

## **Policies to Control and Evaluate Regional Regulations on Taxes and Levies in Indonesia: Re-centralisation?**

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### ABSTRACT

*The research analyses whether the regulations concerning the mechanisms of control and evaluation of regional regulations on taxes and levies, as outlined in Law No.1 of 2022, comply with the concept of regional autonomy in Indonesia. With normative juridical approach, this research found that the mechanisms of control and evaluation of regional regulations on taxes and levies do not comply with the concept of regional autonomy. However, such mechanisms are required in Indonesia as a unitary state that is based on autonomy, since no system of autonomy works in the absence of control. Nonetheless, in this case, the supervisory authority given to the central government, in the form of preventive and repressive supervision, tends to cause too much interference in the process of shaping policies regarding regional taxes and levies, which should be within the authority of regional governments. Therefore, assertive and specific provisions should be made to prevent intervention by the central government that goes beyond what is required.*

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### **1. Introduction**

The essence of regional autonomy is the freedom of local people to regulate and manage their own interests of a local nature in order to realize welfare. The implementation of regional governance involving broad community participation enables the creation of a democratic local government to lead to good governance. In theory and practice, the modern government is taught to create good governance using a decentralized government system.<sup>1</sup> Generally,

<sup>1</sup> Roy Marthen Moonti, 'Regional Autonomy in Realizing Good Governance', *Substantive Justice International Journal of Law*, 2.1 (2019), 43 <https://doi.org/10.33096/substantivejustice.v2i1.31>

decentralisation efforts were triggered by inefficient centralised government bureaucracies, which could not deal effectively with increasingly complex societies, causing socially and environmentally undesirable outcomes due to classical top-down approaches to decision-making. In contrast, decentralised governance systems were assumed to “encourage local authorities to serve the needs and desires of their constituents”. Political decentralisation aims to create efficient administration in a unitary system. In a unitary state with a centrifugal authority style, some groups adhere to a model of structural efficiency with priority scaling through efficient decentralisation.<sup>2</sup>

Efficient political decentralization can be realized through regional regulations. In a decentralized system, the existence of regional regulations in the context of regional governance is very urgent and strategic.<sup>3</sup> Similarly, according to Desyanti et al., regional regulations embody how a unitary state can implement regional autonomy<sup>4</sup> Regional regulations are a further elaboration of higher laws and regulations, they focus on the characteristics of each region according to their different potentials.<sup>5</sup> Local-level legislation is integral to the unified national legal system.<sup>6</sup> The regional government provides for the people of the region by the needs and special conditions in the region, as long as it can still be accounted for by local governments who know more and understand the needs of the people in the region.<sup>7</sup>

Principally, the existence of regional regulations within the purview of regional autonomy is to optimise decentralisation, which from the aspect of political empowerment, is intended to achieve local accountability, local responsiveness and political equality (from the perspective of regional governments) and provide training in political leadership, political education, and create political stability (from the perspective of the central government)

The regional government is administered with autonomy and the responsibility of co-administration established by the 1945 Constitution of the Republic of Indonesia.<sup>8</sup> From the perspective of a welfare state, regional regulations must function as agents of social change so that they can be used as instruments to accelerate the realisation of community welfare in the regions. Regional regulations should not be instruments for autonomous regions to maintain a social order that is coercive/repressive. However, regional regulations should be responsive

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<sup>2</sup> Andi Yakub, Ahmad Bashawir Abdul Ghani, and Mohammad Syafi'i Anwar, 'Urgency of Political Decentralization and Regional Autonomy in Indonesia: Local Perspectives', *Journal of International Studies*, 14 (2018), 141–50 <https://doi.org/10.32890/jis.14.2018.8003>

<sup>3</sup> Kosariza, Netty, and Meri Yarni, 'Jurnal Komunikasi Hukum', *Jurnal Komunikasi Hukum*, 7.1 (2021), 345–59.

<sup>4</sup> Desyanti, Sudarsono, Muchamad Ali Safa'at, and others, 'The Original Intent of Settings Judicial Review of Local Regulations in Indonesia', *International Journal of Multicultural and Multireligious Understanding*, 8.9 (2021), 300–300 <https://doi.org/10.18415/ijmmu.v8i9.3001>

<sup>5</sup> Sugianto Sugianto, Sudarsono Sudarsono, and Aan Eko Widiarto, 'Legal Implications of Regulating the Authority of the Regional Representative Council of the Republic of Indonesia (DPD RI) in Supervising Draft Regional Regulations and Regional Regulations', *International Journal of Social Science Research and Review*, 4.4 (2021), 40–46 <https://doi.org/10.47814/ijssrr.v4i4.117>

<sup>6</sup> Alamsyah and others, 'Applying the Advocacy Coalition Framework to Understand the Process of Local Legislation in Indonesia', *Sriwijaya Law Review*, 3.1 (2019), 34–34 <https://doi.org/10.28946/slrev.Vol3.Iss1.136.pp34-47>

<sup>7</sup> Victor Juzuf Sedubun, 'Philosophical Establishment Of Regional Regulations Based On Regional Characteristics', *Pattimura Law Journal*, 5.1 (2020), 1–19 <<https://doi.org/10.47268/palau.v5i1.476>>.

<sup>8</sup> Ngesti Prasetyo and others, 'The Politics of Indonesias Decentralization Law Based on Regional Competency', *Brawijaya Law Journal*, 8.2 (2021), 159–84 <https://doi.org/10.21776/ub.blj.2021.008.02.01>

by accommodating the interests of the local community and should be sociologically acceptable to the community.<sup>9</sup>

Principally, the purpose of regional regulations is to regulate (*regelling*), and this principle serves as the legal basis to bring about regional autonomy. Regional regulations govern all aspects of life in a regional scope, such as the relationship between the people and their regional government or between local stakeholders in business. Regional regulations are not only restricted to governing the social, political, and cultural life of the people, but they also bear the responsibility of governing the economy at a local level. In this regard, to improve the well-being and economy at a regional level, regional regulations serve as an essential instrument.<sup>10</sup> Regional regulations are generally deemed to be different in scope from legislative products made by the central government, but not in content or material. The content of regional regulations may not regulate matters that deviate from the principles of the unitary state of the Republic of Indonesia. No matter how broad the scope of regional autonomy is, regional autonomy must stay within the frame of the unitary state of the Republic of Indonesia.<sup>11</sup> Regional regulations are less broad than the central government's; the scope applies only to the local level. Therefore, regional regulations are dubbed local statutes. On the other hand, legislative products that are hierarchically above regional regulations have more comprehensive coverage at the national level. Legislation in Indonesia also recognizes hierarchies. The provisions of Article 7 paragraph (1) of Law 12/2011 explain that the types and hierarchies of laws and regulations in Indonesia consist of The 1945 Constitution of the Republic of Indonesia, Decree of the People's Consultative Assembly, Laws/government regulations instead of laws, Government regulations, Presidential decree, Provincial regulation, and District/city regional regulations.

