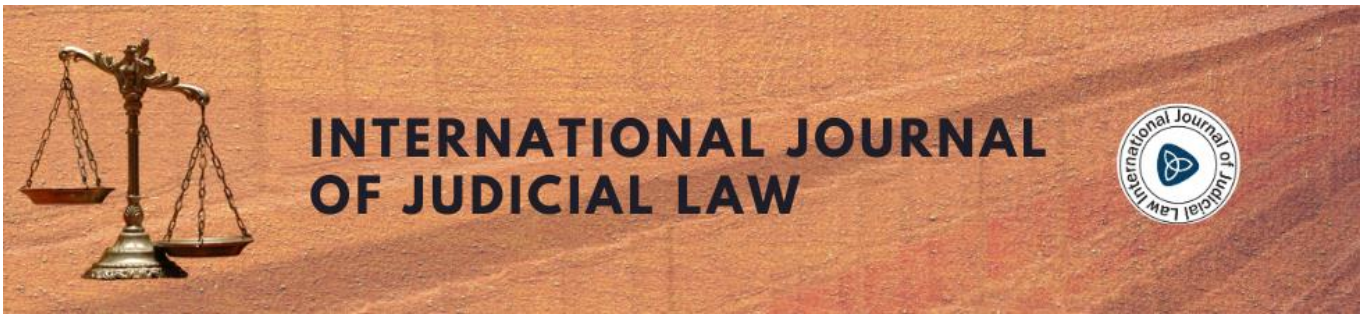




The Authority of Local Governments in the Formation of Local Regulations with Religious Nuances

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Abstract

This research aims to analyze local governments' authority in forming local regulations with religious nuances. This research uses normative legal methods with statutory, conceptual, and case approaches. The results show that the regional autonomy policy provides a wide space for local governments to regulate and develop their regions based on local potential and community aspirations. In the context of autonomy, local governments have full authority to form local regulations that regulate local government affairs, both in terms of substance and technical implementation. The establishment of religious local regulations becomes relevant when adjusted to the social conditions, culture, and characteristics of the local community. Therefore, public participation becomes an important aspect in the formulation process of local regulations, especially local regulations with nuances of Islamic law or other religions, to avoid conflict and reflect local values. However, the regional authority to form local regulations with religious nuances is still limited by the hierarchy of higher laws and regulations, so that testing the substance of local regulations with religious nuances must still refer to national legal norms.

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Keywords: Local Government Authority, Local Regulations, Religious Nuances, Regional Autonomy

1. Introduction

Indonesia is a state of law (rechtstaat), as stated in Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia. Indonesia Year 1945 (UUD NRI Year 1945) Which is a state foundation ^[1] nation Indonesia, so that with thus all aspects life in region Country Unity Republic Indonesia (NKRI) must based on on law And all product legislation – the applicable laws and derivatives. Willem Koninjenbelt put forward one of the important elements of the idea of a state of law, namely that the implementation of government power must be based on the authority granted by the Constitution or recognized laws (wetmatigheid van bestuur) ^[2], so that if the authority to carry out Government or action Government Which given to the Government not based on the Constitution or Law, then the Government's actions are considered invalid (stupid). However Indonesia as country Which adhere to the concept of the welfare state state) so that the goal of the state is to advance welfare general as stated In the opening of the 1945 Constitution, the fourth paragraph also has consequences for the implementation of government, namely that the government must play an active role in intervening in the social and economic life of the community.

1 Hans Nawiasky, General Laws of Justice thanks System lichen Grundbegriffe, Einsiedeln /Zurich/ Koln, Benziger, cet. 2, 1948, p.31

2 William Royal Belt, Headband van Administrative Law, Lemma, 1988, pp. 36–37.

The central government has delegated authority to regional governments to regulate and manage regions according to their respective potential, including regarding formation Regulation Area. Regulation Fixed area No may contradictory with Regulation the legislation above it and may not regulate matters regarding matters that remain the authority of the central government, one of which is religious affairs. Regional regulations are made to create order in the lives of the people in the relevant region.

Law No. 23 of 2014 concerning Regional Autonomy, Article 1 (paragraph 6) states that the term Regional Autonomy is the right, authority, and obligation of autonomous regions to regulate and manage their own Government Affairs and the interests of local communities in the Unitary State of the Republic of Indonesia. With the existence of Regional Autonomy, the Regions then compete to regulate all matters related to their Regions into Regional Regulations. (Regional Regulation), especially Regional Regulation About procedures for worship in each each region or regional regulation containing religious nuances. In On the other hand, there are some people in the regions who want their regions to issue regional regulations with religious nuances, which are also increasingly widespread, thus giving rise to pros and cons.

On the other hand, Indonesian society is known for its multiculturalism, so that in determining regional regulations, it will involve the values, systems, culture, customs, and politics that they adhere to. The existence of this multiculturalism has led to the development of regional regulations that reflect their respective regions. each based on with customs, culture and existing regional systems, for example, Islamic-themed Regional Regulations in Indonesia also play a role in the formation of Regional Regulations - Regional Regulations that have Islamic teachings or Regional Regulations that directly reduce Islamic teachings, namely Sharia Regional Regulations, for example Polewali Mandar Regency Regulation No. 14 of 2006 concerning the Islamic Community Movement to Read the Qur'an, Bangka Regency Regional Regulation No. 4 Years 2006 About Management Zakat, Infaq, and Shadaqoh, Regional Regulation of Gorontalo Province No. 22 of 2005 About Must Read Write Al-Quran for Muslim students, Maros Regency Regulation No. 15 of 2005 concerning Movement Blind Script And clever Read Al- Qur'an in the Region Regency Maros, Regulations Area Regency South Lampung No. 4 of 2004 concerning the Prohibition of Prostitution, Immorality, and Gambling as well as Prevention Actions Masksiat in the South Lampung Regency area.

