

Conflict of Norms Between Regional Regulations and Higher Legislation: Analysis of the Principle of Legal Hierarchy

Marudut Hasugian¹, Mustofa Ponco Wibowo²

Universitas Cenderawasih, Indonesia¹, Universitas Brawijaya, Indonesia²

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Corresponding Author:

Author Name*: Marudut

Hasugian

E-mail*: onggol84@gmail.com

Abstract: *Conflicts between regional regulations and higher-level laws and regulations are a common problem in the Indonesian legal system and have implications for legal uncertainty. This study aims to analyze the application of the principle of legal hierarchy in resolving these normative conflicts and to identify the causal factors and effectiveness of the resolution mechanisms. The research method used is normative legal research with a statutory, conceptual, and case approach, supported by primary, secondary, and tertiary legal materials. The results of the study indicate that normatively, the principle of *lex superior derogat legi inferiori* has provided a strong basis for maintaining normative consistency, but its implementation still faces various obstacles, such as weak regulatory harmonization, limited capacity of regional regulation makers, and the influence of local political interests. In addition, conflict resolution mechanisms through judicial review by the Supreme Court and executive review by the central government have not been fully effective due to dualism of authority and implementation obstacles. This condition has an impact on regulatory disharmony, disrupted investment climate, and decreased public trust in the law. Therefore, it is necessary to strengthen preventive mechanisms through harmonization from the planning stage, integration of the supervisory system, and affirmation of the role of the principle of legal hierarchy as the main instrument in maintaining the consistency of the legal regulatory system in Indonesia.*

Keywords: *Conflict of Norms, Regional Regulations, Principle of Legal Hierarchy, Judicial Review.*

INTRODUCTION

The Republic of Indonesia is constitutionally affirmed as a state based on law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which places law as the commander in all aspects of national and state life. The concept of the state based on law is not only interpreted formally as the supremacy of norms, but also substantively as an instrument for realizing social justice and protecting human rights. In a theoretical framework, the *rechtsstaat* thinking that developed in Continental Europe and the rule of law in the Anglo-Saxon tradition both emphasize that state power must be limited by law.¹ Therefore, law functions as a tool of social engineering (law as a tool of social engineering) as stated by

¹ Jamilah, J., Listiani, M., Adhaini, D., & Syamsiah, S. (2025). Negara Hukum dan Hak Asasi Manusia di Indonesia. *AKSIOMA: Jurnal Sains Ekonomi Dan Edukasi*, 2(5), 898-912. <https://doi.org/10.62335/aksioma.v2i5.1198>



Roscoe Pound, who places law as a means to direct social change in a planned manner.² In the Indonesian context, the law is not merely repressive, but also responsive and progressive, addressing societal dynamics. Thus, the supremacy of law is the primary foundation for ensuring order and stability in national life.

To realize the supremacy of law, a structured and systematic legal system is required, capable of regulating the relationships between norms in a coherent and hierarchical manner. Hans Kelsen's *Stufenbau des Recht* theory provides a conceptual basis that legal norms are structured in a hierarchical manner, where lower norms must be derived from and must not conflict with higher norms. This concept was later reinforced by Hans Nawiasky through the theory of norm groups, which divides norms into several layers, starting from fundamental state norms to implementing regulations.³ In this context, the Indonesian legal system must be consistently built based on this hierarchical structure to prevent normative disharmony. Without a clear structure, the law will lose its binding power and potentially give rise to normative conflict. Therefore, the existence of a structured legal system is an absolute prerequisite for achieving legal certainty. This legal certainty is one of the primary goals of law, along with justice and expediency.

Normatively, the hierarchy of laws and regulations in Indonesia is explicitly stipulated in Law Number 12 of 2011, as amended by Law Number 13 of 2022. This provision explicitly defines the types and hierarchy of laws and regulations, from the Constitution to Regional Regulations. The placement of Regional Regulations within the hierarchy demonstrates their recognition as legitimate legal instruments, yet they remain subordinate to higher-level regulations.⁴ This reflects the principle of *lex superior derogat legi inferiori*, which doctrinally asserts that higher norms have the power to override lower norms. This principle is a fundamental principle in the legal system, aiming to maintain the consistency and integrity of legal norms. Therefore, every Regional Regulation must comply with and not conflict with higher-level laws and regulations. Violation of this principle will result in the nullification of a legal norm.

Despite clear normative provisions, in practice, various Regional Regulations (Perda) are still found to conflict with higher-level laws. This phenomenon demonstrates a gap between *das sollen* (what should be) and *das sein* (what actually happens). Data from the Ministry of Home Affairs shows that in recent years, thousands of Regional Regulations have been revoked or revised due to their inconsistency with higher-level legal provisions.⁵ These cancellations are generally due to content that exceeds regional authority, conflicts with national policy, or impedes public interests such as investment. This situation indicates a weak harmonization process in the formation of regional regulations. Furthermore, it also reflects a

² Leonardy, J., & Bana, E. (2025). Belis: Sudut Pandang Memahami Masyarakat Baumata Dalam Konteks Hukum Sebagai Alat Rekayasa Sosial. *Jurnal Sains, Ekonomi, Manajemen, Akuntansi dan Hukum*, 2(5), 425-436. <https://doi.org/10.60126/sainmikum.v2i5.1356>

³ Prianto, W. (2024). Analisis hierarki perundang-undangan berdasarkan teori norma hukum oleh Hans Kelsen dan Hans Nawiasky. *Jurnal Ilmu Sosial Dan Pendidikan*, 2(1), 08-19. <https://jurnal.unsultra.ac.id/index.php/jisdik/article/view/52>

⁴ Rikardo, O., Purwadini, S. A., & Maharany, S. F. (2024). Peranan Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia. *Jurnal Hukum Sasana*, 10(1), 162-179. <https://doi.org/10.31599/sasana.v10i1.2110>

⁵ Asmara, G. (2024). Rekonstruksi Sistem Pengawasan Terhadap Peraturan Daerah Oleh Pemerintah. *Konferensi Nasional Asosiasi Pengajar Hukum Tata Negara dan Hukum Administrasi Negara*, 2(1), 435-476. <https://doi.org/10.55292/94r4n846>

suboptimal understanding of the principles of sound legislative formation among regional regulation drafters. Therefore, an in-depth evaluation of legislative mechanisms at the regional level is necessary.

