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The Design of Preventive Control on Local Delegated Legislation: A Case Study of Regional Head Regulations

Article	Abstract
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INTRODUCTION

Delegated legislations are theoretically and normatively positioned as a type of statutory regulation that functions as implementing regulations. Implementing regulations means that regulations are formed only to carry out orders from laws and regulations that are hierarchically above them or become secondary legislation over primary legislation. The delegated legislations contain the following:¹ a).

Regulations were made to implement the Law so that it is operational; b). Delegated legislations only contain further provisions (details) in the parent Law; c). Delegated legislations do not change (do not add, reduce, insert, or modify) any provisions, material, and meaning of the provisions in the Law; d). It must be consistent with laws and regulations at a higher level.

¹ Moh Fadli, *Perkembangan Peraturan Delegasi Di Indonesia*, 1st ed. (Malang: UB Press, 2012).

In this way, the number of delegated regulations will be greater than the statutory regulations that require further regulations.² This happens because the delegated legislations contain more detailed than parent regulations.³ Regulations are divided into national-level delegated legislations or those formed by the central government, and regional governments form regional-level delegated legislations. Central-level delegated legislations can be in the form of Government Regulations (*Peraturan Pemerintah/PP*). Article 5 of the 1945 Constitution of the Republic of Indonesia clearly states that the President issues government regulations to implement the law. With this provision, delegated legislations in the form of PP have become the determinant of whether a law can be implemented. This is because a law can only be implemented with government regulations implementing regulations.⁴

At the same time, in granting the President the right to issue a PP as an implementer of the law, there has automatically been a transfer of authority from the legislator to the President. If the process of forming a law, the power to form it rests with the People's Representative Council (*Dewan Perwakilan Rakyat/DPR*) with the approval of the President, then the formation of Government Regulations is sufficient or only purely from the President. Regarding forming delegated legislations (Government Regulations), the President does not require approval from the DPR. This means that the President has the freedom to form Government Regulations. The President's absolute authority to issue delegated legislations in the form of government regulations directly implies the provisions in the 1945 Constitution of the Republic of Indonesia (Constitution).⁵

Delegated legislations do not only apply at the central level⁶. Delegated legislations also apply in the regional-level legislative regulation system where a regional head issues Regional Head Regulations (*Peraturan Kepala Daerah/Perkada*) to implement Regional Regulations (*Peraturan Daerah/Perda*).⁷ Perkada is a type of statutory regulation whose existence is a necessity. Perkada is very much needed to run the wheels of government in the regions and to explain technically and in detail the content material of a regional regulation, which is still general. Perkada, which are very technical, can make it easier for parties, especially third parties, to understand and implement regulations at the regional level.

Perkada must comply with two things as a crucial type of statutory regulation. Namely, the basic order of statutory regulations and the orderly formation of statutory regulations. The primary order of legal regulations is related to principles, types, hierarchy, and content material, while the orderly formation of legal regulations is related to planning, preparation, discussion, ratification or

² Sholahuddin Al-Fatih et al., "Understanding Delegated Legislation in The Natural Resources Sector," *Bestuur* 11, no. 2 (December 2023): 290–311, <https://doi.org/10.20961/BESTUUR.V11I2.78125>.

³ Fitriani Ahlan Sjarif, "Pembentukan Peraturan Delegasi Dari Undang-Undang Pada Kurun Waktu 1999 - 2012" (Universitas Indonesia, 2015).

⁴ Fitriani Ahlan Sjarif, "Gaya Perumusan Kalimat Perintah Pembentukan Peraturan Yang Menjalankan Delegasi Dari Undang-Undang Di Indonesia," *Palar | Pakuan Law Review* 3, no. 2 (2017): 31–50, <https://doi.org/10.33751/palar.v3i2.396>.

⁵ Prisca Listiningrum, "Eksistensi Dan Kedudukan Peraturan Presiden Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia," *Arena Hukum* 12, no. 2 (2019): 337–55, <https://doi.org/10.21776/ub.arenahukum.2019.01202.7>.

⁶ Sjarif, "Pembentukan Peraturan Delegasi Dari Undang-Undang Pada Kurun Waktu 1999 - 2012."

⁷ Sukardi Sukardi and E. Prajwalita Widiati, "Pendelegasian Pengaturan Oleh Undang-Undang Kepada Peraturan Yang Lebih Rendah Dan Akibat Hukumnya," *Yuridika* 27, no. 2 (2012): 141–56, <https://doi.org/10.20473/ydk.v27i2.293>.

stipulation, and promulgation.⁸ The process for forming a *Perkada* must be genuinely well-planned and consistent with the basic regulations/primary legislations.⁹ The potential for *Perkada* to deviate from the basic regulations is enormous, considering that as a draft regulation, it is inevitable that there are many interests involved in it, so various efforts will arise so that the *Perkada* that a regional head will issue can benefit certain parties or groups and often harm the interests of the people. General. Therefore, control over *Perkada* is essential to protect the people's rights and ensure that a *Perkada* remains in the formulation of its primary legislation.