Not only Regional Regulations that have an Islamic nuance (Syariah Regional Regulations), in several regions with a majority population of a certain religion, several Regional Regulations were found that were adjusted to the teachings of their religion, such as Christianity (Gospel Regional Regulation). Manokwari Regional Regulation of West Papua Province concerning the Implementation of Law Based on the gospel, which specifically explains the prohibition of alcoholic beverages and prostitution activities, regulations

regarding clothing and fellowship, including the prohibition of the use and wearing of religious symbols, and the prohibition of the construction of houses of worship of other religions near churches in 2007 and there are still many other gospel regulations that are spread throughout the archipelago^[3].

The emergence of religious-themed regional regulations has given rise to many pros and cons in society and among legal experts. The Chief Justice of the Constitutional Court for the 2008-2013 period, who was also the Minister Coordinator of Politics, Law and Security (Menko Pulhukam) for the 2019-2024 period, Prof. Mahfud MD, assessed that products in the form of sharia law and the like are civil laws that do not need to be designed into Regional Regulations or Regional Head Regulations. Prof. Mahfud emphasized that efforts to design sharia regulations or other religious regulations would be in vain. It should not include very personal religious regulations regulated in the Regional Regulation, because in an era that is free to worship like now, people do not need to be regulated in worship. "For example, people must be diligent in praying, people must fast, must be polite, no need to be regulated"^[4]. Along with the development of the times and to accommodate all interests at the regional level, namely Law No. 23 of 2014 concerning Regional Government, the Law explicitly states that the Regional Government regulates and manages its own Government affairs according to the principles of autonomy and assistance tasks. The Regional Government organizes Government affairs that are under its authority, except for Government affairs that are determined by this Law to be Government affairs. Government affairs that are under the authority of the central Government, namely foreign policy, defense, security, justice, national monetary and fiscal affairs, and Religion^[5].

Related to the implementation of special autonomy, the Aceh Government is given special authority for the Aceh Region (Lex Generalis) because it has a special law to form regional regulations to accommodate the special nature of its Region. As a special autonomous region, Aceh has a Regional Regulation called "Qanun" at the provincial level and Qanun Regency or City.

Formal testing of the Regulations below the law in this case the Regional Regulation regulations use the touchstone of the laws above it in accordance with the 1945 Constitution of the Republic of Indonesia and Law No. 12 of 2011 concerning the Formation of Legislation jucto Law Number 15 of 2019 to cancel the Regional Regulation containing religious nuances raises new legal problems. This gives the impression that the supervision carried out regarding the substance of the Regional Regulation that should not limit regional autonomy and has been passed and enforced so that it has the potential to cause greater conflict if it is canceled, so that until now there are still many Regions that do not have special autonomy still forming and enacting Regional Regulations with religious nuances.

The Plenary Session of the Constitutional Court (MK) which is open to general on date 5 April 2017 through Constitutional Court Decision Number 137/PUUXIII/2015 states: Article

3 M. Jefri Arlinandes Chandra, *Sharia Regional Regulations in the Context of Indonesian Constitutional Law*, Faculty of Law, Dehasen University, Bengkulu, 2022.

4 Tempo.com, "Mahfud MD Says Sharia Bylaw Has Potential for Discrimination." Time, January 16, 2025.

5 Law no. 23 of 2014 concerning Regional Government, Article 10 Paragraph (1)

251 of the Law Number 23 Year 2014 About Local government related with authority cancellation Regulation District/city area No Again Can canceled Minister In State or governor. The cancellation of Regional Regulations (Perda) is in the hands of the Supreme Court (MA). This authority is granted through the Decision of the Constitutional Court (MK) Number 137/PUU-XIII/2015 and Decision Number 56/PUU-XIV/2016.

The formulation of the problem raised in this study is what is the basis of the authority of the Regional Government in forming Regional Regulations as a manifestation of Regional Autonomy and how is the validity of Regional Regulations with religious nuances formed by the Regional Government.

2. Research Methods

This research uses the normative legal research type. Normative legal research is a research that examines positive legal norms of Legislation and Legal Norms as a basis for analyzing a problem (Literature Research) ^[6]. Normative legal research uses data in the form of legal sources, namely such as Legislation, court decisions, and theories and opinions of scholars ^[7]. In this Normative legal research, the concept of law can be seen as what is written in Legislation ^[8] (law in books), not the practice of legal behavior carried out by society (law in action).

The nature of legal research in this study is prescriptive legal research, namely research that aims to provide advice or recommendations on what should be done in relation to a legal problem. This research does not only aim to understand or explain the law, but also to provide normative solutions based on legal principles, statutory regulations, or legal doctrine.

3. Discussion

A. The basis for the authority to form regional regulations in Indonesia as a manifestation of regional autonomy.

The existence of Regional Regulations (Perda) is a necessary prerequisite (*conditio sine qua non*) in implementing regional autonomy. With the changes to Article 18 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the implementation of regional autonomy has significantly gained a strong constitutional basis. Even in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, Perda acknowledged as Wrong One form regulation laws formed by the regional government in Indonesia. Regional regulations are intended to implement higher legal regulations and accommodate the special conditions of the region concerned ^[9].

Existence Regional Regulation as part from regulation legislation constitutionally stated in Article 18 Paragraph (6) of the 1945 Republic of Indonesia Constitution which states that " Regional Governments have the right to establish Regional Regulations and other regulations to implement autonomy and assistance tasks ^[10]". Then the formalization of regional regulations as part of the legislation is also regulated

in the MPR Decree No. III/MPR/2000 Concerning Legal Sources and the Order of Legislation. This cannot be separated from the effort to strengthen the realization of regional autonomy, so it is necessary to place Regional Regulations in the order order regulation legislation. Reason This appear Because in MPRS Decree No. XX/MPRS/1966 Concerning the Sources of the Indonesian Legal Order and the Sequence of Legislation, the existence of regional regulations is not stated And only made based on clause "regulation executor other" And clause "And etc".

