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## The Hierarchical Model of Delegated Legislation in Indonesia

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**Abstract** *In a democratic rule of law like Indonesia, delegated legislation emerges as a necessity. Unfortunately, Article 8, paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, in conjunction with Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011, fails to articulate a clear hierarchy of delegated regulations. Employing a juridical-normative research approach encompassing statutory, historical, and conceptual dimensions, this study sheds light on the prevailing legal vacuum. The research reveals that a staggering 24,052 regulations at the level of Ministries, Agencies, and State Institutions run the risk of overlapping and becoming subject to judicial review in the Supreme Court. The definition of Delegated Legislations in*

*Indonesia, as interpreted herein, is confined to regulations whose legal construction is executed by the executive, as long as formal legal norms continue to confer the authority of delegation in the legislative domain to implement superior regulations. This paper identifies three distinct models governing the structuring of Delegated Legislations within the hierarchy of laws and regulations in Indonesia. These models include the Hierarchical model based on the legal foundation of institution formation, the Hierarchical model based on the position of the institution, and the Hierarchical model based on the source of delegated authority in forming rules. This nuanced exploration seeks to address the complexities surrounding delegated legislation, aiming to provide clarity and coherence within the Indonesian legal framework.*

**Keywords** *Delegated, Legislation, Model, Hierarchy, Indonesia*

## 1. Introduction

There are castes or strata of legal products or legislation due to the legal idea of tiering norms and a hierarchy of laws and regulations.<sup>1</sup> The stronger a law or regulation's binding power, the higher its policy or position. On the other hand, lower levels tend to have more intricate technical rules. As a result, the Law still has to be further developed to be put into practice on a more technical level. This explanation of "*Delegated Legislation*" or "*Delegation Rules*."<sup>2</sup> To enhance Indonesia's democratisation, creating a Delegation

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<sup>1</sup> Bayu Dwi Anggono, "Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusinya," *Masalah - Masalah Hukum* 47, no. 1 (2018): 1–9, <https://doi.org/10.14710/mmh.47.1.2018.1-9>.

<sup>2</sup> Sukardi Sukardi and E. Prajwalita Widiati, "Pendelegasian Pengaturan Oleh Undang-Undang Kepada Peraturan Yang Lebih Rendah Dan Akibat Hukumnya," *Yuridika* 27, no. 2 (2012): 141–56, <https://doi.org/10.20473/ydk.v27i2.293>.

Legislation is crucial.<sup>3</sup> To translate the delegation of authority in the area of laws and regulations whose source of authority derives from the Law, the Delegation Legislation is utilised.<sup>4</sup> Even though theoretically, the delegation rules and the implementing/technical regulations are distinct.<sup>5</sup>

The misalignment of terms, overlapping authorities, and hyper-regulation also have a tangible impact on implementing Delegated Legislations.<sup>6</sup> In their research, Sukardi and E. Prajwalita Widiati<sup>7</sup> stated that there are overlapping legal norms in the delegation regulation family, specifically in the Regional Tax and Retribution Law with Local Regulations and Regional Head Regulations. In another study, Fathorrahman mentioned that Presidential Regulation (Perpres) Number 87 of 2017 concerning Strengthening Character Education could cancel the Regulation of the Minister of Education and Culture (Permendikbud) Number 23 of 2017, which is a delegation regulation from Law Number 20 of 2003 concerning the National Education System.<sup>8</sup>

Meanwhile, Zaelani, in his research, revealed the difficulty of local regulations, both provincial and regency/city, in implementing

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<sup>3</sup> Moh. Fadli, *Peraturan Delegasi Di Indonesia*, 1st ed. (Malang: UB Press, 2011).

<sup>4</sup> Aditya Rahmadhony, Iwan Setiawan, and Mario Ekoriano, "Problematika 'Delegated Legislation' Pada Undang-Undang Nomor 52 Tahun 2009 Tentang Perkembangan Kependudukan Dan Pembangunan Keluarga," *Jurnal Legislasi Indonesia* 17, no. 4 (2020): 407–22, <https://doi.org/10.54629/jli.v17i4.681>.

<sup>5</sup> Fitriani Ahlan Sjarif, "Pembentukan Peraturan Delegasi Dari Undang-Undang Pada Kurun Waktu 1999 - 2012" (Universitas Indonesia, 2015).

<sup>6</sup> P. Daly, "How Binding Are Binding Guidelines? An Analytical Framework," *Canadian Public Administration*, 2023, <https://doi.org/10.1111/capa.12519>.

<sup>7</sup> Sukardi and Widiati, "Pendelegasian Pengaturan Oleh Undang-Undang Kepada Peraturan Yang Lebih Rendah Dan Akibat Hukumnya."

