatory regime is the provisions of the P3 Law as the legal framework for the entire legal system in Indonesia, which, sectorally, is part of the government's responsibilities in the law field. The second regulatory regime is the Local Government Law, which is the legal umbrella for the administration of regional government, which is part of the domestic affairs of the government. Both regulations authorize two different institutions to supervise the formulation of regional regulations, with the same objective of creating harmonious regional regulations.

Another issue is the enactment of the Omnibus Law, which amended Article 251 of the Local Government Law, which then stipulates that:

"In order not to contradict the provisions of higher laws and regulations, the principles of forming laws and regulations, the principles of the substance of laws and regulations, and court decisions, the drafting of regional regulations and regional head regulations shall be coordinated with the ministry in charge of domestic government affairs and involve experts and vertical agencies in the region that carry out government affairs in the field of regulation formation."

However, there is no explanation or implementation provisions for this regulation. As a result, the meaning of "coordination" in the regulation is uncertain, leading to questions about whether this regulation is a new process/stage in the formation of regional regulations or part of the harmonization stage.

2.3.2. Strengthening Preventive Oversight and the Role of Drafters as Efforts to Prevent Inconsistencies in Regional Regulations

Central government oversight of local government administration is a consequence of the unitary state, to maintain unity or as a form of binding unity. Central government oversight can be categorized into two forms: preventive oversight and repressive oversight. Both forms of oversight can also be considered negative oversight as it only prevents actions already taken by the region, whether such actions have legal consequences or not.

Following the issuance of two Constitutional Court decisions in 2017 revoking the authority of the Ministry of Home Affairs/governors to revoke a regional regulation that contradicts higher-level legislation, public interest, and morality, central government oversight of regional regulations has been focused on preventive oversight. One of the measures taken by the central government to strengthen preventive oversight is to require a facilitation stage for regional regulations that have not been evaluated. This is expected to ensure that the content and drafting of regional regulations to be enacted are in line with higher laws and regulations.

If the process of regional regulation formation systematically, the revocation of regional regulations at the downstream stage should not occur if the central government effectively carries out its preventive oversight function. In other words, strengthening the preventive oversight function carried out by the central government in the formation of regional regulations can minimize the issuance of regional regulations that are inconsistent with higher-level laws and regulations, public interest, morality, and regional regulations that are disharmonious.

When compared to repressive oversight, which involves the revocation of a regional regulation that is inconsistent with higher-level legislation, public interest, or morality, preventive

oversight, with its preventive nature, can have a more positive impact. Repressive oversight through the revocation of regional regulations can result in the nullification of all legal consequences arising from such provisions, thereby causing legal uncertainty.

Regarding the revocation of the central government's authority to revoke regional regulations, the Constitutional Court's decision provides a legal consideration that, logically, oversight by the central government over the regulatory authority of regions is better carried out through preventive oversight or “preview” before regional regulations are enacted. The Constitutional Court's considerations in its decision are as follows:

“From the perspective of a unitary state (eenheidstaat), it is reasonable to understand that the central government has the authority to oversee subordinate units. This means that the central government, within the context of the Republic of Indonesia based on the 1945 Constitution, can be deemed to have the authority to supervise provincial governments or district and municipal governments. Likewise, provincial governments may also be granted certain authority to oversee the operations of regency and municipal governments in the area of regulation. The oversight or control exercised by the higher-level government includes, for example, the authority to conduct an 'executive abstract preview,' not a 'review' of regional regulations that are already in effect and binding on the public. If the regional regulation is already binding, then it should be reviewed by a judicial institution as a third party that is not involved in the process of forming the regional regulation in accordance with the system adopted and developed under the 1945 Constitution, namely the “centralized model of judicial review,” not the “decentralized model.” as stated in Article 24A paragraph (1) and Article 24C paragraph (1) of the 1945 Constitution.”

Apart from the issue of human resources, it has been discussed previously that there are also normative issues. Inconsistent regulations at the central level are also a factor contributing to the low quality of regional legal instruments. Before expecting an improvement in the quality of regional legal instruments, regulations at the central level should be improved first. Not only regulations containing provisions on the supervision of the formulation of regional regulations, but other central regulations, such as other ministerial regulations, also need to be improved to provide clarity for regions in drafting their implementing regulations.

Furthermore, there is the issue of sectoral ego, where in drafting provisions, the Ministry of Law and Human Rights focuses on the formulation of legislation in general, while the Ministry of Home Affairs focuses on the administration of regional governments. As a result, both ministries regulate the form of oversight, which essentially has the same function but differs in terms of implementation timing. In practice, the guidance and oversight carried out by both ministries complement each other to create high-quality local regulations if implemented effectively. However, the harmonization results conducted by the regional offices of the Ministry of Law and Human Rights have not yet established a strong legal basis that binds local governments, as local governments still assume that similar reviews will be conducted during the facilitation/evaluation stage. Therefore, many local governments still neglect the harmonization process, or even if they have followed the harmonization process, there is no follow-up action. In fact, this process can assist the Ministry of Home Affairs/governor in facilitating/evaluating by focusing on the content and substance of the regional regulation draft.

