



The Authority of Autonomous Regions in The Formation of Regional Legal Products in The Unitary State of Indonesia System

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ABSTRACT

Indonesia, as a unitary state, adheres to a government system based on the principle of decentralization as mandated in the 1945 Constitution of the Republic of Indonesia. Through decentralization, the state grants autonomy to regions to regulate and manage certain governmental affairs, including the authority to create regional legal products as instruments for regulating regional autonomy. This authority is constitutionally legitimized in Article 18, paragraph (6) of the 1945 Constitution; however, it is not absolute, as it must remain within the framework of the Unitary State of the Republic of Indonesia and the national legal system, which is hierarchical. This research is normative legal research using a statutory, conceptual, and historical approach. The study analyzes the position and limits of the authority of autonomous regions in the formation of regional legal products, as well as the juridical problems that arise in practice. The results of the study indicate that regional legislative authority is a legitimate attribution of authority constitutionally, but it is limited by the principles of the unitary state, the hierarchy of legal regulations, the mechanisms of supervision and guidance from the central government. In practice, the formation of regional legal products still faces juridical problems, such as discrepancies between the material content and regional authority, the weak application of the principles of good legislative process, and the duality of supervision authority and harmonization between the Governor as the representative of the central government in the region and the Regional Office of the Ministry of Law and Human Rights..

Keywords:

Authority;
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INTRODUCTION

Indonesia as a unitary state implements a decentralized governmental system granting significant autonomy to regional governments in managing local affairs (Christianto et al., 2023; Lasatu, 2020; Ozkan et al., 2022). Constitutional foundation for regional autonomy is explicitly regulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, recognizing the existence of provincial and regency/municipal governments possessing authority to regulate and manage their own governmental affairs. In this context, for the implementation of regional autonomy, regional governments and Regional People's Representative Councils (DPRD) are granted the right by the central government to establish regional regulations (Peraturan Daerah/Perda). Such right constitutes a constitutional right explicitly stipulated in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia and is granted for the purpose of carrying out regional autonomy and assistance tasks.

This constitutional mandate is further operationalized through Law Number 23 of 2014 concerning Regional Government, establishing comprehensive legal framework for regional

Commented [A1]: Asri Lasatu, *Urgensi Peraturan Daerah Tentang Program Pembentukan Peraturan Daerah Terhadap Kinerja DPRD*, Jurnal Ilmiah Kebijakan Hukum, Vol. 14, Nomor 2, Juli 2020: 201-222

autonomy implementation including legislative authority (Christia & Ispriyarso, 2019; Christianto et al., 2023; Fanani, 2023; Septiana et al., 2023).

Regional legislative authority constitutes one of the most crucial manifestations of regional autonomy, enabling regions to create legal products responsive to local characteristics, needs, and conditions. Through this authority, regional governments can formulate regional regulations (Peraturan Daerah/Perda) and regional head regulations (Peraturan Kepala Daerah/Perkada) serving as legal instruments for implementing regional governmental affairs. These regional legal products play strategic roles in translating regional autonomy principles into concrete policies addressing community welfare and development in respective regions. In this regard, the formation of regional regulations constitutes an inevitable necessity in the implementation of regional autonomy, as the existence of regional regulations cannot be separated from the process of administering regional governance (Pandžić, 2025; Röell et al., 2022; Setyowati & Quist, 2022).

However, implementation of regional legislative authority encounters various complex challenges threatening legal certainty and harmonization within the national legal system (. et al., 2020; Nirwan et al., 2025). Empirical data from the Ministry of Home Affairs shows that during 2014-2023, more than 3,400 regional regulations were revoked or amended due to conflicts with higher regulations, contradictions with public interest, or violations of legal formation procedures. This phenomenon indicates systemic problems in regional legislative processes requiring comprehensive academic attention.

Constitutional Court Decision Number 137/PUU-XIII/2015 and Number 56/PUU-XIV/2016 affirm that regional legislative authority, while constituting attribution authority granted directly by the constitution, must be exercised within constitutional and legislative boundaries. Regional legal products cannot contradict higher legal norms, transcend regional authority limits, or violate fundamental rights guaranteed by the constitution. This creates inherent tension between regional autonomy demands and national legal system integrity requirements.

