



Dualism of Authority to Review Regional Regulations for Regional Taxes and Levies in Indonesia

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Abstract

In Indonesia, regional regulation review, particularly regional regulations for taxes and regional levies, has entered a new phase following the passage of Law No. 1 of 2022 about Financial Relations between Central and Regional Governments. In accordance with the provisions of Article 245 of Law No. 23 of 2014 on Regional Government, the regional regulation of regional taxes and levies is one of the regional regulations that must first receive central government approval before being promulgated through a preventive monitoring mechanism while it is still in draft form. This provision is in accordance with the Constitutional Court Decision Number 137/PUU-XIII/2015 and the Constitutional Court Decision Number 56/PUU-XIV/2016 which have eliminated the authority of the central government to be able to carry out repressive supervision, and only allow the application of preventive controls. But then again, following the enactment of Law No. 1 of 2022, the provisions of Article 245 of Law No. 23 of 2014 concerning Regional Government were repealed and repressive supervision was reinstated, especially on regional regulations on regional taxes and levies through Article 99 Paragraph (2) of Law No. 1 of 2022 concerning the Financial Relations of the Central and Regional Governments. This research aims to determine the legal consequences of the enactment of Article 99 Paragraph (2) of Law Number 1 of 2022. This research is normative legal research that employs both a statutory and an analytical method. According to the findings of the author's investigation, Article 99 paragraph (2) of Law No. 1 of 2022 concerning Financial Relations of the Central and Regional Governments is not in accordance with Article 24A paragraph (1) of the Constitution of the Republic of Indonesia of 1945, and give rise to Dualism of Authority to review Regional Regulations of Regional Taxes and Levies in Indonesia, and thereby a judicial review must be submitted to the Constitutional Court as soon as possible.

Keywords: *Dualism of Authority; Regional Regulations Review; Regional Taxes and Levies*

Introduction

Autonomy can be regarded as the right to act independently in certain circumstances. This autonomy might lead to the existence of exclusive legislative, administrative, and judicial authority within the regions (Lapidoth, 1997). Certain entities in a sovereign state possess varying degrees of autonomy, which is a relative concept. In international law, autonomy refers to the authority of a component or territorial unit of a state to control itself in particular subjects through the enactment of laws and regulations, but without constituting its own state (Hannum, 2011). In legal concepts, autonomy is frequently referred to as "self-government" (Heintze, 1998). The word is closely related with "house rules," the definition of which has been considered in Chapter XI of the United Nations Charter (Lapidoth, 2001). This autonomy can also be characterized as an internal power-sharing mechanism designed to preserve cultural and ethnic variety while protecting the integrity of a nation (Benedikter, 2009). Indonesia, as a unitary state, adopts a regional autonomy system based on the decentralization principle. Regarding the legal ramifications of the system's implementation, the regions are granted the authority, in the form of options and flexibility, to construct their own government as broadly as feasible (Prasetio & Nurdin, 2021). Although regions are granted the authority to operate their own governments to the greatest extent possible, existing regional policies and legal products must be consistent with national policy. Therefore, monitoring and evaluation processes for existing legal items in the region are required. There are essentially two sorts of monitoring and evaluation procedures that the central government might conduct on autonomous governance: preventive and repressive. Preventive monitoring and evaluation are tied with the authority to ratify (*goedkeuring*), whereas repressive monitoring and evaluation is linked to the authority to cancel (*vernietiging*) or or suspension (*schorsing*) (Sukriono, 2013).

Interestingly, not all forms of regional monitoring and evaluation processes are applicable in Indonesia. As a result of Constitutional Court Decisions 137/PUUXIII/2015 and 56/PUU-XIV/2016, the central government no longer has the jurisdiction to oversee and analyze regional rules in a repressive manner. The Constitutional Court ruling number 137/PUUXIII/2015 declares that the Minister and/or Governor no longer have the competence to annul Regency/City regional legislation. The decision number 56/PUU-XIV/2016 of the Constitutional Court held that the central government no longer has the ability to annul regional rules at the provincial level. The Central Government, through the Minister of Home Affairs and the Governor, has lost the authority to monitor and evaluate regional rules in a coercive manner as a result of these two rulings. As for the legal ramifications of the abolition of the authority of the Minister of Home Affairs and the Governor as the representative of the central government in supervising and evaluating these regional regulations, this results in the loss of dualism of authority in the testing of regional regulations between the executive and the judiciary through executive review and judicial review, respectively. In compliance with the rules of Article 24 A, Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, only the Supreme Court shall be entitled to consider regional regulations that have been constitutionally promulgated. After the enactment of the Constitutional Court's Decision Number/137/PUUXIII/2015 and the Constitutional Court's Decision Number/56/PUU-XIV/2016, the central government has the authority to supervise and evaluate regional regulations in the context of implementing regional autonomy within the structure of a unitary state only through the Executive Abstract Preview mechanism, which is only carried out on draft regional regulations.