Even though MPR Decree No. III/MPR/2000 has emphasized the existence of Regional Regulations as part of the statutory regulations, because this MPR Decree contains the order and naming (nomenclature) ambiguous forms of regulation ^[11], then in further developments as a form of implementation of the order of the provisions of Article 22 A of the 1945 Constitution (Second Amendment), which states that the procedures for the formation of laws are further regulated by law, Law of the Republic of Indonesia Number 15 of 2019 concerning Procedures for the Formation of Legislation has been stipulated.

Formation regulation area is manifestation delegated authority to government area in frame implementation autonomy area for operate rights and obligations. In its formation has set a series the principles that include clarity objectives, institutions or proper forming organ, conformity between types and materials load, can implemented, usability and usability, clarity formulation as well as openness. Besides that too, no may contradictory with regulation more legislation high. All of these parameters actually aims for the concept autonomy area walking on the path that has been given set, the more get closer service government to society and most importantly No threatens the Unitary State of the Republic of Indonesia.

The content of the regulations (the undertaking) area is one of factor important for understood in a way good. Mistake in understanding implications for overlapping the overlap material load Regional Regulation with material load regulation other legislation, both in a way hierarchy and also between regulation legislation of the same level. As a result, it becomes reason law for cancelled. In Law no. 15 of 2019 Concerning Formation Regulation Legislation emphasized: "The content of the material Provincial Regional Regulations and Regency /City Regional Regulations contain material load in frame organization autonomy area and tasks assistance as well as accommodate condition special area and/ or description more carry on Regulation More legislation high".

The same thing determined in article 136 of law No. 32 of 2004, that:

- a) Regional Regulation set by head area after get agreement together with the DPRD;
- b) Regional regulations are formed within the framework of implementing regional autonomy for provinces/districts/cities and assistance tasks;

6 Soerjono Soekanto & Sri Mamudji, Normative Legal Research: A Brief Review, Rajawali Pers, Jakarta, 2003, p. 13.

7 Johnny Ibrahim, Theory and Methodology of Normative Legal Research, Bayumedia Publishing, Malang, 2006, p. 24.

8 Amiruddin & H. Zainal Asikin, Introduction to Legal Research Methods, Rajawali Pers, Jakarta, 2006, p. 118.

9 Good luck Santoso, " Formation Regulation Area in Era Democracy", Legal Reflections, vol. 8, no. 1, (2014): p. 2

10 Change Second, Year 2000.

11 Look Jimly Asshidique, Constitution and Constitutionalism, Secretariat General and Clerk's Office of the Constitutional Court, Jakarta, 2005, p. 311.

- c) The regional regulations as referred to in paragraph (1) are a further elaboration of higher statutory regulations, taking into account the characteristics of each region;
- d) The regional regulations as referred to in paragraph (1) are prohibited from being contrary to the public interest and/or higher laws and regulations. Based on these provisions, it can be stated that the contents of regional regulations include:
 - Regional regulations that regulate the implementation of regional autonomy by taking into account the special conditions or characteristics of each region.
 - Regional regulations regarding the implementation or further elaboration of regulations legislation that more high. Regulation area Regarding the implementation of assistance tasks.

Therefore, there are several types of regional regulations that apply in Indonesia, the implementation of which has a relatively narrow area of application because it only applies in the regions. Regional regulations are Legislation established by the Regional People's Representative Council with the joint approval of the Regional Head (governor or regent/ mayor).

The content of regional regulations is all content in the context of implementing regional autonomy and assistance tasks, and accommodates special regional conditions and further elaboration of higher legislation, including his; ^[12]

▪ Regulation area Province

Regulation Area Province, Which applicable in province the. The Provincial Regulation is formed by the Provincial DPRD with the joint approval of the Governor. The scope of this provincial regulation is the entire province. can use this Regional Regulation which was made by the provincial DPRD together with the Governor.

▪ Regulation area regency or city

Regency/City Regional Regulations, which apply in the regency/city. Regency/City Regional Regulations are formed by the Regency/City DPRD with the joint approval of the Regent/Mayor. Regency/City Regional Regulations are not subordinate to Provincial Regional Regulations. Similar to provincial regulations, regency/city regulations only apply in their respective regions where the regulations are made by the Regency/City DPRD together with the Regent.

In addition to the types of regional regulations mentioned above, there are regulations that stipulate that regional legal products must comply with higher regulations, namely Law No. 15 of 2019 concerning the Formation of Legislation, Law No. No. 30 of 2014 concerning Government Administration, Regulation of the Minister of Home Affairs No. 80 of 2015 and Regulation of the Minister of Home Affairs No. 120 of 2018 concerning the Formation of Regional Legal Products. With words other, beside For carry out provision from Laws and regional regulations can also be formed to implement the provisions of the 1945 Constitution of the Republic of

Indonesia directly, or to further explain the provisions of other higher laws and regulations, namely presidential regulations and regional regulations. government. Like Which has determined Chapter 12 Constitution No. 15 of 2019, which contains material regarding the formation of regional regulations. The material contains: (a) all the material needed in order to to organize autonomy area And task assistance, (b) accommodate conditions that are specific to the region, and (c) explain the provisions of higher statutory regulations, namely presidential regulations, government regulations and laws or government regulations in lieu of laws.

Regional Regulations as referred to in the law include provincial Regional Regulations made by the provincial people's representative council together with the governor and district/city Regional Regulations made by the district/city people's representative council together with the regent/ mayor. Further provisions regarding the procedures for making Village Regulations/equivalent regulations are regulated by the district/city Regional Regulations. The types of legislation other than those referred to in Article 7 paragraph (1) are recognized as existing and have legal force. tie throughout ordered by Regulation Higher legislation. Power law Regulation Legislation is in accordance with hierarchy as referred to in Article 7 paragraph (1) ^[13].

Taking into account the provisions regarding the Regional Regulation in question, it can be concluded that the Regional Regulation has various functions, including others as policy instruments in the regions to implement regional autonomy and assistance tasks as mandated in the 1945 Constitution and the Regional Government Law, but the Regional Regulation is basically an implementing regulation of a higher PUU. In addition, the Regional Regulation can function as a policy instrument to accommodate the specificity and diversity of regions and channel the aspirations of the people in the regions, but in its regulation it remains within the corridor of the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution ^[14].