The phenomenon of regional regulation annulment is not only a technical legal issue but also has broad implications for the legal system and governance. The lack of synchronization between regional regulations and higher-level regulations can create legal uncertainty for the public and businesses. From the perspective of Gustav Radbruch's theory of legal certainty, laws must be clear and predictable to be effectively complied with.⁶ When legal norms conflict, legal certainty is reduced. This can ultimately disrupt economic stability and undermine public trust in local governments. Furthermore, disharmonious norms also have the potential to create conflicts of authority between government institutions. Therefore, regulatory harmonization is an urgent need in the national legal system.

From a regional autonomy perspective, the authority to establish Regional Regulations is a manifestation of the principle of decentralization stipulated in Law Number 23 of 2014 concerning Regional Government. Decentralization provides space for regions to regulate and manage their own interests in accordance with local characteristics.⁷ However, this authority is not unlimited; it must be exercised within the framework of the Unitary State of the Republic of Indonesia. In the theory of state administrative law, authority is always limited by the principle of legality, which requires all government actions to be based on applicable law. Therefore, regional regulations, as regional legal products, must remain within the framework of national law. Failure to comply with these limitations will result in an *ultra vires* exercise of authority. Therefore, regional autonomy must be understood as controlled autonomy.

In norm conflicts, the conflict between a regional regulation and a higher-level regulation constitutes a form of vertical conflict within the legal system. Vertical conflict occurs when a norm at a lower level conflicts with a norm at a higher level in the legal hierarchy. According to norm conflict theory, this type of conflict must be resolved using the principles of preference, one of which is *lex superior derogat legi inferiori*.⁸ In addition, the principles of *lex specialis derogat legi generali* and *lex posterior derogat legi priori* can also be applied under certain circumstances. However, in the context of regional regulations, the most relevant principle is the principle of hierarchy. This conflict of norms indicates disharmony within a legal system that should be consistent and integrated. Therefore, resolving conflicting norms is crucial to maintaining legal system stability.

Conflicting norms between regional regulations and higher-level regulations also reflect weaknesses in the implementation of the principle of legal hierarchy. These weaknesses can occur at the planning, drafting, and ratification stages of regional regulations. In theory, the formation of legislation requires every regulation to undergo a process of harmonization, consolidation, and conceptual consolidation. However,

⁶ RADBRUCH, G. RATIO DECIDENDI HAKIM DALAM MEMUTUS PERKARA IZIN POLIGAMI PERSPEKTIF TEORI KEPASTIAN HUKUM.

⁷ Aithan, I., Frinaldi, A., Magriasti, L., & Naldi, H. (2025). ANALISIS PERKEMBANGAN PRAKTIK DESENTRALISASI DAN OTONOMI DAERAH DI INDONESIA. *Jurnal Ekonomi dan Administrasi Modern*, 9(2). <https://journal.fexaria.com/j/index.php/jeam/article/view/183>

⁸ Susmayanti, R. (2023). Macam-Macam Konflik Norma Hukum dan Solusinya. *Ilmu Perundang-Undangan*, 38.

in practice, this process is often not carried out optimally. Factors such as limited human resources, lack of coordination between institutions, and local political pressure are the main causes. Furthermore, the oversight function of regional regulations has not been effective. This situation indicates that the problem lies not only in norms but also in institutional and procedural aspects.

The mechanism for reviewing and annulling regional regulations in Indonesia involves two main institutions: the Supreme Court, through its judicial review mechanism, and the central government, through its executive review mechanism. The Supreme Court has the authority to review laws and regulations under the law against the law, as stipulated in the Law on the Supreme Court.⁹ Meanwhile, the central government has the authority to revoke regional regulations that conflict with the public interest or higher regulations. This dual mechanism creates its own dynamics in state administration practices. On the one hand, it demonstrates a multi-layered control system, but on the other, it has the potential to create legal uncertainty. Therefore, synchronization of authority between institutions is necessary in overseeing regional regulations.

From a legal theory perspective, the effectiveness of a legal norm is determined not only by its formal validity, but also by its sociological and philosophical validity. As Soerjono Soekanto put it, a law is said to be effective if it meets three elements: legal substance, legal structure, and legal culture.¹⁰ In the context of regional regulations, substance that conflicts with higher norms indicates a material flaw. Meanwhile, weak oversight reflects problems within the legal structure. Furthermore, low legal awareness among the public and authorities also impacts legal culture. Therefore, normative conflicts cannot be viewed in isolation but must be analyzed comprehensively. A multidimensional approach is crucial in understanding this issue.

The existence of normative conflicts between regional regulations and higher-level regulations also raises questions about the extent to which the principle of legal hierarchy can be effectively implemented. Theoretically, this principle provides clear guidelines for resolving normative conflicts. However, in practice, its implementation often faces various obstacles, both political, administrative, and technical and legal. This indicates a gap between ideal norms and the reality of implementation. Therefore, strengthening harmonization mechanisms is necessary from the regulatory planning stage. Furthermore, increasing the capacity of regional regulation drafters is also an urgent need. Without such efforts, normative conflicts will continue to recur.

