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Review on Regional Policies in the Law Number 23 of 2014 Concerning Regional Government and Related Laws and Regulations

Prehľad regionálnych politík v zákone č. 23 z roku 2014 o regionálnej správe a súvisiacich zákonoch a nariadeniach

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Abstract:

One of the new points stipulated in Law Number 23 of 2014 Concerning Regional Government is the affirmation of regional rights to establish regional policies in carrying out government affairs that are within their jurisdiction, regional rights. In the development of this regional policy, the joint jurisdictional agreement between the central and regional governments is a fundamental thing that must be considered by regional decision-makers. Regarding the abolition of regional policies, Law Number 23 of 2014 Concerning Regional Government, regulates the cancellation of a regional policy carried out by the central government, while Law Number 30 of 2014 Concerning Government Administration, regulates the cancellation on a form of a regional policy, particularly a decision to cancel local regulations on special regions. The head is canceled by the decision-making officials, either by a higher-ranking decision-making official or by court order. The inconsistency of these two regulations, in practice across regions, can lead to legal uncertainty, especially for regional policymakers.

Keywords: *local policy, authority, law establishment, abrogation*

Abstrakt:

Jedným z nových bodov stanovených v zákone č. 23 z roku 2014 o regionálnej správe je potvrdenie regionálnych práv na vytvorenie regionálnych politík pri vykonávaní vládnych záležitostí, ktoré patria do ich jurisdikcie, regionálne práva. Pri rozvoji tejto regionálnej politiky je spoločná

jurisdikčná dohoda medzi centrálnou a regionálnou vládou základnou vecou, ktorú musia zvážiť regionálni tvorcovia rozhodnutí. Čo sa týka zrušenia regionálnych politík, zákon č. 23 z roku 2014 o regionálnej správe upravuje zrušenie regionálnej politiky vykonávanej ústrednou vládou, zatiaľ čo zákon č. , najmä rozhodnutie o zrušení miestnych nariadení o osobitných regiónoch. Šéfa kraja odvolávajú rozhodujúci funkcionári, a to buď vyšší rozhodovací úradník, alebo príkazom súdu. Nekonzistentnosť týchto dvoch nariadení v praxi medzi regiónmi môže viesť k právnej neistote, najmä pre tvorcov regionálnej politiky.

Kľúčové slová: *miestnej politiky, autorita, zriadenie práva, zrušenie*

Introduction

The fourth paragraph written in the 1945 Constitution Opening of the Indonesian Republic states that "the goal of Indonesia as a country is to protect the whole Indonesian nation and bloodshed and promote public welfare, educate the nation's life, as well as participate in enriching the education life of the nation". According to the stated goal of Indonesia as a country, it can be concluded that Indonesia is in the process of becoming a prosperous country. It means that Indonesia, with all the authorities it has, must fulfill the responsibility to accomplish the welfare of Indonesian citizens.

In the concept of a prosperous state, it can be interpreted that the state is required to broaden its responsibility for the social and economic problems faced by its population as a whole. The state has to intervene and be present in various social and economic issues in order to provide guarantees for the creation of common welfare in society (Asshiddiqie, 1994).

With regard to the state's great responsibility, the distribution of state power can be divided according to 2 (two) forms of state power distribution, namely (1) horizontal distribution of power and (2) vertical distribution of power. The horizontal distribution shows that state power can be divided into three lines of power, namely: (a) legislative power, (b) executive power, and (c) judicial power. This is related to the distribution of power, the vertical distribution of power will give birth to central government and autonomous regions with decentralization between the two (Juanda, 2004).

Jimly Asshidiqie argues that generally, the concept of decentralization in an autonomous region over the central government itself can be divided into at least three definitions, namely: (1) Decentralization in the sense of decentralization itself, which is the delegation of tasks or workload from the central government to the regional government without decentralization for decision making, (2) Decentralization in the sense of delegation, includes a transfer of power related to decision making from the central government to regional governments or parts of local government organizations that are outside the control of the central government, (3) Decentralization in the sense of transfer of government functions and authorities, which is the transfer of functions and authorities from the central government to regional governments. With these various delegations, regional governments become autonomous regions and are no longer controlled by the central government regarding the government affairs or responsibilities that have been delegated to the regions. Based on what was stated by Jimly Asshidiqie, Indonesia is not a country that adheres to the type of notion of decentralization in the sense of transfer of power. Instead,

Indonesia adheres to decentralization in the sense of delegation, in which the central government gives decision-making power to regional governments (Asshidiqie, 2012).

