

De-Regulation of Criminal Law Provisions in Regional Regulations after the Criminal Code's Enactment

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Abstract. *This research aims to examine the existence of the terms crime and offense as well as the provisions of criminal sanctions in the framework of existing regional regulations after the enactment of Law No. 1 of 2023. It is suspected that Indonesia has various criminal provisions in the framework of regional regulations that cover many articles. In this regard, the enactment of Law No. 1 of 2023 on the Criminal Code in 2025 will ensure the conformity of all criminal provisions stipulated in local regulations with statutory provisions. Thus, the enactment of Law No. 1 of 2023 on the Criminal Code (KUHP) which is scheduled to come into force in 2025 will ensure the submission of all criminal regulations set forth in local regulations to the provisions of the law. This research uses normative juridical research method, using statutory approach and conceptual approach. This research concludes that to prevent disruption of legal harmonization in Regional Regulations, it is necessary to revise the legal provisions contained in Law No. 23 of 2014 concerning Regional Government and Law No. 12 of 2011 concerning the Formation of Legislation, in order to overcome potential confusion. In addition, it is very important for the Regional Government to conduct a comprehensive inventory and evaluation of regional regulations that use the terms "Crime" and "Violation" and regulate the imposition of criminal sanctions in the form of confinement.*

Keywords: Code; Criminal; Harmonization; Regional; Regulation.

1. INTRODUCTION

Law is a set of established rules that regulate human behavior and impose obligations or prohibitions on individuals.¹ One of the various types of legal instruments is a Regional Regulation (hereinafter referred to as a Regional Regulation), which is a form of regional law enforced by the regional executive authority with the approval of the Regional People's Representative Council. In this case, the Regional Regulation is specifically designed to be implemented in a certain geographical area so as to provide legal validity only in that area.

Law No. 12 of 2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law No. 12 of 2011) has consistently been the framework that guides the development of legislative regulations in Indonesia, which also includes Regional

¹ Antonius Cahyadi and E. Fernando M. Manulang, *Pengantar Ke Filsafat Hukum* (Jakarta: Kencana, 2007).

Regulations. This regulation serves as a foundation for the development of effective regional regulations, using appropriate methodology and standards. In terms of regional legal responsibility, Law No. 12 of 2011 stipulates that it is possible to include provisions for criminal penalties in laws and regional regulations. However, it should be noted that the scope of sanctions specified in regional regulations is subject to certain limitations. Regional regulations were formed as a means to exercise regional authority, as regulated in Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government, which is a constituent element of the national legal system. The process of formulating regional regulations in provinces, districts and cities is a development of higher levels of legislation taking into account the characteristics of each region.² In the general context and within the limits of the local legal framework, the development of regional regulations that include criminal provisions is inherently linked to the political idea of criminal law, also known as criminal law policy.³ The provisions mentioned above can also be seen in Minister of Home Affairs Regulation no. 80 of 2015, which has been amended by Minister of Home Affairs Regulation no. 120 of 2018, concerning the Formation of Regional Legal Products. According to the Minister of Home Affairs Regulation, the Regional Regulation has the authority to include 3 (three) different forms of sanctions such as: 1) imprisonment, with a maximum duration of six months; 2) criminal fine with an upper limit of fifty million; and 3) administrative sanctions and rehabilitation. The above trend has been seen in the application of criminal sanctions by regional governments, as described in the "criminal sanctions provisions" section which is usually found in regional government legislative texts.

The Regional Government Law explicitly emphasizes that regional regulations have the authority to include criminal provisions, as contained in Article 15 paragraph (2) of Law No. 12 of 2011 and Article 143 paragraph (2) of the Regional Government Law. These provisions stipulate that regional regulations have the ability to impose criminal sanctions, such as imprisonment and fines. The ability of the Regional Regulation to enforce sanctions is undoubtedly related to the provisions described in Article 15 paragraph (1) of Law No. 12 of 2011, which gives authority to Regional Regulations to formulate criminal legislation within its scope. Regional regulations are characterized by their ideal content, which includes the formulation of criminal acts and appropriate sanctions.⁴ However, it is very important that regional regulations must be formulated in line with higher laws and regulations, as well as the welfare of the general public. In addition, due consideration should be given to the special characteristics of the area concerned⁵. Therefore, when designing punitive measures for criminal offenses in local regulations, it is very important for local governments to comply with the specified jurisdictional boundaries as outlined in the relevant laws and regulations. Therefore, it is very important that the determination of criminal sanctions in regional regulations must not conflict with the jurisdiction provided, as regulated in the law and codified

² Siti Fadila Siregar et al., "Partisipasi Masyarakat Dalam Proses Pembentukan Penyusunan Peraturan Daerah," *Innovative: Journal Of Social Science Research* 3, no. 3 (2023): 7877–90.

