



Authority to Harmonize the Formation of Regional Regulations by the Ministry of Law: Inconsistency Between the Law on the Formation of Statutory Regulations and the Law on Regional Government

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Abstract

This research aims to examine the inconsistencies in the formation of laws and regulations and regional government laws. Harmonization of laws and regulations is an important stage in the process of forming quality legal products that do not conflict with higher legal norms. In the context of the formation of regional regulations, issues arise related to the authority for harmonization carried out by the Ministry of Law (Kemenkum), especially when associated with the provisions of Law Number 12 of 2011 concerning the Formation of Laws and Regulations and Law Number 23 of 2014 concerning Regional Government. The problem in this study is how is the authority for harmonization of the formation of regional regulations by the Ministry of Law and whether there is any inconsistency in the P3 Law with the Regional Government Law. This study aims to analyze the inconsistency in the regulation of the authority for harmonization and its impact on regional autonomy and the clarity of the regional legislative mechanism. This study uses a normative legal method with a statute approach and a theoretical approach, and is analyzed qualitatively descriptively.

Keywords: *Harmonization; Inconsistency; Regional Regulations*

Introduction

Regional legal products are formed to organize regional autonomy and assistance tasks, explained in Articles 236 to 254 of Law Number 23 of 2014 concerning Regional Government (UU Pemda) as amended several times, most recently by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (UU Cipta Kerja). Regional Regulations have a role as a legal basis in managing authority, utilizing resources, and optimizing the potential of a region. However, in its implementation, regional autonomy is often influenced by various perceptions that can exceed the limits of authority that have been set. As a result, autonomy policies do not always have a direct impact on improving community welfare. To prevent inconsistencies between Regional Regulations and higher regulations, their preparation has been regulated in Article 1 of Law Number 12 of 2011 concerning the Formation of Legislation, which was last amended

through Law Number 13 of 2022 (UU P3). In the formation of regulations, aspects of authority, openness and supervision are things that must be taken into account.

As a regional legal instrument, Perda is not only a legal means in organizing government affairs that are the authority of the region, but also a vehicle for channeling the aspirations and needs of the local community. Through Perda, the regional government can respond to social, economic, and cultural conditions in a more appropriate and contextual manner (Saleh, 2016). However, in the midst of the spirit of decentralization that prioritizes regional independence, a crucial challenge has emerged in maintaining regulatory consistency with the national legal system. Harmonization between laws and regulations is a necessity so that there is no conflict of norms and so that regional legal products remain within the corridor of hierarchical and integrated national law. In this context, the Ministry of Law and Human Rights has a strategic role through the function of supervising and facilitating the formation of laws and regulations, including the authority to harmonize draft regional regulations.

Prior to the Constitutional Court (MK) ruling and the amendment to the P3 Law, the authority to supervise regional regulations was mostly dominated by the Ministry of Home Affairs (Mendagri) through an evaluation mechanism. The Minister of Home Affairs, through the Directorate General of Legislation (Ditjen PP), was generally involved in the process of harmonizing and facilitating draft regional regulations in the early stages. However, with the enactment of the P3 Law, there was a paradigm shift that provided more space for the Ministry of Law and Human Rights in the comprehensive supervision process (Siar, 2024). Article 251 of the Regional Government Law explicitly states that draft provincial and district/city regional regulations that have been jointly approved by the DPRD and the regional head before being stipulated must be submitted to the Ministry of Law and Human Rights for harmonization, consolidation, and consolidation of the concept. Although the phrase "supervision" is not explicitly stated in this stage, the essence of "harmonization, consolidation, and consolidation of the concept" has strong supervisory implications. This process ensures that the draft Regional Regulation does not conflict with higher laws and regulations, the public interest, and the principles of forming good laws and regulations (Setiawan, 2018).

