

## *Executive Review and Judicial Review of Regional Regulations as an Implementation of the Principles of the Rule of Law*

Hendi Budiaman

Universitas Galuh, Ciamis, Indonesia

Email: [hendi\\_budiaman@unigal.ac.id](mailto:hendi_budiaman@unigal.ac.id)

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### **Abstract**

*This research aims to examine the mechanism for reviewing Regional Regulations (Perda) through two forms: executive review and judicial review, as a means of implementing the principle of the rule of law in Indonesia. As a nation governed by the rule of law, every Perda must have a clear legal basis, not conflict with regulations at a higher level, and be able to meet the interests of the wider community. The method used in this research is normative juridical with a library approach, focusing on the analysis of applicable regulations and related court decisions. The research findings indicate that the Central Government's Executive Review of Regional Regulations (Perda) is a form of preventive and repressive Review aimed at maintaining the legal and regulatory hierarchy. However, following Constitutional Court Decision No. 137/PUU-XIII/2015, the Ministry of Home Affairs' authority to annul Perda has been limited, strengthening the role of Judicial Review by the Supreme Court. Judicial Review plays a crucial role in realizing justice, providing legal certainty, and protecting human rights from potential abuse of authority at the regional level. This study concludes that synergy between executive Review, in the form of guidance and supervision, and judicial Review as a dispute resolution mechanism is crucial for producing regional legal products that are responsive, democratic, and support the rule of law*

### **A. INTRODUCTION**

Indonesia firmly declares itself a state based on the rule of law (*rechtsstaat*), as stipulated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (Simamora, 2014). A consequence of this principle is the application of the principle of legality, which requires that every government action and all resulting legal products must have a clear legal basis, not conflict with higher-level regulations, and be measurably designed to prevent abuse of power (Bhakti, 2025).

In the era of regional autonomy, local governments have the authority to establish Regional Regulations (Perda) as legal instruments to independently regulate their internal affairs (Bunga, 2020). However, the implementation of autonomy in the drafting of regional regulations often results in problematic Regional Regulations (Perda). These problems can arise both procedurally and substantively, for example,

when Perda conflict with higher-level regulations or do not align with the interests of the wider community (Putri, 2022).

As a country based on the supremacy of law, as stipulated in Article 1 paragraph 3 of the 1945 Constitution, all policies and regulations, including Regional Regulations (Perda), must be guided by applicable laws and regulations (AR, 2019). Regional regulations serve as legal guidelines for implementing regional government policies, but must remain consistent with higher laws (Evandy & Barlian, 2022).

To ensure that Regional Regulations remain in line with the principles of the supremacy of law and the hierarchy of laws and regulations (the principle of *lex superior derogat legi inferiori*), an effective monitoring and review mechanism is required (Romadhon & Sadjijono, 2021). Executive Review (Preview) is a preventive and repressive Review effort carried out by the central government, in this case the Ministry of Home Affairs (Kemendagri) or the Governor, regarding Regional Regulations. This step aims to ensure that issued Regional Regulations align with national policy, both before and after their enactment (Sabir & Mauladi, 2023).

Judicial review is a mechanism through which the Supreme Court (MA) reviews Regional Regulations (Perda) deemed to be in conflict with the law. This process reflects the principle of separation of powers and serves to protect citizens' legal rights (Mulyanti, 2017). Executive and judicial review of Regional Regulations (Perda) are crucial mechanisms to ensure that Perda remain in line with higher laws and regulations, as well as legal principles or the principles of the rule of law in Indonesia (Kruszka, 2012). Both play a supervisory role in the implementation of the principles of the rule of law, namely legal certainty, justice, and limitations on power, to prevent arbitrary practices by local governments (Atang, 2014).

Supervision is carried out by the central government, in this case the Minister of Home Affairs, over Provincial Regulations (Perda), and by Governors over Regency/City Regulations (Sukma, 2017). Ensuring that regional regulations align with the public interest, higher regulations, and moral values is crucial. Based on Constitutional Court Decision No. 137/PUU-XIII/2015, the central government's authority to directly (executive review) revoke regional/municipal regulations has been removed (Quillian & Hexel, 2016). Currently, the central government only has the authority to evaluate or review (pre-ratify) draft Regional Regulations (Perda). Meanwhile, the revocation of existing Perda must be done through the judicial mechanism (Sukma, 2017).

Balancing these two mechanisms is crucial, given that executive review tends to be susceptible to political influence, while judicial review ensures more objective and impartial justice. Following the issuance of the Constitutional Court Decision, specifically Decision 137/PUU-XIII/2015, the Review mechanism for Regional

Regulations (Perda) has been restructured. This change has further focused the material review process through the judicial review process at the Supreme Court (Isra et al., 1945).

