



The Authority Relationship of Central and Local Governments in Forming Laws and Regulations: Between Indonesia and Malaysia

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Article	Abstract
<p>Keywords: Central and Local Governments; Forming Legal Regulations; Legal Authority.</p> <p>Article History Received: Sep 28, 2024; Reviewed: Oct 21, 2024; Accepted: Feb 13, 2025; Published: Feb 16, 2025.</p>	<p><i>This study examines how the powers of the federal government and local governments interact to create laws and regulations in Malaysia and Indonesia. In most countries, the central government is not the only regulator in developing laws and regulations. Regional governments are vested with the authority to manage government affairs delegated to them. This authority includes the power to draft and enact regional regulations, reflecting regional independence in administering local governance. Regional regulations serve as strategic tools to achieve the objectives of decentralization, fostering greater autonomy by empowering regions to address local needs through tailored legislation. However, the delegation of such authority also presents the potential for regulatory conflicts between the central government and regional governments or among regions themselves. Consequently, a comprehensive analysis is essential to evaluate how the relationship between central and regional governmental authorities influences the legislative process in Indonesia. Employing a legal comparative approach provides an effective method for examining the dynamics of regulatory authority between the central and regional governments, offering valuable insights and policy recommendations to harmonize the framework for statutory regulation. The findings highlight those regional regulations play a crucial role in supporting decentralization, yet conflicts between central and regional authorities are inevitable. Comparing the cases of Indonesia and Malaysia, the study underscores the need for clear and collaborative frameworks to harmonize central and local authorities in forming laws and regulations, ensuring legal certainty and effective governance.</i></p>



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INTRODUCTION

Under the rule of law, the law is an outpouring of state policy in a certain period. Therefore, state action cannot be carried out arbitrarily and must have a definite legal basis (Seta, 2020). Understanding law as a *das sollen* also means realizing that law is part of our life and functions as a guideline that must be followed to regulate life so that people's rights and obligations are divided accordingly. If the law is recognized as a norm, then it must be obeyed. Laws are obeyed not because there is power behind them but because obliging them includes the nature of the law itself. This also means that if a rule is not obeyed or violated, the rule's power as a norm is lost (Qurbani, 2021)(Safa'at, 2010).

According to the concept of the rule of law, one way to realize the goal of the rule of law is through regulations or laws and regulations (Al Fatih & Nur, 2023). Laws and regulations are an important component of every element of national and state life, so everything is must according to applicable law, not on the power of a person or group of people. These laws and regulations are important for the state because they are related to guidelines for policy-making on public and private aspects; it is undeniable that every policy that will be issued requires supporting tools, namely, human resources, material resources, and regulatory or statutory regulations (Aziz, 2012).

The preparation of regulatory instruments is not something that is parallel and attached to other supporting aspects of a policy (Fatih, 2022). Basically, creating laws and regulations is not only interpreted as a technical process of forming legal norms, which are then wrapped in a regulation or legislation document. The creation of laws and regulations is also interpreted not only as a process or stage of formation but also as a way to channel ideas to form statutory regulations into points of articles. That is, the formation of laws and regulations not only builds physical legislation or regulations but also builds ideas and aspirations to design social life to solve social problems (Redi, 2019).

Creating legal products is one of the key functions of government, both at the federal and local levels. These products are essential because the community needs them to be served. Guidelines are necessary while creating laws so that later-issued legal products will be powerful for the sake of the law and able to be applied in the future (Irawan Febriansyah, 2016). According to Sidhartha, forming laws and regulations is a plan or plan in establishing the law (Sidharta, 2010) because establishing laws and regulations is a process with a definite flow of stages, so there is a need for

guidelines for forming laws and regulations. If there are no law-making guidelines, there may be chaos in the legal system and government policies.

The process of creating laws and regulations in Indonesia is meticulously regulated by Law Number 12 of 2011 concerning the Establishment of Statutory Regulations, as amended by Law Number 15 of 2019 and Law Number 13 of 2022. This process involves a series of stages, including planning, preparation, drafting, formulation, discussion, approval, promulgation, and dissemination or public outreach. A significant aspect of this law is the formal requirement to ensure public participation throughout the legislative process. Public involvement is essential to fostering transparency and inclusivity in developing laws that address societal needs. The creation of participatory legislation revolves around two key elements: process and substance. The process refers to the structured and transparent procedures that allow the public to contribute meaningfully to the regulation-making process. The substance relates to the content of the laws and regulations, which must reflect the interests of the broader community. Together, these elements aim to produce responsive and democratic laws that align with the principles of good governance and societal welfare. (Jati, 2012).

Community involvement in the formation of the above laws and regulations is a form of democratization of the formation of regulations. According to M. Solly Lubis, the democratic process of law formation necessitates that the inputs that are considered for defining the legislation originate from the community/people themselves and constitute their diverse life goals. Members of the community direct their aspirations through representatives who are genuinely perceptive and sensitive to the needs of their constituents' consciences. Following processing by the legislature, these goals will ultimately result in a statute, a political product, that accurately reflects people's goals (Lubis, 2000). This is because democracy requires broad citizen participation in all state actions, and this democratic system does not allow discrimination against a group in society (Rahardjo, 1980).

In developing laws and regulations in most countries, the central government is not the only regulator. Instead, the regional government (local government) is also given the authority to form regional regulations to regulate government affairs that are handed over to the regions. This policy is implemented not only by countries that implement a system of government or regional autonomy but also by federalist countries.

