
***Ignoratio Elenchi* in the Amendment to the Regional Government Law and its Impact on the Executive Review of Governor Regulations and Gender Equity**

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ABSTRACT

The purpose of this study is to examine the fallacy of reasoning (*ignoratio elenchi*) in the Law Number 23 of 2014 concerning Regional Government, as amended by Law Number 6 of 2023 concerning Job Creation, and its consequences for gender equity and the executive review process of gubernatorial regulations. This paper evaluates numerous pertinent legal provisions and doctrines using a normative juridical method using a statutory and conceptual approach. The study's findings show that the norm's modification conflicts with the ratio decidendi of Constitutional Court Decision Number 56/PUU-XIV/2016, which affirms the existence of executive review of gubernatorial regulations, thus reflecting a fallacy of reasoning in the form of *ignoratio elenchi*. As a result, a legal vacuum has occurred in the administrative oversight mechanism for regional head regulations, which has an impact on weakening legal certainty and opening space for the birth of regulations that conflict with higher regulations and have the potential to discriminate against women, as seen in the practice of gubernatorial regulations that change imperative norms into discretionary norms. Therefore, this study recommends legal reconstruction through strengthening the executive review mechanism, developing preventive oversight mechanisms, and integrating a gender justice perspective into the formation of laws and regulations to ensure normative consistency and protection for vulnerable groups.

INTRODUCTION

According to the Republic of Indonesia's 1945 Constitution, which affirms Indonesia's status as a state of law (*rechtstaat*), the supremacy of law and legal certainty are essential tenets of governmental administration (Arliman, 2020). Maintaining a balance between regional autonomy and central government supervision is essential in unitary states that pursue decentralization through Law Number 23 of 2014 concerning Regional Government. (Suriadi, 2023) Although it stays inside the boundaries of the Unitary State of the Republic of Indonesia, Article 18 of the 1945 Constitution gives regions a constitutional foundation for regulating and managing their own government activities. (Wicaksono D. A., 2020) In practice, this relationship often gives rise to classic problems, such as regulatory disharmony, due to the breadth of regional authority that is not balanced by effective oversight mechanisms. (Wicaksono D. A., 2015) Therefore, harmonization of laws and regulations and oversight of regional norms are essential to prevent the fragmentation of national law, making oversight a key element in maintaining the consistency and integrity of the national legal system.

As a component of regional head regulations (*Perkada*), gubernatorial regulations occupy a special and vital place within the framework of laws and regulations (Saputra, 2025). *Perkada* is acknowledged as a component of the hierarchy of laws and regulations in accordance with Article 8 paragraph (2) of Law Number 12 of 2011 about the Formation of Legislation, but is, by definition, an administrative product (*bestuur*) created by the regional head in an executive capacity. (Nuriani, 2019) Unlike regional regulations (*Perda*), which are legislative products jointly with the Regional People's Representative Council (DPRD), gubernatorial regulations essentially function as instruments for implementing *Perda* and central government policies. (Pratama, 2021) However, in empirical practice, *Perkada* often contains substantive norms that have a broad impact on society, thus exceeding their administrative function. This situation raises the risk of vertical conflict with higher-level laws and regulations, as prohibited in Article 7 paragraph (1) of Law 12/2011, thus emphasizing the urgency of a special, effective, and responsive oversight mechanism for regional heads' legal products (Susanto, 2022).

Within this oversight framework, two main mechanisms are recognized: judicial review and executive review. Judicial review is the authority of judicial institutions, particularly the Supreme Court, to examine regulations under the law, as stipulated in Article 24A paragraph (1) of the 1945 Constitution (Lestari, 2024), while executive review is a form of administrative oversight by the central government over regional legal products within the *bestuur* structure. Theoretically, executive review has the advantages of speed, efficiency, and a preventive nature in maintaining uniformity of national policy (Iskandar & Budiaman, 2022). In a unitary state, the government hierarchy presupposes vertical oversight authority from the central government over the regions to ensure that regional policies do not conflict with national interests, higher-level regulations, or general principles of good governance (Silalahi & Lestari, 2025). Therefore, the existence of executive review is not only administrative but also has a constitutional dimension in maintaining the cohesion of the national legal system.