This study will examine the position of executive review and judicial review within the legal Review hierarchy, explore the synergy between the two, and analyze their role in implementing the principles of the rule of law in Indonesia (Reizaldy, 2025). This study aims to analyze the effectiveness, role, and challenges that arise in the implementation of executive review and judicial review as mechanisms for monitoring the constitutionality of Regional Regulations (Perda). This analysis is expected to support the realization of good regional governance in accordance with the principles of the rule of law (Ricky Endrie Saragih, 2022).

## **B. METHODS**

The research method used in this study is normative legal research or doctrinal legal research, which views law as a system of norms, principles, and statutory regulations (Soekanto, 2007). This research focuses on an analysis of the 1945 Constitution of the Republic of Indonesia, the Law on Regional Government, and regulations and court decisions relating to executive and judicial review of regional regulations. The goal is to determine whether the supervision and annulment of regional regulations by the executive and judicial branches of government are in accordance with the principles of the rule of law, particularly in terms of legality, legal certainty, and protection of rights.

The approaches used include a legislative approach, a conceptual approach, and a case study approach. The legislative approach examines various regulations related to the supervision of regional regulations, while the conceptual approach is used to understand the concept of the rule of law, constitutional supremacy, and the principles of good governance. The case study approach analyzes Supreme Court or Constitutional Court decisions regarding the annulment of regional regulations. The legal materials used consist of primary legal materials such as laws and court decisions, secondary legal materials such as books and journals, and tertiary legal materials such as legal dictionaries.

The legal materials were collected through a library study, reviewing regulations, official documents, and relevant literature. The legal materials were analyzed qualitatively by systematically interpreting and explaining them, using deductive methods to draw conclusions. The focus of this research is to assess whether there is a clear legal basis, whether rights are protected, and whether the checks and balances mechanism between the executive and judiciary are functioning effectively. Through this method, it is hoped that the effectiveness of regional

regulatory Review in realizing the principles of the rule of law in Indonesia will be determined.

### C. RESULTS AND DISCUSSION

#### **Executive Review and Judicial Review of Regional Regulations in Indonesia**

Regional Regulations, often abbreviated as *Perda*, are a legal instrument within the Indonesian legal system, occupying the lowest level of the legal hierarchy. Despite their low level, *Perda* play a crucial role as they serve as the legal basis for regional governance and the implementation of regional autonomy (Rikardo et al., 2024). *Perda* serve as a means to regulate various community interests within the region, such as the management of regional taxes and levies, public order, spatial planning, and various other policies directly related to the needs and characteristics of each region (Sulistiyo & Widayati, 2018).

Throughout their implementation, every Regional Regulation (*Perda*) must undergo a supervisory process to ensure that its contents do not conflict with higher-level laws, the public interest, or applicable legal norms. Supervision of *Perda* is a crucial part of the national legal system, because although regions possess autonomous authority, this authority must remain within the framework of the Unitary State of the Republic of Indonesia (Widiati & Adam, 2012). Through this Review, both the central and provincial governments can ensure that the Regional Regulations (*Perda*) they create do not deviate from the objectives of establishing legislation, namely to create order, legal certainty, and protect public interests. Thus, *Perda* Review serves as a control instrument to ensure that regional legal products remain aligned with the national legal system (Yarni, 2013).

The Review mechanism for Regional Regulations (*Perda*) in Indonesia is a dual Review mechanism, a form of hierarchical and functional control to ensure that *Perda* do not conflict with higher-level legislation, the public interest, and morality. Executive Review is carried out by the Central Government (Ministry of Home Affairs) and Judicial Review is carried out by the Supreme Court (MA). This mechanism involves Executive Review by the Central Government (Ministry of Home Affairs) and Judicial Review by the Supreme Court (MA) (Iskandar & Budiaman, 2022).

#### 1. Executive Review

Executive Review of Regional Regulations (*Perda*) is a control mechanism carried out by the central government through the Minister of Home Affairs and by provincial governments through Governors as representatives of the central government in the regions. The purpose of this Review is to ensure that every Regional Regulation (*Perda*) established by the regional government does not conflict

with higher-level laws and regulations, does not harm the public interest, and does not violate moral norms. This Review is part of the guidance and Review system for the implementation of regional autonomy, ensuring that regional authority remains compliant with the principles of the rule of law and the framework of the Unitary State of the Republic of Indonesia.