Ultimately, the issue of normative conflict between Regional Regulations and higher-level laws and regulations is a complex and multidimensional legal issue. This problem relates not only to normative aspects but also to institutional, legal political, and legal culture aspects. Therefore, a comprehensive analysis is necessary to understand the root of the problem and formulate appropriate solutions. In this

⁹ Kristianto, S., Sinaulan, R. L., & Candra, M. (2026). WEWENANG MAHKAMAH AGUNG MENGUJI KEABSAHAN PERATURAN DAERAH MELALUI HAK UJI MATERIIL. *SINERGI: Jurnal Riset Ilmiah*, 3(2), 723-732. <https://doi.org/10.62335/sinergi.v3i2.2391>

¹⁰ Huda, M. M., Suwandi, S., & Rofiq, A. (2022). Implementasi tanggung jawab negara terhadap pelanggaran HAM berat paniai perspektif teori efektivitas hukum Soerjono Soekanto. *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia*, 11(1), 115-134.

context, this research aims to answer how this normative conflict arises, how the resolution mechanism works, and to what extent the principle of legal hierarchy can guarantee the consistency and harmonization of the legal regulatory system in Indonesia. The approach used is not only normative but also considers empirical and theoretical aspects. Therefore, it is hoped that this research can contribute to the development of legal science, particularly in the fields of constitutional law and the formation of laws and regulations.

METHODOLOGY

The research method used in this article is doctrinal legal research, which positions law as norms or rules written in legislation or as court decisions and legal doctrine. This approach was chosen because the object of study focuses on normative conflicts between Regional Regulations and higher-level legislation from the perspective of the principle of legal hierarchy. According to Soerjono Soekanto, normative legal research is research conducted by examining library materials or secondary data as the main source, which includes primary, secondary, and tertiary legal materials.¹¹ In line with this, Peter Mahmud Marzuki emphasized that normative legal research aims to find the truth based on the logic of legal science from its normative side, so that the analysis carried out is prescriptive.¹² This research employs several approaches, namely the statute approach, the conceptual approach, and the case approach, to gain a comprehensive understanding of the issue of norm conflict being studied. Thus, this method allows researchers to deeply examine the consistency of legal norms within the Indonesian legal regulatory system.

The legal material collection technique was conducted through library research by examining various relevant legal sources, including laws and regulations, scientific literature, legal journals, and expert opinions. The primary legal materials used include the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 as amended by Law Number 13 of 2022, and other related regulations. Meanwhile, secondary legal materials in the form of textbooks, journal articles, and legal doctrine were used to strengthen the analysis. The analysis of legal materials was conducted qualitatively using legal interpretation and systematic legal reasoning methods. According to Johnny Ibrahim, analysis in normative legal research is carried out by constructing legal arguments to address the legal issues at hand, resulting in argumentative and prescriptive conclusions.¹³ With this method, the research is expected to be able to provide normative solutions to the problem of norm conflicts between Regional Regulations and higher regulations, as well as offer a more ideal formulation in the application of the principle of legal hierarchy in Indonesia.

¹¹ Sukmawan, Y. A., & Damayanti, D. (2025). Metode Penelitian Hukum Normatif dan Empiris sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum. *Notary Law Journal*, 4(3), 114-128. <https://doi.org/10.32801/nolaj.v4i3.116>

¹² Zainuddin, M., & Karina, A. D. (2023). Penggunaan metode yuridis normatif dalam membuktikan kebenaran pada penelitian hukum. *Smart Law Journal*, 2(2), 114-123.

¹³ Masidin, S. H. (2023). *Penelitian hukum normatif: Analisis putusan hakim*. Prenada Media.

RESULTS AND DISCUSSION

Normative Analysis of the Application of the Principle of Legal Hierarchy in the Legal Regulatory System in Indonesia

The concept of a state based on law in the context of Indonesian constitutionalism is the main foundation that provides legitimacy to the application of the principle of normative hierarchy in the legal regulatory system. The affirmation of Indonesia as a state based on law in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has the consequence that all actions of state administrators must be subject to applicable law. From the perspective of the theory of rechtsstaat and the rule of law, law not only functions as an instrument of controlling power, but also as a means of protecting the rights of citizens from arbitrary actions.¹⁴ Therefore, the application of a hierarchy of norms is essential to ensure that each legal product has a clear basis for legitimacy and does not contradict one another. Without a hierarchical structure, the legal system will lose its coherence and potentially give rise to normative conflicts. Therefore, a state governed by the rule of law cannot be separated from the need for a hierarchical and systematic system of norms.

The relationship between the supremacy of law and a hierarchical normative structure demonstrates that the supremacy of law can only be realized if there is a clear and consistent hierarchy of norms. The supremacy of law demands that the law be above all forms of power, but in its implementation, the law itself must be organized in a logical and hierarchical system.¹⁵ In this case, the theory of normative hierarchy serves as a tool to prevent contradictions between regulations. If the normative structure is not hierarchical, the rule of law will lose its meaning because there are no parameters for determining which norms should take precedence. This condition will create legal uncertainty and open up space for arbitrary interpretation. Therefore, a hierarchical normative structure is a concrete manifestation of the principle of the rule of law in state practice. In other words, the rule of law and the hierarchy of norms have a mutually reinforcing relationship.

