

## Implementation of Regulatory Supervision Regional Head (DPRD) in Dumai City

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Received: October 18, 2025

Revised: November 02, 2025

Accepted: November 20, 2025

Published: November 29, 2025

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**Abstract:** *The Regional Head Regulation in the hierarchy of laws and regulations can be interpreted through Article 8 paragraphs (1) and (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. The existence of this Regional Head Regulation also raises several record problems, Regional Head Regulations have potential problems no less complicated than Regional Regulations. This is because the supervision of the Regional Head Regulation by the DPRD in Dumai City is not yet clear whose authority. Therefore, this study seeks to analyze how supervision of Regional Head Regulations is made in the context of delegation from higher laws and regulations as well as in the context of policy rules (beleidsregel). This research uses empirical juridical research methods. The results of this study show that the Dumai City DPRD has not been able to supervise the Regional Head Regulation made by the Mayor of Dumai. The suggestion in this study is that there must be clear rules regarding the authorities in supervising the Regional Head Regulation.*

**Keywords:** *Regional Head Regulation, Hierarchies, DPRD*

## INTRODUCTION

In Indonesia, regional autonomy is implemented to achieve two goals: equitable social protection and accelerated democratization. Regional regulations are a crucial tool for realizing both visions. Studies on effective oversight of regional legal products have begun to emerge along with the flood of regional legal products due to Indonesia's vast territory. However, research conducted to date has largely focused on regional regulations. Regional regulations are created by two organizations directly elected by the public through general elections, and therefore often receive greater attention.<sup>1</sup>

Regional leaders must understand regional autonomy as an effort to align the authorized government in meeting the needs of the community. One of the authorities of the regional government is to implement regional autonomy, specifically the formation of basic regional regulations, in accordance with the provisions of Article 8 of Law Number 12 of 2011 concerning the Formation of Legislation which basically

<sup>1</sup> Muhammad Zulhidayat, "Judges' Interpretation of the Division of Joint Assets (Supreme Court Jurisprudence Study Number 2531/Pdt.G/2022/Pajt)," SULTAN ADAM: JOURNAL OF LAW AND SOCIAL 1, no. 1 (2022): 81–87.

states that regional head regulations (hereinafter referred to as Perkada) are recognized and have binding legal force in Law 12/2011.<sup>2</sup>

In the administration of government, the basic rights of the people must be served and protected. Furthermore, the rules and regulations used to carry out government duties and functions are created by the government institutions or organs themselves, so they must be strictly adhered to by those who create them.

The content of the statutory regulations is regulated in Articles 10 to 15 of Law 12/2011, but not in regional regulations. Furthermore, like Law 12/2011, Articles 2 to 9 of the Minister of Home Affairs Regulation Number 120 of 2018 concerning Amendments to the Minister of Home Affairs Regulation Number 80 of 2015 concerning the Formation of Legal Products for Regional Head Regulations (hereinafter abbreviated as Permendagri 120/2018) do not regulate the general content of regional head regulations.

According to Article 246 paragraph (1) of Law 23/2014, regulations such as this Regional Regulation are a continuation or derivative of the Regional Regulation. Basically, this paragraph states that the regional head must create regional head regulations to implement regional regulations. If the regulation is planned by the regional head, then the regulation provides the authority to create technical regulations. Article 5 of Law 12/2011 regulates the basis for its formation, and Article 6 regulates the basis for the material content.<sup>3</sup>

In addition, regional regulations can stipulate the formation of Regional Head Regulations (Perkada) for the implementation of the Regional Regulation. This is explained in Article 246 paragraph (1) of Law 23 of 2014 concerning Regional Government Regulations, which states that Perkada is formed as an action to implement the Regional Regulation or based on the authority in statutory regulations. Basically, Perkada is a delegation of Regional Regulations to implement the Regional Regulation within the framework of the Work of the DPRD and the Regional Head based on cooperation.

Regional heads have the authority to create regional head regulations solely to enable them to carry out their functions and to support the performance of regional government duties. Specifically, the Regional Government Law requires regional heads (Governors, Regents, and Mayors) to implement or use the right to create Regional Regulations. This is done to ensure that regional heads (Governors, Regents, and Mayors) have control over their powers, so that the formation of Regional Legal Products is not used arbitrarily. The authority of regional heads in the field of drafting regional regulations is given so that regional heads can carry out their functions, as well as the authority they have to support the implementation of the functions of someone who holds regional government.<sup>4</sup>

In particular, the Law on Regional Government requires regional heads, including governors, district heads, and mayors, to exercise or use the right to develop regional regulations, establish a supervisory mechanism

<sup>2</sup> Muhammad Zulhidayat, "Anomalies in LPKSM's Authority in Filing Consumer Protection Lawsuits in Indonesia," *Mu'amalah: Journal of Islamic Economic Law* 2 (2019): 79–90.