In principle, the central government and regional government have a synergistic relationship and are dependent on each other. The central government, in making policies, must pay attention to the presence of local wisdom and vice versa concerning the formulation of regional policies in the form of regional regulations and other technical policies, and take note of the existence of national interests which are the priority at that time. This will create a balance and synergy for the national interests that are comprehensive and always pay attention to conditions, specialties, and local wisdom in government affairs in general. Policies developed and implemented by the regions are an integral part of the national policies that have been made, and the central government is not indifferent to regional interests through various lines of policy. The difference lies in how the optimization of local wisdom, potential, innovation, competitiveness, and creativity can be used to achieve these national goals at the local or regional level, which in turn, will help achieve these national goals, which are common national goals (Central Government of Indonesia, 2014a).

Wicipto Setiadi stated that the same thing applies to the issue of regulations at the regional level, where there are many regional regulations—also known as *Peraturan Daerah* (*Perda*)—that are problematic both in terms of formation and substance. The biggest problem related to regional governments (*Pemda* and Regional Representative or *DPRD*) which regulate government affairs that are not their authority or conflict with higher laws and regulations which have the potential to be inconsistent with national objectives (Setiadi, 2014).

One of the reasons for this is the inability of local governments to shift the boundaries of their "zone of power" into regional policy development. Prior to the In amendments to the 1945 Constitution of the Republic of Indonesia, the regional apparatus responsible for formulating local policies was not supervised. After the Constitution of the Republic of Indonesia was amended in 1945, it only regulated the authority of regional governments in formulating regional policies, specifically based on Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia which reads: "The special regional government has the right to stipulate special regional regulations and other regulations to carry out their autonomy and support duties." Based on the wording of the regulation above, it can be clearly stated that in terms of establishing regional policies, this is not a regional obligation, but rather a government right, because it is a legal right where the implementation depends on the area therein.

Discussion

1. Terminology and the Concept of Regional Policies

Regional policies began to receive attention after the emergence of "problematic regional policies". The spirit of regional autonomy that should be based on Law Number 23 of 2014 Concerning Regional Government actually encourages regions to compete in formulating regional policies in the form of regional regulations, especially to increase the regional budget (*APBD*) revenues. Regional regulations that were later

deemed "problematic" were repealed because they conflicted with the public interest and set aside the statutory provisions that had been ratified.

Regional policies are not regulated in the general provisions of Law Number 23 of 2014 Concerning Regional Government, but the explanation only states that "regional policies are in the form of regional regulations, head of regional government (governors, regents, or mayors) regulations, and head of regional government decisions". Despite that, the previous regulation-based regional policies were not regulated clearly (fuzzy). The general explanation of point 7 of Law Number 23 of 2014 concerning Regional Government states that regional policies are regional regulations. However, this is also explained in the Minister of Home Affairs Regulation Number 1 of 2014 concerning Regional Legal Products concerning the use of the term "regional policy".

In Law Number 23 of 2014 Concerning Regional Government, the scope of regional policies tends to be narrower. For the term "regional policy", Minister of Home Affairs Regulation Number 1 of 2014 concerning Regional Legal Products uses the term "regional legal product" for regulatory purposes. Legal products that regulate the regions include regional laws, such as regional laws, general head of regional government laws, and *DPRD* laws. Regional legal products include regulations in the form of regional head decisions, *DPRD* decisions, *DPRD* management decisions, and *DPRD* honorary body decisions.

According to Law Number 23 of 2014 Concerning Regional Government, the preparation of regulations and policies is classified at different levels, the first is placing regional regulations into a hierarchy of laws and regulations that follow presidential decrees. Second, laws within the executive framework are laws of governors/heads of institutions/mayors and are set forth in the form of statutory regulations. Third, the Presidential Decree on that day is recognized as a Governor Regulation/Regent Decree/Mayor Decree and, if applicable, interpreted as a regulation. Thus, in positive law in Indonesia, it is assumed that the existence of a regional regulation is at a higher level than laws and regulations that are not included in the hierarchy of laws and regulations such as Statutes of the Governor/Governor General Regulations and governor/Mayor Regulations. In addition, regulations such as Governor Decrees/Regent Decrees/Mayor Decrees have a lower or higher status than Governor Regulations/Regent Regulations/Mayor Regulations.

In the field of state administration, the concept of regional policies is understood as policies that apply to the public at the regional level. In general, public policy is defined as "Whatever the government chooses to do and not do". In other literature, it is stated that the definition of public policy is "what the government says and does or does not do" (Rusli, 2009).

