

## DECENTRALIZATION AND LEGAL FRAGMENTATION: GOVERNANCE CHALLENGES IN THE POST-REFORM ERA

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### Abstract

Post-reform decentralization in Indonesia has become pivotal for reinforcing democracy and improving governance. Implementation over two decades has led to serious problems, particularly legal fragmentation and regional governance disparities. In this article, we aim to explore the relationship between decentralization and legal fragmentation, and its implications for governance in the post-reform era. To this end, we use a combination of doctrinal and non-doctrinal approaches, with the primary emphasis remaining on the doctrinal method. Analysis, including national regulations, court decisions, government reports, and national and international academic research. The results highlight three main findings. First, decentralization has successfully nurtured local democratization through direct regional head elections and increased public participation, even though the practice of money politics and the dominance of local elites continue to pose challenges. Second, regional autonomy has resulted in legal fragmentation, marked by thousands of problematic regional regulations, either revoked for conflicting with higher-level regulations or for being discriminatory and impeding investment. Third, governance faces multidimensional challenges, including weak institutional capacity, a tug-of-war over central and regional authority, and corruption in several regions. This research provides a critical analysis of the dynamics of decentralization in Indonesia, underscoring the urgency of legal harmonization, institutional design, and regional government capacity. Accordingly, decentralization does not only symbolize democratization but can also be instrumental for strengthening legal certainty and governance.

**Keywords:** *Decentralization; Legal Fragmentation; Governance; Post-Reformation.*

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### 1. Introduction

The 1998 Reformation marked a fundamental shift in Indonesia's constitutional system, particularly changing the paradigm of government administration from centralization to decentralization. Through Law No. 22 of 1999 on Regional Government, later amended by Law No. 32 of 2004 and most recently by Law No. 23 of 2014, the central government empowered regions to exercise greater authority over their own affairs. These changes were designed to bolster democracy, improve the effectiveness of public services, and bring the government closer to the people. The implementation of decentralization also poses new challenges in the form of legal fragmentation.<sup>1</sup> This phenomenon emerges from the creation of thousands of regional

<sup>1</sup> Hala Altamimi, Qiaozhen Liu, and Benedict Jimenez, "Not Too Much, Not Too Little: Centralization, Decentralization, and Organizational Change," *Journal of Public Administration Research and Theory* 33, no. 1 (2023): 170–185, <https://doi.org/10.1093/jopart/muac016>; Ngozi Samuel Uzougbo, Chinonso Gladys Ikegwu, and Adefolake Olachi Adewusi, "Regulatory Frameworks for Decentralized Finance (

regulations (perda) that are often misaligned with national legislation.<sup>2</sup> In practice, this regulatory disharmony creates critical challenges, both in terms of legal certainty and the effectiveness of governance.<sup>3</sup>

This legal fragmentation is increasingly complex because regional regulations is often inconsistent with constitutional principles, lead to discrimination, and even impede the investment climate.<sup>4</sup> The monitoring mechanism for regional legal products still faces obstacles, even though the Supreme Court and the Ministry of Home Affairs are empowered to revoke them.<sup>5</sup> This condition demonstrates the tension between the spirit of regional autonomy and the necessity to maintain national legal integration.

In the past two decades, the issue of decentralization has not only been disputed in Indonesia. but has also become a global agenda, viewed as a pivotal instrument for reinforcing democracy and development. The literature highlights that decentralization can enhance governance when accompanied by legal harmonization and adequate institutional capacity.<sup>6</sup> Institutional quality, including legal certainty, bureaucratic effectiveness, and the rule of law, notably impacts the degree of fiscal decentralization in developing countries.<sup>7</sup> Our research indicates that without strong institutions, fiscal decentralization can remain formal without any genuine impact on regional autonomy. Conversely, poorly managed decentralization can induce regulatory fragmentation, lead to conflicts over authority, and weaken social cohesion.<sup>8</sup> This finding underscores that Indonesia's challenges are not unique but part of a global dynamic that warrants deeper study.

The capacity of local governments, including human resources, facilities, and infrastructure, and administrative skills, is instrumental in realizing the benefits of decentralization for local communities.<sup>9</sup> Without this capacity, even with broad authority, regions face difficulties in implementing regulations and public services effectively.<sup>10</sup>

Moreover, cross-country studies substantiate these findings. Decentralization can enhance transparency and public participation if accompanied by oversight mechanisms and regulatory

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DeFi ): Challenges and Opportunities," *GSC Advanced Research and Reviews* 19, no. 2 (2024): 116–129, <https://doi.org/https://doi.org/10.30574/gscarr.2024.19.2.0170>.

<sup>2</sup> Halimatus Sakdiah, "Efektivitas Otonomi Daerah Dalam Mewujudkan Tujuan Negara : Tinjauan Kritis Desentralisasi Di Indonesia," *Jurnal Pendidikan Sosial Indonesia* 3, no. 1 (2025): 1–11, <https://doi.org/10.62238/jupsi.v3i1.191>.

<sup>3</sup> Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2015).