So far, the control mechanism in place is a repressive control mechanism in the form of space to carry out examinations of a *Perkada*, even though when this repressive control is implemented, it still creates legal problems related to the position of the *Perkada* in the hierarchy of statutory regulations. Repressive control of the *Perkada* referred to in the previous discussion is carried out in the form of control carried out by the legal bureau, either the Local Government or the relevant commission in the legal field in the DPRD.¹⁰ Furthermore, the community also carries out repressive control by conducting a test at the Supreme Court using the right to test the material of the *Perkada*.¹¹

Previous study written by Siti Hamimah,¹² found that there is no control system related to the *Peraturan Bupati* in Indonesia legal system. *Peraturan Bupati* is a form of *Perkada* which needed to be controlled. Every *Bupati* (Head of District or Regents in Indonesia) could issuing *Peraturan Bupati* as a policy, but there is no control mechanism. Thus, Moh. Fadli, a professor from Universitas Brawijaya told that a control mechanism truly needed to make sure the delegated legislation in Indonesia is on the right way.¹³ Moreover, Sholahuddin Al-Fatih also highlighted the hierarchy of delegated legislation, as form in the Article 8 of P3 Law, that the loophole or legal vacuum on those area would made uncertainty in Indonesian legal system.¹⁴ Based on the previous research, it is indicated that this research is different and has a strong novelty to found the solutions related to the design of preventive control on *Perkada*.

Moreover, several types of problems with regional head regulations inventoried by the author include the difficulty of interpreting and implementing blank delegations because the quality of human resources in the regions is not the same, the existence of Regional Head Regulations that are not harmonious and not in sync with the regulations above and equivalent regulations and the difficulty of controlling the number of regional head regulations being formed along with the

⁸ H.A.S Natabaya, *Sistem Peraturan Perundang-Undangan Di Indonesia* (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi, 2006).

⁹ Tim Peneliti Pusat Studi Hukum dan Kebijakan Indonesia, *Menggagas Arah Kebijakan Reformasi Regulasi Di Indonesia, Prosiding Forum Akademik Kebijakan Reformasi Regulasi 2019*, 1st ed. (Jakarta: PSHK UI, 2019).

¹⁰ Hariyanto Hariyanto, Ahmad Rezy Meidina, and Mabarroh Azizah, "Decentralization and the Fulfilments of Children's Rights: Challenges and Opportunities for Local Government in Indonesia," *Lex Scientia Law Review* 8, no. 2 (November 30, 2024): 677–706, <https://doi.org/10.15294/LSLR.V8I2.14373>.

¹¹ Andrivand Andrivand, "PENGUJIAN PERKADA PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 137/PUU-XIII/2015 DAN NOMOR 56 PUU-XIV/2016," *UNES Law Review* 5, no. 3 (March 2023): 978–86, <https://doi.org/10.1038/NATURE.2014.14583>.

¹² Siti Hamimah, "PENGAWASAN PERATURAN KEPALA DAERAH SEBAGAI DELEGASI DARI PERDA," *Jurnal Hukum Positum* 6, no. 2 (2021): 241–53.

¹³ Fadli, *Perkembangan Peraturan Delegasi Di Indonesia*.

¹⁴ Sholahuddin Al-Fatih et al., "Rethinking Delegated Legislation in the Indonesian Legal System," *Jurnal Hukum Novelty* 14, no. 2 (December 2023): 240–51, <https://doi.org/10.26555/novelty.v14i2.a27517>.

increasing number of new autonomous regions in Indonesia.¹⁵ Meanwhile, preventive control over a *Perkada* still needs to be implemented, even though the preventive control mechanism has an equal position in ensuring that a *Perkada* does not violate applicable provisions.¹⁶ Preventive control is far more critical than repressive control because preventive control can prevent losses or casualties to the people while controlling. Repression is a form of control that often results in losses before it is canceled. This research tries to answer several problems from this background, including: 1. How are the control mechanisms for Regional Level Delegated legislations regulated?; and 2. How do we design preventive controls for regional-level delegated legislations?

RESEARCH METHODS

This research is normative legal research¹⁷ with conceptual and statutory regulatory approaches.¹⁸ Meanwhile, legal materials consist of primary, secondary, and tertiary legal materials. All legal materials are then studied descriptively and prescriptively.¹⁹ Normatively, there are no principal delegated legislations, such as Regional Head Regulations. The types and varieties of delegated legislations are only textually mentioned as implementing regulations in the law establishing statutory regulations. Thus, the normative analysis in this article is based on the basic concept of delegated legislations and related regulations regarding regional head regulations, which are used as material for case analysis.

ANALYSIS AND DISCUSSION

The Dynamics of Control over Delegated Legislations

Delegated legislations²⁰ do not only apply at the national level but also apply to the regional level, where a regional head (both the Governor for the Provincial area and the Regent/Mayor for the Regency/City area) can make *Perkada* as a form of implementation of the *Perda* or other higher regulations. *Perkada* made by a regional head qualify as delegated legislations. Namely, a regulation that is formed because there is a delegation of authority to regulate. Delegated legislations are referred to as secondary legislation because their formation is very dependent on primary legislation.²¹ Primary regional-level legislation is *Perda*, considering that a *Perkada* can only be formed if delegated by the Regional Regulation.

