



## Legal Implications of Regulating Judicial Review of District/City Regulations in Indonesia

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### **Abstract**

This article aims to analyze the legal implications of regulating the judicial review of district/city regulations in Indonesia. The author sees that there is incomplete regulation in the examination of statutory regulations under the law against the law, namely the incomplete set of the regional regulations touchstone, the incomplete set of the scope of the material and formal examination, the incompleteness of the legal standing arrangement, and the incomplete setting of the nature of the trial examination open to the court. This study uses a normative juridical research method with a statutory approach and a conceptual approach to provide answers to problems. The existence of incomplete regulation in the examination of legislation under the law against the law has legal implications as follows: legal uncertainty scope of material and formal testing, the absence of legal order, violation of the hierarchy of legislation, the loss of the central government's legal position in testing local regulation, and weak supervision of regional regulations by the central government.

**Keywords:** *Legal Implication; Judicial Review; Local Regulation; District; City*

### **Introduction**

The judge's examination of the products of the legislative acts and the executive branch of power is a consequence of the adoption of the principle of checks and balances based on the doctrine of separation of power. Therefore, the authority to conduct a judicial review is attached to the function of the judge as to the subject, not to other officials (Abdi, M., 2010). In theory, testing by the judicial institution itself can be formal or material (*formele toetsingsrecht en materiele toetsingsrecht*) (Soemantri, S., 1997).

Formal testing is related to procedural questions and is related to the legality of the competence of the institution that makes it. Judges can cancel a regulation that has been stipulated by not following the official rules regarding the formation of the regulation in question. Judges can also declare null and void a regulation that is not stipulated by an institution that does have official authority to form it. While

material testing is related to the possibility of material conflicts of regulation with other regulations that are higher or concerning the specifics of a rule compared to generally accepted norms.

If you refer to the previous discussion, it can be seen that the regulation regarding the touchstone in the examination of legislation under the law in the Law on Judicial Power and the Supreme Court Law still follows the arrangements contained in the previous law. Although there is a stipulation that the Supreme Court has the authority to examine statutory regulations under the law against the law, in the subsequent norms and the Elucidation it is explained that there is an expansion of the touchstone in the examination of statutory regulations under the law, namely statutory regulations. higher. Article 24A paragraph (1) of the 1945 Constitution explicitly states that the Supreme Court has the authority to "examine the legislation under the law against the law". Thus, the touchstone in testing regional regulations has expanded its meaning, namely, no longer only laws as regulated in Article 24A paragraph (1) of the 1945 Constitution, but also higher laws and regulations as regulated in the Law on Judicial Power and the Supreme Court Law.

Likewise, with the scope of testing, although there have been changes to the settings in the 1945 Constitution, the Law on Judicial Power, and the Supreme Court Law, the Supreme Court Regulation No. 1 of 2011 concerning the Right to Test Materials still limits the examination to only the material scope. This of course provides a shift in meaning and even contradictions between the norms in the Supreme Court Regulation Number 1 of 2011 concerning the Right to Material Examination and the norms in the 1945 Constitution, the Law on Judicial Power, and the Supreme Court Law.

This is because the existence of norms in the Supreme Court Regulation Number 1 of 2011 concerning the Right to Judicial Review still accommodates the meaning of judicial review in the understanding before the amendment of the 1945 Constitution, which at that time judicial review was still defined as being limited to only material testing. In the context of this conflicting arrangement, the legal principle of *lex superiori derogate legi inferiori* applies (laws with a higher degree override laws of a lower degree) (Manan, B., 2003).

Thus, referring to the provisions in the 1945 Constitution, the Law on Judicial Power, and the Supreme Court Law, the examination of statutory regulations under the law, especially local regulations can be carried out materially or formally. In this case, the provisions in the Regulation of the Supreme Court Number 1 of 2011 concerning the Right to Material Examination must be set aside. The importance of regional regulations at the level of a unitary state (Desyanti, et.al, 2021) provides a strong argument for looking at the judicial review system within the national legal framework. Therefore, in this study the author examines the legal implications of the judicial review of district/city regulations in Indonesia.