Regarding the special regional policy in the form of a Chief Executive decision, the term state administrative decision is found in Law Number 30 of 2014 Concerning Government Administration. State administrative decisions are written decisions made by government agencies and/or officials regarding government affairs. In this case, compared to what is contained in Article 87 of Law Number 30 of 2014 Concerning Government Administration, state administrative decisions must be approved as decisions of state administrative bodies and/or employees within the executive, legislative, judicial and other state administrative bodies. The logical consequences

related to the concept of regional policies in the context of Law Number 23 of 2014 Concerning Regional Government which has regulated and defined regional policies are regional regulations and regional decisions so that the perspective of regional policies has a wider scope compared to regional government administrative decisions.

2. The Relation between Regional Authority and Regional Regulation Making

Bagir Manan stated that authority means rights as well as obligations (*rechten en pichten*). In relation to regional autonomy, rights imply the right to self-regulate (*zelfregen*) and self-regulate (*zelfbestruren*) while the horizontal meaning of obligation is the right to organize good governance. Meanwhile, vertically it means the right to run the government, in synergy with all state governments (Ridwan, 2010).

The term used in relation to the allocation of capacities between the central government and the regional government within the framework of autonomy is different, which R. Tresna dubbed as "household governing body". Bagir Manan refers to the term "principle of self-help". Despite the various terms used for the allocation of central and regional capabilities, all of them are based on a common understanding, that the teaching of autonomy (formal, material, and practice) is closely related to the sequence of authority distribution, tasks and responsibilities for handling central and regional inter-governmental work between.

In the literature it is explained that there are several systems/principles of area sanitation, namely formal area sanitation, physical sanitation and actual/real sanitation. However, apart from the three regional household systems, there are also residual household systems and real, dynamic and responsible household systems. For more details, some household systems can be explained as follows :

a. Formal household system

   The formal family or household system for dividing powers, duties and responsibilities between the central and the regional to regulate and manage certain government affairs is not further specified. The formal household system is actually rooted in the principle that there is no difference between the nature of jobs managed by the central government and jobs managed by the regional government. Everything that can be regulated by central government can also be regulated by regional government. The division of authority, duties, and responsibilities for the regulation and management of a state company is solely based on the belief that a state company will be better and more successful if it is run and managed by a certain government unit and vice versa. Usefulness and efficiency considerations are points of interest in determining the labor division, authority, and responsibility between the central and regional governments according to this system.

b. Physical household system

   In the physical household system, there is a structured and clear division of powers, duties, and responsibilities between central government and regional government. Government duties include domestic work in reliably defined

areas. The Material Household System is based on the premise that there are indeed fundamental differences between work in the central government and in the regional government, fields that are considered to have a scope of government work that is regulated in detail and centralized management, while some jobs with other specific scopes will be carried out by the local government. In addition, this system assumes that government duties can be separated in different government environments.

c. Actual household system

The actual (real) household system contains the characteristics of the formal and physical household system. However, the actual household system has its own characteristics that distinguish it from the formal household system and the physical household system, namely:

First, there are fundamental issues that were determined at the time the autonomous region was formed, providing certainty about regional household issues. Second, besides household chores which are "physically" determined by the actual household sectors, all the government duties could also be regulated and managed, which based on consideration is important for the regions as long as they are not regulated and managed at the central level. Third, actual household autonomy is based on real factors in the particular region. This allows for differences in the coverage and types of domestic work from one region to another depending on the circumstances of each region and the local wisdom in the region, but still in the corridor of what has been agreed upon in the work of the central government.

d. Residual household system

In the residual (remaining) household system, the tasks that fall under the authority of the central government are determined in advance, while the rest of the tasks or duties that are not handled by the central government will be handed over to regional household duties.

e. True, dynamic, and responsible family system

True, dynamic, and responsible domestic systems are variants of true autonomous systems. The nature of actual autonomy in the sense that the granting of autonomy to the regions must be based on many factors, calculations, actions, or policies that can really guarantee that the concerned region really pays attention to its household in order to accomplish the community welfare in that region. Furthermore, regional autonomy must become a responsible autonomy, in the sense that the granting of this autonomy must really be in accordance with its objectives. The addition of the term "dynamic" does not change the true meaning of autonomy and responsibility rather only as an emphasis.

Broad autonomy is an attitude of self-determination by regional governments in administering the governance which includes authority in all fields except in certain fields such as foreign policy, defense, security, justice, currency, finance, and religion, as well as authority in other fields regulated with government regulations. Besides,

free area autonomy can be interpreted as a complete and integrated authority in implementation, starting from the implementation, monitoring, and evaluation stages.

The real autonomy is the freedom of the regional government in carrying out the governmental authority in certain areas that are practical and deemed necessary in relation to developments in the region.

