

Why Should the Role of the House of Representatives in Monitoring and Review Local Regulations Be Strengthened?

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Abstract

The enactment of Law No. 15 of 2019, which established the Post-Legislative Scrutiny (PLS) institution, marked a pivotal shift in the formation of laws and regulations (PUU) in Indonesia. This legislation ushered in a comprehensive cycle for PPU, fundamentally altering the landscape of legislative processes. Despite this progress, a prevailing assumption persists that the PLS mechanism is solely within the purview of the People's Representative Council (DPR) concerning national laws, while oversight of Regional Regulations (Perda) falls under the authority of the Regional People's Representative Council (DPRD), with limited discourse on the latter's role in academic circles. This study endeavors to elucidate the theoretical underpinnings of PLS within international parliamentary frameworks, analyze the regulatory framework of PLS Perda as delineated in Law No. 23/2014 and PP No. 12/2018, scrutinize its implementation in Provincial DPRD Rules of Procedure, and advocate for bolstering the DPRD's role in conducting PLS Perda. Findings reveal a lexicon of PLS terminology within Indonesian legislative context, alongside a

bifurcation of PLS Perda oversight between the DPD and DPRD. Alarmingly, a staggering majority (93.10%) of Provincial DPRDs nationwide have yet to formalize PLS procedures in their Rules of Procedure, with only the DIY Provincial DPRD demonstrating comprehensive implementation among the 34 surveyed. The imperatives for empowering DPRD's Bapemperda include evaluating Regional Regulations' efficacy, fostering legal coherence, preempting discriminatory legislation, enhancing legislative quality through experiential learning, and resolving the institutional dualism between DPD and DPRD in PLS Perda oversight. These measures not only fortify legislative processes but also mitigate jurisdictional ambiguities, ensuring robust governance at both national and regional levels.

KEYWORDS *District House of Representatives, Law and Democracy, Monitoring, District Rules, Post-Legislative Scrutiny*

Introduction

The enactment of Law No. 15 of 2019 marked a transformative milestone in Indonesia's legislative landscape with the establishment of the Post-Legislative Scrutiny (PLS) institution. This legislation introduced a structured framework for evaluating the impact and effectiveness of laws and regulations (PUU) at both national and regional levels, aiming to enhance governance accountability and legislative quality.¹ While the PLS mechanism has predominantly focused on national laws under the jurisdiction of the People's Representative Council (DPR), regional regulations (Perda) have traditionally been overseen by Regional People's Representative Councils (DPRD).² However, there remains a conspicuous gap in scholarly discourse and procedural

¹ Franklin de Vrieze, and Fotios Fitsilis. "Applying Post-Legislative Scrutiny to the Analysis of Legislation and SDGs in South and Southeast Asia." *Journal of Southeast Asian Human Rights* 4, no. 1 (2020): 1-22.

² Fitriani Ahlan Sjarif, Aditya Wahyu Saputro, and Efraim Jordi Kastanya. "Post-Legislative Scrutiny in Indonesia: A Misconception and Proposed Solutions." *e-Publica* 10, no. 3 (2023): 79-96; Martitah Martitah, et al. "Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 545-594.

implementation concerning PLS mechanisms for Perda, highlighting the underexplored role of DPRD in this crucial aspect of legislative oversight.

Law No. 23/2014 and PP No. 12/2018 outline the regulatory framework governing PLS for Perda, delineating the responsibilities and procedural guidelines for regional legislative bodies. Despite these regulatory provisions, empirical evidence reveals significant disparities in the implementation of PLS across Provincial DPRD throughout Indonesia.³ As of January 2023, Indonesia had 18,621 Regional Regulations (Perda), highlighting the intricate framework governing regional governance and legislative processes. By July 16, 2023, this number had surged to 64,072, including both Regional Regulations and Regional Head Regulations (*Peraturan Kepala Daerah*, Perkada). This sharp increase underscores the dynamic nature of legislative activities at the regional level, driven by ongoing efforts to meet diverse socio-economic and administrative needs across the archipelago. The Ministry of Home Affairs (Kemendagri), through its recent launch of the e-perda application, has diligently documented Regional Regulations and Governor's Regulations from 2015 to 2021. This meticulous record-keeping demonstrates the ministry's commitment to enhancing transparency and efficiency in regional legislative processes, particularly at the provincial level, although district and city-level data are not included in its comprehensive records.⁴

TABLE 1 Comparison of the Number of Perda and Perkada Data in Indonesia

Regional Legal Products	Peraturan.go.id (per 11-01-2023)	JDIHN.go.id (per 16-07-2023)	E-Perda (2015-2021)
Provincial Regulation	10.247	10.427	2.166
Regency/City Regulation	41.021	41.021	-
Governor's Regulation	-	18.448	15.025
Regent/Mayor Regulation	-	36.846	-
TOTAL	18.662	64.072	17.191

Source: <https://peraturan.go.id>; <https://jdihn.go.id>; <http://eperda.kemendagri.go.id/>

Based on the data presented in Table 1, it is evident that the documentation of Perda and Perkada at the provincial level in Indonesia is

³ Ni Luh Gede Astariyani, et al. "Preventive and evaluative mechanism analysis on regulatory and legislation reform in Indonesia." *Law Reform* 19, no. 2 (2023): 248-269.

⁴ See Direktorat Jenderal Peraturan Perundang-undangan, *Database Peraturan Perundang-Undangan*, 11 January (2023), <https://peraturan.go.id/>; Badan Pembinaan Hukum Nasional, "Jaringan Dokumentasi dan Informasi Hukum Nasional," 16 July, 2023, <https://jdihn.go.id/>; Direktorat Produk Hukum Daerah Ditjen Otonomi Daerah, "Data Produk Hukum Daerah Terdampak Undang-Undang Cipta Kerja," 2021.

neither comprehensive nor accurate. Firstly, the information available on the <https://peraturan.go.id> page is incomplete as it fails to include Perkada such as Governor Regulations (Pergub), Regent Regulations (Perbup), and Mayor Regulations (Perwal). Similarly, the data on the <http://eperda.kemendagri.go.id/> page only covers Regional Regulations and Governor's Regulations from 2015 to 2021, omitting records of provincial legal products prior to 2015. Moreover, the Ministry of Home Affairs' innovative e-perda platform does not encompass legal products from districts and cities, further limiting the scope of its comprehensive records.

Secondly, the accuracy of the data is compromised by the inconsistent listing of legal products (Perda and Pergub) across provinces, regencies, and municipalities in Indonesia on the JDIIH page.⁵ Consequently, there remains a lack of precise information regarding the total number of Regional Regulations and Regional Head Regulations (Perkada) produced by each provincial and local administrative unit in the country to date. This deficiency underscores the ongoing challenges in achieving a complete and reliable database for legislative outputs at the sub-national level in Indonesia.

If we consider the number of provincial legal products (Perda and Pergub) enacted between 2015 and 2021, totaling 17,191, it suggests an average of 7 provincial regional legal products are enacted daily in Indonesia. This rate is comparable to the legislative activity at the central level. According to data from the Center for Law and Policy Studies covering October 2014 to October 2018, a total of 8,945 central level regulations were enacted, averaging 6 regulations per day. This similarity in daily enactment rates highlights the active regulatory environment both at the provincial and central levels in Indonesia.

This data highlights a concerning trend of regulatory proliferation in Indonesia, often described as "*regulatory obesity*."⁶ According to the National Development Planning Agency (Bappenas), the extensive production of regulations in Indonesia increases the risk of problematic regulations

⁵ Generally, the number of Regional Regulations and Perkada on the [jdihprov](http://jdihprov.go.id) and jdihkab/city pages throughout Indonesia is incomplete. For example, jdih.kepriprov.go.id. From 2018 to 2020, only 1 Regional Regulation, 4 Regional Regulations in 2021, and 1 Regional Regulation in 2022 were aired

⁶ The "*regulatory obesity*" social situation has encouraged the Indonesian Constitutional Law Lecturers Association (APHTN-HAN) to raise the theme of Regulatory Structuring in the 4th HTN-HAN National Conference on November 10-13, 2017, in Jember, East Java. See Biisariyadi, *The Problem of Judicial Review in "Two Roofs"* (Gautama Budi Arundhati et al. eds., 2017). Long before, the theme of "*regulatory obesity*" or "*legislative inflation*" had become a discourse in Europe. See Wintgens, Luc, ed. *Legisprudence: A new theoretical approach to legislation*. Vol. 5. Hart Publishing, 2002.

characterized by conflicts, multiple interpretations, inconsistencies, and operational inefficiencies. These issues are particularly pronounced in regional regulations, which, as legislation governed at the local level, are more susceptible to rapid changes in central-level laws and regulations. As a result, the content and effectiveness of local regulations are frequently influenced by the dynamic legislative landscape at the national level.

One of the causes of the emergence of obesity, regulations and regulations are problematic due to the non-regulation of the Monitoring and Review stages of laws and regulations in Law No. 12/2011 concerning the Establishment of Laws and Regulations (Law P3).⁷ As soon as it is enacted, the work of forming regulations is completed. In fact, Monitoring and Review of laws and regulations, is a crucial stage to assess the effectiveness of PPU, prevent potential negative impacts from the PPU enforced, and finally to assess whether the regulation needs to be maintained (with recommendations for improved implementation), revised and/or repealed.⁸ Realizing this weakness, on October 2, 2019, the framer of the law instituted the Monitoring and Review institution (*Post Legislative Scrutiny*, abbreviated as PLS) in Law No. 15/2019 concerning Amendments to Law No. 12/2011 concerning the Establishment of Laws and Regulations (hereinafter referred to as Law P3). In Article 1 number 14, Monitoring and Review is defined as *activities to observe, record, and assess the implementation of applicable laws so that it is known the achievement of planned results, the impact caused, and their benefits for the Unitary State of the Republic of Indonesia*.⁹

⁷ Diani Sadiawati M. Nur Sholikin Fajri Nursyamsi Gita Putri Damayana Rizky Argama Ronald Rofiandri Antoni Putra, Nuresti Tristya Astarina Mohamad Iksan Maolana, and Yoga Wiandi Akbar Marsha Destianissa, *Study of Regulatory Reform in Indonesia: Subject Matter and Strategies for Handling* (Jakarta: Indonesian Law and Policy Studies Foundation, 2019, <https://pshk.or.id/research/study-reformasi-regulasi-di-indonesia-pokok-perprobleman-dan-strategi-handling/>).