Previous research by Asshiddiqie (2010) analyzes constitutional foundations of regional legislative authority from the constitutional law perspective, emphasizing the importance of balancing regional autonomy with national unity. Manan (2004) examines hierarchical relationships among legal regulations including regional legal products' positions within the Indonesian legal system. Meanwhile, Hadjon (2011) discusses legal protection principles that should underlie supervision of regional legal products. However, limited studies comprehensively analyze juridical problems in regional legislative authority implementation in the contemporary decentralization era.

This research is important for several reasons. First, theoretically, the study contributes to developing public law theory, particularly regarding legislative authority in decentralized governmental systems. Second, practically, research findings can serve as references for policymakers in perfecting regional legislative mechanisms and supervision systems. Third, normatively, the study provides analysis of harmonization between regional autonomy principles and national legal system integrity, supporting legal certainty and justice in regional governance.

The research addresses two primary questions: (1) What is the position and what are the boundaries of autonomous regional authority in forming regional legal products within the

unitary state system? (2) What juridical problems emerge in regional legislative authority implementation and how should they be resolved? Research objectives are to: (1) analyze constitutional and legislative foundations of regional legislative authority; (2) identify boundaries and limitations of regional legislative authority; (3) evaluate juridical problems in regional legislative authority implementation; (4) formulate recommendations for strengthening regional legislative mechanisms.

Research methodology employs normative legal research with statutory, conceptual, and historical approaches. Legal materials analyzed include the 1945 Constitution, Law Number 23 of 2014, Law Number 12 of 2011 concerning Formation of Legislation, Constitutional Court decisions, and various regional legal products. Analytical techniques utilize legal interpretation methods including grammatical, systematic, historical, and teleological interpretation to uncover legal meanings and implications comprehensively

METHOD

This research constitutes normative legal research examining legal norms and regulations governing regional legislative authority within Indonesia's unitary state system. The normative juridical approach focuses on analyzing statutory provisions, legal doctrines, and judicial decisions related to regional legal product formation. Research employs three complementary approaches: statutory approach examining relevant laws and regulations, conceptual approach analyzing legal concepts and principles underlying regional autonomy and legislative authority, and historical approach tracing evolution of regional legislative authority from colonial era through contemporary decentralization.

Legal materials comprise primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 23 of 2014 concerning Regional Government, Law Number 12 of 2011 as amended by Law Number 13 of 2022 concerning Formation of Legislation, Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011, various ministerial regulations governing regional legal product formation, Constitutional Court decisions interpreting regional legislative authority, and sample regional regulations from diverse regions representing various governmental levels and legal issues.

Secondary legal materials encompass academic literature including legal textbooks, scholarly journal articles, research reports, and legal commentaries providing theoretical frameworks and analytical perspectives. Specific focus is placed on constitutional law, administrative law, and legislation studies addressing decentralization, regional autonomy, and legislative processes. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and bibliographic references facilitating understanding of legal terminology and conceptual frameworks.

Data collection techniques employ library research through systematic documentation and categorization of legal materials. Statutory provisions are inventoried and classified based on hierarchical levels and thematic areas. Constitutional Court decisions are analyzed to identify legal interpretations and constitutional standards for regional legislative authority. Regional regulations are sampled using purposive sampling selecting cases representing common juridical problems including conflicts with higher regulations, procedural deficiencies, and substantive contradictions.

Legal material analysis utilizes prescriptive analytical methods examining what the law ought to be rather than merely describing existing conditions. Analysis proceeds through several stages: (1) legal inventory identifying all relevant provisions; (2) legal synchronization examining vertical and horizontal consistency among regulations; (3) legal interpretation applying grammatical, systematic, historical, and teleological methods to uncover legal meanings; (4) legal argumentation constructing logical reasoning supporting conclusions and recommendations; (5) legal evaluation assessing effectiveness and coherence of current regulatory frameworks.

Analytical frameworks integrate legal positivism emphasizing statutory hierarchy and formal validity with legal realism acknowledging practical implementation challenges. Hans Kelsen's pure theory of law provides foundation for understanding legal system structure and validity chains. Carl Schmitt's decisionism offers insights into political dimensions of legal authority and constitutional interpretation. Contemporary theories of legal pluralism and multilevel governance inform analysis of interactions between national and regional legal systems.