<sup>8</sup> Fathorrahman Fathorrahman, "Peraturan Delegasi Dalam Sistem Peraturan Perundang-Undangan Indonesia," *Jurnal Rechtens* 7, no. 2 (2018): 193–212, <https://doi.org/10.36835/rechtens.v7i2.376>.

delegation regulations.<sup>9</sup> This is because Provincial Regulations and District/City Regulations generally provide a clear delegation of authority, which does not mention the delegation of delegated provisions and the form of legal instruments that must be formed by the institution/body to implement the delegation regulations. In other words, the freedom and freedom contained in the *blangko* authority,<sup>10</sup> precisely in some regions, becomes a severe problem due to limited Human Resources (HR) factors. Thus, local regulations in specific regions cannot be optimised due to the lack of human resources in the legal field, especially those who understand the techniques of forming laws and regulations. Other problems also arise from the Government's inability to carry out the mandate of the Law to make Delegation Legislations, for example, in the case of Law Number 52 of 2009 concerning Population Development and Family Development. Based on the research of Aditya Rahmadhony, Iwan Setiawan and Mario Ekoriano on the Law, of the 20 mandates to form Delegation Legislations in the Law, the Government can only make 5 Delegation Legislations.<sup>11</sup>

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<sup>9</sup> Zaelani, "Pelimpahan Kewenangan Dalam Pembentukan Peraturan Perundang-Undangan (Delegation of Authority the Establishment of Legislation Regulation)," *Jurnal Legislasi Indonesia* 9, no. 1 (2012): 119–34, <https://doi.org/10.54629/jli.v9i1.380>.

<sup>10</sup> Based on Guideline Number 210 of Law Number 12 of 2011 concerning establishing Laws and Regulations, delegation of authority is prohibited. Delegation of authority means preparing laws and regulations that get unlimited or free delegation. Source of reference: Yogyakarta Financial Training Center, Extraordinary Authority of the Government by Using Blangko Delegation, <https://bppk.kemenkeu.go.id/content/berita/balai-diklat-keuangan-yogyakarta-wewenang-luar-biasa-pemerintah-dengan-menggunakan-delegasi-blangko-2019-11-05-ddc8e577/> retrieved January 16, 2022

<sup>11</sup> Rahmadhony, Setiawan, and Ekoriano, "Problematika 'Delegated Legislation' Pada Undang-Undang Nomor 52 Tahun 2009 Tentang Perkembangan Kependudukan Dan Pembangunan Keluarga."

Aditya Rahmadhony, Iwan Setiawan and Mario Ekoriano found that there are 15 Delegated Legislation (Government Regulations and Presidential Regulations) contained in Law Number 52 of 2009 concerning Population Development and Family Development so that only 5 (five) mandates are arranged into 3 (three) legal products, namely Government Regulation Number 87 of 2014 concerning Population Development and Family Development, Family Planning and Family Information System (implementation of Article 12 paragraph (2), Article 22 paragraph (3), and Article 50 paragraph (4)), Presidential Regulation Number 62 of 2010 concerning the National Population and Family Planning Agency (implementation of Article 56 paragraph (3)), Regulation of the Minister of Women's Empowerment and Child Protection Number 6 of 2013 concerning the Implementation of Family Development (implementation of Article 48 paragraph (2)).<sup>12</sup>

Moreover, Fitriani Ahlan Sjarif said that from 1999 to 2012, there were 473 laws, of which there were 261 laws that mandated delegations, with details as much as 39% in the form of Government Regulations, 5% in the form of Presidential Regulations and 20% in the form of Ministerial Regulations.<sup>13</sup> The rest directly implement the Law in the form of regulations of their respective institutions. This creates legal problems because normatively, the hierarchy in Article 7 of Law Number 12 of 2011 (hereinafter referred to as Law P3) only regulates Government Regulations (*Peraturan Pemerintah/PP*), Presidential Regulations (*Peraturan Presiden/Perpres*) and Local

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<sup>12</sup> Rahmadhony, Setiawan, and Ekoriano.

<sup>13</sup> Sjarif, "Pembentukan Peraturan Delegasi Dari Undang-Undang Pada Kurun Waktu 1999 - 2012."

Regulations (*Peraturan Daerah/Perda*)<sup>14</sup> as delegations of regulations that carry out orders from the Law. From the percentage, Delegated Regulations in PP, Perpres, and Perda are not as many as Ministerial Regulations and regulations of their respective institutions.

The problem of the hierarchy of Delegated Legislations is not only limited to the form and type of laws and regulations, such as Ministerial Regulations but also several forms of regulations in Article 8 of Law Number 12 of 2011. Imelda Sapitri and Deni Jaya Saputra found that the absence of hierarchy in Article 8 paragraph (1) of Law Number 12 of 2011 makes Village Regulations that are attributed to Law Number 6 of 2014 concerning Villages considered not too necessary and have no binding legal force by some Village Government organizers.<sup>16</sup> In fact, because of its significant position in the implementation of Village Government, Ari Wuisang, in his research, proposed a repositioning of Village Regulations under the hierarchy of Local Regulations directly.<sup>17</sup> Budianto Eldist Daud Tamin, in his research, even expressly stated that it is necessary to create a hierarchy in Article 8 of Law Number 12 of 2011, especially concerning the position of the Supreme Court Regulation (*Peraturan*

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<sup>14</sup> Siska Windu Natalia and Qurrata Ayuni, "Pembentukan Peraturan Pelaksanaan Undang-Undang Dalam Berbagai," *Jurnal Ilmu Sosial Dan Pendidikan* 7, no. 2 (2023): 1514–26, <https://doi.org/10.58258/jisip.v7i2.4956/http>.

<sup>15</sup> Lovika Augusta Purwaningtyas, Bayu Dwi Anggono, and A'an Efendi, "Pendelegasian Wewenang Pembentukan Undang-Undang Oleh Undang-Undang," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 4, no. 1 (2023): 21, <https://doi.org/10.19184/idj.v4i1.31841>.