⁸ BADAN LEGISLASI DPR, ACADEMIC PAPER OF THE DRAFT LAW OF THE REPUBLIC OF INDONESIA CONCERNING AMENDMENTS TO LAW NUMBER 12 OF 2011 CONCERNING THE ESTABLISHMENT OF LAWS AND REGULATIONS (2019). The urgency of PLS is also driven by the fact, the development of law is not as fast as the development of society. The inability of the law to respond to the rapid development of society poses its own problems. So that in many cases, legal uncertainty arises due to rigid laws and regulations Ridwan Arifin, *Legal Reform Discourse in Indonesia and Global Context: How Does The Law Respond to Crime*, 1 J. LAW LEG. REFORM 193 (2020).

⁹ Republic of Indonesia *Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations*, (2019).

Monitoring and Review of the Law is specifically regulated in Chapter XA (Article 95A and Article 95B), which governs: *first*, PLS to the Law is carried out after the Law comes into force; *second*, PLS on the Law is implemented by the DPR (People's Representative Council), DPD (Regional Representative Council), and the Government; *third*, PLS on the Law by the DPR is coordinated by the DPR Legislation Body;¹⁰ *fourth*, the results of PLS on the Law can be a proposal in the preparation of the National Legislation Program (Proglenas); *fifth*, PLS is carried out through 3 (three) stages, namely planning, implementation, and follow-up; and *sixth*, further provisions regarding PLS to the Law are regulated respectively by DPR Regulation, DPD Regulation, and Presidential Regulation.

Although according to Law P3 Monitoring and Review can be carried out by 3 (three) institutions, namely the DPR, DPD, and the Government, the study of Post-Legislative Monitoring and Review or better known as *Post-Legislative Scrutiny* (PLS), focuses on PLS carried out by the legislative institution (parliament). PLS is the traditional role of parliament to ensure that the implementation measures of public policy are in accordance with what is agreed by parliament and government.¹¹ In many countries, the development of PLS has now received special attention and is now considered an integral part of regulatory governance.¹² In a recent development, with the support of *the Westminster Foundation for Democracy* (WFD), the existence and urgency of the

¹⁰ Initially, in the formulation of Article 95A paragraph (3) of Law No. 15/2019, PLS on laws both carried out by the DPR, DPD, and the Government, were all coordinated by the DPR Legislation Body. This formulation was later amended by Law No. 13/2022 concerning the Second Amendment to Law No. 12/2011 concerning the Establishment of Laws and Regulations. In the formulation of Article 95A of Law No. 13/2022, the DPR Legislation Body only coordinates the implementation of PLS by the DPR. The implementation of PLS by DPD is coordinated by DPD, and the implementation of PLS by the Government is coordinated by the Minister in charge of PPU. See Republic of Indonesia, *Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations*, (2022).

¹¹ Jonathan Murphy & Svitlana Mishura, *Post-Legislative Scrutiny in a Non-Westminster Parliament: Opportunities, Challenges and Considerations*, 21 EUR. J. LAW REFORM 20 (2019); Franklin De Vrieze, *Post-Legislative Scrutiny in Europe: How the Oversight on Implementation of Legislation by Parliaments in Europe Is Getting Stronger*, 26 J. LEGIS. STUD. 427 (2020).

¹² and Griglio, *Parliaments in Europe Engaging in Post-Legislative Scrutiny: Comparing the French, Italian and Swiss Experiences*, 4 J. SOUTHEAST ASIAN HUM. RIGHTS 100 (2020); Linda J. Knap et al., *The Impact of Ex-Post Legislative Evaluations: A Scoping Review*, J. LEGIS. STUD. (2023).

PLS has been recognized in the international Parliament, namely to ensure that the law has met the objectives set.¹³

Based on the development of PLS in various countries, the existence of PLS in Law P3 is welcomed positively. According to Gunardi and Taufik, the institutionalization of PLS institutions is an important process in regulatory governance and is in accordance with international standards.¹⁴ Although welcoming positively, both stated that the PLS regulation in Law P3 still contains weaknesses, because its object is only limited to "Law". Therefore, Taufik suggested that the PLS object be expanded, starting from the Law, PP (Government Regulation), Presidential Regulation (Presidential Regulation), Candy (Ministerial Regulation), Regional Regulations and Provincial and Regency / City Perkada.¹⁵

Is it true that PLS as a traditional function of the legislature is only carried out against the Law and cannot be carried out against the Regional Regulation? Is the DPRD as a representative institution of the people in the regions not authorized to conduct PLS against local regulations? According to Law No. 23 of 2014 concerning Regional Government, the DPRD (Province and Regency / City) as a regional people's representative institution has a supervisory function attached to the DPRD institution.¹⁶ This supervisory function is manifested in the form of "supervision of the implementation of local regulations",¹⁷ the implementation of which is regulated in the DPRD Rules of Procedure based on the Guidelines stipulated in Government Regulations (PP). Based on PP No. 12/2018 concerning Guidelines for the Preparation of DPRD Rules of Conduct, the authority to conduct PLS on the effectiveness of the implementation of Regional Regulations is carried out by the Regional

¹³ Alex Scales and Aisling O Connell, *Evaluation of WFD's Work on Post-Legislative Scrutiny, 2017-2022* (United Kingdom: WFD, 2023).

¹⁴ Gunardi SA Lumbantoruan, *Design of strategies for monitoring and reviewing laws and regulations in support of the regulatory structuring agenda*, 10 FINDING THE LAW 263 (2021); Ade Irawan Taufik, *Initiation of Monitoring and Review Mechanism for Laws and Regulations*, 10 FINDING THE LAW 283 (2021).

¹⁵ Lumbantoruan, *supra* note 16; Taufik, *supra* Note 16. Referring to these criticisms and suggestions, there is an impression (although not expressly stated), the DPRD does not have the authority to conduct PLS against local regulations.

¹⁶ Based on Article 96 paragraph (1) and Article 149 paragraph (1) of Law No. 23/2014, the functions of the DPRD (Province and Regency / City) are the same and are in line with the functions of the DPR, namely the budget function, the legislative function (the establishment of regional regulations), and the supervisory function. See Republic of Indonesia, *Law Number 23 of 2014 concerning Regional Government*, (2014).

¹⁷ See Article 101 paragraph (1) and Article 153 paragraph (1) of Law No. 23/2014.

Regulation Forming Agency (Bapemperda). Article 21 of PP No. 12/2018 affirms: *first*, the supervisory function of the DPRD through evaluation activities on the effectiveness of the implementation of local regulations, carried out by Bapemperda; *second*, the results of Bapemperda's supervision and evaluation are reported to the DPRD leadership and announced in a plenary meeting; *third*, the mechanism for implementing PLS Perda by Bapemperda is further regulated in the DPRD Rules of Procedure.¹⁸

The three principles of PLS above, are new legal politics that were not previously regulated in PP No. 16/2010 concerning Guidelines for the Preparation of DPRD Rules of Procedure. However, studies on the authority of Bapemperda to conduct PLS Perda after the enactment of PP No.12/2018, are still very limited. Based on *the review literature*, it was found that Asrul Sani et al.'s study analyzed the implementation of the supervisory function on the implementation of regional regulations by the Bapemperda DPRD of South Sulawesi Province, with the conclusion that its implementation has not been effective.¹⁹ A similar study was conducted by Saputra et al, who researched in the DPRD of Buleleng Regency. The purpose of the study was to determine the procedures for PLS by Bapemperda and the obstacles faced, with the conclusion that the implementation of PLS by Bapemperda has not been effective.²⁰

Unlike the limited number of PLS studies on local regulations by the DPRD (Bapemperda), the study of PLS on regional regulations (including draft regional regulations) by DPD is the most widely used as the object of study.²¹

¹⁸ Republic of Indonesia *Government Regulation Number 12 of 2018 concerning Guidelines for the Preparation of Rules of Procedure for Provincial and Regency / City DPRDs*, (2018).

¹⁹ Andi Asrul Sani, Lauddin Marsuni & Askari Razak, *Effectiveness of Regional Regulation Implementation of South Sulawesi Province: Case Study at Bapemperda DPRD South Sulawesi Province*, 4 J. LEX GEN. 540 (2023).

²⁰ Kadek Agus Restu Saputra & Ni Gusti Ayu Dyah Setyawati, *Implementation of supervisory authority by the Buleleng Regency DPRD on the implementation of Regional Regulations and Regional Head Regulations*, 7 J. SCIENCE HUK. KERTHANEGARA 1 (2019).

²¹ Eka N A M Sihombing, *Manage the relationship between the Regional Representative Council and the Ministry of Home Affairs in supervising regional regulations* XXIII HUK REFORM. 169 (2018); e putu indra prasetya viguna & nee luh gede astariani, *Regulation of Regional Regulation Supervision by the Regional Representative Council of the Republic of Indonesia*, 8 J. MASTER HUK. UDAYANA (UDAYANA MASTER LAW JOURNAL) 540 (2019); Hanif Hardianto & Ratna Herwati, *Ambiguity of the results of monitoring and evaluation of the Regional Representative Council on the draft Regional Regulations and Regional Regulations*, 15 PANDECTA RES. LAW J. 93 (2020); Yuyun Puspita Sari, Gusti Ayu Ratih Damayanti & Sri Karyati, *Authority of the Regional Representative Council in monitoring and evaluating draft regional regulations (raperda) and regional regulations (perda)*, 4

Interestingly, although all studies criticized the addition of the authority of PLS Perda to DPD, there was not a single argument related to Bapemperda's authority in conducting PLS Perda based on Law No. 23/2014 and PP No. 12/2018.

This article is different from the study of Andi Asrul et al. as well as Saputra and Setyawati. Both studies have not touched the concept and purpose of PLS by the legislature (DPR and DPRD), the substance of the regulation of the PLS implementation mechanism in the DPRD Rules of Procedure, as well as the urgency and arguments why PLS Perda by Bapemperda must be strengthened. This article is also different from the PLS Perda (and Draft Perda) study by DPD conducted by 5 (five) previous researchers. The difference is, this study actually wants to prove that by strengthening the role of the DPRD (Bapemperda) in conducting PLS Perda, the authority of DPD to conduct PLS Perda in the future should be removed.

This study aims to address these gaps by advocating for the empowerment of DPRDs in conducting effective PLS for Perda. It explores the theoretical foundations of PLS within international parliamentary frameworks, analyzes the existing regulatory framework of PLS Perda, scrutinizes its implementation in Provincial DPRD Rules of Procedure, and underscores the imperative of strengthening DPRDs' roles in regional legislative oversight. By enhancing the capacity of DPRDs to evaluate the efficacy and compliance of regional regulations, this research seeks to foster legal coherence, preempt discriminatory legislation, and improve legislative quality, thereby contributing to robust governance and harmonious legal frameworks across Indonesia.

