

# SOME KEY ISSUES IN THE CANCELLATION OF LOCAL REGULATIONS IN INDONESIA

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## ABSTRACT

*This research is motivated by the phenomenon of inconsistency between legal legislation in the regions and national legislation. In Indonesia, there are approximately 42,000 problematic legal products. Among that number, there are 3000 troubled regulations, both from legislation by local governments in 530 districts/cities and provinces. Specifically, in the Region of Central Java Province, there are 33 provincial level regulations and 2 Regional Head Regulations that are canceled by the Governor as representatives of the Central Government in the Region. The general objective of this research is to provide an analysis due to the cancellation of regional regulations. The normative empirical approach is used with qualitative analysis to detect the level of harmonization and synchronization of the application of legislation at the regional level. Here, an in-depth analysis is needed regarding the investigation of the needs of the community and local government in a regulation that must be implemented before the regulation is legalized. Legally hierarchical, this regulation was canceled because it was contrary to the Constitution or other higher regulations. Cancellation of regulations proved that local governments in various parts of Indonesia had not fully understood the regulatory legislation procedures. The results of this study are expected to contribute ideas for local governments to understand the importance of harmonization and synchronization of laws and regulations. In addition, there is a need for local wisdom-based content material in the context of legal legalization to absorb more community aspirations and make regulations in accordance with local contexts and needs when applied.*

**Keywords:** Local Regulation, Cancellation, Executive Review, Judicial Review, Indonesia.

## INTRODUCTION

The cancellation of the regency/city regulation both in absolute or partial manner can be carried out by the provincial governor as a representative of the national government in the region. At a higher level, this cancellation was carried out by the Constitutional Court. This explains that the cancellation of regulations does not necessarily immediately become the authority of the Constitutional Court (Asshiddigie & Syafaat, 2006). Procedures in Indonesia state that cancellations can be passed by the judicial review stage carried out by the Supreme Court as a judicial institution which is given the authority by the Constitution to examine the rules materially (Nasihuddin, 2013). In the judicial review carried out by the judiciary, there are requirements that must be fulfilled including the petitioner, the respondent and, clearly what is legal standing. After the cancellation, if the local government wishes to re-legalize the regulation on changes to both the district and the city with the same material, it must go through the initial process of making it (Butt, 2006). Thus, there is an improvement to the district/city regulations that have been promulgated or to aspects that are included in the cancellation content.

This research is motivated by the phenomenon of inconsistency between legal legislation in the regions and national legislation. In Indonesia, there are approximately 42,000 problematic legal products. Among that number, there are 3,000 troubled regulations, both from legislation by local governments in 530 districts/cities and provinces. Specifically, in the Region of Central Java Province, there are 33 provincial level regulations and 2 Regional Head Regulations that are canceled by the Governor as representatives of the Central Government in the Region. The general objective of this research is to provide an analysis due to the cancellation of regional regulations. The normative empirical approach is used with qualitative analysis to detect the level of harmonization and synchronization of the application of legislation at the regional level. Here, an in-depth analysis is needed regarding the investigation of the needs of the community and local government in a regulation that must be implemented before the regulation is legalized (Wirawan, 2018). Legally hierarchical, this regulation was canceled because it was contrary to the Constitution or higher regulations. Cancellation of regulations proved that local governments in various parts of Indonesia had not fully understood the regulatory legislation procedures. The results of this study are expected to contribute ideas for local governments to understand the importance of harmonization and synchronization of laws and regulations. In addition, there is a need for local wisdom-based content material in the context of legal legalization to absorb more community aspirations and make regulations in accordance with local contexts and needs when applied (Suharjono, 2014).

## **METHODOLOGY**

This study uses qualitative data and empirical data. Empirical data was collected from several regions which were canceled by the Regional Regulation, for example, regional regulations in Region III, Central Java Province, involving 11 Regencies/Cities. The research formulation regarding the consequences of the cancellation of the regulation is one of the strategies that can be used to collect data from several sources and then document the data in archives and several case studies. For example, the data generated through interviews has been analyzed and reflected in each interview of the dept., in each question divided into various sessions. Thus, the choice of relevant materials is integrated with interpretation during interviews with stakeholders. Data was collected from various sources such as interviews with related agencies such as the executive (legal section) and legislative (local parliament). Then researcher searched written documents, observations, and clippings of newspapers. The combination of observation and interview is also used to get a more comprehensive understanding of the phenomenon under study.