<sup>16</sup> Imelda Sapitri and Deni Jaya Saputra, "Kedudukan Peraturan Desa Dalam Hierarki Perundang-Undangan Setelah Keluarnya Undang-Undang Nomor 12 Tahun 2011," *Eksekusi* 2, no. 1 (2020): 1–22, <https://doi.org/10.24014/je.v2i1.9271>.

<sup>17</sup> Ari Wuisang, "Reposisi Peraturan Desa Dalam Hierarki Perundang-Undangan," *Palar: Pakuan Law Review* 4, no. 1 (2018): 91–110, <https://doi.org/10.33751/palar.v4i1.785>.

*Mahkamah Agung/Perma*).<sup>18</sup> The hierarchy in Article 8 paragraph (1) of Law Number 12 of 2011, according to Tamin, is based on the authority possessed by the body or institution.

The various problems of the Delegation Legislations become one part of the various uses of terms and changes in the location of the Delegation Legislations in the hierarchy of laws and regulations in Indonesia. The problem that will arise is that when there is a misalignment or overlap of arrangements between lower legal rules against higher legal rules or fellow legal rules at one level due to improper delegation in the Law, it is necessary to harmonize and synchronize the legal rules. This, of course, can trigger quite complex legal problems, plus the problem of delegation, which results in overlapping legal rules, cannot be used as a reason for conducting *judicial review*.<sup>19</sup> From the description above, a common thread can be drawn regarding the regulation of Delegation Legislations in Indonesia's Hierarchy of Laws and Regulations caused by non-uniformity in the form or term of Delegation Legislations. From the point of juridical analysis, a legal norm should have clear meanings and terms and not cause *vague norms* that can cause injustice, unusefulness, and uncertainty.<sup>20</sup> Therefore, the norms compiled in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations must be clear in the hierarchy, types, functions, and material content.

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<sup>18</sup> Budianto Eldist Daud Tamin, "Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (Perma) Dalam Hierarki Peraturan Perundangundangan Di Indonesia," *Lex Administratum* 6, no. 3 (2018): 112–21.

<sup>19</sup> Zainal Arifin Hoesein, *Judicial Review Di Mahkamah Agung RI Tiga Dekade Pengujian Peraturan Perundang-Undangan* (Jakarta: Rajawali Pers, 2009).

<sup>20</sup> Sidik Sunaryo, "Formal Genus of the Value of Justice in Indonesia," *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (June 25, 2021): 223–36, <https://doi.org/10.22219/ljih.v29i2.16609>.

Theoretically, the description above can be analyzed using several theories, such as the Theory of the State of Law and Tiered Norms. According to the Theory of the State of Law, the State must be based on Law, not on power alone. Thus, the existence of rules to make legal order in the nation and State can be realized. Meanwhile, the Hierarchical Norm Theory states that legal norms are made tiered to facilitate their implementation and supervision. Delegation rules become logical in a state of Law because it is a mandate from the norms above it. Unfortunately, not all laws and regulations can produce Delegation Legislations, and not all forms of Delegation Legislations from the Law are regulated hierarchically in PP, Perpres, and Perda because there are also Delegation Legislations in the form of Ministerial Regulations and regulations at the level of other state bodies/institutions. Based on a series of background descriptions mentioned above, the author of this article conducts analysis and offers new ideas related to the Arrangements Model of Delegation Legislations in the Hierarchy of Laws and Regulations in Indonesia.

## 2. Method

This paper employs normative legal research techniques.<sup>21</sup> The methods employed are the legal (statute approach), history (historical approach), and concept (conceptual approach).<sup>22</sup> This paper takes a legal stance following Law Number 12 of 2011 concerning the Establishment of Laws and Regulations and Law Number 13 of 2022 concerning the Second Amendment, both of which are parts of Law Number 12 of 2011 concerning the Establishment of Laws and

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<sup>21</sup> Tunggal Ansari and Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, <https://doi.org/10.22219/ACLJ.V4I1.24855>.

<sup>22</sup> Sholahuddin Al-Fatih and Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum Di Jurnal Nasional Dan Internasional Bereputasi* (Malang: Inteligencia Media, 2021).



Regulations. The concepts of hierarchical norms and delegation rules are central to the conceptual framework employed by the authors. This paper studies secondary sources of information, such as primary, secondary, and tertiary legal texts, utilized to obtain data.<sup>23</sup> Descriptive analysis is the type of analysis used.<sup>24</sup> The legal reasoning used in this research is reasoning based on rules or deductive, since the argumentation begins “from what is general” (i.e. from rules (axioms) of a (practical and legal) discourse) to reach “what is particular” (i.e. a solution to a concrete legal problem).<sup>25</sup> The legal reasoning in the deductive form is most closely associated with reasoning from enacted law, which usually consists of general rules. Such rules are found in a variety of official legal documents, such as constitutions, statutes, codes, regulations, and executive orders.<sup>26</sup>

### 3. Result & Discussion

#### A. The History & Definition of Delegated Legislation

Etymologically, a regulation can be interpreted as a general law or a set of rules that are binding.<sup>27</sup> Rules are general provisions that are intended for things that are still abstract. Meanwhile, delegation can be interpreted as the delegation of an existing authority of a State

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<sup>23</sup> Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020).

<sup>24</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2014).

<sup>25</sup> Jerzy Stelmach and Bartosz Brozek, *Methods of Legal Reasoning* (Netherlands: Springer Netherlands, 2006), <https://doi.org/10.1007/1-4020-4939-0>.

