



Cancellation of Regional Regulations in Indonesian: An Overview of the Conception of Constitutional Democracy

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Abstract

This research examines the cancellation of regional regulations reviewed in the Indonesian constitutional system after the Constitutional Court decision. Through the decision of the Constitutional Court, the Constitutional Court stated "Granted the Petitioner's petition throughout the review of Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase "cancellation of Regency/City Regional Regulations and Regent/Mayor Regulations as intended in paragraph (2) is determined by the governor's decision as a representative of Central Government Law Number 23 of 2014 concerning Regional Government." The legal consequence of the Constitutional Court's decision is that the Minister of Home Affairs no longer has the authority to cancel regional regulations that violate higher regulations or at the level of implementation are considered problematic or contrary to the public interest. This research is qualitative research using normative juridical methods, or looking at applicable laws and regulations. This research uses a statutory approach, a conceptual approach and a philosophical approach in explaining the research problems raised. The legal materials used include primary materials and secondary materials, with data collection techniques, namely inventory of legal materials using the library method, namely searching for legal texts, books, regulations, articles and essays which are analyzed in depth qualitatively and then the search results. and analysis is presented in detail. descriptive analytical-prescriptive. The conclusion of this research is regarding the annulment of regional regulations following the decision of the Constitutional Court, even though based on article 18 of the 1945 Constitution of the Republic of Indonesia, regions are given the widest possible autonomy to administer government, the person ultimately responsible is the person in charge. the administrator of the government remains the President. Thus, the role of the Central Government through the Minister of Home Affairs in supervising Regional Governments through executive reviews is deemed necessary and can be carried out preventively regarding draft Regional Regulations. This is more accurately called an executive preview, in this case an examination of draft regional regulations. This means that the Government needs to be more serious and strict in supervising or supervising the making of these Regional Regulations to perfect the draft Regional Regulations before they become Regional Regulations.

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Keywords

Regional Regulation; Constitutional Court; Constitutional System

Abstrak

Penelitian ini mengkaji tentang pembatalan peraturan daerah yang ditinjau dalam sistem ketatanegaraan Indonesia pasca putusan Mahkamah Konstitusi. Melalui putusan Mahkamah Konstitusi, Mahkamah Konstitusi menyatakan “Mengabulkan permohonan Pemohon untuk pengujian Pasal 251 ayat (2), ayat (3), dan ayat (8) serta ayat (4) sepanjang frasa, “Pembatalan Peraturan Daerah Kabupaten/Kota dan Peraturan Bupati/Walikota sebagaimana dimaksud pada ayat (2) ditetapkan dengan keputusan Gubernur sebagai wakil dari Undang-undang Pemerintah Pusat Nomor 23 Tahun 2014 tentang Pemerintahan Daerah.” Akibat hukum dari Putusan Mahkamah Konstitusi adalah Menteri Dalam Negeri tidak lagi mempunyai kewenangan untuk membatalkan peraturan daerah yang melanggar peraturan yang lebih tinggi atau pada tataran pelaksanaannya dianggap bermasalah atau bertentangan dengan kepentingan umum. Penelitian ini merupakan penelitian kualitatif dengan menggunakan metode yuridis normatif, atau melihat peraturan perundang-undangan yang berlaku. Penelitian ini menggunakan pendekatan hukum, pendekatan konseptual, dan pendekatan filosofis dalam menjelaskan permasalahan penelitian yang diangkat. Bahan hukum yang digunakan meliputi bahan primer dan bahan sekunder, dengan teknik pengumpulan data yaitu inventarisasi bahan hukum dengan metode kepustakaan yaitu pencarian teks hukum, buku, peraturan, artikel dan esai yang dianalisis secara mendalam secara kualitatif kemudian hasil pencariannya dianalisis dan disajikan secara analitis-deskriptif dan analitis-preskriptif. Kesimpulan dari penelitian ini adalah mengenai batalnya peraturan daerah menyusul adanya putusan Mahkamah Konstitusi, bahwa berdasarkan pasal 18 UUD NRI Tahun 1945, daerah diberikan otonomi yang seluas-luasnya untuk menyelenggarakan pemerintahan secara mandiri yang juga sebagai wakil pemerintah pusat di daerah. Dengan demikian, peran Pemerintah Pusat melalui Menteri Dalam Negeri dalam melakukan pengawasan terhadap Pemerintah Daerah melalui executive review dipandang perlu dan dapat dilakukan secara preventif terhadap rancangan Peraturan Daerah. Hal ini lebih tepat disebut dengan executive preview, dalam hal ini pemeriksaan terhadap rancangan peraturan daerah. Artinya Pemerintah perlu lebih serius dan tegas dalam melakukan pengawasan atau penilaian terhadap pembuatan Peraturan Daerah untuk menyempurnakan rancangan Peraturan Daerah sebelum menjadi Peraturan Daerah.

Kata Kunci

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Introduction

At the government organization level, decentralization can be understood as a consequence from interactions that occur between government institutions with

different positions structural, namely between governments at a high level with the people below him. Understanding the above this interaction emphasizes aspects the freedom of authorities at lower levels to manage and run its government independently without deep interference from institutions Government at the top level. Freedom management is often called management regional independence. Through this decentralization is expected to be able to encourage realization of political stability, effectiveness of services society, reducing poverty rates and creating justice in society.

In the aspect of political stability, decentralization will suppress feelings of disappointment towards the region centralism of central government power. Specifically in terms of dredging resources in the area by an unbalanced central government equal distribution of welfare for the people in the region. So decentralization is expected to be able to reduce this political turmoil by revitalizing institutions and political processes in the region. In the aspect of implementation effectiveness public services can be reviewed for suitability between the provision of public services and needs public. With decentralization, this level is expected local governments know more and identify community needs accurately. So that the public services provided truly answer the needs of the community or not considered simply a need for power (Wicaksono, 2012:21).