Based on Law Number 23 of 2014, that the most important position, because as an element of the regional government in the implementation of regional government.

The position of the DPRD as a regional legislative body has an equal position and is a partner of the government regions, while also carrying out control or supervision functions over the government area. based on constitution number 23 year 2014 about regional government, that the duties and authorities of the DPRD include: ^[15]

- Forming Regional Regulations which are discussed with the Regional Head to obtain joint approval;
- Discuss And agree design Regional Regulation About Budget Regional Income and Expenditure together with the Regional Head;
- Carrying out supervision of the implementation of Regional Regulations and other laws and regulations, Governor's Decrees, Regent's and Mayor's Decrees,

12 Bagir Manan in Tjandra, W. Riawan & Harsono, Kresno Budi, Legislative Drafting Theory and Techniques for Making Regional Regulations, Atmajaya University, Yogyakarta, 2009, p. 13.

13 Aristo Evandy A. Barlian, "Consistency in the Formation of Regional Regulations Based on the Hierarchy of Legislation In Perspective Legal Politics", Fiat Justisia Journal of Legal Studies, vol. 10, no. 4, (2016), p. 611.

14 Aristo Evandy A. Barlian, Ibid, p. 612.

15 Bagir Manan, Welcoming the Dawn of Regional Autonomy, Center for Regional Autonomy Studies Law, Yogyakarta, p. 70.

Regional Revenue and Expenditure Budgets, Regional Government Policies, and Cooperation International in the region;

The principles for the formation of regional regulations according to law number 23 of 2014 are as follows:

- Regional Regulation determined by the Regional Head after get agreement together with the DPRD;
- Regional regulations are formed in order to implement autonomy, assistance tasks and further elaboration of higher laws and regulations by taking into account the characteristics of each region;
- Regional regulations must not conflict with the public interest and/or higher laws and regulations;
- Regional Regulation formed based on the principle formation regulation legislation;
- The public has the right to provide input verbally or in writing in the context of preparing or discussing the Draft Regional Regulation;
- The Regional Regulation may contain provisions regarding the burden of costs for law enforcement, or imprisonment for a maximum of six months or a fine of up to IDR 50,000,000 (fifty million rupiah);
- Regional Head Regulations and /or Regional Head Decisions are stipulated for carry out Regional Regulation;
- Regional Regulation applicable after enacted in sheet news area;
- Perdadapat show official certain as official investigator certain as officers investigating violations of Regional Regulations (PPNS Regional Regulations);
- Promulgation of Regional Regulations in Regional Gazette and Regulations Regional Heads in Regional News.

If in one session period the DPRD and the Governor or Regent/Mayor submit a draft of a Regional Regulation on the same material, then what is discussed is the draft of the Regional Regulation submitted by the Governor or Regent/Mayor to be stipulated as a Regional Regulation. The submission of the draft Regional Regulation is stipulated by the Governor or Regent/Mayor no later than 30 (thirty) days since the draft is jointly approved. In the case of a draft. Regional Regulation not being stipulated Governor or Regent/Mayor in 30 (three tens) day, The draft Regional Regulation is legally a Regional Regulation and must be promulgated by including it in the regional gazette ^[16].

Meanwhile, law number 12 of 2011 regulates several principles regarding the formation of regional regulations as follows:

- a) Discussion of draft Regional Regulations is carried out by the DPRD together with the Governor/Regent/Mayor;
- b) The Draft Regional Regulation that has been approved by the DPRD is stipulated by the Regional Head to become a Regional Regulation;
- c) Regional regulations are formed in the implementation of autonomy, assistance tasks and to accommodate

special regional conditions and/or further elaboration of higher laws and regulations;

- d) Regional Regulation No may contradictory with interest general, Perdalain, or higher laws and regulations;
- e) Regional regulations may contain provisions on the burden of legal enforcement costs or imprisonment for a maximum of six months or a fine of up to five million rupiah;
- f) Decision Head Area set for carry out Regional Regulation;
- g) Regional Regulations and Regional Head Decisions that regulate this are published in the regional gazette.

Regional Regulation is the result of joint work between the DPRD and the Governor/Regent/Mayor, therefore the procedure for forming Regional Regulation must be reviewed from several elements of the government, namely the DPRD Element is Regional Regulation is a form of regional legislative product, therefore it cannot be separated from the DPRD. The participation of the DPRD in forming Regional Regulation is related to the authority of the DPRD in the legislative field or which can indirectly be used to support the legislative function, namely the right of investigation, the right of initiative, the right of amendment, approval of the Draft Regional Regulation (RanPerda). Element Participation is participation intended as the participation of parties outside the DPRD and Regional Government in compiling and forming the Draft Regional Regulation or Regional Regulation ^[17].

In the Principles that are the Basis for the Authority of the regional government in forming regional regulations (Perda) are sourced from the legal Authority, namely the 1945 Constitution, especially Article 18 paragraph (6). This article states that the Regional Government has the right to determine Perda and other regulations to implement autonomy and assistance tasks. In addition, Law Number 23 of 2014 concerning Regional Government also provides a legal basis for the formation of Regional Regulations. Furthermore, conceptually, the theory of the Authority of Regional Governments in forming Regional Regulations is that the regional autonomy policy has provided great opportunities for regions to manage and develop regions based on their potential in accordance with the aspirations and initiatives of each region. Regional regulations regulate regional household affairs originating from autonomy, much broader or more complete than those originating from assistance tasks (medebewind). In the field of autonomy, Regional Regulations can regulate government affairs that are the authority of the region, both in substance and in the ways of carrying out government affairs.

