



THE POSITION OF THE REGULATION HEAD OF THE NUSANTARA CAPITAL AUTHORITY IN THE LEGISLATION SYSTEM

Oleh:

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ABSTRACT

This study aims to determine and understand the position of the regulation of the Nusantara Capital Authority in the legislation system. The research method used is a legal research method with a type of normative legal research in which the approach used is a statute approach and a conceptual approach. The legal materials used are primary, secondary, and tertiary legal materials. The results of this study indicate that the position of the regulation of the Head of the Nusantara Capital Authority is equivalent to regional regulations. This is because: (1) The Head of the Nusantara Capital Authority has a ministerial level position only in the procedural aspect of his appointment, while in terms of forming regulations he has the position of a regional head. (2) In terms of the authority to make rules, the Nusantara Capital Authority as a special regional unit at the provincial level has the authority of attribution in terms of regulating (*regelendad*) the process of implementing the special regional government of the Nusantara Capital (3) Seeing that the position of the Head of the Authority is the head of a special regional government, the legal products issued by the Head of the Nusantara Capital Authority are at the same level as "Regional Regulations" which, if based on the concept of grouping in the Hierarchy of laws and regulations, the location of the Regulation of the Nusantara Capital Authority is classified as regional regulations.

Keywords: Position, Head of Authority Regulation, Legislation

INTRODUCTION

According to Pasal 1 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (hereinafter referred to as UUD NRI Tahun 1945) that "Indonesia is a state of law". According to Brian Z Tamanaha, the rule of law is "*Government official and citizen abide by and bound by law*" (Tamanaha, 2004). Referring to this understanding, one of the characteristics of a state of law is the existence of laws or regulations that become the basis for the government and the



people to act. In the Indonesian constitutional system, the form or type of the rule of law has been regulated in Pasal 7 ayat (1) dan Pasal 8 ayat (1) Undang-Undang Nomor 12 Tahun 2011 on the Formation of Laws and Regulations (hereinafter referred to as UU No. 12 Tahun 2011).

The formation of the rule of law is not only the authority of the Central Government but also the authority of autonomous regions. The unitary state of Indonesia will create a strategy in the division of power between the center and the regions in order to realize the goals of the state (Ervin Nugrohosudin, 2022). The relationship between the central government and local governments as the embodiment of a unitary state is emphasized in Pasal 18 UUD NRI Tahun 1945 ayat (1) The Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into regencies and cities, each of which has a regional government, which is regulated by law. Considering Indonesia as a unitary state as stipulated in Pasal 1 ayat (1) UUD NRI Tahun 1945 recognizes the existence of regional autonomy as specified in Pasal 18 UUD NRI Tahun 1945. One of the regional authorities is to form regulations as specified in Pasal 18 ayat (6) UUD NRI Tahun 1945. Normatively, the position of regulations formed by regions is regulated in Pasal 7 ayat (1) UU No. 12 Tahun 2011.

The form of regional regulations between one region and another is certainly different, because according to the provisions Pasal 18B ayat (1) UUD NRI Tahun 1945 special autonomy has been recognized. In the Special Region of Yogyakarta, it is known as a Special Regional Regulation, in Aceh it is known as Qanun, and in the Special Province of Papua it is known as a Special Regional Regulation. Although there are differences in form, there is no difference in position as stipulated in Pasal 7 ayat (1) UU No. 12 Tahun 2011, except in terms of function.

The enactment Undang-Undang Nomor 3 Tahun 2022 about the National Capital (hereinafter referred to as UU No. 3 Tahun 2022) is a real step in the implementation of autonomy in this case providing opportunities for local government units that are special or special in nature to establish regional



regulations and other regulations to implement autonomy and assistance tasks (Tahir, 2022). According to Pasal 5 ayat (4) UU No. 3 Tahun 2022, The Capital City of the Archipelago will be led by a Head of Authority who has a ministerial level position, appointed, appointed and dismissed by the President. The implications of this construction then give birth to new problems at the level (Legislation) or laws that have been passed by the legislative body. Based on Pasal 5 ayat (6) UU No. 3 Tahun 2022 has the right to establish regulations to organize the Special Regional Government of the Capital City of the Archipelago. However, these provisions cannot automatically be interpreted as Regional Regulations (Perda) which are generally applied in various other local government units, considering that the regional government of the Archipelago Capital does not recognize the existence of a Regional People's Representative Council (DPRD). Meanwhile, based on UU No. 12 Tahun 2011 on the other hand, according to the Governor, Perda are laws and regulations formed by the Regional People's Representative Council (DPRD) with the joint approval of the Governor. Pasal 28 Peraturan presiden Nomor 62 Tahun 2022 explains that the formation of regulations of the Head of the Nusantara Capital Authority is carried out in accordance with the provisions of laws and regulations regarding the formation of laws and regulations.