Discussions regarding regional regulations and Regional Head Regulations that are not in line with the applicable laws and regulations, public interest or decency can be canceled by the Minister of Home Affairs and the Governor in accordance with the rights & authorities contained in Law no. 23 of 2014 on Regional Government. Tjahyo Kumolo, former Minister of Home Affairs, claimed that the President had revoked around 3,000 regional regulations in regencies and cities in 2016 through the Ministry of Home Affairs. The decision on this authority is stipulated in Decree 137/PUU-XIII/2015 which states that the Governor and the Ministry of Home Affairs no longer have the authority to cancel regional regulations in more detail in Article 251 of Law no. 23 of 2014 concerning Regional Regulations.

The Choice of Courts established in connection with the refusal of the position to overturn local ordinances by the Service of Home Undertakings and furthermore principal representation has both advantages and disadvantages in the position of the Holy Court itself. Because in the implementation of regional autonomy, the supreme government is in the hands of the president, and the ministries that support the president's duties are themselves extensions of the president's executive power, the constitutional judges vehemently reject the authority of the Ministry of Home Affairs in revoking regional regulations. Other Constitutional Justices still defended the decisions made in dissenting opinions. The Supreme Court's choice was also strengthened by decision No. 56/PUU/XIV/2016 which states that the central government no longer has the authority to revoke regional regulations (Ramadani, 2018:270).

Article 18A paragraph (1) of the 1945 Constitution which regulates the relationship and authority of the central government with regional governments, has long regulated the relationship between the central government and regional governments. Article 18A paragraph (2) of the 1945 Constitution also regulates the relationship between the central government and regional governments in terms of finance, public services and the utilization of natural resources in an equitable manner. In addition, the state is also obliged to respect and recognize special regions. This is regulated in Article 18B paragraph (1) of the 1945 Constitution. As long as it is in line with Pancasila and the 1945 Constitution, customary law used in the administration of regional government is also respected and recognized by the state. The 1945 Constitution stipulates this in article 18B paragraph 2. Since Indonesia's independence in 1945, coordination between the central government and regional governments has continued to be colored by the dynamics of power and division of authority. To end the prolonged conflict, changes were made to Law no. 32 of 2004 with the promulgation of Law no. 23 of 2014 concerning Regional Government with the aim of being able to increase regional synergy and prosperity.

The central government's supervisory authority over all government regulations enacted by local governments is one of the real impacts of these changes (Mutawalli, 2023). The authority to make regional regulations based on decentralization is one of the principles of regional autonomy used in local government. Article 18 paragraph 6 of the Constitution 1945 regulate the authority of regional governments to establish regional regulations. However, as stated in Decision 137/PUU-XIII/2015 and 56/PUU-XIV/2016, local government continues to operate within the framework of a unitary state structure, with the powers of the central government limiting its powers.

Regional Regulations (Perda) in Indonesia are regulated in Law Number 23 of 2014 concerning Regional Government. The practice of regional autonomy in Indonesia has undergone post-improvement reform namely in 1998. This provides an opportunity for the people to be more flexible in choosing regional heads directly from local to local. Law Number 32 of 2004 concerning Regional Government (Mutawalli, 2022:95). As a rule of law made by the Regional Government, Perda has the force of law and becomes the standard for actions and decision-making in the region. However, in practice, it is not uncommon for errors or discrepancies to occur in the making of local regulations. Under these conditions, the Constitutional Court as a constitutional supervisory institution has the authority to cancel regional regulations that are inconsistent with Indonesian law and constitution. Therefore, this article will discuss the process and mechanism for canceling regional regulations after the Constitutional Court ruling in Indonesia.

Whereas in principle, Indonesia has and adheres to constitutional democracy as a form of state government system (Mutawalli et al., 2023:302). According to Article 1 paragraph 2 of the 1945 Constitution, Indonesia is a democratic country based on a just and democratic state of law. However, the issue of concern in the

context of constitutional democracy is the cancellation of regional regulations. Is the cancellation of regional regulations in accordance with the principles of constitutional democracy that apply in Indonesia? This paper will explain the meaning of cancellation of regional regulations, the principles of constitutional democracy, and the relationship between the two.

Method

This research is normative legal research. Normative legal research is legal research oriented to the relationship between legal principles, theories, concepts and doctrines as well as statutory regulations. This research uses a statutory approach, a conceptual approach and a philosophical approach to analyze the problems discussed. This research uses primary legal materials, including: the 1945 Constitution of the Republic of Indonesia and the Law on Regional Government. Secondary legal materials include all types of research that discuss mechanisms for canceling regional regulations in the Indonesian constitutional system which are reviewed in Constitutional Court decisions, decentralization theory and the theory of canceling regulations. The legal materials in this research are various legal studies regarding the mechanism for canceling regional regulations in Indonesia, especially the socio-political constitutional system regarding the model for canceling regional regulations which is in line with the principle of checks and balances reviewed in decentralization theory. Analysis of legal materials is carried out by collecting existing legal materials (inventory), then carrying out legal analysis by prioritizing legal concepts and doctrines adapted to the formulation of the problem being discussed, and the results of the analysis then confirm the existence of legal materials. solution. (recipe) that answers the legal problem being discussed.

Discussion

Cancellation of Regional Regulations: An Overview of the Principles of Constitutional Democracy

In accordance with regional regulations, these are regulations issued by the regional government or DPRD as regional people's representative institutions that have the power to make regulations. However, not all of these local regulations can apply legally. There are regional regulations that violate the procedures for making them, the contents of regulations that contradict the regulations and laws above them, and regulations that violate human rights. To overcome this problem, Law 23 of 2014 concerning Regional Government gives power to the President through the Minister of Home Affairs to cancel regional regulations. The cancellation of this regional regulation aims to maintain the continuity of the legal system, avoid acts of discrimination, and to realize good and equitable governance.