## **Methods**

In this article, the research used is legal research with the type of doctrinal research. In essence, the basic problem of this research is about the legal implications of the judicial review of district/city regulations in Indonesia. Substantially, the writing of this paper includes normative legal research, namely legal research conducted by examining legal materials (library studies) or secondary data. According to Soerjono Soekanto and Sri Mamudji, normative legal research includes research on legal principles, research on legal systematics, research on levels of vertical and horizontal synchronization, legal comparisons, and legal history (Soekanto, S. & Mamudji, S., 1995). In writing this paper, the author uses a statute approach, and a conceptual approach (Marzuki, P. M., 2005).

## **Research Result and Discussion**

### **1. Legal Uncertainty Scope of Material and Formal Testing**

According to Satjipto Rahardjo, legal certainty has four meanings. First, that the law is positive, meaning that it is legislation (Gsetzliches Recht). Second, that the law is based on facts (Tatsachen), not a formulation of an assessment that will later be made by the judge, such as "goodwill", "politeness". Third, that the fact must be formulated clearly to avoid mistakes in meaning, as well as being easy to implement. Fourth, positive law should not be changed frequently (Rahardjo, S., 2006). From these four meanings, it can be seen that the law must be formulated in a clear way to avoid mistakes in meaning, at the same time the law is also easy to implement.

The existence of legal uncertainty in the regulation of the examination of statutory regulations under the law arises because basically, the Law on Judicial Power and the Law on the Supreme Court have provided clear provisions that the Supreme Court has the authority to conduct formal examinations of the laws and regulations under the law. This can be seen based on Article 20 paragraph (2) letter b of the Law on Judicial Power and its Elucidation which states that "The Supreme Court has the authority to a. adjudicate at the level of cassation against decisions given at the last level by courts in all judicial circles under the Supreme Court unless the law provides otherwise; b. examine the legislation under the law against the law, and c. other powers granted by law. In the Elucidation of Article 20 paragraph (2) letter b of the Law on Judicial Power, it is stated that:

This provision regulates the Supreme Court's right to examine laws and regulations that are lower than the law. The right to test can be carried out both on the content of paragraphs, articles, and/or parts of laws and regulations that are contrary to higher laws and regulations as well as on the formation of laws and regulations.

Elucidation of Article 20 paragraph (2) letter b of the Law on Judicial Power has clearly stated that the right to test can be carried out both on the content of paragraphs, articles, and/or parts of laws and regulations that are contrary to higher legislation and against the establishment of laws and regulations. Therefore, here it can be seen that the Supreme Court can also conduct a formal examination of the statutory regulations under the law because testing can also be carried out on the formation of statutory regulations.

Likewise, the provisions in 31 paragraphs (1) and (2) of the Supreme Court Law states that "The Supreme Court declares that the legislation under the law is invalid because it contradicts a higher statutory regulation or its formation does not meet the requirements of the law. applicable provision." In this case, with the phrase "or its formation, does not meet the applicable provisions", basically the Supreme Court is not only authorized to carry out material tests but can also conduct formal examinations of the laws and regulations under the law.

However, the existence of Supreme Court Regulation Number 1 of 2011 concerning Material Testing only regulates the Supreme Court's authority in material testing. Thus, the Supreme Court is only limited to examining materially the content of the legislation under the law against the law. If the Supreme Court is only limited to examining materially the content of the legislation under the law against the law, then what if the Regional Regulation in its stipulation is not by the formal principles of forming laws and regulations and the processes, techniques, and procedures for the formation of laws and regulations -laws, such as the arrangements contained in Law Number 12 of 2011, Law Number 23 of 2014, and other laws and regulations that regulate in detail the formal mechanism in the determination of regional regulation.