## **RESULTS AND DISCUSSION**

There are approximately 42,000 problematic legal products that have been so far. Among the number, there are more than 3,000 Regulations from 530 Regencies/Cities canceled by higher judicial authorities. More narrowly, there are 33 regional regulations and 2 regional head regulations that were canceled by the Governor of Central Java as representative of the central government in the region. As stated by Agustino (2011), the problematic regional regulation mostly contains rules regarding licence, levies, retributions and limitation the function of an authority (Armia, 2016). More details, the regulation has the following characteristics:

1. Regional regulations contain various types of levies.

2. The lack of clarity regarding the limits of authority between the provincial government and the district/city government which creates a tendency for the imposition of double levies.
3. Licensing and illegal collection procedures resulting from complicated procedures and other costs that result in high-costs economy.
4. There is a tendency for the power of regulation in an area to harm other regions.

In addition, in the provisions of Article 250 of Law Number 23 of 2014 concerning Regional Government as amended several times, the latest Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government, district/city Regulations is prohibited is contrary to the higher laws and regulations, public interests and/or decency. Furthermore, stated categories that contradict the public interest are formulated as follows:

1. Disruption of harmony between community members.
2. Disruption of access to public services.
3. Restrained peace and public order.
4. Disruption of economic activities to improve community welfare; and/or discrimination against ethnicity, religion and belief, race, class and gender.

Basically, the formation of local regulations can be realized into regional law products that can be implemented properly, namely in terms of implementing apparatus, budget, facilities and infrastructure. The legal product itself is a tool/material which is one of the very important authorities of an area that has the authority to regulate and manage its own household. Here, the holder of the right to stipulate a Regional Regulation referred to as legislative rights, has an important role in the success of regional legislation.

In order, the institution that has the authority to form a Regional Regulation is the Regional People's Representative Council (DPRD), while the Regional Regulation is the name of the regional legislative work. Regional legal products according to the provisions of Article 1 number 19 of the Minister of Home Affairs Regulation No. 80 of 2015 concerning the Establishment of Regional Legal Products are regional law products in the form of regulations covering other Regulations or names, and Regional Head Regulations such as Governor Regulations, Regent Regulations, local parliament Regulations. Apart from the regulations, the results of legislation in the form of regional decisions are also the domain of local government legislation, which includes decisions of regional heads, decisions of local parliament, decisions of local parliament leaders and decisions of local parliament honorary bodies.

In Indonesia, there are two procedural steps in examining the validity of a legal product, and its suitability with the Constitution. On the one hand, the procedure provides authority for the legislative body to test local regulations, and on the other hand, the function of reviewing this regulation can also be carried out by the head of the provincial government.

The first, from the judicial side, the state institution that is given the authority to examine the Regional Regulation materially is the judiciary, namely the Supreme Court. Testing by a judicial institution is called a judicial review. Judicial review is the authority of the judiciary to examine the validity and behavior of legal products produced by the legislative and judicial executive in accordance with the applicable constitution. Therefore, the authority to conduct a judicial review is attached to the judge's function as the subject. Although at the beginning the Supreme Court only examined the results of court decisions in its discussion, recently many regulations were canceled by the executive body, namely the results of the Regulatory Products Supervision of District/City Regions, which were included in the authority of the Supreme Court to examine the regulations.

On the other hand, the cancellation of the district/city regulation by the Minister of Home Affairs and the Governor as the representative of the Central Government in the Region is called the executive review (Ita, 2010). Asshiddiqie (2009) stated that the testing by the executive agency which can be called executive review is testing all forms of legal products by the executive according to institutional principles and hierarchical authority. This test, called executive review, is carried out to keep the regulations created by the executive government of the lower level to remain synchronous and consistent and ensure legal certainty and justice for the community (Wicaksono, 2018; Prayogo, 2018).

Some examples are presented by some district/city regulations canceled in Region III. This data on the Legal Bureau of the Central Java Provincial Secretariat which was canceled by the Minister of Home Affairs and the Governor, can be seen in Table 1 below.

<b>No.</b>	<b>Districts</b>	<b>Absolute</b>	<b>Partial</b>
1.	Banjarnegara	4	2
2.	Banyumas Regency	6	2
3.	Batang Regency	1	1
4.	Brebes Regency	2	-
5.	Cilacap Regency	3	2
6.	Pekalongan Regency	3	1
7.	Pekalongan Municipality	2	1
8.	Tegal Municipality	1	1
9.	Tegal Regency	3	1
10.	Purbalingga Regency	5	2
11.	Pemalang Regency	3	-
	<b>Total</b>	<b>33</b>	<b>13</b>

Table 1 show that the district/city regulation which was canceled by the Minister of Home Affairs and the Governor as the representative of the Central Government in the Region III consists of absolute cancellation of 33 regulations and of partial cancellation of 13 regulations.