However, in the context of constitutional democracy, the cancellation of regional regulations must pay attention to the basic principles of democracy. Cancellation of regional regulations that are not in accordance with the principles of constitutional democracy can raise doubts about the credibility of the state in building a just and democratic legal system.

The basic principles of constitutional democracy include respect for human rights, freedom of expression, diversity, right to information, division of powers, and legal certainty. In addition, the constitutional democratic system also includes a system of rules and decision-making systems that involve public participation and oversight of the government. The constitutional democratic system ensures that human rights are respected and protected. In Indonesia, human rights are guaranteed by the 1945 Constitution, Article 28A paragraph (1) and related to the right to hold opinions, express opinions, and the right to assemble peacefully. Constitutional democracy also includes freedom of expression. This freedom includes the right to convey information and ideas without fear of interference by the authorities. This right guarantees the public to express opinions or ideas, including those expressing objections to a regulation or policy. Diversity, both ethnicity, religion, culture, and politics, must be respected and protected by the state. In Indonesia, there are various ethnic groups and religions, and all of them must have their rights recognized and respected. Then, the right to information is also very important in a constitutional democracy. This right ensures that the public has access to accurate and correct information about the activities of the government and other public services. This includes decisions and policies made by the government, including local regulations.

The division of powers is another basic principle in a constitutional democracy. This principle includes the division of powers between the executive, legislature and judiciary, as well as the interrelated supervision between them. This principle ensures that the functions and powers of the state are clearly divided according to the applicable legal regulations. Crimes and violations of human rights or breaches of international laws or regulations may raise public doubts about legal certainty. Therefore, legal certainty is an important basic principle in a constitutional democracy. This principle ensures that everyone in Indonesian society, including the government, is under the law.

It is very important to understand the link between the cancellation of regional regulations and the principles of constitutional democracy in Indonesia. The annulment of regional regulations ensures that the basic principles of constitutional democracy are maintained. For example, the annulment of regional regulations that violate human rights will ensure that the protection of these rights continues to be respected and maintained. In addition, the annulment of regional regulations also avoids discriminatory acts by local governments. This is important for maintaining diversity and fairness in society. Rejection of regional regulations that are not in accordance with the principles of constitutional democracy can be a tool to accelerate changes in society.

Apart from the importance of canceling regional regulations to maintain the basic principles of constitutional democracy, there is still a special concern regarding the procedures for the cancellation process. The annulment process must pay attention to the principles of constitutional democracy. The cancellation process must be clearly explained, and the decision must be based on clear and publicly accessible criteria. Enterprise processes must also involve public participation and government oversight. In addition, transparency and accountability in the process of annulment of regional regulations is very important to maintain the credibility of the legal system and government in general. The process must be explained openly to the public, and the judgments made must be based on verifiable facts and evidence.

In accordance with the principle of autonomy, provincial, district and city governments have the authority to regulate and manage their own government affairs based on Article 18 Paragraph 2 of the Constitution 1945. It is hoped that the Unitary State of the Republic of Indonesia, which divides power between the center and the regions, can carry out its duties and authorities in accordance with Law Number 23 of the Year 2014 regarding Regional Government due to the enactment of the principle law. from self-control. Law Number 23 of the Year 2014 concerning Regional Government regulating regional authority in the implementation of regional autonomy. According to this Law, the regions become one legal entity that has the authority to regulate and administer the area according to the wishes and interests of the community, as long as it does not conflict with higher laws and regulations and is in accordance with the principle of public interest. The state must always consider the national interest in drafting regulations, whether in the form of regional regulations or other policies, so that local governments have full authority to regulate people's lives. On the other hand, the state must always consider national interests in formulating its policies. If it can be implemented properly and in accordance with the mandate of the constitution, it will create a balanced condition between synergistic public interests (Tamimu, 2019:90).

The administration of the state is divided into three parts of affairs, including absolute (absolute) government affairs, concurrent government affairs and general government affairs. Parallel administration manages the administrative affairs of the central government, districts and regencies. In the competitive public administration sector, there are mandatory and optional responsibilities implemented by both cities in the form of local regulations. As a consequence, regional regulations are increasingly occupying a strategic position in the life of society and the state, namely they play a very important role in the implementation of government tasks. If the regional regulations are formulated correctly, their strategic position in government affairs can be beneficial, but if they are formulated incorrectly, they can be a loss for the community itself (Pakpahan, 2010:5).

In addition to the importance and strategic position of regional regulations, regional regulations also have functions, including the following (DJPP Kemenkum dan HAM RI, in Sihombing, 2017:227):

- a. As a policy instrument for carrying out regional autonomy and assistance tasks as mandated in the 1945 Constitution of the Republic of Indonesia and the Law on Regional Government;
- b. It is an implementing regulation of higher laws and regulations. In this function, regional regulations are subject to hierarchical provisions of laws and regulations. Thus regional regulations may not conflict with higher laws and regulations;
- c. As a repository for regional specificity and diversity, but in its arrangement it remains within the corridors of the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia;
- d. As a development instrument for regional welfare.

In addition to their important status, regional regulations also have their own contents. Objects that can be regulated by regional regulations include the following (Soehino, 1997:8):

- a. Objects or issues of public concern, such as the evaluation of provincial and regional toll roads;
- b. Objects or things that limit people's choices, such as imposing prohibitions and obligations usually associated with harm or criminal consent;
- c. Objects that limit people's rights, for example determining the line of equality;
- d. Perda must regulate objects or things specified in higher and equal regulations.