In a unitary state, the central government holds the highest degree of state sovereignty with respect to regional administration. Laws regulate and restrict the central government's operations to prevent sectoral egoism and arbitrary actions. Government units established under the central government must submit to the central government as a logical result of its role as the holder of state sovereignty. The exercise of authority will overlap and collide in the absence of organizational

submission and compliance with applicable rules and regulations (unity command principle) (Al-Fatih, 2020). According to Ni'matul Huda, regional autonomy is a form of democratic life in the context of administering a unitary state (*eenheidstaat*). Based on regional autonomy built in a decentralized government system, people manage their own households in the context of implementing regional autonomy (Wuisang, 2018). In a unitary state, the responsibility for carrying out governmental tasks remains that of the central government. However, because one of the Indonesian systems of government adheres to the principle of a decentralized unitary state, certain tasks are taken care of by themselves. Thus, it creates a reciprocal relationship that gives birth to a relationship of authority, finance, and supervision between government organizational units.

In terms of “statutory authority, local governments have the authority to form regional regulations, which is a form of regional independence in regulating regional household affairs or regional government affairs. The regional regulations is a strategic instrument for achieving decentralization goals. In the context of regional autonomy, regional regulations, in principle, play a role in encouraging maximum decentralization (Suharjono, 2014). The authority of the local government to form regional regulations is a right because the legal policy instruments of the regional government accommodate the aspirations of the people, overcoming various problems that already exist or may arise in the future in the context of regional autonomy (Bunga, 2020).

Under statutory authority, local governments possess the power to establish regional regulations, reflecting their independence in managing regional household affairs and governmental responsibilities. Regional regulations serve as strategic tools for realizing the objectives of decentralization. Within the framework of regional autonomy, these regulations fundamentally promote and support the achievement of maximum decentralization. The authority granted to local governments to formulate regional regulations is not merely an administrative function but a legal right (Suharjono, 2014). This authority enables regional governments to craft policy instruments that address the aspirations of their communities and tackle existing and potential challenges. By doing so, regional regulations play a vital role in ensuring that local governance is responsive, adaptive, and aligned with the principles of regional autonomy. This empowers local governments to create solutions tailored to their unique circumstances, ultimately contributing to equitable and sustainable regional development (Bunga, 2020).

Regional autonomy, which allows regions to form regional regulations, also opens up opportunities for disharmony of regulations between the central region and other regions. According to Ibnu Sina Chandranegara, the inherent problem of a rule of law state is the potential for conflict of regulations, which Richard Susskind calls hyperregulations or legal obesity (Chandranegara, 2020). Based on data from the Information Network and Legal Documentation (JDIH) of the Ministry of State

Secretariat, from 1983-2023 (March 11, 2023), there were 707 laws, 33 Government Regulation in Lieu of Law, 2,426 Government Regulations, and 2,072 Presidential Regulations. The number of regulations does not rule out the opportunity for the emergence of material content of regulations that are in conflict and out of sync. Such a quantity has implications for the quality of regulations that do not run straight (Chandranegara, 2019).

Based on the above description, it is necessary to carry out in-depth research to determine the relationship pattern between the central government's authority and regional governments' development of laws and regulations in Indonesia. The legal research that will be carried out (Al-Fatih & Siboy, 2021)(Al-Fatih, 2023) elaborates and analyzes the quality of regulations regarding the formation of laws and regulations that form the basis of policies for harmonization and synchronization of central and regional regulations (Nuradhawati, 2019). To provide a policy reference for forming statutory regulations between the center and the regions, legal research using a comparative approach is an easy way to evaluate the relationship of authority for forming regulations between the center and the regions.

A previous study was conducted by Wicipto Setiadi, analyzing the institutions responsible for drafting legislation at the central and regional levels. However, the study did not examine the issue of authority relations between the central and regional governments, particularly through a comparative approach (Setiadi, 2019, p. 126) This study compares the relationship between the authority of the central government and local governments in the formation of laws and regulations between Indonesia and Malaysia. The legal system adopted by Indonesia is a civil law system or a continental European legal system (Aulia & Al-Fatih, 2017). Meanwhile, Malaysia adheres to the *Anglo-Saxon* legal system, which comes from the common law tradition. The difference in the legal systems of the two countries follows the legal system applied by the colonial countries, where the British, who colonized Malaysia, adhered to the common law system. Similarly, Indonesia follows the legacy of the Dutch legal system in accordance with the concordance principle.

Malaysia is a federal state comprising both a federal and states with a democratic monarchy form of governance (Faruqi, 2019). Indonesia is a unitary state based on the ideas of constitutional democracy, with a republican system of administration in its autonomous regions and a central government. However, there are similarities in the legal systems between the two countries, namely, a plurality of legal systems; for example, both adopt religious laws (such as Islamic law) in creating norms contained in legislation. According to the differences in the systems of the two countries, an in-depth study titled "The Authority Relationship of Central and Local Governments in Forming Laws and Regulations: Comparison between Indonesia and Malaysia" will be carried out.

METHOD

This study employs a normative juridical method, also known as doctrinal research (Soekanto, 2012). Based on this type of research, the study adopts conceptual, statutory, and comparative approaches (Marzuki, 2017). The legal materials used in this research consist of primary and secondary legal materials. Primary legal materials are derived from statutory regulations, particularly the State Constitution and Law Number 12 of 2011 and its amendments. Secondary legal materials come from journals, books, and other legal literature. Both primary and secondary legal materials are obtained through library research conducted physically and online. The legal materials are then analyzed systematically and grammatically (Safaat et al., 2017).