This study adopts a doctrinal legal research approach utilizing statutory and conceptual analyses. It relies on secondary data presented in a qualitative descriptive manner. The focus of the study is on the application of Post-Legislative Scrutiny (PLS) regulations in the Rules of Procedure of Provincial People's Representative Councils (DPRDs) across the 34 provinces of Indonesia. This deliberate limitation aims to enhance the validity and reliability of the study's findings.

Primary legal materials, comprising central level laws and regulations, are sourced from the <https://peraturan.go.id> and <https://jdih.go.id> websites. Regional legal materials, specifically the Rules of Procedure of Provincial DPRDs, are accessed through the respective provincial legislative information portals such as <https://jdihprov> and <https://dprdprov> pages of all 34 provinces. To assess the

practical implementation of PLS Perda, content analysis is conducted on the legislative documents available on these provincial websites, along with DPRD decisions concerning PLS implementation recommendations. Additionally, to enrich the analytical framework, supplementary information is gathered through participatory observations.

Post-Legislative Scrutiny: Overview

The terminology for monitoring and reviewing legislation varies widely, encompassing terms such as Post-Legislative Scrutiny (PLS), ex-post legislative evaluations, or evaluation of legislation. Conceptually, the Law Commission of England and Wales in 2016 defines PLS as a comprehensive review aimed at assessing the impact of legislation to determine whether its intended policy objectives have been achieved effectively. This broad approach also allows for consideration of narrower questions pertaining to legal or technical aspects of the legislation. According to Franklin and Mousmouti, *Post-Legislative Scrutiny (PLS) is the systematic and structured process of reviewing the implementation and impact of legislation*²². Although different terms are used in practice, the difference in terminology does not change the essence of PLS, namely there are activities *to review, ex post facto, the implementation and impact of the law*.²³

There are at least 4 reasons for the urgency of the legislative institution (Parliament) to carry out PLS: *first*, ensuring the continuity of efforts to form regulations for the implementation of laws, the accuracy and suitability of their formation, as well as the technical needs of legislation implementation in connection with the principles of legality and legal certainty; *second*, knowing immediately the shortcomings and negative effects that arise after the law is implemented; *third*, support a consolidated assessment system on the extent of the effectiveness of a law in regulating and responding to problems that exist in society and the state; and *fourth*, support the improvement of the quality of legislation by learning from experience, as well as the relationship between goals and expected results.²⁴

PLS can be done in many different ways and there is no single blueprint that is universally applicable. But in general, PLS can be seen in a broad sense and a narrow sense. In a broad sense, PLS aims to see the impact of legislation;

²² Franklin De Vrieze and Maria Mousmouti, *Parliamentary Innovation through Post-Legislative Scrutiny Manual for Parliaments* (United Kingdom: WFD, 2023).

²³ *Id.*

²⁴ *Id.*; BADAN LEGISLASI DPR, *supra* note 11.

whether the objectives of the established legal policy have been achieved, and how effective. In a narrow sense, PLS only focuses on the enactment of the law, whether the provisions in the law have been enacted, whether the ordered implementing regulations have been formed, how the courts interpret the norms in the law, and how legal practitioners and citizens have used the law.²⁵

In various PLS studies conducted in various countries, the object of PLS is the Law, which has been aged or has been running for at least 3 (three) years.²⁶ But that does not mean PLS against Perda (local laws) by local parliaments cannot be done. Although literature on this subject is limited, Guanbin Wen's study, which examined the role of the *People's Congress in China's Guangzhou City*, is an example of PLS local legislation by local parliaments. In its study, PLS is carried out by one of the municipal *people's congress* (local council) equipment, namely the Legislative Affairs Committee which is permanent (formal) called the *Legislative Affairs Committee* (LAC). The LAC prepares an annual evaluation plan, formulates a system of evaluation indicators, and organizes evaluation activities.²⁷ In the concluding part of his study, Guanbin stated that the role of *the People's Congress* has changed dramatically from a passive condition in the formation of local laws (Perda), to a major role in sustainable legislative reform in China after the PLS was instituted.²⁸

The scope of PLS can be focused on a single act, the specific provisions of an act, or it can take the form of a cumulative assessment of a set of related laws or implementing regulations. The breadth or narrowness of the scope and focus of the PLS, is the independent authority of parliament, depending on the mandate of the committee or body conducting the supervision, the time and resources available, as well as its most effective use, the potential quality of the oversight, the existence of data, and the importance of a topic.²⁹ For example, because in recent years there has been an increase in the use of delegation regulations to implement a law, the need to PLS on delegation regulations by parliament is important to prevent delegation regulations that deviate from the purpose of granting delegation in the law.³⁰ Similarly, to answer cross-sectoral

²⁵ DEMOCRACY PLUS, *POST-LEGISLATIVE SCRUTINY INTERNATIONAL PRINCIPLES AND OVERSIGHT IN KOSOVO* (2020); VRIEZE AND MOUSMOUTI, *supra* note 28.

²⁶ Franklin De Vrieze, *Principles of Post-Legislative Scrutiny by Parliaments*, WESTMINSTER FOUND. DEMOCR. 1 (2018).

²⁷ Guanbin Wen, *How Does Local People's Congress Lead the Lawmaking? The Case of Legislative Evaluation*, SSRN ELECTRON. J. 1 (2015).

²⁸ *Id.*

²⁹ Pink, *supra* note 32.

³⁰ Thomas G. Fleming, *Parliamentary Scrutiny of Delegated Legislation: Lessons from Comparative Experience*, 94 POLISHED. Q. 412 (2023).

thematic issues, Parliaments in various countries have conducted thematic PLS such as *PLS gender sensitive*,³¹ *climate and environment*,³² and *PLS of campaign finance legislation*³³.

Elena Griglio, who conducted a comparative study of PLS approaches in several countries, classified 3 approaches to PLS, namely:

1. Passive supervisor (passive PLS). In passive PLS, Parliaments limit their role to supervisory assessments conducted by government organs/agencies or external agencies. In this 'passive' attitude, parliament is not directly involved in monitoring the implementation of laws and impact assessments, and relies solely on 'external' reports and evaluations.
2. Informal supervision (informal PLS). In an informal PLS, parliament may decide to take a proactive approach that goes beyond just Hand over post-legislative oversight to the government or external agencies. They form the structure of parliament *administrative ad hoc*, such as research and evaluation units that provide analysis *ex-post* regarding legislative implementation and impact assessment. In informal PLS, there is no PLS regulation/guideline.
3. Formal supervision (formal PLS). Formal PLS is the most 'sophisticated' approach. In formal PLS, parliament conducts PLS through special parliamentary equipment that is permanent and institutional, supported by regulations or guidelines on PLS procedures.³⁴

In Franklin De Vrieze's presentation, these three PLS approaches provide a framework for understanding the diverse ways in which parliaments across countries engage in post-legislative scrutiny. They illustrate varying levels of institutionalization and procedural sophistication in legislative oversight practices, offering insights into how parliamentary bodies approach the evaluation of legislative impacts and effectiveness.

³¹ M Mousmouti, *Gender-Sensitive Post-Legislative Scrutiny in Theory and Practice*, 10 THEORY PRACT. LEGIS. 322 (2022).

³² David Hirst, "Post-Legislative Scrutiny of Climate and Environment Legislation Guide for Parliamentary Practice" (United Kingdom, 2021).

³³ S Lipcean, F C Bértoa & LLMN Gogvadze, *Post-Legislative Scrutiny of Election Campaign Finance Legislation* (2022).

³⁴ Elena Griglio, *Post-Legislative Scrutiny as a Form of Executive Oversight Tools and Practices in Europe*, 21 EUR. J. LAW REFORM 36 (2019). In other literature, some have added a fourth approach called Independent Oversight which is characterized by cooperation between parliaments with other independent oversight agencies. See DEMOCRACY PLUS, *supra* note 31.

Regulation and Implementation of Monitoring And Review of Local Regulations by the Provincial Parliament

In positive law and practice in Indonesia, the term *Post-Legislative Scrutiny* (PLS) is used variously. The term "*Monitoring and Review*" in Law P3, is a contraction of the terminology and practice that has been carried out by the DPR Legislation Body since 2014.³⁵ In order to further strengthen the formation of sustainable laws and regulations, the PLS practice of laws by the DPR Legislation Body has been upgraded to an integral part of the cycle of forming laws and regulations as stipulated in Article 95A and Article 95B of Law P3.

In the executive environment, PLS practices against the Law are carried out by the National Legal Development Agency (BPHN). PLS practice uses the term "*Evaluation of Laws and Regulations*", which is interpreted as part of Monitoring and Review activities as mentioned in Article 1 number 14 of Law No. 15/2019.³⁶ This activity is carried out annually by BPHN, using the 6-dimensional method, and until December 10, 2023, BPHN has carried out PLS on 884 laws and regulations with 6,106 recommendations.³⁷

Specifically regarding PLS Perda, regulated in Law No. 23/2014 on Regional Government, which confirms that the DPRD as a regional people's representative institution has 3 functions attached to the DPRD Institution, namely the function of forming Regional Regulations (legislative function), budget function, and supervisory function.³⁸ The implementation of the supervisory function of the Provincial and Regency / City DPRD is manifested in 3 (three) forms, namely (a) supervision of the implementation of Regional

³⁵ This is affirmed in Article 105 paragraph (1) letter f of the MD3 Law which states: *The Legislation Body is tasked with "monitoring and reviewing laws.* See Republic of Indonesia, *Law Number 17 of 2014 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council*, (2014).

³⁶ National Legal Development Agency, "Guidelines for Evaluating Laws and Regulations Number PHN-HN.01.03-07 of 2020," (2020).

³⁷ National Legal Development Agency, *Evaluation of the National Law Database*, (2023), <https://evadata.kemenumham.go.id/#>.

³⁸ See Article 96 paragraph (1) and Article 149 paragraph (1) of Law No. 23/2014. The three functions of the DPRD are essentially the same as the functions of the DPR, as contained in Article 96 paragraph (1) of the MD3 Law, namely the legislative function, the budget function, and the supervisory function.

