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Reform Management Of Review Local Regulations In Indonesia Through Expansion Of The Authority Of The Supreme Court

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Abstract
This article describes the need for management reform of judicial review for Regional Regulation in Indonesia. After a long period of dualism in the testing system that attaches authority to the Government (i.e. the Ministry of Home Affairs) and the Supreme Court, the Constitutional Court finally imposes a single review on the Supreme Court. With this new mechanism, the Supreme Court's management measures in handling judicial review cases of Regional Regulations urge improvements to ensure institutional accountability and independence.

Keywords: *Supreme Court, Indonesia, Regulatory Regional, Executive Review.*

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I. Introduction

Since January 2001, Indonesia embarked on a historic effort to select multiple functions and responsibilities of government from the centre to the district level. These changes were attempted amid political and economic uncertainty that plagued the Indonesian government and people years after the "East Asian crisis" hit the region in 1997-1998.[1] After decades of centrally controlling economic and political development, more than 360 district and city governments were suddenly tasked with managing almost all state affairs, except foreign policy, monetary policy, religion, and security.[2]

The purpose of the transfer of authority is to encourage regional development from below by giving greater flexibility to local governments in determining more aspirational programs for the benefit of the community and development goals.[3] Diprose noted that there were 2 (two) impacts of decentralization. This policy has eased tensions between the center and the regions around longstanding grievances against the nationalist agenda in Indonesia.[4] Evidence shows, through examining the case of conflict-affected Central Sulawesi, that decentralization has also to some extent addressed long-standing inter-group tensions and horizontal inequalities at the local level[5], especially where geographically concentrated ethnoreligious groups have previously been marginalized from government.[6] It has also reduced grievances by increasing regional autonomy and participation in decision-making through direct regional head elections, which are now hot political contests at the local level.[7]

On the other hand, government management issues also surfaced. Siburian has researched by concluding that the new style of autonomy is also accompanied by regional income inequality [8] Socially, changes in national policies and laws lead to a reinterpretation of mobility patterns and trigger changes in the relationship between local population groups and existing cultural and political inclusion and exclusion mechanisms.[9] Hidayat writes that local political structures are too inadequate to play the driving force for more significant improvement in the health and education sectors with decentralisation.[10]

To accommodate carrying out the devolution of power, the Provincial and Regency/Municipal Governments are permitted to form Regional Regulations with the approval of the Regional People's Representative Council in each of these local units. In contrast to other types of laws and regulations in Indonesia that implement higher regulations, Regional Regulations have unique characteristics because apart from elaborating higher-level regulations, they can also create new norms that depend on regional peculiarities. According to Jimly Asshiddiqie, former Chairman of the Constitutional Court, Regional Regulations are not classified as regulatory products. Still, they are products of the regional legislature together with the head of the local government.[11, p. 95] In this context, a Regional Regulation may conflict with higher legislation and other strategic government policies.

The Monitoring Committee for the Implementation of Regional Autonomy stated that at least 347 regional regulations are problematic and have the potential to hinder investment. Based on the committee's review, it was found that 235 problematic Regional Regulations were related to regional taxes and regional

levies, 63 related to permits, seven related to labour issues, and 42 Regional Regulations with other matters. Many of these regional regulations have problems in juridical, substance, and principle aspects. As for the Ministry of Home Affairs records, from 2015 to July 2019, there were 290 provincial regulations related to investment. During the reign of Joko Widodo-Jusuf Kalla (2014-2019), as many as 3,143 Regional Regulations were cancelled. Previously, from 2002-2009, as many as 2,246 Regional Regulations were cancelled. The following, in 2010-2014, as many as 1,501 Regional Regulations were cancelled. If collected as a whole, there are 7,029 Regional Regulations cancelled.

The management of harmonization of Regional Regulations with higher laws and regulations shows an ineffective operation. During the enactment of the 2004 Regional Government Law, which stipulates that an annulment of a Regional Regulation with a Presidential Regulation has never been carried out. Although several Regional Regulations have been annulled, only 1 (one) Presidential Regulation is enacted, and the majority is carried out by the Decree of the Minister of Home Affairs. The mechanism is contrary to the provisions of the local government law. Furthermore, under the 2014 Regional Government Law provisions, Regency/City Regional Regulations are annulled by a Governor's Decree, while for Provincial Regulations, it is carried out by a Decree of the Minister of Home Affairs. However, the mechanism for supervising this Regional Regulation was later declared contrary to the 1945 Constitution by the Constitutional Court through Decision Number 137/PUU-XIII/2015. Therefore, practically, the only management of supervision of Regional Regulations can only be carried out by the Supreme Court through the authority of judicial review.