In Cilacap District, Cilacap Regency Regulation Number 1 of 2009 concerning Irrigation was canceled because it did not have legal force based on the Constitutional Court Decision Number: 85/PUU-XI/2013 concerning the total cancellation of Law Number 7 of 2004 concerning Water Resources as a basis establishment of Regional Regulations.

Cilacap Regency Regional Regulation Number 10 of 2010 concerning Management of Ground Water in Cilacap Regency because it does not comply with Annex I letter CC number 1 of Act Number 23 of 2014 concerning Regional Government as amended several times the last by Law Number 9 of 2015 concerning Second Amendment to Law Number 23 Year 2014 concerning Regional Government.

In Banyumas Regency, the Regional Regulation of Banyumas District Number 3 of 2007 concerning Management of Regional Property was canceled because the entire material of the

contents of regional regulations was contradictory to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property. Furthermore, the Regional Regulation of Banyumas Regency Number 11 of 2009 concerning Irrigation is considered to have no legal force based on the Constitutional Court Decision Number: 85/PUU-XI/2013 concerning the total cancellation of Law Number 7 of 2004 concerning Water Resources as the basis for the establishment of Regional Regulations.

In Banjarnegara District, Banjarnegara District Regulation Number 1 of 2013 concerning Irrigation as amended by Banjarnegara Regency Local Regulation Number 8 of 2014 concerning Amendments to Banjarnegara District Regulation Number 1 of 2013 concerning Irrigation because it does not have legal force based on the Constitutional Court Decision Number: 85/PUU-XI/2013 related to the total cancellation of Law Number 7 of 2004 concerning Water Resources as the basis for the establishment of Regional Regulations.

In this case, there is an inaccurate local government, both executive and legislative, in finding a legal basis at a higher level. Law Number 7 of 2004 concerning Water Resources has been canceled by the Constitutional Court, but the regional government uses this law as the basis for legalizing the regulations on irrigation.

Although there are regional regulations both partially and absolutely which are canceled because they are contrary to higher regulations, the absolute cancellation of regional regulations is mostly due to the decision of the Constitutional Court (MK) that must be run. This means that local regulations which are canceled due to the Constitutional Court's decision are as follows:

1. Constitutional Court Decision Number 52/PUU-IX/2011 which cancels Article 42 paragraph (2) letter g of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies related to entertainment tax on golf.
2. Constitutional Court Decision Number 85/PUU-XI/2013 which invalidates Law Number 7 of 2004 concerning Water Resources and treats Law Number 11 of 1974 concerning Water Resources again.
3. Decision of the Constitutional Court Number 46/PUU-XII/2014 which cancels the Elucidation of Article 124 of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies related to the calculation of the collection of Control Levies for Telecommunication Towers.

Some legal and constitutional considerations that underlie the cancellation of the regulation include the enactment of Law Number 23 of 2014 concerning Regional Government as amended several times, the latest by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government related to the transfer of authority, the existence of new legislation (management of regional property), and that the regulation is not in accordance with the techniques for the establishment of laws and regulations as stipulated in Law Number 12 of 2011 concerning the Establishment of Legislation. This indicates that the lack of sensitivity and expertise of legislators at the national level also has a significant role in the cancellation of regional regulations in the regions.

## CONCLUSION

The results of research on the cancellation of regional regulations in several regions in the province of Central Java indicate a lack of understanding by the legislator of the nature of legalization of regional regulations in relation to regional autonomy. In general, the Regional Regulation has not reflected the content material that is typical of its regionality, and is less sensitive to vulnerability in contradiction with higher legal products. This is evident in the material quality of the contents of the regional regulation which was canceled, which was not in

accordance with the needs of the community. In addition to the above, there are still a lot of local regulations that come from poor harmonization and synchronization of local regulations. As a result of the annulment of Regional Regulation absolutely will greatly affect the survival of the people because of the increasingly delayed local government programs. On the other hand, the cancellation also concerns the credibility of the local parliament members. Furthermore, to reduce the number of problematic regional regulations that must be canceled, it is suggested that the formation of regional regulations be harmonized in advance with relevant agencies such as the Ministry of Human Rights Law in Central Java which involves Academics, especially Legal Drafting experts.

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