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ANALYSIS OF REGIONAL AUTONOMY REGULATION IN INDONESIA FROM THE PERSPECTIVE OF POSITIVE LAW

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Abstract

The Unitary State of the Republic of Indonesia constitutionally adopts a decentralization system in the conduct of its governance, as mandated by Article 18 of the 1945 Constitution. Regional autonomy grants autonomous regions the right, authority, and obligation to regulate and administer their own governmental and community affairs in accordance with applicable legislation. Since the Reform Era, Indonesia has produced a rich body of legislation on regional governance, yet significant implementation gaps remain. This study examines three central issues: (1) the regulatory framework for regional autonomy in Indonesian legislation; (2) the synchronization of central and regional regulations in the implementation of regional autonomy; and (3) the obstacles encountered in implementing regional autonomy regulations. Employing a normative juridical approach, this study analyzes primary legal sources including the 1945 Constitution and Law No. 23 of 2014, alongside scholarly literature. The findings confirm that Indonesia possesses a comprehensive, layered legal foundation for regional autonomy. Nevertheless, persistent challenges include overlapping authority between governmental levels, limited regional legislative drafting capacity, fiscal decentralization imbalances, and weak supervisory functions. The study recommends a comprehensive reform encompassing regulatory harmonization, human resource capacity building, and institutional strengthening.

Keywords: *Regional Autonomy, Decentralization, Legal Synchronization, Fiscal Decentralization, Regional Regulation*

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A. Introduction

The Unitary State of the Republic of Indonesia (NKRI) applies a decentralization system in the administration of its governance. This is constitutionally reflected in Article 18 paragraph (1) of the 1945 Constitution, which mandates the division of Indonesia into provinces, regencies, and cities, each furnished with its own regional government [1]. This decentralization policy serves as the foundation for the implementation of regional autonomy—an instrument intended to realize societal welfare more equitably and justly across the archipelago.

Regional autonomy is fundamentally the right, authority, and obligation of an autonomous region to regulate and administer its own governmental affairs and the interests of the local community in conformity with applicable legislation [2]. Since the Reform Era, the implementation of regional autonomy in Indonesia has experienced considerable dynamics and development, marked by the emergence of diverse legislative products governing regional governance.

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PRIMA LAW JOURNAL

Vol. 1, No. 2, September 30, 2026, hlm. 146 - 152

Regional autonomy represents the process of decentralizing authority that was formerly concentrated at the center and is thereafter transferred wholly to the regions. The objectives of this transfer are to enable regional governments to provide services in closer proximity to the community, accelerate regional economic growth, improve societal welfare, and advance the democratization process [3].

Against this background, three research questions guide this study: first, how is regional autonomy regulated in Indonesian legislation? Second, how is synchronization between central and regional regulations achieved in the implementation of regional autonomy? Third, what obstacles exist in the implementation of regional autonomy regulations in Indonesia? Addressing these questions is essential for identifying pathways toward more effective and accountable regional governance in Indonesia.

B. Research Methodology

This study employs a normative juridical research approach, which focuses on examining legal norms, legislative texts, and doctrinal literature relevant to the regulation and implementation of regional autonomy in Indonesia [4]. Data were collected through comprehensive library research encompassing three categories of legal materials.

Primary legal materials include the 1945 Constitution of the Republic of Indonesia; Law No. 23 of 2014 on Regional Government; Law No. 12 of 2011 as amended by Law No. 13 of 2022 on the Formation of Legislation; Law No. 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments; Government Regulation No. 2 of 2018 on Minimum Service Standards; Government Regulation No. 12 of 2019 on Regional Financial Management; Minister of Home Affairs Regulation No. 80 of 2015 as amended by Regulation No. 120 of 2018 on the Formation of Regional Legal Products; and Constitutional Court Decision No. 137/PUU-XIII/2015.

Secondary legal materials consist of legal textbooks, scholarly journal articles, and academic commentaries. Tertiary legal materials include legal dictionaries and encyclopedias. The collected data were analyzed qualitatively through legal interpretation methods grammatical, systematic, historical, and teleological to draw conclusions about the legal framework, synchronization challenges, and implementation obstacles of regional autonomy in Indonesia.

C. Discussion and Analysis

1. The Regulatory Framework for Regional Autonomy in Indonesian Legislation

1.1 Constitutional Foundations of Regional Autonomy

The regulation of regional autonomy in Indonesia's legal system is grounded in the constitution as the supreme norm (grundnorm). The 1945 Constitution, following its amendment, explicitly regulates regional government in Chapter VI. Article 18 provides, inter alia, that: Indonesia is divided into provinces, and provinces are divided into regencies and cities, each with its own regional government regulated by statute; provincial, regency, and city governments regulate and administer their own affairs under the principles of autonomy and co-administration (tugas pembantuan); each regional government has a Regional People's Representative Council (DPRD) elected by general election; Governors, Regents, and Mayors are elected democratically; regional governments exercise the broadest autonomy except in matters designated by statute as central government affairs; regional governments are entitled to enact regional regulations and other rules to implement autonomy and co-administration; and the structure and procedures of regional governance are regulated by statute [5].