RESULTS AND DISCUSSION

Power and Authority in the Legal State

Power is essentially mapped into multiple functions that are connected to one another. Although the content of John Locke's "*Two Treatises of Government*" varied, he classified political authority into three categories. According to Locke, the three primary duties of state authority are the legislative, executive, and federative. Based on the ideas of John Locke, Montesquieu divided political authority into three parts in his 1784 work "*L'Esprit des Lois*," or "*The Spirit of the Laws*" in English, as follows:

- a. Legislative power as a lawmaker;
- b. Executive power to enforce laws; and
- c. Power to judge as the judiciary.

This is in line with upholding the principles of popular sovereignty and the checks and balances principle. Checks and balances is a principle to balancing and monitoring between branches of power, usually in the context of state power (Abustan, 2022). According to checks and balances, the President must pay serious attention to the House of Representatives (hereinafter abbreviated as "DPR") in terms of legislative functions, the supervisory function of the government, and the function of the State Revenue and Expenditure Budget (APBN). There are several thoughts and theories put forward by figures regarding the division of power, namely:

- a. According to John Locke's theory, the state has three types of power: legislative, executive, and federative. Legislative power is the power to make laws, executive power is the power to implement laws, and federative power is the power relating to war and peace, making unions and alliances, and all actions with all people and agencies abroad (Locke, 1824).
- b. According to Montesquieu's theory, in state government, there are three types of power, namely, legislative, executive, and judicial. Legislative power is the power to make laws. Executive power is the power to enforce laws. Judicial power is the power to try violations of the law. According to Montesquieu, federal powers are not powers that stand alone but are part of executive power (Ruhenda et al., 2020).

- c. According to Van Vollenhoven's theory, state duties entail four functions, namely, *regeling* (making regulations), *bestuur* (government in the narrow sense), *rechtspraak* (judging), and *politie* (police). In a modern state, the government's duties include the duties of the state in carrying out the public interest, except for maintaining the law in a preventive manner (*preventive rechtszorg*), adjudicating, and making regulations (*regeling*) (Al-Fatih & Muluk, 2023).
- d. According to Logemann's theory, there are five areas of state power: the statutory function (to make laws), the implementation function (to implement laws), the government function (in a special sense), the police function (to maintain order, conduct investigations and investigations), and the judicial function (to adjudicate violations of the law).

In theory, the authority of state institutions in Indonesia aligns with the principles of a presidential system of government. However, in practice, the exercise of their functions and authority reveals that the Indonesian governmental structure does not strictly adhere to the separation of powers characteristic of a presidential system but instead leans toward a power-sharing arrangement. The principle of checks and balances can be implemented through the following mechanisms:

- a. Granting authority to take action to more than one institution, for example, the authority to make laws is given to the government and parliament;
- b. Granting authority to appoint certain officials to more than one institution, for example, the executive and legislative branches;
- c. Legal efforts for one institution to impeach another;
- d. Direct supervision of one institution by other state institutions, such as the executive being supervised by the legislature;
- e. Granting authority to the court as an institution to resolve authority disputes between the executive and legislative bodies.

In political reality, as well as theoretically, the authority of state institutions is always co-opted by one particular political institution, which makes it unable to carry out its functions and authorities, reflecting a system of checks and balances. As is the case with the DPR's authority, whose law-making authority has always been weak, there is even a tendency not to reflect that the Indonesian government system adheres to a separation of powers but is closer to a power-sharing system. Conceptually, Indonesia's state system is commonly used by countries with a parliamentary system of government, not a presidential state. The distribution of power is important to build a constitutional system. A good distribution of power is expected to create a balance of power between one institution and another and establish mutual control to avoid irregularities (Al-Fatih et al., 2023).

Relations between the Central Government and the Regional Government

Indonesia's Law Number 23 of 2014 on Regional Government, promulgated on October 2, 2014, redefined the relationship between the central government and regional governments. Previously, regional autonomy was largely interpreted as the mere delegation of responsibilities from the central government to regional governments for the benefit of the community. However, the essence of regional autonomy lies in the transfer of political and economic authority from the central government to the regions, enabling equitable and fair development and economic growth at the regional level. Accordingly, Law Number 23 of 2014 places greater emphasis on the concept of regional autonomy within the framework of the Unitary State of the Republic of Indonesia.

One of the fundamental changes introduced by Law Number 23 of 2014 on Regional Government, which was not included in Law Number 32 of 2004, is the formalization of mandatory regional affairs and the concurrent relationship between the Central, Provincial, and Regency/City Governments. These changes are explicitly outlined in the appendix to Law Number 23 of 2014. Article 9 of this law classifies government affairs into three categories: absolute, concurrent, and general. Despite the detailed classification, the provisions of Law Number 23 of 2014 continue to emphasize decentralization, as evidenced by the division of responsibilities between different levels of government. However, when analyzed through Clarke and Steward's theory on central-local government relations, this decentralization aligns with the agency model. Under this model, local governments possess limited autonomous power and function primarily as agents of the central government, implementing its policies rather than exercising independent authority. This reflects a structured but centralized approach to governance (Wijayanti, 2016).

Decentralization is a governance framework that establishes the relationship between national and local governments, enabling the national government to delegate authority to local governments and communities to enhance public welfare (Syaukani, et al., 2009). This framework extends beyond mere administrative arrangements, encompassing broader issues such as nationalism, nation-building, and the interplay between national and local democracy. Additionally, it reflects the complex dynamics of state-society relations. The relationship between the central and regional governments often becomes a focal point due to the frequent clashes of interest arising from differing priorities and agendas. In the context of a unitary state, this tension is particularly pronounced, as the central government tends to exert significant control over various governmental functions to maintain national cohesion. However, such centralization efforts can sometimes conflict with the principles of regional autonomy, underscoring the ongoing challenges of balancing centralized authority with effective local governance (Huda, 2009).