Conclusion and Suggestions

Conclusions

Supervision of the formulation of Regional Regulations through harmonization, evaluation, and facilitation represents preventive oversight, implemented by analyzing the consistency or alignment between the regional regulation draft and higher-level legislation, as well as its drafting

techniques. All three involve analysis or review to assess the consistency of the Regional Regulation Draft with higher-level legislation, both in terms of its substance or content and its drafting techniques or legal drafting. This is what can lead to the inefficiency of guidance or oversight in the process of formulating Regional Regulations, particularly for Regional Regulation Drafts from regional governments. However, when compared with other factors, it can be said that the two are different forms of oversight.

If viewed from the perspective of the timing of their implementation, harmonization, evaluation, and facilitation, it is clear that harmonization is carried out during the drafting stage, while facilitation and evaluation are conducted during the discussion stage. Additionally, the objects being oversighted are different. Harmonization is carried out on the initial concept of the regional regulation draft, limited only from the local government. Evaluation is carried out as determined by legislation, such as regional regulation drafts concerning the Medium-Term Regional Development Plan, the Regional Revenue and Expenditure Budget, levies and taxes, spatial planning, and others. Facilitation is only carried out for regional regulation drafts outside of those evaluated.

There are differences in the binding force of each form of oversight in the formulation of Regional Regulations through harmonization, evaluation, and facilitation. Evaluation and facilitation, as forms of oversight conducted by the Ministry of Home Affairs, are mandatory or compulsory stages in the process of formulating Regional Regulations. The mandatory or compulsory nature of these stages is explicitly stipulated in the Regional Government Law and Regulation 120/2018. For regional regulations draft that do not fulfill the results of evaluation or facilitation, it will not be granted a Noreg (registration number). This is due to the results of evaluation or facilitation being the basis for verification by the Ministry of Home Affairs before granting a Noreg for the regional regulation to be enacted.

Meanwhile, in the regulations governing the implementation of harmonization, there is no phrase that explicitly states a requirement or obligation. Harmonization only applies to draft regional regulations originating from the local government, not to those originating from the Regional House of Representatives. Regarding the results of harmonization, there are no further actions that can ensure that the regional government improves the concept of the regional regulation draft that has been harmonized. As a result, harmonization is still considered a “mere requirement,” because there are no legal consequences for regional governments that do not finalize harmonized regional regulations draft.

The central government should strengthen preventive oversight in order to create regional regulations that are harmonious and consistent with higher-level legislation. However, in reality, there are still several issues that can hinder the strengthening of preventive oversight, including, first, dualism in the regulatory regime for the formation of local regulations, which causes uncertainty in the division of authority between the Ministry of Home Affairs and the Ministry of Law and Human Rights in conducting oversight; and second, inadequate human resources, particularly the capabilities and number of designers available in the regions.

Strengthening preventive oversight is necessary, as the revocation of the authority to revoke local regulations held by the Ministry of Home Affairs and governors as representatives of the central government requires the strengthening of preventive oversight over the formulation of regional regulations. The strengthening of preventive oversight in the stages of regional regulation establishment will inherently reduce the issuance of regional regulations that contradict higher-level laws and regulations, public morality, and the public interest.

Suggestion

Several suggestions can be given to this study. First, There needs to be a clear division of supervisory authority in the implementation of harmonization by the Ministry of Law and Human Rights with evaluation/facilitation by the Ministry of Home Affairs. Although in legal terms, harmonization, evaluation, and facilitation are carried out at different times and for different regional regulations, the similarity in the form of analysis and review conducted on a regional regulation can lead to inefficient supervision. Therefore, there should be a clear division of roles between the Ministry of Home Affairs/governor and the Ministry of Law and Human Rights in analyzing the conformity of regional regulations draft with higher laws and regulations. Second, The role of the Ministry of Law and Human Rights (in this case, the regional office of the Ministry of Law and Human Rights) in harmonizing regional regulations draft should be clarified or strengthened. The results of harmonization that analyze compliance from the legal drafting perspective should have binding force to serve as the basis for improving the regional regulation draft being formed. The results of such harmonization should ideally serve as the basis for evaluation or facilitation by the Ministry of Home Affairs, which will focus solely on the content/substance of the regional regulation draft. Third, To support the strengthening of preventive supervision by the central government in the formulation of regional regulations, it is important to improve the regulations governing the formulation of regional regulations, particularly regarding the role of ministries in conducting supervision so that they can serve as guidelines for the effective formulation of regional regulations. Currently, there is still dualism in the regulations governing the formation of local regulations. With the improvement of these regulations, it is expected to provide clear boundaries for the authority of each ministry in conducting guidance and supervision of the formation of local regulations. To support it, the understanding and expertise in the techniques of drafting or legal drafting in particular and law in general need to be maximized.

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