Points 1-5 apply nationally and have a broader scope, while points 6-7 apply locally in provinces, regencies/cities. Regional regulations cover several dimensions, such as organisation, interpretation, and natural resources as support; hence, their implementation may be complex since two conflicting interests often have to be considered: those of the central government and those of regional governments. This issue leads to another problem associated with the authority to make certain legislative and regulatory products. A regional regulation is not only an implementing regulation from regulations made by the central government but also a reflection the aspirations of the people in the area. Regional regulations thus function as an instrument for social control and social engineering of society.<sup>12</sup>

Meanwhile, other laws and regulations only position themselves as written legal instruments for the national interest alone. In contrast, regional regulations do not because the scope of regional regulations is more specific in the regions, but they are still aligned with national

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<sup>9</sup> Syofyan Hadi and Tomy Michael, 'Forming a Responsive Local Law in the National Legal Framework', *International Journal of Social Science Research and Review*, 4.5 (2021), 1-5 <https://doi.org/10.47814/ijssrr.v4i5.135>

<sup>10</sup> Sirajudin and others, *Hukum Administrasi Pemerintahan Daerah* (Malang: Setara Press, 2016).

<sup>11</sup> Nurdin and Djuniarti, 'The Concept for Establishing Ideal Regional Regulations for Economic Improvement in Bone District', *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan*, 11.1 (2022) <https://doi.org/10.24252/ad.vi.32054>

<sup>12</sup> F.C. Susila Adiyanta, 'Karakteristik Responsif Peraturan Daerah Tentang Pajak-Pajak Daerah Sebagai Representasi Dan Partisipasi Kehendak Publik', *Administrative Law and Governance Journal*, 2.3 (2019), 380-99 <https://doi.org/10.14710/alj.v2i3.380-399>

interests. This is what makes a regional regulation not owned by other laws.<sup>13</sup> Thus, in terms of hierarchy, regional governments are positioned under the central government since the latter holds the authority to control policies made at a regional level. The central government should implement control in all aspects regarding the regulatory products made by the regional governments, including decrees issued by them.

Supervision of the implementation of regional government is carried out by the central government, which includes supervision the implementation of government affairs in the regions and supervised regional regulations and regional head regulations. Supervision of regional regulations can be in the form of evaluation and clarification.<sup>14</sup> Generally, control and evaluation of regulatory products at a regional level are required, considering that there is a great number of questioned regional regulations, as listed in the table 1.

Based on data from the Ministry of National Development Planning of the Republic of Indonesia (*PPN/Bappenas*), there were 1,039 questioned regional regulations in the period 2001–2006. In 2007, there were 773 problematic regional regulations, which rose to 1,033 in 2008, and these regulations were designated for scrapping<sup>15</sup>. Similarly, according to data obtained from the Regional Autonomy Implementation Supervisory Committee (henceforth referred to as *KPPOD*), there were 262 questioned regional regulations in the period 2010–2015, and this number increased to 586 in 2016. In 2021, according to the analysis of data from *KPPOD* by Eduardo Edwin, there were 347 regional regulations deemed to be problematic.<sup>16</sup> Since regional autonomy was in place, these questioned regulations were mostly concerning regional taxes and levies (henceforth referred to as *PDRD*). Of 5,054 regional regulations, 930 were designated for scrapping; twenty-four were scrapped by the regional governments concerned, while 506 were officially annulled by the Department of Home Affairs (*Depdagri*). From 2002 to 2009, 1,878 regional regulations were scrapped by the Ministry of Home Affairs (*Kemendagri*).<sup>17</sup> The data above indicate that numerous regional regulations have been scrapped.

**Table. 1**

Questioned regional regulations in Indonesia 2001-2021

Year	2001-2006	2007	2008	2009	2010-2015	2016	2021
	Ministry of National Development Planning of the Republic of			Ministry of Home Affairs ( <i>Kemendagri</i> )	the Regional Autonomy Implementation Supervisory Committee		the Regional Autonomy Implementation Supervisory Committee

<sup>13</sup> Mohamad Roky Huzaeni and Nuril Firdausiah, 'Inefisiensi Peraturan Daerah Di Indonesia', *Rechtenstudent Journal UIN KHAS Jember*, 3.1 (2022), 42–55.hu

<sup>14</sup> Aditya Syaprillah, 'Strategi Harmonisasi Penyusunan Peraturan Daerah Melalui Mekanisme Executive Preview', *Borneo Law Review*, 3.2 (2019), 96–112 <https://doi.org/10.35334/bolrev.v3i2.1077>

<sup>15</sup> Basri Mulyani, 'Dekonstruksi Pengawasan Peraturan Daerah Setelah Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani*, 2.1 (2020), 91–113 <https://doi.org/10.46601/juridica.v2i1.183>

<sup>16</sup> Muhammad Zulfikar, 'KPPOD Temukan 347 Peraturan Daerah Bermasalah', <https://www.Antaraneews.Com/Berita/2101386/Kppod-Temukan-347-Peraturan-Daerah-Bermasalah>, 2021

<sup>17</sup> Mulyani, 'Dekonstruksi Pengawasan Peraturan Daerah Setelah Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja'.

The number of questioned regional regulations	Indonesia (PPN/Bappenas)				(KPPOD)		(KPPOD)
	1,039	773	1,033	830	262	586	347

**Source:** Ministry of National Development Planning Data, 2001-2021

However, the provisions concerning the control of regional regulation drafting and evaluation of regional regulations work like a double-edged sword. These provisions require regional regulations to exist and to be reviewed. The constitution has authorised regional autonomy as outlined in article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, stating that “The regional governments of the province, the regency, and the municipality shall regulate and manage their own government affairs according to the principles of autonomy and duty of assistance”. The legal consequence is that regional governments have the authority to manage their affairs at a regional level within the purview of the unitary state, including regional fiscal matters related to PDRD.