In addition, at the level of regulation in the law, both the Judicial Powers Act and the Supreme Court Law, still do not fully regulate the ruling when the decision on the formal review of the statutory regulations under the law is granted. The incompleteness of this arrangement can be identified based on Article 31A paragraph (7) of the MA Law which only stipulates that:

“If the application is granted as referred to in paragraph (6), the decision shall state clearly the material content of the paragraph, article, and/or part of the legislation under the law which is contrary to the higher legislation.”

Looking at these provisions, then the decision that was granted only included material testing, this can be seen from the phrase "the verdict states firmly the material content of paragraphs, articles, and/or parts of legislation under laws that are contrary to regulations. higher legislation". The problem is, what if the formal examination of the legislation under the law is granted. The decision was granted based on Article 31A paragraph (7) of the Supreme Court Law only covers the decision on a material review.

This is a different arrangement in the case if the test is rejected, as regulated in Article 31A paragraph (9) of the Supreme Court Law which states "If the legislation under the law does not conflict with higher legislation and/or does not conflict in its formation, the decision states that the application is rejected". With the phrase "not contradicting in its formation" then the decision is rejected as regulated in Article 31A paragraph (9) of the Supreme Court Law, in addition to the decision to reject the material review, it also includes the decision to reject the formal review. However, once again, the regulation in terms of whether the decision is granted does not contain the phrase "and/or does not contradict in its formation".

If then compared with the provisions in Article 57 paragraph (2) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 which states that "The decision of the Constitutional Court whose decision states that the formation of the law does not meet the provisions of the formation of law. based on the 1945 Constitution of the Republic of Indonesia, this law does not have binding legal force." Thus, although it is regulated that the Supreme Court has the authority to examine formally because the regulations for its formation do not meet the applicable provisions, the Supreme Court loses the regulatory basis regarding the form of the decision when the decision on the formal test is granted, so there is legal uncertainty.

This is because the legislators are not careful in carrying out their authority which results in the emergence of legal incompleteness which has implications for legal uncertainty. In the Constitutional Court's Decision Number 067/PUU-II/2004 related to the review of Law 5/2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court which was pronounced on February 15, 2005, the Court thought that:

“But on the other hand, it is clear to the Court that the legislators are not careful in carrying out their authority, which results in inconsistencies between one law and another. Such inconsistency has created doubts in the implementation of the law in question which leads to legal uncertainty, a situation which has the potential to cause a violation of constitutional rights as regulated in Article 28D paragraph (1) of the 1945 Constitution which states, ...”

Based on the decision, the Constitutional Court considered that if the legislators were not careful in carrying out their authority, it would result in inconsistencies between one law and another. Likewise, the inaccuracy of lawmakers and Supreme Court regulations, which then creates doubts in implementation which leads to legal uncertainty.

## 2. The Absence of Legal Order

Understanding legal order, A. Hamid S. Attamimi gives the notion of legal order (*rechtsordnung*) as an objective legal entity that does not depend on other laws and determines all legal formation within the legal order unit. This formulation is very important in determining the presence or absence of juridical unity in legal order. Meanwhile, Soehino defines legal order as an order consisting of various kinds of laws and regulations which are arranged hierarchically from regulations with the highest level and/or degree to regulations with the lowest level and/or degree.

The same opinion was conveyed by J. H. A. Logemann who said that just as social order, which is an interrelated whole, also positive law, which is determined by abstracting from a whole, a relation of norms, is a legal order. Thus, in positive law, there are no conflicting/inconsistent or inconsistent or contradictory norms between the applicable legal rules, so that the legal rules become vague. Inconsistencies in-laws and regulations can result in public confusion in understanding these regulations.

The absence of legal order in the examination of statutory regulations under the law against the law occurs because the existence of Supreme Court Regulation Number 1 of 2011 concerning Material Examination only regulates the Supreme Court's authority in material testing. Thus, the Supreme Court is only limited to examining materially the content of the legislation under the law against the law. Whereas based on Article 20 paragraph (2) letter b of Law Number 48 of 2009 concerning Judicial Powers it is stated that "The Supreme Court has the authority to b. examine the legislation under the law against the law".