In Law Number 23 of 2014 concerning the Administration of Special Areas, broad autonomy is interpreted as granting authority to the regions to carry out only certain areas of government, especially regulating the part-time work of the government. This is clear and has been detailed in Law Number 23 of 2014 concerning the Administration of Special Areas according to the rules, standards, procedures, and criteria established by the central government. Implicitly, it has actually been illustrated in the interpretation of Law Number 23 of 2014 concerning the Administration of Special Areas that regions have the right to freely use regional intelligence, potential, innovation, competitiveness, and creativity to achieve national goals at the regional level which will support the achievement of national goals.

Furthermore, regarding business, the government's concurrent affairs are the allocation of governmental affairs between the central government and the provincial/district/city regions. In addition, competition for government duties assigned to the regions is the basis for the implementation of regional autonomy. In concurrent government business, there are mandatory government businesses (related to basic services and related to non-basic services) and optional government businesses.

Competitive government business is related to the principles of accountability, efficiency, and externality, as well as national strategic interests, hence, the division of government business is as follows:

a. The central government has the right to establish in the form of proposed regulations, standards, processes, and criteria as a reference for provincial, district, regency, and city governments in the implementation of government work regulations according to the authority of regional governments, whose own authority is responsible for monitoring, evaluating, and supervising the regional government.

b. The provincial government also has the authority to give directions and manage government affairs at the provincial level (in all districts/cities) based on norms, standards, procedures, and criteria established by central government regulations.

c. Regional governments from provincial to district/city also have the authority to regulate and manage government affairs at their own regional levels based on standards, procedures, and criteria set by the central government.

Furthermore, in the general interpretation of Law Number 23 of 2014, regarding the Administration of Special Areas, there is no clear statement that regional government is carried out in a substantive and responsible manner, as contained in the interpretation of Law Number 32 of 2004 concerning Regional Government. Law Number 32 of 2004 concerning Regional Government has affirmed and emphasized

regional autonomy with accountability ultimately in the hands of the President. Therefore, the president is obliged to provide massive advice and supervision on the implementation of regional government.

In principle, Law Number 23 of 2014 Concerning Regional Government uses the term "government affairs" and no longer uses the term “authority”. The use of the term "government affairs" is interesting because there have been changes in the implementation of regional autonomy. The term “government duties” is more meaningful in the administrative aspect, because there are duties that are the portion between the two and there are duties that are only the portion of the region. When these businesses are sponsored according to the model determined by the central and regional governments, the central government and the regional government do not have the flexibility to create and innovate with decentralized businesses. Meanwhile, the aspect of separate authority is more meaningful than the aspect of empowerment, in which the regions have full authority (decisions) over the management of existing government agencies with a lot of authority over creation and innovation based on the potential of their respective regions (Kaloh, 2007).

In making regional policies, decision-makers in the regions must understand that the regional government only has one authority, namely in dual government affairs which include imperative, forced, and optional government affairs. This is different from the central government which has three agencies (government), namely absolute government, general government, and part-time government (including optional jobs related to forestry, marine, energy, and minerals, etc.).

Government affairs that are absolute for the central government as explained in Article 10 paragraph (1) of Law Number 23 of 2014 Concerning Regional Government, include foreign policy, defense and security, justice, monetary and fiscal policies, locks, and religion. However, the central government can decentralize the authority to vertical agencies and represent the central government in the regions as governors based on the decentralization principle described earlier. Thus, absolute government affairs truly become the authority of the central government and are not bound by city and district governments which uphold the principle of decentralization and do not represent the central government. Furthermore, the authority relation with the formulation of Regional Head decisions is demonstrated in Article 9 of Law Number 30 of 2014 Concerning Government Administration which states that “all decisions and/or actions must be based on statutory regulations and the general principles of good governance”. The laws and regulations regulating the abrogation of all decisions and/or actions referred to above include:

(1) statutory regulations which form the basis of the Authority; and

(2) laws and regulations that form the basis for establishing and/or implementing decisions and/or actions.

Government agencies and/or officials who make and/or implement decisions and/or actions must state or show the provisions of laws and regulations which form the basis of authority and the basis for taking and/or implementing decisions and/or shares. The absence or ambiguity of laws and regulations does not prevent government agencies and/or authorized officials from making and/or implementing decisions

and/or actions as long as they pay attention to the public interest and adhere to the general principles of good governance.

In addition, it is also regulated in Article 11 and Article 12 of Law Number 30 of 2014 Concerning Government Administration, this authority is obtained through attribution, authorization, and/or delegation. Government agencies and/or officials obtain the authority with attribution if:

(1) regulated by the 1945 Constitution of the Republic of Indonesia and/or by law,

(2) is a new entity or not an existing entity; and

(3) attribution is given to government agencies and/or public officials.