³ Tim Lindsey and Helen Pausacker, *Crime and Punishment in Indonesia*, 1st ed. (New York: Routledge, 2021).

⁴ Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Bandung: Sinar Grafika, 2022).

⁵ Aristo Evandy A. Barlian, "Konsistensi Pembentukan Peraturan Daerah Berdasarkan Hierarki Perundang-Undangan Dalam Prespektif Politik Hukum," *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 4 (May 2017): 605–22, <https://doi.org/10.25041/fiatjustisia.v10no4.801>.

criminal law.⁶

When considering the establishment of criminal threats in regional regulations, it is very important to not only understand the legal regulations and doctrines in criminal law, but also improve the process of harmonizing legal regulations both vertically and horizontally.⁷ To date, the formulation of criminal sanctions in regional regulations shows a lack of uniformity in terms of the basic concepts of regional government.⁸ Some regional regulations include minimum and maximum criminal threats, while others only include maximum limits for criminal threats and fines.⁹ Apart from that, many existing regional regulations still prioritize punitive criminal sanctions, which reflect the theory of retributive punishment. This theory states that punishment functions as a form of retaliation for violations committed, which aims to cause suffering to the offender and make them experience the consequences of the actions committed.¹⁰ This perspective can be seen from the various types of sanctions regulated in the applicable Regional Regulations.

Generally, the Regional Regulations mostly use imprisonment and fines as a form of criminal sanctions, although there are several examples where administrative sanctions are also applied, in accordance with the types of punishment as regulated in Article 10 of the old Criminal Code which is used as the foundation of the criminal sanctions policy in the Regional Regulations. The main types of punishment used are imprisonment and fines, as well as additional punishment in the form of confiscation of certain items. In addition, existing legal regulations show different formulations of sanctions and have the potential to give rise to differences in interpretation among the drafters of the Regional Regulations.¹¹ Currently, Indonesia has a large number of criminal provisions in its regional regulations, most of which replicate the pre-existing Criminal Code, especially those relating to Book III which deals with criminal offences. In the context of Gorontalo Province, it should be noted that there are a total of 33 regional regulations that include criminal provisions.¹² Then, the Special Region of Yogyakarta (DIY) has 9 (nine) Regional Regulations which have criminal provisions and

⁶ Suharyo Suharyo, "Pembentukan Peraturan Daerah, Dan Penerapan Sanksi Pidana Serta Problematikanya," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 4, no. 3 (2015): 431–47.

⁷ Gian Manuahe, "Sinkronisasi Antara Hukum Pidana Lokal Dalam Peraturan Daerah Dengan Hukum Pidana Kodifikasi," *Lex Crimen* 2, no. 1 (2013), <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/999>.

⁸ Sri Kridasakti, Purwaningdyah Purwaningdyah, and Eko Nuriyatman, "Pola Legitimasi 'Criminal-Policy' Pada Pembentukan Peraturan Daerah," *Recital Review* 5 (January 16, 2023): 40–62, <https://doi.org/10.22437/rr.v5i1.23157>.

⁹ Wisnu Indaryanto, "Interpretasi Mengenai Ketentuan Pidana Dalam Peraturan Daerah Di Daerah Istimewa Yogyakarta," *WICARANA* 1, no. 1 (March 29, 2022): 29–46, <https://doi.org/10.57123/wicarana.v1i1.3>.

¹⁰ Tina Asmarawati, *Pidana Dan Pemidanaan Dalam Sistem Hukum Di Indonesia (Hukum Penitensier)* (Sleman: Deepublish, 2014).

¹¹ Mohamad Roky Huzaeni and Nuril Firdausiah, "Inefisiensi Peraturan Daerah Di Indonesia," *Rechtenstudent Journal* 3, no. 1 (April 2022): 42–55, <https://doi.org/10.35719/rch.v3i1.92>.

¹² Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal* 5, no. 2 (September 23, 2020): 109–21, <https://doi.org/10.32801/lamlaj.v5i2.150>.

criminal threats.¹³ Apart from that, as of February 2020, Kulon Progo Regency had 21 regional regulations with criminal sanctions.

