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# IMPLICATIONS OH THE RELATIONSHIP BETWEEN THE CENTRAL GOVERNMENT AND LOCAL GOVERNMENTS AS A RESULT OF DISHARMONIZATION OF LOCAL REGULATIONS

## *IMPLIKASI HUBUNGAN PEMERINTAH PUSAT DAN PEMERINTAH DAERAH AKIBAT DISHARMONISASI PERATURAN DAERAH*

**Sarah Marella[1*], Fahmi Ramadhan Firdaus[2]**
[1*, 2] Faculty of Law, Universitas Jember, Indonesia

*marellasarah14@gmail.com

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**ABSTRACT**
Disharminization in local regulations occurs as a result of the phenomenon of over-regulation in Indonesia, which is growing increasingly prevalent. Findings in several regional regulations in Indonesia indicate that disharmony has a significant impact on the implementation of policies that directly affect the community. This issue of disharmony then has implications for the relationship between the central government and local governments as the authorities responsible for formulating and supervising local regulations. The central government is the main authority that controls the administration of the state throughout the territory, while local governments, acting in the name of regional autonomy, are the force that administers matters within their authority. Using a normative juridical method with conceptual, legislative, and comparative research types, this study finds common ground in the problems faced in the relationship between the central government and local governments regarding the issue of disharmony in regional regulations. These problems include the position of regional regulations in the framework of legislative theory, which is then viewed in comparison with Japan in organizing its legislation and the relationship between the central and regional governments in supervising regional regulations.

**Keywords** : Disharmonization, Local Regulations, Government.

***ABSTRAK***
*Disharmonisasi dalam peraturan daerah terjadi akibat adanya fenomena over regulasi di Indonesia yang semakin subur perkembangannya. Temuan dalam beberapa peraturan daerah di Indonesia menandakan jika adanya disharmonisasi memiliki pengaruh besar dalam realisasi kebijakan yang berhubungan langsung dengan masyarakat. Permasalahan disharmonisasi ini kemudian berimplikasi pada hubungan pemerintah pusat dan pemerintah daerah sebagai pemangku otoritas dalam membentuk dan mengawasi peraturan daerah. Pemerintah pusat sebagai pijakan utama yang memegang kendali atas penyelenggaraan negara di seluruh wilayah sedangkan pemerintah daerah yang mengatasnamakan otonomi daerah menjadi kekuatan untuk menyelenggarakan urusan yang menjadi kewenangannya. Dengan menggunakan metode yuridis normatif dengan menggunakan tipe penelitian konseptual, perundang-undangan, dan perbandingan, penelitian ini menemukan titik temu permasalahan yang dihadapi dalam hubungan pemerintah pusat dan pemerintah daerah terkait persoalan disharmonisasi pada peraturan daerah. Permasalahan tersebut antara lain terkait kedudukan peraturan daerah dalam kerangka teori peraturan perundang-undangan yang kemudian diberikan pandangan dengan perbandingan dengan negara Jepang dalam menata perundang-undangannya dan hubungan pemerintah pusat dan daerah dalam mengawasi peraturan daerah.*

***Kata Kunci*** **:** *Disharmonisasi, Peraturan Daerah, Pemerintah.*

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## I. INTRODUCTION

Legislation theory called *stufenbau theory,* was introduced by Hans Kelsen and Hans Nawiasky, forming a concept about hierarchy in norms order. Then, they were made a norms structure by placing grundnorm at the first, enabling act at the second, bylaw at the third, and specific official action at the fourth. In this norms structure, Hans Kelsen asserted that the primary norms must be applied to the subordinate norms. Hans Nawiasky later elaborated and formulated his own version of the structure of the norms in four levels; there are state fundamental norm *(staatsfundamentalnorm),* basic law norm *(staatsgrundgesetz),* formal law *(formell gesetz)*, dan delegates legislation and autonomy law *(verordnung en autonome satzung).*[1]

Indonesia is one of the countries that adopted this theory while adapting it to the existing condition. Considering the background of Indonesia as a state on law in the 1945 Constitution of Republic Indonesia, the regulations that have been created must represent Indonesia as a state based on law. This theory has been adopted and enacted in Law Number 13 of 2022 concerning the Second Amendment

[1] Syofyan, Hadi., & Tomy, Michael. (2022). Hans Kelsen's Thought about the Law and Its Relevance to Current Legal Development, Technicium Social Science Journal, 38, 220-227. https://doi.org/10.47577/tssj.v38i1.7852

to Law Number 12 of 2011 on the Formation of Legislation, which is commonly referred to as the PPP Law.

The existence of the hierarchy is expected to prevent the conflict between regulations and maintain the harmonization in legislation. However indications of the disharmonization still persist in some regulation. Based on the official website of the Ministry of Law, which has recapitulated the data of the number of legislation regulations, Indonesia had a total of 59,372 regulations in 2024.[2] This number is considerable, making the possibility of disharmony or inconsistency among the levels of regulations highly likely to occur. Looking back at 2016, the Ministry of Home Affairs canceled a lot of local regulations, highlighted the core issues both in substantive and administrative ways. The causes of cancellation or revision were largely due to substantive issues, particulary the content of local regulations that was not harmony with the hierarchy of the higher-level legislation.[3]

Local regulation is one of the category regulations with a substantial number recorded around 19.587, causing several critical concerns. One of the issues is about the indication of disharmonization both horizontally with other regulations of equal status and vertically with higher-level legislation.[4] There are several concrete issues about indicating disharmony in local regulation can be found in East Kalimantan Provincial Regulation Number 10 of 2012 concerning Public Roads and Special Roads for the Transportation of Coal and Palm Oil.[5] In addition, disharmony is also found in Salatiga City Regional Regulation Number 6 of 2020 concerning the Regional Drinking Water Company.[6]