<sup>4</sup> Marulak Pardede, "Legitimasi Pemilihan Kepala/Wakil Kepala Daerah Dalam Sistem Pemerintahan Otonomi Daerah," *Jurnal Penelitian De Jure* 18, no. 2 (2018): 127–48, <https://lawpolicyjournal.id/index.php/dejure/article/view/431>.

<sup>5</sup> Jean-Paul Faguet, *Decentralization and Popular Democracy: Governance from Below in Bolivia* (Michigan: University of Michigan Press, 2012), <https://doi.org/10.3998/mpub.175269>.

<sup>6</sup> Faguet.

<sup>7</sup> Faguet.

<sup>8</sup> Jonathan A. Rodden, *Hamilton's Paradox: The Promise and Peril of Fiscal Federalism* (Cambridge: Cambridge University Press, 2006).

<sup>9</sup> Siswidiyanto and Rindi Ardika Melsalasa Sahputri, "Decentralisation and Human Development in Indonesia: The Importance of Local Government Capacity in Delivering Development Outputs and Outcomes," *Lex Localis - Journal of Local Self-Government* 21, no. 2 (2023): 393–419, [https://doi.org/10.4335/21.2.393-419\(2023\)](https://doi.org/10.4335/21.2.393-419(2023)).

<sup>10</sup> Javis Ebuia Otia and Enrico Bracci, "Digital Transformation and the Public Sector Auditing : The SAI ' s Perspective," *Financial Acc & Man* January (2022): 252–80, <https://doi.org/10.1111/faam.12317>; Marco Di Giulio and Giancarlo Vecchi, "Implementing Digitalization in the Public Sector: Technologies, Agency, and Governance," *Public Policy and Administration* 38, no. 2 (2021): 133–58, <https://doi.org/10.1177/09520767211023283>; Tan Yigitcanlar, Duzgun Agdas, and Kenan Degirmenci, "Artificial Intelligence in Local Governments : Perceptions of City Managers on Prospects , Constraints and Choices," *AI & SOCIETY* 38 (2023): 1135–50, <https://doi.org/10.1007/s00146-022-01450-x>; Armin Razmjoo et al., "Effective Policies to Overcome Barriers in the Development of Smart Cities," *Energy Research & Social Science* 79, no. July (2021): 2–10, <https://doi.org/10.1016/j.erss.2021.102175>.

harmonization across levels of government.<sup>11</sup> Nevertheless, without such mechanisms, the emergence of conflicting or overlapping local regulations poses a substantial problem.

The novelty of our research is grounded in its attempt to connect the phenomenon of decentralization with the problem of legal fragmentation within the framework of post-reform governance challenges. To date, most studies on regional autonomy in Indonesia have addressed political or administrative aspects, while its impact on the national legal system has received inadequate attention. Highlighting legal fragmentation as a primary focus, we seek to fill this gap in the literature and advance understanding of the legal implications of decentralization.

Recent studies on decentralization in Indonesia have predominantly explored its political, administrative, and fiscal dimensions, while insufficiently conceptualizing the structural legal consequences arising from evolving central–regional relations. For example, demonstrate that following the enactment of the Job Creation Law, increased central government intervention is evident in the determination of regional tax rates, including the authority to evaluate and adjust local tax and levy regulations that do not align with national investment policies. Their analysis indicates overlapping authority and a partial shift from full decentralization toward conditional central oversight.<sup>12</sup> Similarly, the effectiveness of the HKPD Law in facilitating fiscal independence and conclude that regional fiscal autonomy remains fragile despite regulatory restructuring. Even though these studies provide important doctrinal and fiscal assessments, they do not contextualize these developments within a comprehensive theory of legal fragmentation, nor do they examine how selective recentralization and fiscal restructuring interact to reconfigure the coherence of Indonesia’s national legal system.<sup>13</sup>

The enactment of Law Number 11 of 2020 on Job Creation fundamentally restructures central–regional authority by empowering the central government to standardize and override regional tax and retribution policies in the name of national economic priorities and investment facilitation. This regulatory intervention, accompanied by the authority to determine nationally applicable tax rates and evaluate regional regulations, reflects a recalibration of decentralization toward a more centralized regulatory model. Concurrently, Law Number 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments reorganizes fiscal decentralization through the redesign of regional tax types, revenue-sharing schemes, and intergovernmental transfer mechanisms. Even though both statutes aim to reinforce regulatory efficiency and fiscal sustainability, their combined implementation yields complex normative consequences.<sup>14</sup> The coexistence of regional legislative autonomy with strengthened central evaluative and corrective powers establishes multi-layered regulatory interactions that could intensify legal fragmentation, particularly in the domains of taxation, licensing, and fiscal authority. Existing scholarship has not yet systematically investigated how this post-omnibus restructuring influences legal hierarchy, regulatory coherence, and the principle of legal unity within Indonesia’s unitary constitutional framework.