However, it should be noted that the implementation of Law No. 1 of 2023 concerning the Criminal Code (KUHP) in 2025 has established the supremacy of the Criminal Code over all regional regulations relating to criminal matters. This means replacing terms relating to crimes and violations in regional regulations with criminal acts in accordance with the Criminal Code. Additionally, the imposition of fines has been introduced as an alternative to imprisonment in certain cases. Therefore, adjustments need to be made to the use of terminology and regulations relating to criminal sanctions that can be implemented in regional regulations, as outlined in Law No. 12 of 2011, the Regional Government Law, and the Minister of Home Affairs Regulation concerning the Formation of Regional Legal Products. This harmonization must be carried out by aligning it with the transitional provisions stipulated in Law No. 1 of 2023. Therefore, this research aims to examine the existence of the terms crime and violation as well as the provisions for criminal sanctions in existing regional regulations in line with the enactment of Law No. 1 of 2023.

2. RESEARCH METHODS

This research uses a conceptual approach and a statutory approach as the main approaches. This research also uses secondary data sources. The data analysis process was carried out descriptively and qualitatively, and the research methodology used in this research was analytical descriptive, which involved examining data to obtain a comprehensive understanding of certain legal events in society. This approach allows the analysis of such data in accordance with relevant regulations and guidelines. Legal materials are characterized by a normative perspective and are mainly used to analyze legal problems related to the content of established legal rules (*ius constitutum*). This analysis is based on the authoritative nature of these laws, the primary legal material that will be studied in this problem consists of: 1) The 1945 Constitution of the Republic of Indonesia; 2) Law No. 1 of 2023 concerning the Criminal Code; 3) Law No. 12 of 2011 concerning the Formation of Legislative Regulations as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislative Regulations; 4) Law No. 9 of 2015 concerning Second Amendment to Law No. 23 of 2014 concerning Regional Government; and 5) Minister of Home Affairs Regulation no. 8 of 2009 concerning Amendments to Minister of Home Affairs Regulation Number 23 of 2007 concerning Guidelines for Procedures for Supervision of Regional Government Implementation. The research sees that regional regulations play an important role in the legislative framework. Therefore, it is very important to prioritize the values of harmony, balance, consistency, effectiveness, and integration in formulating regional regulations that are in line with national regulations. In addition, it is very important for regional regulations to be subject to the theory of legislation, namely the theory of hierarchy of higher legislation (*lex superior derogat legi inferiori*) and the idea that new legal regulations replace or cancel old legal regulations (*lex posterior derogate legi priori*). Therefore, with the enactment of Law No. 1 of 2023, synchronization between criminal sanctions in regional regulations and codified criminal law needs to be done to support harmonization and effectiveness in

¹³ Indaryanto, "Interpretasi Mengenai Ketentuan Pidana Dalam Peraturan Daerah Di Daerah Istimewa Yogyakarta."

the implementation of criminal sanctions provisions as the basis for making regional regulations.

3. RESULTS AND DISCUSSION

3.1. The Obligations of Regional Governments in Making Regional Regulations in Accordance with the Hierarchy of Legislative Regulations in Indonesia

Formulating and enforcing regional regulations is a substantial matter as a correlation between the establishment of regional autonomy and the capacity of regional government.¹⁴ Article 18 paragraph (6) of the 1945 Constitution stipulates that regional governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance duties. However, in order to realize regional autonomy, the formulation of regional regulations must be seen in the context of the legislative system. On the other hand, the presence of regional regulations is also a manifestation of the representative system in policy formulation by regional governments.¹⁵ In Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Formation of Legislative Regulations as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislative Regulations, it is stipulated that Regional regulations are part of the hierarchy of laws and regulations in Indonesia. This statement serves to emphasize the constitutional right of regional governments to establish regional regulations and other regulations in order to carry out autonomy and shared governance.¹⁶

Incorporating national interests as a constituent element is crucial for regional regulations.¹⁷ The formal and substantive principles that guide the making of statutory regulations cannot be ignored by regional regulations just because there is evidence of their specialness.¹⁸ Therefore, the formulation of regional regulations is inherently influenced by a sense of regional autonomy, although it remains closely linked to the national legislative framework. Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government, which gives regional governments the authority to regulate and manage their regions, including making laws and regulations in accordance with the principle of subsidiarity and the principle of recognition, is the basis of this clause. Therefore, regional regulations play an important role in upholding the principles of democracy and the supremacy of law, because regional regulations regulate the decision-making and implementation processes by government bodies, officials and regional government administrators.¹⁹

¹⁴ Agus Mulyaman and Achmadi, *ILMU PERUNDANG-UNDANGAN: Pembentukan Peraturan Daerah*, 1st ed. (Tangerang: Lembaga Literasi Dayak, 2021).

