



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 Head of NCA is equivalent to regional regulations. This is because: (1) Head of NCA is at the ministerial level in terms of appointment procedures, while in terms of promulgating regulations, he serves as 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 Head of the Authority is the head of a special regional government, the legal products issued by Head of NCA are at the same level as "Regional Regulations" which, If based on the concept of grouping in the hierarchy of statutory provisions, positions of regulation head of NCA Authority is classified as a regional regulation. **Keywords:** Position, Head of Authority Regulation, Legislation

INTRODUCTION

Based on to Ps. 1 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (can then be said 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*"¹. 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 Ps. 7 ayat (1) dan

¹ Brian Z. Tamanaha, *On The Rule of Law : History, Politics, Theory* / Brian Z. Tamanaha (Cambridge : Cambriedge University Press, 2004, 2004).



Ps. 8 ayat (1) UU 12 Tahun 2011 on the on the formation of laws and regulations (can then be said UU No. 12/2011).

The formation of a rule of law state is not only the authority central government but also the authority of autonomous regions. The unified state of Indonesia will create a strategy to divide power between the center and the regions to realize the goals of the state². The relationship between central government and local government as the embodiment of a unitary state is emphasized in Ps.18 UUD NRI Tahun 1945 ayat (1) The Unitary State of the Republic of Indonesia consists of provinces, regencies and cities. The law regulates the government of each region. Indonesia as a unitary state as such provisions are regulated in Pasal 1 ayat (1) UUD NRI Tahun 1945 recognizes the presence of regional autonomy as referred to Ps. 18 UUD NRI Tahun 1945. One of the regional authorities is to form regulations as specified in Ps. 18 ayat (6) UUD NRI Tahun 1945. Normatively, the position of regulations formed by regions is regulated in Ps. 7 ayat (1) UU No. 12/2011.

The form of regional regulations between one region and another is certainly different, because according to the provisions Ps.18B ayat (1) UUD NRI Tahun 1945 special autonomy has been recognized. In the Special Region of Yogyakarta it is called Special Regional Regulation, in Aceh it is called Qanun and in Papua Province it is called Special Regional Regulation. Although there are differences in form, there is no difference in position as stipulated in Ps. 7 ayat (1) UU No. 12/2011, except in terms of function. The enactment Undang-Undang Nomor 3 Tahun 2022 about the National Capital (can then be said UU No. 3/2022) In this case, it is a real step in the implementation of autonomy, Allows special or privileged regional government units to implementing autonomy and assistance tasks through the implementation of regional regulations³. According to Ps 5 ayat (4) UU No. 3 Tahun 2022, The Capital Authority will be led by a Head of Authority who has a ministerial-level position, who are selected, appointed, and dismissed by the President. The implications of this construction then give birth to new

² Ervin Nugrohosudin, "Kedudukan Kepala Otorita Ibu Kota Nusantara Dalam Undang-Undang Nomor 3 Tahun 2022," *Jurnal Legislatif* 5 No 2 (2022).

³ Erdin Tahir, "Kedudukan Peraturan Otorita Ibu Kota Nusantara Dalam Sistem Peraturan Perundang-Undangan," *Jurnal Hukum POSITUM* 7, no. 2 (2022): 314–41.



problems at the level (Legislation) or laws that have been passed by the legislative body. Based on Psl 5 ayat (6) UU No. 3 Tahun 2022 has the right to promulgate regulations on the organization of the Specials Regional Government of the Capital City Authority. 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 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 DPRD with the joint approval of the Governor. Ps 28 Peraturan presiden No. 62/2022 explained that the formation of regulations by Head of Nusantara Capital Authority (can then be said Head of NCA) is done in compliance with the legal requirements for the creation of laws and regulations.

Problem of position regulations established by special and privileged regions in the legislative and regulatory system arose in February 15, 2022 it was promulgated UU No. 3 Tahun 2022 about Nusantara Capital Authority. The law stipulates that Head of NCA is the person who organized the national capital's special regional government. Head of NCA is responsible for issuing regulations in accordance with in Ps. 5 ayat (6) UU No. 3 Tahun 2022 This authority raises many issues, especially On the position of regulations in the legislative framework of the system, both regional regulations and ministerial regulations, given the position of Head of Authority at the ministerial level.