Even so, following enactment of Law No. 1 of 2022 concerning the Financial Relations of the Central and Regional Governments, the author discovered legal problems in the form of a Conflict of Norms between Article 99 Paragraph (2) of Law No. 1 of 2022 concerning the Financial Relations of the central and regional governments and Article 24A Paragraph (1) of the Constitution of the Republic of Indonesia 1945 concerning the evaluation procedures of local regulations of Taxes and Regional Levies. In order to analyse local tax and local levy regulations, the central government, through the minister of finance and the minister of home affairs, is authorized to review the suitability of regional regulations of

Provincial / Regency / City Taxes and Levies that have been implemented using multiple indicators, one of which is compliance with higher laws and regulations, as stipulated in Article 99 Paragraph (2) of Law No. 1 of 2022 below:

“Policymakers and ministers in charge of domestic government affairs review regarding provincial/district/municipal regional regulations on taxes and levies that have been in effect in order to assess the conformity between the regional regulations in question and the public interest, the provisions of higher laws and regulations, as well as national fiscal policies”

There is no doubt that this provision contradicts Article 24A Paragraph (1) of the Republic of Indonesian Constitution of 1945, which says that the Supreme Court has the right to examine regional regulations as legal regulations whose stance is against the law, as specified in the following article:

*“The Supreme Court has the ability to hear cases at the level of cassation, to review statutory rules for violations of the law, and to conduct other legal authorities.***)”*

In this instance, the author does not object if the minister of finance and the minister of home affairs are granted the authority to review the adequacy of regional regulations for taxes and levies using public interest and national fiscal policy indicators. Nevertheless, the author objects to the indicators employed by the minister of finance and the minister of home affairs in the form of "higher laws and regulations." The authors are interested in doing study under the title Dualism of Authority on Regional Regulations of Regional Taxes and Levies Judicial Review in Indonesia in light of the aforementioned issues.

Research Methods

This research is a normative juridical research that departs from the existence of a conflict of norms between Article 99 Paragraph (2) of Law Number 1 of 2022 concerning Financial Relations of Central and Regional Governments with Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which with regard to the conflict of authority to examine regional regulations between the central government and the Supreme Court, especially regional regulations on taxes and regional levies. The research approach used is a statutory approach and an analytical approach. While the search for legal materials in this study was carried out through library research and the analysis techniques used were evaluation techniques and systematic techniques.

Results and Discussion

1. Ratio Legis Regulatory Evaluation of Regional Taxes and Levies in Law Number 1 of 2022 concerning Financial Relations between Central and Regional Governments

Ratio legis is legal reasoning based on common sense, which is the reason or purpose for the creation of legal regulations. The formation of a law can be learned by reading academic texts that have already been prepared in order to determine the ratio legis (rational reasoning). Academic papers are organized into a scientific research activity in order to foster rational, critical, and objective thinking. As a result, having an academic paper to describe deep thoughts is critical before they are eventually compiled into a legal text. It is necessary to regulate the governance of financial relations between the central government and regional governments in a fair and harmonious manner in order to create an effective and efficient allocation of national resources. On January 5, 2022, Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments was passed (JDIH MARVES, 2022). The preparation of Law Number 1 of 2022 is based on four pillars: The first pillar is to reduce vertical and horizontal inequality between levels of government at the national, provincial, district, and city levels (Hutabarat et al., 2022). The second pillar is to create a local tax system by promoting more efficient resource allocation at the national level. Because regional spending is funded by public

money, either in the form of regional taxes or transfers from the central government, the third pillar encourages the improvement of the quality of spending in the regions. Harmonization of central and regional expenditures is the fourth pillar, which aims to provide optimal public services while maintaining fiscal sustainability (Sofi, 2022). Decentralization's ability to help the state achieve its goals is highly dependent on the capacity or performance of the regions in carrying out these functions, as well as the extent to which the central government and regional governments can work together harmoniously (Rizky, 2022). Finance Minister Sri Mulyani Indrawati explained that the Law on Financial Relations between the Central and Regional Governments was designed to reform the allocation of fiscal resources, granting authority to collect revenues, and to strengthen regional spending. This is solely aimed at realizing equitable distribution of public services and public welfare throughout the region. According to her, the fiscal decentralization policy has been running for two decades, but its implementation is still facing many problems. There are still discrepancies since not all regions have equal potential, so fiscal policy reform is absolutely required (Anonym, 2022).