¹⁵ Fitrah Malik, Abdul Wahid, and Diana Fitriana, "Fungsi Legislasi Dewan Perwakilan Rakyat Daerah (DPRD) Dalam Pembentukan Peraturan Daerah (PERDA)," *Jurnal De Jure Muhammadiyah Cirebon* 4, no. 1 (July 25, 2022): 67–76, <https://doi.org/10.32534/djmc.v4i1.3051>.

¹⁶ Johan Jasin, *Penegakan Hukum Dan Hak Asasi Manusia Di Era Otonomi Daerah* (Sleman: Deepublish, 2019).

¹⁷ Mulyaman and Achmadi, *ILMU PERUNDANG-UNDANGAN: Pembentukan Peraturan Daerah*.

¹⁸ Anak Agung Istri Ari Atu Dewi, *Penyusunan Perda Yang Partisipatif* (Zifatama Jawara, 2019).

¹⁹ Abdul Madjid, Eny Harjati, and Triya Indra Rahmawan, *Kebijakan Formulasi Delik Dalam Peraturan Daerah* (Universitas Brawijaya Press, 2021).

The interaction between local political dynamics and technical aspects of regional regulation formulation is an important factor that needs to be considered. These regulations must be in line with the provisions outlined in the 1945 Constitution and applicable laws and regulations.²⁰ In this regard, the Regional Government Law stipulates that Regional Regulations and Local Government Regulations must not conflict with higher statutory regulations, public interests, and/or moral norms. Therefore, regional regulations must refer to a set of rules and guidelines designed to enforce and operationalize higher laws, as well as taking into account the unique circumstances and characteristics of a particular geographic area.

In this regard, all regional regulations must comply with and must not conflict with higher legal regulations. This condition is based on the legal doctrine of "*lex superiore derogat legi inferiori*", which indicates that higher laws have greater authority than lower laws.²¹ In such a way, the main aim of this act is to provide a framework that ensures a level of legal certainty in the legislative system.²² The doctrine of the hierarchy of statutory regulations includes the principle that lower statutory regulations must obtain their legal basis from higher statutory regulations, and that lower statutory regulations must be in harmony with and not conflict with higher statutory regulations. high in content.²³

This principle can actually be the basis for the process of criminalization and decriminalization in regional regulations as certain activities in the formation of legal norms such as requiring compliance with the principles that govern the formulation of regulations. Therefore, legislative development requires a comprehensive intellectual examination of criminal policy issues. The idea of Criminal Policy is related to the imposition of criminal sanctions in regional regulations which is widely considered to be a rational and important issue in the field of crime control.

The justification for including criminal consequences in the Regional Regulations through the inclusion of a chapter on "criminal provisions" can be supported primarily by the principles of criminal law, especially those included in the principle of legality.²⁴ The Regional Government Law, together with Law No. 12 of 2011, basically allows the formation of criminal policies through regional regulations. However, this law does not provide specific guidelines or standard references that local governments can follow in formulating and determining criminal sanctions. This has an impact on the large number of disparities in determining criminal sanctions between regional governments

²⁰ Aristo Munandar, "Pencabutan Peraturan Daerah Oleh Pemerintah Pusat," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 3 (June 20, 2022): 15–21, <https://doi.org/10.52005/rechten.v3i2.38>.

²¹ Suko Prayitno, "Mekanisme Pembatalan Peraturan Daerah Dan Akibat Hukumnya Berdasarkan Asas Lex Superiori Derogat Legi Inferiori," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 8 (November 8, 2017): 109, <https://doi.org/10.32493/jdmhkdmdhk.v8i2.698>.

²² Yonathan Wicaksana, "Dualisme Pemaknaan Asas Lex Specialis Derogat Legi Generali," *Verstek* 9, no. 3 (September 14, 2021), <https://doi.org/10.20961/jv.v9i3.55060>.