The relationship between the principle of legal hierarchy and the objectives of law, namely certainty, justice, and utility, demonstrates that this principle has a strategic function in the legal system. From Gustav Radbruch's perspective, law must fulfill three basic values: legal certainty (rechtssicherheit), justice (gerechtigkeits), and utility (zweckmäßigkeit).¹⁶ The principle of legal hierarchy makes a key contribution to achieving legal certainty by ensuring that there are no conflicts between norms. Furthermore, justice can be achieved if higher norms reflect the values of substantive justice, which lower norms must adhere to. Meanwhile, legal benefit is achieved when the legal system operates effectively and does not cause confusion in its application. However, in practice, tensions often arise between these three values, particularly when higher norms do not fully reflect substantive justice. Therefore, the application of the principle of legal hierarchy must be conducted critically and not merely formalistically.

¹⁴ Ismoyo, J. D., Apriyanto, A., Harryanti, T., & Judijanto, L. (2025). *Teori Negara Hukum Modern*. PT. Sonpedia Publishing Indonesia.

¹⁵ Cahyono, S. P., Setyawarni, T., Muyana, A. I., & Bayu, A. A. (2023). Hubungan Hukum Dan Kekuasaan Dalam Sistem Hukum Di Indonesia. *Dinamika Hukum & Masyarakat*, 6(1), 23-48.

¹⁶ Firdaus, M. B. (2025). Dialektika Keadilan, Kepastian, Kemanfaatan Hukum dalam Perspektif Gustav Radbruch pada Hukum Indonesia. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 3(1), 357-367. <https://doi.org/10.62379/qy4b6z80>

The normative basis for the hierarchy of laws and regulations in Indonesia is explicitly regulated in Law Number 12 of 2011, as amended by Law Number 13 of 2022. This provision establishes the types and hierarchy of laws and regulations that serve as guidelines for the formation of national law. This regulation reflects the state's efforts to create an orderly and structured legal system. Normatively, the existence of this hierarchy also provides a clear legal basis for testing and revoking conflicting regulations. However, this regulation is not merely declarative but must be implemented consistently in practice. Weaknesses in implementation will result in disharmony in norms that contradict the purpose of the law's formation. Therefore, a critical analysis of this normative basis must be conducted to assess its effectiveness.

The placement of Regional Regulations within the national legal hierarchy demonstrates their subordination to legal norms. This means that Regional Regulations must not conflict with higher-level legislation, either in terms of their content or their authority to create them. Within the framework of regional autonomy, Regional Regulations are granted the authority to regulate local interests, but this authority is limited by higher-level norms.¹⁷ These limitations are essential to maintaining the unity of the national legal system within the framework of the Unitary State of the Republic of Indonesia. However, in practice, deviations often occur, where regional regulations regulate matters beyond their authority. This situation indicates a discrepancy between the regulated norms and their implementation in the field. Therefore, the subordinate position of regional regulations must be clearly understood by those who formulate regulations in the regions.

The legal implication of the subordinate status of Regional Regulations is that any Regional Regulation that conflicts with a higher-level regulation can be declared invalid or revoked. This principle aligns with the principle of *lex superior derogat legi inferiori*, which serves as the basis for resolving vertical normative conflicts. In state practice, this implication is realized through judicial review mechanisms by the Supreme Court and revocation by the central government. However, the existence of these mechanisms is not always effective in preventing the birth of problematic Regional Regulations. This shows that a repressive approach through revocation alone is not sufficient; it must be balanced with a preventative approach through harmonization from the outset. Furthermore, this legal implication also impacts the legitimacy of Regional Regulations in the eyes of the public. Regional Regulations that are frequently revoked will reduce public trust in regional legal products.

Theoretical studies on the principle of legal hierarchy cannot be separated from the *Stufenbau des Recht* theory proposed by Hans Kelsen. This theory states that the legal system is a multi-level structure in which each norm derives its validity from a higher norm.¹⁸ In the Indonesian context, this theory is relevant because the legal system is structured in a hierarchical manner as stipulated in the law. However, the application of Kelsen's theory in practice is not always ideal, particularly when there is political intervention in the formation of law. Furthermore, this theory tends to be formalistic and pays little attention to the sociological aspects of law. Therefore, its application needs to be combined with other, more contextual approaches. Nevertheless, Kelsen's theory remains the primary basis for understanding the hierarchical

¹⁷ Doorson, S., Rahmawati, E., Azra, D. N., Diaz, Y., & Qutrunnadaa, F. A. (2024). Implementasi Hukum Tata Ruang dalam Konteks Otonomi Daerah. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 2(2), 128-140. <https://doi.org/10.61104/alz.v2i2.378>

¹⁸ Nabillah, T., Prasetyo, R. W. A., Ohoiwutun, Y. T., & Rato, D. (2025). Hakikat Keilmuan Hukum Sistem Civil Law dalam Perspektif Teori Hukum Murni. *Jurnal Hukum Legalita*, 7(2), 210-220. https://jurnal.umko.ac.id/index.php/legalita/article/view/2003?_cf_chl_tk=LSebTmPxHae7P6XqshrCjXPjN.IumxXuvZg_YmW6Shc-1776306088-1.0.1.1-rm7VD9qY8PF214GpYM9quBePO11DYpbtVtDsrmsOxC0

structure of law. In addition to Kelsen, Hans Nawiasky developed a theory that divides legal norms into several groups: fundamental state norms, basic state regulations, formal laws, and implementing regulations.¹⁹ This theory provides a more detailed perspective in understanding the structure of legal norms. In the Indonesian context, the fundamental norms of the state can be identified with Pancasila, while the Constitution serves as the basic rule of the state. Regional regulations are at the implementing level and must comply with the norms above them. Thus, Nawiasky's theory reinforces the concept of a normatively regulated hierarchy of norms. However, the implementation of this theory also faces challenges, particularly in maintaining consistency between norms. Therefore, strict oversight of the formation of regulations at every level is necessary.