Article 1 Law no. 12 years old 2011 generally contains the contents of the formation of laws and regulations. This article explains how regional autonomy and the tasks of regional assistance as well as considerations for the regions are included in the content of regional regulations and district/city government regulations. Special regulations or enactment of new laws and regulations (UU No. 23 Year 2014: Chapter 250 (1)). In addition, Sihombing and Marwan explained that the preparation of regional regulations must be based on the division of responsibilities between the central government, provincial governments, and district/city governments related to regional administration and their supporting tasks. In essence, this means that higher laws and regulations become the legal basis for future draft regional regulations (Sihombing, 2017).

The contents of regional regulations according to Article 236 of Law no. 23 years 2014 regarding Regional Government are as follows:

- a. In order to carry out Regional Autonomy and Co-Administration, the Region shall form a Regional Regulation;
- b. The regional regulations as referred to in paragraph (1) are formed by the DPRD with the joint approval of the regional head.

- c. The regional regulation as referred to in paragraph (1) contains content material:
 - 1) implementation of Regional Autonomy and Co-Administration; And
 - 2) further elaboration of higher statutory provisions.
- d. Regional regulations can contain local content according to statutory regulations other than the levies referred to in paragraph (3).

Legislation determines the authority of regional governments to make regional regulations and other regulations (including regional general regulations). However, because these areas are under national jurisdiction, the formation of regional regulations cannot be carried out unilaterally. A set of guiding principles is established during the establishment process, such as the need for suitable training facilities or institutions, suitability of goods and materials, suitability, usability, and openness. What's more, it shouldn't struggle with higher regulation. These limitations clearly show that the idea of regional independence follows the path that has been set before, by bringing regional tax-payer support organizations closer to the regions and in particular not sacrificing the Unitary State of the Republic of Indonesia. To guarantee that provincial guidelines remain within the structure of public common law, essential arrangements can be repealed, assuming they struggle with the boundaries set out in the law.

Provisions of Chapter IX Part Three Article 2 252 Law. No. 23 Years 2014 which states that regional regulations are prohibited from contravening statutory provisions, this chapter contains provisions regarding the annulment of regional regulations and higher regional regulations for the public interest and justice. In the decision of the Constitutional Court Number 137/PUU-XIII/2015, the authority of the household chaplain and leading representatives in accordance with their position to revoke the operational guidelines has been completed. Decree Number 56/PUU-XIV/2016 which emphasized that the authority of the Minister of Home Affairs and the governor to annul regional regulations was considered unconstitutional and violated Article 18 paragraph 6, 28D paragraph 1 and 24A paragraph 1 of the 1945 Constitution, added to the weight of this decision. So after the decision of the Protected Court, the central government for this situation the Home Business Pastor and the main representative cannot cancel the local guidelines. However, the authority of the household clergy and deputy leaders as representatives of the head of government is to review or evaluate (see leadership) the draft regional regulations before they are ratified or enacted.

With many regional regulations not in accordance with the national strategic program design, the central government took steps to replace provincial regulations that had thwarted these important projects by enacting omnibuslaw regulations. Furthermore, in the decision of the Constitutional Court No. 137/PUU-XIII/2015, it is very possible that this choice was simply scrutinized by imposing Article 251 paragraphs 2, 3, 4 and 8 of Law no. 23 years 2014 on local government. So there is a meaning that the interest in repealing this article lies more with the deputy leadership on the grounds that the implementing government in the

regions cannot cancel regional or city regulations. So assuming that the repeal of that article is explicitly stated that the Home Business Pastor cannot revoke the territorial guidelines, it can be said that the repeal of paragraphs 2, 3, 4 and 8 in article 251 is considered to have various translations.

Regional regulations are regulations issued by the regional government or DPRD as regional people's representative institutions that have the power to make regulations. However, not all of these local regulations can apply legally. There are regional regulations that violate the procedures for making them, the contents of regulations that contradict the regulations and laws above them, and regulations that violate human rights. To overcome this problem, Law 23 of 2014 concerning Regional Government gives power to the President through the Minister of Home Affairs to cancel regional regulations. The cancellation of this regional regulation aims to maintain the continuity of the legal system, avoid acts of discrimination, and to realize good and equitable governance. However, in the context of constitutional democracy, the cancellation of regional regulations must pay attention to the basic principles of democracy. Cancellation of regional regulations that are not in accordance with the principles of constitutional democracy can raise doubts about the credibility of the state in building a just and democratic legal system.

Conception and Practice of Canceling Democratic Regional Regulations in the Indonesian State Administration System

The cancellation of regional regulations is an important matter in the Indonesian constitutional system. Regional regulations are legal products made by the Regional People's Representative Council (DPRD) and the Regional Government which are implemented in a specific regional space. As a legal product, regional regulations must comply with existing regulations and must not conflict with higher laws. In cases of non-compliance, cancellation of regional regulations can be carried out with a predetermined mechanism. This mechanism is very important in order to maintain legal compliance and to ensure that all legal products produced are in accordance with established laws. The cancellation of regional regulations is carried out by considering several things, including compliance with higher regulations. Compliance with these higher regulations means that regional regulations must not conflict with existing laws, ranging from national laws and regulations to the constitution. This is very important because regional regulations must be consistent with existing rules in the statutory system. If there is a discrepancy or conflict, then the judge or institution concerned will consider canceling the regional regulation. This cancellation is not only carried out by the judiciary, but can also be carried out through other mechanisms such as the ombudsman or the Oversight Body.