As an independent legal entity, a regional area has the right to form policies concerning PDRD, which are outlined as regional regulations (regulatory products). In the drafting process of a regulation, there must be no intervention from any parties or even the central government. This provision is outlined in article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia: “The regional governments are entitled to determine regional regulations and other regulations for the execution of the autonomy and the duty of assistance”. Strict control mechanisms regarding the promulgation of regional PDRD regulations will certainly affect governance at a regional level. Regional governments seem to have no more room to govern PDRD issues due to the intervention of the central government through the setting up of related policies. Therefore, this research suggests that the mechanisms of control and evaluation of regional regulations concerning PDRD outlined in Law No. 1 of 2022 concerning financial relations between central and regional governments (henceforth referred to as the HKPD law) need to be further investigated to find out whether such mechanisms are pertinent to the concept of regional autonomy in Indonesia. Several studies concerning control of regional regulations performed by the central government have been previously conducted, but they did not specifically discuss the mechanisms of control and evaluation of regional regulations concerning PDRD in Indonesia. This research aims to comprehensively analyse the regulations concerning control and evaluation of regional regulations concerning PDRD outlined in HKPD law from the perspective of regional autonomy.

## 2. Research Method

This research employed the normative juridical approach. It focused on the conflicts of norms in national regulations concerning the mechanisms of control and evaluation of regional regulations concerning PDRD, governed by article 97, paragraph (2) letter b, article 98, and article 99 of HKPD law. These provisions do not comply with article 18 paragraph (2) and article 18 paragraph (6) of the 1945 Constitution, which are higher norms. The analysis process



involved statutory, conceptual, and analytical approaches. The legal data were studied based on documentation and qualitative analysis techniques.

### 3. Result and Discussion

#### 3.1. Classification and Relevance of the Type of Control and Evaluation of Regional Regulations

Based on the promulgation of the 1945 Constitution of the Republic of Indonesia, Indonesia was founded on the fundamentals of a unitary state<sup>18</sup>. According to article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Indonesia was divided into several territorial regional areas, including provinces and regencies/municipalities. Regional governments were established in each region according to the law.<sup>19</sup> However, in a unitary state, regardless of the extent of autonomy and the diverse specifics or privileges granted to each region, the principle of one unified legal system should not be ignored to the extent of making it seem as if two legal systems are prevailing in the country.<sup>20</sup>

The decentralisation policy has significantly changed the local government and its relationship with the central government.<sup>21</sup> Decentralisation or regional autonomy is a form of administrative structure in an organisation. It determines administrative methods for regulating regions, where central authorities provide the regions with legislative, judicial, and executive powers.<sup>22</sup> Regional governments are given the flexibility to exercise a variety of tangible authorities to improve services and the welfare of the community, while the central government focuses more on handling issues related to the existence of the state, including foreign relations, defence and security, justice, and monetary policies.<sup>23</sup> Within the scope of state administration, the central government holds the highest position and power to ensure the unity of the state. Therefore, the unitary state refers to the principle of uniformity such that the central government is responsible for guaranteeing uniformity in all aspects, especially in providing services to all citizens. In a unitary state, the central government manages all parts of the country. Due to the vast area and character of the regions, in addition to the limitations of the central government to handle all government affairs that guarantee public services, several matters are handed over to regional governments.<sup>24</sup> However, in terms of implementation, Indonesia follows the decentralisation principle in running its unitary state,

<sup>18</sup> I Putu Dedy Putra Laksana, 'Pengawasan Represif Pemerintah Pusat dalam Pembentukan Peraturan Daerah', *Acta Comitatus Jurnal Hukum Kenotariatan*, 4.1 (2019), 119–31 <https://doi.org/10.24843/AC.2019.v04.i01.p11>

<sup>19</sup> Ni'matul Huda, *Hukum Pemerintahan Daerah* (Bandung: Nusa Media, 2017).

<sup>20</sup> Desyanti Desyanti, Sudarsono Sudarsono, Muchamad Ali Safa'at, and others, 'Legal Implications of Regulating Judicial Review of District/City Regulations in Indonesia', *International Journal of Social Science Research and Review*, 5.1 (2022), 45–55 <https://doi.org/10.47814/ijssrr.v5i1.148>

<sup>21</sup> Tessa Talitha, Tommy Firman, and Delik Hudalah, 'Welcoming Two Decades of Decentralization in Indonesia: A Regional Development Perspective', *Territory, Politics, Governance*, 8.5 (2020), 690–708 <https://doi.org/10.1080/21622671.2019.1601595>

<sup>22</sup> Hadi Prabowo, 'Influence of Implementation of Development and Supervision Policy to the Effectiveness of Regional Autonomy in Indonesia', *Jurnal Bina Praja*, 2019, 63–73 <https://doi.org/10.21787/jbp.11.2019.63-73>

<sup>23</sup> Stefanus Yufra M Taneo and others, 'The Role of Local Government in Improving Resilience and Performance of Small and Medium-Sized Enterprises in Indonesia', *The Journal of Asian Finance, Economics and Business*, 9.3 (2022), 245–56.

<sup>24</sup> Genoveva Pupitasari Larasati, 'Implementasi Desentralisasi Dalam Kerangka Negara Kesatuan Republik Indonesia', *Jurnal Komunikasi Hukum*, 8.NO 1 (2022), 244–51.

giving rise to governmental tasks and reciprocal relationships between the central and regional governments. This further leads to the relationship between authority and control. Within the unitary state, the responsibility for implementing governmental tasks remains in the central government's hands. However, because of the system Indonesian government, one of which adheres to the principle of the decentralised state unit, then there are tasks certain things that are taken care of by themselves, giving rise to the reciprocal relationship that gives birth to a relationship authority, finance, supervision, and between units government organisation.<sup>25</sup>

Control and autonomy are two different concepts of a unitary state. *Control* is the main activity in management that tries to ensure that the expected planning will do the work.<sup>26</sup> Control is an instrument of the central government to oversee regional regulations and ensure that they comply with the policies made by the central government. *Autonomy*, however, allows independence and freedom in regional areas in a unitary state based on democratic fundamentals. Autonomy can also be characterised as an internal power-sharing mechanism designed to preserve a cultural and ethnic variety while protecting the integrity of a nation.<sup>27</sup> With autonomy, regional governments may initiate policies according to the interests and aspirations of the people. Thus, control and autonomy represent two elements held by the central and regional governments to bring about well-being and justice for all citizens. However, these concepts often trigger conflicts between the central and regional governments.<sup>28</sup> It is commonly accepted that demands for better decentralisation trigger regional autonomy through reform. From a historical perspective, Indonesia follows the principle of power distribution according to territorial autonomy.