When a *Perda* delegates the formation of a *Perkada* as an implementing regulation, this is a form of transfer of authority. In general, the transfer of authority from one official or one organ to

¹⁵ Sholahuddin Al-Fatih et al., "The Hierarchical Model of Delegated Legislation in Indonesia," *Lex Scientia Law Review* 7, no. 2 (November 2023): 629–58, <https://doi.org/10.15294/lesrev.v7i2.74651>.

¹⁶ Hariyanto, Muhammad Mutawalli Mukhlis, and Daud Rismah, "The Role and Authority of the Deputy Regional Head According to Islamic Principles within the Framework of Regional Government Law," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (February 7, 2025): 13–27, <https://doi.org/10.31958/JURIS.V24I1.12678>.

¹⁷ Tunggal Ansari and Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, <https://doi.org/10.22219/ACLJ.V4I1.24855>.

¹⁸ Sholahuddin Al-Fatih and Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum Di Jurnal Nasional Dan Internasional Bereputasi* (Malang: Inteligencia Media, 2021).

¹⁹ Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia*, 1st ed., vol. 1 (Malang: UMM Press, 2023).

²⁰ {Citation}

²¹ Fadli, *Perkembangan Peraturan Delegasi Di Indonesia*.

another organ can occur due to attribution, delegation, and mandate.²² The order to establish *Perkada* by the *Perda* is a type of declarative transfer of authority. Namely a delegation of authority from a higher organ or official to a lower official with the result that responsibility and accountability rests with the recipient of the delegation. The legal basis for issuing *Perkada* is based on; a). Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia; b). Law Number 12 of 2011 concerning the Formation of Legislation; and c). Law Number 23 of 2014 concerning Regional Government. When a *Perda* must be followed up with a *Perkada*, then automatically, there is a delegation from the *Perda* to the *Perkada*. This means that there has been a delegation of authority to regional heads to make *Perkada*. *Perkada* is a type of statutory regulation whose authority to form is in the hands of the regional head. The authority of regional heads in making regional regulations is unilateral because in making regional head regulations, a regional head cannot be intervened by anyone.²³

However, there is a classic problem when there is a delegation of regulations from *Perda* to *Perkada*. This classic problem relates to guarantees whether regional head regulations that the Governor, Regent, or Mayor will form will be in line with *Perda* or harmony.²⁴ In this context, classic problems regarding legal regulations in Indonesia will affect regional-level delegated legislations. These classic problems relate to the need for more control over the types of regulations that are classified in statutory regulations, the uncertain content of statutory regulations, and the unclear hierarchy of statutory regulations.²⁵

The classic problem that will occur in *Perkada* is the process of forming and controlling or testing regional head regulations. From the aspect of formation, the process of creating regional-level delegated legislations for both Provincial and Regency/City areas is the absolute authority of the regional head. Thus, regional heads can freely make regional regulations. However, in the formation process, there is no guarantee that the material content of a regional regulation will be in line with regional regulations. This means that a regional regulation may not be in accordance with or even conflict with *Perda*. This happens because; *First*, misunderstanding of the concept. Regional heads and their legal teams often need help understanding the material substance of the regulations for which their delegated legislations must be made. Regional heads often need help understanding how to translate a provision in a regional regulation into a regional regulation. This misunderstanding occurs due to limited abilities as well as differences in interpretation within regional heads regarding a concept in the provisions of regional regulations.

On the other hand, sometimes the concepts in a regional regulation could be clearer (fatigue of the norm). Due to a lack of understanding of this concept, the translation of the *Perda* delegation into *Perkada* can be different. Something optional in a Regional Regulation may be interpreted as mandatory in a Regional Regulation. *Second*, specific interests. Whether we admit it or not, the

²² Moh Gandara, "Kewenangan Atribusi, Delegasi Dan Mandat," *Khazanah Hukum* 2, no. 3 (2020): 92–99, <https://doi.org/10.15575/kh.v2i3.8187>.

²³ Rusdianto Sudirman, "URGENSI PEMBENTUKAN TIM ANALISIS KEBUTUHAN PERDA (AKP) DALAM PENYUSUNAN PROGRAM PEMBENTUKAN PERATURAN DAERAH," *JURNAL SULTAN: Riset Hukum Tata Negara* 2, no. 2 (March 2024): 42–51, https://doi.org/10.35905/SULTAN_HTN.V2I2.7973.

²⁴ Firman Freaddy Busroh et al., "Harmonisasi Regulasi Di Indonesia: Simplikasi Dan Sinkronisasi Untuk Peningkatan Efektivitas Hukum," *Jurnal Interpretasi Hukum* 5, no. 1 (January 2024): 699–711, <https://doi.org/10.22225/JUINHUM.5.1.7997.699-711>.

²⁵ Bayu Dwi Anggono, "Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusinya," *Masalah-Masalah Hukum* 47, no. 1 (2018): 1, <https://doi.org/10.14710/mmh.47.1.2018.1-9>.

process of forming *Perkada* is still fraught with various interests, especially the interests of third parties. Many parties may try to influence the contents of a regional regulation. *Third*, parties will try to carry out various political lobbies to ensure their interests are safe regarding the issuance of a *Perda* or attempt to ensure that the contents of a *Perda* are in accordance with their interests. *Fourth*, the process of forming legislative regulations, including making delegated legislations, is a process that must be integrated with the political process. Political decisions tend to be more dominant in making legal decisions ²⁶.