Authorities and/or government officials have authority through empowerment and responsibilities that are in the authority of related government agencies and/or officials. The granting of rights cannot be legalized except as provided in the 1945 Constitution of the Republic of Indonesia and/or laws. According to this perspective, in principle, the delegation of authority in drafting laws and regulations can be divided into two forms, namely:

(1) Trust Authorization; and

(2) Authorization from the Award Giving Institution

Authorization is an authority to make statutory provisions granted by higher statutory regulations to similar or lower statutory regulations, whether that authority can be expressly stated or not. Meanwhile, delegating is the granting of power to formulate statutory regulations granted by the constitution or laws to the existing state/government organization.

Regarding the Government, in Article 1 paragraph (5) of Law Number 23 of 2014 Concerning Regional Government, it is states that "the government power is the authority of a President whose implementation is carried out by ministries, branches of state, and special government administration organs".

In Law Number 30 of 2014 Concerning Government Administration, authority is defined as rights owned by government agencies and/or public officials or other regulators to make decisions and/or act in administering the state, administering government. Government authority, hereinafter referred to as authority in this literature, is interpreted as the right of government agencies and/or other officials or state regulators to act in the field of public law. Government agencies and/or civil servants are those who carry out government functions, both within the government and other government agencies.

With regard to empowerment, an example of empowerment is contained in Article 20 paragraphs (1), (2) and (4) of Law Number 23 of 2014, regarding the Administration of Special Areas, which reads as follows:

(1) The counter-government duties which are under the jurisdiction of the provincial area shall be carried out for the allocation of regencies and cities which are managed centrally according to the principle of joint management;

(2) Allocation of provincial areas for regencies/cities based on the principle of joint management as referred to in paragraph (1) letter b and for villages as

referred to in paragraph (1) letter c regulated by governor regulations in accordance with the provisions in force by law

(3) Distribution according to regency/city area to the villages mentioned in paragraph

(4) Regulated by the statutes of the regent/mayor in accordance with statutory regulations.

The delegation of authority in the formulation of regional policies can be seen in Law Number 23 of 2014 Concerning Regional Government, stated in Article 17 paragraph (1), Article 146 paragraph (1), and Article 236 of Law Number 23 of 2014 Concerning Regional Government, specifically as follows:

Article 17 paragraph (1) states that "the region has the authority to establish regional policies to carry out government affairs in the regional jurisdiction".

Article 146 paragraph (1), "In order to implement regional regulations or implement statutory regulations, regional heads shall establish regional regulations".

Article 236 states that:

(1) "In order to achieve Regional Autonomy and Joint Governance, the Regions establish Regional Regulations.

(2) The zoning regulations as referred to in paragraph (1) arranged by the *DPRD* with general approval from the site manager.

(3) Regional regulations as referred to in paragraph (1) include:

a. carrying out autonomous tasks and assisting the region; and

b. developing more legal provisions and higher regulations.

(4) Besides local content material as referred to in paragraph (3), regional settlements can contain local content material as required by law".

3. Inconsistencies of Articles Related to Regional Policies Abrogation in Law Number 23 of 2014 and Related Law and Regulation

Law Number 23 of 2014 Concerning Regional Government has established that the reason for abrogating a regional regulation (*Perda* or *Perkada*) is a contradiction between the regulation with the provisions of higher laws and regulations along with society's interests and decency. Article 250 of Law Number 23 of 2014 Concerning Regional Government also states that "*Perda* and *Perkada* are prohibited from contradicting provisions of higher laws and regulations, public interest, and/or truth". Whereas previously Law Number 32 of 2004 Concerning Regional Government did not clearly define the scope of "public interest violations" in the law. Whereas in Law Number 23 of 2014 Concerning Regional Government, it has been explained that the contradictions to the public interest include:

a. disturbing the harmony between community members;

b. public services access cut off;

c. compared to disrupting public order and security;

d. increase of economic activity disruption;

e. community welfare; and or

f. discrimination on the basis of race, religion and belief, race, intergroup, and gender.

In Article 251 of Law Number 23 of 2014 Concerning Regional Government, the cancellation of a regional regulation is carried out gradually according to the government hierarchy, where the minister who cancels the regional regulation has contradicted his superior. Statutory provisions, public interest, and/or regulations above it, in this case, the Governor revokes city/regional government regulations that contradict the provisions of laws and regulations, public interest, and/or more substantial laws. We can see clearly in Article 251 of Law Number 23 of 2014 Concerning Regional Government that:

(1) Regional regulations and governor regulations which contradict provisions of higher laws and regulations, public interest and/or manners, shall be canceled by the Minister.