According to Clarke and Steward, the relationship model between the central government and regional governments can be theoretically divided into three groups (Huda, 2009). First, the relative autonomy model provides significant freedom to local governments while respecting the central government. The emphasis is on granting regional governments freedom of action within the framework of powers/duties and responsibilities that have been formulated by laws and regulations, both of which are agency models. In the model where the local government does not have significant power, it is considered more of an agent of the central government whose job is to carry out the central government's policies. Therefore, in this model, various detailed laws and regulations as a control mechanism are very prominent. In this model, local revenue is not important, and the regional financial system is dominated by assistance from the central government. The third model is the interaction model, in which the existence and role of local government are determined by the interactions that occur between the central and local governments. According to Bagir Manan, at least four factors determine central and regional relations in autonomy arising from the organizational structure of regional governments, namely, authority relations, financial relations, supervisory relations and relations (Manan, 2001).

The authority relationship between the central and regional governments is closely tied to the distribution of regional household affairs, which determines the scope of autonomy granted to regional governments. This determination can reflect either limited or broad autonomy. First, regional household affairs are often categorically defined, with their development governed by specific regulations. Second, if the system of supervision is overly restrictive, autonomous regions risk losing their independence to freely organize and manage their household affairs. Third, financial relations between the central and regional governments also impact autonomy, as limited regional financial capacity restricts the ability of regions to operate independently. Broad autonomy, on the other hand, is grounded in the principle that all government affairs should inherently be considered regional matters, except for those explicitly designated as central government responsibilities. This approach aims to balance authority while fostering regional independence within a unitary state framework.

Based on the provisions of Law Number 23 of 2014, the pattern of relationships between the central and regional governments are as follows:

- a. Decentralization is the handing over of some of the executive authority from the Central Government to the Regions, where in Article 9 (already mentioned on the previous page), this Concurrent Government Affairs that forms the basis of Regional Autonomy. Concurrent Government Affairs submitted include Compulsory Affairs and Optional Affairs. Compulsory Affairs comprise Compulsory Affairs for Basic Services and Compulsory Affairs for Non-Basic Services. The division of authority affairs refers to the theory of the relationship

model between the central government and regional governments, according to Clarke and Steward, including the agency model. In the model where the local government does not have significant power, it is considered an agent of the central government whose job is to carry out central government policies. Therefore, detailed laws and regulations as a control mechanism are very prominent in this model.

- b. The division of concurrent government affairs, as outlined in Article 13, is guided by the principles of accountability, efficiency, externality, and national strategic interests. The principle of accountability ensures that responsibility for government policies is assigned based on proximity to the extent, magnitude, and scope of the impacts resulting from their implementation. The principle of efficiency focuses on achieving the highest level of effectiveness and resource optimization possible in carrying out government affairs. The principle of externality considers the extent, magnitude, and range of effects caused by the implementation of government policies, ensuring that the scale of impacts is properly addressed. Lastly, the principle of national strategic interests prioritizes maintaining national integrity and unity, safeguarding state sovereignty, supporting foreign relations, achieving strategic national programs, and considering other critical factors necessary for the nation's welfare and stability. Together, these principles ensure a balanced and well-regulated division of responsibilities.
- c. Pursuant to Article 13 paragraph (2), the characteristic for determining government affairs that fall according the authority of the central government are as follows:
 - 1) government affairs, which are located across provinces or across countries;
 - 2) government affairs, whose users cross provinces or cross countries;
 - 3) the benefits or negative impacts of government affairs across provinces or across provinces
 - 4) countries;
 - 5) government affairs, which uses its resources more efficiently if it is carried out by
 - 6) the central government; and/or
 - 7) the role of government affairs is strategic for the national interest.

Study of the Theory of the Rule of Law and the Formation of Legislation

The creating of laws and regulations is an essential component in the development of national law and can only be effectively achieved through methods that are binding on all institutions with the authority to draft such regulations. As a constitutional state, Indonesia is obligated to create national laws that are developed in a planned, integrated, and sustainable manner within the national legal framework. The process of creating laws and regulations must adhere to several fundamental principles, including the concept of a Pancasila legal state,

which reflects the nation's values and ideals. Additionally, the creation of these regulations must prioritize human rights protection and uphold the principle of equality before the law, ensuring that laws apply fairly and equally to all individuals. The creation of good legislation is guided by previously established legal principles, ensuring that it is in line with the overarching legal structure. Ultimately, the authority to create laws and regulations is vested in legitimate power holders who are democratically elected by the people (Irawan Febriansyah, 2016).

The creation of laws and regulations aims to establish effective and sound legislation. According to I.C. Van Der Vlies and A. Hamid S. Attamimi, well-crafted laws and regulations can be classified into two categories: formal principles and material principles. The formal principles encompass the following: “the principle of clear goals or *“beginsel van duidelijke doelstelling”*”; the principle of the right organ/institution or *“beginsel van het juiste the organ”*”; the principle of the need for regulation or *“het noodzakelijkheids beginsel”*”; the principle of being able to implement or *het beginsel van uitvoerbaarheid*; and the principle of consensus or *“het beginsel van consensus”*. Material principles include the principles of correct terminology and systematics or *“het beginsel van duidelijke terminology en duidelijke systematiek”*”; the principle of being recognizable or *“het beginsel van de kenbaarheid”*”; the principle of equal treatment in law or *“het rechtsgelijkheidsbeginsel”*”; the principle of legal certainty or *“het rechtszekerheids beginsel”*”; and the principle of implementing the law according to individual circumstances or *“het beginsel van de individuele rechtbedeling”*.