B. The validity of regional regulations with religious nuances

The theory of Indonesian legislation points out to specificity theory legislation that becomes main description, so that the one that intended is section, aspect or side knowledge knowledge legislation that object the material is Indonesian legislation, specifically a number of understanding basically

16 Muhammad Mr. "Formation Regulation Area Which Responsive In Supporting Regional Autonomy", Dih, Journal of Legal Studies, (2014): p. 25.

17 Share Manan, Ibid, p. 77.

[18]. Wrong One authority Which very important from a the area that authorized arrange And look after House The stairs Alone is authority For set Regulation Area. Right to set The Regional Regulation called right Regional legislature.

Generally a number of area province / district / city whose DPRD dominated by the party based on a particular religion, has amount bylaw nuanced Religion more Lots compared to area based on party based on Pancasila. Several Regional Regulations were born for arrange various behavior religious society. However Because There is a number of problem Which there is in substance regulation said, good on realm conceptual, social, culture and also politics, so No everything give good results.

Partial effort group which uses the name of Islam to to press coming into effect regulation Islamic law is one of them consequence logical that is not Can avoided. This is added with situation democracy moment this is what gives freedom for convey expression religious, Good from race fundamentalist and also from the poles that most extreme even though. However thus, effort enforcement regulation Sharia Islam the precisely experience Lots problematic and counterproductive with values democracy in progress developed, Which value About diversity.

Muslim population of Indonesia in large amount This give

implications for the formation of bylaw nuanced sharia. In this case, the regulation with the nuance of sharia has great importance among the majority of society. Thus, in addition to directly reflecting the sharia compliance of its adherents, the demand for the implementation of regulations with religious nuances also reflects the potential for growth and dynamic behavior of society so that the existence of a regulation by the government in the form of policies is needed to protect their rights.

Regulation of religion-themed regulations is very important to be regulated in a district/city area because in any case a regulation must be adjusted to the real conditions in the area. Each region has different community characteristics so that community participation is very important in making a regulation, especially a regulation with religious nuances so that conflict does not occur. The need for public order and security in regions are increasingly expected, while religious-related regional law products are limited by higher regulations. Along with the progress of the era that demands changes every time, it is a must for policy makers to respond more wisely. The method can be in the form of changing rules, making regulatory rules, or discretion as possessed by government officials.

Table 1: List "Regional Regulation Religious nuances" in Various Area in Indonesia

Province	Regency / City	Form / Content
Nanggroe aceh darussalam (nad)	Aceh	Regional Regulation No. 5 of 2000 concerning the Implementation of Islamic Law.
		Qanun No. 14 of 2003 concerning Khalwat (Indecency).
		Qanun No. 13 of 2003 concerning Maisir (Gambling).
		Qanun No. 7 of 2004 concerning Zakat Management.
West java	Indramayu	Regional Regulation No. 7 of 1999 concerning Prostitution.
		Regional Regulation No. 30 of 2001 concerning the Prohibition of the Distribution and Use of Alcoholic Beverages.
	Garut	Regional Regulation No. 6 of 2000 concerning Morality.
		Circular Letter of the Regent of 2000 Concerning Hijab for Regional Government Employees.
	Cianjur	Regional Regulation No. 1 of 2003 concerning Zakat Management.
		Regional Regulation No. 7 of 2004 concerning Zakat Management.
Banten	Attack	Regional Regulation No. 21 of 2000 concerning the Prohibition of Prostitution.
	Tangerang City	Regional Regulation No. 06 of 2002 concerning Zakat Management.
		Regional Regulation No. 7 of 2005 concerning the Prohibition of the Distribution and Sale of Alcoholic Beverages,
		Regional Regulation No. 8 of 2005 concerning the Prohibition of Prostitution.
South sulawesi	Bulukumba	Regional Regulation No. 03 of 2002 concerning the Prohibition, Supervision, Control and Sale of Alcoholic Beverages.
		Regional Regulation No. 6 of 2003 concerning Quran Reading Skills for Students and Prospective Brides and Grooms.
		Regional Regulation No. 02 of 2003 concerning Management of Professional Zakat, Infaq, and Shadaqah.
		Regional Regulation No. 04 of 2003 Concerning Muslim and Muslimah Clothing.
	Bulukumba	Regional Regulation No. 03 of 2002 concerning the Prohibition, Supervision, Control and Sale of Alcoholic Beverages.
		Regional Regulation No. 6 of 2003 concerning Quran Reading Skills for Students and Prospective Brides and Grooms.
		Regional Regulation No. 02 of 2003 concerning Management of Professional Zakat, Infaq, and Shadaqah.
		Regional Regulation No. 04 of 2003 Concerning Muslim and Muslimah Clothing.
	Enrekang	Regional Regulation No. 16 of 2005 concerning Muslim Clothing.

18 Philipus M. Hadjon, in Yuliandri, Principles for the Formation of Good Legislation, Ideas for the Formation of Sustainable Legislation, Rajawali Press, Jakarta, 2009, p. 14.