Based on several previous studies related to disharmonization in laws and regulations, the first is a thesis written by Roqib regarding *Harmonization of Regency / City Regional Regulations in the Context of Preventive Supervision After the Constitutional Court Decision Number 137 / PUU / 2015.* The results of this study indicate the following the Constitutional Court's decision, the supervision of the central government, specifically by the Minister and the Governor, is limited to

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[2] Direktorat Jenderal Peraturan Perundang-Undangan Kementerian Hukum. (2024). Database Peraturan Perundang-Undangan. Retrieved from https://Peraturan.Go.Id/Perda/Rekapitulasi

[3] Arie Elcaputera., Ahmad, Wali., & Arya, W. D. (2022). Urgensi Harmonisasi Rancangan Peraturan Daerah: Sebuah Analisis Tantangan dan Strategi Pembentukan Peraturan Perundang-Undangan Indonesia dalam Rangka Penguatan Otonomi Daerah. *Jurnal Ilmu Hukum Fakultas Hukum Riau,* 11 (1), 121-123. https://doi.org/10.30652/jih.v11i1.8238

[4] Direktorat Jenderal Peraturan Perundang-Undangan Kementerian Hukum. (2024). Database Peraturan Perundang-Undangan. Retrieved from https://Peraturan.Go.Id/Perda/Rekapitulasi.

[5] Bayu Rolles. (2024). Hauling di Jalan Umum: Tumpang Tindih Regulasi Daerah dan Pusat, Ajukan Petisi Lewat Forum Perhubungan. Retrieved from https://kaltimpost.jawapos.com/utama/2385370663/hauling-di-jalan-umum-tumpang-tindih-regulasi-daerah-dan-pusat-ajukan-petisi-lewat-forum-perhubungan#google_vignette

[6] Gerryn Mauretha Indrawan. (2024). Disharmoni Pengaturan Tentang Modal Dasar dalam Peraturan Daerah Kota Salatiga Nomor 6 Tahun 2020 Tentang PDAM. Universitas Kristen Satya Wacana.

preventive supervision by double checking the content material during register numbering. Regions that do not comply with preventive supervision can be subject to administrative sanctions and delays in evaluating draft regional regulations.[7]

The second study by Labobun, Raharsun & Anwar also examined the *Inconsistency of Legislation in the Implementation of Local Government in Indonesia.* The results of this research emphasize that the government must be connected and ensure consistency in every regulation regarding the relationship between the authority of the local government and the central government. The government is also deemed necessary to evaluate, harmonize, and identify laws and regulations between sectors to ensure the principle of money follow function runs optimally.[8]

The third research by Baizura, Firdaus, and Indra with the title *Structuring Legislation Delegation in the Formation of Regional Regulations Associated with the Realization of the Regional Regulation Formation Program.* The results of this study indicate that the structuring of delegation of regional regulations when associated with the structuring program for the formation of regional regulations, can be done with several approaches, namely based on temproral aspects, material aspects, and institutional aspects. There is an impact in the delegation of regional regulations on the target implementation of the regional regulation formation program, namely poor budget management, obstruction of regional rights, and problems in the aspects of regional regulation formation.[9]

In addition, we need to look at other countries like Japan about how to manage the legislation problem. Indonesia already had a discussion with Japanese government about issue of overlapping regulations in Japan in the focus group discussion agenda *Study For The Amendment to The Law* in Osaka in 2017, the problem of overlapping regulations that goes to court is almost non-existent. If such a case arises, it will be resolved in the district court which will then annul the article in question. For local governments, with their initiative, they will not implement the policy of the questioned article because it is problematic.[10]

The formation of this disharmonious local regulations cannot be separated from the roles of the central government and local government. As regulated in Article 18 paragraph (1) and (5) 1945 Constitution of

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[7] Muhamad Roqib. (2020). *Harmonisasi Peraturan Daerah Kabupaten/Kota dalam Rangka Pengawasan Preventif Pasca Putusan Mahkamah Konstitusi Nomor: 137/PUU-XIII/2015. Tesis.* Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Airlangga.

[8] Muslim Lobubun., Yohanis Anthon Raharusun., & Iryana Anwar. (2022). *I*nkonsistensi Peraturan Perundang-Undangan Dalam Penyelenggaraan Pemerintahan Daerah Di Indonesia. *Jurnal Pembangunan Hukum Indonesia.*, Vol.4. https://doi.org/10.14710/jphi.v4i2.294-322

[9] Maizathul Baizura., Emilda Firdaus., & Mexsasai Indra. (2021). Penataan Pendelegasian Perundang-Undangan dalam Pembentukan Peraturan Daerah Dikaitkan dengan Realisasi Program Pembentukan Peraturan Daerah. *Riau Law Journal*, 5 (2).

[10] Andi Saputra. (2017). Di Jepang, Tumpang Tindih UU dan Perda Bermasalah Nyaris Tak Ada. Detik News. Retrieved from https://news.detik.com/berita/d-3421505/di-jepang-tumpang-tindih-uu-dan-perda-bermasalah-nyaris-tak-ada

Republic Indonesia, it explains that local government are authorized to regulate and manage their government affairs based on the principle of autonomy and assistance by being given the broadest possible autonomy. In addition, this system also regulates the division of power between central government and local government. In this division of affairs, it seems ideal if local government has quite a lot of affairs to do, even though if it is examined more deeply, there is an unproportionality in the division of affairs that is not in accordance with the principles of regional autonomy.

Based on Japan's experience in organizing legislation and connecting with problems related to disharmonization of local regulations and other laws and regulations in Indonesia, a writer of this research will further discuss the regulatory arrangement of the type of local regulation based on regulation and discuss the relationship between the central government and local in term of mechanism to monitor and resolve disharmonization issues in local regulation.