This authority is intended to ensure that draft regional regulations do not conflict with higher laws and regulations and do not disrupt the public interest and the unity of the national legal system. However, this authority of the Ministry of Law raises its own problems, especially when viewed from a normative perspective. There are indications of inconsistencies between the P3 Law and the Regional Government Law, especially regarding who has the authority to carry out harmonization and at what stage the harmonization is carried out. This study aims to analyze the authority to harmonize the formation of regional regulations by the Ministry of Law and examine the effectiveness and challenges faced in ensuring harmony between regional legal products and the national legal system. This study is important to evaluate the extent to which the role of central supervision of regional legislation can be implemented in a balanced manner, without reducing the principle of regional autonomy but still ensuring legal certainty, harmony, and effectiveness in the national legal system. The supervision of the Ministry of Law faces four main challenges, namely limited resources, weak coordination between institutions, compliance of local governments, and local political dynamics. Based on the description above, the problem in this research is how is the authority to harmonize the formation of regional regulations by the Ministry of Law and whether there is any inconsistency between the P3 Law and the Regional Government Law.

Methods

This study uses a normative legal research method, namely a method that focuses on the analysis of legal norms written in laws and regulations and other legal materials (Rahayu, 2020). This method is used to study the authority to harmonize the formation of regional regulations by the Ministry of Law and Human Rights, especially in seeing the inconsistencies between the provisions in the P3 Law and the

Regional Government Law. The approaches used in this study are the statute approach and the theoretical approach. The statutory approach is carried out by examining and comparing the normative provisions of the two laws, as well as related implementing regulations, to identify any conflicts or overlapping authorities in the process of harmonizing draft regional regulations. Meanwhile, the theoretical approach is used as a conceptual framework in analyzing and explaining legal problems arising from the dualism of these regulations. The theories used include the theory of authority, the theory of the legal system, and the theory of regional autonomy, which function as a basis for compiling legal arguments and providing solutions to the disharmony of norms found (Ali, 2021).

Results and Discussion

Authority for Harmonization of Regional Regulation Formation by the Ministry of Law

Article 58 of the P3 Law explicitly regulates the authority to harmonize Draft Regional Regulations (RanPerda). This article states that draft provincial regulations and draft district/city regulations that have been jointly approved by the DPRD and the Governor/Regent/Mayor must be submitted to the Ministry of Law and Human Rights (Kemenkum) for harmonization before being stipulated. The main objective of this harmonization is to ensure the alignment of the Draft Regional Regulation with Pancasila, the 1945 UUDNRI, higher laws and regulations, and the public interest. This harmonization authority has undergone significant evolution through changes to the P3 Law. Article 58 paragraph (2) of the P3 Law was amended to state that this amendment stipulates that the harmonization, consolidation, and consolidation of the concept of the Draft Provincial Regulation originating from the Governor is carried out by the ministry or institution that organizes government affairs in the field of the formation of laws and regulations, namely the Kemenkum. Further developments occurred with the enactment of Law Number 13 of 2022. This law strengthens the centralization of harmonization authority, where the harmonization, rounding, and strengthening of the concept of the Draft Provincial Regulation (both originating from the Provincial DPRD and the Governor) are entirely the authority of the Ministry of Law and Human Rights (Dwiatmoko, 2022).

The change in Article 58 of the P3 Law from initial coordination to full authority of the Ministry of Law and Human Rights reflects a deliberate, albeit controversial, policy shift towards greater central control over regional legislative products. This move signals an acknowledgement by the central government that the previous decentralized harmonization mechanism was not effective enough in preventing the formation of problematic Perda. This encourages a "centripetal" or centralized tendency in legislative oversight, which is essentially a priority of legal consistency and the integrity of the national legal system over the principle of broad regional autonomy. The Regional Government Law serves as the main legal umbrella governing the implementation of regional government in Indonesia. This law firmly emphasizes the principle of the broadest possible autonomy for regions. One concrete manifestation of this principle of autonomy is the authority given to regions to form Perda. The formation of this Perda is carried out in order to carry out government affairs that are the authority of the region, reflecting regional conditions, aspirations, and uniqueness of the region concerned. The Regional Government Law also emphasizes the active role of the Regional People's Representative Council (DPRD) and the Regional Head as representatives of legislative and executive power at the regional level. The principle of regional autonomy mandates regions to regulate and manage their own government affairs and the interests of the local community based on their own initiatives and community aspirations (Hilala, 2023).