		Regional Regulation No. 15 of 2005 on Reading and Writing the Quran, which requires every elementary school student to high school in this area to undergo a Quran reading test before being determined to move up a class. They are declared to have moved up a class if they can read the Quran and every employee can be promoted and have a position if they can read the Quran.
		Regional Regulation No. 17 of 2005 concerning Zakat Management.
		Regional Regulation No. 6 of 2005 concerning Muslim Clothing.
	Goa	Regional Regulation No. 7 of 2003 concerning Eradicating Al-Quran Illiteracy at Elementary Level as a Requirement for Graduating from Elementary School and Acceptance at the Next Level of Education.
West sulawesi	Malayan Taxi	Regional Regulation 28/2000 Concerning the First Amendment to Regional Regulation No. 1/2000 Concerning the Eradication of Prostitution.
		Regional Regulation No. 13/2003 Concerning Revision of Tasikmalaya Regency Strategic Plan (Containing Islamic Religious Vision).
	Polewali Mandar	District Regulation No. 14 of 2006 concerning the Islamic Community Movement to Read the Qur'an.
North sulawesi	Gorontalo	Regional Regulation No. 10 of 2003 concerning Prevention of Vice.
West sumatra	West Sumatra Province	Regional Regulation No. 11 of 2001 concerning the Eradication and Prevention of Vice.
	Padang City	Circular of the Mayor of Padang Regarding the Implementation of the Obligation to Wear Muslim Clothing for All Students.
		Regional Regulation No. 6 of 2003 concerning Quran Reading and Writing Skills for Elementary School and Madrasah Ibtidaiyah Students.
		Mayor's Instruction No. 451. 422/Binoss- III/2005, dated March 7, 2005 concerning the Obligation to Wear the Hijab and Islamic Clothing (for Muslims) and the recommendation to wear them (for non-Muslims).
	Pariaman Plains	Regional Regulation No. 2 of 2004 concerning Prevention, Prosecution and Eradication of Vice.
	Solo	Regional Regulation No. 10 of 2001 concerning the Obligation to Read the Quran for Students and Brides.
South sumatra	South Sumatra Province	Regional Regulation No. 13 of 2002 Concerning the Eradication of Vice
	City of Palembang	Regional Regulation No. 2 of 2004 Concerning the Eradication of Prostitution
	Lahat	Regional Regulation No. 3 of 2002 concerning the Prohibition of Prostitution and Immoral Acts in Lahat Regency.
North sumatra	Medan City	Regional Regulation No. 6 of 2003 concerning the Prohibition of Vagrants and Beggars and Immoral Practices in the City of Medan.
Riau		Letter of the Governor of Riau No. 003. 1/UM/08. 1/2006 Concerning the Making of Arabic Malay Nameplates.
Bengkulu	City of Bengkulu	Regional Regulation No. 24 of 2000 concerning the Prohibition of Prostitution; and Mayor's Instruction No. 3 of 2004 Concerning Faith Enhancement Activity Programs.
		Regional Regulation No. 7 of 2001 concerning the Prohibition of Prostitution and Immoral Acts in Way Kanan Regency.
Lampung	Right Way	Regional Regulation No. 15 of 2002 concerning the Prohibition of Prostitution and Immoral Acts in the City of Bandar Lampung.
	City of Bandar Lampung	Regional Regulation No. 15 of 2002 concerning the Prohibition of Prostitution and Immoral Acts in the City of Bandar Lampung.
	South Lampung	Regional Regulation No. 4 of 2004 concerning the Prohibition of Prostitution, Immorality, and Gambling and the Prevention of Vice in the South Lampung Regency Area.
	Onion Bones	Regional Regulation No. 5 of 2004 concerning the Prohibition of Production, Hoarding, Distribution and Sale of Liquor.
South kalimantan	Banjarmasin Regency	Regional Regulation No. 8 of 2005 Concerning Friday Khusyu'
		Regional Regulation No. 04 of 2004 concerning Completing the Al-Quran for Students from Elementary School (SD) to High School (SMA).
West kalimantan	Samba	Regional Regulation No. 3 of 2004 concerning the Prohibition of Prostitution and Pornography
		Regional Regulation No. 4 of 2004 concerning the Prohibition of Gambling.
East java	The City of Pamekasan	Circular Letter of the Regent No. 450 of 2002 Concerning the Use of the Hijab for Government Employees, Closing Activities during the Adhan, Addition of Islamic Religious Education Hours, Koko shirts and kopiah every Friday for Employees.
		Regional Regulation No. 18 of 2001 concerning the Prohibition of the Distribution of Alcoholic Beverages.
	Jember	Regional Regulation No. 14 of 2001 concerning Handling of Prostitution.
	Gresik	Regional Regulation No. 7 of 2002 concerning the Prohibition of Prostitution

		Practices; and
		Regional Regulation No. 15 of 2002 concerning the Distribution of Alcoholic Beverages.
	Bantul Regency	Regional Regulation No. 5 of 2007 Concerning the Prohibition of Prostitution in Bantul Regency
West southeast nus	NTB Province	Regional Regulation No. 8 of 2018 Concerning Conversion of PT. Bank NTB into PT. Bank NTB Syariah
		Regional Regulation No. 2 of 2016 Concerning Halal Tourism
	Bima Regency	Regional Regulation No. 3 of 2014 Concerning Solemn Friday
West papua	City of Manokwari	Regional Regulation No. 3 of 2018 Concerning Manokwari, the City of the Gospel

The table above illustrates the development of several regional regulations with sharia nuances in Indonesia. Constitutionally, article 18 of the 1945 constitution in the annual session (st)-pmr in 2000 has been amended and added so that the provisions of article 18 uud 1945 sounds as following: ^[19]

- The Unitary State of the Republic of Indonesia is divided into provincial areas and these provincial areas are divided into districts and cities, each of which has a regional government, which is regulated by law;
- The provincial, district and city regional governments regulate and manage their own government affairs according to the principle of autonomy and assistance tasks;
- Provincial, district and city regional governments have Regional People's Representative Councils whose members are elected through general elections;
- Governors, Regents and Mayors as heads of provincial, district and city regional governments are elected democratically;
- Regional governments exercise the broadest possible autonomy, except for government affairs which are regulated by law. determined as a central government affair;
- Regional governments have the right to establish regional regulations and other regulations to implement autonomy and assistance tasks;
- Composition and procedures for organizing regional government regulated by law;
- The relationship of authority between the central government and the regional governments of provinces, districts and cities, or between provinces and districts and cities, is regulated by law, taking into account the specificities and diversity of the regions;
- Connection finance, service general, utilization source natural resources and other resources between the central government and regional governments are regulated and implemented fairly and harmoniously based on law;
- The State recognizes and respects regional government units that are special or unique in nature which are regulated by law; and the.... customary law communities and their traditional rights as long as they exist life and in accordance with development public and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

The changes to Article 18 of the 1945 Constitution as described above, illustrate the concept of regional government which is increasingly complete and detailed. In addition, several things that are not mentioned in the 1945 Constitution 1945 previously, now get affirmation And addition between others: (a) Mention province, regency And city; (b) Principles of organization government, that is autonomy And task assistance; Existence DPRD in every government area And method filling; Election of regional heads; (e) The nature of autonomy, namely the broadest possible autonomy; (f) The relationship of authority between the central government And area, as well as between government area Which One with others; (g) Mention unit government area Which nature special; and (h) The unity of customary law communities and their traditional rights. Meanwhile, the things that remain maintained in the Amendment to the 1945 Constitution are the principles of a Unitary State and the existence of Special Regions ^[20].