Executive Review is carried out through two mechanisms: preventive Review and repressive Review. Preventive Review is carried out in the form of an evaluation of Draft Regional Regulations (Raperda) before they are enacted into Perda. This evaluation is generally conducted for specific Raperda with strategic impacts, such as Raperda on regional taxes, regional levies, the Regional Budget (APBD), and regional spatial plans. Under this mechanism, the Minister of Home Affairs or the Governor will assess the suitability of the Raperda's contents with higher-level regulations, the public interest, and applicable legal principles, thereby preventing conflicts from the outset.

In addition to preventive Review, repressive Review also occurs after the Perda is enacted. Under this mechanism, regional governments are required to submit the enacted Regional Regulation to the Minister of Home Affairs for Provincial Regulations, or to the Governor for Regency/City Regulations, no later than seven days after ratification. The Regulation will then be clarified to assess its compliance with higher-level laws and the public interest. In this case, the Governor acts as a representative of the central government in supervising Regency/City Regulations, while the Minister of Home Affairs supervises Provincial Regulations, thus creating a hierarchical Review system.

However, following Constitutional Court Decisions No. 137/PUU-XII/2015 and No. 56/PUU-XIV/2016, the authority of the Minister of Home Affairs and Governors to directly annul Regional Regulations (Perda) was revoked. Cancellation of Regional Regulations deemed to conflict with higher-level laws and regulations must now be pursued through a judicial review mechanism in the Supreme Court. Nevertheless, the central government and provincial governments retain the authority to conduct executive reviews in the form of evaluations and clarifications as part of their guidance and Review functions over regional governments. This aims to ensure that the established Regional Regulations comply with applicable legal provisions and do not deviate from the principles of the rule of law.

## 2. Judicial Review

Judicial Review, or judicial review, of Regional Regulations (Perda) in Indonesia is a legal review mechanism conducted by the judiciary to assess the compliance of Regional Regulations with higher-level laws and regulations. This review can include material review, namely assessing the content or substance of the

Perda, and formal review, namely assessing the procedures for establishing the Perda. Judicial review is a form of repressive Review because it is conducted after a Regional Regulation is enacted and takes effect. This differs from executive review, which is conducted by the central or provincial government in the form of an evaluation before or after the enactment of a Regional Regulation as part of its administrative guidance function.

The institution authorized to conduct judicial review of Regional Regulations is the Supreme Court (MA). This authority is granted because Regional Regulations fall under the category of statutory regulations. Therefore, the Supreme Court has the authority to review Provincial and Regency/City Regulations suspected of contradicting laws or higher-level regulations. Through this authority, the Supreme Court plays a crucial role in maintaining the harmony and consistency of the national legal system and ensuring that all regional regulations do not deviate from applicable legal provisions.

The Supreme Court's authority to annul Regional Regulations was further strengthened following Constitutional Court Decisions No. 137/PUU-XII/2015 and No. 56/PUU-XIV/2016. These decisions affirmed that the Minister of Home Affairs and Governors no longer have the authority to annul Regional Regulations directly. Thus, the mechanism for repressive annulment of regional regulations is entirely carried out through judicial review in the Supreme Court. Parties who feel aggrieved by the enactment of a regional regulation, whether the public, institutions, or other parties, can file a petition for judicial review with the Supreme Court in accordance with established procedures.

The primary purpose of judicial review of regional regulations is to ensure that the regulation does not conflict with higher-level laws and regulations, does not harm the public interest, and remains in accordance with the principles of the rule of law and the hierarchy of laws and regulations. Before reaching the judicial review stage, regional regulations generally undergo an administrative Review process in the form of evaluation or clarification by the central or provincial government. However, if a party still feels aggrieved or a legal conflict is discovered, judicial review in the Supreme Court becomes the legitimate legal mechanism to test and even annul the regulation to ensure legal certainty and justice.

A legal issue that arises in the judicial review of Regional Regulations (Perda) is the potential for normative conflict if the review is conducted simultaneously by the Supreme Court (MA) and the Constitutional Court (MK). In the Indonesian legal system, the Supreme Court has the authority to review Perda against the law, while the Constitutional Court has the authority to review laws against the 1945 Constitution of the Republic of Indonesia. Conflict can arise when the Supreme Court

annuls a Perda because it is deemed to be in conflict with the law, but at the same time the law is being reviewed by the Constitutional Court. If the Constitutional Court subsequently declares the law unconstitutional, the legal basis used by the Supreme Court becomes invalid, thus creating legal uncertainty.