The inherent tension between the principle of "the broadest possible autonomy" mandated by the Regional Government Law and the increasingly centralized harmonization authority under the amendments to the P3 Law, reveals a fundamental philosophical and practical dilemma in Indonesia's unitary state model with decentralized governance. This tension is not simply a legal conflict, but rather a reflection of competing policy objectives: encouraging local initiatives versus ensuring national legal

coherence and preventing regulatory fragmentation. Despite the granting of autonomy, the central government retains ultimate control to ensure national unity and legal consistency. This creates a dynamic in which local self-government is balanced against the need for a coherent national legal system. The “inconsistencies” that emerge are manifestations of ongoing negotiations between central authority and regional aspirations within a complex and layered governance structure (Simatupang, 2017).

Inconsistency between the P3 Law and the Regional Government Law

Previously, the harmonization of the Draft Regional Regulation (RanPerda) initiated by the Regional Head (Governor/Regent/Mayor) was coordinated by the legal bureau or legal department at the regional level. In this mechanism, the vertical agency of the Ministry of Law (Regional Office of the Ministry of Law and Human Rights) can only be involved as a party providing input or technical support. The position of the central government, which tends to be passive, shows that the principles of decentralization, deconcentration, and assignment tasks are implemented optimally. However, with the changes to the P3 Law, especially through Law Number 13 of 2022, there has been a significant shift in authority. The authority to harmonize the RanPerda is now entirely under the Ministry of Law and Human Rights, which is implemented through its vertical agencies such as the Ministry of Law and Human Rights. This change marks a clear transition from a coordination model at the regional level to a centralization of authority at the central level (Elcaputera, 2022).

This shift is seen as a form of normative control by the Central Government aimed at ensuring legal certainty and preventing the cancellation of Regional Regulations in the future. This change in mechanism represents a shift from a decentralized-supportive harmonization model (where regional legal bureaus take the lead with technical guidance from the center) to a centralized-preventive model (where the Ministry of Law and Human Rights takes over the main responsibility). This implies an assessment that the capacity or consistency at the local level in producing legally valid Regional Regulations is still lacking, so that stronger and more direct central intervention is needed to prevent legal problems from the start. This shift shows a pragmatic choice by the central government to prioritize legal order over the interpretation of unfettered regional legislative autonomy, especially considering the many Regional Regulations that have been canceled due to previous inconsistencies.

The shift of authority for harmonizing regional regulations to the Ministry of Law and Human Rights has sparked heated debate over the balance between central government norm control and the principle of decentralization/deconcentration of regional autonomy. Those who support centralization argue that this step is an essential form of norm control to maintain the unity of the national legal system. They argue that centralization can effectively prevent regulatory conflicts, both vertically (between regional regulations and higher regulations) and horizontally (between regional regulations), as well as guarantee legal certainty for the community and investors. In addition, centralization is expected to improve the quality of regional regulations and significantly reduce the number of problematic regional regulations that often have to be canceled by the central government. On the other hand, it is known that the centralization of this harmonization authority fundamentally shifts the principle of decentralization and deconcentration of regional autonomy. This has the potential to reduce the initiative and responsiveness of regional governments in formulating policies that are in accordance with unique local needs and characteristics. This debate highlights the complexity of finding the right balance between the spirit of regional autonomy, which gives regions the freedom to regulate their household affairs, and the need for national legal harmony within the framework of a unitary state (Ahmad, 2022).

This highlights a fundamental ideological struggle in the governance model in Indonesia. It is the tension between the constitutional mandate for regional autonomy and the practical need for a coherent national legal system. This is not a simple matter of right or wrong, but rather a complex policy dilemma with multiple consequences (Salma, 2025). The central government, through the Ministry of Law and Human Rights, asserts its role as the primary guardian of the legal hierarchy and national coherence, even

if it means limiting some aspects of regional legislative independence. This ongoing negotiation forms the practical limits of decentralization in Indonesia. Harmonization of Regional Regulations does not only involve a purely legal dimension, but also includes deep philosophical and sociological aspects. Philosophically, harmonization must always refer to the values of Pancasila and the 1945 Constitution of the Republic of Indonesia as the source of all sources of state law. This ensures that every Regional Regulation that is formed does not conflict with the basic values and ideology of the state. The goal is for Regional Regulations to become an integral part of a complete national legal system, reflecting the ideals of the nation.