<sup>26</sup> Edward H. Levi, *An Introduction to Legal Reasoning* (Chicago: University of Chicago Press, 2013); Steven J. Burton, *An Introduction to Law and Legal Reasoning* (New York: Wolters Kluwer Law & Business, 2007).

<sup>27</sup> Andreas Kruck and Moritz Weiss, “The Regulatory Security State in Europe,” *Journal of European Public Policy* 30, no. 7 (July 3, 2023): 1205–29, <https://doi.org/10.1080/13501763.2023.2172061>.

Administration body or position (*Tata Usaha Negara/TUN*) that has obtained an attributive government authority to other State Administration (TUN) bodies/institutions or positions.<sup>28</sup> "Delegation" is described in the *black-law dictionary* as 'the act of entrusting authority or empowering others to act as agents or representatives.'<sup>29</sup> This concept is built under the *Doctrine of Delegation*, which can be explained as "The principle (based on the Concept of Separation of Powers) that limits the ability of the Legislature to transfer its legislative power to other Branches of Government, especially the Executive Branch." This theory or principle states that lawmakers under existing authorities provide basic guidelines and ground rules for authorized bodies. This subordinate body was tasked with drafting and regulating laws at the local level.<sup>30</sup>

The idea of Delegated Legislations developed when Lord Hewart in 1929 conveyed the phenomenon of government power exceeding the sovereignty of parliament and being outside the jurisdiction of the courts.<sup>31</sup> Hewart, Chief Justice in England and Wales, was disappointed with the delegation of power from parliament to departments under government power.<sup>32</sup> Then John Willis, through his research in the British Parliament, found the reality that the British Parliament delegates their authority to the

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<sup>28</sup> Fathorrahman, "Peraturan Delegasi Dalam Sistem Peraturan Perundang-Undangan Indonesia."

<sup>29</sup> Victor Imanuel W Nalle, "Kewenangan Yudikatif dalam Pengujian Peraturan Kebijakan," *Jurnal Yudisial* 6, no. 1 (March 2013): 33–47, <https://doi.org/10.29123/JY.V6I1.117>.

<sup>30</sup> Shantanu Saharan and Pankaj Jangir, "Concept of Delegated Legislation and Its Legal Application in a State," *International Journal of Law Management & Humanities* 3, no. 4 (2020): 994–1000.

<sup>31</sup> Lord Hewart, *The New Despotism* (London: Ernest Benn Limited, 1929).

<sup>32</sup> Michael Taggart, "From 'Parliamentary Powers' to Privatization: The Chequered History of Delegated Legislation in the Twentieth Century," *University of Toronto Law Journal* 55, no. 3 (2005), <https://doi.org/10.1353/tlj.2005.0030>.

government through certain departments to pass final laws, modify the Parliament Act by regulations, or produce a complete legislative scheme through rules.<sup>33</sup> In England, the omnipotence of law from the King in Parliament means no constitutional impediment to delegating legislative and judicial power to the executive.<sup>34</sup>

Delegated Legislations continued to gain popularity, particularly in the British Commonwealth.<sup>35</sup> This sparked significant discussion about how to model delegation rules oversight, giving rise to the *Donoughmore Report*<sup>36</sup> and other worries about the executive branch's predominance over the legislative and courts.<sup>37</sup> The following is how the Australian Parliament defines the Delegated Regulations:<sup>38</sup> *"Delegated Legislation is a term which covers the vast amount of legislation made by government agencies and the Governor-General under authority of Acts of Parliaments, which delegate this power to agencies. This type of legislation is also known as Subordinate Legislation or, since 2005, Legislative Instruments. Within the broad area of Delegated Legislation, the following more specific terms are sometimes used: a)*

<sup>33</sup> John Willis, "The Parliamentary Powers of English Government Departments," *The Cambridge Law Journal* 3, no. 3 (1929): 428–29, <https://doi.org/10.1017/S0008197300104775>.

<sup>34</sup> Stanley A. de Smith, *Delegated Legislation in England* (Utah: University of Utah, Institute of Government, 1949).

<sup>35</sup> D. Erdos, "The UK GDPR, the Immigration Exception and Brexit: Interrogating Open Rights Group v Secretary of State for the Home Department and Its Aftermath," *Modern Law Review* 86, no. 3 (2023): 785–800, <https://doi.org/10.1111/1468-2230.12784>.

<sup>36</sup> A report on the performance of parliament and its relationship with government in relation to the establishment of the Rules of Delegation in the UK

<sup>37</sup> F. De Francesco and J. Tosun, "The Enactment of Public Participation in Rulemaking: A Comparative Analysis," *Swiss Political Science Review* 29, no. 1 (2023): 21–36, <https://doi.org/10.1111/spsr.12550>.

<sup>38</sup> C. van der Pump and E. Scheepbouwer, "Australia's Combustible Cladding Crisis—A Failure in Delegated Legislation?," *Buildings* 13, no. 4 (2023), <https://doi.org/10.3390/buildings13041010>.

*Regulation: the most common form of delegated legislation. Used for legislation of general application emanating from a government department. Published in the Statutory Rules series until 2004 and in the Select Legislative Instrument series from 2005; b) Rule; c) Ordinance; and d) By-law."*

Another definition of Delegated Legislations is obtained from the UK parliament's website on the definition of Delegated Legislation: "*Delegated or secondary legislation is usually concerned with detailed changes to the law made under powers from an existing Act of Parliament. Statutory instruments form the majority of delegated legislation but it can also include Rules or Codes of Practice.*"<sup>39</sup> From these two definitions, a common thread can be drawn that the product of legislation is, of course, made by the legislature. However, beyond that, the existence of legal rules made other than by the legislative institution is also recognized. Legal rules made by other than these legislative institutions are also recognized for their existence as part of the product of legislation.