Regulations and Perkada; (b) supervision of the implementation of other laws and regulations related to the administration of Local Government; and (c) the implementation of follow-up on the results of the audit of financial statements by the Audit Board.³⁹ The procedures for implementing the functions, duties and authorities of the DPRD are further regulated by the DPRD Rules of Procedure based on the Guidelines set by the Government.⁴⁰

Government Regulation No. 12/2018 which regulates the Guidelines for the Preparation of DPRD Rules of Procedure as mandated by Law No. 23/2014 was stipulated on April 16, 2018. Specific arrangements of the authority of the DPRD in conducting supervision and the authority of Bapemperda to conduct PLS Perda, are presented in the following table.

TABLE 2. The Regulation of the Authority of DPRD to Conduct Oversight and the Authority of Bapemperda to Conduct Post-Legislative Scrutiny (PLS) of Regional Regulations in Government Regulation No. 12/2018.

No	Article	Notes
1	21	<p>(1) The supervisory function is manifested in the form of supervision of:</p> <ul style="list-style-type: none"> a. the implementation of Regional Regulations and regulations of Regional Heads; b. implementation of other laws and regulations related to the implementation of local government; and c. implementation of follow-up on the results of the audit of financial statements by the Financial Audit Agency. <p>(2) Supervision as referred to in paragraph (1) can be carried out through:</p> <ul style="list-style-type: none"> a. commission work meetings with local governments; b. working visit activities; c. public hearing meetings; and d. community complaints. <p>(3) The supervisory function as referred to in paragraph (1) huruf a and letter b is carried out by Bapemperda through evaluation activities on the effectiveness of the implementation of Regional Regulations, Regional Head Regulations, and the implementation of other laws and regulations.</p> <p>(4) The results of the evaluation as referred to in paragraph (3) are reported to the Leadership of the DPRD and announced in the plenary meeting.</p>

³⁹ See Article 101 paragraph (1) and Article 153 paragraph (1) of Law No. 23/2014.

⁴⁰ See Article 132 paragraph (2) and Article 154 paragraph (2) jo Article 186 paragraph (2) of Law No. 23/2014.

No	Article	Notes
		(5) The DPRD, based on the decision of the plenary meeting, can request clarification of the findings of the report on the results of the audit of financial statements to the Financial Audit Board.
		(6) The request for clarification as referred to in paragraph (5) is submitted through a letter from the Chairman of the DPRD to the Financial Audit Board.
2	52 point j	Bapemperda has the following duties and authorities: j. conducting a study of the Regional Regulation;

Source: Government Regulation No. 12/2018

Based on the provisions of Article 21 paragraph (3) and paragraph (4) as well as Article 52 letter j of PP No. 12/2018, it is clear to see a new direction of legal politics of the supervisory function of the DPRD, namely strengthening the institution of Bapemperda through granting PLS Perda authority through evaluation activities on the effectiveness of the implementation of Regional Regulations. The results of the PLS Perda Bapemperda are reported to the DPRD Leadership and announced in a plenary meeting.⁴¹ The two principles of PLS regulation, the mechanism is left to the DPRD to regulate it further in the Rules of Procedure.

If the provisions of Article 21 PP No. 12/2018 are connected with the stages of the formation of laws and regulations in Law No. 15/2019, then the design of the stages of the formation of Regional Regulations and PLS Perda as explained at the Figure 1.

⁴¹ In PP No. 16/2010 concerning Guidelines for the Preparation of Rules of Procedure for Provincial and Regency / City DPRD's that were previously in force, there is no provision for affirmation of authority to Bapemperda to conduct PLS Perda or the task of Bapemperda to conduct regional government studies.

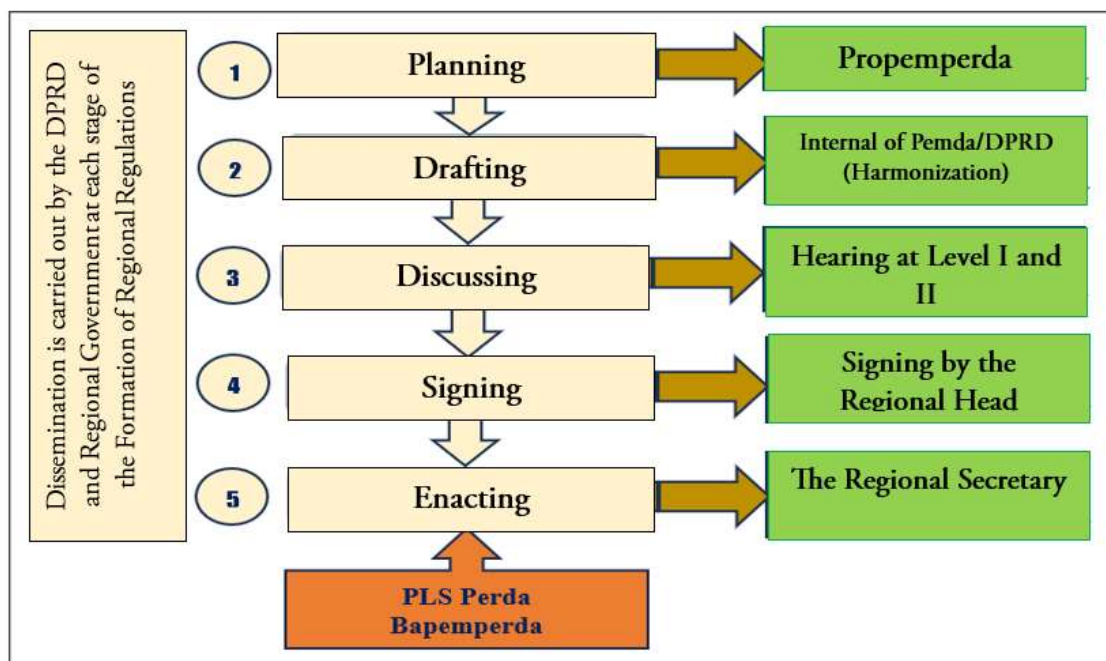


FIGURE 1. Stages of Regional Regulation Formation and PLS Perda

What are the mechanisms of PLS Perda in the Rules of Procedure of Provincial DPRD's across Indonesia following the enactment of Government Regulation No. 12/2018? Have DPRD's established their own procedures, or do they adhere strictly to the formulations outlined in Government Regulation No. 12/2018? This study examines these questions through a search of the legislative portals of all 34 provinces, specifically <https://jdihprov> and <https://dprdprov> pages, and presents the findings in the following table.

TABLE 3. Regulation of the Authority of Bapemperda to Conduct PLS Perda in the Rules of Conduct of Provincial DPRD's throughout Indonesia

No	DPRD Province	Regulations of DPRD		Description of PLS in the Code of Conduct	
		After PP 12/2018	Change/ Replacement	Yes	No
1	Aceh	1/2019	1/2022	-	√
2	Sumatera Utara	1/2020	1/2023	-	√
3	Riau	2/2018	1/2020; 1/2022	-	√
4	Kepulauan Riau	1/2019	-	-	-
5	Sumatera Barat	1/2018	1/2020	-	-
6	Jambi	1/2018	1/2020; 1/2022	√	-
7	Sumatera Selatan	175/2018	1/2020; 1/2021	-	√
8	Lampung	NA	NA	NA	NA
9	Bangka Belitung	1/2018	1/2021	-	√
10	Bengkulu	7/2019	7/2020	-	√
11	DKI Jakarta	1/2019	1/2020	-	√
12	Banten	1/2018	1/2022	-	√

No	DPRD Province	Regulations of DPRD		Description of PLS in the Code of Conduct	
		After PP 12/2018	Change/ Replacement	Yes	No
13	Jawa Barat	1/2018	1/2019; 1/2022	-	√
14	Jawa Tengah	1/2018	1/2019	-	√
15	D.I. Yogyakarta	1/2018	1/2019 (1/2015)	√	-
16	Jawa Timur	1/2015	1/2020	-	√
17	Bali	1/2018	1/2019	-	√
18	Nusa Tenggara Barat	1/2018	1/2019	-	√
19	Nusa Tenggara Timur	NA	NA	NA	NA
20	Kalimantan Timur	1/2019	1/2020	-	√
21	Kalimantan Selatan	NA	NA	NA	NA
22	Kalimantan Barat	1/2019	1/2020	-	√
23	Kalimantan Tengah	1/2019	1/2023	-	√
24	Kalimantan Utara	1/2018	1/2019	-	√
25	Sulawesi Selatan	1/2018	1/2019; 1/2023	-	√
26	Sulawesi Utara	2/1019	-	-	√
27	Sulawesi Tengah	1/2018	1/2019	-	√
28	Sulawesi Tenggara	1/2018	1/2020; 1/2022	-	√
29	Sulawesi Barat	1/2019	1/2020	-	√
30	Gorontalo	NA	NA	NA	NA
31	Maluku	1/2010	-	-	√
32	Maluku Utara	3/2018	1/2019	-	√
33	Papua	1/2020	-	-	√
34	Papua Barat	NA	NA	NA	NA

Source: Analysed from the primary source

NA= Not available

Based on table 3 data, of the 34 Provincial DPRD throughout Indonesia, there are 5 DPRD whose data is not found, namely the DPRD of Lampung Province, East Nusa Tenggara, South Kalimantan, Gorontalo, and the DPRD of West Papua Province. Of the 29 provincial parliaments, only 2 DPRD (6.90%) describe the mechanism for implementing PLS Perda and Perkada in the Rules of Procedure, namely the Jambi Provincial DPRD and DIY Provincial DPRD. In other words, most provincial parliaments in Indonesia (93.10%), have not described the PLS mechanism in the DPRD Rules of Procedure.

Content analysis on the provincial jdihdprd website throughout Indonesia, found no data and information showing that the Provincial DPRD Bapemperda has implemented PLS against Regional Regulations as referred to Article 21 PP No. 12/2018. The findings of the study also confirm, of the 2 (two) Provincial DPRD (Jambi and DIY) that have described the PLS mechanism in the Rules of Procedure, only the DIY Provincial DPRD has carried out the implementation of the PLS Perda function. In other words, most of the Provincial DPRD in Indonesia (33 Provincial DPRD), have not implemented PLS Perda as referred to in Article 21 PP No. 12/2018.