Fifth, there is no preventive control. Preventive controls are controls used or implemented before a regulation is passed, including regional head regulations. Preventive controls in regional head regulations still need to be in effect or have yet to be regulated. This means that the regional head can directly ratify a draft *Perda* without asking for consideration from other institutions. As a result of the absence of preventive control, regional head regulations become “free” regulations and can easily deviate from primary legislation. *Sixth*, corrupt behavior. The freedom to make *Perkada*, whose authority is given to the regional head without involving other institutions and there is no preventive control mechanism, automatically opens the potential for acts of corruption for a regional head regarding the *Perkada* that will be issued. As a ruler who has the freedom to make *Perkada*, the Regional Head has the potential to deviate from various higher regulations, considering that he has the Power. Lord Acton²⁷ warned of the tendency to behave corruptly in a ruler. He said, “*Power tends to corrupt, and absolute Power corrupts absolutely. Great men are almost always evil, even when they exercise influence and not authority.*” This means that the Power possessed by a person tends to corrupt that person. Regional heads can undoubtedly use their authority to form regional regulations according to their wishes or those of their groups.

From those conditions, strict control of delegated legislations is necessary.²⁸ The form of control over regional-level delegated legislations (*Perkada*) can be preventive and repressive. However, this form of preventive and repressive control over regional head regulations is still an acute problem. Preventive control has not been regulated as part of the control over regional-level delegated legislations. On the other hand, the form of repressive control over *Perkada* still needs legal certainty. Repressive control, realized through review by the judiciary of a type of statutory regulation, is a form of control applied to regional-level delegated or regional head regulations (*Perkada*). Uncertainty regarding the review of *Perkada* is related to *Perkada*'s position in the hierarchical system of statutory regulations and the judicial institutions that will review them. *Perkada* or regulations issued by Governors, Regents, and Mayors are types of regulations that are not included in the hierarchy of statutory regulations, which are regulated hierarchically in Article 7 paragraph (1) of Law number 12 of 2011 concerning the Formation of statutory regulations (as amended by Law Number 15 of 2019). The hierarchy of statutory regulations in the Indonesian *ius constituent* is: a). The 1945 Constitution of the Republic of Indonesia; b). Decree of the People's Consultative Assembly; c). Law/Government Regulation instead of Law; d). Government

²⁶ Moh. Mahfud MD, *Politik Hukum Di Indonesia, Jurnal Pendidikan Agama Islam-Ta'lim*, vol. 12 (Jakarta: Raja Grafindo Persada, 2014).

²⁷ Christopher Lazarski, *Lord Acton for Our Time, Lord Acton for Our Time* (Cornell University Press, 2023), <https://doi.org/10.7591/cornell/9781501771712.001.0001>.

²⁸ Kenny Chng, “Re-Examining Judicial Review of Delegated Legislation,” *Legal Studies* 44, no. 1 (2024): 81–98, <https://doi.org/10.1017/lst.2023.7>.

regulations; e). Presidential decree; f). Provincial Regional Regulations; and g). Regency/City Regional Regulations.²⁹

When the regulation of *Perkada* is not included in the type of legislation arranged hierarchically, it automatically causes the position of *Perkada* to be unclear in the Indonesian legal system. On the other hand, even though *Perkada*, which are not accommodated in the hierarchy of statutory regulations, are still forced to be recognized as “part” of statutory regulations through the provisions of Article 8 of Law number 12 of 2011 concerning the Formation of statutory regulations.³⁰ The provisions of Article 8 Paragraph (1) still need to address legal certainty regarding the position of *Perkada*. Because even though *Perkada* is part of the statutory regulations, it is not included in the hierarchy of statutory rules, which will create complications in its review. Not including *Perkada* in the hierarchy of statutory regulations will mean that the parties or any person who feels disadvantaged by a *Perkada* will not have room to obtain justice or the opportunity to file a lawsuit against a *Perkada*. This happens because reviewing statutory regulations is based on the sequence of statutory regulations. This means that the hierarchy of statutory rules is used to state whether a statutory regulation can be subject to material review and determine which institution has the authority to examine it.³¹

The provision that reviewing legislative regulations in Indonesia is based on a hierarchy of statutory rules can be seen from the provisions of Articles 24 A and 24 C of the 1945 NRI Constitution. Article 24 A of the 1945 NRI Constitution states that the Supreme Court (MA) can review regulations.³² Legislation under the law against the law. The words below the law state that explicitly, the testing provisions that apply to the Supreme Court are that the Supreme Court can test statutory regulations that are hierarchically below the law. This means the Supreme Court cannot review statutory rules other than those under other laws or regulations. For example, the Supreme Court cannot review the Constitution because, hierarchically, the Constitution is above, not below, the law. At the same time, the Supreme Court cannot review statutory regulations other than those under the law as regulated in Article 7 paragraph (1) of Law 12 of 2011, where the Legislative Regulations under the law consist of Government Regulations (PP), Presidential Regulations (Perpres) and Regional Regulations (Perda). Only these three types (PP, Presidential Decree, Regional Regulation) can be reviewed or become objects of the Supreme Court's authority.