On the basis of the Academic Document of the Draft Law on Financial Relations between the Central and Regional Governments, it is clear that the ratio legis of the arrangement regarding the implementation of local taxes and levies in the Law is a form of alignment with several rules on the administration of regional taxation listed in Law No. 23 of 2014 regarding Local Government and Law No. 11 of 2020 regarding Job Creation related to the review of proposed regional regulations, the repeal of local regulations and the imposition of sanctions, as well as the collection of local taxes (BPHN & Kementerian Hukum dan Hak Asasi Manusia, 2021). In Law No. 23 of 2014 concerning Local Government, changes in the mechanism for submitting draft local regulations for taxes and local levies of districts / cities / provinces, from those previously submitted to the Minister of Home Affairs and the Minister of Finance in parallel as stipulated in Law No. 28 of 2009 concerning Taxes and Regional Levies, changed to be submitted only to the Minister of Home Affairs, while the Minister of Finance conducts an evaluation of the regional regulation draft of Taxes and Regional Levies if there is a coordination request from the Minister of Home Affairs. The mechanism influences the length of time required by the Central Government to complete an evaluation. Consequently, in Law No. 11 of 2020 concerning Job Creation, the system is modified such that draft regional regulations for taxes and regional levies are still submitted simultaneously to the governor (for the regency/city report), the Minister of Home Affairs, and the Minister of Finance. The arrangement is designed to make sure that the provisions governing the administration of taxes and levies in the region are consistent with the mechanisms outlined in Law No. 11 of 2020 concerning Job Creation, with the same goal in mind, namely to expedite the Central Government's evaluation of the draft local regulations of Taxes and Local Levies (BPHN & Kementerian Hukum dan Hak Asasi Manusia, 2021).

When it comes to how the central government aligns with Law No. 11 of 2020 on Job Creation, it does so by giving it authority to review regional tax rates as part of providing fiscal incentives to encourage investment development in regions through the determination of nationally applicable tariffs, so the central government can freely change the rates of taxes and levies set by local governments (Pratama, 2022). With regard to regional taxes and levies that impede the investment ecosystem functions and ease of business, central government authorities have been given authority under Article 97 of Law Number 1 of 2022 governing Financial Relations between Central and Regional Governments as follows:

- (1) *“The government, in accordance with the national priority program, has the ability to make adjustments to the Tax and Levy policies that are established by the local government. These adjustments can be made within the context of the implementation of national fiscal policies, the support of the ease of investing policy, and the encouragement of the growth of industries and/or businesses that are highly competitive and provide protection and equitable arrangements.”*

(2) *The national fiscal policies related to taxes and levies as referred to in paragraph (1) are in the form of:*

- a. may change the rates of Taxes and Levy rates by determining the rates of Taxes and Levies that apply nationally; and*
- b. **supervision and evaluation of regional regulations (henceforth Perda) concerning taxes and levies** which hinders the investment ecosystem and ease of doing business...etc”*

Because the object referred to in the provisions of the article utilizes the term "Regional Regulations (henceforth *Perda*)" rather than "Draft of regional regulations (henceforth *Raperda*)," it is clear that the type of supervision used in accordance with the provisions of Article 97 paragraph (2) letter b is repressive supervision.