The finding that the DIY Provincial DPRD as the only Provincial DPRD in Indonesia that has implemented PLS Perda, is interesting for further study. Unlike the other 33 Provincial DPRD, before the enactment of PP No. 12/2018, the DIY Provincial DPRD already had special regulations on Procedures for Implementing Supervision Functions, which were stipulated in DPRD Regulation No. 1/2015. The scope of supervision in this regulation is very broad. Specifically regarding PLS against Regional Regulations, it is regulated in Article 34 and Article 35 which basically regulate:

1. The implementation of PLS Perda can be carried out by Members of the DPRD, Commissions, or Special Committees (Pansus).
2. The scope of PLS is to examine and examine: (a) the implementing regulations ordered to be formed by the Regional Regulation; or (b) Regional regulations established in describing laws and regulations in the context of implementing government affairs under the authority of the local government.
3. The mechanism for implementing PLS Perda is carried out through work visits, work meetings, hearing meetings, public hearings and/or facial procedures. In such activities, may invite or visit: (a) the community; (b) Regional Devices; (c) Vertical agencies; and/or (d) stakeholders to obtain input on the implementation of local regulations.
4. The results of PLS Perda are reported in: (a) Commission meetings; (b) joint meetings of the Commission; (c) Leadership meetings; (d) consultation meetings; or (e) plenary meeting.
5. Follow-up PLS Perda can be: (a) formulation of evaluation results and recommendations; (b) requests to the Governor to make improvements, changes, policy replacements and/or implementing officials who manifestly do not perform well to achieve the objectives of the implementation of Local Government; (b) recommendations containing requests to the Governor to provide administrative sanctions to implementing officials in accordance with the weight, lightness, and nature of the inspection findings from the implementation of the supervisory function of the DPRD; or (c) any other decision.⁴²

Based on document searches, publications of the implementation of PLS Perda on <https://www.dprd-diy.go.id/> website, the practice of implementing PLS Perda in the DIY Provincial DPRD is explained as follows:

⁴² Excerpted from the provisions of Article 33, 34, Article 55 of DIY DPRD Regulation No. 1/2015 and Article 212 of DPRD Regulation No. 1/2018.

1. The planning stage, including: (a) planning PLS Perda activities are carried out every year as stipulated in the DPRD Annual Work Program by Decision of the DPRD Leadership. On average, 4 PLS Perda are scheduled every year;⁴³ (b) proposing the object of PLS Perda by each Commission in accordance with the Annual Work Program of the DPRD; (c) stipulation and approval of supervision of the implementation of local regulations; in the Plenary Meeting; (d) the establishment of a Special Committee to Supervise the Implementation of Local Regulations stipulated by the Decision of the Leadership of the DPRD; and (e) preparation of the schedule of the Pansus work plan.
2. Implementation phase with activities: (a) working visits (field visits); (b) consultation; (c) Public Hearing Meeting (FGD/public hearing), and (d) invite resource persons for their input. After that, the preparation of a draft Pansus Recommendation Report which was discussed together with the relevant Regional Apparatus.
3. Follow-up stage with activities: (a) Submission of the Pansus Recommendation Report in the Plenary Meeting attended by the Governor/Deputy Governor; (b) the approval of the Member of Parliament to the recommendation of the Pansus; (c) signatories of the Decree of the Leadership of the DPRD on DPRD Recommendations Regarding the Implementation of Local Regulation Supervision; and (d) official submission of the Decision of the DPRD Leadership on DPRD Recommendations Regarding the Implementation of Local Regulation Supervision to the DIY Governor. Recommendations submitted to the Governor can be in the form of recommendations for improving the implementation of local regulations, revising norms in regional regulations, and/or revoking content material in regional regulations.

Unlike the DIY Provincial DPRD which already has a special regulation on DPRD Regulation No. 1/2015 concerning Procedures for the Implementation of Supervision Functions, other Provincial DPRD's have only simply adopted the formulation of the provisions of Article 21 PP No. 12/2018. Based on participatory studies and observations, the PLS Regional Regulation as referred to in Article 21 PP Number 12 of 2018 has not been explained and implemented due to two important things, firstly inconsistency in interpretation, and secondly at the dissemination stage.

⁴³ For example, DIY Provincial DPRD Decision No. 34/K/DPRD/2020 about the DIY Provincial DPRD Work Program in 2020.

A. Inconsistency and multi-interpretation of PLS Perda Arrangements

It has been stated that the granting of PLS authority to Bapemperda to conduct evaluation activities on the effectiveness of the implementation of regional regulations is a new legal policy strengthening the duties and authority of Bapemperda as *the center of law* in the DPRD by referring to the regulation of the authority of the DPR Legislation Body in the MD3 Law. However, there are inconsistencies and multiple interpretations in the PLS regulation in Article 21 PP No. 12/2018 as follows:

1. The authority of Bapemperda according to Article 21 paragraph (3) of PP No. 12/2018 is to supervise through activities "*evaluation of the effectiveness of the implementation of local regulations, regional head regulations, and the implementation of other laws and regulations*". Meanwhile, in the formulation of the duties and authorities of Bapemperda (Article 52 letter j) states: *Bapemperda has the duty and authority to conduct local regulation studies*. Use of phrases *evaluation of the effectiveness of the implementation of local regulations* and phrases *conducting studies* Local regulations clearly show inconsistency and multi-interpretation. Phrases *evaluation of the effectiveness of the implementation of local regulations* better reflects the purpose of "Monitoring and Review" of laws and regulations as referred to in Article 1 number 14 of Law P3, namely: *activities to observe, record, and assess the implementation of applicable laws so that the achievement of planned results, impacts caused, and benefits are known*. The phrase "review of local regulations" is more normative (normative studies), and will differ in meaning from the phrase "review of the implementation of local regulations" which is more empirical (empirical studies). Supposedly, because the formulation of Article 21 paragraph (3) and Article 52 letter j of PP No. 12/2018 refers to the formulation of the duties and authorities of the DPR Legislation Body in Article 105 letter f of the MD3 Law, the phrase used is "Monitoring and Review of Local Regulations".
2. In Article 21 PP No. 12/2018, there are 2 (two) DPRD fittings that are authorized to supervise the implementation of Regional Regulations and supervise the implementation of Regional Regulations and supervise implementation of other laws and regulations related to the administration of local government, which is carried out by the Commission in Article 21 paragraph (2) and supervision carried out by Bapemperda in Article 21 paragraph (3). Placing the regulation of the authority of the Commission and the authority of Bapemperda in one article (Article 21) with the same

object of supervision, causing multiple interpretations in the regions. There is an assumption that supervision of local regulations is the authority of the Commission which is carried out through commission work meetings with local governments, working visit activities, public hearings; and public complaints, such as the practice before the enactment of PP No. 12/2018. In fact, there is a fundamental difference between the supervision of the Commission and PLS by Bapemperda. In terms of theory, PLS by Bapemperda on Regional Regulations is part (a small part) of the supervisory function of the DPRD carried out by the Commission, as presented in the Figure 2.

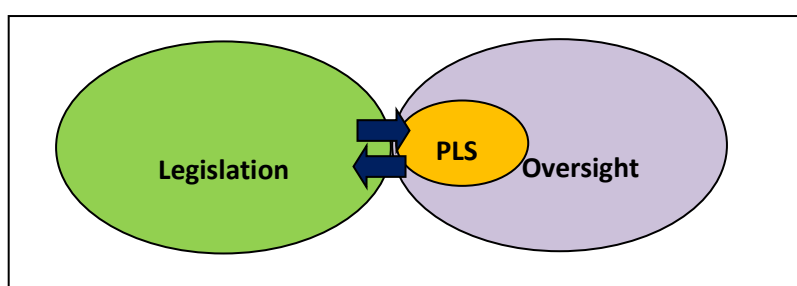


FIGURE 2. PLS's Position in Relation to Legislation and Supervision⁴⁴

Thus, in terms of the technique of forming legislation,⁴⁵ the unification of formulations in one article ultimately obscures the authority of Bapemperda to supervise and evaluate the effectiveness of local regulations. Supposedly, the regulation of the authority of the Commission and Bapemperda should not be made in 1 article, but in a separate article so that the difference in supervision between the Commission and Bapemperda is known.

3. Related to the object of supervision. In addition to Perda and Perkada, the object of supervision of Bapemperda also includes "*implementation of other laws and regulations related to the administration of local government*". The formulation is inaccurate, multi-interpretive and inconsistent because: **First**, object "*other laws and regulations related to the administration of local government*" very broad, covering Law, PP, Perpres, Candy and others.

⁴⁴ Franklin De Vrieze, "Post-Legislative Scrutiny", Paper "Post-Legislative Scrutiny in non-Westminster Parliaments", prepared for the Academic Seminar on Post-Legislative Scrutiny by IALS-UoL and WFD, London 10 July 2018, by Jonathan Murphy and Svitlana Mishura, p. 6. [@WFD_Democracy](http://www.wfd.org).

⁴⁵ See Annex II Number 77 of Law No. 12/2011 on the Establishment of Legislation which states that the content of laws and regulations is better formulated in many short and clear articles than into several articles where each article contains many paragraphs, unless the content material contained in the article is an inseparable series.

Moreover, there is no explanation in Law No. 23/2014 and PP No. 12/2018 regarding the understanding of this matter.

Second, PLS on the *implementation of other laws and regulations related to "authority that is the business of local government"* is also not appropriate carried out by Bapemperda whose particular object is Perda. The supervisory task is more precisely carried out by the DPRD Commission, not by Bapemperda. This is consistent with the duties and authorities of Bapemperda in Article 51 letter j, namely *conducting a review of Regional Regulations* (Monitoring and Review of Regional Regulations).

B. The Dissemination of the PLS Perda Policy Direction in PP No. 12/2018 to the DPRD

After the enactment of PP No. 12/2018, there was no socialization from the Government (Kemendagri) regarding the urgency and purpose of affirming the authority of Bapemperda to conduct PLS Perda.⁴⁶ As a result, most DPRD Members including Bapemperda members do not know about PLS Perda. Moreover, the deadline for drafting the Rules of Conduct is very narrow (no later than October 16, 2018) as ordered by Article 134 paragraph (2) of PP No. 12/2018, That is the main reason why the Committee for the Preparation of Rules of Conduct only simply adopts the formulation of the provisions of Article 21 PP No. 12/2018 as presented in the table above.⁴⁷

The Urgency of Strengthening the Authority of Bapemperda in Monitoring and Reviewing Local Regulations

There are at least 5 (five) urgencies why Bapemperda's authority to conduct Regional Regulation Monitoring and Review must be strengthened,

⁴⁶ Further search through search engines *Google* or through channels *You Tube*, there was no socialization from the Government (Kemendagri) regarding PP No. 12/2018. The publication is carried out in general by the Public Relations of the Cabinet Secretariat: "This is PP No. 12/2018 concerning Guidelines for the Preparation of Rules for Province, Regency / City DPRD," May 8, 2018, <https://setkab.go.id/inilah-pp-no-122018-tentang-pedoman-penyusunan-tata-tertib-dprd-provinsi-kabupatenkota>.