To address this gap, in this study, we situate legal fragmentation as a central analytical lens to examine the governance implications of decentralization and selective recentralization in post-reform Indonesia. By integrating decentralization theory, particularly institutional approaches underscoring accountability and regulatory coherence with constitutional doctrines on hierarchy of norms and unitary state principles, we provide a more comprehensive understanding of how evolving central regional legal arrangements produce fragmented regulatory outcomes and

<sup>11</sup> Christopher J. Rees and Farhad Hossain, “Perspectives on Decentralization and Local Governance in Developing and Transitional Countries,” *International Journal of Public Administration*, 33, no. 12–13 (2010): 581–587, <https://doi.org/10.1080/01900692.2010.514459>.

<sup>12</sup> Nabila Alif Radika Shandy and Allan Fatchan Gani Wardhana, “Bagaimana Hubungan Pusat Dan Daerah Pasca Penetapan Undang-Undang Cipta Kerja ? Kasus Penetapan Pajak Daerah,” *AS-SIYASI: Journal of Constitutional Law* 2, no. 1 (2022): 93–114, <https://doi.org/10.24042/as-siyasi.v2i1.12934>.

<sup>13</sup> Venti Eka Satya and Monika Suhayati, “Analisis Efektivitas Undang-Undang Tentang Hubungan Keuangan Pusat Daerah Terhadap Kemandirian Fiskal Daerah,” *Parliamentary Review* 6, no. 1 (2024): 21–29, [https://berkas.dpr.go.id/pusaka/files/parliamentary\\_review/Parliamentary%20Review-VI-1-M-2024.pdf](https://berkas.dpr.go.id/pusaka/files/parliamentary_review/Parliamentary%20Review-VI-1-M-2024.pdf).

<sup>14</sup> Jennie Litvark, Junaid Ahmad, and Richard Bird, *Decentralization in Developing Countries* (Washington DC: The World Bank, 1998).

influence governance quality. Our article departs from prior doctrinal and fiscal evaluations by treating legal fragmentation not as incidental regulatory inconsistency, but as a structural outcome of institutional reconfiguration in Indonesia's post-omnibus decentralization framework.

Accordingly, in this study, we analyze how the post-reform decentralization framework, particularly following the enactment of Law Number 11 of 2020 on Job Creation and Law Number 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments, reconfigures the architecture of central–regional legal relations and promotes the emergence of legal fragmentation within Indonesia's unitary state system. Hence, we aim to (i) map the evolving distribution of regulatory and fiscal authority between the central and regional governments, (ii) identify the forms and drivers of legal fragmentation arising from selective recentralization and fiscal restructuring, and (iii) evaluate their implications for governance coherence, legal certainty, and sustainable development. By situating contemporary regulatory reforms within a broader constitutional and institutional framework, in this research, we aim to facilitate both theoretical debates on decentralization in developing countries and practical discussions regarding the future direction of Indonesia's decentralization policy.

## 2. Method

In this study, we use a combination of doctrinal and non-doctrinal approaches with the primary emphasis remaining on the doctrinal method, to investigate the dynamics of decentralization and legal fragmentation in post-reform Indonesia. In this context, we not only examine regulations governing the implementation of regional government, such as Law Number 23 of 2014 concerning Regional Government and its implementing regulations, but also explore how legal principles are understood, interpreted, and implemented in government practice.<sup>15</sup>

Even though we primarily adopt a doctrinal method research design, we expand the methodological approach through a socio-legal orientation to address governance-related questions. Doctrinal method research is well-suited because the core problem examined in this article refers to the structure of legal authority, hierarchy of norms, and institutional design governing central–regional relations, particularly following the enactment of Law Number 11 of 2020 on Job Creation and Law Number 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments. Nevertheless, because governance challenges encompass practical implications beyond textual norms, this study complements doctrinal analysis with qualitative document analysis of policy papers, government reports, and secondary empirical findings. The analytical techniques used include statutory interpretation (to examine consistency within the hierarchy of norms), conceptual analysis (to evaluate decentralization and legal fragmentation frameworks), and thematic content analysis of policy and implementation documents to detect patterns of regulatory overlap, institutional tension, and accountability gaps. It is acknowledged that this study does not use primary empirical fieldwork; therefore, its findings are restricted to doctrinal -institutional analysis and secondary implementation data. Future research may reinforce the analysis through empirical socio-legal investigation covering stakeholder interviews and quantitative governance indicators.

The approaches used in this research encompass a legislative approach by investigating various regulations governing the relationship between the central and regional governments; a conceptual approach by presenting the ideas of decentralization, legal fragmentation, and governance as developed in academic literature; and a comparative approach by recording decentralization practices in other countries to attain a broader perspective. With this combination of approaches, the analysis is performed not only at the doctrinal level of regulations, but also at the conceptual and practical levels that indicate the real challenges of decentralization.<sup>16</sup>

Regarding data collection, this study explicitly employs a literature review or library research technique to gather data. The data were systematically collected from authoritative legal sources. These sources include statutes and regulations of regional governments, decisions of the Constitutional Court and the Supreme Court, and official government reports. They are based on

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<sup>15</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2016).

<sup>16</sup> Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1949).

their relevance to decentralization, legal fragmentation, and governance, as well as their credibility and academic rigor. Thanks to this approach, we can comprehensively map existing legal norms, doctrinal debates, and empirical findings, while also identifying inconsistencies between regulatory frameworks and governance practices. Because it relies on a structured literature review, this study ensures methodological transparency. It provides a solid analytical foundation for investigating decentralization as a legal and governance phenomenon in post-reform Indonesia.