## II. METHOD

This research will use the normative juridical method with several approaches, including a conceptual approach that forms an understanding contained in the legal issues being discussed, a statutory approach by examining the consistency of an applicable regulation with its application, and a comparative approach by comparing a situation and legislation with other countries to be used as a view in fixing the problem being solved. The collection of legal materials, which include primary legal materials in the form of laws and regulations and secondary materials in the forms of books, journals, and official articles, are collected to be interpreted later to support the research.

## III. ANALYSIS AND DISCUSSION

### a. Structuring Local Regulations Based on Legislative Theory

The Stufenbau theory framework by Hans Kelsen basically forms the concept of the enforceability of a law theoretically and practically based on deductive thinking, where the enforceability of a law must be based on the enforceability of higher laws above it until it reaches a meta-juridical source of law. In the context of norm linkage, a norm becomes the basis for forming other norm with a superordinate and sub-ordinate relationship model. The norm that forms the basis is called superior, while the norm to be formed is called the inferior norm. The legal structure is personified in the state, not a system of norms coordinated with one another, but rather hierarchical model in which each norm has a distinct level. The establishment of a legal norm is determined by two mechanisms, namely through the organs and procedures that will create a lower norm and/or through the content of the lower norm. A norm formation that is not determined at all by other norms cannot be part of the legal system.[11]

[11] Jimly Asshiddiqie., & M. Ali S. (2012). Teori Hans Helsen Tentang Hukum. Konstitusi Press. Jakarta.

The hierarchical structure of legislation in Indonesia is not just stipulated. However, this structure exist because laws and regulations are formed by various institutions, each of which has different functions and content material according to its level. Within this, the hierarchy, function, and content of laws and regulations always form a functional relationship between one regulation to another.[12] In creating a statutory regulation, it's necessary to understand a principle so as not to violate or deviate from one another. When forming a law and regulations, it is necessary to understand a principle so as not to violate or deviate from each other. This principle is called *lex superior derogat legi inferior*, which means that a higher legal rule negates the legal rules below it.

The existence of local regulation in the structure of laws and regulations implicity reflects regional independence in autonomy. However, in its implementation, it still cannot be separated from the national legislative system, so a regional regulation must not conflict with higher-level regulations or the public interest. Local regulation can also be used as a benchmark for whether national policies that have been formed by the regions can be appropriately implemented and purposefully, because it's not uncommon for national policies to get stuck because the area doesn't adopt them appropriately.[13]

The problem of legislation in Indonesia, according to Bayu Dwi Anggono, is mainly in the aspects of orderly types, hierarchy, and content of laws and regulations. The cause of this problem is the lack of supervision of the types of regulations that can be included in the types of laws and regulations, the content of laws and regulations cannot be determined with certainty, and the unclear hierarchical structure, which causes difficulty of review the laws and regulations.[14]

The problem of local regulation includes a lack of public participation, draft local regulations that are often intervened in internal DPRD meetings, the process of forming local regulations is being considered routine, limited human resources to predict problems that will arise. And local governments tend to be oriented towards accelerating the economy by increasing local levies through local regulations.[15]

The conflict of interest of the ruler also contributes to the problem of legislation. The formation of a legal product is not always in a neutral and close condition, as the attraction and influence of political interests will always impart their own style to every legal product. The friction of political interests of a ruling regime is one of the most determining factors

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[12] *Jimly Asshiddiqie & M. Ali S, 155*

[13] Amira Kenap., Dientje Rumimpuni., & C.A, Gerungan. (2021). Proses Penyusunan Rancangan Peraturan Daerah Menjadi Peraturan Daerah, *Jurnal Lex Administratum,* 9 (3), 78-88.

[14] Bayu Dwi Anggono. (2014). Asas Materi Muatan yang Tepat dalam Pembentukan Undang-Undang, serta Akibat Hukumnya: Analisis Undang-Undang Republik Indonesia yang Dibentuk pada Era Reformasi. Universitas Indonesia.

[15] Moh Roky Huzaeni., & Nuril Firdausiah. (2022). Inefisiensi Peraturan Daerah di Indonesia, *Jurnal Rechtenstuden*t, 3 (1).

in the formation of legal products.[16] The conflict of interest in the formation of local regulations is more prominent in the element of political conflict that exists in the horizontal relationship within the local government order between DPRD and regional head. Local regulations should be formed to enhance the welfare of the community, rather that become a tool for the ruler's political interests.[17]

DPRD and local government have an important position in absorbing the aspirations and participation of the community in connection with the formation of local regulation, so if the relationship between the two is found in political conflict, it will disrupt stability in coordinating community participation, which is an important foundation in the formation of local regulation. The dynamics of public participation in the formation of local regulation is also an indicator of the success of the principles of decentralization and regional autonomy where the community plays an active role in achieving the concept of common welfare through local government policies. With this, the share of decentralization exist by seeing an increase in public participation and change in the role of government from provide to facilitator.[18]

Public participation from local communities is a form of democracy that provides citizens with political rights to be involved in government. The government in encouraging regional community participation is conceptually adjusted to Article 354 paragraph (2) of Law Number 23 of 2014 concerning Regional Government. In realizing the community participation mentioned in this provision, it is necessary for local governments to make comprehensive and forward-looking and sustainable empowerment.[19]

Many efforts by local governments are sometimes not enough to avoid conflicts in the formation of local regulations, such as conflicts of interest between political elites that ignore community participation. Reflecting on the Constitutional Court Decision No.91 /PUU-XVIII/2020, which examines the controversial Cipta Kerja Law, this decision forms a new conception put forward in the judge's ratio decidendi where the principle of meaningful participation contains three conditions, namely the right to be heard, the right to be considered, and the right to be explained.[20]

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[16] Felani Ahmad Cerdas., Ali Abdurahman., & Indra Perwira. (2022). Harmonisasi dalam Pembentukan Peraturan Daerah di Indonesia. *Jurnal Ilmu Hukum Kyadiren,* 4 (1), 40-53. https://doi.org/10.46924/jjhk.v4i1.149