Meanwhile, in the evaluation aspect, 2 types of procedures are applied in the evaluation stage of regional regulations for taxes and levies, namely preventive and repressive. This provision is specifically regulated in Paragraph 2 of Law Number 1 of 2022 concerning Financial Relations between Central and Regional Governments with the sub-title "Evaluation of Draft Regional Regulations and Regional Regulations on Taxes and Levies". From the sub-heading, it can be understood that the object of evaluation is not only limited to local regulations but also local regulations that have been enacted and have binding legal force. The provisions for preventive evaluation of the *Raperda* (regional regulations draft) of Regional Taxes and Levies are regulated in Article 98 as follows:

- (1) The evaluation of the draft provincial regulation on taxes and levies is carried out by the minister in charge of domestic government affairs and the minister.*
- (2) The draft provincial regulation on taxes and levies that has been jointly approved by the provincial DPRD and the governor prior to stipulation must be submitted to the minister in charge of domestic government affairs and to the minister no later than 3 (three) working days from the date of approval.*
- (3) The evaluation of the draft district/city regulations regarding taxes and levies is carried out by the governor, the minister in charge of domestic government affairs, and the minister.*
- (4) The draft district/city regional regulation on taxes and levies that have been mutually approved by the district/municipal DPRD and the regent/mayor before being stipulated must be submitted to the governor, the minister in charge of domestic government affairs, and the Minister at the most of 3 (three) working days from the date of approval.*
- (5) The Minister who administers domestic Government Affairs evaluates the draft Perda as referred to in paragraph (1) to test the suitability of the draft Perda with the provisions of this Law, the public interest, and/or other higher laws and regulations.*
- (6) The Governor evaluates the regional regulations draft as referred to in paragraph (3) to test the suitability of the regional regulations draft with the provisions of this Law, the public interest, and/or other higher laws and regulations.*
- (7) ... etc.”*

When examined further, the evaluation provisions of the draft regional regulations for regional taxes and levies are consistent with the Constitutional Court's decisions Number/137/PUUXIII/2015 and

Number 56/PUU-XIV/2016, which confirm that the central government's only remaining control mechanism over autonomous regional governments is through the executive abstract preview mechanism, which occurs before regional regulations are promulgated. The Minister of Home Affairs and the Governor's executive review ability to review or repeal regional rules was withdrawn by the Constitutional Court in Decision Number 137/PUU-XIII/2015 and Decision Number 56/PUU-XIV/2016. The Constitutional Court revoked the jurisdiction of the Minister of Home Affairs and the Governor for a variety of reasons, including: (Winata et al., 2018)

1. Article 1 paragraph 3 of the Constitution of 1945 specifies that the existence of judicial review in a state of law is one of the prerequisites for the development of a state of law. Legislation should only be evaluated by a judicial authority.
2. Regional regulations are clearly referred to as a form of law with a hierarchy under Law No. 12 of 2011 about the Formation of Legislations. As a result, according to Article 24A paragraph (1) of the 1945 Constitution, the examination can only be conducted by the Supreme Court and not by any other authority.
3. As mandated by Article 1 paragraph (3) of the 1945 Constitution, the executive can annul local regulations that deviate from the logic and formation of the Indonesian legal state, as well as negate the role and function of the Supreme Court as an institution authorized to review statutory regulations under the Law in the case of Regency/City Regional Regulations, as affirmed in Article 24A paragraph (1) of the 1945 Constitution.
4. The excess of the legal product of canceling Regional Regulations in the executive sphere with the legal product of the Governor's provisions, as stipulated in Article 251 paragraph (4) of the Regional Government Law, has the potential to cause duality in court decisions if the authority to review or cancel Regional Regulations resides in both the executive and judicial power structures.
5. If the regional regulation is legally binding on the general public, then it is preferable for the judiciary as a third party not to be involved in the process of forming the relevant regional regulation in accordance with the system that was adopted and developed in accordance with the 1945 Constitution, which is the "centralized model of judicial review" rather than the "decentralized model," as stipulated in Article 24A paragraph (1) and Article 24C paragraph (1) of the 1945 Constitution.

As a direct result of this decision, the executive review mechanism will no longer be able to be put into effect as a legal consequence. Nevertheless, following the passage of Law Number 1 of 2022, the provisions for executive review were re-enacted through the Articles outlined below:

"Article 99"

- (1) The regional regulations that have been stipulated by the governors/regents/wali cities are submitted to the minister who organizes domestic government affairs and to the minister no later than 7 (seven) working days after being determined for evaluation.*
- (2) Ministers and ministers who administer domestic government affairs evaluate provincial/district/municipal regional regulations on taxes and levies that have been enacted to examine the conformity between the regional regulations referred to and the public interest, the provisions of higher laws and regulations, and national fiscal policies.*
- (3) In the event that based on the evaluation as referred to in paragraphs (1) and (2) the Regional Regulation is in conflict with the public interest, higher legislation and/or national fiscal policy, the Minister recommends that the Regional Regulation in questions can be amended to the minister in charge of Domestic Government Affairs.*
- (4) etc."*

