

Supervision of Regional Legal Products: Strengthening Executive Review in the Decentralization System

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Abstract

Executive Review in the formation of regional legal products as strategic supervision to realize good regional regulations. This study aims to analyze and examine the process of supervision of regional legal products using the ROCCIPI method. This study found that the ROCCIPI method is very effective in the formation and supervision of regional legal products, both from the regulatory and implementation aspects. The problem that will be discussed in this study is how the supervision of regional legal products is based on the ROCCIPI method. The method used is normative legal research using the statute approach and theoretical approach related to the supervision of regional legal products based on the ROCCIPI method which will be analyzed qualitatively descriptively.

Keywords: Supervision, Regional Legal Products, ROCCIPI.

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INTRODUCTION

Regional governments (Pemda) have an important role in organizing governance at the regional level to support the effectiveness and efficiency of government as a whole. [1] In its implementation, regional government is based on the principle of regional autonomy which gives authority to regions to regulate and manage their own government affairs. Decentralization as a form of implementation of regional autonomy provides space for regional governments to be more independent in carrying out their duties and functions. Therefore, the synergy between the central government and regional governments must continue to be strengthened in order to realize a more effective, efficient, and responsive government to the needs of the community.[2] Therefore, the regional government has the authority to formulate regional legal products as mandated by Article 18 paragraph (6) of the 1945 Constitution, which states that regional governments have the right to stipulate regional regulations and other regulations to implement regional autonomy and assistance tasks. Regional legal products, one of which is the Regional Regulation formed to implement regional

autonomy and assistance tasks, are explained in Articles 236 to 254 of Law Number 23 of 2014 concerning Regional Government (Law on Regional Government 2014) as amended several times, most recently by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Law on Job Creation). To prevent any discrepancies between Regional Regulations and higher regulations, their preparation has been regulated in Article 1 of Law Number 12 of 2011 concerning the Formation of Legislation, which was last amended by Law Number 13 of 2022. In the formation of regulations, aspects of authority, openness, and supervision are things that must be considered.

The mechanism for monitoring regional legal products is carried out by various institutions, including the Ministry of Home Affairs (Kemendagri), Ministry of Law (Kemenkum), related ministries, Regional Representative Council (DPD), Pancasila Ideology Development Agency (BPIP), Regional People's Representative Council (DPRD), and Regional Apparatus Organizations (OPD). The large number of

¹Rahayu, Ani Sri. *Introduction to Regional Government: A Study of Theory, Law and Application*. Sinar Grafika, 2022. 7

² Fauzi, Achmad. "Regional autonomy within the framework of realizing good regional governance." *Spektrum Hukum* 16.1 (2019): 119-136.

institutions that monitor the formation of regional regulations is problematic, one of which is the length of the bureaucratic process caused by each institution having its own SOP for monitoring regional regulations. With the large number of institutions that monitor the formation of regional legal products, it actually causes various problems, such as the length of the bureaucratic process, overlapping authority, and minimal coordination between institutions. This causes supervision to be ineffective and inefficient. Therefore, strategic steps are needed to simplify the supervision mechanism so that the process of forming regional regulations can run faster and optimally. With better bureaucratic reform, it is hoped that supervision of regional legal products can be more effective, efficient, and provide maximum benefits for the community.

METHOD

The research method used is the normative research method.^[3] By using the statute approach and theoretical approach related to the supervision of regional legal products based on the ROCCIPI method.⁴ The statute approach (legislative approach) is to examine matters concerning legal principles, legal views and doctrines, and environmental laws and regulations, and accurate data that can be accounted for regarding the supervision of regional legal products based on the ROCCIPI method.^[5] Theoretical approach in research is a conceptual framework used to understand, analyze, and explain the phenomena being studied. This approach is based on relevant theories and becomes the basis for compiling arguments and interpretations of research results. In addition, an in-depth examination of the legal facts is also carried out to then attempt to solve the problems that arise in the symptoms concerned. ^[6]

RESULTS AND DISCUSSION

Law Number 12 of 2011 as amended by Law Number 13 of 2022 (UU P3) emphasizes that the harmonization of Draft Regional Regulations is coordinated by the relevant ministries/institutions and implemented by their vertical agencies, also applicable to Regional Head Regulations. However, after the Constitutional Court Decision Number. 137/PUU-XIII/2015 and Number. 56/PUU-XIV/2016, this mechanism was strengthened through executive review to ensure good regional regulations.