If associated with Law No. 22 of 1999 concerning Regional Government, the amendment to Article 18 of the 1945 Constitution seems to follow the spirit of regional autonomy based on Law No. 22 of 1999 because in material terms, this Law explicitly states that the legal field is not included in the exceptions. This means that regions have the authority to form their own laws as long as they do not conflict with higher regulations, regulations area other, And interest general. While That, Law No. 32 of 2004 on Regional Government emphasizes the principle of decentralization and that means there is a guarantee of the rights of regional governments to regulate and manage their own households. Therefore, based on the two laws regulating regional government that were born in the reform era, there is a normative gap that allows regions to implement pattern the law each, including the implementation of Islamic law in areas where the people have deeply internalized the sources of Islamic legal traditions.

Matter This reinforced by opinion Jimly Asshiddiqie ^[21], that in the context of regional autonomy policy, law and the legal system can be decentralized because based on the original powers regulated in Article 7 paragraph (1) of Law No. 22 of 1999 concerning Regional Government, judicial powers include matters determined as the authority of the central government. The problem of what is meant by the judiciary also includes the understanding of the legal substance that is used as a reference in the judicial process. If judicial power

19 Muntaha, *Regional Autonomy and the Development of Regional Regulations with Sharia Nuances*, Safria Insania Press, Yogyakarta, 2010, p. 207

20 Philipus M. Hadjon, *Introduction to Indonesian Administrative Law*, Gadjah Mada University Press, Yogyakarta, 1993, p. 241.

21 Jimly Asshiddiqie, "Islamic Law Among the Agenda of National Legal Reform", in *Mimbar Hukum*, Ditbinperta and al-Hikmah, vol. 51, no. XII, (March – April, 2001): pp. 3– 5.

is understood in the institutional sense structured justice starting from the first instance court to the Supreme Court, so administrative development And management system his trial Of course No can be decentralized. Because the judicial power, according to the provisions of the 1945 Constitution, culminates in an independent Supreme Court. Even based on the provisions of Law No. 35/1999 (now amended to Law No. 4 of 2004) both matters of judicial procedure and judicial administration are developed under one roof under the Supreme Court. However, in relation to legal material and legal culture as two important components in the national judicial system and the national legal system as a whole, there are no provisions that emphasize the need for uniformity throughout the jurisdiction of the Republic of Indonesia.

In fact, in article 18 paragraph (5) of the second amendment to the 1945 constitution it is stated:

Regional governments exercise the broadest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central Government. In paragraph (6) of this article it is also stated: Regional governments have the right to establish regional regulations and other regulations to implement autonomy and assistance tasks. In fact, Article 18 B paragraph (1) also states: The state recognizes and respects government units area Which special or exceptional nature which is regulated by law. In paragraph (2) it is stated: The State recognizes and respects customary law community units and their rights. traditional throughout Still life And in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law.

Based on several provisions of the articles of the constitution in above, shows that the 1945 Constitution recognizes and respects legal pluralism in society. Therefore, according to him, even though the national justice system is structured in national system framework, legal material used as a reference by judges can be developed in various ways. Even historically, the Indonesian national legal system as has long been known has indeed originated from various legal subsystems, namely the Western system, the customary legal system, and the Islamic legal system, coupled with practices influenced by various developments in national law since independence and developments resulting from the influence of the association of the Indonesian nation with legal traditions from the international world. Likewise, the diversity of legal traditions that grow and live in the association of our own very pluralistic society from Sabang to Merauke, cannot be ignored if our national legal system is expected to work effectively as an instrument to create peace and justice in living together. Therefore, the sources of our living customary legal traditions, the sources of legal traditions that are deeply lived in the religious beliefs of our society, and even sources of legal norms that are completely foreign, as long as we need them to realize justice and truth and peace in life, we cannot possibly reject their implementation in the legal consciousness of our society and nation ^[22].

More carry on Jimly Dear Sir ^[23], state that in law there is a known hierarchy of regulations legislation based on principle *lex superior derogatory lex inferior* that lower law must not conflict with higher law. However, this principle can be limited by the principle of *lex specialist derogat lex generalis*, namely that general law is negated by special law. With this principle, the implementation of a law that is intended to apply generally in all regions can take into account special possibilities that exist in the regions. These special things can be stated in the form of regulations which is specifically intended to apply in the relevant area. With the recognition of this principle, the customary legal norms that live and apply in the villages can grow again and can even be officially stated as an inseparable part of the official Indonesian legal system, namely if the customary legal norms have been stated in the form of Village Regulations.

At the district or city and provincial levels, the specificities of legal norms can also be recognized as long as they are officially stated in the relevant Regional Regulation material. Therefore, in the future, it is very possible that various additional qualifications will be applied to the material of laws and regulations stipulated at the central level. In other words, as an impact of the current regional autonomy policy, in the future there will be symptoms of pluralism in the regulation of legal material and decentralization in the management and development of national law. It means, trend decentralization And diversity legal system Which develop moment This has in accordance with principle *lex specialist derogatory lex generalist* ^[24]

Prescriptive analysis in this study, then there are several criteria for regional regulations with religious nuances that are possible to have the power of implementation in various regions so that there is no misunderstanding regarding the absolute authority held by the central government regarding religion in the types of religious activities that can become the authority of the regional government, with the following description:

- That the legalization has been accommodated in the Republic of Indonesia Law Indonesia Number 32 Year 2004 About Amendments to Law Number 23 of 2014 concerning Regional Government, but only need to be emphasized so that futuristically, the provincial government does not hinder the desire for districts /cities to ratify regional regulations with religious nuances, thus the urgency for positive steps in terms of fulfilling the principles of humanity and the form of fulfillment of human rights for people in the regions to freely regulate and carry out religious life.
- The legitimacy of regional government is related to regulating religious life with the barometer being the existence of regional regulations in the hierarchy of statutory regulations contained in Constitution Number 12 Year 2011 That No provide limitations for regions to create regional regulations to accommodate the needs and interests of religious life of the community in the region.
- Clustering between religious affairs is certainly

22 Jimly Asshiddiqie, "Decentralization and Legal Pluralism" in Selected Chapters of Legal Theory; Collection of Scattered Writings, FH-UI, Jakarta, 2000, pp. 84 – 85.