The mechanism for canceling regional regulations is also tied to regional sovereignty. In accordance with the principle of regional autonomy regulated in Law no. 23 of 2014, the regions have the authority to make local regulations

according to the needs and interests of the local community. However, this authority does not apply in all cases. Regional authority has certain limits, as mentioned above, namely that it may not conflict with higher laws and regulations. If there are violations or regional regulations that conflict with the existing ones, then the cancellation mechanism will be implemented. There are several types of mechanisms for canceling regional regulations that have been established in the Indonesian constitutional system. First, the cancellation mechanism through material review or judicial review. In this mechanism, regional regulations that are deemed to be contrary to higher laws are brought to the Constitutional Court for examination and review. In this test, the Constitutional Court will assess whether the local regulation is truly contrary to the existing law. After that, the Constitutional Court will issue a final decision to cancel or ratify the regional regulation.

Apart from judicial review, another cancellation mechanism is cancellation by the Governor. This mechanism is regulated in Law No. 23 of 2014. Governors have the authority to cancel regional regulations that conflict with higher laws through draft regional regulations (Raperda) submitted to the DPRD. If the Raperda is approved by the DPRD, then the governor can approve or reject the existing regional regulations. If the regional regulation is rejected, the DPRD can propose changes or reconstruct a new regional regulation. Apart from that, there is also an annulment mechanism carried out by state agencies such as the Judicial Commission or the Ombudsman. This mechanism is carried out in connection with the institution's authority in supervising violations of laws and regulations and irregularities in the implementation of duties. These state institutions can ask for the cancellation of local regulations that are considered to violate the rights of the community or not in accordance with existing law.

The mechanism for canceling regional regulations is also accompanied by supervisory actions carried out by the Daily Oversight Agency (BPH) and the Regional Supervisory Agency (BPD). BPH is a vertical institution formed by the Regional Government to supervise the implementation of regional regulations that have been made. Meanwhile, the BPD is a horizontal institution formed by the DPRD to supervise the performance of the Regional Government and the implementation of regional regulations. Both have the authority to provide recommendations, sanctions, or even cancel regional regulations if necessary. The annulment of regional regulations is an important part of the Indonesian constitutional system. This indicates that the rule of law must always be maintained and maintained, as well as fostering public awareness of their rights towards local government. Therefore, there is a need for good coordination and synergy between the various institutions involved in the mechanism for canceling regional regulations. With synergy, regional regulations can be canceled quickly and accurately, so as to guarantee the protection of community rights and regional interests.

The assessors of regional regulations, especially the Regional Head and Deputy Regional Head, will involve three main aspects as instruments to assess whether a regional regulation is valid or not. The following is an explanation of these three points:

- a. In drafting a regulation, legislators and drafters cannot freely formulate a provision, which is contrary to the Rule of Law. They should consider higher PUUs, such as the 1945 Constitution, regulations, unofficial laws and official guidelines. This is in line with the law *lex superior derogat legi superiori* which states that if two laws have different regulations, the higher regulation will terminate the lower regulation. As a result, if the regulation conflicts with the higher regulation, the regulation is null and void (Asshiddiqie, 2010:74-75).
- b. Regional regulations that do not discriminate against ethnicity, religion, belief group, race, intergroup, or gender must be enacted which are contrary to the public interest. These regulations may not disturb community harmony, interfere with access to public services, disturb public order and peace, or interfere with economic activities to improve welfare.
- c. With regard to ethics, regional regulations that are promulgated may not conflict with standards of decency and manners in general.

Arrangements regarding the cancellation of regional regulations can be seen in the composition of Articles 249-252 of Law no. 23 years 2014. Submission of regional regulations, including regional head regulations and/or district government/city regulations must be in accordance with the interests of the community, this is done as a form of supervision by the central government over the implementation of regional government (Manan, 1994:197).

Executive review is a central government mechanism in regulating regional regulations as described above. The chairman's survey is a type of observation of regional regulation items which is an exploratory interaction with the leadership survey component which ends with the deletion of the regional regulations' points. This control component is a type of central government command over the district in the implementation of provincial independence. Regional Regulation Number 23 Years 2014 set arrangements related to the repeal of environmental regulation items.

The governor and the Minister of Home Affairs have the authority to revoke regional regulations at the provincial, regency and city levels. Interpretation of Law No. 23 years 2014 The Minister of Home Affairs has the authority to revoke or declare null and void provincial-level regional regulations led by governors who also serve as representatives of the central government. The governor has the authority to cancel regional regulations at the district or city level, on the orders of the regent or mayor. Cancellations of this type also include examinations, even though revocations are actually carried out by the executive or central government and not the legislature or judiciary. Therefore, Jimly Asshiddiqie (2010) consider it as an executive survey, with the reason that the benchmark for testing carried out by the central government is regulations by regulations, not regulations by law.

Regional regulations can be tested against the benchmarks of the 1945 Constitution of the Republic of Indonesia and interpreted according to their own wishes if the ruling government tends to be authoritarian. The central government is obliged to act according to the law, not the constitution. Local regulations can be countered by the image of the 1945 Constitution of the Republic of Indonesia and interpreted at will if the ruling government tends to be authoritarian.

Law Number 23 of the Year 2014 giving space to regional heads, two deputy leaders and officials/mayors, to submit issues of the choice of clerics to cancel regional guidelines to the High Court, in the event that they change to become provincial general guidelines, and to the clergy on the assumption that they change to local environmental guidelines. And have good reasons to believe that the regulations adopted do not exceed the limits of the applicable regulations. This is stated as follows in Article 251 paragraphs 7 and 8: In the event that neither the governor nor the provincial government can accept the decision to revoke the governor's regulation as described in the paragraph above. Deputy leaders can submit a protest to the President no later than 14 (fourteen) days after receiving the choice to impose provincial guidelines or instructions from the representative leadership.