Meanwhile, the review of the law/*Perpu* (Government Regulation instead of Law) against the above statutory regulations or the 1945 Constitution of the Republic of Indonesia is carried out by the Constitutional Court (*Mahkamah Konstitusi*/MK). The legal regulations that can be tested by the MK and Supreme Court clearly show that the approach and grant of authority to examining

²⁹ Zaka Firma Aditya and Muhammad Reza Winata, “Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia),” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): 79–100, <https://doi.org/10.22212/jnh.v9i1.976>.

³⁰ Article 8 of Law 12 of 2011 includes types of statutory regulations, namely regulations stipulated by the People's Consultative Assembly (MPR), People's Representative Council (DPR), Regional Representative Council (DPD), Supreme Court (MA), Constitutional Court (MK), Financial Audit Agency (BPK), Judicial Commission (KY), Bank Indonesia (BI), Ministers, bodies, institutions or commissions of the same level established by Law or the Government by order of Law, Regional People's Representative Council (DPRD) Province, Governor, Regency/City Regional People's Representative Council (DPRD), Regent/Mayor, Village Head or equivalent.

³¹ Al-Fatih et al., “The Hierarchical Model of Delegated Legislation in Indonesia.”

³² Ahmad Siboy et al., “Judicial Review in Indonesia: A Simplification Model,” *Lex Scientia Law Review* 6, no. 2 (December 2022): 359–90, <https://doi.org/10.15294/lesrev.v6i2.54848>.

institutions is based on the hierarchical structure of statutory regulations. When Regional Head Regulations (Perkada) are not included in the hierarchy, it certainly makes Perkada a type of statutory regulation that the Supreme Court and the Constitutional Court cannot test. This view differs from Bayu Dwi Anggono's interpretation of the types of statutory rules in the hierarchy of statutory regulations. Bayu Dwi Anggono believes that the hierarchical structure of statutory regulations is structured based on who forms them. For example, Bayu Dwi Anggono placed a Joint Ministerial Decree under a Presidential Regulation (Perpres) in Indonesia's hierarchical system of laws and regulations to request a Joint Ministerial Decree for judicial review by the Supreme Court (*Mahkamah Agung/MA*).³³

In fact, in the hierarchy of statutory regulations as regulated in Article 7 paragraph (1) of Law 12 of 2011, a Joint Ministerial Decree is a type of regulation that is not included or qualified as a type of statutory regulation with a hierarchical position. If Bayu's theory is analogous to the position of delegated regulations at the regional level, then Perkada become a type of statutory regulation that is hierarchically under Perda. So that a Perkada can also be tested by the MA even though the Perkada is not included as part of the types of statutory regulations that have a hierarchical position. When a statutory regulation does not have a hierarchical position then automatically the statutory regulation cannot be submitted for judicial review to judicial institutions including the Supreme Court.

So, what happens when the Supreme Court hears a request for judicial review of the Regional Head of Regional Regulation? The review of regional regulations by the Supreme Court, as has been happening so far, is quite an interesting legal phenomenon. On the one hand, the Supreme Court may not examine regional regulations because the Supreme Court is a judicial institution whose authority to review is limited to examining statutory regulations, which have a hierarchical position regulated by law.³⁴ Suppose the Supreme Court examines regional regulations, which are not included in the hierarchy of statutory regulations. In that case, the review by the Supreme Court regarding a regional can be said to be a review that exceeds the authority possessed or given to the Supreme Court. The Supreme Court is said to have exceeded its jurisdiction because it reviews statutory regulations not part of its absolute competence. In this case, the Supreme Court's decision regarding the review of Perkada can be said to be null and void. It is void and null because an unauthorized institution tested and decided it.

On the other hand, the Supreme Court's review of a regional regulation can be justified. *First*, the principle of *res judicata pro veritate habetur*.³⁵ This principle basically means that when there is a conflict of norms with a court decision, what is justified or won is the court decision. In the context of reviewing Perkada by the Supreme Court, review by the Supreme Court of a Perkada can be justified even though reviewing Perkada by the Supreme Court is not included in the type of legislation that the Supreme Court can test. This is because the Supreme Court is a judicial institution, so the Supreme Court's decision can override regulations regarding objects. Legal rules

³³ B D Anggono, *Keputusan Bersama Menteri Dalam Perundang-Undangan Republik Indonesia* (Jakarta: Fakultas Hukum Universitas Indonesia, 2009).

³⁴ Zainal Arifin Hoesein, *Judicial Review Di Mahkamah Agung RI, Tiga Dekade Pengujian Peraturan Perundang-Undangan, Raja Grafindo Persada* (Jakarta: Rajawali Pers, 2009).

³⁵ Jörg Kammerhofer, "Beyond the Res Judicata Doctrine: The Nomomechanics of ICJ Interpretation Judgments," *Leiden Journal of International Law* 37, no. 1 (March 2024): 206–27, <https://doi.org/10.1017/S0922156523000547>.

that the Supreme Court can test. *Second*, legal protection.³⁶ The principle of legal protection is a principle that teaches people's rights to be recognized, protected, and guarded so that if there are people who feel they have been mistreated or regulation has harmed their rights, then those people must receive legal protection, both repressive and preventive legal protection. If people are hurt by a delegated regulation, such as a Regional Regulation, they must be given space to take preventive and repressive legal measures. A review of a regional regulation is a form of repressive legal protection the Supreme Court provides for people seeking justice.

