

Preventive Supervision in the Indonesian Constitutional System and Its Application to Regional Legal Products of East Aceh Regency

Muchsin Muchtar , Tamaulina Br. Sembiring , Bambang Fitrianto

Abstract

This study aims to analyze the legal regulations for preventive supervision of regional legal products within the framework of the Indonesian constitution and its implementation in East Aceh Regency. The study uses a normative legal method with a statutory and conceptual approach. The results of the study indicate that after the Constitutional Court Decisions Number 137/PUU-XIII/2015 and Number 56/PUU-XIV/2016, supervision of regional legal products is more focused on preventive mechanisms through the evaluation of draft regional regulations before they are enacted. In East Aceh Regency, preventive supervision is implemented based on East Aceh Regency Qanun Number 3 of 2020 by involving the Legal Section of the Regional Secretariat in the process of harmonization, synchronization, and evaluation of draft regional legal products. Preventive supervision plays an important role in realizing regional legal products that are in line with laws and regulations and ensure legal certainty.

Keywords: Preventive Supervision, Regional Legal Products, Regional Autonomy, East Aceh.

Muchsin Muchtar¹

¹Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: muchsin1985m@gmail.com¹

Tamaulina Br. Sembiring², Bambang Fitrianto³

^{2,3}Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: tamaulina@dosen.pancabudi.ac.id², bambangfitrianto@dosen.pancabudi.ac.id³

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Introduction

Indonesia, as a nation based on the rule of law, places the constitution as the primary foundation for governance. Every government policy and action, both at the central and regional levels, must align with constitutional principles and applicable laws and regulations. Within this framework, the creation of regional legal products is a crucial part of implementing regional autonomy as granted by the 1945 Constitution of the Republic of Indonesia. (Parlindungan 2017)

The granting of authority to regions to regulate and manage government affairs is realized through the creation of various regional legal products, primarily regional regulations and regional head regulations. These legal products serve as instruments for implementing development, public services, regional financial management, and various policies related to the needs of local communities. The broad authority held by regions means that every regional legal product must remain within the framework of the national legal system and not conflict with the public interest. (Suharjono 2014)

In practice, the quality of regional legal products remains a serious issue. In 2016, the government, through President Joko Widodo, announced the revocation of 3,143 regional regulations and regional head regulations deemed problematic. These thousands of regulations were deemed to hamper regional economic growth, prolong bureaucracy, hinder investment and ease of doing business, and conflict with higher-level laws and regulations. The large number of revoked regional legal products indicates that the oversight mechanism for the formation of regional regulations has not been functioning optimally. (Hasani 2020)

This phenomenon demonstrates the tension between the implementation of regional autonomy and the need to maintain the unity of the national legal system. On the one hand, regions are given the authority to create regulations tailored to the characteristics and needs of their communities. On the other hand, the state has an interest in ensuring that regional legal products do not create disharmony in norms, hinder development, or create legal uncertainty. This situation makes oversight of regional legal products a crucial instrument in Indonesia's constitutional system.

Conceptually, oversight of regional legal products is carried out through two mechanisms: preventive oversight and repressive oversight. Preventive oversight is carried out before a regional legal product is enacted or implemented, while repressive oversight is carried out after the legal product is enacted. Preventive oversight aims to prevent the issuance of legal products that conflict with higher regulations, the public interest, or constitutional principles. Through this mechanism, potential normative conflicts can be detected early in the planning and formulation stages of regulations. (Sulistyo, Antikowati, and Indrayati 2014)

The urgency of preventive supervision has grown stronger following the issuance of Constitutional Court Decision Number 137/PUU-XIII/2015 and Constitutional Court Decision Number 56/PUU-XIV/2016. In both decisions, the Constitutional Court stated that the authority of the Minister of Home Affairs and the Governor to cancel regional regulations through the executive review mechanism is contrary to the 1945 Constitution of the Republic of Indonesia. The Court emphasized that the authority to review regional regulations that have been in effect is the authority of the Supreme Court as regulated in Article 24A paragraph (1) of the 1945 Constitution. This decision ended the dualism of regional regulation reviews that were previously carried out by the executive and judicial institutions. (Subawa et al. 2025)