Research validity is ensured through triangulation of legal sources, systematic application of legal interpretation methods, and critical engagement with diverse theoretical perspectives. Limitations are acknowledged including focus on normative rather than empirical dimensions, emphasis on Indonesian legal context limiting direct generalizability, and reliance on available documented sources rather than field observations of legislative processes.

RESULTS AND DISCUSSION

Constitutional and Legislative Foundations of Regional Legislative Authority

Constitutional foundations of regional legislative authority in Indonesia are explicitly established in Article 18 paragraph (6) of the 1945 Constitution stating that regional governments possess authority to establish regional regulations and other regulations to implement autonomy and assistance tasks. This constitutional provision grants direct legitimacy to regional legislative authority as inherent element of regional autonomy, not merely derivative or delegated power from central government. The constitutional recognition elevates regional legislative authority to fundamental governmental function protected by constitutional guarantees.

Legislative elaboration of constitutional mandates is primarily contained in Law Number 23 of 2014 concerning Regional Government. Article 236 specifies that regions establish regional regulations to implement regional autonomy and assistance tasks, while Article 237 empowers regional heads to establish regional head regulations as implementing regulations for regional regulations or based on attributed authority. This statutory framework creates hierarchical structure of regional legal products with regional regulations as primary legislative instruments requiring regional parliament approval and regional head regulations as secondary instruments within executive domain.

Law Number 12 of 2011 as amended, concerning Formation of Legislation, positions regional regulations within national legal hierarchy as level six regulations below laws, government regulations, and presidential regulations but possessing equal legal force with ministerial regulations and other equivalent instruments within respective jurisdictions. Regional head regulations occupy level seven as implementing regulations. This hierarchical

positioning establishes clear validity chains and legal force parameters for regional legal products within the integrated national legal system.

Table 1. Hierarchy of Legal Products in Indonesia

Level	Legal Product Type	Authority
1	1945 Constitution	Supreme Law
2	MPR Decree (before amendment)	Legislative Body
3	Law / Perppu	President with DPR
4	Government Regulation	President
5	Presidential Regulation	President
6	Regional Regulation (Perda)	Regional Head with Regional Parliament
7	Regional Head Regulation (Perkada)	Regional Head

Source: Law Number 12 of 2011 concerning Formation of Legislation, as amended by Law Number 15 of 2019

Boundaries and Limitations of Regional Legislative Authority

Regional legislative authority, while constitutionally protected, operates within defined boundaries ensuring harmonization with national legal system and constitutional principles. Four primary limitation categories govern regional legislative scope: material, procedural, territorial, and substantive boundaries.

Material boundaries delineate governmental affairs subject to regional regulation. Law Number 23 of 2014 categorizes governmental affairs into absolute affairs reserved exclusively for central government (foreign affairs, defense, security, monetary policy, fiscal policy, and religious affairs) and concurrent affairs distributed among governmental levels. Regional legislative authority extends only to concurrent affairs allocated to regional competence based on externality principles, accountability, and efficiency. Absolute affairs remain beyond regional legislative jurisdiction regardless of regional characteristics or needs.

Procedural boundaries require regional legal products to conform to legislative formation procedures established in Law Number 12 of 2011 and Ministry of Home Affairs Regulation Number 80 of 2015. Regional regulations must undergo systematic processes including planning, drafting, deliberation, ratification, and promulgation stages. Mandatory requirements include academic manuscripts providing scientific justification, public participation mechanisms, harmonization with higher regulations, and legislative technique compliance. The formation of regional regulations must be examined through synchronization and harmonization with higher-level laws and regulations in order to provide legal certainty for all parties. Failure to satisfy procedural requirements constitutes grounds for cancellation through central government supervision mechanisms.

Territorial boundaries confine regional legal products' applicability to respective regional administrative jurisdictions. Provincial regulations apply within provincial territory, regency/municipal regulations within regency/municipal boundaries. Inter-regional regulatory coordination mechanisms become necessary when addressing cross-boundary issues requiring harmonized approaches. Regional regulations cannot regulate matters extending beyond territorial limits or infringe upon other regions' legislative authority.

Substantive boundaries prohibit regional legal products from contradicting higher legal norms (*lex superior* principle), public interest, or decency standards. Constitutional Court decisions establish that regional regulations cannot diminish constitutional rights, impose

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discriminatory provisions, contradict national development priorities, or create barriers to national economic integration. Substantive review mechanisms enable central government to cancel regional regulations violating these principles, supported by Constitutional Court judicial review authority addressing constitutional compatibility.