A. Hamid S. Attamimi discussed the development of good laws and regulations, emphasizing the importance of both formal and material principles in crafting effective legislation (Attamimi, 1993). According to Attamimi, proper Indonesian laws and regulations include the ideals of Indonesian law, the principle of the state based on law and the principle of government based on the constitution, among other principles (Indrati, 2020). The principles for forming good laws and regulations include the following:

- a. The principle of clarity of purpose, which dictates that each type of legislation must have clearly defined objectives to be accomplished;
- b. According to the principle of properly forming institutions or officials, each type of legislation must be made by a state institution or an authorized official for establishing legislation; and legislation can be annulled or null and void if it is made by a non-state institution or unauthorized official as the actualization of the principle of legality in law;
- c. The principle of conformity between types, hierarchies, and content material requires that the development of legislation aligns with its designated type and position within the legislative hierarchy. This principle ensures that the content of each regulation is appropriate and consistent with its level of authority,

preventing overlaps or conflicts between different types of laws and regulations.

- d. This principle requires that each type of legislation must consider its effectiveness in society from philosophical, sociological, and juridical perspectives;
- e. The principle of usability and efficiency asserts that every legislative act must be created because it is genuinely necessary and beneficial in regulating the life of society, the nation, and the state;
- f. The principle of clarity in formulation emphasizes that every piece of legislation must adhere to established technical drafting standards. This includes proper structuring, systematic organization, precise choice of words or terms, and the use of legal language that is both clear and straightforward. The aim is to ensure that laws are comprehensible and do not lead to multiple or conflicting interpretations when applied in practice.
- g. The principle of openness means that in developing legislation, which starts from planning, drafting, discussing, ratifying and stipulating, promulgation is transparent and open, providing all layers of society with the widest possible opportunity to provide input.

Comparative Study of Indonesian and Malaysian Legal Systems

Indonesia's legal system is comparable to that of Malaysia. Both Indonesia and Malaysia possess numerous advantages, including people who are proficient in legal matters, yet the enforcement of the law requires improvement. According to Lawrence M. Friedman, for the improvement of laws, law enforcement must encompass three essential components: *first*, the structure, which examines how the legal system organizes and delivers services for systematically embedding legal norms; *second*, substance, which refers to the output of the legal system, including regulations and judicial decisions; and *third*, culture, which pertains to the values within society that significantly influence the operation of law (Friedman, 2011). The state must establish an effective legal system, and the judicial framework must take into account the cultural context of the society, as seen in Malaysia, where public compliance is higher when the law aligns with the deeply rooted values and beliefs of the people.

Malaysia has embraced the concept of legal pluralism. It operates within the jurisdictions that have been duly established by the Federal Constitution and its legal system, which is a coexistence of civil and Islamic laws (Hj Mokhtar & Ali Tajuddin, 2023). Besides civil and shariah courts, Malaysia also recognizes certain courts, such as the native courts in Sabah and Sarawak. Existing jurisdiction between courts in Sabah and Sarawak generally extends to situations where both parties are indigenous groups, cases examining matters of religion or marriage in which one party is a native, and other cases where jurisdiction is governed by written law. The Native

courts act as customary courts that apply to native communities in Sabah and Sarawak.

Additionally, the Federal Constitution also recognized court-martial that deal with people involved in military activities. In relation to the Jurisdiction and powers of a court-martial, Article 103 paragraph (1) of the Armed Forces Act 1972 [Act 77] provides that, in accordance with the provisions outlined in the section, a court-martial is vested with the authority to try individuals subject to service law under Act 77 for offences that fall within its jurisdiction. Furthermore, the court-martial is empowered to impose any punishment permitted under the Act for such offences. Besides that, pertaining to the industrial court, the minister in charge of industrial relations law can conciliate any trade disputes pursuant to section 19A of the Industrial Relations Act 1967, and the director general of workers can be summoned to settle disputes over employee salaries.

Authority to Form Laws and Regulations

Indonesia adheres to a presidential system of government (Ariyanto & Kafrawi, 2022; Zain et al., 2023), where the executive branch operates independently of the legislature. This contrasts with Malaysia's legal system, which is grounded in Islamic law. In Indonesia's presidential system, the executive is not subject to the legislature's approval, meaning that executive power holders cannot be removed or dismissed by the legislature, even if there is disapproval of their policies. The president serves as both the head of state and the head of government, consolidating these two roles. The president has the exclusive prerogative to form a cabinet and appoint ministers whom he or she considers capable of carrying out the duties. Since the president is responsible for forming the cabinet, the cabinet is solely accountable to the president, with no authority for the parliament to dissolve or remove it. This system ensures that the president's executive powers remain insulated from legislative control (Yani, 2018). Furthermore, a presidential system of government has the following characteristics:

- a. The president is the organizer of the state.
- b. The president holds two positions at once (head of state and head of the government).
- c. The president is not elected by parliament but is elected directly by the people in an electoral system or by a council of assemblies.
- d. The president can form a cabinet and has the prerogative to place people in the cabinet as ministers.
- e. The president is not responsible for parliament.
- f. The president cannot dissolve parliament.

- g. The president cannot be removed by parliament except through the impeachment procedure specified in the statutory regulations (Ruhenda et al., 2020).

The weaknesses or deficiencies of the presidential system of government are as follows:

- a. The accountability system is not clear.
- b. Making decisions/making policies takes a long time.
- c. Executive power outside the direct supervision of the legislature to create absolute power.
- d. Decision-making or public policy is generally the result of bargaining between the executive and the legislature.