However, the Constitutional Court's ruling does not eliminate the central government's supervisory authority over regional legal products. It only eliminates repressive oversight, in the form of revoking existing regional regulations. Instead, preventive oversight remains as an instrument for fostering and controlling the formation of regional legal products. This provision is reflected in Article 245 of Law Number 23 of 2014 concerning Regional Government, which regulates the evaluation mechanism for certain draft regional regulations before they become regional regulations. (Novandra 2019)

In this context, preventive supervision has acquired an increasingly strategic position as a key instrument for maintaining alignment between regional legal products and the national legal system. The success of preventive supervision will determine the quality of regional regulations while minimizing the possibility of legal disputes and revocation through judicial review mechanisms in the Supreme Court. In other words, the effectiveness of preventive supervision is a crucial factor in achieving harmony between the principles of regional autonomy and the rule of law.

This issue becomes increasingly interesting to study in regions with unique characteristics, including East Aceh Regency. As part of Aceh Province, which has specific governance structures based on the Aceh Government Law, the development of regional legal products in East Aceh Regency has its own unique dynamics. The authority held by the region requires an oversight mechanism capable of ensuring the conformity of regional legal products with higher-level laws and regulations without compromising the autonomy granted to the region.

To date, studies on preventive supervision have focused more on the normative aspects following Constitutional Court Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016, while studies on its implementation at the local government level remain relatively limited. In fact, the effectiveness of preventive supervision is determined by legal regulations along with their implementation in the process of formulating regional legal products. Based on these conditions, this study is crucial to analyze the legal regulations on preventive supervision within the Indonesian constitutional system and examine their application to regional legal products in East Aceh Regency.

Research Methodology

This study employs a normative-empirical legal research method. The normative approach is used to analyze legal regulations regarding preventive supervision of regional legal products based on legislation, doctrine, and court decisions. Meanwhile, the empirical approach is used to examine the application of preventive supervision to regional legal products in East Aceh Regency. (Sembiring et al. 2024)

The approaches used include the statute approach , the conceptual approach , and the case approach , particularly regarding Constitutional Court Decisions Number 137/PUU-XIII/2015 and Number 56/PUU-XIV/2016.

The research data consists of primary legal materials, secondary legal materials, and field data obtained through literature studies and interviews with relevant parties. (Iqbal et al. 2025) All data were analyzed qualitatively using descriptive-analytical techniques to gain an understanding of the legal regulations for preventive supervision in the Indonesian constitutional system and their application to regional legal products in East Aceh Regency. (Sembiring et al. 2024)

Results

A. Legal Regulations on Preventive Supervision in the Indonesian Constitutional System

Granting authority to regions to form regional regulations is one of the consequences of the implementation of regional autonomy in the Unitary State of the Republic of Indonesia. The constitutional basis for this authority is regulated in Article 18 paragraph (6) of the 1945 Constitution , which states:

"Regional governments have the right to establish regional regulations and other regulations to implement autonomy and assistance tasks."

This provision grants regional governments the right to establish regional regulations as legal instruments for administering government affairs within their jurisdiction. Regional regulations serve as a means for regional governments to translate community needs into binding policies. This authority is a manifestation of the principle of decentralization, which provides space for regions to regulate and manage their own interests based on the conditions and characteristics of their respective regions. (Palullungan and SH 2023)

However, the authority to create regional regulations cannot be understood as a stand-alone authority without oversight. In a unitary state, the relationship between the central and regional governments remains within an integrated system of governance. Regional freedom to create regulations must remain in line with national interests and the harmony of the national legal system. (Zaskia et al. 2025)

This view aligns with Bagir Manan's opinion, which states that the relationship between the central and regional governments in a unitary state is built on the basis of decentralization, which grants regions independence in managing their own affairs. However, this independence does not diminish the role of regional governments as part of the national government structure. Within this framework, oversight is a crucial instrument for maintaining a balance between regional autonomy and the interests of the nation as a whole. (Yusdianto 2015)

In the study of state administrative law, supervision of regional government administration is recognized in two forms: preventive supervision and repressive supervision. Bagir Manan explains that preventive supervision is carried out before a regional decision or policy is implemented. This supervision aims to prevent the issuance of legal products that conflict with higher-level laws, the public interest, or the objectives of government administration. Repressive supervision, on the other hand, is carried out after a legal product is enacted and implemented as a form of correction to policies deemed problematic.