Juridical Problems in Regional Legislative Authority Implementation

Empirical analysis reveals systemic juridical problems undermining effective regional legislative authority implementation. First, harmonization deficiencies result in frequent conflicts between regional regulations and higher regulations. During 2014-2023, Ministry of Home Affairs data indicates 3,427 regional regulations were cancelled or required amendments due to incompatibility with national laws, government regulations, or presidential regulations. Weak ex-ante harmonization mechanisms during drafting stages allow problematic provisions to advance through legislative processes, necessitating costly ex-post corrections through supervision and cancellation procedures.

Legislative technical quality problems manifest in ambiguous formulations, inconsistent systematization, and inadequate legal reasoning. Many regional regulations lack precision in defining key terms, establishing clear rights and obligations, or specifying enforcement mechanisms. Academic manuscripts required as scientific foundations often demonstrate insufficient depth of analysis, limited stakeholder consultation, and weak legal argumentation. These technical deficiencies compromise legal certainty, complicate implementation, and generate interpretative disputes among governmental agencies and affected parties.

Overlapping regulatory authority among governmental levels creates confusion and legal uncertainty. Concurrent affairs distribution principle sometimes produces ambiguous boundaries between provincial and regency/municipal competencies, enabling multiple regulations addressing identical subject matter with potentially contradictory provisions. Case studies from extractive industries, environmental protection, and spatial planning reveal persistent jurisdictional conflicts requiring central government intervention or Constitutional Court adjudication for resolution.

Supervision mechanism ineffectiveness enables problematic regional regulations to remain operative despite violating legal principles or causing public harm. Preventive supervision through mandatory submission of regional regulations to central government for evaluation encounters implementation challenges including delayed submissions, inadequate evaluation capacity, and political sensitivities around central-regional relations. Repressive supervision through cancellation procedures faces similar obstacles plus additional complications from ongoing implementation, established legal relationships, and regional resistance to central intervention.

Table 2. Cancelled Regional Regulations by Category (2014-2023)

Cancellation Reason	Number of Regulations	Percentage
Conflict with higher regulations	1,543	45.0%
Procedural violations	892	26.0%
Contradiction with public interest	618	18.0%
Authority exceedance	374	11.0%

Source: Ministry of Home Affairs of Indonesia, Annual Report on Regional Regulation Supervision 2014–2023

CONCLUSION

This research demonstrates that regional legislative authority in Indonesia constitutes constitutional attribution authority enabling regional governments to form legal products regulating local governmental affairs within the unitary state framework. Constitutional foundation derives from Article 18 paragraph (6) of the 1945 Constitution, operationalized through Law Number 23 of 2014 establishing comprehensive regulatory framework. Regional regulations and regional head regulations serve as primary instruments embodying regional legislative authority with hierarchical positions integrated within national legal system. Boundaries of regional legislative authority encompass material limitations reserving absolute governmental affairs to central authority, procedural requirements mandating compliance with legislative formation standards, territorial constraints limiting applicability to jurisdictional boundaries, and substantive prohibitions against contradicting higher norms and public interest. Juridical problems in implementation include harmonization deficiencies causing conflicts with higher regulations affecting 3,427 regulations during 2014-2023 with 45% cancelled due to regulatory conflicts, legislative technical quality problems reflected in ambiguous formulations and insufficient legal reasoning, overlapping authority among governmental levels generating jurisdictional confusion particularly in concurrent affairs, and ineffective supervision mechanisms enabling problematic regulations to remain operative. Recommendations for strengthening regional legislative processes include intensive capacity building programs enhancing regional legislative drafting skills and legal analysis capabilities, integrated legal information systems facilitating access to applicable regulations and supporting harmonization processes, optimized preventive supervision through mandatory prior review and technical assistance, enhanced inter-governmental coordination mechanisms addressing concurrent affairs and cross-boundary issues, and academic quality improvement ensuring rigorous scientific foundations for regional regulations. These improvements aim to realize regional legislative authority balancing regional autonomy with national legal system integrity, supporting effective governance, legal certainty, and public welfare in accordance with rule of law principles and democratic values.

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