There aren't many actual studies on Indonesian Delegated Legislations. In Indonesia, the meaning of Delegated Legislations is restricted to those whose legal interpretation is made by the executive, as long as formal legal standards continue to grant the authority of delegation in the field of legislation to implement regulations from higher invitation.<sup>40</sup> This was discovered through the author's research. At least four modifications in regulations connected to the hierarchy of existing laws and regulations in Indonesia can be used to trace the history of Delegated Legislations in Indonesia through this legal construction and understanding.

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<sup>39</sup> Sukardi and Widiati, "Pendelegasian Pengaturan Oleh Undang-Undang Kepada Peraturan Yang Lebih Rendah Dan Akibat Hukumnya."

<sup>40</sup> Fadli, *Peraturan Delegasi di Indonesia*.

**TABLE 1.** Form of Delegated Legislations in Indonesia

Regulation	Form of Delegated Legislations
TAP MPRS No. XX/MPRS/1966	Government Regulations, Presidential Decrees, Implementing Regulations (Ministerial Regulations and so on)
TAP MPR No. III/MPR/2000	Government Regulations, Presidential Decrees and Local Regulations
Law Number 10 of 2004	Government Regulations, Presidential Regulations and Local Regulations
Law Number 12 of 2011	Government Regulations, Presidential Regulations, Local Regulations and Regulations in Article 8 paragraph (1)

Sources: Authors, 2023

From Table 1 above, it can be seen that there are various terms to refer to Delegated Legislations, which can potentially cause regulatory confusion and obesity. Based on the database of the Directorate General of Laws and Regulations, Ministry of Law and Human Rights of the Republic of Indonesia, a detailed number of laws and regulations from 1945 to December 2019, the government has issued many regulations. Of these, the most regulations are ministerial-level regulations, namely 14,334 regulations.<sup>41</sup> This number continues to increase in 2021, where, based on data retrieved from the Ministry of Law and Human Rights (accessed on 26 November 2021), there are 3,835 Central Regulations (including PP and Perpres), 16,619 Ministerial Regulations, 4,478 State Bodies and Institutions (*Lembaga Pemerintah Non-Kementerian/LPNK*) Regulations and 15,982 Local Regulations.<sup>42</sup>

<sup>41</sup> Patrick Corputty, "Omnibus Law Sebagai Alternatif Penyembuh Obesitas Regulasi Sektoral," *Jurnal Saniri* 1, no. 1 (2020): 54.

<sup>42</sup> Dedy Wicaksono, Dian Agung, Hantoro, Bimo Fajar, Kurniawan, "Quo Vadis Pengaturan Kewenangan Pengadilan Tata Usaha Negara Dalam Penerimaan

Considering the current factual conditions, noteworthy observations emerge to enhance the organization of Delegated Legislations within the hierarchy of laws and regulations in Indonesia. Firstly, there is a pressing need for the general provisions section of Law P3 to incorporate an operational definition related to Delegated Legislations. Such an addition would facilitate a more practical understanding for the framers of laws and regulations, offering clarity on aspects like meaning, material content, types, and functions. This, in turn, enhances the implementability, practice, usability, and enforceability of Delegated Legislations.

Additionally, it is imperative for the government to promptly establish a digital database system encompassing laws and regulations at both central and local levels. This system should undergo regular updates to ensure that Delegated Legislations align with any changes in the parent regulation. The primary aim is to prevent the emergence of overlapping regulations and to streamline the process for legal drafters in the formulation of Delegated Legislations. By adopting these measures, the regulatory framework can evolve towards greater coherence and efficiency in addressing the complexities associated with Delegated Legislations in the Indonesian legal landscape.

## **B. The Arrangement Model of Delegated Legislations in Indonesia**

The arrangement model of Delegated Legislations in Indonesia is a new topic in legislation. There is not much similar literature on

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Permohonan Fiktif Positif Pasca Penataan Regulasi Dalam Undang-Undang," *Jurnal Rechtsvinding* 10, no. 2 (2021): 323–37, <https://doi.org/10.33331/rechtsvinding.v10i2.715>.

the treasures and traditions of science in Indonesia, so the novelty and findings will greatly impact academics and practitioners in the field of legislation. Regulatory reform through this model can help realize more effective and efficient governance. Based on the search, the latest data on delegation regulations in Indonesia were found as follows:

**TABLE 2.** State Body and Institution Regulations

<b>Name of Institution Regulation</b>	<b>Number of Regulations</b>
MPR Regulation	40
DPR Regulations	23
DPD Regulations	2
MA Regulations	69
MK Regulations	72
BPK Regulations	35
KY Regulations	22
BI Regulation	212
KPU Regulations	258
Bawaslu Regulations	190
Regulations of other Bodies/ Commissions/Institutions of the same level (described in table 3. below)	4.946
<b>Total</b>	<b>5.869</b>

Sources: [www.peraturan.go.id](http://www.peraturan.go.id) and [www.mkri.id](http://www.mkri.id), 2023<sup>43</sup>