Third, legal vacuum/legal loopholes.³⁷ Examining regional head regulations by the Supreme Court is one form of effort to address the legal vacuum (*vacuum recht*). When the Supreme Court adjudicates a request for reviewing a Perkada, the Supreme Court takes a progressive step to address the legal vacuum regarding the space for testing a Perkada, which needs to be regulated by statutory regulations regarding institutions with the authority to examine. At this level, the Supreme Court can postulate or argue that its testing practices are to uphold justice or not just maintain the law in a purely formal sense. Suppose it enforces the law in a strictly formal sense. In that case, the Supreme Court cannot review a Regional Regulation and cause injustice to the people, even though the Supreme Court is a judicial institution that exercises judicial power to not only enforce the law but also uphold justice as mandated by Article 24 of the 1945 Constitution of the Republic of Indonesia.

Fourth, further form or implementation of Perda.³⁸ Perkada are delegated legislations or regulations issued based on delegation from Perda. This means that the Perkada is issued only to implement the Perda, and its contents do not conflict with or exceed the regulations of the Primary Legislation (Perda). Based on the position of Perkada as the implementer of this Perkada, the Supreme Court, in substance or material, is considered appropriate to examine the Perkada material. In this way, Perkada is automatically placed on an equal footing or directly under Regional Regulations hierarchically even though Article 7 paragraph (1) of Law 12 of 2011 does not mention and place Perkada as part of the types of statutory regulations that are included in the hierarchy of statutory regulations.

The Design of Preventive Control for Regional Delegated legislations

Regional Head Regulations (Perkada) as delegated legislations are legislation that can only be left with control. As a rule that will apply generally, the rule must not contain norms that could harm the people. At the same time, it must be ensured that the norms in the Regional Regulations do not deviate from or add to things not delegated by the principal regulations (primary legislation). To ensure that regional-level delegated legislations such as Perkada are run by the hierarchy and material content, control is automatically needed over regional-level delegated legislations especially Perkada.

³⁶ Sholahuddin Al-Fatih and Zaka Firma Aditya, "The Legal Protection Against Terrorism Suspects in Indonesia (Case Study of the Arrest Process of Terrorism Suspects By Densus 88)," *Legality: Jurnal Ilmiah Hukum* 27, no. 1 (July 2019): 14–26, <https://doi.org/10.22219/jihl.v27i1.8954>.

³⁷ Gamal Abdul Nasir, "Kekosongan Hukum & Percepatan Perkembangan Masyarakat," *Jurnal Hukum Replik* 5, no. 2 (September 2017): 172, <https://doi.org/10.31000/jhr.v5i2.925>.

³⁸ Eka N.A.M. Sihombing, "Problematika Penyusunan Program Pembentukan Peraturan Daerah (Problems on Forming Local Regulations Programs)," *Jurnal Legislasi Indonesia* 13, no. 3 (2016): 285–96.

Control over Perkada is needed because; *First*, Regional Head Regulations are regulations whose authority to form lies with one party or lies with the regional head only. Other institutions, such as the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah/DPRD*), cannot intervene in the material content of a Perda. This is because the DPRD's authority in terms of regulations at the regional level is only found in the process of forming primary legislation, namely Perda. When a Perda has received joint approval between the DPRD and the Regional Head, the delegation of regulations is no longer a joint authority between the DPRD and the Regional Head.³⁹ When delegated legislations are made by one party, the agreement between the DPRD and the Regional Head when approving a Perda is likely betrayed by the regional head by creating a norm contrary to the Perda.

Second, control over delegated legislations is needed so that regional heads are careful and severe in making regional regulations. By having control over delegated legislations, the former will automatically feel that they are under supervision, so the potential for corruption or playing around with Perkada can be minimized. Meanwhile, the forms or design choices that can be taken to control delegated legislations can be in the form of preventive control and repressive control. Preventive control is a form of control through supervision or testing of draft delegated legislations or regional head regulations before they are ratified. In this process, a draft derogation regulation is submitted by the regional head to other institutions and socialized to the general public to obtain additional provisions for various shortcomings or to minimize the number of parties disadvantaged by the presence of a regional regulation. Repressive control is a form of control that occurs after a delegated regulation is legally declared effective. Repressive control is control in the form of testing delegated legislations. Judicial institutions usually carry out this form of control. Repressive control can only be carried out after there is a party or people who fulfill legal standing because they are the party directly disadvantaged by the issuance of a Regional Regulation.⁴⁰ Preventive control implies that it can prevent parties who will be harmed by regional heads' delegated legislations (Perkada).

In contrast, repressive control implies control that can cause someone to be already harmed by a delegated legislation. The loss is not obtained compensation or restoration of rights even if a Regional Regulation is later annulled by the judiciary, considering that decisions containing the revocation of the binding legal force of regional-level delegated legislations cannot be applied retroactively,⁴¹ according to Moh. Fadli, control over delegated legislations still takes the form of repressive control through testing at the Supreme Court (MA), even though repressive control is not enough and must be accompanied by preventive control.⁴² Therefore, if the interests of the people are prioritized, then repressive control is the most appropriate form of control because repressive control is preventative and does not cause victims or people whom the issuance of

³⁹ Muhammad Mutawalli Mukhlis et al., "Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasah," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 30, 2024): 505–26, <https://doi.org/10.29240/JHI.V9I2.9709>.