(2) Regional regulations in the form of mayors and regent regulations that are contrary to the provisions of laws and regulations concerning superiors, public interests, and/or decency are revoked by the governor as the representative of the central government.

(3) In the context of the governor as the representative of the Central Government, the governor does not repeal the Regency/Municipal Regulation and/or the regent/mayor regulation which is contrary to the provisions of higher laws and regulations, public interest, and/or decency as referred to in paragraph (2), the Minister cancels Regency/Municipal Regional Regulations and/or regent/mayor regulations.

(4) The repeal of provincial regional regulations and governor regulations as referred to in paragraph (1) shall be stipulated by a ministerial decree and the cancellation of regency/city regional regulations and regent/mayor regulations as referred to in paragraph (2) shall be stipulated by a governor's decision as the representative of the Central Government.

The formulation of Article 17 of Law Number 23 of 2014 Concerning Regional Government and Article 251 of Law Number 23 of 2014 Concerning Regional Government explains that regional policies in the form of regional regulations and basic regional regulations are invalidated if conflict with the higher laws and regulations, public interest. and/or decency and many other reasons, because it conflicts with the Standards. Moreover, in regard to the standards, procedures, and criteria of a regional regulation or policy stipulated by the Central Government. However, Article 17 paragraph (3) of Law Number 23 of 2014 Concerning Regional Government is not in accordance with Article 251 of Law Number 23 of 2014 Concerning Regional Government. Article 17 paragraph (3) of Law Number 23 of 2014 Concerning Regional Government states that the central government cancels regional policies. In the general provisions of Article 1 point 1 of Law Number 23 of 2014 Concerning Regional Government, there is a limitation in which “the central

government" is interpreted as the President of the Republic of Indonesia who holds the powers of the government of the Republic of Indonesia and assisted by the Vice President. In this case, "the central government" refers to the president who is assisted by the vice president and ministers to cancel regional policies. In other words, based on Article 17 paragraph (3) of Law Number 23 of 2014 Concerning Regional Government, it can be understood that the President has the authority to abolish regional regulations, head of regional government regulations, and Head of Regional Government decisions or other regional policies. Nevertheless, the question arises is whether the president directly acts as the central government and cancels the regional policies.

The general interpretation of Law Number 23 of 2014 Concerning Regional Government states that "the President as the holder of government power is supported by the Minister of State and each Minister is responsible for a number of government affairs to the President". Several government duties that are the responsibility of the Minister are in fact autonomous from the regions. The consequence of the minister's position as an assistant to the president is that the minister is directly responsible for guiding and supervising on behalf of the president in order that the administration of the special area government is in accordance with statutory provisions. To supervise the regional policies, particularly those related to the abolition of regional policies, the oversight body in this regard is the Minister of Home Affairs. Thus, Article 17 paragraph (3) of Law Number 23 of 2014 Concerning Regional Government can be understood that the Minister of Home Affairs can act on behalf of the President to cancel special area policies, including special area status, The Head of special area status, and The Head of regional government decisions.

This is clearly contrary to Article 251 of Law Number 23 of 2014 Concerning Regional Government which adheres to hierarchical revocation, in this case, the Minister of Home Affairs has the authority to cancel Provincial Regulations and Governor Regulations. Meanwhile, the Regency/City Regional Regulations and Regent/Mayor Regulations were revoked by the Governor. Whereas the governor does not revoke the status of the regency/city and regent/mayor, the Minister of Home Affairs could revoke the status of the province/city. The cancellation of special area policies, especially the decisions of the heads of special areas, is regulated from a different perspective in Law Number 30 of 2014 Concerning Government Administration. Article 66 of Law Number 30 of 2014 Concerning Government Administration regulates that:

(1) Decisions can be canceled only if there is an error in:

   a. Authorization;

   b. Procedure; and/or

   c. Substance comparison

(2) In this abrogation context, a new stipulation must be given accompanied by a legal basis for revocation and taking the AUPB into account.

(3) The decision to cancel as referred to in paragraph (1) can be made by:

   a. Decision makers from government officials;

b. Decision maker from Superior Officials; or

c. In connection with the Court's decision.

(4) Decisions to cancel the regional regulations by public officials and superiors as referred to in paragraph (3) letters a and b are made no later than 5 (five) working days from the date of receipt due to the cancellation as referred to in paragraph (1) are recorded and begin effective from the date of issuance of the revocation decision.