Furthermore, there is potential for overlapping authority between the Supreme Court and the Constitutional Court in reviewing legislation. The Supreme Court reviews regulations subordinate to the law, including Perda, while the Constitutional Court reviews laws against the 1945 Constitution. However, the Constitutional Court's ruling on a law can directly impact the validity of the Perda established based on that law. This can lead to unclear legal status for regional regulations, particularly if the regulation has been annulled by the Supreme Court, while the law underlying the annulment has also been annulled by the Constitutional Court.

This situation also has the potential to create a legal vacuum and difficulties in implementing decisions. A legal vacuum can arise because there is no longer a legal basis governing a particular area in the region, thus hampering governance and policy implementation. Furthermore, the difference in the nature of Constitutional Court decisions, which can nullify legal norms, and Supreme Court decisions that annul regional regulations, can create obstacles in their implementation. Therefore, normative conflicts between these two institutions can impact legal certainty, the effectiveness of regional government, and the consistency of the national legal system.

To avoid such normative conflicts, synchronization and harmonization are theoretically necessary in Indonesia's regulatory review system. This synchronization is crucial to ensure alignment between the authority of the Supreme Court and the Constitutional Court, preventing conflicting decisions that could lead to legal uncertainty. In this context, Constitutional Court decisions should be prioritized because the Constitutional Court has the authority to review laws against the 1945 Constitution of the Republic of Indonesia, as the highest law in the hierarchy of regulations. This aligns with the principle of constitutional supremacy, which states that all laws and regulations, including statutes and regional regulations, must comply with and not conflict with the constitution.

By prioritizing Constitutional Court decisions, consistency and legal certainty within the national legal system can be better assured, as the constitution serves as the primary basis for determining the validity of a legal norm. Furthermore, clearer institutional coordination and legal regulations are needed regarding the relationship of authority between the Supreme Court and the Constitutional Court in reviewing laws and regulations. This way, the potential for normative conflicts can be minimized, legal vacuums can be avoided, and the implementation of the principles of the rule of law, particularly the principles of legality, legal certainty, and

constitutional supremacy, can be optimally realized within the Indonesian legal system.

### **Implementation of the Principles of the Supremacy of Law on Regional Regulations**

The implementation of executive and judicial review on Regional Regulations (Perda) is a crucial mechanism that reflects the principle of the supremacy of law. This principle affirms that the law is supreme, and all regulations, including Perda, must comply with the hierarchy of higher laws and regulations (the 1945 Constitution and laws). The implementation of executive and judicial review on regional regulations reflects the principles of the supremacy of law in several ways.

- **The Principle of Legality**

The principle of legality requires that all government actions and policy formulation must be based on valid laws and regulations. In the context of regional autonomy, regional authority to create Perda is not unlimited but rather limited by the corridors of the legal hierarchy (*lex superior derogat legi inferiori*). When the Executive Review or Judicial Review mechanism annuls a Perda that conflicts with the Law, this action effectively restores the dignity of the law as supreme. This ensures that no local regulations deviate from the higher national legal framework, thus maintaining legal stability and unity.

Furthermore, the annulment of regional regulations lacking a strong legal basis serves as a corrective instrument to prevent arbitrary actions by regional authorities. Without this Review, the principle of legality would collapse, as regions could create discriminatory regulations or infringe on citizens' rights for the sake of sectoral interests. With annulment by a judicial institution (the Supreme Court) or strict Review by the executive, the state guarantees that the law is the highest authority binding on all parties. This creates legal certainty for the public that every regulation affecting their lives has been tested for its legal and constitutional validity.

- **Limitation of Power**

Limitation of power through executive and judicial Review is a crucial checks and balances mechanism to prevent absolutism at the local level. In a decentralized system, regional governments and regional legislative councils (DPRD) have extensive authority to regulate their territories, but this authority has the potential to be abused for political or group interests. Central government intervention through evaluation or annulment by the Supreme Court ensures that regional policies do not exceed their authority (*ultra vires*). Thus, regional power remains in check and is forced to comply with the parameters of the greater national interest.

In addition to preventing arbitrariness, this Review serves to protect the civil

and economic rights of the community from discriminatory regional policies or those that hinder public access. Without judicial Review, a regional regulation can easily disregard the principles of universal justice for the unilateral benefit of local authorities. The annulment of a regional regulation that harms the public interest demonstrates that the rule of law stands above political power; the law acts as a protector of citizens from becoming the object of irrational policies. This ensures that every regional legal product remains oriented toward the public welfare and aligned with the national development vision.