23 Jimly Asshiddiqie, "Law Islam in Between..... op. cit., p. 5

24 Jimly Asshiddiqie, "Decentralization..... op. cit., p. 85.

different from religious life. Regulation of religious affairs related to the ratification of new religions, determination of national holidays, and other general matters related to religion are the authority of the government. center, However outside from bullet points That, to regulate religious life can be the authority of the regional government.

- Political improvement will also a determining factor in the smooth running of regional regulations with religious nuances. So far, regional regulations with sharia nuances are usually proposed by Muslim parties, but need existence improvement related with desire to fulfill the regulation of religious life in order to create Islamic ethics for society so that if implemented evenly, Indonesia will have character.
- The criteria for religious-nuanced regional regulations still follow the formal and material aspects as regional regulations in general. However, for substance, there must be specific implementation for adherents of the religion.
- The need for additional authority of religious courts to try cases of violations of regional regulations with sharia nuances, and also to remain on the authority of the district court to try violations of regional regulations. Because, if the district court is authorized to try cases of violations of regional regulations based on sharia, then there is the potential for being tried by non-Muslim judges who do not understand Islamic law. Thus, there is a need for additional authority of religious courts to resolve these legal problems.

The reason for accepting religious-themed regional regulations is because these regulations are aimed at a particular religion and do not... applies to all adherents of other religions outside those regulated by the regional regulation, apart from regional regulations that are deemed to be in accordance with the principle of diversity single fish And principle similarity position in law and government. However, there are also regulations that pass even though the regulation is mandatory in regulating religious life, and does not contain sanctions for the implications of the mandatory phrase.

The authority to cancel regional regulations is regulated in the Regional Government Law is the authority of the 'minister' but it is not mentioned which ministry so that there have been several transfers of authority to cancel regional regulations which in 2016 through the Minister of Home Affairs was canceled by the Constitutional Court then in 2017 it was transferred to the Minister of Law and Human Rights. The cancellation of the authority of the Minister of Home Affairs to cancel regional regulations, accommodated through the Constitutional Court Decision Number 137/PUU-XIII/2015 and 56/PUUXIV/2016 has brought significant changes in the implementation of Regional Government. Initially, the Constitutional Court Decision Number 137/PUU-XIII/2015 grant testing provision Chapter 251 paragraph (2), paragraph (3), paragraph (4) and paragraph (8) of Law Number 23 of 2014. Through this decision, the Constitutional Court eliminated the authority of the Minister of Home Affairs and Governor as representatives of the Central Government in the regions to cancel Regency/City Regional Regulations. Which

considered problematic. In development Next, as if to complete the Decision, the Constitutional Court then issued Decision Number 56/PUUXIV/2016 which in essence decided that the central government no longer has the authority to cancel the Provincial Regulation. The Constitutional Court Decision Number 56/PUUXIV/2016 granted part of the judicial review of the provisions Chapter 251 paragraph (1), paragraph (2), paragraph (7), And paragraph (8) Act Number 23 of 2014 concerning Regional Government. So, based on Permenkumham Number 32 of 2017 concerning Procedures for Settlement of Disputes over Legislation Through Non-litigation Paths, so that the authority regarding regional regulations currently through the Ministry of Law and Human Rights can apply with the executive review. However, after conducting an investigation, it was found that of the 133 regulations that were cancelled by the Ministry of Home Affairs, not a single regional regulation with religious nuances was cancelled through that mechanism.

The True Validity of the Regulations Area Which nuanced Religion does not conflict with the higher laws above it, because in the formation of A Regional Regulation certainly looks at moreover formerly runway philosophically, namely Pancasila as the Statutory Fundamental Norm, and the 1945 Constitution of the Republic of Indonesia as the constitution, as well as regional regulations with religious nuances have gone through a formation process mechanism in accordance with applicable laws and regulations.

Religiously-tinged regulations are actually evidence of freedom that is far from discriminatory. at a time is step proceed in reach ideals of the state and society. Each region has different characteristics of society that must be respected, this is what drives the Regional Government to compete to form Regional Regulations with Religious Nuances and in fact until now these regulations still exist and are accepted by the community at the regional level.

4. Conclusion

Based on the discussion in this thesis, it can be concluded that the basis of the regional government's authority in forming regional regulations (Perda) is derived from the legal authority, namely the 1945 Constitution, especially Article 18 paragraph (6). This article states that the Regional Government has the right to determine Perda and other regulations to implement autonomy and assistance tasks. In addition, Law Number 23 of 2014 concerning Regional Government also provides a legal basis for the formation of Regional Regulations. In terms of the theoretical concept, the authority of the Regional Government in forming Regional Regulations is that the regional autonomy policy has provided great opportunities for regions to manage and develop regions based on their potential in accordance with the aspirations and initiatives of each region. Perda regulates regional household affairs that originate from autonomy, much wider or more fully than those originating from assistance tasks (medebewind). In the field of autonomy, Perda can regulate government affairs that are the authority of the region, both in substance and in the ways of carrying out government affairs. The True Validity of the Regulations Area Which nuanced Religion does not conflict with higher laws, because in the formation of A Regional Regulation certainly looks at moreover formerly runway philosophically,

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