<sup>3</sup> Muhammad Zulhidayat, "The Dysfunctional Role of the Anti-Football Mafia Task Force in Eradicating Match-Fixing in Indonesian Football," *Jurnal Ilmiah Dunia Hukum* 6, no. 2 (October 14, 2022): 93, <https://doi.org/10.35973/jidh.v6i2.3240>.

<sup>4</sup> Muhammad Zulhidayat, Atma Suganda, and Imran Bukhari Razif, "Political Law of The Government in A Special Naturalization of Indonesian Football Players Based on Welfare State Theory," *Eduvest - Journal Of Universal Studies*, 2022, <https://doi.org/10.36418/edv.v2i4.419>.

for institutions/high officials/central government to control the powers granted to both Governors, District Heads, and Mayors, so that the powers in the field of forming regional legal products are not carried out carelessly or in other words the formation of legal products must be strictly controlled/supervised.<sup>5</sup>

However, the authority granted to regional governments to draft regional head regulations also raises a number of issues. Regional head regulations can create complex problems, just like regional regulations. This is because oversight of regional head regulations remains unclear. Therefore, this study seeks to analyze the oversight of regional head regulations carried out within the framework of delegation of higher-level legislation and political regulations (beleidsregel) in Dumai City.<sup>6</sup>

In contrast, Regional Head Regulations (Peraturan Kepala Daerah) are city or district government regulations derived from Perda (Regional Regulations). Therefore, research on the theme of Regional Head Regulations appears to be crucial. Therefore, regional head regulations are an integral part of the regional governance system. This study seeks to examine the position of regional regulations in relation to governors, mayors, and regents, conducted within the context of the delegation of higher-level legislation and within the context of a policy (beleidsregel).

A. Hamid Attamimi stated that the regional head regulations that apply outward or are generally regulatory and binding are shown to the general public, because the people affected by these regulations cannot make cloth unless they follow them. Regional Head Regulations, also known as bleidsregel, have legal meaning even though they are not widely publicized. According to Van Wijk, there are two general types of policy regulations: the first is made and applies to the policy maker himself, and the second is made and applies to the administrative bodies or officials who are subordinate to the policy maker.

Many regional heads, including governors, regents, and mayors, believe that oversight is unnecessary because they believe they have autonomous authority and are fully aware of the legal issues and needs in their regions. Consequently, how should the legal products of regional head regulations (Perkada) be monitored? Effective oversight of regional authority, particularly in the formation of Perkada, will be further explored in this paper, linking it to fields such as democracy, authority, legal science, and state science..

Due to the special and extensive authority granted to them by Regional Legal Products, the Regent's and Mayor's Regulations must also be monitored and controlled. Essentially, people tend to blame great power for its absolute nature. According to Lorn Acton, "power tends to corrupt, and absolute power tends to corrupt absolutely." Therefore, to limit absolute power, oversight and control are necessary.

Based on the description above, the problem formulation that is the focus of this research can be put forward, namely: How Implementation of Regional Head Regulation Supervision by the DPRD in Dumai City?

<sup>5</sup> Muhammad Zulhidayat, "The Ambiguity of the Constitutional Right to Freedom of Religion and Belief in Indonesia from the Perspective of Ius Constitutum," *Jurnal Nalar Keadilan* 1, no. 1 (2021): 59–73.

<sup>6</sup> Auliya Khasanofa and Muhammad Zulhidayat, "Indonesian Democracy: Folk Party or Humanitarian Tragedy?" 121, no. Inclar 2019 (2020): 117–20, <https://doi.org/10.2991/aebmr.k.200226.023>.

## METHODOLOGY

The research method used in this paper is empirical juridical. This method will examine the process of implementing regional head regulation supervision in Dumai City. Empirical legal research reveals living law in society through the actions of the community.

## RESULTS AND DISCUSSION

### 1. Implementation of Supervision of Regional Head Regulations by the DPRD in Dumai City

Based on Article 1 Paragraph (1) of the 1945 Constitution, the Republic of Indonesia (NRI) is a Unitary Republic consisting of provincial regions, which are further divided into districts and cities. Each province, district, and city has a regional government regulated by law (Article 18 Paragraphs (1) to (6) of the 1945 Constitution). The division of regions shows that the unitary state system has regional governments. According to the principles of autonomy and assistance tasks, regional governments have the right to regulate and manage their own government affairs. Regional autonomy gives regional governments the freedom to regulate and organize their own government by utilizing the creativity, initiative, and role of the community to develop and advance their regions.