The principle of *lex superior derogat legi inferiori* is a basic principle which states that higher regulations override lower regulations if there is a conflict.²⁰ This principle is a key instrument in maintaining the consistency and integrity of the legal system. In practice, this principle is used as a basis for testing laws and regulations that conflict with higher norms. However, the application of this principle is not always straightforward, particularly when there is a conflict between local interests and national policies. Furthermore, there is the potential for abuse of this principle for certain political interests. Therefore, the application of this principle must be carried out objectively and based on the principle of justice. Thus, the principle of *lex superior derogat legi inferiori* serves not only as a technical tool but also as an instrument for upholding fundamental values within the legal system.

Supporting principles within the legal system are essential instruments for maintaining the consistency and coherence of legal norms in the face of potential conflicts. Three primary principles frequently used in resolving norm conflicts are *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, and *lex posterior derogat legi priori*. These three principles have distinct but complementary functions in determining which norm should take precedence. *Lex superior* emphasizes hierarchy, *lex specialis* emphasizes the specificity of the content, and *lex posterior* emphasizes the time of enactment of the norm. In practice, the relationship between these three principles is not always harmonious and often creates dilemmas in determining priorities. This demonstrates that a legal system requires not only clear norms but also appropriate legal reasoning methods. Therefore, a comprehensive understanding of the interrelationships between these principles is crucial in law enforcement practices.

The relationship between *lex superior*, *lex specialis*, and *lex posterior* can theoretically be understood as a system of complementary norm preferences, but in practice this often creates ambiguity. Under certain circumstances, a lower-level, specific norm can conflict with a higher-level, general norm. This situation raises the question of whether hierarchy or specificity should be prioritized. Conversely, a newer norm may conflict with an older, higher-level norm. This situation demonstrates the complexity of applying these principles. In legal doctrine, there are no absolute rules regarding the priority of principles, requiring contextual interpretation by law enforcement. Therefore, the application of these principles cannot be done mechanically but must consider the overall objectives of the law.

¹⁹ Arbas, C., & Andryan, A. (2025). RESTRUKTURISASI HIERARKI PERATURAN PERUNDANG-UNDANGAN SEBAGAI SISTEM HUKUM NASIONAL. *Jurnal Asipper*, 1(1), 42-61. <https://asipper.or.id/index.php/asipper/article/view/2>

²⁰ Wijayanti, S., Sari, Z. N., Salam, S., & Firdaus, A. A. (2024). Norm Clash in *Lex Superior Derogate Legi Inferiori* Principle's Implementation on Circular Letters and Laws. *Reformasi Hukum*, 28(3), 234-250. <https://doi.org/10.46257/jrh.v28i3.732>

The potential for conflict between principles in normative practice is a logical consequence of the complexity of a dynamic legal system. This conflict often arises in concrete cases where there is overlap between the authority, content, and timeframe of norms. In such circumstances, law enforcers are required to conduct in-depth legal reasoning to determine which principle should take precedence. Inaccurate choice of principles can result in inconsistent decisions and undermine legal certainty. Furthermore, conflicts between principles also open up room for subjective interpretation and potential misuse for specific interests. This demonstrates that the legal system depends not only on norms but also on the integrity and capacity of law enforcers. Therefore, clearer guidelines are needed for determining the priority between principles.

In vertical conflicts, the principle of *lex superior derogat legi inferiori* should, in principle, be the top priority in resolving normative conflicts. This is due to the importance of maintaining the legal hierarchy as the foundation of the legal system. If this principle is ignored, disruption will occur in the legal order, which can lead to uncertainty and inconsistency. However, in practice, there is a tendency to prioritize other principles, such as *lex specialis*, without considering the position of norms within the hierarchy. This situation has the potential to undermine the integrity of the national legal system. Therefore, it is necessary to emphasize that in vertical conflicts, the normative hierarchy must be the primary parameter. Therefore, other principles can only be used subsidiarily and must not override the basic principle of hierarchy.

The principle of forming good legislation is an important element in preventing norm conflicts from the initial stage.²¹ Law Number 12 of 2011 establishes various principles that must be met in the formulation of regulations, including the principle of clarity of purpose and the appropriateness of type, hierarchy, and content. The principle of clarity of purpose requires that each regulation have a clear direction and objective to avoid multiple interpretations. Meanwhile, the principle of appropriateness of type and content requires that the substance of the regulation be in accordance with the authority of the legislator. Violations of these principles are often the main cause of normative conflicts. Therefore, the application of the principle of good legislation must be a primary concern in the legislative process. Without it, the resulting legal product has the potential to be normatively flawed. Furthermore, the principle of enforceability and the principle of usability also play a strategic role in ensuring the effectiveness of legislation. The principle of enforceability requires that every legal norm be realistic and applicable in practice, both technically and administratively. Meanwhile, the principle of usability emphasizes that regulations must provide real benefits to society. If a regulation cannot be implemented or does not provide benefits, its existence becomes irrelevant and has the potential to give rise to conflict. Regional regulations often fail to consider implementation aspects, thus contradicting national policy. This demonstrates weak planning in regulatory development. Therefore, these two principles must be consistently integrated into the legislative process.