To this end, the methodological choice reflects a deliberate focus on institutional architecture rather than micro-level behavioral analysis. By situating governance challenges within the structure of legal norms, authority allocation, and intergovernmental regulatory design, we seek to demonstrate that many implementation problems emerge from doctrinal inconsistencies and fragmented institutional arrangements. Even though socio-legal or empirical approaches are valuable for capturing lived experiences and enforcement practices, our research prioritizes clarifying the constitutional and regulatory framework as a necessary analytical foundation for subsequent empirical inquiry. Accordingly, our study facilitates a structured doctrinal -institutional diagnosis of decentralization and legal fragmentation, which may serve as a foundation for future empirical validation and policy-oriented research.

### **3. Results and Discussion**

#### **3.1. Decentralization as an Instrument of Local Democratization**

Our findings indicate that post-reform decentralization in Indonesia has expanded the procedural space for local democratization, particularly through mechanisms of direct regional head elections and increased local community political participation. Communities have greater access to electing regional leaders and monitoring the implementation of local government. Concurrently, decentralization has also fostered opportunities for the local political elites who dominate the political process and consolidate power through patrimonial networks. Decentralization has led to a more participatory democracy on the surface, but has failed to produce a substantive democracy oriented towards accountability and equity.

The most concrete evidence is the implementation of direct regional head elections since 2005, which has boosted public political participation in various regions. Data from the General Elections Commission (KPU) illustrate that voter turnout in the first regional elections in 2005 exceeded 60 percent, a relatively high figure compared to elections during the New Order era. Furthermore, regional autonomy has facilitated the development of regional regulations that accommodate local aspirations, such as environmental protection regulations grounded in local wisdom in Bali and Kalimantan. This evidence reveals that decentralization is beyond a transfer of administrative authority but expands the scope for democratization through public involvement and strengthening political legitimacy at the local level.

Nevertheless, these findings also indicate a paradox. Procedural democratization at the local level has strengthened patrimonial political practices. Subsequently, many elected regional heads have been implicated in corruption cases, and the novel political dynasties have emerged, such as in Banten and South Sulawesi, where public office is transmitted to family members or certain groups.

This finding aligns which underscores that decentralization in post-authoritarian Indonesia actually reinforces local oligarchies rather than deepening democratization.<sup>17</sup> The result is a paradox: elite groups exploit instruments designed to expand public participation to consolidate their power. More broadly, Faguet's theory of decentralization posits that the success of decentralization in bolstering democracy depends heavily on the capacity of the institutions and the institutional structures that nurture it.<sup>18</sup> In other words, local democratization will not develop

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<sup>17</sup> Loren Rytter, "Vedi Ranandi Hadiz, Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective. Stanford: Stanford University Press, 2010," *Comparative Studies in Society and History* 55, no. 2 (2013): 515–17, <https://doi.org/10.1017/S0010417513000170>.

<sup>18</sup> Jean-paul Faguet, "Decentralization and Governance," *World Development* 53 (2014): 2–13, <https://doi.org/10.1016/j.worlddev.2013.01.002>.

only by distributing authority, but must be endorsed by transparent institutional governance, strong accountability mechanisms, and effective public participation.

Post-reform decentralization in Indonesia was primarily designed to deepen the democratization process. With broader regional autonomy, local governments were expected to reinforce public participation, broaden participation in decision-making, and bring public services closer to citizens. Law No. 22 of 1999 concerning Regional Government, which was later revised through Law No. 32 of 2004 and Law No. 23 of 2014, was formulated to distribute authority from the central government to the regions, enabling communities to be more directly involved in development in their respective regions.<sup>19</sup>

Nevertheless, the implementation of decentralization in Indonesia has actually presented a paradox.<sup>20</sup> Even though the direct election of regional heads has increased popular political participation and boosted political competition at the local level, decentralization has also led to the phenomenon of local strongmen, the emergence of regional political elites who exploit autonomy to establish personal or group power bases. This phenomenon decentralization in Indonesia bolsters local oligarchies rather than deepens substantive democratization.<sup>21</sup>

Furthermore, capacity gaps between regions influence the quality of local democratization.<sup>22</sup> Regions with abundant resources can develop relatively good governance. In contrast, regions with limited fiscal and human resource capacity frequently experience stagnation or even decline in public services. Decentralization can only enhance democracy and government effectiveness if accompanied by strong institutions and adequate administrative capacity.<sup>23</sup> Accordingly, the success of decentralization in Indonesia cannot be understood solely from a doctrinal framework, but must be viewed from the extent to which local democratic mechanisms can operate substantively and not be co-opted by narrow local political interests.