[17] Zainul Jumadin., & Yusuf Wibisono. (2019). Konflik Politik Antara Gubernur dan DPRD DKI Jakarta dalam Proses Penetapan APBD 2015. *Populis: Jurnal Sosial dan Humaniora,* 4 (2), 249-303. https://doi.org/10.47313/psjh.v4i.698

[18] Pascal Wilmar Toloh. (2024). Formulasi Sistem Partisipasi Bermakna *(Meaningful Participation)* dalam Pembentukan Peraturan Daerah sebagai Penguatan Demokrasi Lokal. *Jurnal Legislasi Indonesia,* 21 (3), 305-318. https://doi.org/10.54629/jli.vl7i

[19] Ibnu Affan. (2021). Urgensi Partisipasi Masyarakat dalam Penyelenggaraan Pemerintah Daerah. *De Lega Lata Jurnal Ilmu Hukum,* 6 (1), 128-139. https://doi.org/10.30596/d11.v6i.5318

[20] Putusan Mahkamah Konstitusi No.91/PUU-XVIII/2020

The condition of legislation in Indonesia is quite complex and requires a comparison for future improvement. Looking at other countries, such as Japan, it reveals a legislation framework that tends to be more stability in organizing, fostering, and supervising aspects of its legislation. Each central government, prefecture, and municipality in Japan has its authority in the formation of laws and regulations and the operating local government. The regulation of the position of regions in the implementation of regional autonomy in Japan is regulated in the Constitution of Japan Chapter VIII on Local Government Articles 92 to 95.[21]

Regulations regarding regional public organizations and entities should be established by law while adhering to the principle of regional autonomy. Regional entities shall establish assemblies as deliberative institutions in accordance by the law. Regional officials such as regional heads and members of lower assemblies, and others specified by applicable regulations shall be elected through direct voting in each region. The regional government has the right to manage the administrative affairs under its authority and enact regional regulations. Special laws that apply only to a region cannot be passed by the DIET without the approval of the majority of the people of the region concerned in accordance with applicable regulations. The management of laws and regulations in Japan has a nature of compliance and discipline that should be used as a comparison. The regulatory research forum training *Study for the Amendment to the Law* also discusses the management of laws and regulations at the central and regional levels to be the starting point of how in Japan the problem of overlap almost never occurs.[22]

Basically, Japan also has a similar central-local relationship with Indonesia in administering the government. Based on the Omnibus Decentralization Act (1999), the central government still has the right to control the operation of local governments. However, in Japan, the right to intervene is restricted by limiting the right to intervene in the legislative field, which can only intervene in the issuance of regulations at the central level by the legislative body as long as it does not conflict with the provisions regarding regional autonomy. Second, intervention in the judicial setting. If it is believed that the local government violates the provisions of the law, then prosecution can be carried out against the local government in court. Third, intervention in administrative matters, which is carried out only to the extent of providing advice, recommendations, considerations, and granting permits or approvals.[23]

The Japanese government has a special institution that focuses on addressing the challenges of the formation of laws and regulations, namely the Subcommittee for Regulation and System Reform or the

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[21] *Constitution of Japan*

[22] Andi Saputra. (2017). Di Jepang, Tumpang Tindih UU dan Perda Bermasalah Nyaris Tak Ada. Detik News. Retrieved from https://news.detik.com/berita/d-3421505/di-jepang-tumpang-tindih-uu-dan-perda-bermasalah-nyaris-tak-ada

[23] Omnibus Decentralization Act 1999

Regulatory Reform Council.[24] This institution is a special institution established by cabinet order as stated in Article 37 paragraph (2) of the Cabinet Office Establishment Law 2001. This institution was established on the basis that it is necessary to monitor the implementation conditions of the new policy, namely the three-year policy to introduce regulatory reforms by taking into account economic and social structural reforms.[25]

The way for the government to push for further regulatory reforms in the future, according to the Remarks on Regulatory Reforms, is to establish a deliberative body whose leader is from the private sector and is able to provide recommendations objectively as a regime in cooperative relations between the government and the government and the private sector under the supervision of the cabinet, especially the prime minister. With this, the Regulatory Reform Council has the authority to investigate and discuss comprehensively reform issues that are deemed to require perspectives to introduce economic and social structural reforms at the request of the prime minister.[26]

As stated by the Organization for Economic Co-Operation and Development (OECD), the government in Indonesia is still lacking in managing the formation of laws and regulations. In Indonesia, there is also still no special body that is fully responsible for ensuring that laws and regulations support government policy objectives. With this, the OECD then suggested or gave recommendations to the government to establish an independent institution focused on actively monitoring government regulatory policies for quality.[27]

In reality, apart from the OECD perspective, it is necessary to realize that establishing a special institution to manage the formation of laws and regulations is an urgency that must be adopted by the government. The factor why it should be adopted is because it has been proven that the dissemination of the stages of the formation of laws and regulations to various institutions is quite difficult for the government to ensure that the draft laws and regulations support the government's development policy objectives and another factor is the absence of authority for institutions that are only focused on objective and measurable assessments to form a new regulation. This raises the issue of hyper regulation to 42,996 with 8,414 central level regulations, 14,453 ministerial regulations, 4,164 non-ministerial agency regulations, and 15,965 regional regulations.[28] Based on the function of the special institution in Japan, it can be understood that there is an idea of renewal in organizing regulations in Indonesia, namely by establishing a special body or institution under the government whose function is to provide

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[24] Bayu Dwi Anggono. (2020). Lembaga Khusus di Bidang Pembentukan Peraturan Perundang-Undangan: Urgensi Adopsi dan Fungsinya dalam Meningkatkan Kualitas Peraturan Perundang-Undangan di Indonesia. *Jurnal Legislasi Indonesia,* 17 (2), 131-145. https://doi.org/10.54629/jli.vl7i2

[25] Cabinet Office Establishment Law, 2001

[26] Cabinet Office. Council for Regulatory Reform. Retrieved from https://www8.cao.go.jp/kisei/en/.