The distinction between judicial review and executive review is explicitly affirmed in Constitutional Court Decision Number 56/PUU-XIV/2016, which states that regional regulations as legislative products must be tested through a judicial review mechanism by the Supreme Court, while gubernatorial regulations, as administrative products, remain within the realm of executive review by the central government, specifically the Minister of Home Affairs (Shadiqin, 2020). The ratio decidendi of this decision emphasizes that the administrative nature of gubernatorial regulations places them within the scope of government functions (*bestuurfunctie*), so that their oversight logically and systematically falls within the executive structure, not the judiciary (Islahuddin, 2024). Thus, the Constitutional Court firmly upholds the central government's authority to annul gubernatorial regulations that conflict with higher laws, the public interest, and morality, as previously stipulated in Article 251 of Law 23/2014. This ruling serves as a fundamental premise for maintaining the design of normative oversight within Indonesia's decentralized system. (Andrivand, 2023)

METHOD

The normative juridical method used in this study views the law as a system of norms that are examined using a conceptual and statutory approach. The 1945 Republic of Indonesia Constitution, Law Number 23 of 2014 concerning Regional Government as amended by Law

Number 6 of 2023 concerning Job Creation, and other relevant laws and regulations governing the relationship of authority between the central and regional governments are just a few of the pertinent legal provisions that are systematically reviewed in order to implement the statutory approach, including the oversight mechanism for regional head regulations. Meanwhile, a conceptual approach is used to analyze legal concepts that develop in legal doctrine and theory, such as the concept of the rule of law, judicial review, executive review, the principle of norm hierarchy, and the concept of fallacies of reasoning (*ignoratio elenchi*) in the formation of laws and regulations. The legal materials used consist of primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of scientific literature, journals, and opinions of relevant experts. All legal materials are analyzed qualitatively using systematic and teleological legal interpretation techniques to discover the meaning and purpose of the norms, and to assess the consistency and conformity between the applicable norms and the underlying legal principles. Thus, this study aims to produce comprehensive legal arguments to explain the problems studied and to formulate normative solutions to the lack of a gubernatorial regulation oversight mechanism in the Indonesian legal system.

RESULTS AND DISCUSSION

Distortion of the Implementation of the Constitutional Court Decision in Amendments to the Regional Government Law

The disparity between the legal interpretation established in Constitutional Court Decision Number 56/PUU-XIV/2016 and the development of post-amendment norms in Law Number 23 of 2014 concerning Regional Government, as amended by Law Number 6 of 2023 concerning Job Creation, is the source of the distortion in the application of the Constitutional Court's decision regarding the amendments to the Regional Government Law. As stated in Article 1 paragraph (3) of the Republic of Indonesia's 1945 Constitution, within the framework of a state founded on the rule of law, all enactments of legislation must adhere to the principle of constitutional supremacy and respect the final and binding decisions of the Constitutional Court. Therefore, any changes to norms intended as a follow-up to the Constitutional Court's decision should reflect substantial compliance with the ratio decidendi of the decision, not merely formal changes that deviate from the Court's legal reasoning (Hakiki, 2023).

The Constitutional Court made a clear distinction between the legal nature of gubernatorial and regional rules in Decision Number 56/PUU-XIV/2016. According to Article 24, regional rules are subject to judicial scrutiny by the Supreme Court because they are regarded as regional legislative goods jointly developed by the regional head and the Regional People's Representative Council (DPRD). The 1945 Constitution's paragraph (1). Conversely, gubernatorial regulations are understood as administrative products arising from executive functions (*bestuursfunctie*), so their oversight remains within the scope of executive review by the central government. In this context, the Court only annulled the phrase relating to the power to revoke regional regulations under Article 251 of Law 23/2014, but preserved the Minister of Home Affairs' power to revoke gubernatorial regulations that go against morality, higher-order laws, or the public interest (Sukardi & Wardana, 2024).