These findings suggest that decentralization as an instrument of local democratization in Indonesia operates within a contested political-legal environment. Even though direct local elections and broadened regulatory authority have boosted political participation and institutionalized procedural democracy, the persistence of regulatory conflicts and resistance to harmonization mechanisms suggests deeper structural tensions. Through the post-enactment of Law Number 11 of 2020 on Job Creation and Law Number 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments, the politics of regional regulation have become increasingly intertwined with national economic and fiscal agendas. The central government's reinforced authority to assess and invalidate regional regulations in the name of regulatory coherence and investment certainty represents not only an attempt at juridical harmonization but also a recalibration of political control within Indonesia's unitary framework. Conversely, resistance from local governments toward the annulment of regional regulations often stems from electoral considerations and local revenue interests, indicating that regional democratization is firmly embedded in political competition and resource control.

Hence, the first research question, whether decentralization functions as an effective instrument of local democratization, must be addressed in qualified terms. Decentralization in Indonesia has undeniably institutionalized procedural democratic mechanisms and broadened local political access. Nevertheless, fragmented regulatory authority and politicized harmonization processes constrain its capacity to yield substantive democracy characterized by accountability,

<sup>19</sup> Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*.

<sup>20</sup> Abdul Basir Hamidi, "The Paradox of Decentralization: Examining Corruption in Indonesia's Decentralized Framework," *Journal of Governance* 9, no. 3 (2024): 512–29, <https://doi.org/http://dx.doi.org/10.31506/jog.v9i3.22574>.

<sup>21</sup> Ryter, "Vedi Ranandi Hadiz, Localising Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective. Stanford: Stanford University Press, 2010."

<sup>22</sup> Luis de Sousa, Nuno F. da Cruz, and Daniel Fernandes, "The Quality of Local Democracy: An Institutional Analysis," *Local Government Studies* 49, no. 1 (2023): 1–29, <https://doi.org/10.1080/03003930.2021.1882428>; Daniel Lindvall and M. Karlsson, "Exploring the Democracy-Climate Nexus: A Review of Correlations between Democracy and Climate Policy Performance," *Climate Policy* 24, no. 1 (2024): 87–103, <https://doi.org/10.1080/14693062.2023.2256697>.

<sup>23</sup> Faguet, "Decentralization and Governance."

legal coherence, and equitable development. Therefore, weak legal harmonization is not merely a technical defect in legislative drafting, but rather reflects political bargaining between central and regional actors over authority, fiscal resources, and regulatory discretion. To this end, the transfer of powers cannot explain democratization through decentralization, but the institutional design governing oversight, harmonization, and accountability should be considered. Without fortifying these mechanisms, decentralization risks reinforcing localized elite consolidation while simultaneously eliciting intervention from central authorities, thereby perpetuating a cycle of legal and political fragmentation.

### 3.2. Legal Fragmentation in the Implementation of Regional Autonomy

Post-reform decentralization in Indonesia has led to legal fragmentation, particularly through the proliferation of regional regulations (*perda*) that conflict with the constitution, national laws, and human rights principles. Ministry of Home Affairs data indicate that between 2002 and 2016, more than 3,143 regional regulations were revoked because they misaligned with higher-level regulations or were deemed to impede the investment climate.<sup>24</sup> The revoked regulations were not only associated with levies deemed burdensome to businesses, but also discriminatory regulations, including regulations mandating the wearing of the hijab in some areas, or regulations limiting the religious practices of minority groups. Another prominent case was the revocation of regional regulations associated with market levies in several areas, which were deemed to impede the flow of goods and investment.

These examples demonstrate the weak technical capacity of regional governments to draft regulations and the lack of an effective legal harmonization mechanism between the central and regional governments. This evidence indicates that, even though regions are granted legislative authority, their technical capacity to draft regulations remains insufficient, leading to legal products that are often misaligned with the national legal framework.

This phenomenon is also observable in regulations governing central-regional relations. Law No. 22 of 1999 granted regions broad authority to adopt regional regulations. Nonetheless, after numerous problematic regulations emerged, the central government tightened the rules through Law No. 32 of 2004 and subsequently Law No. 23 of 2014, which vested authority in the central government, specifically the Ministry of Home Affairs, to revoke regional regulations. This authority has prompted constitutional debate. Finally, the Constitutional Court, in Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016, affirmed the Supreme Court's authority to annul regional regulations, not the executive branch. These decisions underscore a fundamental problem in Indonesian legal governance: decentralization has conferred regulatory autonomy, but legal control over regional legislation remains indeterminate and incoherent.

This finding aligns with Butt's research which found that the cancellation of regional regulations by the Supreme Court and the Ministry of Home Affairs reveals the problem of disharmony in the Indonesian legal system, where decentralization actually leads to an "overproduction" of local regulations that are inconsistent with national legal norms.<sup>25</sup> From the perspective of constitutional law theory, this fragmentation stems from the asymmetric decentralization model which assesses regions as relatively autonomous legal subjects, but without an effective harmonization mechanism.<sup>26</sup> In comparison, Smoke's research illustrates that in many developing countries, decentralization that is not accompanied by bolstering institutional capacity often induces similar problems, namely policy inconsistencies between the central and regional governments, ultimately harming legal certainty.<sup>27</sup>

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<sup>24</sup> Sekretaris Kabinet Republik Indonesia, "Kemendagri Resmi Umumkan 3.143 Perda Yang Dibatalkan," Sekretaris Kabinet Republik Indonesia, 2016, <https://setkab.go.id/kemendagri-resmi-umumkan-3-143-perda-yang-dibatalkan/>.