The urgency of oversight of regional legal products became increasingly apparent when the central government revoked 3,143 regional regulations in 2016, deemed to hinder investment, prolong bureaucracy, hinder ease of doing business, and conflict with higher-level laws and regulations. This fact demonstrates that many regional legal products still do not fully comply with the principle of harmonization of laws and regulations. This situation also demonstrates the importance of oversight mechanisms in the process of developing regional legal products.

A significant development in the regional legal product oversight system occurred following the issuance of Constitutional Court Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016. Both decisions tested the constitutionality of Article 251 of Law No. 23 of 2014 concerning Regional Government, which grants the Minister of Home Affairs and Governors the authority to revoke regional regulations deemed to be in conflict with higher laws, the public interest, and morality. (Novandra 2019)

In its considerations, the Constitutional Court emphasized that the authority to test statutory regulations under the law is the authority of the Supreme Court as regulated in Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states:

"The Supreme Court has the authority to adjudicate at the cassation level, to test laws and regulations under the law against the law, and has other powers granted by law."

This provision expressly grants the Supreme Court the authority to review laws and regulations under the law. According to the Constitutional Court, the Minister of Home Affairs and the Governor's authority to annul regional regulations creates a duality of judicial review, as the Supreme Court simultaneously holds the authority to review regional regulations through the judicial review mechanism. This dualism is deemed inconsistent with the principles of the rule of law and the constitutional system established by the 1945 Constitution of the Republic of Indonesia.

Constitutional Court Decisions Number 137/PUU-XIII/2015 and Number 56/PUU-XIV/2016 brought significant changes to the system of supervision of regional legal products in Indonesia. Through these two decisions, the Constitutional Court confirmed that the authority to test and cancel regional regulations that have been established is the constitutional authority of the Supreme Court as regulated in Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Thus, the *executive review mechanism* that previously allowed the Minister of Home Affairs and Governors to cancel regional

regulations was declared unconstitutional. Since these decisions have obtained binding legal force, the cancellation of regional regulations can only be done through a *judicial review mechanism* by the Supreme Court as a judicial institution authorized to test regulations under the law against the law.

However, the Constitutional Court's ruling cannot be interpreted as eliminating the central government's oversight function over regional governance. The Constitutional Court essentially only eliminated repressive oversight that occurs after a regional regulation is enacted and takes effect. The central government's authority to provide guidance and supervision to regions remains recognized within the framework of a unitary state. In fact, following the ruling, preventive oversight has become even more important, serving as a primary instrument for ensuring that draft regional regulations comply with higher-level laws, the public interest, and national policy before they are enacted as regional regulations. In other words, the focus of oversight has shifted from efforts to annul regulations after they take effect to prevent the creation of regional laws that could potentially give rise to future conflicts of norms or legal disputes.

The central government's supervisory authority is maintained through a preventive supervisory mechanism as regulated in Article 245 of Law Number 23 of 2014 concerning Regional Government. The provisions of Article 245 paragraph (1) state:

"The draft Provincial Regulation governing the RPJPD, RPJMD, APBD, changes to the APBD, accountability for APBD implementation, regional taxes, regional levies and regional spatial planning must be evaluated by the Minister before being stipulated by the governor."

Furthermore, the provisions of Article 245 paragraph (3) state:

" The draft of the Regency/City Regional Regulation that regulates the RPJPD, RPJMD, APBD, changes to the APBD, accountability for the implementation of the APBD, regional taxes, regional levies, and regional spatial planning must be evaluated by the governor as the representative of the Central Government before being stipulated by the regent/mayor."

This provision demonstrates that central government oversight of regional legal products continues through an evaluation mechanism for draft regional regulations before they are enacted. This evaluation is conducted to ensure that the substance of the regulations complies with higher-level laws, national policies, and the public interest.

Based on this description, it can be understood that Constitutional Court Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016 do not eliminate the central government's supervisory function over regional governments. Instead, these decisions emphasize a paradigm shift in oversight from a repressive approach to a preventive one. In this context, preventive oversight becomes the primary instrument for maintaining harmony between the implementation of regional autonomy and the unity of the national legal system.

B. Preventive Supervision of Regional Legal Products in East Aceh Regency

Preventive supervision of regional legal products in East Aceh Regency is carried out based on national laws and regional regulations governing the procedures for establishing regional legal products. One of the primary regulations is East Aceh Regency Qanun Number 3 of 2020 concerning the Establishment of Regional Legal Products.