The regional head has the strategic authority to form a Regional Regulation, a regional legal product. In addition to what has been mentioned previously, Article 8 Paragraph (1) of the Law on the Formation of Legislation establishes the legal basis, Article 246 Paragraph (1) of the Law on the Formation of Legislation states that "To implement a Regional Regulation or on the authority of legislation, the regional head establishes a Regional Regulation", which clearly and firmly shows that the regional head has the authority to form a Regional Regulation. To ensure that this large and absolute power is not abused or violates vertical and horizontal regulations, there needs to be a legal approach to examine it.<sup>7</sup>

Article 8 paragraphs (1) and (2) of Law Number 12 of 2011 concerning the Formation of Legislation defines regional head regulations in the hierarchy of statutory regulations. Regulations other than those mentioned above may remain in place as long as they are in accordance with higher regulations. The scope of delegated or secondary legislation includes these legislative products. The content of general regional regulations based on the provisions of Article 246 of Law Number 23 of 2014 is important in the implementation of regional regulations or becomes the authority of statutory regulations. The right of regional governments to establish regional head regulations and other regulations (including regional head regulations) which in this case are recognized by the Constitution.

Article 8 paragraph 2 of Law No. 12/2011 states that Regional Regulations are recognized as laws. This means that types of laws and regulations other than those mentioned in Article 7 paragraph (1) include regulations made by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, the Minister, agencies, institutions, or commissions responsible. This recognition requires two things: as long as it is regulated by higher, stricter laws and is based on ability.<sup>8</sup>

<sup>7</sup> I Nyoman Puspa Negara, Faculty of Law, and Udayana University, "Legal Vacuity in the Regulation of Sanctions in Regional Head Regulations (Case Study of Law 12/2011 AND Law 23/2014)" 10, no. 10 (2021).

<sup>8</sup> Ali Muhammad Johan, "Regional Head Election System in Regions Implementing Asymmetric Decentralization," Al-Qisth Law Review 5, no. 1 (2021): 70, <https://doi.org/10.24853/al-qisth.5.1.70-98>.

Normally, a Regional Regulation (Perkada) is created to establish the implementing rules of established regulations. With the awareness that this makes the Regional Regulation higher than its consequences, the substance of the Perkada must not be inconsistent with the Regional Regulation. Perkada created based on authority must be considered within the scope of authority held by the Regional Head. Indeed, the regional head has the authority to create laws even if not regulated by the Regional Regulation. The process of forming a Perkada consists of three steps: First, the Perkada is stipulated by a higher law or created based on authority; second, the draft Perkada is prepared by the head of the initiating regional apparatus; and third, after being prepared, the draft Perkada is submitted to the provincial legal bureau or the district/city legal department or other names for discussion.

Meanwhile, the monitoring mechanism for the Regional Head's regulations implemented by the DPRD at the beginning of the Law (MD3 and the Regional Government Law) did not provide an explanation Learn more about the monitoring or supervision mechanism implemented by the DPRD regarding the Regional Head's regulations. The legal provisions in the MD3 Law explain that the DPRD has the right to control the Regional Head's Regulations, if we implement regional regulations and regulations, laws and other decisions. Regent/mayor, APBD, regional government policies in their implementation and regional development programs, international cooperation, both in these terms, the nomenclature of the Perkada is included in the phrase "other legal provisions".<sup>9</sup>

Therefore, to date, the institution authorized to supervise regional regulations lacks law enforcement tools, which undoubtedly impacts the effectiveness of law enforcement. The next question is, if the limits and control mechanisms for regional regulations are not defined, what form will that control take? This is especially true if the contents of the regional regulation contradict the regional regulation that serves as the basis for the regulation's actions.

With the enactment of the proposed Regional Regulation, the agency responsible for its implementation considers its task to have been completed. This is despite the Regional Regulation stating that technical regulations not specifically addressed therein will be further regulated by a Regional Head Regulation. The public will be confused if there is no Regional Head Regulation in question. Furthermore, without a Regional Head Regulation, it will be difficult to enforce sanctions for violations. This is because the method for imposing sanctions if technical regulations are unclear. This will undoubtedly result in inefficient Regional Regulations.<sup>10</sup>

Studies show that the relationship between the Regional Representative Council (DPRD) and the Regional Government is mutually beneficial in running regional governance. The regional government carries out government functions, namely providing services to the community, while the DPRD, as a legislative body, carries out its main duties as stipulated in laws and regulations. This shows that the DPRD plays a crucial role in ensuring that the government runs according to its stated objectives. Regional Regulations and Regional Head Regulations, such as Governor Regulations and Regent/Mayor Regulations, are categorized as implementing regulations because they constitute orders or delegations from higher laws. They are also

<sup>9</sup> Muhammad Zulhidayat and Batara Simbolon, "Analysis of the Citizenship Status of Children Among Artists Born Abroad in the Perspective of Law No. 12 of 2006 Concerning Citizenship of the Republic of Indonesia," *Audi Et AP: Journal of Legal Research* 2, no. 02 (2023): 72–78, <https://doi.org/10.24967/jaeap.v2i02.2303>.