⁴⁷ The author's experience during the preparation and discussion of the Jambi Provincial DPRD Rules of Procedure No. 1/2020, there were no members of the Tatib Pansus Team who agreed to the purpose and purpose of the provisions of Article 21 paragraph (3) of PP No. 12/2018. Pansus considers the formula already *given* so that it was taken over in the formulation of the Tatib DPRD.

namely: (1) assessing the effectiveness of the enactment of Regional Regulations; (2) establish legal order; (3) ensure that there are no discriminatory local regulations; (4) improving the quality of legislation through experiential learning; and (5) solutions to resolve the dualism of the authority of the people's representative institutions (DPD and DPRD) in conducting PLS Perda. The five urgencies will be discussed below.

1. Assess the effectiveness of the enactment of local regulations

The stage of DPRD approval of a draft bylaw is not the end of the legislative process (the process of forming a regional regulation). No less important stage is to ensure that the implementation of the Regional Regulations formed is carried out in accordance with the objectives set by the DPRD together with the Regional Heads. The success of the DPRD as a regional people's representative institution is not seen from the success of the implementation of Perda, but the implementation and effectiveness of Perda.

There are 19 variables used to determine the effectiveness or failure of a law and regulation (PPU). One of the variables is whether the implementing regulations ordered by the PPU have been established by the Government.⁴⁸ The Government compliance indicator issues delegation regulations ordered by law, becoming the main indicator in Law Monitoring and Review activities carried out by the DPR Legislation Body.⁴⁹

The importance of the position of implementing regulations, because the norms in the Regional Regulations can only be implemented properly when the Perkada ordered by the Regional Regulations has been issued. Several studies show that because the Perkada ordered by the Regional Regulation has not been formed, it has an impact on the ineffectiveness of the implementation of the Regional Regulation that has been determined.⁵⁰

The tendency of local governments to ignore the formation of delegation perkada ordered by local regulations is a common trend that occurs in all regions in Indonesia. This tendency is one of the 5 (five) regulatory diseases (*legispheritis*), namely the incompleteness of the basic elements of regulations so that regulations are not effective.⁵¹ This *disease of legispheritis*, in fact, has long

⁴⁸ National Legal Development Agency, *Supra* note 45.

⁴⁹ BADAN LEGISLASI DPR, REPORT ON THE RESULTS OF MONITORING AND REVIEW OF LAW NUMBER 18 OF 2008 CONCERNING WASTE MANAGEMENT (2023).

⁵⁰ Sylvia Aryani, *The Existence of Regional Head Regulations as Implementing Regulations for Regional Regulations*, 2 BADAMAI LAW J. 153 (2017).

⁵¹ Rivals G. Ahmad and Asep Yunan Firdaus, *Village Regulation Design Module with a Strategic Approach*, Epistema Institute (Jakarta: Epistema Institute, 2019).

been a criticism of the DPRD.⁵² Irfan Muhaimin's study, which examines the level of compliance of the Jambi Provincial Government and the Central Java Provincial Government in issuing the Governor's Regulation ordered by the 2018-2019 Regional Regulation, illustrates this trend. Of the 29 Pergub ordered by 29 Jambi Provincial Regional Regulations, only 4 Regional Regulations (13.80%) have been formed by the Regional Government. Similarly, of the 29 Pergub ordered by 29 Perda Jawa Tengah Province, only 13 Perda (44.83%) have been formed.⁵³ In other words, the level of compliance of the Provincial Government in issuing delegation Governor Regulations is very low, in the range of 13.80 to 44.83%.

TABLE 4. Number of Governor's Delegations for Regional Regulations of Jambi Province and Central Java Province in 2018-2019

Year	Province of Jambi		Province of Central Java	
	Number of Regional Regulations Delegated to the Governor's Regulation	Number Issued Governor's Regulation	Number of Regional Regulations Delegated to the Governor's Regulation	Number Issued Governor's Regulation
2018	8	2	13	6
2019	21	2	16	7
TOTAL	29	4	29	13

*Source: Irfan Muhaimin*⁵⁴

Effectiveness assessment can also be seen from the perspective of whether the current Regional Regulation is operational or not.⁵⁵ It often happens, when a new bylaw is formed, the old bylaw is not revoked. In other words, the old bylaw is *de jure* valid because it has never been repealed, but it is *de facto* non-

⁵² See: (1) Putu A, "DPRD Furious at Many Barren Local Regulations," *Batampos*, 2018, [https:// batampos.co.id/2018/04/03/dprd-geram-banyak-perda-mandul/](https://batampos.co.id/2018/04/03/dprd-geram-banyak-perda-mandul/); (2) PKS Faction of the Lampung Provincial DPRD, "Confide in No Family Resilience Governor, Women's Sector, Visit the Lampung PKS Faction," 2021, <https://fraksi.pkslampung.com/2021/05/25/curhat-belum-ada-pergub-ketahanan-keluarga-bidang-perempuan-sambang-fraksi-pks-lampung/>; (3) West Sumatra Provincial DPRD, "West Sumatra DPRD Asks for Ratified Regional Regulations to Be Issued by Governors," 2022, <https://dprd.sumbarprov.go.id/home/berita/1/1521>.

⁵³ Irfan Muhaimin, "Regulation for the Formation of Regional Head of Delegation Regulations in the Perspective of Legislation" (Jambi University, 2021), <https://repository.unja.ac.id/21611/>.

⁵⁴ *Id.*

⁵⁵ National Legal Development Agency, *supra* Note 45.

operational or also called *dead law*⁵⁶. The experience of the Bapemperda DPRD Jambi Province when initiating the "Ranperda on the Revocation of Jambi Provincial Regional Regulations", shows this. Based on the analysis and evaluation of Jambi Provincial Regional Regulations for 1958-2019, 92 Jambi Provincial Regional Regulations were found to be non-operational (*dead law*) and must be revoked, with cluster details:

1. Regional Tax and Regional Levy Cluster, as many as 67 Regional Regulations;
2. Local Regulation Cluster on Villages and Villages, as many as 12 Regional Regulations;
3. Cluster of Regional Regulations on Regional Authority and Certain Affairs, as many as 6 Regional Regulations;
4. Cluster of Regional Regulations on Natural Resources Management, as many as 7 Regional Regulations.⁵⁷

Dead Perda (as a dead law), or *Perda mati* is a common phenomenon that occurs in almost all regions in Indonesia. One example is the Regional Regulation on Government Affairs which is the authority of the Province or Regency/City in all Regions. With the enactment of Law No. 23/20014, concurrent government affairs between the Central, Provincial and District/City Governments have changed in scope as contained in the Annex to Law No. 23/2014. Thus, since the enactment of Law No. 23/2014, Perda on Government Affairs as an order from Law No. 32/2004 on Regional Government and PP No. 38/2007 concerning the Division of Government Affairs between the Government, Provincial Regional Governments, and District/City Regional Governments has become no longer operational because the content material is contrary to Law No. 23/2014, so it should have been revoked. However, there are still many regions that have not revoked the

⁵⁶ ACHMAD ALI, LEGAL THEORY & JUDICIARY (Fourth ed. 2012). In his book, Achmad Ali distinguishes the law of sleep (*sleeping law*) and a death penalty (*dead law*). *Sleeping law* That is, the rule of law is still used, but not optimally, like a person who is nodding off. *Dead law* It means a rule of law that has never been repealed, but in reality is no longer used.

⁵⁷ "Jambi Province Regional Regulation No. 2/2022 concerning the Revocation of Jambi Provincial Regional Regulations" (2022). The revocation of 92 local regulations initiated by the Bapemperda DPRD Jambi Province is the highest record in Indonesia. The 2nd record is held by DIY Province which revoked 82 Regional Regulations through DIY Provincial Regional Regulation No. 10/2016. The difference is, the initiative to repeal the Regional Regulation in DIY Province comes from the DIY Regional Government, while in Jambi Province the initiative comes from the Bapemperda DPRD.

Regional Regulation on Government Affairs,⁵⁸ although the Minister of Home Affairs (Mendagri) has long reminded the local government to revoke the Regional Regulation.⁵⁹

The main factor affecting the large number of "dead local regulations" is the absence of PLS Perda carried out by Bapemperda or the Local Government Legal Bureau/Section. From the Bapemperda side, PLS Perda is not implemented because the mechanism is not described in the Rules of Procedure so that PLS Perda activities are not budgeted in the budget document of the DPRD Secretariat. While the Local Government Law Bureau / Section considers that its main responsibility is *the law making process*, which is to review each Regional Draft or Perkada Plan which can reach two hundred every year.⁶⁰ The Local Government Legal Bureau/Section does not have data on the number of delegates in each local regulation and the extent of follow-up by the implementing regional apparatus.⁶¹ Similarly, there is no special unit to assess the impact of the enforceability of a local regulation with the presence of higher laws and regulations, whether existing regional regulations are maintained, revised, or repealed. Moreover, human resources in the field of law at the Legal Bureau / Section are also very limited.⁶²

Creating a Legal Order

To ensure that laws and regulations can support the upholding of the principle of the rule of law (*rechtsstaat and rule of law*), at least 2 orders are

⁵⁸ For example, West Java Provincial Regional Regulation No. 10/2018 concerning West Java Provincial Government Affairs which until now has been *de jure* still valid.

⁵⁹ Based on data from Regional Regulations canceled by the Minister of Home Affairs in 2016, almost every province has canceled this Regional Regulation, either Provincial Regional Regulations or District/City Regional Regulations. In West Java, there are 10 canceled Regency Regional Regulations, namely: 1) Bekasi (Perda No. 6/2008), 2) Cianjur (Perda No. 3/2008), 3) Cirebon (Perda No. 2/2008), 4) Indramayu (Perda No. 6/2008), 5) Majalengka (Perda No. 2/2008), 6) Sumedang (Perda No. 7/2008), 7) Tasikmalaya (Perda No. 8%/2008), 8) Cimahi City (Perda No. 5/2008), 9) Depok City (Perda No. 7/2008), and 10) Sukabum City (Regional Regulation No. 2/2008). See https://www.kemendagri.go.id/media/filemanager/2016/06/21/d/a/daftar_lose-perkada_dan_permendagri_yang_dibatalkan_2016.pdf June 21, 2016, retrieved 02/08/2023.

⁶⁰ LAN STATE ADMINISTRATION POLICY STUDY CENTER, *Supra* Note 9.

⁶¹ In Jambi Province, for example, the results of research show, the Law Bureau has a recapitulation register book to record the names and numbers of Perda and Perkada every year. But in it there is no number of delegates in each Regional Regulation.