The Qanun stipulates that every regional legal product must be formulated based on the principles of good legislative regulation. These principles include clarity of purpose, appropriate institution or official, appropriateness of type and content, implementation, usability and effectiveness, clarity of formulation, and transparency.

The existence of these principles demonstrates that oversight of regional legal products actually begins at the planning and drafting stages of regulations. Oversight is not limited to the final stage, when a legal product is to be enacted, but rather occurs from the beginning,

through testing of the purpose of the creation, the authority of the legislator, and the suitability of the content to be regulated.

Furthermore, the provisions of Article 3 of East Aceh Regency Qanun Number 3 of 2020 stipulate that the content of regional legal products must pay attention to the values of protection, humanity, nationality, family, justice, equality in law and government, legal order and certainty, balance, local wisdom, and norms and ethics.

This provision implies that the creation of regional legal products is oriented toward formal legal aspects and must consider the social values entrenched within the community. In the context of East Aceh, the existence of the principle of local wisdom is crucial because regional legal products must accommodate the social and cultural characteristics of the local community without neglecting the provisions of higher-level laws and regulations.

In addition to regulating the principles and content of regional legal products, East Aceh Regency Qanun Number 3 of 2020 also stipulates that Regent Regulations can only be issued to implement qanuns, enforce orders from higher-level laws, or based on the authority of the regional head. This regulation limits authority to prevent abuse of discretion in the formation of regional legal products. (Zarzani, Fitrianto, and Simanjuntak nd)

The implementation of preventive supervision in East Aceh Regency is inseparable from the role of the Legal Section of the Regional Secretariat of East Aceh Regency. Based on the Provisions of Article 15 of the Regulation of the Regent of East Aceh Number 42.a of 2020 concerning the Position, Organizational Structure, Duties and Functions and Work Procedures of the Regional Secretariat of East Aceh Regency, the Legal Section has the task of carrying out the preparation of regional policy formulation, coordinating the formulation of regional policies, coordinating the implementation of regional apparatus tasks, as well as monitoring and evaluation in the fields of legislation, legal assistance, documentation and legal information.

Furthermore, the provisions of Article 16 of the East Aceh Regent Regulation Number 42.a of 2020 emphasize that the Legal Section has the function of preparing materials for the formulation of regional policies, coordinating the formation of regulations, coordinating the implementation of regional apparatus duties in the legal field, as well as implementing monitoring and evaluation of regional legal products.

Based on these provisions, the Legal Division holds a strategic position in the process of developing regional legal products. The Legal Division acts as an initial filter, ensuring that each draft qanun and draft regental regulation meets formal and material requirements before being submitted to further deliberations. (Sembiring et al. 2023)

In practice, preventive supervision is carried out through a process of harmonization, synchronization, substantive review, and legal review of each draft regional legal product. These stages can identify early on any inconsistencies with higher-level regulations, overlapping regulations, or potential legal issues that could hinder regulatory implementation.

When linked to Constitutional Court Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016, the preventive oversight mechanism implemented in East Aceh Regency takes on increasingly strategic significance. The central government's loss of authority to revoke regional regulations after they have been enacted makes the quality of oversight during the drafting stage a determining factor in the quality of regional legal products.

The effectiveness of preventive oversight in East Aceh Regency depends heavily on the Legal Division's ability to harmonize, synchronize, and review each draft of regional legal products. This role is increasingly strategic given that the Legal Division is the unit responsible for ensuring that the content of the regulations does not conflict with higher-level laws and regulations, does not exceed regional authority, and is consistent with the needs of government administration and the interests of the community. Furthermore, the success of preventive oversight is also influenced by the quality of coordination between regional agencies as regulatory initiators, particularly in the provision of data, the preparation of

academic papers, and the formulation of policy substance that will be incorporated into regional legal products.

On the other hand, consistency in applying the principles of good legislative formulation is an equally important factor. The principles of clarity of purpose, appropriateness of content, transparency, legal certainty, and expediency must be the foundation of every stage of regional legal product development. The more optimal oversight is carried out from the planning and drafting stages of regulations, the greater the opportunity for the birth of high-quality, implementable regional legal products that meet community needs. This condition ultimately provides legal certainty for government administrators and the community and strengthens the harmonization of regional policies with the national legal system, so that the objectives of regional autonomy can be realized effectively and responsibly.