The central government, through the Ministers of Home Affairs and Finance, is provided with the opportunity to conduct executive reviews of regional regulations on taxes and regional levies that have

been promulgated, according to the terms of this article. Although the provisions of Article 99 do not use the term executive review directly, the evaluation stage of regional regulations for taxes and levies can be regarded as an executive review action based on the terms of the article. Nevertheless, the following assertion raises a number of questions:

1. First, these activities are not limited to a draft regional regulation but also to the regional regulations for taxes and levies that are currently in effect.
2. Second, these activities are carried out by the government (executive sector), namely the Minister of Home Affairs and the Minister of Finance as representatives of the central government.
3. Third, the changes to regional regulations are based on recommendations from the Minister of Home Affairs.

With the re-arrangement of the executive review mechanism on regional regulations on taxes and levies, in Law Number 1 of 2022, the government and the DPR have taken constitutional disobedience actions against the decisions of the Constitutional Court, not to mention that the dualism of authority to review regional regulations between the executive and judiciary, which had previously been resolved through the decision of the constitutional court, has now been revived.

2. Critical Analysis of the Evaluation of Regional Regulations for Regional Taxes and Levies in Law Number 1 of 2022 concerning Financial Relations between Central and Regional Governments

As previously discussed, the formation of Article 99 Paragraph (2) of Law Number 1 of 2022 Concerning Financial Relations between the Central and Regional Governments has legal consequences in the form of dual authority between the executive and judicial institutions. Furthermore, the significant content of Article 99 Paragraph (2) of Law Number 1 of 2022 Concerning Financial Relations between the Central and Regional Governments also contradicts a higher standard. In deep examination reveals that executive review and judicial review have distinct implementation bases. In the context of accomplishing the control function between the central and regional governments in implementing regional autonomy, executive review of regional rules is conducted. Although this Judicial Review is conducted to apply the principle of checks and balances based on the separation of powers to all policies in order to test the legality and effectiveness of legal products produced by legislative and judicial executives against the provisions of laws and higher regulations. In the absence of explicit limits on the subject of testing between the two procedures, the executive and the judiciary have overlapping authority to analyze legislation, specifically with respect to evaluating regional regulations as statutory regulations under the law. In which both the executive and judiciary, particularly the Supreme Court, have the power to evaluate regional regulations.

Therefore, in order to accurately respond to this executive review, it ought to be well researched. In a state of law that has some form of unity, it is appropriate for higher-level governments to be given the authority to supervise and evaluate regulations (including local regulations and regional head regulations) that are born in the region. This authority should be given to higher-level governments at the appropriate time. Indeed, in its own execution, the requirements governing supervision and evaluation must still examine its conformance with higher norms including in prior judgements that have been handed down by the constitutional court that have the nature of *erga omnes*. The argument regarding the nature of the constitutional court's decision, which is *erga omnes*, is supported by the explanation provided in Article 10 paragraph (1) of the Constitutional Court Law. This explanation states that the constitutional court's decision is equivalent to the law, that the ruling immediately obtains permanent legal force as soon as it is pronounced, and that no legal effort can be taken to challenge the ruling after it has been pronounced (final and binding) (Aprianti et al., 2021). Due to this reason, it is advisable that the efforts of the government to revive the executive review system under Article 99 of Law No. 1 of 2022 should not be carried out.

In response to the decision of the Constitutional Court No. 137/PUUXIII/2015 and the decision of the Constitutional Court No. 56/PUU-XIV/2016, which removed the authority of the Minister of Home Affairs to cancel the Regulation because it was deemed contrary to the Constitution of 1945, the substance of the provisions of the ruling are, in conflict with the duties and functions of evaluation and analysis established by Article 99 Paragraph (2) of Law No. 1 of 2022. Since the essence of the Constitutional Court's decision essentially reaffirms Article 24 of the 1945 Constitution of the Republic of Indonesia, which states that the authority of state institutions to test the products of laws and regulations rests with the judicial power, the Constitutional Court's decision is significant (Wibowo et al., 2021). To solve the problem of law, the author employs a number of theories, including Grand Theory, Middle Theory, and Applied Theory; the analysis is then supported by a number of legal principles and the subsequent analysis.