PROBLEM FORMULATION

The problem formulations raised in this paper are:

1. What is The Position of the Regulation of the Head of NCA in the Hierarchy of Legislative Regulations?

RESULT AND DISCUSSION



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

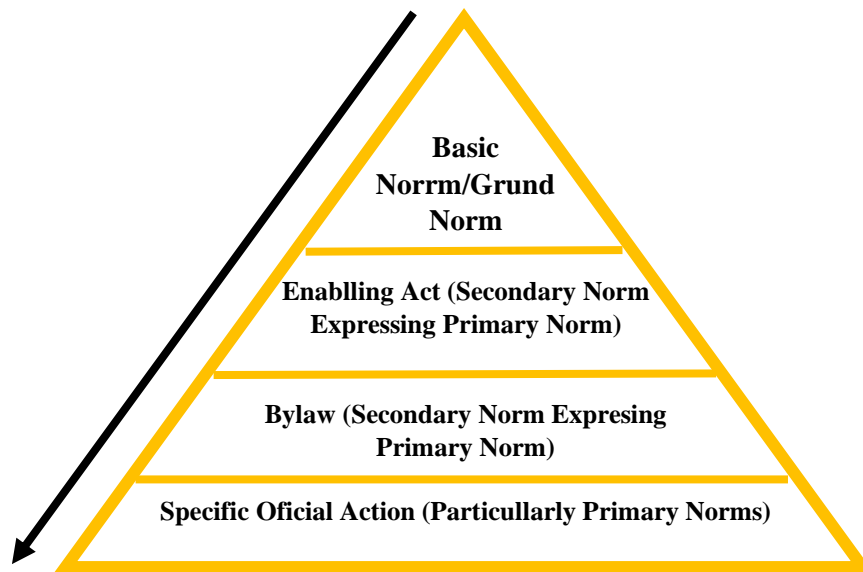
Regarding position of law and regulations, it is impossible to separate the "stufenbau" theory in which Hans Kelsen considers law to be a system of norms. Law can only be seen as a unified system, not as separate entities. Therefore, Hans Kelsen developed the "student theory" (also known as the theory of hierarchy of norms) as a result. This theory explains that state legal norms are decentralized. High legal standards lead to lower legal standards⁴. In other words, whether a lower legal standard applies depends on whether it complies with a higher legal standard.

According to Hans Kelsen's previous opinion, there is a relationship between all state laws and the relationship is hierarchical, including higher and lower laws⁵. Lower legal standards are based on higher legal standards both forming a unified legal system, and lower legal standards can only be used if they are compatible with higher legal standards⁶.

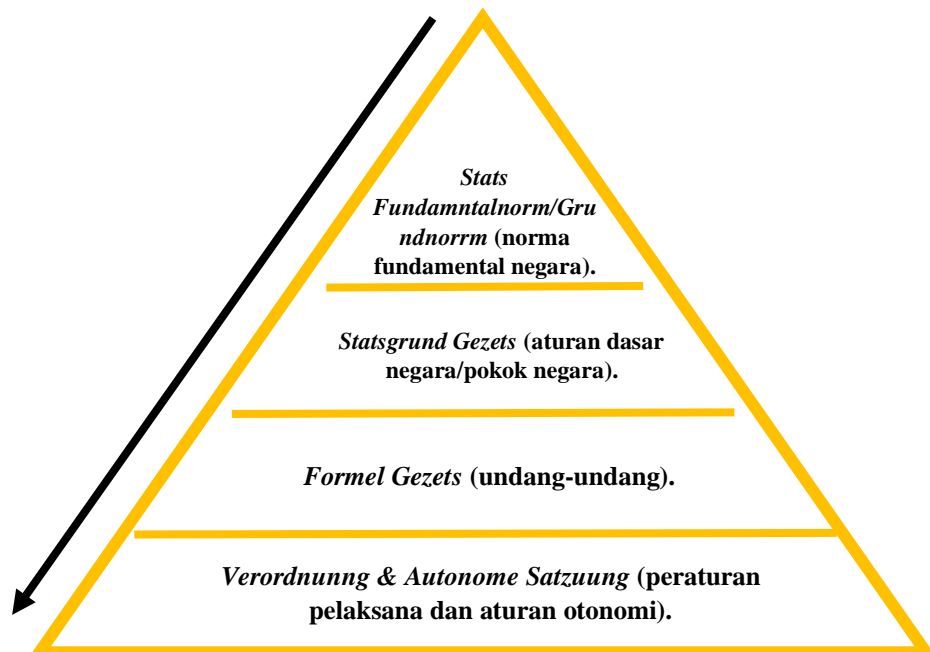
⁴ Syofyan Hadi, "Hukum Positif Dan The Living Law (Eksistensi Dan Keberlakuannya Dalam Masyarakat)" 5, no. 2 (2017): 259–66.

⁵ Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum / Jimly Asshiddiqie, M. Ali Safa'at* (Jakarta, 2021).

⁶ Tomy Michael Syofyan Hadi, "Hans Kelsen's Thoughts about the Law and Its Relevance to Current Legal Developments," *Technium Social Sciences Journal* 9 (2020): 228–97, <https://techniumscience.com/index.php/socialsciences/article/view/332/124>.



According to Hans Nawiasky, in addition to superposition and decentralization, norms are grouped and arranged according to the state's legal regulatory structure into four levels:



Indonesia is a country influenced by the Stufenbau theory, Indonesian legislation has a significant impact from its creation to its implementation. Apart



from being a theory, hierarchy can be used as a tool to control regulations that are considered to have harmed society both materially and non-materially.