[27] *Bayu Dwi Anggono, 137*

[28] *Bayu Dwi Anggono, 139*

assistance to the head of government in improving the quality of regulatory design and evaluating regulations.

According to PSHK, if the president is going to establish a special or single institution to deal with this issue, it must really pay attention to the functions of this institution so that its existence and essence have a real impact on improving the quality of regulation in Indonesia. These functions are to carry out regulatory planning that is in line with development planning, to harmonize between the assessment of the suitability of the proposal in substance with the content material and synchronization with the provisions in other laws and regulations of a higher level, and finally to monitor and evaluate the laws and regulations that are in force.[29]

Planning for the establishment of a special institution in the field of regulation has been discussed since 2019 in line with the renewal of several provisions in Law Number 15 of 2019 concerning Amendements to Law Number 12 of 2011 concerning the Establishment of Legislation. This regulation has been annulled to the establishment of special regulatory institutions, as specified in Article 21, Article 58, Article 26, Article 47, Article 49, and Article 54. Then, the legitimacy of the establishment of institutions or ministries in Article 99A. However, it has not regulated its conception in a definite and detailed manner, such as form, position, structure, organization, and period. This special institution that will be formed should also encourage the existing aspects of public participation, specifically as a central space for public input in the development of laws and regulations. The existing aspects of public participation are still not fully coordinated, and there has been no real effort from the government to establish this special institution.[30]

The government can consider establishing this institution as a state auxiliary organ or supporting state institution established by law, not directly mandated in the 1945 Constitution of the Republic of Indonesia. This supporting institution then functions specifically for certain authorities and is independent.[31] If based on its duties and functions to accommodate public participation and actively supervise and evaluate the laws and regulations that have been formed so that they are harmonious and of high quality, this independent state institution in the field of regulation can be formed following the indicators of IRAs, namely Independent Regulatory Agencies.

Indicators of independence of IRAs include the first party politicization of appoinments, politicization in determining leaders. Second, departures (dismissal and resignation), namely the dismissal of

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[29] Resma Bintani Gustaliza. (2019). Mengurai Permasalahan Pembentukan Peraturan Perundang-Undangan Guna Peningkatan Kualitas Peraturan Perundang-Undangan. *Prosiding Forum Akademik Kajian Reformasi Regulasi*: *Menggagas Arah Kebijakan Reformasi Regulasi di Indonesia* (YSHK 2019).

[30] Fahmi Ramadhan Firdaus. (2024). Public Participation in Law-Makin Process: A Comparative Perspective of 5 (Five) Democratic Countries. *Jurnal Konstitusi.* 21 (2), 204-225. https://doi.org/10.31078/jk2123

[31] Kelik Iswandi., & Nanik Prasetyoningsih. (2020). Kedudukan *State Auxiliary Organ* dalam Sistem Ketatanegaraan di Indonesia. *Jurnal Penegakan Hukum dan Keadilan.* 1 (20), 138-165. https://doi.org/10.18196/JPHK.1208

members before the end of the term of office. Third, the tenure of IRA members, namely the independence of elected officials. Fourth, the financial and staffing resources of IRA, namely independence in finance and resource management and fifth is the use of power to overturn the decisions of IRAs by elected politicians, the influence of power to overturn decisions issued by independent institutions.[32]

Institutional independence, as indicated by IRAs, prevents this regulatory institution from later facing political conflicts and outside interventions in all aspects of its independence. This institution is different from the Directorate General of Laws and Regulations, where the Director General of PP is largely in terms of harmonization, which is limited to preventive aspects when laws and regulations are still in draft form, namely by preparing academic papers, harmonizing and synchronizing, at the regional level through regional offices facilitating the preparation and formation of regional regulations, directing technical guidance to implement agencies, and evaluating and monitoring the implementation of the formation of laws and regulations. Meanwhile, this independent institution, if it follows the institutional pattern of Japan, focuses more on repressive efforts by evaluating when the regulation is effect and observing the implementation of its policies in the community.

This institution does not explicitly directly bring about changes in the structuring of laws and regulations. However, institutional monitoring will implicitly encourage the implementation of harmonious laws and regulations. The authority possessed by this institution is not only focused on evaluation, but it is also necessary to conduct a legal audit of the laws and regulations that have been formed. The importance of conducting legal audits is related to several factors, including, the first being to inform the proposal of new laws and regulations as a concrete form of evaluating of the audit results. Second, there are still shortcomings in terms of harmonization, which are primarly limited to the formation of laws and regulations. Third, a legal audit can help in analyzing the priority needs of laws and regulations that are needed by the community. Fourth, it can achieve the objectives of the law, namely the certainty, justice, and benefits. Fifth, it ensures the accountability of government administration, including the enacted laws and regulation, and determines the framework for policy objectives to be achieved. Sixth, reducing the budget in the implementation and supervision of laws and regulations.[33]

The purpose of the implementation of this legal audit is to overcome the excessive proposal for the formation and ratification of laws and regulations, so that disharmonization problems can be overcome.[34] From this objective, it can be seen that the authority of this institution will also

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[32] Rizki Ramadani. (2020). Lembaga Negara Independen di Indonesia dalam Perspektif Konsep Independen *Regulatory Agencies*. *Jurnal Hukum Ius Quia Iustum,* 27 (1), 171-192. https://doi.org/10.35719/rch.v3il.92

[33] Mohammad Syaiful Aris., & Dita E.K. Putri. (2024). Legal Audit Sebagai Mekanisme Penyelesaian Disharmonisasi Peraturan Perundang-Undangan. *Jurnal Rechtsvinding*, 13 (1), 99-115. https://dx.doi.org/10.33331/rechtsvinding.v13i1.1588