⁴⁰ Oce Madril and Jerry Hasinanda, "Perkembangan Kedudukan Hukum (Legal Standing) Dalam Pengujian Administratif Di Pengadilan Tata Usaha Negara Dan Uji Materi Di Mahkamah Agung," *Jurnal Hukum & Pembangunan* 51, no. 4 (2021): 952–70, <https://doi.org/10.21143/jhp.vol51.no4.3296>.

⁴¹ Mohammad Agus Maulidi, "Problematisa Hukum Implementasi Putusan Final Dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum," *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (October 2017): 535–57, <https://doi.org/10.20885/iustum.vol24.iss4.art2>.

⁴² Fadli, *Perkembangan Peraturan Delegasi Di Indonesia*.

delegated legislations has harmed. In contrast, repressive control is less ideal because repressive control cannot treat people who have already been disadvantaged by the enactment of a delegated legislation even if, later, the delegated legislation is canceled. Meanwhile, the legislative, executive, and judicial institutions can control regional-level delegated legislations. These three institutions can control delegated legislations at the regional level.

1. Preventive Control by the Legislature

Preventive control by the legislative body over *Perkada* is an offer of control by implementing a control mechanism over central-level delegated legislations, as Mohammad Fadli offers.⁴³ Where according to Moh. Fadli, preventive control over delegated legislations, both PP and Presidential Decree, by legislative institutions can or should be started when the parent law is formed and when the PP is drafted. The way to carry out preventive control when drafting a PP is by obtaining an assessment or approval from the DPR before the PP is adopted or promulgated by the government. This theory of preventive control over central-level delegated legislations can be applied *mutatis mutandis*⁴⁴ and untypically to regional-level delegated legislations so that the control design can be described as follows:

“The final stage of drafting the Regional Regulation involves the Regional People's Representative Council (DPRD). This means that before the Regional Head enacts or promulgates a Regional Head Regulation, the Regional Head must submit the final draft of the Draft Regional Head Regulation (Raperkada) to the DPRD to obtain an assessment from the DPRD regarding the relationship between the suitability of the provisions stipulated in the Regional Head Regulation and its parent Regional Regulation.”

In controlling delegated legislations by the DPRD, the DPRD can make simple procedures such as forming *Perda*. In fact, in this context, those most involved are experts within the DPRD.

2. Preventive Control by Executives

Control by executive agencies, both preventive and repressive, is a form of control over laws and regulations that still need to be in force in Indonesia. The executive agency is only active in forming statutory rules but must be given the authority to conduct testing. Efforts to grant authority to the executive to carry out reviews of statutory regulations have been provided by Law Number 23 of 2014 concerning the Regional Government. In the law that has been replaced by Law 9 of 2015, the executive can be the institution that cancels regional regulations. Namely, the Minister of Home Affairs can cancel provincial-level regional regulations, and the Governor can cancel Regency/City regional regulations. However, the control authority given to the executive agency was revoked by the Constitutional Court (MK) because it was deemed to conflict with Article 24 A of the 1945 Constitution of the Republic of Indonesia.

In the context of regional-level delegated legislations, the executive can be given the authority to carry out preventive control over delegated legislations. Preventive control by the executive here is control from an executive higher than the level of the legislator to be controlled. For example, for delegated legislations issued by the Regent/Mayor, preventive control can be carried out by the

⁴³ Fadli.

⁴⁴ Asri Lasatu, “Urgensi Peraturan Daerah Tentang Program Pembentukan Peraturan Daerah Terhadap Kinerja DPRD,” *Jurnal Ilmiah Kebijakan Hukum* 14, no. 2 (2020): 201, <https://doi.org/10.30641/kebijakan.2020.v14.201-222>.

Provincial Government or Governor, and for delegated legislations issued by the Governor, the authority to exercise control can be exercised by the Minister of Home Affairs. The control model by the superior government is essential because a delegated legislation (Perkada) can potentially contain norms that conflict with the delegated legislations above it or relate to administrative matters with the government above it.

3. Preventive Control by the Judiciary

The practice of control by the judiciary over delegated legislations is still repressive, namely through testing by the Supreme Court (MA), even though the repressive control carried out by the MA is a form of control that is less than ideal considering that control by the MA is a control process that will take quite a long time—long considering that the delegated legislations that must be controlled by the Supreme Court not only control regional level delegated legislations (Perkada) but also national level delegated legislations. Just imagine how many Government Regulations (PP), Presidential Regulations (Perpres), and Regional Head Regulations throughout the Republic of Indonesia must be controlled by the Supreme Court even though the Supreme Court is a judicial institution that has only around 60 judges. At the same time, 60 Supreme Court judges hear cases of control or review of delegated legislations and cassations on general, administrative, religious, and military cases.