²³ Ari Setyono, "Formulasi Pengharmonisasian Rancangan Peraturan Perundang-Undangan Yang Dibentuk Di Daerah," *Jurnal Ilmiah Hukum DEJURE: Kajian Ilmiah Hukum* 4, no. 2 (March 30, 2022): 189–205, <https://doi.org/10.35706/dejure.v4i2.6453>.

²⁴ Kridasakti, Purwaningdyah, and Nuriyatman, "Pola Legitimasi 'Criminal-Policy' Pada Pembentukan Peraturan Daerah."

responsible for enacting regional regulations, even though there are similarities in terms of the objects being regulated.²⁵ The absence of comprehensive and uniform criminal regulations in the Regional Government Law in conjunction with Law No. 12 of 2011 has significant consequences for the aim of delegating authority to regional governments to determine criminal sanctions through criminal policies.

In general, the DPRD prioritizes the imposition of imprisonment combined with fines in formulating various types of criminal sanctions in Regional Regulations. In this regard, imprisonment is only regulated in specific regional regulations, such as regional regulations on regional taxes.²⁶ The imposition of imprisonment and fines as alternative criminal punishments is a prominent characteristic outlined in the previous Criminal Code, in addition to eight other formulations. However, the implementation of Law No. 1 of 2023, which will come into force in 2025, has eliminated the use of prison sentences as the main form of punishment in the basic criminal law. So in particular, it needs to be clarified that Provincial Regional Regulations and Regency/City Regional Regulations have the obligation to determine sanctions in accordance with the provisions in Law No. 1 of 2023. So to ensure there is harmonization in the regulations regarding criminal provisions in Regional Regulations.

3.2. The Existence of the Terms Crime and Violation and Provisions for Criminal Sanctions in Regional Regulations

Regional regulations are considered to be subordinate to higher statutory regulations because they are regulations that describe and detail the statutory regulations that are above them.²⁷ Therefore, the substance regulated in regional regulations shows a significant connection with the regulations above them. Apart from that, regional regulations often show a tendency to override other formal juridical and technical issues, and often conflict with the laws and regulations above them.²⁸ These regulations are also not specifically formulated to answer all existing problems, the lack of attention to this has led to the emergence of various problems related to regional regulations.²⁹

One of the main objectives of national legal policy also includes the harmonization of all laws and regulations at both the central and regional levels, so as to avoid

²⁵ Arie Elcaputera, "URGENSI HARMONISASI RANCANGAN PERATURAN DAERAH: Sebuah Analisis Tantangan Dan Strategi Pembentukan Peraturan Perundang-Undangan Indonesia Dalam Rangka Penguatan Otonomi Daerah," *Jurnal Ilmu Hukum* 11, no. 1 (August 28, 2022): 121, <https://doi.org/10.30652/jih.v11i1.8236>.

²⁶ Stevaming Malelak, "Hambatan Penerapan Ketentuan Pidana Dalam Perda Nomor 19 Tahun 2011 Tentang Pajak Daerah Di Kabupaten Timor Tengah Selatan," *Jurnal Paris Langkis* 3, no. 2 (March 28, 2023): 129–36, <https://doi.org/10.37304/paris.v3i2.6685>.

²⁷ Dalinama Telaumbanua, "Pembentukan Peraturan Daerah Kabupaten/Kota," *JURNAL EDUCATION AND DEVELOPMENT* 4, no. 1 (May 22, 2018): 96–96, <https://doi.org/10.37081/ed.v4i1.279>.

²⁸ Muhammad Suharjono, "Pembentukan Peraturan Daerah yang Responsif dalam Mendukung Otonomi Daerah," *Dih: Jurnal Ilmu Hukum* 10, no. 19 (2014): 240052, <https://doi.org/10.30996/dih.v10i19.281>.

²⁹ Marten Bunga, "Model Pembentukan Peraturan Daerah Yang Ideal Dalam Penyelenggaraan Otonomi Daerah," *Jurnal Hukum & Pembangunan* 49, no. 4 (December 30, 2019): 818–33, <https://doi.org/10.21143/jhp.vol49.no4.2342>.

inconsistencies with higher laws and regulations.³⁰ Thus, it is necessary to carry out an examination of criminal policies related to regional regulations, such as aiming to harmonize regional regulations that have criminal sanctions with codified criminal law.