**TABLE 3.** Agency/Commission/Institution Regulations

<b>No.</b>	<b>Name of Agency/Commission/Institution of Level/Similar</b>	<b>Number of Regulations</b>
1	Regulation of the State Civil Service Agency	296
2	Investment Coordinating Board Regulation	156
3	Regulation of the Meteorology, Climatology and Geophysics Agency	164
4	National Narcotics Agency Regulations	158

<sup>43</sup> Note: The regulatory status recapitulation is still being refined (valid, partially enforced, and non-applicable statuses may change while this information lasts)

No.	Name of Agency/Commission/Institution of Level/Similar	Number of Regulations
5	Regulation of the National Disaster Management Agency	128
6	Regulation of the National Counterterrorism Agency	32
7	Regulation of the National Border Management Agency	80
8	Downstream Oil and Gas Regulatory Agency Regulations	133
9	Food and Drug Administration Regulations	387
10	Regulation of the Nuclear Energy Supervisory Agency	128
11	Regulation of the Financial and Development Supervision Agency	126
12	Regulation of the Health Social Security Administration Agency	38
13	National Land Agency Regulations	27
14	Regulation of the Central Bureau of Statistics	108
15	National Search and Rescue Agency Regulations	69
16	National Standardization Body Regulations	135
17	Regulation of the National Nuclear Energy Agency	122
18	Indonesian Waqf Board Regulations	12
19	Regulation of the Honorary Board of General Election Organizers	15
20	Attorney General's Regulation	95
21	National Archives Regulations	198
22	Regulation of the National Commission on Human Rights	25
23	Corruption Eradication Commission Regulations	46
24	Indonesian Medical Council Regulations	116
25	Regulation of State Administration Institutions	201
26	Regulation of the Indonesian Institute of Sciences	113
27	Deposit Insurance Corporation Regulations	30
28	Witness and Victim Protection Agency Regulations	34
29	National Cipher Agency Regulations	113
30	Ombudsman Regulation of the Republic of Indonesia	53
31	Financial Transaction Reporting and Analysis Center Regulations	64
32	National Police Regulation of the Republic of Indonesia	282
33	Environmental Impact Control Agency Regulations	1
34	Indonesian Broadcasting Commission Regulations	2



No.	Name of Agency/Commission/Institution of Level/Similar	Number of Regulations
35	National Aeronautics and Space Administration Regulations	33
36	Financial Services Authority Regulation	463
37	National Social Security Board Regulations	14
38	National Library Regulations	118
39	Regulation of the National Agency for the Placement and Protection of Indonesian Workers-Indonesian Migrant Workers Protection Agency	58
40	Regulation of Government Procurement Policy Institute	156
41	Geospatial Information Agency Regulations	45
42	Central Information Commission Regulations	14
43	Regulation of Indonesian Export Financing Agency	0
44	Regulation of the State Civil Apparatus Commission	8
45	Regulation of the Employment Social Security Organizing Agency	15
46	Regulation of the Agency for the Assessment and Application of Technology	28
47	Maritime Security Agency Regulations	28
48	Regulation of the Pancasila Ideology Development Board	33
49	Regulation of the Commodity Futures Trading Supervisory Agency	5
50	National Cyber and Encryption Agency Regulations	53
51	Creative Economy Agency Regulation	53
52	Regulation of the National Amil Zakat Agency	14
53	National Search and Rescue Agency Regulations	58
54	Hajj Financial Management Agency Regulations	29
55	National Population and Family Planning Board Regulations	72
56	Regulation of the State Intelligence Agency	23
57	Business Competition Supervisory Commission Regulation	12
58	Batam Free Trade Area and Free Port Council Regulation	3
59	Regulation of the Indonesian Migrant Workers Protection Agency	31

No.	Name of Agency/Commission/Institution of Level/Similar	Number of Regulations
60	Regulation of the National Professional Certification Agency	1
61	Regulation of the Public Housing Savings Management Agency	15
62	Regulation of the National Council of Special Economic Zones	3
63	Regulation of the National Research and Innovation Agency	61
64	Regulation of the National Food Agency	31
65	Regulation of the Nusantara Capital Authority	11
<b>Total</b>		<b>4.946</b>

Sources: [www.peraturan.go.id](http://www.peraturan.go.id), 2023

A total of 5,869 (the data is updated regularly, data taken on September 20, 2023, at 10.32 Western Indonesian Time) regulations at the level of Agencies/Commissions/Institutions at other levels/similar were successfully inventoried. Indonesia has around 75 other levels/similar Bodies/Commissions/Institutions. Each competes to make regulations from the number of other Bodies/Commissions/Institutions of the same level/kind. These regulations do not include regulations made by the head/chairman/head of the Agency or Institution, for example, the Regulation of the Chief Justice of the Constitutional Court and the like. Regulations at the level of State Agencies and Institutions are a type of delegation regulation whose source of authority is obtained from the delegation of regulations above. For example, the Constitutional Court Regulations obtain delegation of authority in legislation from the Constitutional Court Law or even the 1945 NRI Constitution.

As a side note, specifically for the Constitutional Court Regulations, they are not promulgated, so if you search for data on the Constitutional Court Regulations on the [www.peraturan.go.id](http://www.peraturan.go.id) page, the data will be nil or 0. Although not promulgated, the

Constitutional Court Regulation remain in effect for the public. The non-promulgation of the Constitutional Court Regulation only has juridical implications on the inability of the Constitutional Court Regulation to be subject to judicial review by the Supreme Court (*Mahkamah Agung/MA*). Of course, studies related to the uniqueness of the non-promulgation of this Constitutional Court Regulation are few and interesting enough to be discussed further. In addition to regulations at the State Agencies and Institutions level, there are also regulations at the Ministry level—the following data on the number of regulations at the Ministry level that have been successfully inventoried.