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PRIMA LAW JOURNAL
Vol. 1, No. 2, September 30, 2026, hlm. 146 - 152

Article 18A of the 1945 Constitution further provides that authority relations between the central government and provincial, regency, and city governments—as well as between provinces and regencies/cities—are regulated by statute with due regard to the specificities and diversity of each region. Financial relations, public services, and the utilization of natural and other resources between the central and regional governments are regulated and implemented equitably and harmoniously by statute [6].

Article 18B affirms that the state recognizes and respects special or particular regional government units as regulated by statute, and similarly recognizes and respects customary law community units and their traditional rights, insofar as these remain alive and consistent with societal development and the principle of the Unitary State of the Republic of Indonesia [7]. These provisions underscore that Indonesia's constitutional design explicitly accommodates asymmetric recognition of regional distinctiveness within a unitary framework [8].

Theoretically, decentralization—the animating spirit of regional autonomy—can be differentiated into territorial decentralization, functional decentralization, and administrative decentralization. In the Indonesian context, decentralization is implemented through the creation of autonomous regions vested with authority to administer their own governmental affairs [9].

1.2 The Hierarchy of Legislation

Within the hierarchy of Indonesian legislation, regional autonomy regulations are arranged in successive layers. Law No. 13 of 2022—the second amendment to Law No. 12 of 2011 on the Formation of Legislation—establishes a normative hierarchy descending from the 1945 Constitution, through Decrees of the People's Consultative Assembly (MPR), Laws/Government Regulations in Lieu of Law (Perpu), Government Regulations, Presidential Regulations, Provincial Regional Regulations, to Regency/City Regional Regulations [10].

Law No. 23 of 2014 on Regional Government constitutes the primary legal umbrella for regional governance. This law divides governmental affairs into three categories: absolute governmental affairs, which fall exclusively within the authority of the central government; concurrent governmental affairs, which are divided among the central government, provincial governments, and regency/city governments; and general governmental affairs, which fall within the authority of the President as head of government [11].

In the domain of regional finance, Law No. 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments provides the overarching framework for the allocation of fiscal resources, replacing the previous Law No. 33 of 2004 to align fiscal arrangements with the broader regional governance framework [12].

2. Synchronization of Central and Regional Regulations in the Implementation of Regional Autonomy

2.1 The Concept of Synchronization in the Legal System

Regulatory synchronization is the effort to harmonize various pieces of legislation so as to prevent overlapping, conflict, and disharmony between legal norms. In the context of central–regional relations,

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PRIMA LAW JOURNAL
Vol. 1, No. 2, September 30, 2026, hlm. 146 - 152

synchronization is of paramount importance given the sheer volume of regulations issued by both levels of government [13].

Central government oversight of regional regulations is exercised through two instruments: preventive oversight and legal oversight. Preventive oversight is conducted through an evaluation mechanism before a regional regulation is enacted, while legal and social oversight is conducted through the annulment of regional regulations that conflict with the public interest or higher-level legislation [14].

2.2 The Mechanism for Harmonizing Regional Legal Products

Minister of Home Affairs Regulation No. 80 of 2015, as amended by Regulation No. 120 of 2018 on the Formation of Regional Legal Products, governs the procedures for drafting, deliberation, enactment, and promulgation of regional legal products. This regulation requires every regional legal product to undergo a harmonization process with higher-level legislation before it is enacted [15].

Constitutional Court Decision No. 137/PUU-XIII/2015 has clarified the limits of central government authority in annulling regional regulations. The Constitutional Court held that the power to annul regional regulations may only be exercised through the judicial review mechanism, and not through executive decision [16]. This ruling has significant implications for the balance of authority between central and regional governments in the oversight of regional legislation.

The Minimum Service Standards (Standar Pelayanan Minimal/SPM) established under Government Regulation No. 2 of 2018 represent an important instrument for ensuring synchronization between central policies and their regional implementation. The SPM sets the minimum threshold of type and quality of basic services that regional governments are obligated to provide, thereby creating a common baseline across regions while preserving regional flexibility in delivery [17].