The validity of a norm comes from its formulation, which follows a process established by a higher norm.³¹ In this case, the implementation of criminal policies by the regional government and DPRD, which involves the imposition of punishments such as imprisonment or fines, is directly related to the process of drafting and evaluating regional regulations based on Article 7 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations. This article refers to Hans Kelsen's theory of tiered legal norms, known as "*stufenbau des rechts*", which emphasizes that statutory regulations must not conflict with higher regulations that replace them.³² The structure and hierarchy of norm systems, highlighting that the highest standards, known as basic norms, serve as the foundation on which lower norms are based.³³ So, if any changes are made to basic norms, it will endanger the integrity of the underlying norm system. In this framework, the hierarchical arrangement of statutory provisions, also known as *stufenbau* theory, has the potential to become a basis for conducting statutory review.³⁴

Peter Mahmud Marzuki stated that in the context of harmonization of laws and regulations, the principle of *lex superiori derogat legi inferiori* applies. This principle states that in the event of a conflict between laws and regulations of different levels, the laws and regulations of the lower level must be set aside.³⁵ To ensure the alignment of regulations in regional regulations with national criminal policy, higher laws supersede lower laws, thereby requiring lower laws to comply with provisions outlined at a higher level. The implementation of Law No.1 of 2023 has brought about changes in criminal policy, which in turn will cause confusion in the practical application of legal provisions. In the past, Article 103 of the old Criminal Code stipulated that the regulations outlined in Chapters I to Chapter VII of the Criminal Code applied to criminal acts that were punishable by punishment based on alternative statutory provisions, unless otherwise provided by law. For several decades, the provisions outlined in Article 103 have served as guiding principles for the development of legislative regulations relating to the formation of sentencing policies in Law No. 23 of 2014 concerning Regional Government, as well as appropriate implementing

³⁰ Yuli Asmara Triputra, "Harmonisasi Peraturan Daerah Terhadap Peraturan Perundang-Undangan Dalam Bingkai Negara Kesatuan Republik Indonesia," *Jurnal Lex Librum* 3, no. 1 (2016): 417–28.

³¹ Eko Hariyanto, "Harmonisasi Peraturan Daerah Berdasarkan Asas Lex Superior Derogate Legi Inferiori Untuk Mencapai Kepastian Hukum Dalam Suatu Peraturan Daerah," *Ensiklopedia Education Review* 4, no. 2 (2022): 136–42.

³² Barlian, "Konsistensi Pembentukan Peraturan Daerah Berdasarkan Hierarki Perundang-Undangan Dalam Prespektif Politik Hukum."

³³ Hasanuddin Hasan, "Hierarki Peraturan Perundang-Undangan Negara Republik Indonesia Sebagai Suatu Sistem," *Madani Legal Review* 1, no. 2 (December 10, 2017): 120–30, <https://doi.org/10.31850/MALREV.V1I2.32>.

³⁴ Zaka Firma Aditya and Muhammad Reza Winata, "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia (Reconstruction Of The Hierarchy Of Legislation In Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): 79–100.

³⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2014).

regulations, which include Regional Regulations. Policy guidelines relating to substantive criminal law provisions in Law No. 23 of 2014 and its implementing regulations refer to the broader provisions outlined in the Criminal Code. Thus, the policy lines relating to the substantive criminal law provisions outlined in Law No. 23 of 2014 and its implementing regulations refer to the general provisions contained in the previous Criminal Code. However, with the existence of Law No.1 of 2023 as the new Criminal Code, the guidelines and criminal policy lines in the Regional Regulations must conform to the provisions of Book One of Law No.1 of 2023, and the provisions regarding the adjustments will be regulated by law.

Then, Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government, categorizes criminal acts committed against Regional Regulations as violations, in accordance with the classification of violations specified in the previous version of the Criminal Code. However, Law No. 1 of 2023 in 2025 as the new Criminal Code, in accordance with Article 614 of Law No. 1 of 2023 which explicitly states that the qualifications for crimes and violations as stated in many Regional Regulations must be changed to criminal acts. Thus, material aspects of criminal law or criminal acts described in regional regulations are recognized by the Criminal Code, provided they are subject to applicable limitations and provisions. Apart from that, in Article 615 of Law No.