The Supreme Court's repressive control over regional-level delegated legislations needs to be more effective and efficient because every regional regulation that is to be requested for judicial review must be submitted directly to the MA through the District Court (*Pengadilan Negeri/PN*) in the area concerned.⁴⁵ The PN only distributes it to the MA, considering that the PN does not have the authority to review regulations, including regional-level delegated legislations, even though the PN is a judicial institution under the MA. Not to mention, the review process carried out by the MA is closed or not open, like the legal review of the Constitution carried out by the Constitutional Court (MK). Therefore, the judiciary must control regional-level delegated legislations through preventive control. Forms of preventive control by the judiciary can take the form of judicial reviews or questions. Control in the form of a judicial preview is how the judiciary can receive and examine requests for judicial review of draft delegated legislations that regional heads will issue. In the context of this preventive control, requests for testing or requests to carry out control are carried out by people who have the potential to be harmed if the draft delegated legislation in a region is passed.

Preventive control with a judicial preview mechanism is an effort to bring in judicial institutions to prevent the rights of the people in a region from being harmed by the regional head's policies. Another form that the judiciary can take in carrying out preventive control over regional-level delegated legislations is by providing a space for regional heads to ask questions (such as a constitutional questions mechanism ⁴⁶) about whether the material content of the draft regional head delegated legislations conflicts with the material content of primary legislation. (regional regulations) or not. Question forums like this do not always have to take the form of tests but can

⁴⁵ Imam Bahaudin, "PENGUJIAN PERATURAN PERUNDANG-UNDANGAN," vol. 105, 2025.

⁴⁶ Muhammad Reza Winata, "Judicial Restraint Dan Constitutional Interpretation Terhadap Kompetensi Mengadili Pelanggaran Pemilihan Umum Terstruktur, Sistematis, Dan Masif," *Jurnal Legislasi Indonesia* 17, no. 4 (December 2020): 423, <https://doi.org/10.54629/jli.v17i4.663>. but the Structured, Systematic, and Massive (TSM

also take the form of focus group discussions (FGD) between regional heads and the District Court.

However, preventive control through delegation to the PN can only be provided for Regency/City level delegated legislations or does not apply to Provincial level delegated legislations or delegated legislations established by the Governor. It would be strange if the PN tried the Governor's regulations, considering that the PN only has jurisdiction or relative competence at the Regency/City level. At the same time, the position of the Province is much higher than that of the Regency/City area (the Province is a region or region that oversees the Regency/City). Therefore, for delegated legislations at the provincial and regional level, a form of reflexive control can be given to the High Court (*Pengadilan Tinggi*/PT), which in structure and function is a judicial institution within the MA positioned at the provincial and regional level.

Not only that, but the PT can also be given the authority to adjudicate all regional-level delegated legislations, including delegated legislations issued by the Governor, Regent, and Mayor. This is because the PT is an appellate-level court. Hence, the number of cases tried, both criminal and civil, will be much smaller than the PN so that the PT has more time and a representative and proportional number of judges to carry out preventive controls on regional-level delegated legislations. This is also supported by the relatively small number of regencies/cities in each province or not reaching up to 40 regions. The maximum number of towns/regencies in one province is only around 29 regions, namely East Java and Central Java.

If preventive control is given to the judiciary, other institutions that can be chosen to carry out preventive control are the State Administrative Court (*Pengadilan Tata Usaha Negara*/PTUN) and the State Administrative High Court (*Pengadilan Tinggi Tata Usaha Negara*/PT TUN). Administrative justice can be used as a choice because it is a judicial institution that focuses on and deals with the rule of law issues. The PTUN adjudicates legal regulations of the best hiking nature from State administrative officials. However, even though the basic competence of administrative justice is more about best hiking, administrative justice can still be given additional authority to carry out preventive control over delegated legislations (*Perkada*) that are reveling in nature. Theoretically, administrative justice can be given additional testing to regional-level delegated legislations (*Perkada*) because institutionally, the best hiking and delegated legislations have similarities. Namely, both are made unilaterally by regional heads as State administrative officials.

Table 1. The Design of Preventive Control by the Judicial Institution

The Type of Judicial Preview	The Judicial Institution	Regulation Type	Design/Model of Control
Preventive	District Court	Regional Head Regulation (District/City)	1. The Judicial Preview of Regional Head Regulations Draft 2. Constitutional Question for Regional Head Regulations
	High Court	Regional Head Regulation (Province)	
	Administrative High Court	Regional Head Regulation both in District/City or Province	

Source: Primary data, 2024 (Edited).

CONCLUSION

Regional-level delegated legislations are delegated legislations that the Governor, Regent, and Mayor can establish. Regional level Delegated legislations are necessary to implement Regional Regulations (Perda) between the DPRD and the Regional Head. As a regulation made by a political office, the potential for a Regional Regulation to be inconsistent with its primary legislation is a very potential occurrence. Therefore, control is needed over a delegated legislation so that the delegated legislation does not conflict with the primary legislation, is not ultra vires, and does not give rise to a fatigue of norms or conflict of norms. One form of control that can be implemented is preventive control, namely a form of control over Delegated legislations before they are officially promulgated. The legislature, executive, and judiciary can carry out this preventive control. The legislature can involve the DPRD before enactment. Control by the executive is control over a draft delegated legislation by the executive above it, such as by the Governor for City Regional Regulations and the Minister of Home Affairs for Provincial Regional Regulations, while control by the Judiciary, the form of reviewing draft delegated legislations whose authority can be given to the District Court and High Court or Court. State Administration and State Administrative High Court.

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