**TABLE 4.** Ministerial Regulations

No.	Ministry Name	Number of Regulations
1	Ministry of Religious Affairs	752
2	Ministry of Internal Affairs	1.294
3	Ministry of Energy and Mineral Resources	524
4	Ministry of Law and Human Rights	550
5	Ministry of Forestry	464
6	Ministry of Marine Affairs and Fisheries	682
7	Ministry of Health	847
8	Ministry of Finance	3.545
9	Ministry of Communication and Information Technology	300
10	Ministry of Foreign Affairs	144
11	Ministry of Cooperatives, Small and Medium Enterprises	158
12	Ministry of Environment	181
13	Ministry of Women's Empowerment and Child Protection	178
14	Ministry of State Apparatus Empowerment and Bureaucratic Reform	561
15	Ministry of National Development Planning/National Development Planning Agency	119

No.	Ministry Name	Number of Regulations
16	Ministry of Public Housing	136
17	Ministry of Research and Technology	22
18	Ministry of Tourism and Creative Economy	106
19	Ministry of Public Works	118
20	Ministry of Education and Culture	704
21	Ministry of Trade	862
22	Ministry of Industry	797
23	Ministry of Defense	569
24	Ministry of Agriculture	559
25	Ministry of Manpower and Transmigration	145
26	Ministry of State-Owned Enterprises	69
27	Ministry of Culture and Tourism	38
28	Coordinating Ministry for People's Welfare	18
29	Ministry of Development of Disadvantaged Regions	27
30	Ministry of National Education	40
31	Ministry of Transportation	1.192
32	Ministry of State Secretariat	44
33	Ministry of Social Affairs	290
34	Ministry of Agrarian and Spatial Planning/National Land Agency	215
35	Ministry of Manpower	201
36	Ministry of Public Works and Public Housing	201
37	Coordinating Ministry for Economic Affairs	85
38	Coordinating Ministry for Political, Legal and Security Affairs	46
39	Ministry of Environment and Forestry	344
40	Ministry of Tourism	74
41	Ministry of Research, Technology and Higher Education	359
42	Ministry of Youth and Sports of the Republic of Indonesia	111
43	Ministry of Villages, Development of Disadvantaged Regions, and Transmigration	162
44	Coordinating Ministry for Human Development and Culture	48
45	Coordinating Ministry for Maritime Affairs	30
46	Coordinating Ministry for Maritime Affairs and Investment	25

No.	Ministry Name	Number of Regulations
47	Ministry of Education, Culture, Research, and Technology	129
<b>Total</b>		<b>18.255</b>

Sources: [www.peraturan.go.id](http://www.peraturan.go.id), 2023

A total of 18,255 regulations at the Ministry level were successfully inventoried. When added to regulations at the State Agencies and Institutions level, the total number of existing regulations is 24,124. This means those regulations at the level of Ministries, Agencies, and State Institutions are the object of a judicial review in the Supreme Court (except 72 Constitutional Court Regulations). This is certainly in quantity. It will add to the busyness of the Supreme Court. Nevertheless, the legal vacuum related to the hierarchy of delegation regulations in Article 8 paragraph (1) of Law P3 also complicates the position and function of Delegated Legislation made by existing Ministries, Agencies, and State Institutions.

In order to avoid getting caught up in the *lawmaker's heavy*, the framers of Delegated Legislations, both at the level of Ministries, Agencies, and State Institutions, need to understand the hierarchy of Delegated Legislations themselves. Some of the offers of regulatory structuring models for Delegated Legislations in Indonesia include: *First*, this first model seeks to see the hierarchy of Delegated Legislations based on the source of authority of the institution. Institutions whose source of authority comes from the 1945 NRI Constitution certainly have a hierarchy above/higher than institutions whose source of authority comes from the Law.

*Second*, this second model seeks to see the Delegated Legislations hierarchy based on the institution's position. For institutions with an equal position, then the hierarchy of Delegated Legislations is also the

same/equal. For example, the position of the MA, MK, KY, and BPK as high state institutions after the amendment of the 1945 NRI Constitution, then the Delegated Legislations produced by the four high state institutions are also the same/equal/parallel to the hierarchy. Moreover, *Third*, this third model seeks to see the hierarchy of Delegated Legislations based on the source or origin of delegation authority in the field of legislation. A Delegated Legislation whose source of delegated authority comes from the 1945 NRI Constitution, of course, is higher than that sourced from the Law or even actually does not have delegated authority in its formation (formed autonomously by other level/similar Bodies/Commissions/Institutions directly without delegation from legal products on it).

The first and second models need to improve, related to changes in regulations on Bodies/Commissions/Institutions of the same level/similar that make Delegated Legislations. If the parent regulation changes, then the position of the Agency/Commission/Institution at the same level/similar may also change. Thus, the author tends to the third model, where the regulatory structuring model of Delegated Legislations in Indonesia's hierarchy of laws and regulations is based on the source of delegation authority in the field of laws and regulations. This model provides legal certainty and flexibility in Delegated Legislations without having to be guided by the source of authority of the Agency/Commission/Institution at the level/like. Bodies/Commissions/Institutions of the same level/similar may be changed, renamed, or deleted, but the position of Delegated Legislations still exists and has legal force.