Meanwhile, in the Elucidation of Article 20 paragraph (2) letter b of Law Number 48 of 2009 concerning Judicial Powers, it is stated that "This provision regulates the Supreme Court's right to test against laws and regulations that are lower than the law. The right to test can be carried out both on the content of paragraphs, articles, and/or parts of laws and regulations that are contrary to higher laws and regulations as well as on the formation of laws and regulations.

If the Supreme Court is only limited to examining the material and material content of the legislation under the law against the law, then what if the Regional Regulation in its stipulation is not by the formal principles of establishing laws and regulations and the processes, techniques, and procedures for the formation of laws and regulations-laws, such as the arrangements contained in Law Number 12 of 2011, Law Number 23 of 2014, and other laws and regulations that regulate in detail the formal mechanism in the stipulation of regional regulation.

The absence of legal order in the examination of statutory regulations under the law against the law also occurs because the Supreme Court Regulation Number 1 of 2011 concerning the Judicial Review does not accommodate the Petitioner as stipulated in Article 31A paragraph (2) of the Supreme Court Law. The provisions of Article 1 paragraph (4) of Supreme Court Regulation Number 1 of 2011 concerning Material Examination states that: "Objection Petitioners are community groups or individuals who file an objection request to the Supreme Court on the enactment of a statutory regulation at a lower level than the Law."

Whereas based on Article 31A paragraph (2) of the Supreme Court Law, the Petitioner's review of the legislation under the law against the law does not limit that the Petitioner is only a community group or individual. Article 31A paragraph (2) of the MA Law states:

"The application as referred to in paragraph (1) can only be made by parties who consider their rights to be impaired by the enactment of laws and regulations under the law, namely:

- a. individual Indonesian citizens;
- b. customary law community units as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; or
- c. public legal entity or private legal entity.”

Thus, Article 1 paragraph (4) of the Supreme Court Regulation Number 1 of 2011 concerning the Judicial Review seems to be trying to simplify the other Petitioners as stipulated in Article 31A paragraph (2) of the Supreme Court Law, where the Petitioner is a customary law community unit or a public legal entity or a private legal entity. only interpreted by the community or individuals only. Whereas the Legal Standing of the customary law community unit as long as it is still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law is, of course, different from the legal standing of the community or individual.

Likewise, with the legal standing of public legal entities or private legal entities, it cannot be simplified with the legal standing of the community or individuals as regulated in Supreme Court Regulation Number 1 of 2011 concerning Material Testing. This is because the recognition of legal entities as legal subjects has its legal authority. Legal subjects have a very important position and role in the field of law, especially civil law because these legal subjects can have legal authority.

Efforts to simplify the legal standing of public legal entities or private legal entities with the legal standing of communities or individuals are not appropriate. Because the Supreme Court Regulation Number 1 of 2011 concerning Material Testing does not provide regulation on the legal standing of a public legal entity or a private legal entity as a Petitioner, this is a form of incomplete regulation because Article 31A paragraph (2) of the Supreme Court Law states that one of the Petitioners' Legal Standing is tested legislation under the law is a public legal entity or a private legal entity, so that legal inconsistencies occur.

### 3. Violation of the Hierarchy of Legislation

In the theory of legislation there is an understanding of the existence of a hierarchy of laws and regulations. Hans Kelsen stated that the legal system is a rung system with tiered rules. The relationship between the norms that govern the actions of other norms and these other norms can be referred to as a super and subordination relationship in a spatial context (Asshiddiqie, J. & Safaat, M.A., 2006). The norms that determine the making of other norms are superior, while the norms that are created are inferior.

The creation determined by a higher norm is the reason for the validity of the whole legal order that forms the unity. Hans Kelsen states that the unity of these norms is based on the fact that the formation of lower norms is determined by higher norms, and this order is ended by the highest, namely the basic norm which is the highest reason for the validity of the whole legal order that becomes a single entity. with the following statement:

“The unity of these norms is constituted by the fact that the creation of the norm—the lower one—is determined by another—the higher—the creation of which is determined by a still higher norm, and that this regressus is terminated by a highest, the basic norm which, being the supreme reason of validity of the whole legal order, constitutes its unity”.