The priority of imprisonment as the main form of punishment in existing regional regulations, compared to fines, shows that imprisonment is considered a more serious crime. However, it has become common knowledge that the lack of implementation of criminal sanctions in regional regulations is based on negligence carried out by district/city and provincial governments.³⁶ Basically, the effectiveness of law enforcement can be seen in the specific prevention aspect of a crime, which can be seen in its effect on the perpetrator with 2 aspects such as initial prevention and correction.³⁷ In keeping with this perspective, it is crucial to include doctrinal steps that serve as guiding principles in the criminalization process. These steps should include consideration of real and potential victims, while also considering an analysis of the costs and outcomes obtained from the principle of *ultimum remedium*.³⁸ So the provisions in Law No.1 of 2023 regarding provisions on criminal sanctions that must be applied to replace imprisonment in the Regional Regulation are considered to be more effective in preventing and recovering losses experienced by victims.

Therefore, it is very important to establish a harmonized regulatory and regulatory framework that effectively prevents redundancy, encourages linkages, and mutually reinforces each other, so that this synchronization is very important to ensure legal certainty. In this case, the vertical synchronization process requires a comprehensive examination of the relevant rules and regulations in a particular domain to ensure harmonious coexistence and avoid contradictions.³⁹ In this regard, in Permendagri no.

³⁶ M Chairul Idrah, "Efektifitas Sanksi Pidana Dalam Peraturan Daerah Provinsi Jambi Tentang Pajak Daerah," *Jurnal Ilmiah Universitas Batanghari Jambi* 14, no. 3 (2017): 54–60.

³⁷ Bambang Waluyo, *Penegakan Hukum Di Indonesia* (Bandung: Sinar Grafika, 2022).

³⁸ Marcus Priyo Gunarto, "Asas Keseimbangan Dalam Konsep Rancangan Undang-Undang Kitab Undang-Undang Hukum Pidana," *Jurnal Mimbar Hukum* 24, no. 1 (2012): 83–97, <https://doi.org/10.22146/jmh.16143>.

³⁹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. (Jakarta: Kencana, 2016).

8 of 2009 concerning Amendments to Minister of Home Affairs Regulation Number 23 of 2007 concerning Guidelines for Procedures for Supervision of Regional Government Implementation, it is explained that regional apparatus at the Provincial and Regency/City levels have the authority to carry out inspections of the type and number of DPRD legal products, so that they do not there are regulations that conflict with other laws and regulations. In addition, in the realm of general government administration relating to supervision procedures, Government Supervisory Officials have the authority to examine Provincial and Regency/City Regional Regulations that are no longer in accordance with statutory regulations, regional conditions.

Thus, to avoid problems in setting the criminal sanctions system in regional regulations, consideration of the future of regional legislative practice is needed after the implementation of the new Criminal Code. The criminal consequences used in regional regulations should be closely related to the provisions and characteristics of criminal acts outlined in Law No. 1 of 2023. Thus, the legal provisions outlined in Law No. 23 of 2014 concerning Regional Government and Law No. 12 of 2011 concerning the Formation of Legislative Regulations needs to be revised to overcome potential ambiguity. Apart from that, the Regional Government together with Government Supervisory Officials also need to carry out a comprehensive inventory and evaluation in preparation for the enactment of Law No.1 of 2023.

So, to avoid damaging the legal synchronization of legal products at the regional level (*Perda*), the Regional Government should immediately carry out a comprehensive inventory and evaluation of regional regulations which have provisions for criminal sanctions in the form of imprisonment and fines and use the term "Crime" and/ or "Violation" before Law No.1 of 2023 comes into force in 2025.

4. CONCLUSION

Indonesia's criminal law policy has changed with the enactment of Law No. 1 of 2023, and one of these influences the criminal law policy contained in the Regional Regulation, namely regarding changing the phrases "Crimes" and "Violations" to "Criminal Actions" and changing the provisions for imprisonment sanctions becomes a fine in accordance with Law No. 1 of 2023 as the new Criminal Code. Even though Law No. 1 of 2023 will take effect in 2025, Regional Governments need to carry out a thorough inventory and evaluation to examine and ensure the harmony of criminal provisions in regional regulations and immediately make preparations to change regulations that conflict with Law No. 1 of 2023. Apart from that, to avoid regulatory disharmony between regional regulations and those above them, the legal provisions outlined in Law No. 23 of 2014 concerning Regional Government and Law No. 12 of 2011 concerning the Formation of Legislative Regulations needs to be revised so that there are no regulations that conflict with the transitional provisions in Law No.1 of 2023 which will come into effect in 2025.

5. REFERENCES

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