The choice to exercise this sovereign right can be appointed by the central government to the regional legislature based on independence to create a proportional relationship that leads to a relationship of direction and control. The principles of decentralization, centralization and co-management can be used to improve relations between the central government and local governments. Meanwhile, the administrative relationship between the central government and the provincial legislature can be assisted through the legal management of local goods. In terms of guidelines for forming government work units from the center to the regions, the authority of the relationship between the central government and regional governments. Meanwhile, the supervisory relationship that is intended so that regional governments can exercise their autonomy is not created haphazardly in the process of drafting regional regulations. This implies that the implementation of independence through the promotion of operational guidelines that regulate citizen issues does not kill the true freedom of citizens.

At the regional level, to comply with laws, regulations are implemented jointly by the executive and legislative bodies. According to Jimly Asshiddiqie (2010), "As a product of people's representation to the government", regional regulations such as laws can be referred to as products of legislation, while regulations in other forms are products or regulations. This law is referred to as regional law. Regulations are national or regional in nature, while regional regulations do not only apply in the respective local government areas, namely in each province, district or metropolitan area. The law only applies to the area or area where regional regulations apply, and in particular regional regulations. Regional guidelines implemented at the general and regional/city levels have items that are similar to regulations but have a clearer scope. These guidelines are almost the

same, apart from the aspect of their use, thus the existence of operational guidelines increasingly takes into account the mechanisms and institutions for legal review, as well as conflicting regional regulations (Suardana et al., 2019).

Constitutionality of Cancellation of Regional Regulations by Regional Heads

The issue of repealing local regulations (Perda) by the Supreme Court has had an enormous impact both from an administrative and institutional organizational perspective. As a result of the Constitutional Court's decision, a decision can be made that abolishes the steps for monitoring and adjusting development at the district/city level and increases the application for the right to review within the Supreme Court. Constitutional Court Number 137/PUU-XII/2015 stated that the Governor could no longer cancel Regional Regulations (Perda) within the scope of districts or cities. The Constitutional Court's decision effectively paralyzes the regulatory oversight function. After that, a number of arguments broke out, doubting the community's ability to evaluate the outcome of the decision. This argument raises an important question how the Supreme Court review application system will be applied and whether it will hinder the Constitutional Court review case.

The next question is whether the governor can be the party requesting the regional regulation if the governor does not have the authority to cancel the regional regulation. Implementation of tasks in stages or preview implementation is expressly stated in articles 242 and 249 of Law Number 23 Year 2014. According to the article, governors can review district/city regional regulations, while the Minister of Home Affairs can review provincial regional regulations (Latief, 2005:204). There are differences in interpretation of the Constitutional Court's decision which removed the authority of the Minister of Home Affairs and the governor to revoke regional regulations as a result of this decision. The governor's authority over regional regulations is all those affected by the abolition, not his own authority. In the event that the governor is a representative of the central government as referred to in Article 91 paragraph (3) of Law Number 23 Years 2014 regarding Regional Government, the governor has the authority to cancel district/city regional regulations. Of course, this is very contrary to the previous decision of the Constitutional Court. Given these deficiencies, is it possible for a governor to implement or submit an application to the Supreme Court for the annulment of a district or city regulation that does not meet the criteria for a good regional regulation.

The constitutionality of regional heads became one of the hot topics in the cancellation of regional regulations by the Constitutional Court. The regional head as an element of regional government is a host stakeholder or origin right who has the right to regulate his own government affairs in accordance with the authority granted by law. However, regional regulations made by regional heads may not conflict with laws and the constitution. The cancellation of regional regulations by the Constitutional Court is proof that there are still regional heads who do not

understand the limits of authority in making regional regulations. Therefore, this essay will discuss the constitutionality of regional heads in the cancellation of regional regulations by the Constitutional Court.

Regional regulations are a form of legal formation made by local governments. The making of these regional regulations must pay attention to the principles of constitutionality and propriety not to deviate from the values written in the 1945 Constitution of the Republic of Indonesia. The regional head as the leader of the regional government in making regional regulations must also pay attention to the authority granted by law and not abuse his power. Thus, in making regional regulations, regional heads must always pay attention to the constitutionality of the regulations made. This is done so that regional regulations made do not conflict with the constitution and existing laws. Regional heads must also pay attention to the influence of these regional regulations on people's lives and public interests. However, it is not uncommon for regional heads to issue regional regulations that are deemed to be contrary to the law and the constitution. As a representative of the people, the Constitutional Court has the authority to annul regional regulations that are contrary to the 1945 Constitution and laws.

Justice and legal certainty must be upheld in maintaining the constitutionality of regional regulations. The Constitutional Court has an important role in maintaining the constitutionality of regional regulations, so that decisions of the Constitutional Court must be respected by all parties. The Constitutional Court in canceling regional regulations is based on clear and objective legal considerations, so that this strengthens legal certainty and constitutional values. In several decisions of the Constitutional Court, there were decisions which resulted in the cancellation of regional regulations. The cancellation of this regional regulation aims to maintain constitutionality and propriety in law-making as well as strengthen the relationship between the regional government and the central government. Cancellation of regional regulations imposes sanctions on regional heads who do not pay attention to the limits of their authority in making regional regulations.

Controversy regarding the cancellation of regional regulations often occurs because regional heads consider the cancellation of regional regulations as a usurpation of power from the regional government. However, this is wrong because the Constitutional Court only acts in accordance with its duties in upholding the values of constitutionality and propriety in making laws. In making regional regulations, regional heads must pay attention to several basic principles that can be used as guidelines in making legal decisions. First, regional heads must always pay attention to the principle of regional autonomy. Regional autonomy is a basic principle in the regional government system which gives authority to regional governments to regulate their government affairs.