1. Problems in the Process of Supervising Regional Legal Products

Supervision of regional legal products faces various challenges that need serious attention. Regional legal products are often not in line with national-level laws and regulations, such as laws or government regulations. ^[7] This disharmony can create legal uncertainty and risk harming the community. The effectiveness of supervision is highly dependent on the quality and competence of human resources who understand the legal aspects in depth. However, in many regions, limited human resources are an obstacle that hinders the optimal supervision process. In practice, the preparation and supervision of regional legal products are often influenced by certain political interests. This can lead to regulations that are not objective and less in favor of the interests of the community. ^[8]

The supervision process involves various parties, such as local governments, the DPRD, and the Ministry of Home Affairs. The imbalance in coordination and weak synergy between institutions often cause supervision to be less effective. The large number of institutions involved in supervision has the potential to slow down the process of reviewing regional regulations, thus impacting the effectiveness of policy implementation at the regional level. In its supervision, various institutions have their respective roles to ensure that regional legal products are in accordance with national law and the public interest. Some of the main institutions involved include:

- a. Ministry of Home Affairs (Kemendagri): Kemendagri has the authority to foster and supervise regional legal products. This supervision includes evaluation of draft Regional Regulations (Perda) at the provincial level and the cancellation of Perda and gubernatorial regulations that conflict with higher regulations.
- b. Ministry of Law and Human Rights (Kemenkum): Kemenkumham is responsible for providing legal guidelines and ensuring that regional legal products do not conflict with the principles of human rights (HAM) and general legal norms.
- c. Regional Representative Council (DPD): As a regional representative in the legislative system, DPD has the authority to provide input related to regional legal products, especially those

³Soetrisno, Research Methodology, UGM, Yogyakarta, 1978, 49.

⁴ Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, Jakarta, 2011, 35

⁵ Mukti Fajar dan Yulianto Achmad, *Dualism of Normative & Empirical Legal Research*, Yogyakarta, Pustaka Pelajar, 2010, 34

⁶ Abdulkadir Muhammad, *Law and legal research*, Bandung : Citra Aditya Bakti, 2004, 32

⁷ Sudarmanto, Kuku, et al. "Implications of Law Number 11 of 2020 Concerning Job Creation on the Formation of Regional Legal Products." *Jurnal USM Law Review* 4.2 (2021): 702-713.

⁸Jayuska, Rizki, and Ismail Marzuki. "Problems in the Formation of Regional Regulations by the Regional Government of Central Kalimantan Province for the 2016-2021 Period." *Pagaruyuang Law Journal* 4.2 (2021): 149-167.

related to regional autonomy and regional interests.

- d. Pancasila Ideology Development Agency (BPIP): BPIP plays a role in ensuring that regional legal products are in line with Pancasila values. Presidential Regulation Number 7 of 2018 gives BPIP the authority to provide recommendations related to Pancasila ideology in regional policies and regulations.

The large number of institutions tasked with supervising regional legal products has the potential to cause overlapping authority, which results in ineffective supervision, the emergence of inter-institutional conflicts, and increased administrative burdens. Therefore, strategic steps are needed such as harmonization of authority, simplification of supervisory mechanisms, and increasing the capacity of regional governments so that the supervision process can run more effectively and efficiently. Supervision of regional legal products is an important element in maintaining the harmony of the national legal system. However, challenges in terms of institutions, capacity, and political dynamics are still the main obstacles. Therefore, synergy between the central government, regional governments, supervisory institutions, and the community is needed to create a more transparent and effective supervisory mechanism. Thus, regional legal products can function optimally in serving the interests of the community without conflicting with higher regulations.