<sup>25</sup> Simon Butt, *Corruption and Law in Indonesia* (London: Routledge, 2011).

<sup>26</sup> Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*.

<sup>27</sup> P. Smoke, "Managing Public Sector Decentralization in Developing Countries: Moving Beyond Conventional Recipes," *Public Administration and Development* 35 (2015): 250–262, <https://doi.org/10.1002/pad.1736>.

Legal fragmentation due to decentralization is not unique to Indonesia; it occurs in several other countries as well. In India, for example, the granting of broad powers to state governments often leads to overlapping regulations between the central and state governments, explicitly on interstate trade and fiscal policy.<sup>28</sup> Meanwhile, in Nigeria, decentralization impacted by the federalism has actually led to “jurisdictional conflicts” between the federal government and state governments in managing natural resources, impeding investment and exacerbating social conflicts.<sup>29</sup> The legal fragmentation commonly stems from decentralization in developing countries, especially when local legislative capacity is weaker than the level of complexity of local problems.<sup>30</sup> This comparison indicates that Indonesia does not stand alone, but face similar challenges with other countries, so comparative learning is pivotal in improving the design of legal governance.

Our study reinforces findings on legal fragmentation in the implementation of regional autonomy by presenting concrete examples of regional regulations and those annulled by the central government, as well as Supreme Court decisions. These examples clearly reveal the occurrence of legal disharmony in practice, both because the regional regulations do not align with higher-level laws and because their substance is discriminatory and detrimental to the public interest.

**Table 1.**  
**Examples of Problematic Regional Regulations and Related Regulations**

No	Name of Regional Regulation	Area	Reason for Cancellation
1	3,143 Regional Regulations / Regional Regulations that were cancelled	All of Indonesia (district/city/province)	Regional regulations/local regulations are in conflict with national regulations or impede investment; many levies and permits are considered problematic. <sup>31</sup>
2	Central Java Provincial Regulation No. 6 of 2002 concerning Groundwater Extraction	Central Java	Cancelled because it does not align with Law 18/1997 concerning Regional Taxes and Regional Retributions, Law 7/2004 concerning Water Resources, and PP 66/2001 concerning Regional Retributions.
3	Central Java Provincial Regulation No. 21 of 2002 concerning Control of the Utilization of Unprotected Flora and Fauna Across Regencies/Cities	Central Java	Cancelled by the Minister of Home Affairs because the authority for cross-district/city regulations was judged to function at the provincial level; contrary to Law 18/1997 and other regulations.

<sup>28</sup> Arvind Panagariya, *India: The Emerging Giant* (Oxford: Oxford University Press, 2008); Abidin Abidin, Tulus Suryanto, and Mohd Mizan Aslam, “Ijya’ Al Mawat’s Resistance to Land Legal Policy in Indonesia,” *Diponegoro Law Review* 09, no. 2 (2024): 297–314, <https://doi.org/10.14710/dilrev.9.2.2024.297-314>; Umer Chapra, *Islam Dan Pembangunan Ekonomi* (Jakarta: Gema Insani Press, 2000).

<sup>29</sup> Rotimi Suberu, “Federalism in Africa: The Nigerian Experience in Comparative Perspective,” *Ethnopolitics* 8, no. 1 (2009): 67–86, <https://doi.org/10.1080/17449050902738846>; Abdul Rahman Sabara, “Regional Autonomy in the Political System and Authority in Indonesia,” *Diponegoro Law Review* 07, no. 2 (2022): 296–311, <https://doi.org/10.14710/dilrev.7.2.2022.296-311>.

<sup>30</sup> Sabara, “Regional Autonomy in the Political System and Authority in Indonesia”; Charly Ondobo Tsala, Raymond Ekodo, and Henri Tabi Ngoa, “Does Decentralization Decrease State Fragility? Evidence from Developing Countries,” *Journal of the Knowledge Economy* 16 (2025): 15228–15259, <https://doi.org/10.1007/s13132-024-02400-2>; Bassem Karray, “No Roadmap, No Global Vision: Shortcomings and Pitfalls of the First Stage of Decentralization Reforms in Tunisia,” *Mediterranean Politics* 30, no. 25 (2023): 1–22, <https://doi.org/10.1080/13629395.2023.2207431>; Magdalena Belof and Piotr Kryczka, “Challenges in Outsourcing Local Spatial Planning in Poland: Is Legal Procedure the Last Remaining Safeguard in the Democratic Decision-Making Process?,” *Planning Practice & Research*, no. July (2025): 1–27, <https://doi.org/10.1080/02697459.2025.2528252>.

<sup>31</sup> Sekretaris Kabinet Republik Indonesia, “Kemendagri Resmi Umumkan 3.143 Perda Yang Dibatalkan.”