<sup>10</sup> Syawaluddin Hanafi et al., "Challenges in Implementing Human Rights Protection Policies for Persons with Disabilities in DKI Jakarta Province," *Jurnal Hukum dan HAM Wara Sains* 2, no. 6 (2023): 509–16, <https://doi.org/10.58812/jhhws.v2i6.446>.

autonomous regulations because they are made based on the authority granted by law.<sup>11</sup>

In essence, Montesquieu did not propose a strict or absolute separation. Instead, he showed several examples of how legislative, judicial, and executive powers overlapped, essentially meaning that the king's power to veto belonged to the legislative branch, and parliament's right to scrutinize how laws were executed, and the right to hold the king's ministers accountable for what caused the overlap.<sup>12</sup>

In a democracy, there is a government based on people's representation; its power and authority are derived from the people and exercised through the people's representatives, who are fully accountable to the people. In other words, every policy made by the government must be agreed upon with the people's representatives, and the people's representatives have strict control over those they represent. Meanwhile, in the concept of a welfare state, the establishment of Regional Head Regulations, apart from the legality principle established by Regional Regulations, is sometimes considered insufficient. The legality principle alone is not sufficient to implement regional autonomy and provide services to the community. As a result, the authority held by regional heads, also known as free emerssen (deskr), is not sufficient.

Because it is bound by authority standards, what is not regulated cannot necessarily be implemented. The essence of normative authority is the idea of limiting power to prevent its arbitrary use. This also applies to the DPRD's oversight of regional regulations. For example, the absence of detailed DPRD regulations regarding the oversight mechanism for regional regulation regulations does not mean the DPRD has the authority to revoke them, even if the regulation is deemed fundamentally contrary to regional regulations. However, the absence of such regulations does not mean the DPRD has no room for oversight.<sup>13</sup>

Oversight is a crucial management function because it helps national development programs run smoothly. Effective oversight is expected to achieve goals. Oversight aids development implementation by detecting irregularities. Based on the above statement, the oversight function must be prioritized if we are to implement good and clean governance.<sup>14</sup>

Governor's, Regent's, and Mayor's Regulations are regional legal products that must be monitored and supervised by the government through designated officials. Based on the principles of decentralization and assistance tasks established by the Regional Government Law, none of these regulations removes the authority of higher-level governments over lower-level or regional governments. Finally, this is to ensure that regional legal products, such as Governor's, Regent's, and Mayor's Regulations, continue to be monitored and controlled.

<sup>11</sup> Adrie S.Sos, SH.MH and I Ketut Suardita, "Consistency in the Formation of Regional Regulations Based on the Hierarchy of Legislation in the Perspective of Civil Service Law," *Jurnal Yustitia* 18, no. 1 (2024): 64–80, <https://doi.org/10.62279/yustitia.v18i1.1196>.

<sup>12</sup> Muhammad Zulhidayat, "Constitutional Comparison Between Indonesia and Switzerland Constitutions Regarding The Mechanism Of Constitutional Amendment," *Activa Juris* 1, no. August (2021): 1–9.

<sup>13</sup> Jimly Asshiddiqie, *Introduction to Constitutional Law Volume 1, Constitutional Law Book, I*, vol. 1 (Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2006).Page 2

<sup>14</sup> Muhammad Zulhidayat and Melly Risfani, "LEGAL POLITICS OF PRESIDENTIAL TERM LIMITATIONS," *Riau Law Journal* 7, no. 2 (2023): 188–200.

## CONCLUSIONS

The oversight authority over regional regulations (Perkada) lacks enforcement tools, which naturally impacts their effectiveness. While Perkada does have limitations and oversight mechanisms, the next question is how the Regional People's Representative Council (DPRD) will oversee them, given the lack of a law. Furthermore, in cases where the contents of the Perkada conflict with the regional regulations that underlie the Perkada's actions, the DPRD must exercise its oversight.

As a further recommendation for this research, more detailed regulations are needed on how the Regional People's Representative Council (DPRD) oversees regional regulations (Perkada). These regulations should include how the DPRD assesses draft Perkada drafts prepared by the Regional Head. This way, the regional legislative and executive bodies maintain balance. The Dumai Mayor's Perkada, which represents the Central Government (the Minister of Home Affairs and/or the President as the highest government officials in Indonesia), can be controlled and supervised.

This must be done because, although regions have autonomy and assistance tasks, governance must be regulated by the central government. In other words, supervision and control must be carried out to ensure governance aligns with national development plans and the form of the state.

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