⁶² LAN STATE ADMINISTRATION POLICY STUDY CENTER, *supra* Note 9.

needed, namely the basic order of laws and regulations (PPU) and the orderly formation of laws and regulations. The basic order of laws and regulations (PPU) is related to the principles, types, hierarchy and content material, while the orderly formation of laws and regulations is related to planning, drafting, discussing, ratifying or stipulating and promulgation.⁶³

In accordance with the hierarchy of Indonesian laws and regulations, the position of Perda is in the lowest hierarchy. Therefore, in order to maintain the basic order of the PPU, the content of the Regional Regulation is prohibited: *first*, contrary to the higher PPU; *second*, contrary to the principle of the formation of PPU; *third*, contrary to the material principle of the content of laws and regulations; and *fourth*, contrary to court decisions.⁶⁴

The main cause of disharmony between local regulations and higher PPU is due to rapid changes in laws and regulations at the central level, making it difficult to be monitored by local governments. An example is the enactment of the Job Creation Law⁶⁵ which has changed, deleted, and/or added new norms in 75 laws, and 2 laws were repealed.⁶⁶

The large number of laws affected by the Job Creation Law and its implementing regulations has an impact on Perda and Perkada as lower-standing laws and regulations. Based on data from the Ministry of Home Affairs, there are currently 17,222 regional regulations and perkada throughout Indonesia affected, with the following details:

⁶³ Bayu Dwi Anggono, *Orderly Types, Hierarchies, and Material Content of Laws and Regulations: Problems and Solutions*, 47 FAIRY TALE. HALL. 1 (2018).

⁶⁴ See Article 176 number 2 of the Job Creation Law.

⁶⁵ Law No. 11/2020 on Job Creation was promulgated on November 12, 2020. After the Constitutional Court Decision, Law No. 11/2020 was repealed with Perppu No. 2/2022 and then Perppu was determined to become Law No. 6/2023 concerning the Stipulation of Perppu No. 2/2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law). To implement the provisions of the Job Creation Law, currently 49 PP and 5 Presidential Regulations have been issued.

⁶⁶ Compare that to Idhul Rishan which mentions 83 (81 amended and 2 revoked). See Idhul Rishan and Nika Imroathun, "Incompatibility of Omnibus Law Method in Simplifying Regulations," *Jurnal Hukum Ius Quia Iustum* 29, no. 1 (2022): 166–88, <https://doi.org/10.20885/iustum.vol29.iss1.art8>.

TABLE 5. Recapitulation of the Number of Provincial and Regency/City Regional Regulations and Perkada in Indonesia Affected by the Job Creation Law

Types of Legal Products	Province	Regency/City	Total
Perda	860	9.532	10.392
Perkada (Pergub/Perbup/ Perwal)	870	5.960	6.830
TOTAL	1.730	15.492	17.222

Source: Directorate of Regional Legal Products of the Ministry of Home Affairs⁶⁷

How is Bapemperda's role in local regulations affected by the Job Creation Law? In theory and practice, the role of Bapemperda can be:

First, conducting PLS on affected local regulations that have a major impact on the administration of local government and the community. For example, the Provincial Regional Regulation on the Management of Mineral and Coal Mining (Perda Minerba). With the enactment of Law No. 3/2020,⁶⁸ the authority of the Province in the management of Mineral and Coal was removed and transferred to the authority of the Central Government. However, because PLS Perda has not been implemented by Bapemperda, until now (\pm 3 years) since the enactment of Law No. 3/2020, no Provincial Government in Indonesia has taken the initiative to revise or revoke the Mineral and Coal Regional Regulation.⁶⁹

Second, Bapemperda re-inventories the current regional regulations affected by the Job Creation Law. Because, looking at the data in the Recapitulation List in table 5 above, not all Provinces (including Districts / Cities) in Indonesia have included their Regional Regulations as Regional Regulations affected by the Job Creation Law. An example is the Mineral and Coal Regional Regulation.⁷⁰

⁶⁷ Direktorat Produk Hukum Daerah Ditjen Otonomi Daerah, "Data Produk Hukum Daerah Terdampak Undang-Undang Cipta Kerja," 2021.

⁶⁸ The abolition of provincial authority in the mineral and coal sector is expressly contained in Article 7 and Article 173B of Law No. 3/2020 concerning Amendments to Law No. 4/2009 concerning Mineral and Coal Mining. Law No. 3/3020 is among those amended again by the Job Creation Law.

⁶⁹ The issuance of Presidential Regulation No. 55/2022 concerning Delegation of Business Licensing in the Mineral and Coal Mining Sector, does not mean that the Mining Regional Regulation in the Province is substantially not problematic. This is because the affairs delegated in the Presidential Regulation are limited and do not include metal and coal mineral affairs.

⁷⁰ There are still 8 provinces in Indonesia that have not included the Mineral and Coal Regional Regulation as a Regional Regulation affected by the Job Creation Law, namely: (1) North Sumatra (Regional Regulation No. 2/2013); (2) Jambi (Perda 11/2019); (3) South Sumatra (Regional Regulation No. 5/2011); (4) Bangka Belitung (Regional

Ensure there are no discriminatory bylaws

The principle of nondiscrimination⁷¹ is one of the main characteristics in the Indonesian constitution. Through the elaboration of its articles, the 1945 Indonesian State Constitution affirms what is the right of every citizen guaranteed by the constitution.

In reality, there is no guarantee that regional autonomy will necessarily lead to a more democratic life, unless there are specific efforts to promote democracy and human rights substantively.⁷² A monitoring study conducted by Komnas Perempuan during 1999-2009, found that 154 regional policies issued at the provincial level (19 policies), district/city level (134 policies) and village level (1 policy) became a means of institutionalizing discrimination, both from the goal and as an impact. The regional policy was issued in 69 districts/cities in 21 provinces with the following classification:

TABEL 6. Classification of Discriminatory Regional Regulations Monitoring Results of Komnas Perempuan 1999-2009

Category	Total
Criminalization of women	38
Control over the female body	21
Restrictions on religious freedom for the Ahmadiyya community	9

Regulation 1/2019); (5) West Java (Regional Regulation 2/2017); (6) Istimwa Yogyakarta (Regional Regulation No. 2/2018); (7) East Nusa Tenggara (Regional Regulation No. 6/2014); and (8) North Sulawesi (Regional Regulation No. 3/2019)..

⁷¹ What is meant With this discrimination is a restriction, distinction, harassment, exclusion and / or neglect, which is directly or indirectly, based on human discrimination on any basis, including religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, political belief, which results in the reduction, deviation or elimination of recognition, exercise or use of human rights and fundamental freedoms in the life of both individuals and collectives in political, economic, legal, social, cultural, and other aspects of life. See KOMNAS PEREMPUAN, *Supra* Note 74.

⁷² Citing Irene Istiningsih, Ridwan Arifin stated that the implementation of Law No. 23/2014 on Regional Government provides opportunities for local governments to implement legal guidelines that are relevant to the wishes of their regions. Thus, in some regions, this translates as the implementation of Sharia regulations in everyday life. The application of the rule affects the women. In the Tangerang area, at least 11 girls have been arrested just because they went out at night with makeup. In Aceh, three female activists have been arrested by Sharia police for not wearing headscarves and speaking in front of their lodging rooms after attending human rights training. See Ridwan Arifin, Rasdi Rasdi & Riska Alkadri, *Review of Law Enforcement and Rights Fulfillment Issues in the Context of Universalism and Relativism of Human Rights in Indonesia*, 26 J. ILM. HUK. LEG. 17 (2018).

Category	Total
Arrangement of worship/religious life	82
Arrangement of migrant workers	4
TOTAL	154

*Source: Komnas Perempuan*⁷³

Although discriminatory policies are not unique to women, analysis of international legal norms shows that more attention is paid to protecting women in terms of non-discrimination based on sex. Three factors can explain it. *First*, women belong to weaker and more vulnerable groups of society, which require greater attention to their rights by the world community. *Secondly*, women's rights have long been denied, leading to a long struggle for their rights and the need to enshrine such rights in law. *Third*, despite international and national norms on equality, there are still situations in the world where women are discriminated against in various fields.⁷⁴

Monitoring and advocacy of discriminatory regional policies continue to be carried out by Komnas Perempuan. As of 2022, there are 441 discriminatory policies against women. In collaboration with the Ministry of Indonesian Women's Empowerment and Child Protection (KPPA), the Ministry of Law and Human Rights, and the Ministry of Home Affairs, of the 441 policies, 305 policies are still valid and contain discrimination either directly or indirectly against women and 127 policies are not valid because they were revoked with the new policy.⁷⁵

Based on the Komnas Perempuan Report, it seems that it is not easy to revise or revoke discriminatory regional policies against women set by the Regions both with Perda and Perkada. Because, of the 441 discriminative regional policies, only 127 policies (28.80%) were followed up in the form of repeals with new policies. The report also shows that although Komnas Perempuan has reported and recommended to KPPA, the Ministry of Law and Human Rights, and the Ministry of Home Affairs to clarify and evaluate, there has not been much progress.

Observing the difficulty of discriminatory policy changes (Perda and Perkada) reported by the Women's Commission and the gender-sensitive

⁷³ KOMNAS PEREMPUAN, *supra* note 78.

⁷⁴ Oleg M. Yaroshenko et al., *Gender Inequality in Social Security on the Basis of the ECtHR Case-Law*, 6 SRIWIJ. LAW REV. 224 (2022).

⁷⁵ Komnas Perempuan, *Catibu 2023: Annual Record of Violence Against Women 2022, Komnas Perempuan* (Jakarta: Komnas Perempuan, 2023).

Parliamentary PLS movement in several countries,⁷⁶ this is where the urgency of the role of the DPRD through Bapemperda to carry out PLS Perda needs to be institutionalized and strengthened, because:

1. If the norms in the Regional Regulation or the entire content of the Regional Regulation are discriminatory, Bapemperda may recommend that the norm or Regional Regulation be revised or revoked. The revision or repeal of the Regional Regulation can be directly initiated by Bapemperda through the proposal of the DPRD initiative. Moreover, in practice so far, Bapemperda's initiative to revise or revoke local regulations to be included in the Propemperda as an initiative of the DPRD, is always approved by the DPRD or local government.⁷⁷
2. If the norm is contained in the Perkada delegation from Perda,⁷⁸ Bapemperda in accordance with its authority under Law No. 23/2014 and PP No. 12/2018, it can still conduct PLS against Perkada and recommend that the norm or Perkada be revised or revoked.
3. The recommendation of PLS Perkada results by Bapemperda has a strong influence. This is because the PLS Perkada recommendation by Bapemperda eventually became the DPRD's recommendation which was approved in the Plenary Meeting. In the event that the recommendations of the PLS Perkada results are not followed up by the Regional Head without sufficient reason, the DPRD can institutionally propose its rights in the form of interpellation rights, questionnaire rights, or the right to express opinions.