This paper explore the authority of the Supreme Court in testing Regional Regulations. The flow of discussion is intended to show the weaknesses of the testing mechanism and propose ideas about the urgency of expanding the authority of the Supreme Court in the management of reviewing Regional Regulations..

II. Discussion

Legal Review in Central-Local Government Relation

Judicial review is a complex process.[12] This mechanism explores the intricacies of the provisions of a norm to ensure that the fundamental principles of law formation are not ignored.[13] Even in some European countries, the authority of this court is not only to examine a statutory regulation but also all government actions.[14] With this authority, the court should carry out an objective interpretation of the law per the demands of the public.[15] Referring to the case in India, this judicial review is "not a static phenomenon. It has ensured that the, judicial review ini "not a static phenomenon. It has ensured that the Constitution is the supreme law of the land, and in situations when a law impinges on the rights and the liberties of citizens, it can be pruned or made void."[16] Briefly, judicial review is an essential marker of a modern government, where the law involves representative institutions and courts [17].

The subsequent discussion concerns the institutional competence of testing legal norms. In general, with central and regional relations, the central government can control legislative products at the local level. Western European countries express considerable diversity in the positions given to local governments in constitutions. In federal systems, such as in Germany, Austria and Switzerland, municipal governments are very much at the centre of authority. However, the constitution may vary the position and rights of local government vis-a-vis both the middle and federal levels.[18] In unitary systems, variations flow again from what is written in the constitution – for example, whether or not local governments have rights over some general competence powers or should operate within a more restricted ultra vires framework, where local governments can only do what is permitted. So to do under central law, as in England, for example. The UK provides an interesting example of the ultra vires model, in which it has an unwritten constitution, so the place of local government in the scheme is determined only by the law and its interpretation.[18]

To compensate for the devolution of power, the legal system in a country often emphasizes the urgency of central control over the regions. However, the literature generally indicates that the control mainly enters the budget sector, be it transfer of funds, determination of fiscal capacity, and policy sanctions as an effect of budget management.[19]–[22] However, from a legal perspective, it can also be carried out as a supervision of the implementation of legal products at the local level.[23] The government can unilaterally cancel or refuse the application of legal products set by the local government.[24]–[26] Pola ini mengambil model *executive review.*

Of course, there are power relations issues in such a review model. The central government tends to be dominant and may formulate vague elements in determining the implementation of legal products in the regions.[27], [28] From an academic point of view, this is contrary to the concept of decentralization which demands a more substantive distribution of power. [29] Moreover, in the ideal type of law enforcement, it must be kept away from political elements that obscure the substance of the law itself. Therefore, it is increasingly being pushed that the examination of legal norms must be left to an independent judiciary, including in assessing the legal rules established at the local level against national interests.[30] This judicial review model is considered popular and closer to the need for accountability in establishing a separation of powers This judicial

review model is considered popular and closer to the need for accountability in establishing a separation of powers.[30][31]

Judicial Review of Regional Regulations through the Supreme Court

In Indonesia, based on the 1945 Constitution as the highest basic law, the review of a regional regulation as a legal product under the law should be carried out by the Supreme Court through a judicial review mechanism. In this case, Article 24 A Paragraph (1) of the 1945 Constitution confirms that the Supreme Court has the authority to adjudicate at the level of cassation, examine statutory regulations under the law against the law, and has other powers granted by law. This provision emphasizes that if a regional regulation is deemed to conflict with a higher regulation (including the law), the cancellation process is based on a judicial review in the Supreme Court. In addition, Article 20 paragraph (2) letter b of Law Number 48 of 2009 concerning Judicial Power in conjunction with Article 31 paragraph (1) of Law Number 5 of 2004 concerning the Supreme Court has also stated that the Supreme Court has the authority to examine legislation under a law against law.