3. Obstacles in the Implementation of Regional Autonomy Regulations in Indonesia

3.1 Overlapping Authority

One of the primary obstacles in the implementation of regional autonomy regulations is the problem of overlapping authority between the central and regional governments. Although Law No. 23 of 2014 has provided a more explicit division of authority, in practice considerable ambiguity persists in determining the jurisdictional boundaries of each level of government [18].

Regulatory overlap also arises in the relationship between provincial governments and regency/city governments. This situation has the potential to create legal uncertainty that can impede investment and public service delivery. Bagir Manan argues that this problem is rooted in the as-yet-unclear conceptualization of decentralization within Indonesia's legal system [19]. Without a settled conceptual framework, legislative attempts to demarcate authority remain vulnerable to competing interpretations and jurisdictional disputes in practice.

3.2 Regional Legislative Capacity

The capacity of regional bureaucratic apparatus to produce quality legal products is a determinant factor in the success of regional autonomy implementation. The limited availability of human resources competent in legislative drafting (legal drafters) at the regional level has resulted in many regional

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PRIMA LAW JOURNAL

Vol. 1, No. 2, September 30, 2026, hlm. 146 - 152

regulations failing to meet the technical standards for the formation of legislation [20].

This capacity problem is compounded by the high rate of turnover among regional officials as a consequence of regional head elections. Changes in regional leadership are frequently accompanied by shifts in policy priorities and changes in personnel, so that ongoing programs become neglected or lose their continuity [21]. The resulting discontinuity undermines the coherent, long-term legislative planning that effective regional autonomy requires.

3.3 Fiscal Decentralization Challenges

Fiscal decentralization is a crucial component of genuine and accountable regional autonomy. However, its implementation continues to face numerous obstacles, including high regional dependence on fiscal transfers from the center, low Regional Own-Source Revenue (Pendapatan Asli Daerah/PAD), and inefficiency in regional financial management [22].

Government Regulation No. 12 of 2019 on Regional Financial Management requires regions to prepare budgets based on the principles of efficiency, effectiveness, transparency, and accountability. In practice, however, the application of these principles continues to encounter both structural and cultural barriers [23]. Many regions lack the administrative infrastructure to operationalize these principles rigorously, particularly in districts and cities with smaller populations and weaker economic bases.

3.4 Supervision and Guidance

The supervisory and guidance functions performed by the central government and by governors as representatives of the central government in the regions constitute important instruments for ensuring the consistent implementation of regional autonomy regulations. Law No. 23 of 2014 explicitly provides that in carrying out guidance and supervision of the governmental affairs of regency/city governments, the President is assisted by the Governor as the representative of the central government [24].

Ridwan HR observes that the primary problem in supervision is the weak institutional capacity of supervisory bodies and the absence of clear sanction mechanisms for regions that fail to comply with applicable legislation [25]. Without credible enforcement, supervisory mandates remain largely declaratory. HAW. Widjaja further argues that the effectiveness of supervision is highly dependent on the quality of the relationship between the central and regional governments, which must be built upon a foundation of trust, effective communication, and shared commitment to national development goals [26].

D. Conclusion

First, the regulation of regional autonomy in Indonesia rests upon a comprehensive and layered legal foundation, extending from the 1945 Constitution as the supreme norm to a wide range of technical implementing regulations. Law No. 23 of 2014 on Regional Government serves as the primary regulatory instrument that systematically governs the distribution of authority between the central and regional governments. This legislative architecture provides a structurally sound basis for regional autonomy; however, the quality of the legal framework does not in itself guarantee effective implementation.

Second, the synchronization between central and regional regulations continues to face diverse

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PRIMA LAW JOURNAL

Vol. 1, No. 2, September 30, 2026, hlm. 146 - 152

challenges, particularly with respect to the harmonization of regional legal products with higher-level legislation. The Constitutional Court's ruling in Decision No. 137/PUU-XIII/2015—confining the power of annulment to the judicial review mechanism—has introduced greater legal certainty in central–regional regulatory relations, but the day-to-day harmonization of a vast body of regional legislation remains administratively demanding. Existing supervisory mechanisms need to be strengthened so that they can function optimally in preventing the issuance of disharmonious regional regulations.

Third, the obstacles in implementing regional autonomy regulations encompass overlapping authority, limited regional legislative capacity, fiscal decentralization imbalances, and weak supervisory and guidance functions. Resolving these obstacles requires a comprehensive approach involving regulatory reform, enhancement of human resource capacity—particularly in legal drafting—and institutional strengthening of both regional governments and their supervisory counterparts. Only through such a multifaceted strategy can Indonesia realize the promise of genuine and accountable regional autonomy that serves the welfare of all its people.

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PRIMA LAW JOURNAL

Vol. 1, No. 2, September 30, 2026, hlm. 146 - 152

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