Conclusion

Based on the results of the discussion, it can be concluded that preventive supervision of regional legal products is an important instrument in maintaining a balance between the implementation of regional autonomy and the principles of the Unitary State of the Republic of Indonesia. Constitutionally, the authority of regional governments to form regional regulations is guaranteed by Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia, but its implementation remains within the framework of supervision to ensure its compliance with higher laws and national interests. Following the Constitutional Court Decisions Number 137/PUU-XIII/2015 and Number 56/PUU-XIV/2016, the authority to cancel regional regulations through the *executive review mechanism* was abolished so that supervision of regional legal products is more focused on the preventive stage through the evaluation of draft regional regulations as regulated in Article 245 of Law Number 23 of 2014 concerning Regional Government. In the context of East Aceh Regency, preventive supervision is implemented through a mechanism for developing regional legal products based on East Aceh Regency Qanun Number 3 of 2020 and supported by the strategic role of the Legal Section of the Regional Secretariat in harmonizing, synchronizing, and evaluating draft regional legal products. This situation demonstrates that the effectiveness of preventive supervision is a key factor in realizing high-quality regional legal products, providing legal certainty, and aligning with the national legal system.

References

- [1] Hasani, Ismail. 2020. *Testing the Constitutionality of Regional Regulations* . Gramedia Popular Library.
- [2] Iqbal, Muhammad, Zaki Ulya Radhali, Andi Rachmad, Hanri Aldino, and Muhammad Iqbal Asnawi. 2025. "Legal Research Methodology (Theoretical and Practical Guide)." *CV Sangpena Media* .
- [3] Novandra, Riza. 2019. "Supervision of Regional Regulations Following Constitutional Court Decisions Number 137/Puu-Xiii/2015 and 56/Puu-Xiv/2016." *Jurnal Rechldee* 187.
- [4] Palullungan, Liberthin, and MH SH. 2023. *Formation of Regional Regulations* . Nas Media Pustaka.
- [5] Parlindungan, Gokma Toni. 2017. "Principles of the Rule of Law and Democracy in the Formation of Regional Regulations." *Jurnal Hukum Respublica* 16(2):384–400.
- [6] Sembiring, Tamaulina Br, Asri Ady Bakri, Maria Yei Andrias, and Riri Maria Fatriani. 2023. "Regional Government System."
- [7] Sembiring, Tamaulina Br, S. Sn Irmawati, Muhammad Sabir, and SS Indra Tjahyadi. 2024. *Textbook of Research Methodology (Theory and Practice)* . Saba Jaya Publisher.
- [8] Subawa, Made, Bagus Hermanto, I. Gede Yusa, and Ni Putu Niti Suari Giri. 2025. *Dynamics of Regional Autonomy in the Indonesian Constitutional System* . Deepublish.

- [9] Suharjono, Muhammad. 2014. "Formation of Responsive Regional Regulations in Support of Regional Autonomy." *DiH: Journal of Legal Studies* .
- [10] Sulistyo, Yuri, Antikowati Antikowati, and Rosita Indrayati. 2014. "Government Supervision of Regional Legal Products (Regional Regulations) Through the Mechanism for Cancelling Regional Regulations Based on Law Number 32 of 2004 Concerning Regional Government." *E-Journal Lentera Hukum* 1(1):1–12.
- [11] Yusdianto, Yusdianto. 2015. "The Relationship between Central and Regional Authority According to Law Number 23 of 2014 Concerning Regional Government." *PADJADJARAN Journal of Law* 2(3):483–504.
- [12] Zarzani, T. Riza, Riza Bambang Fitrianto, and Anto Simanjuntak. nd "Legal Science Analysis of Normative Studies of Truth and Justice." *Soumatara Law Review Journal Vol .*
- [13] Zaskia, Salwa, Tamaulina Br Sembiring, Johan Berkat Fanolo Harefa, and M. Aulia Aditya Rahman Zebua. 2025. "The Impact of Decentralization Policy on Regional Autonomy in the Framework of Constitutional Law." *INNOVATIVE: Journal of Social Science Research* 5(4):639–49.