2.1 Analysis Based on the Hierarchy of Legislation Theory

This theory is used as a Grand Theory in this study because the author's main concern is the conflict between Article 99 Paragraph (2) of Law No. 1 of 2022 Concerning Financial Relations of the Central and Regional Governments as a lower-ranking norm and Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia as a higher-ranking norm. Adolf Merkl was the originator of the theory of the association or tiering of legal principles, which was later adopted by Hans Kelsen. Kelsen defines in this theory the chain of validity that leads to the country's constitution, which is the final presupposition, the final postulate, upon which all standards in the rule of law depend for their validity. In other words, this presumption is known as transcendental logical presumption (Asshiddiqie & Safa'at, 2006). In another essay, Jimly Asshiddiqie believes that Adolf Merkl and Hans Kelsen invented the idea of "hierarchy of norms" (Stufenbau der Rechtsordnung) by placing the constitution at the apex of the hierarchy of legal norms. Therefore, this ultimate rule determines the form and scope of ordinary laws (einfaches gesetzesrecht, statutory law).

This is consistent with the view of Hans Kelsen, cited by Maria Farida Indrati (2007), that legal norms are tiered and layered in a hierarchy (arrangement), meaning that a lower norm is sourced and based on higher norms, and higher norms apply sourced and based on higher norms, and so on until a norm that cannot be traced further and is hypothetical and fictitious, which is the fundamental norm (grundnorm). Under the premise that Maruar Siahaan (2016) agreed with the opinion of Maria Farida Indrati, the statute is structured to rise. In other words, higher laws and regulations should serve as a source for lower ones, while lower laws and regulations should not contradict with higher ones.

The provisions related to the hierarchy of laws and regulations in force in Indonesia can be seen in Article 7 Paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation which was later amended by Law Number 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Establishment of Legislations, as per the following provisions:

1. 1945 Constitution of the Republic of Indonesia
2. Decree of the People's Consultative Assembly
3. Laws/Government Regulations in Lieu of Laws (*Perppu*)
4. Government regulations
5. Presidential decree
6. Provincial Regulations and
7. Regency/City Regional Regulation

If the hierarchical position of Law No. 1 of 2022 is determined based on the author's analysis of the problem of norm conflicts raised in this study, then Law No. 1 of 2022 is completely subservient to the Constitution; therefore, if the theory of the hierarchy of laws and regulations is applied, the provisions

of Law No. 1 of 2022 must be consistent with those of the Constitution. In this case, the author finds a contradiction between Article 99 Paragraph (2) of Law Number 1 of 2022 as the lower norm and Article 24A Paragraph (1) of the Constitution of the Republic of Indonesia as the norm in terms of substance or content. At the evaluation stage of regional regulations on taxes and levies, who is in a higher position, particularly in terms of the authority to review regional regulations for taxes and levies?. Because in the Law on Financial Relations between the Central and Regional Governments, the authority is delegated to the Minister of Home Affairs and the Minister of Finance, whereas constitutionally, this authority belongs to the Supreme Court, as stipulated in Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, whose validity has been reaffirmed by Constitutional Court Decision Number 137/PUUXIII/2015 and Constitutional Court Decision Number 56/PUU-XIV/2016. According to the author's examination, the validity of Article 99, paragraph 2, of Law No. 1 of 2022 should be found invalid using a higher standard, as should the Constitutional Court's ruling. Therefore, it deserves a comprehensive review by the Constitutional Court.

2.2 Analysis Based on Coherence Theory

To support previous analysis, the authors use Coherence Theory as Middle Theory. Based on this theory, a statement is considered true if the statement is coherent or consistent with previous statements that are considered true, meaning that the judgment is true if the consideration is consistent with other considerations that have been accepted as true, namely those that are logically coherent (Harefa, 2016). Based on the description in the previous sub-chapter, it can be understood that there are regulatory inconsistencies in terms of the authority to review regional regulations for taxes and levies contained in Article 99 Paragraph (2) of Law Number 1 of 2022 with Article 24A Paragraph (1) of the Basic Law. The Republic of Indonesia and the decision of the Constitutional Court Number 137/PUUXIII/2015 and the Decision of the Constitutional Court Number 56/PUU-XIV/2016. So that the existence of Article 99 Paragraph (2) in the perspective of coherence theory cannot be maintained, because in essence, in achieving the truth of coherence the proposition stated in the law must be in accordance with the proposition in the constitution (Nalle, 2016). Nevertheless, if indeed these provisions are maintained, it will lead to various kinds of legal consequences, such as difference of interpretation in its implementation; the emergence of legal uncertainty; the laws and regulations are not implemented effectively and efficiently; as well as legal dysfunction (Antari et al., 2020).