No	Name of Regional Regulation	Area	Reason for Cancellation
4	Central Java Provincial Regulation No. 3 of 2004 concerning Permits for the Utilization of Timber Forest Products Across Districts/Cities	Central Java	Cancelled because the authority for forest management and cross-regional forest product permits should lie with the central/provincial government, not the district/city government.
5	Supreme Court Decision / Joint Decree of Three Ministers – Mandatory Hijab Regulation in Public Schools	Some Provinces (public schools)	The Supreme Court's decision annulled the Joint Ministerial Decree (SKB) of the Three Ministers because it violated several laws; the SKB was deemed discriminatory, violating freedom of expression and children's rights. <sup>32</sup>

Source: Processed data, 2025

Table 1 illustrates that the phenomenon of regional regulation revocation is not an isolated incident but reflects structural problems in central-regional relations. Even though regional autonomy expands the scope of local legislative authority, weak legislative capacity and legal harmonization mechanisms have produced legal products that conflict with the national legal framework and human rights principles. This finding further underscores the urgency of improving Indonesia's decentralization design to minimize legal fragmentation.

In closing, legal fragmentation in the implementation of regional autonomy in Indonesia must not be evaluated merely as a technical inconsistency in legislative drafting, but rather as a structural outcome of evolving central–regional power relations. The annulment of thousands of regional regulations, including the widely cited figure of 3,143 revoked bylaws, vividly depicts the scale of regulatory disharmony that originated in the decentralization era. Nevertheless, subsequent constitutional developments, particularly the Constitutional Court's decision restricting the executive's unilateral power to invalidate regional regulations, reconfigured the harmonization landscape and intensified political negotiations over regulatory review. Through the enactment of Law No. 11 of 2020 on Job Creation and Law No. 1 of 2022 concerning Fiscal Relations between the Central Government and Regional Governments, harmonization has increasingly been conceptualized as part of a national strategy for regulatory simplification and fiscal consolidation. Nonetheless, in practice, the evaluation and correction of regional regulations frequently manifests competing political interests: regional governments may resist annulment due to electoral incentives and revenue considerations. Conversely, the central government may use harmonization instruments to align policies and exercise political control within the unitary state.

Comparative experience from other countries, such as India and Nigeria, shows that legal fragmentation is a recurrent challenge in decentralized systems, particularly when institutional capacity and intergovernmental coordination vary. Nevertheless, the Indonesian case indicates that fragmentation does not solely imply administrative weakness but also manifests contested legal authority and politicized oversight mechanisms. Therefore, strengthening legal harmonization goes beyond procedural refinement; it involves a clearer constitutional delineation of regulatory competencies, transparent and accountable review mechanisms, and enhanced regional legislative capacity. Only by addressing both the institutional and political dimensions of harmonization can Indonesia mitigate regulatory fragmentation and confirm that decentralization improves, rather than undermines, legal certainty and governance quality.

### 3.3. Governance Challenges: Between Government Efficiency and National Integration

The research findings indicate that the primary challenge to post-reform governance in Indonesia stems from the misalignment between political decentralization, institutional capacity,

<sup>32</sup> Andreas Harsono, "Mahkamah Agung Republik Indonesia Mendukung Peraturan Wajib Jilbab Pemerintah Seyogianya Menegakkan Hak Anak Perempuan Dan Perempuan Muslim Untuk Memilih," *Human Right Watch*, July 1, 2021, <https://www.hrw.org/id/news/2021/07/01/379120>.

and regulatory quality. Field findings reveal notable disparities in the regions' ability to exercise their autonomous authority, particularly in licensing, natural resource management, and public services. Even though some regions have developed innovative governance practices, many remain burdened by corrupt and opaque bureaucratic practices, with implications for the uneven distribution of public services across Indonesia.

This finding aligns with international studies, emphasizing that the readiness of local institutional capacity and accountability mechanisms primarily determines the success of decentralization. Treisman argues that decentralization without strong institutional controls aggravates patronage practices and elevates the risk of corruption.<sup>33</sup> Meanwhile, the Indonesian context, post-1998 decentralization actually reinforced local oligarchies that regulated regional bureaucracy and resources. Theoretically, this finding suggests that decentralization in Indonesia has brought more governance challenges than benefits, primarily due to weak checks and balances at the local level.

This reality is reflected in several regulations that are frequently modified to respond to national political dynamics. For example, the fundamental changes from Law No. 22 of 1999 to Law No. 32 of 2004, and then Law No. 23 of 2014, indicate the tension between centralization and decentralization of authority. In the area of natural resource management, the transfer of mining licensing authority from districts/cities to provincial governments under Law 23/2014 constituted a response to the rampant cases of mining permit abuse in the regions. This case depicts that decentralization without consistent regulations actually leads to governance instability and undermines legal certainty for both businesses and the public.

A case study in East Kalimantan illustrates how the broad authority of districts/cities in issuing mining permits in the era of Law 22/1999 led to thousands of overlapping mining business permits (IUP) that did not align with spatial planning. When authority was returned to the provinces through Law 23/2014, many problematic mining permits (IUPs) were not readily resolved, resulting in conflicts among local governments, mining companies, and local communities. Conversely, in regions like Surabaya and Bandung, decentralization has fostered innovation in public service governance, for example, through the digitization of permits and citizen participation in policymaking, which has been demonstrated to increase transparency and accountability.<sup>34</sup> This contrast reveals that regional institutional capacity and local leadership commitment substantially influence the effectiveness of decentralization.