UUD NRI Tahun 1945 was established as a fundamental law in law and occupies the highest position in Indonesia's legal and regulatory hierarchy⁷. The legal and regulatory hierarchy in Indonesia is completely included Ps 7 ayat (1) UU No. 12/2011 yaitu sebagai berikut:

No	UU No.12/2011.	Tata Urutan Peraturan Per-UU
1.	Ps. 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 all know, the government made the decision to transfer national capital to Penajam Paser Utara in East Kalimantan. The government views the capital city of Jakarta as no longer suitable as a capital city⁸. 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 UU Nomor 3 Tahun 2022 on the National Capital City (can than be said UU No.3/2022) As a new special autonomous region, the capital city authority is led by

⁷ Syofyan Hadi Rusdianto Sesung, "Peraturan Presiden Nomor 33 Tahun 2020 Dalam Perspektif Prinsip Otonomi Dan Desentralisasi" 6534 (2016): 1–23.

⁸ Reni Ria Armayani Hasibuan and Siti Aisa, "Dampak Dan Resiko Perpindahan Ibu Kota Terhadap Ekonomi Di Indonesia," *AT-TAWASSUTH: Jurnal Ekonomi Islam* 5, no. 1 (2020): 183, <https://doi.org/10.30829/ajei.v5i1.7947>.



the Head of NCA who heads the government of the capital city authority special region at the ministerial level. The meaning of word minister is only limited to the procedural aspects of nomination, appointment and dismissal by the President and does not imply the authority to manage and administer it. In addition to the above procedural aspects, Head of NCA is the same as head of general region, responsible for the management of special areas. In connection with this, this affects the position of regulations issued by the Head of NCA.

Existence local regulations (Perka) is a manifestation of the authority of autonomous regions to develop local regulations. The implementation of autonomy is closely linked to the concept of "Perka", so that implementation of regional autonomy, The principle is that local governments have the authority to enact local regulations, as well as other regulations, to carry out autonomous and supporting duties. The use of the term "Regulation of Head of NCA " is a special form of the Government of Nusantara Capital Authority, but its position and function are the same as other regional regulations.

So in terms of the authority to make regulations, the position of the Regulation of Head of NCA 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 Head of NCA itself is 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 is of the opinion that the position of Head of NCA is the Head of Government of the Special Region, so the legal products issued by the Head of NCA 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. 3/2022.



Meanwhile, the content material of regional regulations is generally guided by the provisions of UU No. 23/2014. If it is based on the concept of grouping in the hierarchy of laws and regulation in Ps 7 UU No.12/2011 regarding the hierarchy of statutory regulations, The Regulation of the Head of NCA is ranked sixth, 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

Position of the regulation of Head of NCA in the legislation system is positioned as a regional regulation which in the order or hierarchy of legislation the position of Head of NCA 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 Head of NCA. The Head of NCA has a ministerial level position only in terms of procedural appointments, while in terms of stipulating regulations, he acts as a regional head. Second, one of the authorities of Head of Nusantara Capital Authority Government is to make regulations whose application is attributive in the context of organizing the government of a special autonomous region.

DAFTAR PUSTAKA

- Asshiddiqie, Jimly, and M. Ali Safa'at. *Teori Hans Kelsen Tentang Hukum / Jimly Asshiddiqie, M. Ali Safa'at*. Jakarta, 2021.
- Ervin Nugrohosudin. "Kedudukan Kepala Otorita Ibu Kota Nusantara Dalam Undang-Undang Nomor 3 Tahun 2022." *Jurnal Legislatif* 5 No 2 (2022).
- Hasibuan, Reni Ria Armayani, and Siti Aisa. "Dampak Dan Resiko Perpindahan Ibu Kota Terhadap Ekonomi Di Indonesia." *AT-TAWASSUTH: Jurnal Ekonomi Islam* 5, no. 1 (2020): 183. <https://doi.org/10.30829/ajei.v5i1.7947>.
- Rusdianto Sesung, Syofyan Hadi. "Peraturan Presiden Nomor 33 Tahun 2020 Dalam Perspektif Prinsip Otonomi Dan Desentralisasi" 6534 (2016): 1–23.
- Syofyan Hadi. "Hukum Positif Dan The Living Law (Eksistensi Dan Keberlakuannya Dalam Masyarakat)" 5, no. 2 (2017): 259–66.
- Syofyan Hadi, Tomy Michael. "Hans Kelsen's Thoughts about the Law and Its Relevance to Current Legal Developments." *Technium Social Sciences Journal* 9 (2020): 228–97.



<https://techniumscience.com/index.php/socialsciences/article/view/332/124>.

Tahir, Erdin. “Kedudukan Peraturan Otorita Ibu Kota Nusantara Dalam Sistem Peraturan Perundang-Undangan.” *Jurnal Hukum POSITUM* 7, no. 2 (2022): 314–41.

Tamanaha, Brian Z. *On The Rule of Law : History, Politics, Theory* / Brian Z. Tamanaha. Cambridge : Cambriedge University Press, 2004, 2004.