Therefore, the unity of norms is a constitution based on the fact that a norm is made, the lowest legal norms must adhere to higher legal norms, and the highest legal norms (such as the constitution) must adhere to the most basic legal norms (grundnorm). Hans Kelsen's theory regarding the hierarchy of legal norms was inspired by Adolf Merkl by using the *das doppelte recht* theory, namely legal

norms have two faces, with the understanding that legal norms are upwards that originate and are based on the norms above and legal norms. Downwards it also becomes the basis and the source for the norms below it. So that the norm has a relative validity period (*rechkracht*) because the validity period of a norm depends on the legal norms above it, so that if the legal norms above are revoked or abolished, then the legal norms below are revoked or erased as well. (Indrati, M.F., 1998).

One of the contents of the 1945 Constitution, in particular, Article 24A paragraph (1) of the 1945 Constitution regulates the Supreme Court in which it is determined that the Supreme Court has the authority to judge at the cassation level, examine legislation under the law against the law, and has other powers that provided by law. The existence of this provision confirms the Supreme Court's authority to examine the legislation under the law against the law.

Then based on Article 24A paragraph (5) of the 1945 Constitution, it is stated that "The composition, position, membership, and procedural law of the Supreme Court and the judicial bodies under it are regulated by law". Based on these provisions, it is clear that the law of the Supreme Court is regulated by law. The meaning of the phrase "regulated by" according to Attachment II number 201 of Law Number 12 of 2011 concerning the Establishment of Legislations is as follows:

"If the contents of the delegated content have been partly regulated in the Delegating Legislation, but the content material must be regulated only in the delegated Legislation and may not be delegated further to a lower Legislation (sub-delegation), use the sentence Further provisions regarding .... are governed by ... "

The Constitutional Court's decision Number 012-016-019/PUU-IV/2006 confirmed the meaning of the phrase "regulated by" namely it is believed that from a technical standpoint, the phrase "regulated by law" means that it must be regulated by a separate law. In addition, the phrase "regulated by law" also means that it must be regulated by laws and regulations in the form of laws, not in the form of other laws and regulations (Widiarto, A. E., 2019). Thus, the provisions of Law 12/2011 and the Constitutional Court Decision Number 012-016-019/PUU-IV/2006 determine that the meaning of the phrase "regulated by" in an order to delegate further regulation includes elements:

- a. must be regulated only in-laws and regulations which are delegated separately;
- b. may not be further delegated to lower laws and regulations (sub-delegation); and
- c. the material is not mixed with other material that is not ordered to be further regulated (Widiarto, A. E., 2019).

Thus, there is a legal problem because the provisions of Article 31A paragraph (10) of the Supreme Court Law stipulate that "Stipulations regarding the procedure for reviewing statutory regulations under the law are regulated by a Supreme Court Regulation." Although the provisions of Article 31A of the MA Law do not explicitly mention the phrase "procedural law", it can be understood that procedural law is a formal law that contains provisions on how a process proceeds in court.

This understanding of procedural law is obtained by linking the understanding of criminal procedural law. According to Andi Hamzah, criminal procedural law is a formal procedural law that regulates how the state through its tools implements its right to criminalize and impose crimes (Hamzah, A., 2008). Likewise, the understanding of procedural law according to D. Simons states that the Criminal Procedure Code is in charge of regulating how the state with its equipment uses its rights to convict and impose criminal penalties (Sutarto, S., 1987). Meanwhile, R. Soesilo stated that the Criminal Procedure Code is a law that regulates how to maintain or implement material criminal law, to obtain a judge's decision, and how the contents of the decision are implemented (Soesilo, R., 1982).