Problems regarding the position of regulations formed by special and privileged regions in the system of laws and regulations arose when on February 15, 2022 it was promulgated UU No. 3 Tahun 2022 about Nusantara Capital Authority. The law establishes a Head of the State Authority as the organizer of the special regional government of the Capital City. One of the authorities of the Head of the Authority of the Capital City of the Archipelago is to form regulations as specified in Pasal 5 ayat (6) UU No. 3 Tahun 2022 This authority raises problems, especially from the aspect of the position of regulations in the system of laws and regulations, whether they are regional regulations or ministerial regulations, considering that the Head of the Authority is a ministerial-level position.



PROBLEM FORMULATION

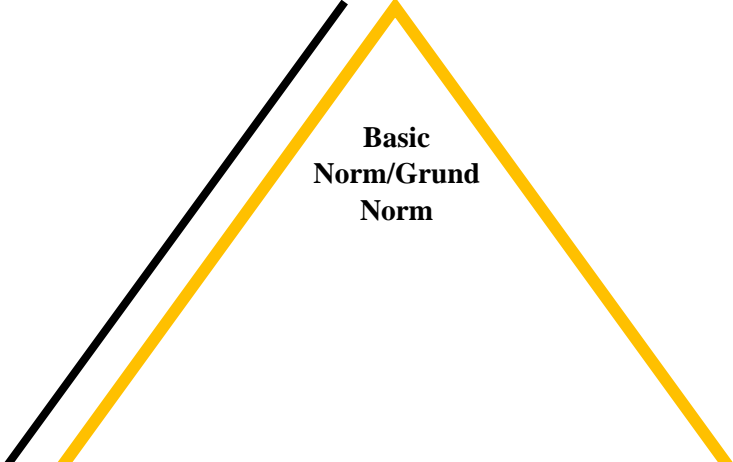
The problem formulations raised in this paper are:

1. What is The Position of the Regulation of the Head of the Nusantara Capital Authority in the Hierarchy of Legislative Regulations?

RESULT AND DISCUSSION

The Position of the Regulation of the Head of the Nusantara Capital Authority in the Hierarchy of Legislative Regulations

Talking about the position of laws and regulations, it cannot be separated from the theory of "*stufenbau*" in which Hans Kelsen views law as a system of norms. As a system, the law cannot be understood as something separate, but can only stand alone understood as an integrated legal system. Therefore, Hans Kelsen issued a second theory known as "*Stuent Theory*" or norm hierarchy theory. This theory explains that the state's legal norms are tiered and layered. Higher legal norms are the source for lower legal norms (Syofyan Hadi, 2017). In other words, whether a lower legal norm is valid or not depends on whether it is in line with the higher legal norm. Referring to Hans Kelsen's opinion above emphasizes that legal norms in a country are hierarchical, so there is a relationship between all legal norms, both higher legal norms and lower legal norms (Asshiddiqie & Safa'at, 2021). Legal norms that are the basis for the formation of other legal norms have a higher hierarchy. Legal norms formed by higher legal norms have a lower position. Both the higher norms and the lower norms are a unity as a legal system. Therefore, the validity of a lower legal norm depends on its conformity with a higher legal norm (Syofyan Hadi, 2020).