From a sociological aspect, harmonization aims to ensure that Regional Regulations are able to effectively meet the legal needs of the community and do not cause social problems or discrimination. Centralization of harmonization is expected to overcome the phenomenon of "problematic Regional Regulations" that were previously found, which often hamper investment and even conflict with the spirit of diversity and national unity (Berlian, 2016). Meanwhile, from a legal perspective, harmonization ensures that Regional Regulations are in line with higher laws and regulations (known as vertical harmonization) and also with regulations at the same level (horizontal harmonization). In addition, harmonization also ensures that Regional Regulations are drafted in accordance with applicable legislative drafting techniques. Although the legal arguments for harmonization are clear (hierarchy, consistency), the philosophical and sociological dimensions highlight a deeper goal: ensuring that Regional Regulations are not only legally valid but also serve the public interest and are in line with national values. Centralization of harmonization, from this perspective, is an attempt to uphold broader philosophical and sociological goals, suggesting that local processes may not be sufficient in upholding these principles. By centralizing, the government aims to more effectively embed these national values and policy priorities into local legislation, acting as a guard against regulations that may be locally popular but nationally detrimental. This reaffirms the principle of a unitary state where local regulations must ultimately serve the national interest (Fahmi, 2019).

The centralization of harmonization authority by the Ministry of Law and Human Rights is expected to bring the potential to improve the quality of Regional Regulations. Through this process, it is expected that there will be an increase in the conformity of the substance and form of Regional Regulations, as well as better synchronization with other laws and regulations, which in turn will reduce the potential for the cancellation of Regional Regulations in the future. Effective harmonization fundamentally aims to create legal certainty. On the contrary, regulatory disharmony will actually create legal uncertainty and legal dysfunction, which ultimately makes it difficult for the community and law enforcement officers to carry out their duties. This poses significant practical challenges in the implementation of this centralization policy. One of the main obstacles is the lack of an adequate number of drafters of laws and regulations in the Regional Offices of the Ministry of Law and Human Rights, which are struggling to accommodate the surge in harmonization requests. In addition, the problem of slow coordination from the proposers in the regional government can also hinder the harmonization process and have a negative impact on the quality of the resulting Regional Regulations. Harmonization recommendations provided by the Ministry of Law and Human Rights are sometimes also not binding and can change depending on the political situation in the region.

The current reliance on outdated ministerial regulations and inadequate human resources indicate critical operational gaps that erode the effectiveness of centralized harmonization policies. Addressing these practical shortcomings is essential for the policy to achieve its intended goals of legal certainty and quality of regional regulations. Without adequate operational support, centralization risks becoming a mere bureaucratic obstacle, delaying the formation of regional regulations, and potentially leading to the return of problematic regional regulations or increasing requests for judicial review to the Supreme Court. This suggests that policy shifts without adequate operational support can create new forms of inconsistency and inefficiency (Paputungan, 2023). Centralization of regional regulation harmonization inherently shifts the principles of decentralization and deconcentration, placing the central government in

a more assertive position in the regional legislative process. This shift has the potential to create conflicts of authority between the center and regions, given the differences in interpretation and interests in the division of government affairs. Although this centralization does not necessarily eliminate the principle of regional autonomy as a whole, it can limit the scope for regional autonomy and reduce regional initiatives in responding to local needs quickly and flexibly. The unclear division of concurrent sectoral affairs and authorities between city/district, provincial, and central governments can lead to irregularities, differences in perception, inconsistencies, and unclear authorities in various regional government sectors. This condition can in turn lead to conflicting laws and regulations, both at the local and national levels, which ultimately leads to development inequality (Muzaiyyin, 2023).