Regional autonomy is characterised as independence that confers the right to pursue legal actions entailing looking after and administering regional duties and governmental operations. The autonomy principle and the duty of co-administration established in article 18, paragraph (2) of the 1945 Constitution is referenced in the execution of the regional autonomy idea. According to the idea of total independence, the constitution grants regional administrations independence to carry out the duties of regional governance. This idea takes into account regional rights that permit the administration of all governmental functions in the regional territories. Decentralization gave rise to certain rights, and it is legal to exercise them. Many factors, including organisation, power, funding, and control, are involved in the regional rights to administer all governmental responsibilities in regional territories. Nonetheless, to attain national aims and execute national policies, the central government must oversee regional governments' activities under the controlling or supervisory

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<sup>25</sup> Septi Nur Wijayanti, 'Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014', *Jurnal Media Hukum*, 23.2 (2017), 186-99 <https://doi.org/10.18196/jmh.2016.0079.186-199>

<sup>26</sup> Engkus Engkus, Cecep Wahyu Hoerudin, and Dedeng Yusuf Maolani, 'Supervision and Control of The Government Internal Supervisory Apparatus in The Implementation of Regional Autonomy', *International Journal of Science and Society*, 1.1 (2019), 56-69 <https://doi.org/10.54783/ijssoc.v1i1.16>

<sup>27</sup> Sinta Devi Ambarwati, Sudarsono Sudarsono, and Shinta Hadiyantina, 'Dualism of Authority to Review Regional Regulations for Regional Taxes and Levies in Indonesia', *International Journal of Social Science Research and Review*, 5.7 (2022), 315-28 <https://doi.org/10.47814/ijssrr.v5i7.482>

<sup>28</sup> Firdaus Firdaus, 'Refleksi Konstitusionalitas Pengawasan Peraturan Daerah Pasca Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015', *Jurnal Konstitusi*, 16.2 (2019), 391-391 <https://doi.org/10.31078/jk1629>

perspective<sup>29</sup>. To ensure that regional regulations are relevant to the principles or norms that apply, the processes of promulgation and implementation should be continuously supervised or controlled; control is intended to achieve the following purposes, according to Ateng Syafrudin prevent any abuse of authority, prevent any state loss resulting from administrative negligence of authority and maintain the interests and wisdom of regional governments.<sup>30</sup>

In implementing control over the regional regulations concerning PDRD, the criteria outlined in the control objectives require urgent consideration to enable optimal results. Control has to be implemented from the beginning of the enforcement of a policy and should also cover the aspect of regulation-making. Furthermore, control is a preventive action meant to prevent abuse, profligacy, errors, obstacles, and failure in an organisation's target achievement.<sup>31</sup> Principally, control is classified into several kinds based on the position of the organs or bodies authorised to conduct it internal and external.

Internally this control is carried out by a body or an organ structurally positioned within a governmental scope. An organisation uses internal control systems to ensure that its resources are used effectively and efficiently to achieve organisational goals.<sup>32</sup> This type of control is more focused on administrative control in an organisation, such as control based on hierarchy and carried out by superiors over subordinates or control performed by established expert teams of specific fields. Weak internal control, one of the causes of fraud, illustrates that implementing internal control is an absolute necessity in every organisation, especially in public organisations.<sup>33</sup>

External means, this type of control is performed by an organ or a body outside a governmental scope. In its implementation, this type of control involves using judicial bodies as instruments to carry out control. It may also involve other external parties, for example, media control over social aspects, control given through state organisations such as control over finance, and control carried out by a legislative body in the political realm.

Based on the objective, control is classified into two types, they are Preventive control and Repressive control. Preventive control is a type of control that has the authority to validate (*goedkeuring*). It prevents abuse in governmental administration at a regional level, harmonization of draft regional regulations as part of the preventive control that has the role of prevention and minimization strategies due to repressive control causing material and moral losses to local government.<sup>34</sup> Revrisond Baswir believes that this type of control is not only meant to prevent abuses but also to provide efficient and effective technical guidelines in

<sup>29</sup> Surya Mukti Pratama and Hario Danang Pambudhi, 'Kebijakan Kepala Daerah Dalam Kerangka Sistem Otonomi Daerah', *Jurnal Analis Hukum (JAH)*, 4.1 (2021), 120–30.

<sup>30</sup> Agus Kusnadi, 'Re-Evaluasi Hubungan Pengawasan Pusat Dan Daerah Setelah Berlakunya UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah', *Arena Hukum*, 10.1 (2017), 61–77 <https://doi.org/10.21776/ub.arenahukum.2017.01001.4>

<sup>31</sup> Agus Kusnadi.

<sup>32</sup> Bambang Pamungkas, Cendy Avrian, and Reisia Ibtida, 'Factors Influencing Audit Findings of the Indonesian District Governments' Financial Statements', *Cogent Business & Management*, 6.1 (2019) <https://doi.org/10.1080/23311975.2019.1673102>

<sup>33</sup> Resmiyati Ansar and Rizky Wahyu Utami Ohorela, 'The Effect of Local Government Size, Regional Complexity, Capital Expenditure, PAD, and Economic Growth on Weaknesses of Local Government Internal Control (Empire Study in Regency and City in North Maluku Province 2015-2019)', *International Journal of Environmental, Sustainability, and Social Sciences*, 3.2 (2019), 242–51.

<sup>34</sup> Hermi Sari BN, Galang Asmara, and Zunnuraeni Zunnuraeni, 'Pengharmonisasian Rancangan Peraturan Daerah Inisiatif Eksekutif Oleh Kementerian Hukum Dan Hak Asasi Manusia', *Jurnal Dinamika Sosial Budaya*, 22.2 (2020), 314–314 <https://doi.org/10.26623/jdsb.v22i2.2470>



governance. It could also serve as an instrument to set the authority of an institution regarding the tasks performed, responsibilities, targets, and objectives to be achieved.<sup>35</sup> While Repressive control is a type of control deals with suspension (*schorsing*) or revocation (*verneitiging*) of a regulatory product at a regional level following the validation and promulgation of the product. This type of control is performed after a governmental organ has taken action at a regional level; it compares what has taken place (*das sein*) with what has been planned (*das sollen*).