Improve the quality of legislation through experiential learning

Bapemperda's experience in conducting PLS on Regional Regulations, directly or indirectly, will remind the quality of the formation of Regional

⁷⁶ Maria Mousmouti, "Policy Paper: Gender-Sensitive Post-Legislative Scrutiny," July (2020): 1-25.

⁷⁷ Based on the author's experience as an Expert of Bapemperda 2019-2023, the approval of the Bapemperda initiative to propose a Ranperda by the DPRD and Local Government is because there is a common assumption and belief that the urgency of the presence of the Ranperda has been carried out a deep study by Bapemperda.

⁷⁸ Examples of discriminatory Perkada instead of delegation of bylaws between lan: (1) Perwal Bogor No. 30/2022 concerning Official Clothing; (2) Perwal Tasikmalaya No. 16/2022 concerning State Civil Apparatus Service Clothing; (3) Perwal Pariaman No. 12/2022 concerning Guidelines for the Implementation of Quranic Literacy Education; and (4) Perwal Binjai No. 22/2022 concerning the Obligation to Be Good at Reading the Quran for Students. See Komnas Perempuan.

Regulations in the future. An example of the experience of the Jambi Provincial DPRD Bapemperda in evaluating the Provincial Regional Regulations for 1958-2019 whose output revoked 92 Regional Regulations. The lessons learned from these activities include: *first*, there is a "feeling of shame" either in the DPRD or in the Jambi Provincial Government which neglects to revoke the old Regional Regulation whose material is no longer appropriate due to the presence of new laws or higher laws and regulations; *second*, there is awareness in Bapemperda about the urgency of conducting PLS Perda and Perkada.⁷⁹ This new awareness encourages the Jambi Provincial DPRD to regulate in more detail the PLS Perda and Perkada mechanisms in Jambi Provincial DPRD Regulation No. 1/2022 concerning Amendments to Jambi Provincial DPRD Tatib Regulation No. 1/2020 by adding the provisions of Article 35A and Article 35B which are presented in the following table.

TABLE 7. Regulation of PLS Regional Regulation and Perkada in Jambi Provincial DPRD Regulation No. 1/2022

No	Article	Contents
1.	35A	<ul style="list-style-type: none"> (1) Supervision of the implementation of the Regional Regulation is carried out after the Regional Regulation takes effect. (2) Supervision of the implementation of the Regional Regulation is carried out by the DPRD and the Regional Government. (3) Supervision of the implementation of the Regional Regulation within the DPRD is carried out by the Commission and Bapemperda which is coordinated by Bapemperda (4) The results of the supervision of the implementation of the Regional Regulation as referred to in paragraph (2) can be a proposal in the preparation of the Regional Regulation
2.	35B	<ul style="list-style-type: none"> (1) The scope of supervision of the implementation of the Regional Regulation includes: <ul style="list-style-type: none"> a. the formation of implementing regulations ordered directly from the Regional Regulation; b. conformity between the content of the Regional Regulation or implementing regulations and the content of higher laws and regulations; and c. effectiveness of the implementation of the Regional Regulation. (2) Supervision of the implementation of the Regional Regulation is carried out in 3 (three) stages as follows:

⁷⁹ This was revealed by the Chairman of the Jambi Provincial DPRD Bapemperda in the Bapemperda Meeting on the Discussion of the Draft Amendment to the Provincial DPRD Regulation on Rules of Conduct on July 13, 2023 concerning the reasons for the new regulation of PLS Perda and Perkada in Article 35, Article 35A, and Article 35B.

No	Article	Contents
		<ul style="list-style-type: none"> a. planning stage; b. implementation stage; and c. follow-up stage.
	(3)	<p>The planning stage as referred to in paragraph (2) letter a consists of:</p> <ul style="list-style-type: none"> a. determination of priority scales; b. making preliminary studies; c. human resource and budget support; d. Preparation of the Framework of Reference.
	(1)	<p>The implementation stage as intended in paragraph (2) b is carried out through:</p> <ul style="list-style-type: none"> a. work meetings; b. working visits; c. meetings with public opinion; and d. Preparation of Supervision Results Report;
	(2)	<p>The follow-up stage as referred to in paragraph (2) letter c is carried out through:</p> <ul style="list-style-type: none"> a. submission of reports on the results of supervision in the Plenary Meeting; and b. submission of recommendations for reports on the results of supervision to the Regional Government stipulated by the Decree of the DPRD.

Source: Jambi Provincial DPRD Regulation No. 1/2022.

The Solution to Resolve the Dualism of the Authority of the People's Representative Institutions (DPD and DPRD) in Conducting PLS Perda

In Indonesia's positive law, the authority to conduct PLS Perda is not only given to the DPRD through Bapemperda, but also given to the Regional Representative Council (DPD) through Law No. 2/2018 concerning Amendments to Law No. 17/2014 concerning MD3. In Article 249 paragraph (1) letter j of Law No. 2/2018, DPD is given new authority to "*monitor and evaluate local regulations and draft bylaws*".⁸⁰ To exercise this authority, DPD

⁸⁰ The granting of new authority to DPD to monitor and evaluate local regulations and draft regional regulations is closely related to the abolition of the authority of the Minister of Home Affairs to cancel provincial regional regulations and the authority of the governor

issued DPD Regulation No. 4/2022 concerning Monitoring and Evaluation of Draft Regional Regulations and Regional Regulations.⁸¹ In Article 1 point 1, Monitoring and Evaluation is defined as the activity of collecting, observing, identifying, analyzing, and reviewing draft bylaws and regional regulations that have the potential to conflict with the principles of the formation of laws and regulations to become recommendation material.

Various studies show that granting authority to DPD to conduct PLS on Regional Regulations and Regional Draft Regulations is inappropriate, because it has the potential to present rivalry, ambiguity, and dualism of authority between the Government and DPD.⁸² Furthermore, with the enactment of Law No. 13/2022 which requires all regional regulations to be harmonized by the Regional Office of the Ministry of Law and Human Rights,⁸³ practically the DPD's authority to carry out PLS Ranperda has actually been abolished (fall) by itself. Similarly, the DPD authority conducts PLS Perda.

In the latest development, DPD admitted that it is impossible to carry out PLS Perda Provinces and Regencies / Municipalities throughout Indonesia, which number tens of thousands. It takes a lot of cost, time, and energy to do this so that the implementation is believed to be ineffective and efficient.⁸⁴ Moreover, the recommendations of the results of PLS Perda by DPD to the President and DPR, do not bind the President and DPR.⁸⁵ Similarly, recommendations to the local government.⁸⁶ Therefore, the addition of the granting of authority to the DPD creates legal uncertainty and the regulation is unconstitutional,⁸⁷

to cancel district/city regional regulations based on Constitutional Court Decisions Number 137/PUU-XIII/2015 and Number 56/PUUXIV/2016.

⁸¹ DPD Regulation No. 4/2022 is a replacement for DPD Regulation No. 3/2019.

⁸² Eka N.A.M. Sihombing, *Problems on Forming Local Regulations Programs*, 13 J. LEGIS. INDONES. 285 (2016); Hardianto and Herwati, *supra* note 24.

⁸³ Article 58 of Law No. 13/2022 concerning the Second Amendment to Law No. 12/2011 concerning the Establishment of Laws and Regulations states that rounding, and solidifying the conception of the Provincial Regional Regulation Draft is coordinated by the Regional Office of the Ministry of Law and Human Rights. Using principles *lex posterior derogat legi priori*, Article 58 of Law No. 13/2022 has the effect of conveying the provisions of Article 249 paragraph (1) of Law No. 2/2018.

⁸⁴ This was revealed by Abdul Cholik, DPD Member. See BULD-IPDN-WFD, "National Seminar on Monitoring and Review and Evaluation of Regional Regulations (Perda) and Regional Head Regulations (Perkada)" (Bogor: 24 March 2021), https://www.youtube.com/watch?v=xX4A_RnazDU&t=14826s.

⁸⁵ Sorry, Damayanti, and Karyati, *supra* note 24.

⁸⁶ Hardianto and Herwati, *supra* note 24.

⁸⁷ Wiguna and Astariyani, *supra* note 24.

DPD finally realized the various legal and technical obstacles in the implementation of PLS Perda and Draft Perda which were questioned by many parties. DPD encourages Bapemperda to carry out PLS Perda. Because, from a theoretical and normative point of view, the most appropriate to carry out Monitoring and Review of Regional Regulations is the DPRD through Bapemperda.⁸⁸

Conclusion

The authority of Provincial and Regency/City Bapemperda DPRDs to conduct Post-Legislative Scrutiny (PLS) of Regional Regulations is firmly established by Law No. 23/2014 on Regional Government and Article 21(3) of Government Regulation No. 12/2018, which provides guidelines for DPRD Rules of Procedure. This authority is intrinsic to the function of DPRDs as regional legislative bodies responsible for formulating regional regulations, thereby contributing to the continual improvement of legislative quality.

However, despite this legal foundation, the majority of provincial parliaments in Indonesia (93.10%) have not incorporated procedures for implementing PLS Perda into their Rules of Procedure. Only two Provincial DPRDs, namely DIY and Jambi, have formalized such procedures. Consequently, PLS Perda remains largely unimplemented across 33 Provincial DPRDs, highlighting a significant gap in legislative oversight and potentially leading to the proliferation of conflicting, ambiguous, discriminatory, or ineffective local regulations.

To address these challenges and enhance the quality and coherence of regional regulations, it is imperative to prioritize strengthening the role of Bapemperda in conducting PLS Perda. This can be achieved through two primary strategies: first, amending Government Regulation No. 12/2018 to provide detailed guidelines for PLS Perda procedures, in line with best practices observed in the 2024 Legislative Election results; and second, revising DPRD Rules of Procedure to incorporate robust regulations on PLS Perda, modeled after successful implementations in DIY and Jambi Provincial DPRDs. By institutionalizing and enhancing the implementation of PLS Perda, Indonesia can foster a regulatory environment that supports legal clarity, effectiveness, and coherence at the regional level, contributing to a streamlined National Regulation System.

⁸⁸ BULD-IPDN-WFD, *supra* note 93.

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