Harmonization and synchronization of laws and regulations are crucial preventative measures to prevent norm conflicts. Vertical harmonization aims to ensure that lower-level regulations do not conflict with higher-level regulations, while horizontal harmonization aims to avoid overlap between regulations at the same level.²² This process should be carried out systematically from the planning stage to the enactment of regulations. In practice, the role of institutions such as the Ministry of Law and Human Rights, the Regional

²¹ Yamani, A. Z. (2024). Tata Cara, Teknis, Dan Tahapan Pembuatan Perundang-Undangan. *Journal of Law and Nation*, 3(2), 322-330. <https://joln.my.id/index.php/joln/article/view/118>

²² Busroh, F. F., Khairo, F., & Zhafirah, P. D. (2024). Harmonisasi regulasi di Indonesia: Simplikasi dan sinkronisasi untuk peningkatan efektivitas hukum. *Jurnal Interpretasi Hukum*, 5(1), 699-711. <https://doi.org/10.22225/juinhum.5.1.7997.699-711>

People's Representative Council (DPRD), and local government legal bureaus is crucial in achieving harmonization. However, coordination between institutions is often suboptimal, resulting in many regulations that are out of sync. Therefore, strengthening harmonization mechanisms is an urgent need.

Normative weaknesses in the current harmonization mechanism indicate gaps in the legal regulation system. Despite formal regulations, harmonization implementation is often administrative and non-substantive. The harmonization process focuses more on formalities than on the quality of the content. Furthermore, limited human resources and a lack of understanding of legislative techniques are also major obstacles. In some cases, harmonization is even influenced by political interests that override legal principles. This situation indicates that the existing mechanism is unable to effectively guarantee normative consistency. Therefore, reforms to the harmonization system are needed that are more comprehensive and quality-based.

Criticism of the implementation of the principle of legal hierarchy cannot be separated from the gap between ideal norms (*das sollen*) and practical reality (*das sein*). Normatively, the Indonesian legal system has a clear hierarchical structure, but in practice, deviations often occur. Institutional factors, such as weak coordination and oversight, are among the main causes. Furthermore, legal politics also influence the formation and implementation of laws and regulations. Local political interests often ignore the principle of legal hierarchy in order to achieve specific goals. As a result, the integrity of the national legal system is compromised. Therefore, a strong commitment from all stakeholders is needed to consistently uphold the principle of legal hierarchy.

Conflicts between Regional Regulations and Higher Legislation and the Mechanism for Resolving Them

The concept of norm conflict in legal theory essentially refers to a condition in which two or more applicable legal norms simultaneously regulate the same object, but produce different or conflicting legal consequences. From the perspective of normative legal theory, norm conflict is understood as the failure of the legal system to maintain its internal consistency, as emphasized in Hans Kelsen's teachings regarding the importance of harmony between norms in a legal order.²³ Normative conflicts not only raise technical legal issues but also threaten the validity and legitimacy of the law itself. Therefore, the existence of conflict resolution principles such as *lex superior*, *lex specialis*, and *lex posterior* is crucial. However, in practice, normative conflicts often cannot be resolved simply because they involve various interests and regulatory complexity. This demonstrates that normative conflicts are an inherent phenomenon in dynamic legal systems. Therefore, a conceptual understanding of normative conflicts is an essential foundation for legal analysis.

In its classification, normative conflicts can be divided into vertical and horizontal conflicts, each with distinct characteristics and resolution mechanisms. Vertical conflicts occur when there is a conflict between norms that occupy different positions within the legal hierarchy, while horizontal conflicts occur between norms at the same level. In the Indonesian legal system, vertical conflicts are more crucial because they directly relate to violations of the principle of legal hierarchy.²⁴ Horizontal conflicts can generally be resolved through the principles of *lex specialis* or *lex posterior*, but vertical conflicts require the application

²³ Meidanasari, A. (2025). Teori Hukum Normatif Dalam Perspektif Aliran Pemikiran Neo Kantian. *Lex Renaissance*, 10(1), 1-29. <https://doi.org/10.20885/JLR.vol10.iss1.art1>

²⁴ Paongan, R. T., Maramis, R. A., & Pinasang, D. R. (2025). Analisis Harmonisasi Peraturan Perundang Undangan Dalam Mengatasi Konflik Regulasi Di Indonesia. *Innovative: Journal Of Social Science Research*, 5(4), 4796-4812. <https://doi.org/10.31004/innovative.v5i4.20799>

of the lex superior principle as the primary principle. Therefore, focusing on vertical conflicts is relevant in maintaining the integrity of the national legal system. In this study, attention is focused on vertical conflicts between Regional Regulations and higher-level legislation. This approach is crucial for identifying weaknesses in the implementation of the principle of legal hierarchy.

Conflicting norms in Regional Regulations often arise in the form of inconsistencies between their content and laws or higher-level regulations. Regional Regulations that regulate matters that are already regulated differently in the Law indicate disharmony in legal substance. This condition reflects a violation of the principle of normative consistency that should be maintained in the legal regulatory system. Furthermore, some Regional Regulations include norms that conflict with national policies, such as investment restrictions or discriminatory regulations. This phenomenon indicates that the formation of Regional Regulations is often not based on comprehensive legal analysis. As a result, the resulting Regulations have the potential to create normative conflicts. Therefore, evaluating the content of Regional Regulations is crucial. In addition to conflicting content, normative conflicts can also arise from deviations in authority or ultra vires in the formation of Regional Regulations. In the theory of state administrative law, all authority must be exercised within the limits determined by statutory regulations.²⁵ When local governments regulate matters beyond their authority, the regulation becomes legally flawed. This abuse of authority often occurs due to a lack of understanding of the limits of regional autonomy. Furthermore, local political interests also encourage the creation of regulations that exceed their authority. This situation indicates an abuse of authority in the regional legislative process. Therefore, oversight of the authority of those creating regulations is crucial.