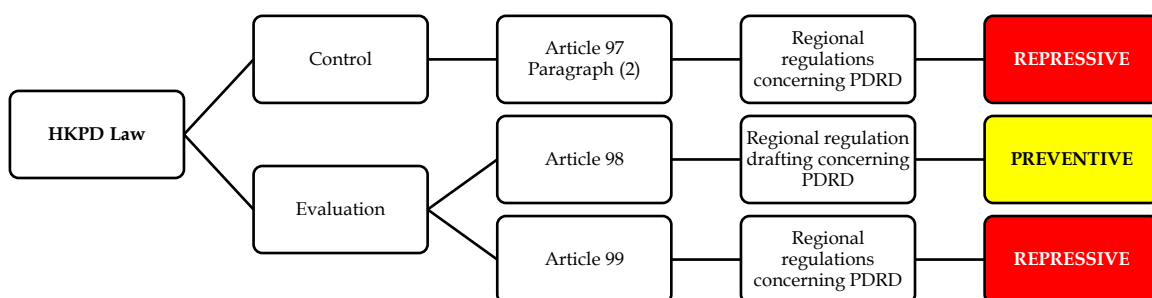
In terms of the time when control is performed, two types of control are presented as priori and posteriori. Priori meaning, not much different from preventive control, this type of control is performed before a decree or decision is issued. It is meant to prevent wrongdoings. For example, an approval given by a person of superior position is essential before an institution takes any actions. While posteriori type of control is intended to facilitate recovery from wrongdoings that have taken place. Like repressive control, this control is performed after an action has been taken by an organ of government or after the issuance of a government decree/decision. Judicial control through a judicial body plays a role in this type of control.

In terms of the nature of control towards the objects controlled, control consists of the several types, such as *rechtmatigheid* and *doelmatigheid*. *Rechtmatigheid* type of control aims to consider or assess an object according to its legality. For example, a judicial body exercises control within the scope of the law by focusing on the legality aspect. While *doelmatigheid* type of control is conducted to see matters from a benefit perspective. It may take place within the scope of the government, commonly known as built-in control. It sees internal administrative techniques not only according to the aspect of legality (*rechtsmatigheidsdoetsing*), but it also takes into account the benefit aspect.

This article categorises the processes used in controlling and evaluating regional legislation for PDRD based on the different types of control explained in this subsection. The following figure illustrates how both preventative and repressive control are involved in these control and evaluation systems, which are governed by HKPD law.

**Diagram 1.**

*Regulating control and evaluation of regional regulations concerning PDRD in compliance with HKPD law.*



<sup>35</sup> Agus Kusnadi, 'Re-Evaluasi Hubungan Pengawasan Pusat Dan Daerah Setelah Berlakunya UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah', *Arena Hukum*, 10.1 (2017), 61-77 <https://doi.org/10.21776/ub.arenahukum.2017.01001.4>

**Source:** Law No. 1 of 2022 Concerning Financial Relations Between The Central Government And Local Governments

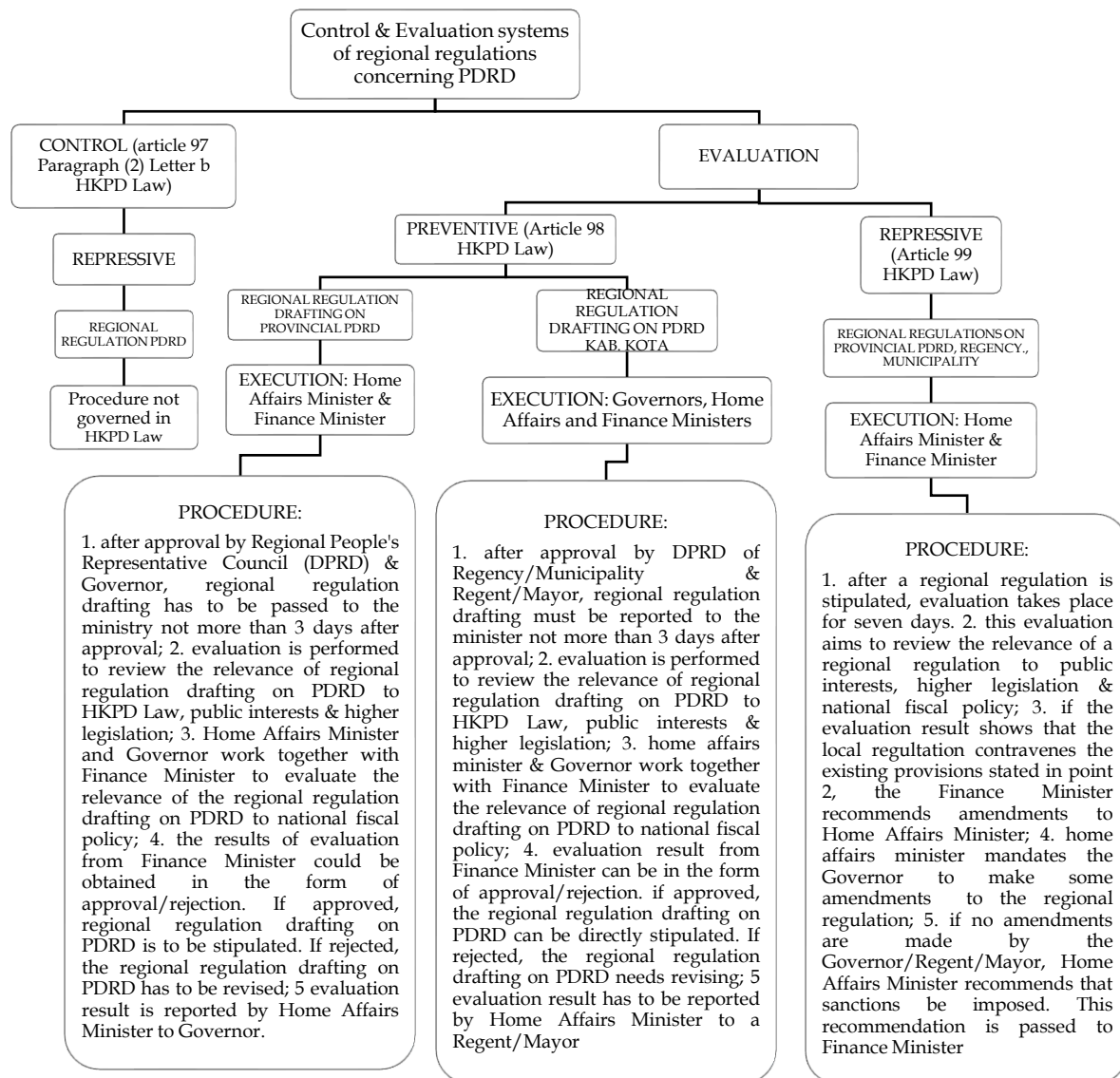
The following is an effort to control and evaluate preventive and repressive regional regulations on PDRD in the HKPD Law. Preventive control, commonly known as executive preview, is performed before regulation come into effect. This measure is not performed for all regulatory products but only for those governing particular matters. According to new legal provisions, certain regulatory products should only come into effect after approval, and regional regulations concerning PDRD are one of them. The outcome of preventative control is the regulated product's acceptance or rejection. On the other hand, repressive control, or executive review, is conducted by an authorised official on all regulatory products at a regional level, including decrees issued by regional heads and regional regulations. If the evaluation reveals that there is a problem with a regulation, then the outcome of repressive control will be suspension, amendment or revocation of a regulatory product. Suspension is intended to give regional governments a chance to be prepared before a regulatory product is revoked, as such a revocation often takes place after suspension.<sup>36</sup> From the above elaboration, it is clear that the fundamental differences between preventive and repressive control lie in their implementation, namely before or after the regulations are enacted and their legal implications. The following are details regarding the mechanisms of control and evaluation of regional regulations concerning PDRD as stipulated in HKPD law.