The shift in authority for harmonization risks changing the central-regional relationship from one of partnership and shared responsibility (as envisioned by broad autonomy) to a more hierarchical dynamic, akin to a principal-agent relationship. This could stifle local innovation and responsiveness, lead to a “one-size-fits-all” approach that ignores local specificities, and potentially undermine the goals of decentralization in a diverse archipelagic country. If regions feel that their legislative initiatives are over-controlled or delayed, this could lead to reduced innovation, slower responses to local problems, and a sense of powerlessness, potentially exacerbating central-regional frictions rather than resolving them. The challenge is to find a balance where central oversight facilitates, rather than hinders, effective local governance.

In addition to preventive harmonization by the Ministry of Law and Human Rights, the supervision system for Regional Regulations also involves the role of the Minister of Home Affairs and the Supreme Court. The Minister of Home Affairs has an evaluation role for draft Regional Regulations, especially those related to the Regional Budget, before the Regional Regulation is stipulated. This role is administrative-preventive, aimed at ensuring compliance with higher regulations and the public interest. However, it should be noted that the authority of the Minister of Home Affairs to cancel Regional Regulations that have been stipulated (post-stipulation) has been removed by the Constitutional Court ruling. This ruling confirms that the cancellation of Regional Regulations is the authority of the judicial institution, not the executive. The Supreme Court, on the other hand, has the authority to conduct material and formal testing of Regional Regulations that have been enacted (judicial review). This authority is constitutionally regulated in Article 24A paragraph (1) of the 1945 UUDNRI, which states that the Supreme Court has the authority to test laws and regulations under the law against the law. The role of the Supreme Court is judicial-repressive and passive, meaning that the Supreme Court will only conduct testing if there is a request submitted by an interested party.

Based on Article 251 paragraph (1) and paragraph (2) of the Regional Government Law, it is explained that the Minister and Governor cancel the Regional Regulation and Draft Regional Regulation after the Constitutional Court Decision Number 137/PUUXIII/2015 concerning the judicial review of the Regional Government Law against the 1945 UUDNRI, explaining that the Governor no longer has the authority to cancel Regency/City Regional Regulations, and through the Constitutional Court Decision Number 56/PUU-XIV/2016 concerning the judicial review of the Regional Government Law against the 1945 UUDNRI, the Minister of Home Affairs no longer has the authority to cancel Provincial Regional Regulations. This aims to maintain synchronization between policies that have been determined by the central government and regional legal products formed by regional governments, and these regional legal products reflect legal order and legal certainty, can fulfill the sense of justice of the community for socio-economic changes (Laksana, 2019). Supervision of Regional Regulations so that they are in accordance with ensuring the principles of compliance, effectiveness, and usefulness of regulations made by regional governments (Kurnia, 2022).

Article 373 paragraph (1) of the Regional Government Law explains that the Central Government carries out guidance and supervision of the implementation of provincial Regional Government. Article 373 paragraph (2) of the Regional Government Law explains that the Governor as a representative of the

Central Government carries out guidance and supervision of the implementation of district/city Regional Government. Guidance and supervision nationally are coordinated by the Minister. Article 374 paragraph (1) of the Regional Government Law explains that guidance for the implementation of provincial Regional Government is carried out by the Minister, technical ministers, and heads of non-ministerial government institutions. The decision of the Constitutional Court (MK) which eliminated the authority to cancel Regional Regulations by the Minister of Home Affairs has strengthened the role of the Supreme Court as the highest constitutional guardian of problematic Regional Regulations. This creates a two-level supervision system: the Ministry of Law and Human Rights for pre-determination harmonization (administrative-preventive) and the Supreme Court for post-determination judicial review (judicial-repressive) (Syapriallah, 2022).