Observing the elaboration of Article 66 of Law Number 30 of 2014 Concerning Government Administration and related to Law Number 23 of 2014 Concerning Regional Government, there are at least two important substances that must be paid close attention to regarding the repeal of regional regulations which is the decision of the Head of Regional Government namely:

(1) Based on Article 17 of Law Number 23 of 2014 Concerning Regional Government, regional policies decided by Heads of Regional Government are canceled because of the conflict with the regulations, standards, procedures, and criteria set by the Central Government. This clearly contradicts Article 66 of Law Number 30 of 2014 Concerning Government Administration which states that "a decision can be canceled only because of defects in authorization, procedure; and or compared to affairs".

The expression "irrevocable" indicates that there is no other reason that can replace the Regional Manager's decision apart from the three reasons stated above. Considering the content of Article 17 of Law Number 23 of 2014 Concerning Regional Government, it allows the decision cancellation of the Head of Regional Government on the grounds that it contradicts the rules, standards, procedures, and criteria set by the central government. Now the question is whether the standards, procedures, and criteria developed by the central government include the three reasons for canceling a decision as stipulated in Article 66 of Law Number 30 of 2014 Concerning Government Administration (Jurisdiction, Procedures, Customs, and Content). If it does not contain them, it can be concluded that Article 17 of Law Number 23 of 2014 Concerning Regional Government is contradicting Article 66 of Law Number 30 of 2014 Concerning Government Administration.

(2) There are three options in the mechanism for canceling the decision of the Chief Executive, based on Article 66 of Law Number 30 of 2014 Concerning Government Administration which regulates that decisions of state administrative bodies can be canceled by the decision-making official, the official head of the decision-making department or by court order. The first option, the governor's decision can be canceled by the governor himself, the regent's decision can be canceled by the regent himself, and the mayor's decision can be canceled by the mayor himself with the provision that the newly regulated decision contains a legal basis for cancellation and taking into account the general principles of good governance. The cancellation decision is made within five working days after the reason for the cancellation is known. The second option is a superior official who has made a decision to cancel the Head of the regional government's decision. This

means that there is a layered alternative where the Governor's decision is canceled by the Minister of Home Affairs as the Governor's direct superior, and the Regent/Mayor's decision is canceled by the Governor and being dismissed as the Regent's and Mayor's direct superior.

The third alternative is the Governor's Decree, the Regent's Decree, and the Mayor's Decree are canceled through a court decision, which has permanent legal force. The mechanism for canceling the Head of Regional Government's decisions based on Law Number 30 of 2014 Concerning Government Administration is different from the mechanism for canceling the Head of Regional Government's decisions (part of regional policies) version of Law Number 23 of 2014 Concerning Regional Government. As previously stated in Article 17 of Law Number 23 of 2014 Concerning Regional Government, it has revoked the special area policy (including the decision of the Head of the special area) made by the central government, in which the president is essentially supported by the vice president and ministers, which in this case the Minister of Home Affairs, on behalf of the President, can cancel the Head of regional government's decisions.

By quoting Rudy Hendra Pakpahan's view that there are differences in Article 80, Article 85, and Article 86 of Minister of Home Affairs Regulations Number 1 of 2014 and Article 145 paragraph (2) and (3) of Law Number 32 of 2004 Concerning Regional Government. Furthermore, it is stated that the provisions of Article 80 paragraph (3) and Article 86 paragraph (3) of Minister of Home Affairs Regulation Number 1 of 2014, the provision for granting the authority to abolish regional status to the Minister and Governor is fake and contradicts Articles 7 and 8 of Law Number 12 of 2011 concerning the Formation of Laws. In correlation to the cancellation of regional regulations, Article 80 paragraph (3) and Article 86 paragraph (3) of Minister of Home Affairs Regulations Number 1 of 2014 is in accordance with the replacement for Law Number 32 of 2004 concerning the Regional Government, namely Article 251 of Law Number 23 of 2014 concerning Regional Government but contradicts Article 17 of Law Number 23 of 2014 concerning Regional Government (Pakpahan, 2014).

Conclusion

Law Number 23 of 2014 concerning Regional Government clearly regulates the regional rights to establish regional policies and provides perspectives on regional policies regarding their scope, formulation, and repeal.