It is clear that regulatory discrepancy in the area of testing regional legislation on taxes and levies between one legal product and another, both vertically and horizontally, will cause confusion, leaving the aims to be realized from the implementation of the rules no longer relevant. This conflict is driven not only by discrepancies in the application of the principles of good legislation and regulation formation, but it will also result in a variety of tensions and conflicts in practice. There are 3 (three) options for dealing with issue, which include: (Antari et al., 2020)

1. Amend/ revoke certain articles that have experienced disharmony or all articles of the legislation in question, by the institutions/agencies authorized to form them;
2. Submit application for judicial review to the judiciary as follows;
 - a. For judicial review of the Constitution to the Constitutional Court;
 - b. For testing the legislation under the law against the law to the Supreme Court.
3. Applying the principles of law/legal doctrine.

2.3 Analysis based on the Principle of Legal Preference

The principle of legal preference is used by the author as an Applied Theory in this study. This principle is commonly used as the basis for prioritizing a rule of law over another by looking at three criteria, namely: hierarchy, chronology, and specificity (Irfani, 2020). Based on these three criteria, there

are several principles, principles, or legal rules that can be used to resolve conflicting norms between laws and regulations, including:

1. The principle of "*lex superior derogat legi inferiori*": means that a higher law (norm/rule of law) negates the validity of a lower law (norm/rule of law).
2. The principle of "*lex posterior derogat legi priori*": means that the new law (norm/rule of law) nullifies the validity of the old law (norm/rule of law).
3. The principle of "*lex specialis derogat legi generalis*": means laws (norms/rules of law) that specifically nullify the validity of laws (norms/rules of law) that are general. (Irfani, 2020)

However, from the 3 types of legal preference principles above, not all principles can be applied to analyze the problems that the authors raise in this study. Because the principle of "*lex posterior derogat legi priori*" can only be applied in the condition that the new legal norms have an equal or higher position than the old legal norms and the principle of "*lex specialis derogat legi generali*" according to Prof. Bagir Manan can only be applied if it meets the criteria:

1. The provisions found in the general law rules remain in effect, except those specifically regulated in the special legal rules;
2. *Lex specialis* provisions must be equivalent to *lex generalis* provisions (for example, law to law); and
3. The provisions of the *lex specialis* must be in the same legal environment (regime) as the *lex generalis*, for example: the Commercial Code (refer to KUH Dagang) is *lex specialis* from the Civil Code (refer to KUH Perdata) because it is in the same legal scope, namely the civil law environment. (Manan, 2004)

Meanwhile, in the author's research, the conflicting standards emerge between lower and higher regulations. As a result, the author's only preference concept for assessing the problem of norm conflict in terms of duality of authority to review regional laws for taxes and levies between the administration and the judiciary is the principle of "*lex superior derogat legi inferiori*." It is not difficult to identify whether a norm has a higher rank than other norms because the rule of law often has a documented legal order that is arranged hierarchically. The types and hierarchy of laws and regulations in the Indonesian legal system are governed by the provisions of Articles 7 and 8 of Law Number 12 of 2011 Concerning the Establishment of Legislation (Irfani, 2020). Basic norms are utilized as the major source that unites additional norms and produces a norm order in the hierarchy of laws and regulations. A norm belonging to a specific normative system or normative order may only be tested by confirming that the norm draws its validity from the fundamental norms that comprise that norm order (Irfani, 2020). Hence, if it refers to the principle of "*lex superior derogat legi inferiori*" then Article 24A paragraph (1) of the Republic of Indonesia's Constitution, as a basic norm with a higher position, can nullify the validity of Article 99 paragraph (2) of Law Number 1 of 2022, as a legal norm/rule with a lower position. There will be no duality in the authority to analyze regional regulations for taxes and regional levies in this manner, because the regulations established are constitutionally only susceptible to examination by the Supreme Court as the responsible authority. In the context of establishing regional autonomy, the executive can supervise and evaluate regional rules on taxes and levies through counseling to regions through enhancing executive preview or testing of a legislative norm before it is legally binding in general. Given that the process of developing a regional legal product takes a significant amount of time, money, and effort. As a result, it is far more effective and efficient for the government to conduct the test before the local legal product is published. This is consistent with the spirit of the requirements of Article 24A paragraph (1) of the Constitution of the Republic of Indonesia, which does not give any jurisdiction to the executive institution to study regional regulations and regional head regulations.