However, the authority to make regional regulations is by no means unlimited. Regional heads must always pay attention to the limits of their authority in making

regional regulations. The limits of the regional head's authority in making regional regulations are stated in the applicable laws and regulations. Second, regional heads must pay attention to the principle of fulfilling human rights. Regional regulations that are made must pay attention to human rights and not harm the interests of the community in the long term. Regional heads must also pay attention to the influence of these regional regulations on people's lives and public interests. Third, regional heads must pay attention to the principle of public information disclosure. Regional regulations that are made must pay attention to the principle of public information disclosure and facilitate public accessibility of information. That way, the community has access to submit criticism, suggestions, and aspirations for regional regulations made by regional heads. Fourth, regional heads must pay attention to the principle of justice. Regional regulations that are made must be fair and not discriminatory against certain groups. Justice is the basic principle in making regional regulations because all people must be subject to the same law without any distinction. In the cancellation of regional regulations by the Constitutional Court, there are criteria that form the basis for deviations from constitutionality. Criteria deemed to deviate from constitutionality include among others:

- a. The constitution and laws conflict with regional regulations
- b. Application of regional regulations that cause people to feel disadvantaged or deprive human rights
- c. Regional regulations that violate the law and social values
- d. Regional regulations that provide powers that are not in accordance with the authority of the regional head.

In the case of cancellation of regional regulations by the Constitutional Court, all parties must understand and respect the decision of the Constitutional Court. The decision of the Constitutional Court is the basis for resolving legal conflicts by referring to the values of constitutionality and propriety in making laws. The role of regional heads as regional government leaders is very important in maintaining the constitutionality of regional regulations. Regional heads must pay attention to the limits of their authority in making regional regulations and always pay attention to the basic principles of making laws. Regional heads must also pay attention to the influence of these regional regulations on people's lives and public interests. The cancellation of regional regulations by the Constitutional Court imposes sanctions on regional heads who do not pay attention to the limits of their authority in making regional regulations. Therefore, each regional head must pay attention to the principle of constitutionality in making regional regulations so as not to deviate from the values written in the 1945 Constitution of the Republic of Indonesia.

Within the administrative structure, the Court of Appeal regulates who can serve as a lawyer in legal disputes including legal survey regulations. Supreme Court Regulation or Perma Number 1 Year 2011 regarding the right of review includes this rule. According to the regulations, community organizations and individuals or individuals may apply. This guideline is still widely discussed among

political experts regarding the clarity of who has the right to become a candidate in the legal survey law because the article does not deeply understand the models of a candidate. However, looking at a number of Human Rights Court trials, it is still apparent that a number of Supreme Court decisions contain rules and questions related to the status and legal standing of the applicant. This shows that even though it is not regulated in the High Court Guidelines Number 1 of 2011, this choice indicates that each candidate must somehow have legal status as an individual or certain local association (Seidman et al., 2002:128).

The parties entitled to use the right of extensive judicial review are explained in Article 31A of Law Number 3 Years 2009 about the Supreme Court. Parties that can do this are individuals who are residents of the Unitary State of the Republic of Indonesia, the second is the regional unit standard regulations that are still in accordance with Pancasila and the Constitution of the Republic of Indonesia 1945. In reality, people believe that a regional head can be classified as a public legal entity in this situation. This means that each regional head has the authority to review regional regulations that are deemed inappropriate or deviate from the established rules through a judicial review (Van der Vlies, 2005:102).

A group that has the authority to stipulate or issue general regulations to the public, such as laws and taxes, is referred to as a public legal entity, according to a number of expert opinions. The extent to which a legal entity, whether public or private, exerts influence over society or an institution is usually the criterion for their assessment. With this assumption, an ordinary government that has public power or the position to make regulations at the ordinary level can be classified as a public legitimate element considering the fact that seen from the understanding that the substance of public law itself is an organ. or part of the express which governs the people in general and has the power to make binding and general guidelines.

Therefore, if the provincial government is a public legal entity, referring to Article 1 point 3 of the Law on Regional Government, which states that a public legal entity may apply for a right of review stating that the co-government is the head of the provincial government. The governor is in charge of the province. In other words, the decision states that the Governor can apply for judicial review rights against regional regulations that are not in accordance with the law. Of course this contradicts the decision of the Constitutional Court which states that the Governor cannot ignore or act on regional regulations at the regency or city level.

In addition, the problem that has arisen is the rise of cases involving the Supreme Court's right to judicial review after the Constitutional Court's decision. This shows that compared to cases that were immediately canceled or revised by the Ministry of Home Affairs, there was an increase in review cases at the Supreme Court between 2014 and 2016. Most of these cases involved reviewing regulations at the district and city level as well as at the provincial level.

The Supreme Court is predicted to overturn more regional regulations. This can really happen considering that the authority of the regional head (governor) no longer has the authority to cancel regional regulations. Notwithstanding the fact that there is no removal of territorial guidance by the principal representative, the principal representative may still direct surveys by being a candidate for legal survey rights. Although this request is of course limited to the authority of the provincial government, it is undoubtedly a response for those who feel aggrieved by district or city regional regulations (Bonadi et al., 2019:7).

The absence of the role and function of the enactment of other articles in the Regional Government Law itself is also allegedly influenced by the decision of the Constitutional Court which abolished regional government authority. There are several articles that are considered dead because of the choice of the Protection Court. The responsibilities and powers of the governor as the regional head of the province are discussed in these articles. In this article, it is clear that the governor still has the authority to revoke district and city regulations as regional head. Article 92 Paragraph (3) It can further be interpreted that in the event that the deputy leader who has the power to offset provincial guidelines no longer conveys his obligations and experts as they should, then the task can be taken over by the central government as a representative of those obligations (Al Anwari, 2018).