The scope of regional policies includes regional regulations, the Head of Regional Government's regulations, and the Head of Regional Government's decisions. The formulation must be based on the substantive authority stipulated in Law Number 23 of 2014 concerning the Regional Government. The formulation of regional policies without regard to regional jurisdiction will result in "problematic" regional policies. In this case, the local policymakers must address the problem of regional government competition, the basis for the mandate in drafting laws and regulations, and the basis of authority that is regulated in laws. With regard to regional deregulation, the regional policymakers must pay attention to the following matters:

(1) By incorporating Article 17 of Law Number 23 of 2014 concerning Regional Government and Article 251 of Law Number 23 of 2014

concerning Regional Government, it can be concluded that regional policies in the form of regional regulations and basic regional regulations are canceled due to the conflict with higher laws and regulations, public interest and/or appropriate and contrary to the Regulations, Standards, Procedures, and Criteria stipulated by the Central Government. However, there is a contradiction in Article 251 of Law Number 23 of 2014 concerning Regional Government with Article 17 paragraph (3) of Law Number 23 of 2014 concerning Regional Government. Article 17 paragraph (3) confirms that the central government cancels regional policies. Therefore, based on Article 17 Paragraph (3) of Law Number 23 of 2014 concerning Regional Government, the President assisted by the Vice President and the Minister canceled the special area policy. This means the president cancels regional regulations (*Perda*), the Head of Regional Government's regulations, and the Head of Regional Government's decisions. This is not in accordance with the gradual cancellation provisions in Article 251 of Law Number 23 of 2014 concerning the Regional Government.

(2) Article 17 of Law Number 23 of 2014 concerning Regional Government in the form of canceling the Head of Regional Government's decisions due to the conflict with the rules, standards, procedures, and criteria set by the central government. This clearly contradicts Article 66 of Law Number 30 of 2014 concerning Government Administration which states that "a decision can only be canceled if there is an error in authority; procedure; and/or substance".

(3) The expression "irrevocable" indicates that no other reason can substitute the District Manager's decision other than the three reasons stated previously. Article 17 of Law Number 23 of 2014 concerning Regional Government allows the cancellation of the Head of Regional Government's decisions on the grounds that they are contrary to the rules, standards, procedures, and criteria set by the central government. Compared to the mechanism for canceling the Head of regional government's decisions in Law Number 30 of 2014 concerning Government Administration, it is different from the mechanism for canceling the Head of regional government's decisions (based on regional policies). Article 17 of Law Number 23 of 2014 concerning Regional Government states that "the abolition of regional policies (including the Head of regional government's decisions) is carried out by the central government, particularly when the president supports the Vice President and the Ministers". In this case, the Minister of Home Affairs on behalf of the President can reject the decision of the Chief Executive. Meanwhile, according to Law Number 30 of 2014 concerning Government Administration, the cancellation Head of regional government's decisions has three alternatives, specifically from decision-making officials, direct superiors from decision-making officials, or decisions in court.

(4) It is necessary to examine the inconsistencies of several articles related to special area policies in Law Number 23 of 2014 concerning Regional Government and the difference between Law Number 23 of 2014 concerning Regional Government with Law Number 30 of 2014 concerning Government Administration related to government administration. In particular, the

development of standards for special zone policies should be assessed in order to avoid legal uncertainty and to be carried out effectively in practice in the regions.

References

Asshiddiqie, J. (1994) *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*. Jakarta: Ichtiar Baru Van Hoeve.

Asshidiqie, J. (2012) *Pengantar Ilmu Hukum Tata Negara*. Jakarta: Rajawali Press.

Central Government of Indonesia (2004) *Law Number 32 of 2004 concerning Regional Government*. Indonesia.

Central Government of Indonesia (2014) *Law Number 23 of 2014 concerning Regional Government*. Indonesia.

Central Government of Indonesia (2014) *Law Number 30 of 2014 concerning Government Administration*. Indonesia.

Indonesian Ministry of Home Affairs (2014) *Minister of Home Affairs Regulation Number 1 of 2014*. Indonesia.

Juanda (2004) *Hukum Pemerintahan Daerah; Pasang Surut Hubungan Kewenangan antara Kepala Daerah, DPRD dan Kepala Daerah*. Bandung: Alumni.

Kaloh, J. (2007) *Mencari Bentuk Otonomi Daerah suatu solusi dalam menjawab kebutuhan lokal dan tantangan global*. Jakarta: Rineka Cipta.

Pakpahan, R.H. (2014) 'Disharmonisasi Peraturan Menteri Dalam Negeri Nomor 1 Tahun 2014 tentang Pembentukan Produk Hukum Daerah dengan beberapa Undang-Undang Regulasi Pembatalan Peraturan Daerah', *Jurnal Legislasi Indonesia*, 11(2).

Ridwan, H.R. (2010) *Hukum Administrasi Negara*. Jakarta: Rajawali Press.

Rusli, B. (2009) 'Kebijakan publik di daerah'. Bimbingan Teknis Peningkatan.

Setiadi, W. (2014) 'Urgensi Reformasi Regulasi dalam Rangka Mendukung Pembangunan Nasional', *Majalah Hukum Nasional*.

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