[34] *Mohammad Syaiful Aris, 110.*

play a role in preventive matters, but if conceptualized as the final result, it is still a repressive effort. Evaluation is seen from an audit where all laws and regulations are still valid, which then from this independent institution will formulate in which fields the proposed formation and ratification of laws and regulations must be suppressed to reduce disharmony. The final result of this legal audit will be to provide three solutions, namely maintaining, revising, and revoking. The implementation of this evaluation is not necessarily carried out in a free period of time, but must have a periodic concept.[35]

Adopting the system of special institutions in the arrangement of regulations in Japan which is then refined in the concept of IRAs which is adjusted to the ideal system of forming laws and regulations, especially in local regulations, can be considered by the government to overcome the problem of disharmonization. The phenomenon of hyper-regulation and disharmony between the central government and local governments is a problem that has never found a common ground because many sectors are involved in forming a legislation. Therefore, a special independent institution is needed as a neutral and objective third party in providing perspectives and directions in the course of upholding the hierarchy of laws and regulations in Indonesia.

**b. Supervision of the Central Government and Local Governements in Resolving Regional Policies Due ti Disharmonization**

The pattern of relations between the central government and local governments cannot be separated from the existence of problems that have an impact on the tendency of centralization practices. Widespread intervention from the central government to local governments. This intervention is manifested in the principles of equal treatment, equal services, and equal protection. This model cannot be directly applied in Indonesia, which is a unitary state. The central government still has a portion of its own role by not simply releasing local governments to manage their households. The central government will continue to be present in the joints of government by bringing national policies that must be carried out in order to achieve balance in the life of the state. The relationship between the center and the regions is a dynamic relationship that swings between *centralizing* or *regionalizing*.[36]

The problem of disharmonization is a manifestation of the unsynergistic and unsynchronized relationship between the central government and local governments. East Kalimantan Province and Salatiga City are examples of regions that indicate disharmony in some of their regulations. A case of disharmony in local regulations occurred in East Kalimantan, namely in the East Kalimantan Provincial Regulation Number 10 of 2012 concerning the Implementation of Public Roads and Special Roads for Coal and Palm Oil Transportation Activities.

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[35] *Mohammad Syaiful Aris, 112.*

[36] Busrizalti. (2013). Hukum Pemda Otonomi Daerah dan Implikasinya. Total Media. Yogyakarta.

In its policy implementation, this regional regulation is disharmonized with Law Number 2 of 2025 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining. The key issue with this disharmony is that Article 6 and Article 7 of the East Kalimantan Provincial Regulation contradict Article 91 of the Minerba Law, which pertains to the practice of regulating the use of public roads for access to mining activities. The regional regulation strictly prohibits the use of public roads. However, the center allows hauling on public roads with several conditions. After review, it is clear that the regulation on road status in this regional regulation only applies to provincial regulations. Thus, the local government is not flexible to take action because it turns out that this regional regulation is also not detailed in determining the related restrictions. This regional regulation is considered barren because the central government has accomodated the mining authority through the law.[37]

In Salatiga City, disharmonization occurs in Salatiga City Regional Regulation No. 6 of 2020 on Regional Water Supply Company (PDAM) of Salatiga City. Article 9 of this regulation states *The PDAM capital sourced from regional capital participation as referred to in Article 8 paragraph (1) letter a that has been paid up until 2020 amounted to Rp. 26,647,120,000.* This provision contradicts vertically with Government Regulation No. 54/2017 on Regional-Owned Enterprises (BUMD) where Article 17 letter e of the BUMD Regulation explains that the articles of association of a regional Company contains the amount of authorized capital and paid-up capital.[38]

Various problems of disharmonization in local regulations across several sample regions in Indonesia need to be understood regarding the pattern of supervisory relations between the central government and local governments in harmonizing local regulations. The relationship between the central government and local governments established in the role of harmonizing local regulations in terms of supervision during the formation of local regulations and afterward. Technically, there are three models of supervision, namely general, preventive, and repressive. General model supervision is conducted under the Ministry of Home Affairs and the governor as the representative of the central government. The minister supervises all domestic affairs carried out by the regions and those related to the task of assistance. The governor also supervises the level II regional governments, namely districts/cities.[39]

Focusing on the scope of the implementation of local regulations, the government's efforts are more emphasized on preventive and repressive efforts, which are described in the following table:

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[37] Bayu, Rolles. (2024). Hauling di Jalan Umum: Tumpang Tindih Regulasi Daerah dan Pusat, Ajukan Petisi Lewat Forum Perhubungan. Retrieved from https://kaltimpost.jawapos.com/utama/2385370663/hauling-di-jalan-umum-tumpang-tindih-regulasi-daerah-dan-pusat-ajukan-petisi-lewat-forum-perhubungan#google_vignette

[38] *Gerryn Mauretha Indrawan, 1*

[39] Enny, Nurbaningsih. (2011). Berbagai Bentuk Pengawasan Kebijakan Daerah dalam Era Otonomi Luas. *Jurnal Mimbar Hukum,* 23 (1), 169-190. https://doi.org/10.22146/jmh.16197