Basic
Norm/Grund
Norm

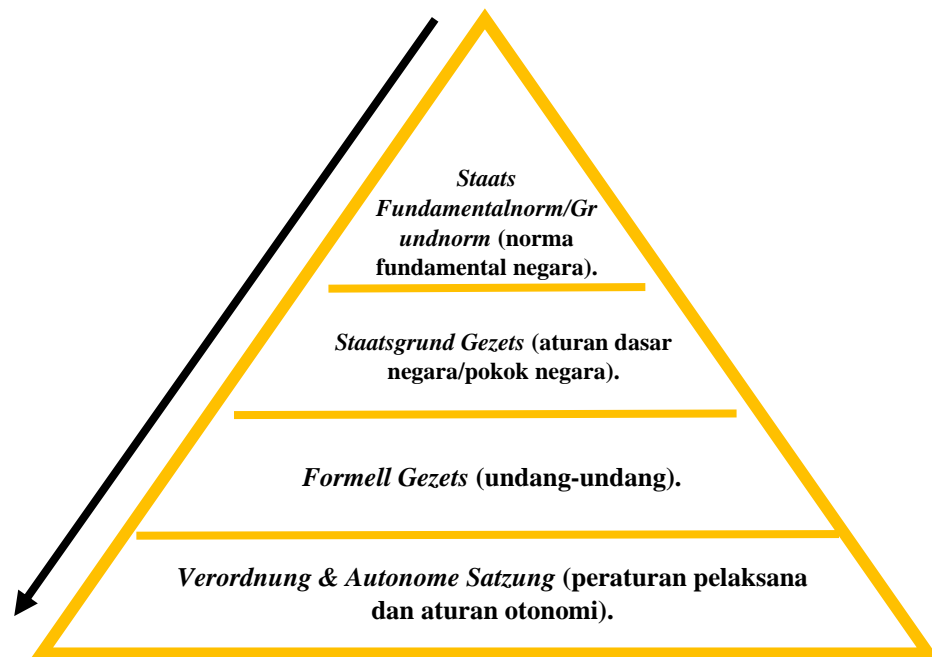


**Enabling Act (Secondary Norm
Expressing Primary Norm)**

**Bylaw (Secondary Norm Expressing
Primary Norm)**

Specific Official Action (Particularly Primary Norms)

Then according to Hans Nawiasky, that in addition to the norms are layered and tiered, the legal norms of a country are also grouped, and the grouping of legal norms in a country is arranged in the State Law Norm Structure (*die Stufenordnung der Rechtsnormen*) in four levels, that is:



Indonesia as a country that is influenced by *Stufenbau Theory*, the formation of laws and regulations in Indonesia has a major influence during the formation process to its implementation. Hierarchy is not just a theory but can be a tool to control regulations that are considered by the community to have harmed both material and non-material.



UUD NRI Tahun 1945 has been established as the basic law in the legislation and occupies the highest place in the hierarchy of Indonesian laws and regulations. (Rusdianto Sesung, 2016). The hierarchy of laws and regulations in Indonesia is contained in full in Pasal 7 ayat (1) UU No. 12 Tahun 2011 yaitu sebagai berikut:

No	Undang-Undang No. 12 Tahun 2011.	Tata Urutan Peraturan Perundang-Undangan
1.	Pasal 7 Ayat (1)	<ol style="list-style-type: none">1. Undang-Undang Dasar RI Tahun 19452. Ketetapan MPR RI3. Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang;4. Peraturan Pemerintah;5. Peraturan Presiden;6. Peraturan Daerah Provinsi; dan7. Peraturan Daerah Kabupaten/Kota.

As we know, the government has decided to move the national capital to Penajam Paser Utara, East Kalimantan. The government views the capital city of Jakarta as no longer suitable as a capital city (Hasibuan & Aisa, 2020). This is due to overcrowding and high urbanization growth with the largest concentration of people.

Responding to Jakarta's increasing unfitness as a capital city, the government set Undang-Undang Nomor 3 Tahun 2022 on the National Capital City (hereinafter referred to as UU No. 3 Tahun 2022) became the government's official step in moving the new capital city. As a new special autonomous region, the Nusantara



Capital Authority is led by the Head of the Nusantara Capital Authority, who is the head of the special regional government of the Nusantara Capital with a ministerial level. The meaning of the word ministerial level is only limited to procedural aspects, namely being appointed, appointed, and dismissed by the President and not regarding the authority to regulate and manage it. Beyond the procedural aspects above, the Head of the Nusantara Capital Authority is the same as the Regional Head in general who has responsibility for the implementation of a special regional government. Referring to this, it affects the position of the regulations issued by the Head of the Nusantara Capital Authority which can be seen in the following explanation:

Regulations Head of the Nusantara Capital Authority

No	Peraturan Kepala Otorita Ibu Kota Nusantara	Tanggal Ditetapkan	Sumber
1.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 1 Tahun 2022 Tentang Organisasi dan Tata Kerja Otorita Ibu Kota Nusantara	9 September 2022	Berita Negara Tahun 2022 Nomor 894
2.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 2 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Ibu Kota Nusantara Barat	20 Februari 2023	Berita Negara Tahun 2023 Nomor 300
3.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 3 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Ibu	20 Februari 2023	Berita Negara Tahun 2023 Nomor 301
4.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 4 Tahun 2023	20 Februari 2023	Berita Negara



	Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Ibu Kota Nusantara Timur 2		Tahun 2023 Nomor 302
5	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 5 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Ibu Kota Nusantara Selatan	19 Juni 2023	Berita Negara Tahun 2023 Nomor 496
6.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 6 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Ibu Kota Nusantara Utara	19 Juni 2023	Berita Negara Tahun 2023 Nomor 497
7.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 7 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Simpang Samboja	19 Juni 2023	Berita Negara Tahun 2023 Nomor 492
8.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 8 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Kuala Samboja	19 Juni 2023	Berita Negara Tahun 2023 Nomor 493
9.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 9 Tahun 2023 Tentang Rencana Detail Tata Ruang Wilayah Perencanaan Muara Jawa	19 Juni 2023	Berita Negara Tahun 2023 Nomor 500
10.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 10 Tahun 2023	03 Juli 2023	Berita Negara RI



	Tentang Tata Cara Pemantauan dan Evaluasi Pelaksanaan Perincian Rencana Induk Ibu Kota Nusantara		Tahun 2023 Nomor 501
11.	Peraturan Kepala Otorita Ibu Kota Nusantara Nomor 11 Tahun 2023 Tentang Hak Keuangan dan Fasilitas Lainnya Bagi Pegawai dalam Struktur Organisasi Otorita Ibu Kota Nusantara	1 Agustus 2023	Berita Negara Tahun 2023 Nomor 587

The existence of the Regulation of the Head of the Nusantara Capital Authority (Perka) is an implementation of the authority of autonomous regions to make regional regulations. The concept of Perka is closely related to the implementation of regional autonomy, so that in carrying out regional autonomy, the principle of regional government is recognized as having the right to establish regional regulations and other regulations to implement autonomy and assistance tasks. The use of the term "Regulation of the Head of the Nusantara Capital Authority" is a form of specificity owned by the Nusantara Capital Authority, but regarding its position and function it is the same as regional regulations.

So in terms of the authority to make regulations, the position of the Regulation of the Head of the Nusantara Capital Authority or can be called Perka can be said to be equivalent to regional regulations which in its application can be issued in the "Regional Gazette" which is valid only for the authorization area, instead of the opposite in the form of "Berita Negara" which should be said to be a ministerial regulation with general applicability. This is very contradictory to the concept of implementing regional autonomy. Because the Head of the Nusantara Capital Authority itself is the head of a special region, its legal products should be at the same level as regional regulations, not in the form of ministerial regulations.



As explained above, the author argues that the position of the Head of the Nusantara Capital Authority is the head of a special regional government, so the legal products issued by the Head of the Nusantara Capital Authority are at the same level as "Regional Regulations" and can even be said to be at the level of regional head regulations "Perkada".

Although the Perka Otorita can be likened to a regional regulation, its content is specifically different, because the authority to regulate and certain content material in the Perka Otorita is based on the provisions of UU No. 3 Tahun 2022. Meanwhile, the content material of regional regulations is generally guided by the provisions of UU No. 23 Tahun 2014. If it is based on the concept of grouping in the hierarchy of laws and regulations in Pasal 7 UU No. 12 Tahun 2011 regarding the hierarchy of statutory regulations, the location of the Regulation of the Head of the Nusantara Capital Authority is classified in the sixth order, namely regional regulations. This can be seen from the scope or scope of its validity, which has similarities with regional head regulations whose validity is only within the region and does not apply to other regions

CONCLUSION

The position of the regulation of the Head of the Nusantara Capital Authority in the legislative system is positioned as a regional regulation which in the order or hierarchy of legislation the position of the Head of the Nusantara Capital Authority Regulation is a statutory regulation under the law which has the same position as the Regional Regulation. This is because: First, in running its government, the Nusantara Capital Authority is directly led by the Head of the Nusantara Capital Authority. The Head of the Nusantara Capital Authority has a ministerial level position in procedural aspects only, while in terms of forming regulations he acts as a regional head, Secondly, one of the authorities of the Head of the Nusantara Capital Authority is to form regulations which in their application are attributions in the context of running a special autonomous regional government.



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