In the process of its formation, various institutions have a role in ensuring that regional legal products are in line with applicable regulations and are in the interests of the community. However, the existence of many supervisory institutions also has an impact on increasing the state's financial burden in the formation of regional regulations. On the one hand, the number of supervisory institutions can increase transparency and accountability, but on the other hand, this also requires a large budget for operations, including the costs of experts, research, and supporting facilities and infrastructure. In addition, overlapping authority between institutions can lead to budget waste because each has a nearly similar supervisory mechanism. The protracted supervision process can also extend the stages of drafting regional legal products, thus requiring

additional budget for repeated studies and revisions. Regional governments must also allocate more funds to meet the various administrative requirements submitted by each supervisory institution. Although the number of supervisory institutions can improve the quality of regulations and ensure higher compliance with the law, the consequences in the form of increasing the state's financial burden cannot be ignored. High operational costs, overlapping authority, and a long legislative process are challenges in themselves. Therefore, steps are needed to simplify the supervisory mechanism so that budget efficiency is maintained without reducing the quality of the regional legal products produced.

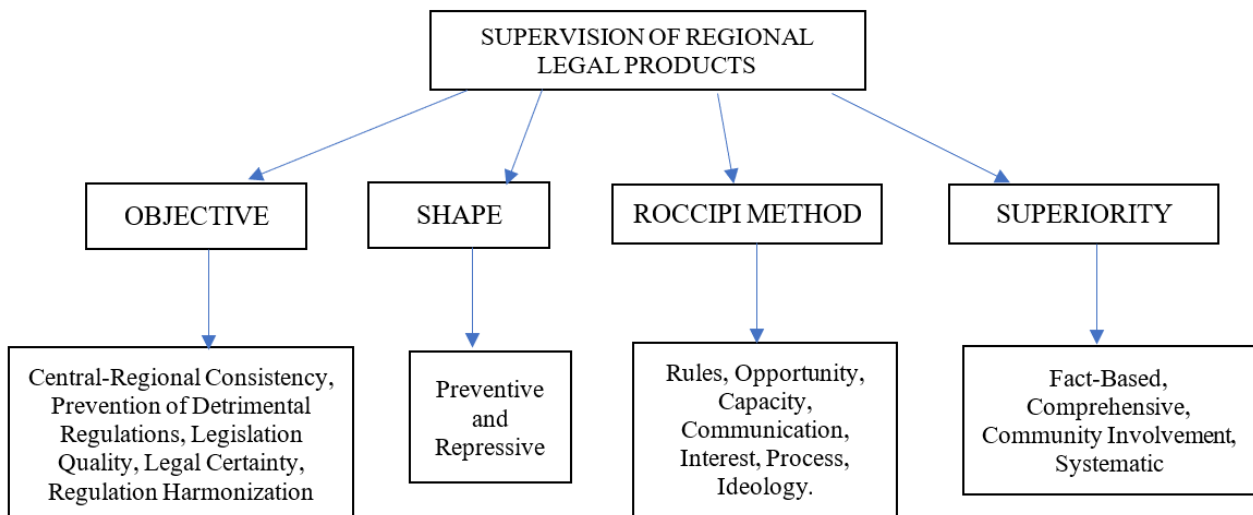
2. Supervision of Regional Legal Products Based on the ROCCPI Method

The main objective of this supervision is to maintain consistency between central and regional government policies, and to prevent the emergence of regulations that could harm the community or the public interest. In the system of decentralization and regional autonomy in Indonesia, supervision of regional legal products is an important aspect in maintaining the quality of legislation and harmonization of the national legal system. [⁹] As explained previously, supervision of regional legal products involves various institutions with their respective powers and authorities to ensure that the process of formulating and implementing regional regulations is in accordance with applicable legal principles. This supervision includes evaluation and verification of the substance and procedures of each Regional Regulation drafted by the regional government. The main objective is to ensure that the regulation does not conflict with higher regulations and does not create legal uncertainty for the community. [¹⁰] With a more structured and synergistic approach, supervision of regional legal products can run more optimally, so that the resulting regulations are able to fulfill the principles of justice, legal certainty, and benefits for the community.

The use of this method is expected to improve the quality of regional legal products, so that they are more responsive to community needs and produce regulations that are more transparent, accountable and can be implemented well as described in the following chart:

⁹ Yudanti, Anggita, and Wicipto Setiadi. "Problems of Indonesian Regulation Formation in Planning Regulation Formation with Regional Development Planning." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* (2022): 27-40.