2.4 Analysis based on the principle of Legal Certainty

Legal certainty refers to the enactment of laws that are unambiguous, consistent, and unaffected by subjective conditions. Legal certainty is interpreted as norms that are clear enough to serve as a guidance for those subject the legislation in question (Wijayanta, 2014). The concept of certainty implies that there is clarity and rigor in the application of the law in a given culture. Things so as not to produce a great deal of misunderstanding. According to Van Apeldoorn, "legal certainty might also refer to concrete matters that can be resolved by law" (Apeldoorn, 1990). Legal certainty is the assurance that the law will be carried out, that those with legal rights will be able to exercise them, and that decisions can be implemented. Legal certainty is a court protection against arbitrary conduct that ensures a person will be able to get an expected outcome under specific conditions. The notion of legal certainty and legal positivism share a tight conceptual relationship. The connection between the principle of legal certainty and positivism is that they both seek to clarify positive law. Law in a positivistic flow demands "regularity" and "certainty" to ensure the appropriate and efficient operation of the legal system. To achieve the objective of absolute legal certainty in order to protect the public interest (which includes personal interests) by serving as the primary engine of enforcing justice in society, maintaining citizens' trust in the ruler (government), and maintaining the ruler's authority over citizens' opinions (Julyano & Sulistyawan, 2019). In accordance with the analysis in the preceding subchapter, so that the procedure for evaluating the tax and local levies can operate optimally and reflect the principle of legal certainty, the provisions contained in Article 99 Paragraph (2) of Law No. 1 of 2022 must be immediately adjusted to conform to higher standards and binding constitutional court rulings, so that the regulation of the evaluation of the tax regulation and the regional levy can a) operate optimally; and reflect the principle of legal certainty. Because laws and regulations are essentially written norms (rules) in the context of the Indonesian legal state, which is utilized by community and state organizers to organize the government, their application must be precisely regulated (Prayogo, 2018).

Conclusion

If reviewed based on the *Legis Ratio*, the administration of regional taxes and levies is regulated in Law No. 1 of 2022 in an effort to harmonize several rules regarding regional tax administration as stated in Law No. 23 of 2014 regarding to Regional Government and Law No. 11 of 2020 relating to Job Creation, with the goal of accelerating the process of completing the evaluation of draft regional regulations and regional regulations on Regio. This is carried out to create a favorable investment ecosystem and promote business-friendliness in the region. Unfortunately, the arrangements in the evaluation aspect stipulated in Article 99 Paragraph (2) of Law No. 1 of 2022 do not take into account the provisions of Article 24A Paragraph (1) of the 1945 NRI Constitution as a higher standard, as well as the Constitutional Court Decision No. 137/PUUXIII/2015 and the Constitutional Court Decision No. 56/PUU-XIV/2016, resulting in a dual authority to test tax regulations and local levies in Indonesia.

Based on the analysis that has been done by the author using several theories and legal principles, the validity of Article 99 Paragraph (2) of Law Number 1 of 2022 should be declared invalid with a higher norm. Based on the theory of the hierarchy of laws and regulations, Article 99 Paragraph (2) should adjust the provisions of Article 24A Paragraph (1) of the 1945 Constitution of the Republic of Indonesia as a higher norm because the position of Law Number 1 of 2022 is hierarchically under the constitution. The regulation of the authority to examine regional regulations on taxes and levies with higher regulations should be carried out consistently between one norm and another so that it can be enforced in line with the coherence theory which states that a statement is considered true if the statement is coherent or consistent. The Constitutional Court's Decision Number 137/PUUXIII/2015 and the Constitutional Court's Decision Number 56/PUU-XIV/2016 which in the end triggered the ambiguity of the regulation. As a result, in order to avoid confusion about which rules should be adopted and enforced

in testing regional tax and retribution regulations, the author attempts to investigate this issue using the legal preference principle, specifically the principle of "lex superior derogat legi inferiori," which states that a higher law nullifies the validity of a lower law, such that in the case of testing local tax and retribution regulations, the provisions that must be adhered to a higher law nullify the validity of a lower law. The provisions of Article 99 paragraph (2) of Law Number 1 of 2022 shall be immediately submitted to the Constitutional Court for material review in order to reflect legal certainty.

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