The Constitutional Court handed down two decisions revoking the authority of the Minister of Home Affairs and the Governor to cancel Regional Regulations at the Regency/City and Provincial levels, namely Decision Number 137/PUU-XIII/2015 and Decision Number 56/PUU XIV/2016. The Court gave several considerations as follows. *First*, Local Regulation is a form of legislation with a hierarchy under the Act. Therefore, the review can only be carried out by the Supreme Court , not by other institutions as regulated in Article 24A paragraph (1) of the 1945 Constitution. *Second*, cancelling the Regional Regulation is based on the Regional Government Law, namely because it violates the public interest and morality. It is the domain of the MA to apply its benchmarks. The cancellation of a Regional Regulation only through a governor's decision is judged by the Constitutional Court also not under Indonesia's regime of laws and regulations. The mechanism is because the Regional Regulation as a legal product in the form of a regulation cannot be cancelled by a governor's decision as a legal product in the form of a decision. *Third*, there is potential for dualism in court decisions between the administrative court decision that examines the legality of the governor's or minister's decision and the decision on the judicial review by the Supreme Court on the substance of the same case. However, with different legal products, according to the Constitutional Court, it will create legal uncertainty that violates Article 28D paragraph (1) of the 1945 Constitution. With the abolition of the mechanism for cancelling regional regulations by the government, the only mechanism for cancelling regional regulations must be done through the Supreme Court.

The Supreme Court Reform

To anticipate the entry of applications for judicial review rights against Regional Regulations in the Supreme Court, the Supreme Court should revise its procedural law by clarifying the process and stages of the trial. One thing that needs to be re-examined, for example, relates to the closed-ended trial model for the right to judicial review. The Supreme Court reasoned that the closed trial and only examined case documents were taken because the judicial review had to be decided quickly. However, the closing of hearing on the right to judicial review can ignore the principle of a transparent and accountable trial, so that this often results in criticism from the petitioners and the wider public, including closing access to information for the mass media. Openness becomes essential; they cannot follow the progress of handling cases, and the litigants do not have the opportunity to present experts or witnesses to hear their statements in court.

Another thing that needs to be studied in depth relates to the number of Supreme Judges in the state administration chamber, as many as 7 (seven) people who will examine all applications for judicial review rights. If the number of existing Supreme Court Justices is deemed insufficient to cope with many incoming judicial review applications, it is necessary to change the composition or increase the number of Supreme Court Justices in the state administration chamber. Thus, in addition to being able to examine and decide cases quickly, the nature of the trial can also be carried out openly, as the basic principle of the trial, which is open to the public, except for some instances, for example, concerning matters of children, morality, or state security.

Review of Regional Regulations should be conducted openly. The application handled by the panel of judges reviews general regulations or binds the community at large in a specific area. Therefore, the review process should also explore regional regulation as a material consideration in deciding the application. It can be achieved through a direct request for information from the applicant and the respondent, namely the local government. Requests for information can also be made to experts or elements of society submitted by the parties. For this reason, a judge who examines the application and domiciled in Jakarta faced limitations of conditions and developments of an area.

The consequence of the parties involvement in this proceed is the burden of costs that must be borne. With the current application examination conducted by the Supreme Court in Jakarta, the parties must come to Jakarta to attend the trial. For this reason, the costs required are substantial. However, involving these parties can be done through a breakthrough by delegating the authority of examination to the High Court/State

Administrative Court at provincial level. The process of review Regional Regulations has been included in the scope of the state administrative court. The delegation must also be within the scope of the state administrative court, and the high administrative court is in each provincial capital city. The examination process carried out by the high administrative court can facilitate access for the public to be involved in the trial. Therefore, the costs required will be much less than the parties attending the trial in Jakarta.

III. Conclusion

The Constitutional Court has changed the legal politics of internal government control in the constitutional system in Indonesia with the revocation of the Government's authority to review Regional Regulations through executive review. The Constitutional Court also puts an end to the dualism of authority to examine Regional Regulations, so that the only way for a material review of Regional Regulations can only be done through a petition for objection to the right to a judicial review at the Supreme Court. The Supreme Court needs to review the procedural law in cases of judicial review rights, especially regarding the nature of the trial, which is still closed, and the number of Supreme Court Justices who will handle cases of judicial review rights. The review essential for anticipating the surge in requests for objections to the Regional Regulation to the Supreme Court.

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