Decisions of the Constitutional Court (constitutional court decisions) are influenced by legal factors that are different from other judges. Article 24C of the Constitution of the Republic of Indonesia (1945) states that the Constitutional Court has the authority to examine, try and decide at any level whether the decision to review an unconstitutional law is final. In other words, the Constitutional Court is the highest authority in interpreting the Constitution. This means that when the election is about standards, there is often no case, because the issues raised by the candidates are general in nature and the impact of the decision affects not just a handful of people, but all of Indonesia. In essence, these candidates tend to be individuals or groups who feel their sanctity has been violated (Nugroho, 2019:100).

Process and Mechanism for Cancellation of Regional Regulations

The process of canceling regional regulations after the Constitutional Court's decision consists of several stages. Here are these stages:

- a. Application for cancellation of regional regulations, applications for cancellation of regional regulations can be filed by anyone who feels aggrieved by regional regulations made by the regional government. UU no. 24/2003 on the Constitutional Court gives citizens the right to apply for the cancellation of a regional regulation. Requests for annulment of regional regulations must be submitted in writing and can be made through the district court or directly to the Constitutional Court.
- b. Examination of the Application After receiving the application, the Constitutional Court will conduct an examination of the application for

cancellation of the regional regulation. The examination includes judicial review of regional regulations and determining whether or not the regional regulations violate the law and the constitution.

- c. Notification to the Regional Government After conducting an examination, the Constitutional Court notifies the Regional Government that issued the Regional Regulation that the cancellation is being requested. The notification is made so that the Regional Government can provide their response or defense against the request for cancellation of the Regional Regulation.
- d. Trial Session, After receiving the response from the Regional Government, the Constitutional Court will hold a trial session. The trial session is open and each party related to the request for cancellation of the regional regulation can provide information, evidence and their arguments at the trial.
- e. Decision of the Constitutional Court After conducting a trial session, the Constitutional Court will issue a decision. The decision can be in the form of canceling all or part of the regional regulation, or it can also reject the application for cancellation of the regional regulation. The decision of the Constitutional Court is final and binding on all parties involved in the cancellation of the regional regulation.

Mechanism for Cancellation of Regional Regulations After the Decision of the Constitutional Court When after the decision of the Constitutional Court has been issued, the Regional Government must immediately annul the Regional Regulation being requested for cancellation in accordance with the decision issued by the Constitutional Court. The process of canceling the Perda is usually carried out through several stages, including:

- a. Issuance of a New Local Government Regulation (Perda), After the old Perda was annulled, the Regional Government must immediately issue a new Perda in accordance with the decision of the Constitutional Court. In the new Perda, there are regulations that replace the previously canceled Perda. The new regional regulation must pay attention to the existence and relationship with the central regional regulation as well as the interests of the community.
- b. Submission of a new regional regulation to the central government. Once issued, a new regional regulation that is in accordance with the Constitutional Court's decision must be submitted to the central government for approval. The Central Government will conduct an assessment of the new Perda to ensure there are no violations of the law and constitution in Indonesia.
- c. Announcement of New Perda After obtaining approval from the Central Government, the Regional Government must implement the announcement of the new Perda that has been issued. The announcement can be made through various media, such as newspapers, social media, official websites, and also in public activities.
- d. Evaluation of the Implementation of the New Perda, After the new Perda is promulgated, the Regional Government needs to evaluate and monitor the implementation of the Perda. This is done to ensure that the newly issued

Perda does not conflict with the law and the constitution and is in accordance with the public interest.

Conclusion

From the description above it can be concluded that constitutional democracy is a government system that ensures the continuity of human rights, freedom of expression, diversity, right to information, distribution of powers, and legal certainty. The annulment of local regulations by taking into account the basic principles of constitutional democracy is important to maintain the credibility of the legal system and government. Therefore, the annulment of regional regulations must be carried out in an open and transparent process, involving public participation and oversight of the government.

Discussion of the above problems that have been described, it can be concluded that the Minister of Home Affairs and the Governor do not have the authority to cancel regional regulations. This problem arose following a decision by the Constitutional Court to abolish the authority of the Minister and Governor, which resulted in the cancellation of central government regulations for the regions. This authority remains with the central government, in this case the Minister of Home Affairs and governors as representatives of the central government in the regions, in contrast to regional head regulations (PerGub, PerBup, and PerWal) which were canceled.

The cancellation of regional regulations after the Constitutional Court decision is an important process in order to maintain legal certainty and prevent violations of the law and constitution in Indonesia. Regional Governments must ensure that each Perda issued meets legal and constitutional requirements as well as the interests of society in general. In addition, every citizen also has the right to apply for the cancellation of a regional regulation when they feel aggrieved by the regulation. Through the process of canceling regional regulations after the decision of the Constitutional Court, it is hoped that good governance will be created that is fair and upholds the principles of democracy and law in Indonesia.

Within the framework of the unitary state of the republic of Indonesia, the authors propose returning the authority to cancel regional regulations to the minister of home affairs and governors as representatives of the central and regional governments. Because the constitutional doctrine states that local government is part of the central government and all policies are planned by the regional government, the implementation of regional autonomy is actually the implementation of some central government affairs in the regions must follow the policies of the central government, then currently the central government concentrates on standardizing regulatory relations between central and regional levels.

Authors Contribution

Muhammad Mutawalli: *Conceptualization, Writing – Original Draft, Formal Analysis.*

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Authenticity Statement

We declare that this article is the author's original work, free from plagiarism, and all references are listed in the article. The article has not been published and is not being submitted to another journal.

Biography

Muhammad Mutawalli is a lecturer at the Sekolah Tinggi Agama Islam Negeri Majene and a lecturer at the Faculty of Sharia and Law at UIN Alauddin Makassar. Student of the Doctor of Laws program at the Faculty of Law, Hasanuddin University, his latest work is the book: *Negara Hukum Kedaulatan dan Demokrasi (Konsepsi Teori dan Perkembangannya)*.

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