### **Diagram 2.**

*Control and evaluation systems of regional regulation drafting and regional regulations concerning PDRD in HKPD Law*

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<sup>36</sup> Basri Mulyani, 'Dekonstruksi Pengawasan Peraturan Daerah Setelah Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani*, 2.1 (2020), 91-113 <https://doi.org/10.46601/juridica.v2i1.183>



Source: Law No. 1 of 2022 Concerning Financial Relations Between the Central and Regional Governments

Both preventive and repressive control of regional regulations concerning PDRD are not new and have existed for long in Indonesia. Since the independence, regulatory control has existed but with differences in the regulatory provisions, in terms of scope and context. This regulatory control came as a consequence of the unitary state concept in Indonesia. During the regime of PDRD law <sup>37</sup>, certain provisions regarding the mechanisms of control and evaluation of regional regulations concerning PDRD were in force, but they were scrapped by HKPD law, which serves as the only law that governs the control and evaluation of regional regulations concerning PDRD. HKPD law also gives authority to the central government to control and evaluate problematic regional regulations concerning PDRD. Such regulations are deemed to affect the ease of running businesses or investment ecosystems at a regional level. The conferment of this authority on the central government is intended to provide protection and regulation that are just, support national fiscal policy, encourage the growth of competitive

<sup>37</sup> Negara Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 28 Tahun 2009 Tentang Pajak Daerah Dan Retribusi Daerah*, 2009.

businesses and industries, and support all policies that ease investment at a regional level. Principally, controlling and evaluating the regional regulations concerning PDRD outlined in HKPD law are not much different from those in PDRD law. They both regulate the mechanisms of controlling and evaluating regional regulations in a preventive and repressive way. Some differences between the two are detailed as follows:

**Table 2.**

*Comparison between the mechanisms of control and evaluation of local regulations concerning PDRD in PDRD law and HKPD law*

**DIFFERENT REPRESSIVE CONTROL MECHANISMS OF REGIONAL REGULATIONS CONCERNING PDRD**

<b>According to Article 158 of Law No. 28 of 2009 concerning PDRD</b>	<b>According to Article 99 of Law No. 1 of 2022 concerning HKPD</b>
<ul style="list-style-type: none"> <li>• <b>Executor:</b></li> <li>1. Finance Minister (makes a recommendation to revoke a regional regulation sent to the Ministry of Home Affairs) and</li> <li>2. Minister of Home Affairs (requests revocation of a regional regulation to the President)</li> <li>• The revocation of a regional regulation is stipulated under a presidential regulation</li> <li>• The regional regulation is declared effective if the central government through the President does not issue presidential regulation to revoke the regional regulation.</li> <li>• If the revocation is approved, the Regional House of Representatives (DPRD) along with a Regional Head may revoke the regional regulation concerned.</li> <li>• A regional area has the right to raise objections to the revocation of the regional regulation through the presidential regulation.</li> <li>• Objections to the revocation of a regional regulation are raised by a Regional Head to the Supreme Court.</li> </ul> <p>The presidential regulation is then revoked and holds no permanent legal force if objections raised to the Supreme Court by the Regional Head are granted (either partly or fully)</p>	<ul style="list-style-type: none"> <li>• <b>Executor:</b></li> <li>1. Finance Minister (recommendations to make some amendments to the regional regulation are sent to the Minister of Home Affairs) and</li> <li>2. The Minister of Home Affairs (mandates the governor/the regent/the mayor to make amendments to the regional regulation) and</li> </ul> <p>If no amendments are made after the time outlined in the law concerning regional regulations, sanctions could be imposed according to the recommendation given by the Ministry of Home Affairs</p>

**Source:** Ministry of National Development Planning Data, 2023

The table indicates that the control mechanisms as governed in PDRD law are stricter than those outlined in HKPD law. Request for revocation of regional regulations deemed to contravene public interests, a higher law, and/or a national fiscal policy could be made through a presidential regulation according to PDRD law. However, regarding the regulatory provisions outlined in HKPD law, a problematic regional regulation concerning PDRD cannot directly be revoked, but it is rather amended. In terms of authority, this study disagrees with the mechanisms to control and evaluate regional regulations concerning PDRD as governed in the PDRD law and HKPD law because only the Supreme Court holds the authority to review or assess regional regulations, which occupy a lower position than laws. This is relevant to the constitutional mandate as stipulated in article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, stating that "The Supreme Court shall have the

authority to adjudicate at the level of cassation, to review statutory rules and regulations below the laws against the laws, and shall have other authorities granted by the laws." Thus, the president, Finance Minister, and Minister of Home Affairs do not have any authority to decide whether a regional regulation contravenes a higher law.