¹⁰ Nalle, Victor Imanuel W. "Research methodology in legislative drafting in Indonesia." *The Theory and Practice of Legislation* 11.1 (2023): hlm 83-96.



This chart illustrates the structure of the concept of supervision of regional legal products with four main components, namely Objectives, Forms, ROCCIPI Methods, and Excellence. Supervision aims to maintain consistency between central and regional government policies, prevent regulations that are detrimental to the community, and ensure the quality of legislation that is in harmony with the national legal system. Another goal is to ensure legal certainty, which means that regulations must not overlap or conflict with higher regulations. Harmonization of regulations is also an important factor so that there are no regional regulations that conflict with national policies. Supervision is carried out in two main forms, namely preventive which is carried out before the regulation is implemented to ensure compliance with applicable laws and regulations and repressive which is carried out after the regulation is implemented, aims to evaluate its impact and make revisions if necessary.

The ROCCIPI method is an analytical approach used in the formation and supervision of regional legal products. The ROCCIPI method has the advantage that the regulations produced are more in accordance with the real conditions of society. Examining various aspects in the formulation of regulations. Regulations are more participatory and take into account public needs. Supervision is carried out based on structured and comprehensive analysis. This chart provides a systematic overview of how supervision of regional legal products is carried out with a fact-based approach and in-depth analysis. By implementing the ROCCIPI method, it is hoped that regional regulations can be more effective, fair, and in line with the interests of society and national law.

a. ROCCIPI as the Basis for the Formation of Regional Legal Products

The formation of regional legal products plays an important role in creating effective governance that is responsive to the needs of the community. However, in its implementation, many regional regulations are ineffective, difficult to implement, or even contradict

national regulations. To improve the quality of regional legal products, one approach that can be used is the ROCCIPI method. This method offers fact-based analysis that helps in designing regulations by considering various factors that influence their effectiveness. The ROCCIPI method was developed by William Robinson as an analytical tool in evaluating and designing more effective regulations.

In drafting regional regulations, the ROCCIPI method can be used to analyze the problems to be addressed and ensure that the regulations made are truly effective in resolving the problem. Regional governments need to identify the root of the problem before establishing appropriate regulations. For example, if the regulations being drafted are related to waste management, it must be ascertained whether the main obstacles come from a lack of public awareness, limited facilities, or weak law enforcement. Through ROCCIPI-based analysis, the resulting regulations will be more relevant to conditions in the field and easier to implement because they have considered various factors that influence their effectiveness. After the regulations are implemented, periodic evaluations need to be carried out to measure the effectiveness of the policy and make revisions if necessary.

One of the advantages of the ROCCIPI method is that regulations are more fact-based. The resulting legal products are more relevant to real conditions in society because they are compiled based on a comprehensive analysis. By considering various factors that influence the implementation of regulations, this method helps prevent the birth of regulations that are impractical or contrary to the needs of the community. This method encourages community involvement in the process of forming regulations by taking into account their interests and capacities. Regulations that are made by considering aspects of communication, opportunities, and community capacity are easier to comply with and implement. The ROCCIPI method offers a comprehensive approach to designing regional legal

products by considering various factors that influence the effectiveness of regulations. By implementing this method, local governments can produce regulations that are more effective, applicable, and in line with the needs of the community. Ultimately, the application of the ROCCIPI method will contribute to improving the quality of regional governance and provide real benefits to the community.

b. ROCCIPI as a Basis for Supervision of Regional Legal Products

Supervision of regional legal products is a fundamental aspect in maintaining justice, effectiveness, and harmony of regulations at the local and national levels. Regional legal products include policies set by the regional government in the form of *Perda* or *Perkada* which aim to regulate various aspects of community life in a region. To ensure that these regulations meet the principles of good legislation, an effective supervision mechanism is needed. Lon Fuller put forward several principles of good legislation, including: regulations must be announced clearly, not retroactively, have clear and easy-to-understand formulations, and must not contradict each other. In addition, regulations must be permanent, not change frequently, and there must be harmony between the actions of legal officials and applicable provisions.^[11]

In Indonesia, the mechanism for monitoring regional legal products is regulated in Law Number 13 of 2022, which is the second amendment to Law Number 12 of 2011 concerning the Formation of Legislation. One of the recommended methods in monitoring regional legal products is ROCCIPI. Although this method is optional as stated in Attachment I of the P3 Law, ROCCIPI is often used in the evaluation and monitoring process because of its broad scope. In addition to ROCCIPI, other methods such as Regulatory Impact Analysis (RIA) can also be applied, but ROCCIPI is preferred because it covers more variables that influence the formulation and implementation of regulations.