Therefore, the authority to form laws in the Republic of Indonesia can be described in the following table:

- a. Forming Laws

The Republic of Indonesia is based on the 1945 Constitution article 20 paragraph 1, which states that the power to form laws resides in the House of Representatives. In article 20 paragraph 2, it is stated that each draft of law (RUU) is discussed by the DPR together with the President to obtain mutual approval. The process for forming laws is regulated in Law Number 12 of 2011, which concerns the establishment of legislation articles 16 to 23, articles 43 to 51 and articles 65 to 74. The formation of laws is one part of the formation of laws and regulations covering the stages of planning, drafting, discussing, validating or stipulating, and enacting.

- b. Stages of planning legislation

In Indonesia, planning is the stage where the DPR and the President (as well as the DPD regarding certain bills) compile a list of bills to be drafted in the future. This process is generally known as the drafting of the National Legislation Program (Prolegnas). The results of the discussion are then presented in the Decree of the DPR. There are two types of National Legislation Program, namely, those that are compiled for a period of 5 years (Medium Term National Legislation Program) and those that are compiled annually (Annual Priority National Legislation Program). Before a bill can be included in the annual National Legislation Program, the DPR and/or the government must first prepare the academic paper and the bill.

- c. Discussion Stage of the Draft Law

In Indonesia, the process of discussing bill material between the DPR (People's Representative Council) and the President, as well as the DPD (Regional Representative Council) for specific topics, involves two levels of talks. Level 1 discussions are conducted in meetings at various DPR bodies, such as commissions, joint commissions, the legislative body, the budget agency, or

special committees. Level 2 discussions take place during plenary meetings of the DPR. Before the Constitutional Court's Decision No. 92/PUU-X/2012 (MK 92/2012), the DPD's involvement was limited to Level 1 discussions. However, after the MK 92/2012 decision, the DPD was granted the right to participate in Level 2 discussions, allowing for broader involvement in legislative deliberations. Despite this change, the role of the DPD remains limited, as it does not include the authority to approve bills. This distinction highlights the continued constraints on the DPD's legislative power within Indonesia's bicameral parliamentary system.

In Malaysia, the characteristics and limitations of laws and regulations are defined by officials who have the authority to do so at both the federal and state levels. These officials are appointed based on the relevant legal provisions, either through attribution or delegation. The regulation drafters must be well-versed in the types of rules and the logical consequences within the regulatory hierarchy. A clear understanding of these elements helps prevent errors in selecting the appropriate forms of regulations that align with the applicable legal framework. In the legal context, the authority granted by the state, whether outlined in the constitution or in subordinate regulations, must always be accountable to the implementing agencies or bodies. Consequently, some state organs derive their authority directly from the constitution or other laws, while others may receive delegated authority from one state organ to another.

d. Legislation Stage

In Indonesia, based on Law Number 12 of 2011 Article 72, the submission of the bill that has been approved by the DPR and the President is carried out within no more than seven days from the date of mutual agreement. After receiving the bill that has been approved by the DPR and the President, the State Secretariat puts it into presidential papers and finally sends it to the President to be ratified into law.

e. Invitation Stage

In Indonesia, promulgation refers to the formal placement of ratified laws in the State Gazette (abbreviated as LN) for the main text of the law, and in the Supplement to the State Gazette (abbreviated as TLN) for the explanatory notes and any annexes. Before a law is published in the LN and TLN, the Minister of Law and Human Rights is responsible for signing and assigning the respective LN and TLN numbers to the legal text. The primary purpose of promulgation is to ensure public awareness of the laws that will govern and bind them. In Malaysia, the enactment process of legislation incorporates rules governing behavioral patterns. Laws and regulations in Malaysia are regulatory in nature (*regularend*) rather than unidirectional or one-time in application (*einmahlig*). Legislation is generally binding, as it is intended for the public at

large and not directed at specific individuals or particular persons, ensuring it is impersonal in its application (Purwaningtyas et al., 2023).

In the process of forming local regulations in Indonesia, there has been a shift in the authority to annul such regulations. Pursuant to Article 251 paragraph (2) and paragraph (3) of the Local Government Law, it is stipulated that regency/city local regulations and regent/mayor regulations that contradict higher laws, public interests, or morality are subject to annulment by the governor acting as the Central Government's representative. However, the Constitutional Court's Decision Number 137/PUU-XIII/2015 declared that the annulment of regency/city local regulations by the governor or minister is inconsistent with the 1945 Constitution. The Constitutional Court reasoned that Article 251 paragraph (2) and paragraph (3) effectively undermined the Supreme Court's role and authority to review regulations subordinate to laws, including regency/city local regulations, as guaranteed by Article 24A paragraph (1) of the 1945 Constitution.

As a federal state, Malaysia implements a more distinct division of powers between the Federal government and the states in accordance with the Federal Constitution. The Federal List encompasses strategic matters such as defense, finance, and foreign relations, which are exclusively managed by the central government. The State List pertains to more localized issues, such as Islamic religion, land, agriculture and forestry (List II (State List), where states have jurisdiction. The Concurrent List provides a framework for collaboration between the central and state governments in areas such as social welfare, town and country planning, public health, housing, culture and sports on which both federal and state legislature may enact the law. This structured division underscores the hierarchical relationship in which the central government retains significant control over key national matters while granting limited autonomy to states for local governance.

In practice, the authority of Malaysian states is relatively restricted, as many critical matters, such as finance and security, remain under the central government's control. The central government holds a significant directive role in shaping national policies, including the harmonization of regulations across federal and state levels, as stipulated in Article 75 of the Federal Constitution.