Tabel 1 Scope of Local Regulation Implementation in Prevention and Enfocement Efforts

| No. | Ralated Regulations | Government's Efforts | |
|---|---|---|---|
| | | **Preventive Efforts** | **Repressive Efforts** |
| **1** | Article 58 Paragraphs (1) and (2) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation | Harmonizing, rounding, and stabilizing the conception of draft local regulations | (Doesn't regulate repressively) |
| **2** | Article 251 paragraph (1) of Law Number 23 Year 2014 on Regional Government (Has changed following the Constitutional Court Decision) | (Doesn't regulate preventively) | Cancellation of provincial bylaws by the minister and regency/city bylaws by the governor |
| **3** | Article 81 to Article 85 of Presidential Regulation No. 87 of 2014 on the Implementation Regulation of Law No. 12 of 2011 on the Formation of Laws and Regulations | Harmonizing, rounding, and stabilizing the conception of draft local regulations | (Doesn't regulate repressively) |
| **4** | Article 30 and Article 129 paragraph (1) of the Regulation of the Minister of Home Affairs Number 120 of 2018 Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products | Harmonizing, rounding, and stabilizing the conception of draft local regulations | This regulation regulates the revocation of governor regulations in Article 129 paragraph (1) which is carried out by the Minister of Home Affairs through the Director General of Regional Autonomy. |
| **5** | Regulation of the Minister of Law Number 2 of 2019 on the Resolution of Disharmony in Legislation through Mediation | (Doesn't regulate preventively) | Mediation is carried out when the regulations in question conflict both vertically and horizontally. |

The regulations on the harmonization procedures of local regulations, as outlined in the table basically have almost the same bureaucratic concept. The actors involved all aspects of harmonization are primarily internal coordination within the local government and with the DPRD. The coordination relationship with the central government is a problem because a pattern of harmonization in regulations has been established, but there are still local regulations that are not in harmony. The central government, as a government organizer with a structure above the local government must be able to overcome problems that have already been like this.

This authority in harmonization underwent a change soon after the issuance of Constitutional Court Decision Number 137/PUU-XIII/2015 and Constitutional Court Decision Number 56/PUU-XIV/2016.[40] These two Constitutional Court decisions examined Article 251 of the Regional Government Law.[41] The implementation of the decision is in connection with the authority to cancel regional regulations, which originally could be canceled by the Minister of Home Affairs and the governor. This authority took the form of an executive review in terms of cancellation, which was limited to executive preview. The authority to cancel is granted to the authority of the Supreme Court through a judicial review mechanism, which involves examining laws and regulations under the law. This is in accordance with what is stated in Article 24 A paragraph (1) of the 1945 Constitution of the Republic of Indonesia that the Supreme Court has the authority to hear laws and regulations under the law.

The central government agencies involved in the executive preview are ministries or institutions that organize government affairs in the field of legislation formation, namely the Ministry of Law and the Ministry of Home Affairs. The collaboration between the Ministry of Law and the Ministry of Home Affairs is a concrete action from the central government to control and supervise the formation of harmonious regional regulations. This centralized approach is expected to enhance the quality of local regulations, making them more effective and aligned with central government policies. The purpose of harmonization by the Ministry of Law is in accordance with Regulation of the Minister of Law Number 22 of 2018, that is, to harmonize with Pancasila, the 1945 Constitution of the Republic of Indonesia, laws and regulations at the same level or higher, court decisions, and techniques for drafting laws and regulations.[42]

The Ministry of Home Affairs has the authority to foster and supervise the implementation of local government in terms of the formation of regional legal products. The role played by the Ministry of Home Affairs in this case is coherently related to the division of

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[40] Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015

[41] Putusan Mahkamah Konstitusi Nomor 56/PUU-XIV/2016

[42] Haeril Akbar., Sukardi., & Radian Salman. Dualisme Pengawasan Preventif: Tantangan Harmonisasi dan Fasilitasi dalam Pengawasan Peraturan Daerah. *Jurnal Amama Gappa,* 33 (1), 1-17. https://journal.unhas.ac.id/index.php/agjl/article/view/35449

government affairs which is the source of the formation of regional legal products. The participation of the Ministry of Home Affairs is also to ensure the harmonization of the draft regional regulations with other laws and regulations, such as the draft regional regulations relating to local taxes, levies, APBD, and RTRW must be evaluated by the Minister of Home Affairs before being approved by the regional head.[43] The Minister of Home Affairs and the governor have a role that is only limited to executive preview, no longer as well as executive review. The authority of executive preview by the Minister of Home Affairs and the governor provides a control function over the process of making local regulations in the form of drafts that are not yet generally binding, while if it has been stipulated as a local regulation, it is usually binding and there can be a cancellation mechanism through the Supreme Court.[44]

Another repressive effort that can be said to be a renewal of the central government is to mediate the types of laws and regulations that are disharmonized through the Ministry of Law as stipulated in the Minister of Law Regulation Number 2 of 2019 concerning the Resolution of Disharmony in Legislation through Mediation. The types of laws and regulations that this regulations can accomodate include ministerial regulations, regulations of non-ministerial government agencies, regulations of non-structural agencies, and regional laws and regulations. The spirit of initiating mediation as a non-litigation effort to reduce cases coming to the Supreme Court is positive. However, other problems arise because the concept of mediation does not accurately reflect the characteristics of public law, instead confusing public law with private law. Mediation in practice is commonly found in the field of private law so that not all fields of law can adopt the practice of mediation because the issues in Regulation of the Minister of Law Number 2 of 2019 concern public affairs in the form of conditions and situations of a legal norm that deserve to be considered for legality and legitimacy.[45]

The regional response to the annulment of regional regulations will be somewhat complicated. This could be involve either an ongoing policy or the temporary or permanet suspension of development until a legal basis that is re-established by the regional government.[46] The situation will be even more complex if the local government continues to enforce regional regulations that have been canceled, as in Article 252 paragraphs (1) to (5) the local government will be subject to sanctions in the form of administrative sanctions to the regional head and DPRD members and/or sanctions for delaying the evaluation of the draft

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[43] *Haeril Akbar, 6*

[44] Lusy Liani. (2020). Hapusnya Wewenang Executive Review Pemerintah Terhadap Peraturan Daerah: Studi Pasca Adanya Putusan MK Nomor 137/PUU-XIII/2015 dan Nomor 56/PUU-XIV/2016. *ADIL: Jurnal Hukum,* 10 (2), 22-47. https://dx.doi.org/10.33476/ajl.v10i2.1222