The effectiveness of this system is highly dependent on strong coordination and clear division of roles to avoid gaps or overlaps in supervision. Any failure in the harmonization process of the Ministry of Law and Human Rights (for example due to capacity or coordination issues) will directly increase the likelihood of the Regional Regulation being challenged in the Supreme Court, potentially creating a backlog of cases or undermining legal certainty. To ensure that the harmonization of legal policies between the central and regional governments runs sustainably and effectively, several strategies need to be implemented. First, it is urgent to issue a new Regulation of the Minister of Law and Human Rights. This regulation must clearly provide technical guidelines for the implementation of harmonization under Law Number 13 of 2022, replacing the old regulations that are no longer relevant and create legal uncertainty (Widyantari, 2020).

Second, there is a need to increase the capacity and number of drafters of legislation in the Regional Office of the Ministry of Law and Human Rights. This is crucial to accommodate the surge in harmonization requests that have occurred after the amendment of the law. Without adequate human resources, the harmonization process risks becoming a bottleneck that hinders the formation of quality regulations. The current reliance on outdated ministerial regulations and inadequate human resources indicate critical operational gaps that erode the effectiveness of centralized harmonization policies. Addressing these practical shortcomings is essential for the policy to achieve its intended goals, namely legal certainty and quality of regulations. Third, strengthening coordination and communication between the Ministry of Law and Human Rights, the Ministry of Home Affairs (Mendagri), local governments (especially the Legal Bureau/Legal Section), and the DPRD is absolutely necessary. Effective communication will ensure that the harmonization process runs effectively and efficiently, reducing the potential for miscommunication and bureaucratic obstacles.

In addition to the above strategies, increasing capacity and coordination between institutions in the formation of Regional Regulations is also key. First, the development of sustainable training programs for designers of legislative regulations, both in the regions and at the Ministry of Law and Human Rights, must continue to be carried out. This training aims to improve their technical competence and philosophical-sociological understanding in formulating comprehensive regulations. Second, the development of an integrated legal information and documentation system between the center and regions is very important. This system will facilitate access to information and real-time monitoring of regulations, reduce duplication, and increase efficiency. Third, encouraging constructive dialogue between the Central and Regional Governments is essential. This dialogue must focus on finding common ground between the need for normative control by the center and the spirit of regional autonomy, ensuring that the resulting Regional Regulations remain responsive to the needs and characteristics of the regions.

Conclusions

The inconsistency of the authority to harmonize the formation of Regional Regulations by the Ministry of Law and Human Rights, especially based on Article 58 of the P3 Law, with the spirit of

regional autonomy carried out by the Regional Government Law, has had a negative impact on bureaucratic efficiency, regional independence, innovation, and potential central-regional tensions. Although based on good intentions to create harmony and legal certainty, its implementation has the potential to erode the principle of autonomy. To overcome this problem, a comprehensive approach is needed which includes: redefining the role of the Ministry of Law and Human Rights harmonization to focus more on fundamental aspects and harmony of national law without interfering with regional authority; strengthening regional capacity in the preparation of Draft Regional Regulations; changing the harmonization approach to be more consultative and facilitative; utilizing information technology for real-time and transparent input; and re-evaluating or revising Article 58 of the P3 Law to limit the role of the Ministry of Law and Human Rights to the technical harmonization of legislation, not the substance of regional autonomy. These steps are crucial to creating a harmonious, efficient and decentralization-compliant Regional Regulation formation system.

The impact of this inconsistency is twofold. On the one hand, centralized harmonization has the potential to improve the quality of regional regulations and reduce revocations, thereby creating greater legal certainty. On the other hand, there are significant implementation challenges, such as limited drafting resources at the Ministry of Law and coordination issues, which can hamper the process and potentially limit regional initiatives and responsiveness to local needs. Implications for central-regional relations can also lead to more hierarchical dynamics, potentially inhibiting regional innovation. The effectiveness of the regional legal oversight system as a whole is highly dependent on the synergy between preventive harmonization carried out by the Ministry of Law and Human Rights, the evaluative role of the Minister of Home Affairs, and passive judicial review by the Supreme Court. To achieve sustainable and effective harmonization, institutional capacity building, clear improvement of derivative regulations, and increased coordination between institutions are needed. These efforts are crucial to realizing regional regulations that are not only of high quality and have legal certainty, but are also able to accommodate and reflect the spirit of regional autonomy.

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