With the control and evaluation of regional regulations, regional governments do not have the freedom to regulate policies concerning PDRD independently at a regional level. Also, regional governments have no authority to direct regional fiscal policies. Policies to control and evaluate regional regulations concerning PDRD indicate that the central government holds a stronger power than the regional governments. Theoretically and conceptually, the implementation of the mechanisms of control and evaluation of regional regulations concerning PDRD should not cause any problems for Indonesia, which follows the unitary principle. However, the absence of clear regulations concerning control and evaluation mechanisms for regional regulations concerning PDRD, especially in HKPD law, tends to enable the central government to have a higher authority to intervene in regional governments. This tends to move governance towards centralisation (re-centralisation), which principally contravenes the concept of regional autonomy in Indonesia.

### 3.2. The Ideal Model of Mechanisms to Control and Evaluate Regional Regulations

The mechanisms to control and evaluate a regional regulation restrict the space for regional governments to exercise their authority, these restrictions are contrary to the spirit of regional autonomy, in which regions are given the freedom and independence to manage their regions.<sup>38</sup> Control mechanisms in Indonesia involve preventive control by the central government (also known as executive preview), repressive control (executive review), and judicial review performed by a judicial body, resulting from the check and balance principle between organs that exercise the state's authority.<sup>39</sup> This principle was initiated due to the power distribution system in Indonesia, which separates executive, legislative, and judicial powers according to the *trias politica* doctrine. Thus, each power is exercised independently. This power distribution applies universally to all civil law and common law states.<sup>40</sup>

The connection between the central and regional governments has changed to some extent, and this change depends on the policies taken by each regime that has ruled. Control of regional governments by the central government often triggers conflict of interests and power struggle between the two, and this leads to a classic debate. On one hand, the powers held by the central government lead to more centralisation. On the other hand, decentralisation is needed to strengthen governance at a regional level. Notably, inconsistency in policies regarding the relationship between the central and regional governments in terms of authority became obvious after the reform. The government's policies based on an extensive decentralisation system were initially regulated by Law No. 22 of 1999 concerning Regional Government, but it did not last long. In 2004, the government's policies were directed back to centralisation, which was principally intended to strengthen the powers of the central government. This condition persisted until Law No. 23 of 2014 regarding Regional Governance was approved.

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<sup>38</sup> Dita Dwi Arisandi dan Lilik Pudjiastuti, *Pengawasan Pemerintah Pusat Terhadap Peraturan Daerah Kabupaten/Kota Di Bidang Perizinan*, 2017.

<sup>39</sup> Riza Novandra, 'Pengawasan Peraturan Daerah Setelah Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015 Dan 56/PUU-XIV/2016', *RechtIdee*, 14.2 (2019), 186-206 <https://doi.org/10.21107/ri.v14i2.4764>

<sup>40</sup> Rika Marlina, 'Pembagian Kekuasaan Dalam Penyelenggaraan Pemerintahan Di Indonesia', *Jurnal Daulat Hukum*, 1.1 (2018), 171-78 <http://dx.doi.org/10.30659/jdh.v1i1.2631>



Law concerning regional regulations seems to outline some policies that tend to give more authority to the central government than to regional governments. This is indicated that regulatory provisions implying that sanctions are imposed on regional governments over failure to comply with control mechanisms, regulatory provisions regarding control by the central government of regional governments in Indonesia, the central government's authority through the Minister of Home Affairs to revoke regional regulations, and the possibility to scrap the mechanism of appeal that regional governments may submit over the revocation of a regional regulation by the central government. These all indicate that regional autonomy has shifted towards centralisation or, in this regard, re-centralisation. Local government controls are becoming tighter, and this limits their workspace. That is, this reduces the freedom of regional governments to carry out their governmental duties by the principle of autonomy.

Control that is not conducted proportionally may give rise to *ultra vires* actions by regional governments. When this happens, governance in the unitary state will be threatened. Therefore, the mechanisms used to control and evaluate regulatory products, especially those concerning PDRD, should have clear scopes. The central government can exercise control through the evaluation of draft regional regulations and regional regulations in tax and sector retribution. Thus, the regional government's authority in administering the government, especially in the area of regional taxes and levies, reflects a fully decentralized system. Philosophically, the authority of the central government to intervene. This is in line with the theory expressed by Clarke and Stewart about the model of the relationship between the central government and local government, namely the agency model. In this model, local government does not have enough powers, so its existence is more as an agent of the central government tasked with carrying out the policies of the central government because in this model, there are various regulations contained in laws and regulations as a control mechanism very prominent, and the regional financial system mostly comes from central aid government.<sup>41</sup>

To maintain the ideal concept of regional autonomy, re-conceptualisation of the mechanisms of control of regional regulations concerning PDRD in Indonesia has to be carried out. If the methods of control and assessment do not go through a review procedure at the court, there is opportunity for the central government to act arbitrarily in regards to their control over regional governments. This situation can certainly threaten the existence of regional autonomy. However, the executive body has the authority to control and evaluate regulatory products that have not been promulgated or that have no permanent legal force.<sup>42</sup> As proposed by the author in the diagram below:

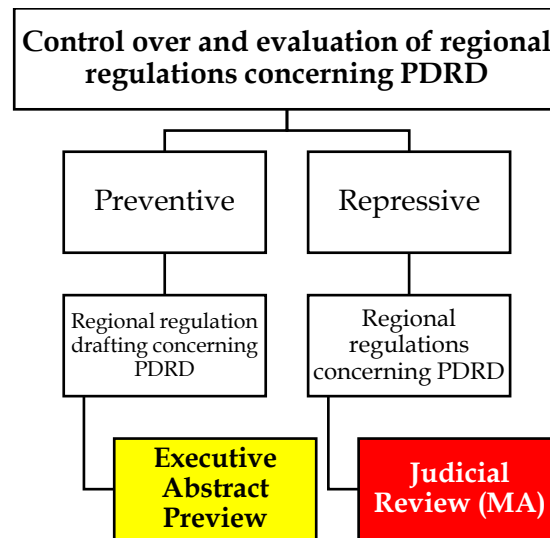
### Diagram 3.

*The concept of re-conceptualisation of control and evaluation mechanisms for regional regulations concerning PDRD in HKPD law*

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<sup>41</sup> Nabila Alif Radika Shandy and Allan Fatchan Gani Wardhana, 'Bagaimana Hubungan Pusat Dan Daerah Pasca Penetapan Undang-Undang Cipta Kerja? Kasus Penetapan Pajak Daerah', *As-Siyasi: Journal of ...*, 2.1 (2022), 94-114.