The ROCCIPI method offers an in-depth analysis of various aspects of regional legal products, including:

- 1) Rules: Assess the extent to which regulations can direct the behavior of the community targeted by the regulation.
- 2) Opportunity: Measure the availability of access for the community to comply with regulations.
- 3) Capacity: Evaluate the community's ability to comply with regulations from an economic, social, and educational perspective.
- 4) Communication: Assess the clarity of the delivery of regulations to avoid misunderstandings in implementation.

- 5) Interest: Ensure that regulations are in line with the interests of the various parties affected.
- 6) Process: Check whether regulations are drafted in a transparent and democratic manner.
- 7) Ideology: Determine the alignment of regulations with applicable legal, social, and cultural values.

Advantages of the ROCCIPI Method in Supervision of Regional Legal Products, one of which is a comprehensive analysis. ROCCIPI includes seven variables that allow supervision of regulations in terms of substance, formation process, to implementation. This method can be adjusted to the characteristics of regulations in various regions. ROCCIPI emphasizes the aspects of community interests and capacity, so that it can increase the active role of local governments in regulatory supervision. With an analysis-based approach, supervision can be carried out systematically to ensure the sustainability and efficiency of regional regulations. In the context of the Indonesian government, regional autonomy and decentralization give authority to local governments to set policies according to the needs of local communities. This principle is regulated in the Regional Government Law. However, in its implementation, the central government still has the authority to supervise so that regional legal products do not conflict with national policies. ^[12]

This supervision can be carried out in two forms, namely preventive which is carried out before the regulation is implemented to ensure compliance with national legal principles and repressive which is carried out after the regulation is implemented to assess its impact and effectiveness and make revisions if necessary. From the perspective of the hierarchy of laws and regulations, regional legal products must be in line with the 1945 Constitution, laws, and government regulations. Therefore, supervision is an important step to ensure harmonization of regulations at all levels. Supervision of regional legal products is an important step in maintaining the alignment of regulations with national policies. By using the ROCCIPI method, supervision can be carried out more systematically and based on in-depth analysis. The central government needs to strengthen the supervision mechanism by increasing communication with regional governments, ensuring the effectiveness of regulations, and encouraging regional innovation that remains in line with national interests. The ideal supervision model is one that maintains a balance between the freedom of regions to set their own policies and the obligation of the central

¹¹ Wicaksana, Bagus. "Analysis of Commitment and Capabilities of Marketplace Business Actors to Government Regulation Number 80 of 2019." *Cendekia Niaga* 6.2 (2022): 138-155.

¹² Hamidi, Jazim, et al. *Theory and law of drafting regional regulations*. Universitas Brawijaya Press, 2012.3

government to ensure that the regulations made do not conflict with national legal principles^[13].

CONCLUSION

Supervision of regional legal products plays an important role in maintaining harmony between central and regional policies and preventing regulations that are detrimental to the community. In Indonesia's decentralized system, this supervision ensures that regional regulations are in line with national legal principles and do not create legal uncertainty. The ROCCPI method is an effective approach in the formation and supervision of regional legal products because it analyzes regulations based on seven main aspects: rules, opportunities, capacity, communication, interests, processes, and ideology. With a fact-based approach and comprehensive analysis, this method helps create responsive, transparent, and accountable regulations. In supervision, the ROCCPI method allows for systematic evaluation of regulations, both preventively before implementation and repressively after implementation. This aims to ensure that regulations remain in accordance with national policies and the needs of local communities. With optimal supervision, regional regulations can function effectively, improve governance, and provide real benefits to the community.

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¹³ Dwiatmoko, Anang, and Harsanto Nursadi. "Problematisa Dan Penataan Pembentukan Peraturan

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