Article 31A paragraph (10) of the Supreme Court Law stipulates that "Stipulations regarding the procedure for reviewing statutory regulations under the law are regulated by a Supreme Court Regulation". The provisions of Article 31A paragraph (10) of the Supreme Court Law are also intended to regulate the procedural law for testing laws and regulations under the law which is then realized in the form of Supreme Court Regulation Number 1 of 2011 concerning Material Examination. Although the title of the regulation is not the same as what is meant by Article 31A paragraph (10) of the MA Law, namely "the procedure for testing statutory regulations under the law", it can be understood that it is intended as further regulation of Article 31A paragraph (10) of the MA Law namely regulating the "procedures for testing the legislation under the law".

Based on this explanation, based on Article 24A paragraph (5) of the 1945 Constitution which states that "The composition, position, membership, and procedural law of the Supreme Court and the judicial bodies under it are regulated by law" must be understood as a necessity that the procedural law of the Supreme Court, including the regulation regarding the procedural law of testing legislation under the law, is regulated by law and may not be sub-delegated to a lower regulation.

#### **4. The Loss of the Central Government's Legal Position in Testing Local Regulation**

Based on Article 28 D paragraph (1) of the 1945 Constitution, everyone has the right to fair recognition, guarantees, protection, and legal certainty, and equal treatment before the law. The right to protection of fair legal certainty is given to everyone and the state is obliged to respect this right. Article 28D paragraph (1) of the 1945 Constitution recognizes and protects the constitutional rights of citizens to obtain certain legal guarantees and protections.

Article 1 point 8 of the Law concerning the Establishment of Legislations has determined that Regency/City Regional Regulations are Legislations established by the Regency/City Regional People's Representative Council with the mutual consent of the Regent/Mayor. Then in Article 7 paragraph (1) of the Law on the Formation of Legislations, it is clearly stated that the Regional Regulation is one form of official legislation with a hierarchy under the law and based on Article 9 paragraph (1) of the Law on the Establishment of Legislation. -Invitation, then if a statutory regulation under the law is suspected to be contrary to the law, the examination is carried out by the Supreme Court.

However, in the Supreme Court Regulation Number 1 of 2011 concerning Material Examination, several provisions eliminate the right to equality before the law. The provisions of Article 1 paragraph (4) of Supreme Court Regulation Number 1 of 2011 concerning Material Examination states that "Objection Applicants are community groups or individuals who submit an objection request to the Supreme Court on the enactment of a statutory regulation of a lower level than the Act." Whereas based on Article 31A paragraph (2) of the Supreme Court Law, the Petitioner's review of the legislation under the law against the law does not limit that the Petitioner is only a community group or individual. Article 31A paragraph (2) of the MA Law states:

“The application as referred to in paragraph (1) can only be made by parties who consider their rights to be impaired by the enactment of laws and regulations under the law, namely:

- a. individual Indonesian citizens;
- b. customary law community units as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; or
- c. public legal entity or private legal entity.”



In addition, local people will also lose their right to conduct a formal review of Regional Regulations to the Supreme Court. This is because the existence of Supreme Court Regulation Number 1 of 2011 concerning Material Testing only regulates the Supreme Court's authority in material testing. Thus, the Supreme Court is only limited to examining materially the content of the legislation under the law against the law. In this case, equality before the law seems to be ruled out.

## 5. Weak Supervision of Regional Regulations by the Central Government

Indonesia is a unitary state and at the same time, it is also a state of law (Article 1 paragraph (1) and paragraph (3) of the 1945 Constitution). The basic thing contained in this Constitutional norm is the principle that in the Unitary State of the Republic of Indonesia there will be a legal system for the Government at the Central level as well as at the regional level. Therefore, in a unitary state, regardless of the extent of autonomy granted to regions (as affirmed in Article 18 paragraph (2) of the 1945 Constitution) and no matter how diverse the specialties or privileges granted to a region, the breadth and diversity of the specifics or privileges granted to a region. the area should not be understood as a basis for ignoring the principle of one unified legal system in such a way that it is as if two legal systems were prevailing in the Unitary State of the Republic of Indonesia. It is in this context that the spirit of granting the widest possible autonomy to regions, as regulated in the Regional Government Law, should be assessed and understood.