<sup>42</sup> Novia Maharani Sukma, 'Analisis Yuridis Pembatalan Perda Oleh Menteri Dalam Negeri', *Jurnal Ilmiah Galuh Justisi*, 5.1 (2017), 1-21 <http://dx.doi.org/10.25157/jigj.v5i1.150>



**Source:** Created by the author

Clear scopes should have been set for the executive powers of control and evaluation of regional regulations. This would ensure that the intervention of the central government in the regional governments affairs is not excessive. This measure needs to be implemented in regulations concerning PDRD governed in HKPD law. The executive body or central government through the Minister of Home Affairs or the Minister of Finance should only have the authority to conduct executive preview at the stage of regional regulation drafting concerning PDRD, not executive review of regional regulations concerning PDRD. With this approach, before the regional regulation is passed, the central government through its ministers must ensure that it is in accordance with public interests, higher legislation, and national fiscal policy. The conduct of an executive preview is expected to minimise the number of questioned regional regulations concerning PDRD in Indonesia. Thus, repressive action regarding regional regulations concerning PDRD will be minimised. HKPD law, as the only law governing the mechanisms to control and evaluate regional regulations concerning PDRD, needs immediate revision by requesting a judicial review from the Supreme Court. This request should emphasise on clear scopes about the mechanisms of control and evaluation of regional regulations concerning PDRD in HKPD law.

Issues regarding control and evaluation have been long debated. In the era of PDRD law, several regional areas raised objections, implying that regional regulations require a tough, costly, and time-consuming process to make; thus, it is unfair for a regulation to be revoked by the central government through the Minister of Home Affairs. The mechanism of revocation of regional regulations by the central government is not fully accepted by regional areas.<sup>43</sup> Departing from this issue, the mechanisms of control and evaluation of regional regulations concerning PDRD stipulated in HKPD law, which is the latest law, have undergone some changes, and these changes have been made to promote regional autonomy. Although the mechanisms of control and evaluation of regional regulations concerning PDRD have been amended, and these amendments allow the revision of questioned regional regulations and not the direct revocation of such regulations, it is important to point out that regional regulations with permanent legal force should be reviewed and assessed by the Supreme Court. This is because regional regulations are joint political products of the DPRD and a Regional Head, serving as a legal instrument to run governance at a regional level.

<sup>43</sup> Sukma.

Judicial review is closely related to the principle of an independent judiciary. Principally, a judicial review releases a statement declaring that a regional regulation is valid or invalid, or cancels a regional regulation that contravenes a higher law. Thus, this control can be classified as a repressive control<sup>44</sup> by the Supreme Court, which is constitutionally authorised to take any action within its capacity as an independent judicial body not subject to another party, such as the executive body.

In terms of hierarchy, regional regulations are classified as part of legislation, but they occupy a lower position laws within the Indonesian jurisprudence hierarchy.<sup>45</sup> Thus, a local regulation that has passed through appropriate procedures for the sake of public interest should not be easily amended or evaluated by the central government through the Minister of Home Affairs. If an evaluation has to take place, there should be a legal procedure through the Supreme Court. Viewed from the aspects of decentralization, regional autonomy, and central and regional relations within a unitary state's framework, the central government's authority to evaluate local regulations can be justified. However, the Supreme Court has the authority to examine the constitutionality (formal and material) of regional regulations. Parties may promptly request a review of a district, municipal, or regional rule before the Supreme Court if it causes them harm. That is enough if the central government considers that the regional regulation violates higher laws and regulations or the public interest. For the government to determine only to be submitted to the Supreme Court for re-examination both formally and materially.<sup>46</sup>

Since the Supreme Court holds this authority. The 1945 Constitution of the Republic of Indonesia implies that judicial review, with its permanent legal force, is the only way to review a regulation, and it is done through the Supreme Court, not an executive review. Although control and evaluation mechanisms are required within the context of regional autonomy, efforts should be made to ensure that they do not contravene the regional autonomy concept as governed in the Constitution. This study recommends the reconceptualisation of the mechanisms of control and evaluation of regional regulations concerning PDRD in HKPD law to achieve better control and evaluation systems than those currently in place.

#### 4. Conclusion

Financial Relations Between Central and Regional Governments Law classifies control and evaluation of regional regulations concerning PDRD into two: preventive and repressive control, as outlined in Article 97 Paragraph (2), Article 98, and Article 99. If the systems of control and evaluation are too strict, they will reduce the freedom of regional governments in forming fiscal policy at a regional level. However, control and evaluation are still required for regional regulations within the context of a unitary state. To maintain the ideal concept of regional autonomy, a reconceptualisation of the mechanisms of control and evaluation of

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<sup>44</sup> I Putu Indra Prasetya Wiguna and Ni Luh Gede Astariyani, 'Pengaturan Pengawasan Peraturan Daerah Oleh Dewan Perwakilan Daerah Pengaturan Pengawasan Peraturan Daerah Oleh Dewan Perwakilan Daerah Republik Indonesia', *Jurnal Magister Hukum Udayana (Udayhana Master Law Journal)*, 8.4 (2019), 539-48 <https://doi.org/10.24843/JMHU.2019.v08.i04.p08>

<sup>45</sup> Alwadud Lule, 'Dualisme Pengujian Peraturan Daerah: Legitimasi Konstitusional Dan Mengakhiri Ambivalensi Penyelesaian Hukum', *Jurnal Crepido*, 03.November (2021), 110-19 <https://doi.org/10.14710/crepido.3.2.110-119>

<sup>46</sup> Rahmat Qadri Nasrun, Husni Djalil, and Efendi, 'Kedudukan Peraturan Daerah Yang Dibatalkan Oleh Keputusan Menteri Dalam Negeri Setelah Putusan Mahkamah Konstitusi Nomor 137/PUU-XIII/2015', *Syiah Kuala Law Journal*, 3.1 (2019), 95-113.

regional regulations concerning PDRD is required in Indonesia. This can be achieved by providing clear scopes regarding control and evaluation. Only executive preview at the drafting stage of regional regulations concerning PDRD should be carried out by the central government. This will help to minimise the application of repressive measures. If an evaluation needs to be performed or amendments to a regional regulation need to be made, the procedure to do so should involve the Supreme Court as the only judicial body that holds the authority to review regional regulations, which are positioned lower than laws.

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