Regional regulations that conflict with the public interest are also a concrete manifestation of normative conflict with broad implications. The public interest, in a legal context, encompasses the interests of the wider community, which must be protected by the state. Regulations that hinder investment, limit access to public services, or are discriminatory clearly contradict the principle of the public interest. In practice, many regional regulations are revoked because they are deemed to disrupt economic and social stability. This demonstrates that the formulation of regional regulations often fails to consider broader impacts. As a result, these regulations are problematic not only normatively but also sociologically. Therefore, the principle of the public interest must be a primary consideration in the formulation of regional regulations.

An analysis of the causes of normative conflicts indicates that weaknesses in the regional legislative process are a primary factor. The process of formulating regional regulations often fails to go through the ideal stages, such as adequate harmonization and public review. Furthermore, limited human resources in the field of drafting legislation also poses a serious obstacle. Lack of coordination between institutions, both at the regional and central levels, exacerbates this situation. In many cases, regional regulations are drafted without considering existing regulations, resulting in overlapping norms. This situation indicates that the regional legislative system is still suboptimal. Therefore, improvements to the legislative process are urgently needed.

Local political factors and sectoral interests also play a significant role in normative conflicts. The formation of regional regulations is often influenced by the interests of regional political elites, which do not always align with national policy. From a legal political perspective, this demonstrates a tug-of-war

²⁵ Rahim, A., Aulia, S., Susanti, S., Arifin, M., & Riyadi, S. (2023). Relevansi Asas Kepastian Hukum dalam Sistem Penyelenggaraan Administrasi Negara Indonesia. *JiIP-Jurnal Ilmiah Ilmu Pendidikan*, 6(8), 5806-5811. <https://doi.org/10.54371/jiip.v6i8.2575>

between central and regional interests. Narrow sectoral interests often override the legal principles that should underlie regulatory formation. As a result, the resulting regulations not only conflict with higher norms but also harm the wider community. This situation demonstrates that the law is not entirely free from political influence. Therefore, stronger oversight mechanisms are needed for the regional legislative process.

The legal implications of conflicting norms between regional regulations and higher-level regulations are the emergence of serious legal uncertainty. When two different norms apply simultaneously, the public will experience confusion in determining which norm to follow. This contradicts the principle of legal certainty, one of the primary objectives of law. Furthermore, regulatory disharmony also impacts the investment climate and public services. Businesses will be reluctant to invest in regions with inconsistent regulations. Furthermore, the public will also be disadvantaged because public services become ineffective. Therefore, conflicting norms must be resolved promptly to maintain legal and economic stability.

The mechanism for testing Regional Regulations through judicial review by the Supreme Court is one of the main instruments in resolving normative conflicts.²⁶ This authority is granted based on statutory regulations governing the Supreme Court's role as guardian of the constitutionality of norms under the law. The judicial review procedure is conducted through a petition filed by an interested party, which is then assessed by a judge based on the norm's compliance with higher-level regulations. While this mechanism guarantees judicial oversight, its effectiveness still faces various obstacles, such as limited public access and lengthy trial processes. Furthermore, not all problematic regional regulations are tested through this mechanism. This indicates that judicial review is not yet fully effective as a solution to normative conflicts. Therefore, this mechanism is needed to be strengthened to make it more responsive and efficient.

The mechanism for the cancellation of Regional Regulations by the central government (executive review) is an administrative oversight instrument normatively intended to maintain the consistency of regional regulations with higher-level laws and the public interest. This authority was initially granted to the Minister of Home Affairs and Governors as representatives of the central government in the regions, as stipulated in the Regional Government Law. Within the framework of state administrative law theory, this authority constitutes a form of repressive oversight of established regional legal products. However, the implementation of this authority is not without criticism due to its potential to undermine the principle of regional autonomy. Furthermore, the unilateral use of the cancellation authority by the executive can raise questions of legal legitimacy. Therefore, this mechanism must be placed within a framework of proportional checks and balances. Thus, executive review must not become a tool of central domination over the regions.

The legal basis for the central government's revocation of regional regulations has undergone significant changes following the Constitutional Court's ruling, which limited the executive's authority to revoke regional regulations. In several of its decisions, the Constitutional Court emphasized that the revocation of generally binding legal norms should be carried out through judicial, not administrative, mechanisms.²⁷ This ruling implicitly shifts the paradigm of oversight from executive-heavy to judicial supremacy. The

²⁶ Silalahi, W., & Wijaya, G. (2025). Pengujian Perundang-Undangan Dalam Sistem Hukum Indonesia: Analisis Legislative Review, Executive Review, dan Judicial Review. *Jurnal Ilmiah Mahasiswa*, 3(1), 67-76. <https://ejournal.penerbitjurnal.com/index.php/JIMA/article/view/1234>

²⁷ Putri, C. A., & Hufron, H. (2026). Kekuatan Mengikat Putusan Mahkamah Konstitusi Terhadap Pembentukan Norma Hukum Baru. *RIGGS: Journal of Artificial Intelligence and Digital Business*, 4(4), 3973-3982. <https://doi.org/10.31004/riggs.v4i4.4264>

implication of this ruling is a reduction in the central government's authority to directly annul regional regulations. However, in practice, there are still varying interpretations of the ruling's implementation. This indicates a lack of clarity in the regulation of the authority to annul regional regulations. Therefore, a reaffirmation of the boundaries of authority between the executive and the judiciary is necessary.

Criticism of the dualism of oversight mechanisms between executive review and judicial review is a central issue in norm conflict analysis. This dualism creates the potential for overlapping authority that could undermine legal certainty. On the one hand, the central government has the administrative authority to annul regional regulations, while on the other, the Supreme Court has the judicial authority to review these regulations. This situation creates ambiguity in determining the most appropriate mechanism. Furthermore, this dualism also opens up space for forum shopping, where certain parties choose the most advantageous mechanism. From a legal theory perspective, this situation contradicts the principles of legal certainty and simplicity. Therefore, harmonization of the two mechanisms is necessary.