The logical and legal reason why the author chose the third model is based on the theory of delegation in delegated legislation.<sup>44</sup>

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<sup>44</sup> Aan Eko Widiarto, Muhammad Dahlan, and Ria Casmi Arrsa, "The Construction of Legal Basis Relevant to the State of Law in the Event of Pandemic

Delegation theory, also a category of sources of authority, is interpreted as giving authority to the party receiving delegation. In other words, the theory of delegation in the field of legislative regulations gives rise to the discourse that regulations that receive delegated orders from the regulations above them have binding power, usability, and effectiveness. Moreover, based on *delegatus non potest delegare* maxims,<sup>45</sup> the third model is the most relevant because there is only one way to delegate the regulations, from the parent legislation to the secondary legislation. The first and the second model does not fulfill the requirement from the *delegatus non potest delegare* maxim.

Therefore, to strengthen the third model, it is necessary to amend Law P3, especially concerning the addition of one paragraph, namely Article 8 paragraph (3), which reads, "*The hierarchy of laws and regulations as referred to in Article 8 paragraph (1) is based on the delegation of authority that orders it.*" By adding this paragraph, the hierarchy of Delegated Legislations in Article 8 paragraph (1) becomes clear and has legal certainty. For example, a Ministerial Regulation that gets a delegation of formation from the Law, then the position of the Ministerial Regulation is directly under the Law.

The meticulous structuring of the hierarchy of Delegated Legislations holds paramount significance, ensuring its seamless integration into the existing legislative system. This organizational precision serves to eliminate potential overlaps in regulations, paving the way for regulatory reforms that foster more effective and efficient

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Emergency: A Lesson from Indonesia," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (December 22, 2022): 283–97, <https://doi.org/10.22219/ljih.v30i2.23553>.

<sup>45</sup> Sholahuddin Al-Fatih and Mujibur Rahman Khairul Muluk, "Understanding Beschikking, Regeling and Beleidsregel in Indonesian Legal System," *Audito Comparative Law Journal (ACLJ)* 4, no. 2 (May 19, 2023): 87–95, <https://doi.org/10.22219/aclj.v4i2.25417>.

governance. This imperative aligns with the foundational principles governing the formulation of legislative regulations, categorized into formal and material dimensions. These principles include, among others, the clarity of goals, the necessity of regulation, appropriateness of organs or institutions, relevance of content material, feasibility of implementation, and adherence to recognized legal ideals, Indonesian Law, State Fundamental Norms, Basic Law, and State principles based on law. In light of these guiding principles, the hierarchy model of delegated legislation becomes subject to amendment within the framework of Law P3, with a proposed addition of Article 8, paragraph (3). This amendment is poised to further refine and fortify the structural integrity of the legislative framework in pursuit of more robust governance.<sup>46</sup>

#### 4. Conclusion

In summary, the examination of the historical and dynamic facets of Delegated Legislations in Indonesia has been elucidated through various regulatory frameworks, including TAP MPRS No. XX/MPRS/1966, TAP MPR No. III/MPR/2000, Law Number 10 of 2004, and Law Number 12 of 2011. The interpretation of Delegated

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<sup>46</sup> Catur Wido Haruni, "Constitutionality of Monitoring and Evaluation of Regional Regulation Drafts and Regional Regulations by Regional Representative Council," *Legality: Jurnal Ilmiah Hukum* 30, no. 1 (April 13, 2022): 103–15, <https://doi.org/10.22219/ljih.v30i1.20532>. See also Sukardi Sukardi, and Hadi Rahmat Purnama. "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia". *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155-90. <https://doi.org/10.15294/jils.v7i1.53057>; Ridwan Arifin, "Democracy on Indonesian Legal Reform: How Can People Participate on Laws and Regulations Establishment Process". *Journal of Indonesian Legal Studies* 2, no. 2 (2017): 155-58. <https://doi.org/10.15294/jils.v2i02.19439>; Yunas Luluardi, and Ayon Diniyanto, "Political Dynasty in Law and Political Perspective: To What Extent Has the Election Law Been Reformed?". *Journal of Law and Legal Reform* 2, no. 1 (2021): 109-24. <https://doi.org/10.15294/jllr.v2i1.44321>.



Legislations in Indonesia confines their scope to regulations crafted by the executive, under the condition that formal legal norms still delegate legislative authority for higher regulations. Propelling this discussion forward, two key enhancement suggestions have been identified: firstly, the imperative incorporation of operational definitions pertinent to Delegated Legislations into the general provisions of Law P3 through amendments; secondly, the expeditious development of a comprehensive digital database system for laws and regulations at both central and local levels, ensuring alignment with any changes in parent regulations.

The hierarchical structuring of Delegated Legislations in Indonesia unfolds through three distinct models: a Hierarchical model based on the legal foundation of institution formation, another based on the position of the institution, and a third based on the source of delegated authority in forming rules. While the first two models exhibit strength in addressing regulatory dynamics, the third model is favored for its flexibility and immediacy. To accommodate this third model effectively, a proposed amendment to Law P3 entails the addition of Article 8, paragraph (3), affirming that the hierarchy of laws and regulations is based on the delegation of authority that ordains it. This strategic amendment seeks to reconcile the nuanced complexities within the regulatory landscape, ensuring a more adaptive and responsive legal framework for Delegated Legislations in Indonesia.

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There is no conflict of interest

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