- **Justice and Legal Certainty**

The Supreme Court's judicial review mechanism guarantees the public substantive justice for regional legal products. In a democratic legal system, citizens should not be left without recourse when a regional regulation is deemed to violate their constitutional rights or harm their interests. By providing access to challenge regional regulations, the public has a formal legal instrument to demand the annulment of legally flawed regulations. This reinforces the principle of equality before the law, where regional governments, as policymakers, have equal standing with the people before the courts.

Furthermore, this Review is crucial for creating national and integrated legal certainty. Without synchronization and review, overlapping regulations between regions or contradictions between regional and central regulations will arise, confusing the public and business actors. Legal certainty is achieved when the validity of every applicable regional regulation has been tested and no longer contains multiple interpretations or conflicting norms. Thus, judicial review ensures that the legal order remains consistent, predictable, and provides real protection for every citizen, wherever they are.

- **Maintaining the Integrity of the Unitary State**

The implementation of executive and judicial Review of regional regulations is a vital instrument for maintaining legal integration within the framework of the Unitary State of the Republic of Indonesia. Although the decentralized system grants regions autonomy to manage their own affairs, this authority does not constitute complete sovereignty separate from the central government. This Review ensures that no region creates "parochial" or exclusive regulations that could threaten national cohesion. With a control mechanism in place, the central government can ensure that all local policies remain in line with the vision, mission, and national identity enshrined in the constitution.

Furthermore, synchronizing regional regulations with national interests is crucial to prevent functional disintegration, particularly in the economic and social spheres. For example, regulations that hinder the flow of trade between regions or

that conflict with national public service standards can disrupt the stability of the nation as a whole. Through strict Review, the rule of law is upheld to ensure that all regions of Indonesia remain bound by a harmonious legal system and are not fragmented into "mini-states" in terms of regulations. This emphasizes that regional autonomy exists to strengthen, not weaken, the sovereignty of the Unitary State of the Republic of Indonesia.

The implementation of executive and judicial review of regional regulations is a concrete manifestation of the principle of the rule of law, which ensures that power does not run unchecked. Through four main pillars—the principle of legality, limitation of power, justice and legal certainty, and the integrity of the unitary state—this Review system ensures that every policy at the local level remains within the legal framework. This mechanism is not intended to undermine the spirit of regional autonomy, but rather to ensure that it is implemented responsibly and in harmony with the national legal hierarchy.

Ultimately, strong Review of regional regulations reflects Indonesia's rule of law, which positions the constitution and laws as the highest authority. With the synergy between the executive's role in development and the judicial's role in review, the public is protected from potential arbitrariness, while national integration is maintained. This creates a harmonious, stable and just legal order for all Indonesian people in every corner of the region

#### **D. CONCLUSION**

Based on a study of executive and judicial Review of Regional Regulations (Perda) as an implementation of the principle of the rule of law in Indonesia, it can be concluded that both mechanisms are crucial instruments that function as "brakes and accelerators" in the implementation of regional autonomy. Executive Review, carried out by the central government through the Ministry of Home Affairs and governors, acts as a preventive and repressive administrative filter through evaluation and clarification to ensure the efficiency, harmony, and quality of Regional Regulations from the planning stage until their enactment. Meanwhile, judicial Review through judicial review by the Supreme Court provides stronger legal certainty because it is carried out by an independent judicial institution and its decisions are binding, particularly following the Constitutional Court's decision revoking the executive's authority to directly annul Regional Regulations. This situation indicates a shift in Review mechanisms toward strengthening the judiciary's function as the guardian of the rule of law. However, there is the potential for normative conflict if there are differences or interconnections in judicial review between the Supreme Court and the Constitutional Court. Therefore, synchronization, harmonization, and coordination

of authority are necessary to ensure legal certainty, avoid legal vacuums, and ensure that all regional regulations remain subject to the hierarchy of laws and the principle of constitutional supremacy.

The implementation of executive and judicial Review of regional regulations (Perda) is a concrete manifestation of the principle of the rule of law, which ensures that every local policy remains in line with the national legal system. Through the principle of legality, this Review ensures that Perda have a clear legal basis and do not conflict with higher regulations, thus maintaining consistency in the legal hierarchy. In terms of limiting power, this mechanism functions as a check and balance, preventing regional governments from acting arbitrarily or exceeding their authority, which could harm the public interest. Furthermore, the aspects of justice and legal certainty provide space for the public to judicially test the validity of Perda if they are deemed to violate their rights, while also ensuring regulatory synchronization to prevent overlapping. Finally, this Review strengthens the framework of the Unitary State of the Republic of Indonesia by ensuring that regional autonomy does not give rise to sectoral egos that threaten national integration. Overall, the synergy between executive evaluation and judicial review creates a legal order that is harmonious, stable, and based on substantive justice for all citizens.

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