Malaysia's federal system guarantees and explicitly delineates the division of powers between the central and state governments through the Federal Constitution. The Ninth Schedule of the Constitution provides a clear framework by establishing three lists of competencies: the Federal List, the State List, and the Concurrent List. These lists ensure that each level of government has a distinct and well-defined scope of authority. This structure reflects a federal arrangement where, despite constitutional guarantees of power division, the central government retains substantial influence over strategic national issues.

State governments in Malaysia have the autonomy to manage matters listed under the State List. For instance, in the realm of Islamic religion, state governments hold the authority to enact syariah laws and oversee religious affairs for Muslims, including the administration of religious institutions such as mosques. Regarding land, states have full responsibility for land use policies, which often play a crucial role in driving local economic development. Similarly, in the agricultural sector, states manage policies tailored to support local agricultural activities based on the specific potential of their regions. This autonomy reflects the decentralized approach within the federal framework, allowing states to address and regulate issues closely tied to their local contexts.

CONCLUSION

Under the concept of the rule of law, laws and regulations serve as essential mechanisms to uphold governance, ensuring that authority and decisions are guided by established legal frameworks rather than individual or group interests. These laws and regulations are integral components of national and state life, forming the foundation for orderly governance. Notably, the central government is not the sole entity responsible for creating laws and regulations. In many nations, regional governments are entrusted with the authority to formulate regional regulations, enabling them to manage and administer governmental affairs delegated to their jurisdiction. This practice is common not only in countries adopting regional autonomy systems but also in federal states. The authority of regional governments to establish their own regulations reflects a significant degree of independence in managing local governance. Regional regulations are instrumental in advancing the objectives of decentralization, offering tailored solutions to meet regional needs. In the context of regional autonomy, such regulations play a pivotal role in maximizing the benefits of decentralization. However, granting this authority also introduces the potential for conflicts between central and regional governments, particularly when regulations overlap or are misaligned. These challenges underscore the need for a thorough examination of how the distribution of regulatory authority between the central and regional governments influences the legislative process in Indonesia.

To address these concerns, comparative legal research offers a valuable framework for evaluating the dynamics of authority in law-making. By comparing Indonesia and Malaysia, two countries with different governance structures, researchers can analyze the interactions between central and regional governments in the legislative process. While Indonesia implements regional autonomy within a unitary state framework, Malaysia operates under a federal system where authority is explicitly divided between federal and state governments. Such comparative studies can provide insights into best practices and challenges in harmonizing regulatory frameworks, ensuring that decentralization contributes to effective and equitable governance.

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REFERENCES

- Abustan, A. (2022). Implementasi Demokrasi dan Legitimasi Penjabat Kepala Daerah di Indonesia. *Indonesia Law Reform Journal*, 2(3), 274–287. <https://doi.org/10.22219/ilrej.v2i3.22202>
- Al-Fatih, S., & Nur, A. I. (2023). Does the Constitutional Court on Local Election Responsive Decisions? *Journal of Human Rights, Culture and Legal System*, 3(3), 569–596. <https://doi.org/10.53955/jhcls.v3i3.74>
- Al-Fatih, S. (2020). Harmonisasi Regulasi Hubungan Pusat & Daerah Melalui Omnibus Law (Harmonizing Regulation of Central & Local Regulations Through the Omnibus Law). *SSRN Electronic Journal*. <https://doi.org/10.2139/SSRN.3857493>
- Al-Fatih, S. (2023). *Perkembangan Metode Penelitian Hukum di Indonesia* (1st ed.). UMM Press.
- Al-Fatih, S., & Muluk, M. R. K. (2023). Understanding Beschikking, Regeling and Beleidsregel in Indonesian Legal System. *Audito Comparative Law Journal (ACLJ)*, 4(2), 87–95. <https://doi.org/10.22219/ACLJ.V4I2.25417>
- Al-Fatih, S., Safaat, M. A., Widiarto, A. E., Uyun, D. Al, & Nur, M. (2023). The Hierarchical Model of Delegated Legislation in Indonesia. *Lex Scientia Law Review*, 7(2), 629–658. <https://doi.org/10.15294/LESREV.V7I2.74651>
- Al-Fatih, S., & Siboy, A. (2021). *Menulis Artikel Karya Ilmiah Hukum di Jurnal Nasional dan Internasional Bereputasi*. Inteligencia Media.
- Attamimi, A. H. S. (1993). *Hukum tentang Peraturan Perundang-undangan dan Peraturan Kebijakan*.
- Aulia, F., & Al-Fatih, S. (2017). Perbandingan Sistem Hukum Common Law, Civil Law dan Islamic Law dalam Perspektif Sejarah dan Karakteristik Berpikir. *Legality : Jurnal Ilmiah Hukum*, 25(1). <https://doi.org/10.22219/jihl.v25i1.5993>
- Aziz, N. M. (2012). Urgensi Penelitian Dan Pengkajian Hukum Dalam Pembentukan Peraturan Perundang-Undangan-undangan. *Recht Vinding BPHN*, 1(April), 1–15. <https://doi.org/10.33331/rechtsvinding.v1i1.104>
- Bunga, M. (2020). Model Pembentukan Peraturan Daerah Yang Ideal Dalam Penyelenggaraan Otonomi Daerah. *Jurnal Hukum & Pembangunan*, 49(4), 818. <https://doi.org/10.21143/jhp.vol49.no4.2342>