Cumulatively, the three findings indicate that post-reform governance challenges in Indonesia are not confined to administrative inefficiency but reflect a deeper structural tension among decentralization, regulatory coherence, and national integration. The drive for regulatory simplification and fiscal consolidation following the enactment of Law Number 11 of 2020 on Job Creation and Law Number 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments depicts the state's attempt to improve efficiency, investment certainty, and macroeconomic stability. These recentralizing tendencies coexist with constitutionally entrenched regional autonomy, yielding layered authority structures and recurring regulatory contestation. Consequently, governance functions within a fragmented institutional environment where efficiency objectives may conflict with democratic responsiveness and local political realities.

Responding to the third research question suggests that governance in Indonesia's decentralized system can achieve a balance between efficiency and national integration only if harmonization mechanisms are institutionalized in a transparent, accountable, and constitutionally consistent manner. Strengthening oversight should not culminate in excessive political centralization, just as regional autonomy should not legitimize divergent regulatory practices that undermine legal certainty and national cohesion. Therefore, the future direction of Indonesia's decentralization must go beyond a dichotomy between central control and regional autonomy, toward a calibrated model of coordinated multilevel governance that integrates legal

<sup>33</sup> Daniel Treisman, *The Architecture of Government: Rethinking Political Decentralization* (Cambridge: Cambridge University Press, 2007).

<sup>34</sup> Yhannu Setyawan et al., "Digital Government Post-Reform in Indonesia : Normative Developments and Implementation by State Organizing Institutions," *Law Reform* 21, no. 1 (2025): 155–79, <https://doi.org/10.14710/lr.v21i1.68556>.

hierarchy, fiscal design, and political accountability into a coherent institutional framework capable of sustaining both effective government and national unity.

#### 4. Conclusion

This study illustrates that decentralization in post-reform Indonesia yields interconnected governance consequences rather than isolated sectoral problems. Procedural democratization without substantive accountability, persistent legal fragmentation in regional regulation, and multidimensional governance inefficiencies are the three principal findings that form a reinforcing cycle. Adequate institutional safeguards have not accompanied expanded regional political participation, thereby reinforcing procedural democracy and enabling elite capture and regulatory opportunism. Subsequently, weak harmonization mechanisms lead to fragmented regional regulations, which, in turn, facilitate central corrective intervention. Such intervention—especially following the enactment of Law Number 11 of 2020 on Job Creation and Law Number 1 of 2022 on Fiscal Relations between the Central Government and Regional Governments—exacerbates political contestation between levels of government. This dynamic perpetuates a vicious cycle in which limited institutional capacity, fragmented coordination, and politicized oversight mutually reinforce one another, restricting both governance efficiency and national legal integration.

Theoretically, this research facilitates decentralization scholarship, particularly institutional approaches associated with Faguet and Treisman by suggesting a Triple Deficit Model of post-reform decentralization: (1) a capacity deficit, manifested in uneven regional legislative and administrative competence; (2) a coordination deficit, manifested in overlapping authority and inconsistent regulatory harmonization; and (3) an accountability deficit, evident in both local elite dominance and politicized central oversight. By integrating constitutional legal hierarchy into governance theory, our study advances the argument that legal fragmentation is not an incidental by-product of decentralization. Instead, it is a structural governance condition stemming from the interaction of these three deficits within a unitary state framework.

Breaking this cycle requires reform strategies that go beyond general appeals for “better coordination.” In the short to medium term (1–3 years), the government should institutionalize a transparent, rule-based harmonization mechanism that establishes a permanent central–regional regulatory coordination forum with clear procedural standards and public reporting obligations. Concurrently, measurable capacity-building programs should be implemented for regional legislatures (DPRD), including mandatory legislative drafting certification and integrated regulatory digitalization systems, to prevent doctrinal overlap. In the medium to long term (3–5 years), harmonization review procedures should be constitutionally formulated to avoid both arbitrary annulment and unchecked regulatory divergence, particularly in strategic sectors such as natural resources and regional taxation. Moreover, reinforcing local political accountability must involve stricter enforcement of anti-money politics laws and improved civic oversight mechanisms facilitated by open governance platforms.

Future research should elaborate on this analysis through quantitative and comparative designs. Large-scale empirical studies examining the correlations among regional regulation annulments, investment flows, and public service indicators would provide more robust evidence of governance impact. Comparative subnational research investigating provinces or districts with divergent institutional performance would further validate the Triple Deficit Model and refine its explanatory power. Additionally, cross-country comparison with other decentralized systems could reveal how different institutional designs mitigate or exacerbate fragmentation dynamics.

Ultimately, the formal division of authority between the central and regional governments will not necessarily determine the future of decentralization. The courage to undertake institutional redesign that can bridge the tension between regional autonomy and national legal integration, between procedural democracy and substantive governance, and between economic efficiency and social justice is pivotal.

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