An analysis of court decisions regarding the annulment of regional regulations demonstrates the strategic role of the Supreme Court in maintaining the consistency of legal norms. Through the judicial review mechanism, the Supreme Court examines regional regulations deemed to conflict with higher-level regulations. In several decisions, the Supreme Court explicitly annulled regional regulations that violated the principle of legal hierarchy.²⁸ This demonstrates the judicial institution's role as a guardian of the constitutionality of norms under the law. However, not all decisions demonstrate consistency in legal reasoning. Judges vary in their approaches to assessing norm conflicts. Therefore, analyzing decisions is crucial for assessing the quality of law enforcement.

The consistency of judges' legal reasoning in Supreme Court decisions is a crucial factor in establishing legal certainty. In the theory of legal interpretation, consistency is a primary requirement for decisions to serve as reliable precedent.²⁹ However, in practice, there are differences in the interpretive approaches used by judges, both grammatically, systematically, and teleologically. These differences often result in inconsistent decisions in similar cases. This situation has the potential to create legal uncertainty for the parties. Furthermore, inconsistency can also undermine public trust in the judiciary. Therefore, clearer interpretative standards are needed in the judicial review of regional regulations.

The contribution of court decisions to establishing legal certainty cannot be underestimated, as they serve as a reference in legal practice. A Supreme Court decision annulling a regional regulation provides certainty regarding which norms apply. Furthermore, the decision serves as a tool to correct problematic regional legal products. However, the effectiveness of a decision depends heavily on its implementation on the ground. In some cases, regional regulations remain in effect despite being annulled. This indicates weaknesses in the enforcement of court decisions. Therefore, strengthening the enforcement mechanism for decisions is crucial.

²⁸ Hakiki, Y. R., Widiastuti, R., & Wahyuningsih, A. (2023). Rekonstruksi Desain Pengujian Peraturan Daerah Pasca Putusan Mahkamah Konstitusi. *Lex Renaissance*, 8(1), 58-75. <https://doi.org/10.20885/JLR.vol8.iss1.art4>

²⁹ Hasibuan, H. (2024). Kepastian Hukum Dalam Putusan Hakim: Studi Terhadap Inkonsistensi Yurisprudensi Mahkamah Agung. *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan*, 2(3), 76-84. <https://doi.org/10.59966/yudhistira.v2i3.1670>

Evaluations of the effectiveness of normative conflict resolution mechanisms show that both judicial review and executive review have their respective strengths and weaknesses. Judicial review has stronger legitimacy because it is conducted by an independent institution, but the process is relatively slow and limited to requests.³⁰ Meanwhile, executive review is faster and more proactive, but vulnerable to political interference. Both have important roles, but without proper coordination, they can lead to conflicts of authority. Furthermore, implementation barriers such as limited public access and a lack of transparency also pose obstacles. This situation indicates that the existing mechanisms are not yet fully effective. Therefore, reforms are needed in the normative conflict resolution system.

The ideal reformulation of normative conflict resolution should be directed at strengthening preventive mechanisms through harmonization from the regional regulation planning stage. A preventive approach is more effective than a repressive one because it can prevent conflicts from occurring in the first place. Furthermore, integrating regulatory oversight systems between the central and regional governments is crucial to avoid overlapping authority. Expanding the role of institutions such as the Ministry of Law and Human Rights in the harmonization process can also improve regulatory quality. Furthermore, increasing human resource capacity in regulatory design is a key factor. This reformulation must be carried out systematically and sustainably. Thus, normative conflicts can be significantly minimized.

The affirmation of the role of the principle of legal hierarchy in ensuring normative consistency is an important conclusion to this analysis. The principle of legal hierarchy serves as a primary instrument for resolving vertical normative conflicts. However, the implementation of this principle still faces various obstacles in practice. Limitations in implementation arise when there are conflicts with other principles or specific interests. Therefore, strengthening this principle through stricter regulations and consistent implementation is necessary. Furthermore, legal education for those who formulate regulations is also crucial to improve understanding of this principle. Thus, the principle of legal hierarchy can function optimally in maintaining the integrity of the national legal system.

CONCLUSIONS

Conflicts between regional regulations and higher-level laws and regulations are essentially a manifestation of the weak implementation of the principle of legal hierarchy in Indonesia's legal system. Normatively, the principle of *lex superior derogat legi inferiori* provides a clear framework for determining the validity of norms, but in practice, it is often distorted by weaknesses in the regional legislative process, a lack of harmonization, and the intervention of local political interests. While judicial review by the Supreme Court and executive review by the central government are in principle available, their effectiveness remains limited due to dual authority, inconsistent decisions, and implementation obstacles. This situation has implications for disrupted legal certainty, regulatory disharmony, and declining public trust in regional legal products. Therefore, resolving conflicting norms cannot be done solely through a repressive approach; it must be balanced with strengthening preventive mechanisms through harmonization from the planning stage, improving the quality of regulatory drafters, and integrating regulatory oversight systems. Thus, the principle of legal hierarchy is positioned not only as a formal principle, but as a substantive instrument in ensuring the consistency, certainty, and integrity of the national legal system.

³⁰ Amin, F. (2025). Peran Mahkamah Konstitusi dalam Menjaga Prinsip Konstitusionalisme di Indonesia: Studi Putusan Judicial Review Tahun 2019–2024. *Ranah Research: Journal of Multidisciplinary Research and Development*, 7(6), 4467-4475. <https://doi.org/10.38035/rrj.v7i6.1856>

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