However, the responsibility of the central government can be disrupted by the arrangement of the Petitioner's legal standing in the judicial review of the Regional Regulation in the Supreme Court. Referring to the provisions of Article 1 paragraph (4) of the Regulation of the Supreme Court Number 1 of 2011 concerning the Right to Material Examination, it can be seen that:

“An applicant for an objection is a community group or individual who submits an objection request to the Supreme Court on the enactment of a Legislation at a lower level than the Act.”

Based on these provisions, the Petitioners for judicial review in the Supreme Court are only limited to two, namely (1) community groups and (2) individuals. The existence of the Petitioner's limitations raises the question of whether the Central Government can submit a judicial review of the Perda to the Supreme Court. This is because the central government will find it difficult to determine the qualifications to enter into 2 (two) types of categories of Petitioners.

In the Elucidation of Article 31A paragraph (2) of the MA Law, it only explains about individuals, namely individuals or groups of people who have the same interests. Meanwhile, what is meant by public legal entities and private legal entities is said to be "sufficiently clear". The absence of further explanation explaining that the Central Government is part of the party that has legal standing will of course create doubts in the process of submitting a request for a judicial review of regional regulation.

In addition, it also becomes clear that there are differences in legal standing arrangements between the Supreme Court Regulations and the MA Law. Although there is a principle of *lex superior derogate lex inferiori*, namely the higher regulation overrides the lower regulation, but the differences in the Petitioner's arrangements between the Supreme Court Regulations and the Supreme Court Law will affect the practice of reviewing Regional Regulations. For example, in the practice of testing the Regional Regulations contained in the Supreme Court Decision Number 28 P/HUM/2018 concerning the Testing of the Kediri Regency Regulations Number 5 of 2017 concerning the Appointment and Dismissal of Village Apparatus.

The Petitioners, in this case, are guided by Article 31 paragraph (2) of the Supreme Court Law which states that a party that can apply for a judicial review of laws and regulations under the law against the law can only be carried out by parties who consider their rights to be impaired by the enactment of the legislation-laws under the Act, namely Individual Indonesian Citizens; The customary law community

unit is still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in law; or Public legal entity or private legal entity.

With the stipulation in Article 1 paragraph (4) of Supreme Court Regulation Number 1 of 2011 concerning Material Examination, the Central Government as a public legal entity seems to have lost the right to submit a request for a Regional Regulation review to the Supreme Court. Whereas in practice, there may be many regional regulations that are out of sync or not in harmony with the laws and regulations above. Horizontally, local regulation experiences disharmony or experience far differences with other regulations in the area or with Perda in other places.

This situation can be seen from various regional regulations that have been canceled or revised by the central government through the Minister of Home Affairs. This indicates that there is a problem both substantively and administratively in the Perda. This can be seen from the cancellation of regional regulations by the central government due to reasons for the substance or content of the regional regulations that are not in harmony with the hierarchy of laws and regulations above. This is because in the Unitary State there is a legal system for the Government at the Central level as well as at the regional level.

Therefore, in a unitary state, regardless of the extent of autonomy granted to regions (as emphasized in Article 18 paragraph (2) of the 1945 Constitution) and no matter how diverse the specifics or privileges granted to a region (as emphasized in Article 18B paragraph (1)) the 1945 Constitution), the breadth and diversity of the specifics or privileges granted to the region should not be understood as a basis for ignoring the principle of a unified legal system.

## **Conclusion**

There are four forms of incomplete regulation in the examination of statutory regulations under the law against the law, namely the incomplete set of the regional regulation test stone, the incomplete set of the scope of the material and formal examination, the incompleteness of the legal standing arrangement, and the incomplete setting of the nature of the trial examination open to the court. general. The existence of incomplete regulation in the examination of legislation under the law against the law has legal implications as follows: legal uncertainty scope of material and formal testing, the absence of legal order, violation of the hierarchy of legislation, the loss of the central government's legal position in testing local regulation, and weak supervision of regional regulations by the central government.

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