[45] Rahmat Akbar., & Ahmad Yasin. (2021). Mempersoalkan Mediasi sebagai Upaya Penyelesaian Disharmoni Peraturan Menteri. *Fundamental: Jurnal Ilmu Hukum,* 10 (1), 33-45. https:doi.org/10.34304/jf.v10i1.34

[46] Aryanto. (2019) *Pembatalan Peraturan Daerah yang Berkaitan dengan Hak dan Wewenang Daerah Otonom dalam Perspektif Hukum Ketatanegaraan. Skripsi.* Program Studi Ilmu Hukum Fakultas Hukum Universitas Muhammadiyah Sumatera Utara.

regional regulation. The impact of this is the non-payment of financial rights stipulated in the provisions of laws and regulations. Sanctions can be suspended if the local government continues to submit objections to the President for provincial regional regulations and to the Minister for district or city regional regulations. For regencies/municipalities, DAU and/or DBH will be postponed or reduced for the affected regions.

The objection mechanism is a right of the local government that must be maintained because it involves the regions's role in exercising independence and discretion, which enables it to know its own region better. This is because not all revoked local regulations are based on the principle of direct legislation formation absolutely justified by the central government. Avoiding this arbitrariness, it is necessary for the local government to seek through an objection mechanism for revocation by the Minister to the President for provincial regulations and the governor to the Minister for district / city regulations.[47]

The government developed another repressive effort, namely the implementation of digital-based policies implemented in Indonesia in cooperation with Japan as a cooperation partner through the JICA (Japan International Cooperation Agency). Through JICA's special program, JPP (JICA Partnership Program) aims to spur the growth and development of projects at the lowest level of society in developing countries by leveraging on technology and experience in development. The cooperation in this JPP project is further realized throught the *"e-Harmonization Application"* program, where this program will run under the direction of the Ministry of Law, particulary at the Directorate General of Laws and Regulations.[48]

This e-harmonization application is a digital update in the harmonization of integrated laws and regulations and accelerating the accountability process. This system is designed to facilitate the harmonization of various types of draft regulations including Draft Laws (RUU), Draft Government Regulations (RPP), Draft Presidential Regulations (RPerpres), and various regulations of ministries, institutions, and regions. The existence of e-harmonization will bring great benefits to various related parties such as the government, legislative drafters, and of course the community.[49]

The development of this application must also consider several factors in the future, including to technical arrangements for using applications, socialization and feasibility trials with the public, and application integration systems. The most basic step to run this program after launching is to create a Circular Letter the Minister of Law containing procedures for implementing e-harmonization, addressed to each Regional Office of the Ministry of Law. A Ministerial Circular Letter

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[47] *Aryanto, 52*

[48] Japan International Cooperation Agency (JICA). Membangun Partisipasi Aktif Masyarakat dalam Kerjasama Internasional. Retrieved from https://www.jica.go.jp/indonesian/overseas/indonesia/activities/activity03.html.

[49] Kementerian Hukum Kanwil NTT. (2025). *e-* Harmonisasi: Langkah Besar Menuju Modernisasi Regulasi. Retrieved from https://ntt.kemenkum.go.id/berita-utama/e-harmonisasi-langkah-besar-menuju-modernisasi-regulasi

is an official text that contains notifications, appeals, or technical instructions related to procedures for implementing certain.[50] With this, the procedures that will be carried out by the implementing officers of each Regional Office of the Ministry of Law will be directed and implemented in accordance with the bureaucracy.

## IV. CONCLUSION

The arrangement of local regulations in Indonesia in the context of the normative level theory proposed by Hans Kelsen, is in the correct position, which is in the lowest level of the hierarchy of laws and regulations, serving as a delegation of the regulations above it. However, in practical terms, the application of this theory, leads to problems with local regulations, where the concept of hierarchy becomes a source of disharmonization problems that are rooted in local regulations. Several factors are contribute to the problem of structuring local regulations in the hierarchy of laws and regulations, including the lack of supervision over the orderly hierarchy of laws and regulations, ego-sectoral regional independence, conflicts of interest between DPRD and regional heads, and lack of community participation in meaningful participation. To overcome the problems of structuring and supervising local regulations in order to maintain of a harmonious level of norms, Indonesia is deemed necessary to imitate the concept of Japan which has a special institution for supervising laws and regulations to remain harmonious.

Supervision of local policies, including harmonized local regulations, is carried out by the central government and local governments in two mechanisms; preventive efforts and repressive efforts. Preventive efforts are carried out by the central government through the Ministry of Home Affairs and the Ministry of Law, and the regions are carried out by the DPRD together with the local government to harmonize local regulations. Repressive efforts are carried out by the Supreme Court through the annulment of regional regulations and mediation by the Ministry of Law. Such efforts, in reality, have not been able to accommodate the problem of disharmonization. In some arrangements, preventive efforts have been issued to strictly emphasize harmonization, but disharmonization problems still occur when these regional regulations are running. Repressive efforts, including cancellation and mediation, but cancellation not directly coordinated by the central government, to be canceled. Mediation, too, does not have enough power to be an option as an effort that can be taken to harmonize regional regulations. The latest effort from the digital-based government was issued in early 2025 which is classified as a preventive measure, namely the launch of an *e-harmonization* application that is integrated with the Ministry of Law to harmonize draft laws and regulations. Therefore, the author suggests several things for future consideration by the government and/or further research. First, the government needs to examine and consider the concept of establishing a special institution that is independent in overseeing the

[50] Yohanes Pattinasarani. (2022). Keabsahan Surat Edaran yang Muatan Materinya Bersifat Pengaturan dan Sanksi, *Jurnal Saniri,* 3 (1), 27-36.

hierarchy of laws and regulations, as well as the problem of disharmony between different types of laws and regulations. Second, promoting and enhancing the legal culture of the central government and local governments that are integrated and have the share a common understanding in forming and harmonizing local regulations.

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