- Chandranegara, I. S. (2019). Bentuk-Bentuk Perampingan dan Harmonisasi Regulasi. *Jurnal Hukum IUS QUIA IUSTUM*, 26(3), 435–457. <https://doi.org/10.20885/IUSTUM.VOL26.ISS3.ART1>
- Chandranegara, I. S. (2020). Kompabilitas Penggunaan Metode Omnibus Dalam Pembentukan Undang-Undang. *Jurnal Hukum Ius Quia Iustum*, 27(2), 241–263. <https://doi.org/10.20885/iustum.vol27.iss2.art2>
- Faruqi, S.S. (2019). *Our Constitution*. Sweet & Maxwell Asia: Kuala Lumpur.
- Fatih, S. Al. (2022). *Edukasi Pembentukan Peraturan Desa Berbasis Nilai Ketubanan Yang Maha Esa*. Jurnal Dedikasi Hukum. <https://doi.org/10.22219/jdh.v2i3.23467>
- Hj Mokhtar & Ali Tajuddin, H.H. (2023). The Islamic Legal System In Malaysia: Challenges And Strategies. *IUM Law Journal*. 31 (S), IUM LJ 39 – 68.
- Friedman, L. M. (2011). *Sistem Hukum Perspektif Ilmu Sosial*. Nusa Media.
- Indrati, M. F. (2020). *Ilmu Perundangundangan: Jenis, Fungsi, dan Materi Muatan*. Kanisius.
- Irawan Febriansyah, F. (2016). Konsep Pembentukan Peraturan Perundang-Undangan di Indonesia. *Perspektif*, 21(3), 220–229. <https://doi.org/10.30742/perspektif.v21i3.586>
- Jati, R. (2012). Partisipasi Masyarakat Dalam Proses Pembentukan Undang-Undang Yang Responsif. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 1(3), 329. <https://doi.org/10.33331/rechtsvinding.v1i3.88>
- Locke, J. (1824). Economic Writings and Two Treatises of Government [1691]. *The Works of John Locke in Nine Volumes*, (London: Rivington, 4.
- Lubis, M. S. (2000). *Politik dan Hukum di Era Reformasi*. CV Mandar Maju.
- Marzuki, P. M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Nuradhawati, R. (2019). Dinamika Sentralisasi Dan Desentralisasi Di Indonesia. *Jurnal Academia Praja*, 2(01), 152–170. <https://doi.org/10.36859/jap.v2i01.90>
- Purwaningtyas, L. A., Anggono, B. D., & Efendi, A. (2023). Pendelegasian Wewenang Pembentukan Undang-Undang oleh Undang-Undang. *Interdisciplinary Journal on Law, Social Sciences and Humanities*, 4(1), 21. <https://doi.org/10.19184/idj.v4i1.31841>
- Qurbani, I. D. (2021). Makna Hukum dan Kekuasaan: Studi Terhadap Pembentukan Undang-Undang di Indonesia. In *Dinamika Hukum*. Intelegensia Media.
- Rahardjo, S. (1980). *Hukum, Masyarakat, dan Pembangunan*. Alumni.
- Redi, A. (2019). *Hukum Pembentukan Peraturan Perundang-undangan*. Sinar Grafika.
- Ruhenda, R., Heldi, H., Mustapa, H., & Septiadi, M. A. (2020). Tinjauan Trias Politika Terhadap Terbentuknya Sistem Politik dan Pemerintahan di Indonesia. *Journal of Governance and Social Policy*, 1(2), 58–69. <https://doi.org/10.24815/gaspol.v1i2.18221>
- Safa'at, M. A. (2010). Pengujian Ketentuan Penghapusan Norma dalam Undang-Undang. *Jurnal Konstitusi*, 7(1), 001–014. <https://doi.org/10.31078/JK711>

- Safaat, M. A., Widiarto, A. E., & Suroso, F. L. (2017). Pola Penafsiran Konstitusi dalam Putusan Mahkamah Konstitusi Periode 2003—2008 dan 2009—2013. *Jurnal Konstitusi*, 14(2), 234. <https://doi.org/10.31078/jk1421>
- Seta, S. T. (2020). Hak Masyarakat dalam Pembentukan Peraturan Perundang-undangan. *Jurnal Legislasi Indonesia*, 17(2), 154–166. <https://doi.org/10.54629/jli.v17i2.530>
- Setiadi, W. (2019). Institutional Restructuring to Sustain Regulatory Reform in Indonesia. *Hasanuddin Law Review*, 5(1), Article 1. <https://doi.org/10.20956/halrev.v5i1.1699>
- Sidharta, B. A. (2010). *Ilmu Hukum Indonesia*. Unika parahyangan.
- Soekanto, S. dan S. M. (2012). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers.
- Somadiyono, S. (2020). Perbandingan Sistem Hukum Antara Indonesia dan Malaysia. *Wajah Hukum*, 4(2), 414–420. <https://doi.org/10.33087/WJH.V4I2.243>
- Suharjono, M. (2014). Pembentukan Peraturan Daerah Yang Responsif Dalam Mendukung Otonomi Daerah. *DiH: Jurnal Ilmu Hukum*, 10(19). <https://doi.org/10.30996/dih.v10i19.281>
- Wijayanti, S. N. (2016). Hubungan Antara Pusat dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014. *Jurnal Media Hukum*, 23(2), 186–199. <https://doi.org/10.18196/JMH.2016.0079.186-199>
- Wuisang, A. (2018). Reposisi Peraturan Desa Dalam Hierarki Perundang-Undangan. *Palar | Pakuan Law Review*, 4(1), 91–110. <https://doi.org/10.33751/palar.v4i1.785>
- Yani, A. (2018). Sistem Pemerintahan Indonesia: Pendekatan Teori dan Praktik. *Lentera Hukum*, 5(2), 248–258. <https://doi.org/10.19184/EJLH.V5I2.7004>