Normatively, the provisions of Article 251 of Law Number 23 of 2014 concerning Regional Government, before the amendments, provided a clear legal basis for the Minister of Home Affairs to annul gubernatorial regulations as part of the administrative oversight

mechanism. This provision aligns with the principle of normative hierarchy as stipulated in Article 7, paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which requires that any lower-level regulation must not contradict a higher-level regulation. Furthermore, Article 8, paragraph (2) of Law 12/2011 recognizes the existence of regional head regulations as part of the legal regulatory system, but remains subordinate to higher-level norms. Therefore, the central government's authority to annul gubernatorial regulations is a logical consequence of the legal hierarchy structure and unitary system of government (Armin, 2023).

However, the amendment to the norm through Law Number 6 of 2023 concerning Job Creation eliminates the provision regarding the authority to annul and replaces it with a norm that emphasizes coordination in the formation of regional regulations and regional head regulations. This new provision no longer explicitly regulates the executive review mechanism for gubernatorial regulations, thereby eliminating the administrative oversight instrument previously held by the central government. The change not only represents a shift in norms but also creates a significant regulatory vacuum, as there is no alternative mechanism that can effectively and quickly replace the annulment function (Ismiyanto, 2023).

This discrepancy indicates a distortion in the implementation of the Constitutional Court's substantive ruling. Legislators not only failed to appropriately adopt the Court's ruling and legal reasoning, but also changed the regulatory direction in a manner that contradicts the fundamental logic of the ruling. However, based on the principle of constitutionality, every piece of legislation must align with the ruling of the Constitutional Court as the final interpreter of the constitution. This discrepancy also has the potential to violate the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, as it obscures the oversight mechanism for gubernatorial regulations and creates uncertainty regarding the authority authorized to correct problematic norms (Erick & Risman, 2023).

The distortion has weakened the oversight function within the decentralized system as stipulated in Article 18 of the 1945 Constitution. In a unitary state, decentralization does not mean the absolute relinquishment of central government control; rather, it still includes elements of guidance and oversight of the regions. With the elimination of the executive review mechanism, the central government loses a crucial instrument to ensure that regional policies remain in line with national interests and do not conflict with higher-level laws and regulations. Therefore, this change in norms not only reflects an inconsistency with the Constitutional Court's ruling but also has the potential to disrupt the balance between regional autonomy and national legal integration, necessitating a more comprehensive legal evaluation and reconstruction.

***Ignoratio elenchi* as a Fallacy of Reasoning in the Formation of Norms and its Implications for the Emptiness of Executive Review**

Fallacies in the formation of statutory norms can be analyzed from a legal logic perspective, one of which is *ignoratio elenchi*, a condition where legislators provide answers to issues that are not at the heart of the problem. In the context of changes to the norms of the Regional Government Law, this phenomenon is clearly evident when legislators fail to appropriately respond to the ratio decidendi of Constitutional Court Decision Number 56/PUU-XIV/2016. The Constitutional Court explicitly addressed the mechanism for testing norms for regional regulations and gubernatorial regulations, but the legislative changes shifted the focus

to the coordination aspect of regulatory formation. It demonstrates a discrepancy between the premises established by the Court and the conclusions reached by the legislators, thus logically fulfilling the characteristics of the *ignoratio elenchi* fallacy.

In this decision, the Constitutional Court emphasized that regional regulations, as legislative products, must be subject to judicial review by the Supreme Court under Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, while gubernatorial regulations, as administrative products, remain within the scope of executive review by the central government. However, the changes to the norms in Law Number 23 of 2014 concerning Regional Government, as amended by Law Number 6 of 2023 concerning Job Creation, no longer maintain this mechanism. The provisions previously stipulated in Article 251 concerning the Minister of Home Affairs' authority to annul regulations were removed and replaced with coordinating norms that lack a direct supervisory function. Thus, the legislators failed to address the main issue raised by the Court, namely the regulation of the normative review mechanism, but instead shifted the regulation to an irrelevant aspect.

Theoretically, this error results in a breakdown in the continuity between the normative system and legal logic, which should be coherent. Within the hierarchical framework of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, every lower-level norm must comply with a higher-level norm, and a supervisory mechanism is necessary to ensure such compliance. Furthermore, Article 8, paragraph (2) of Law 12/2011 recognizes regional head regulations as part of the legal regulatory system, but does not change their subordination. With the elimination of the executive review mechanism, there is no longer an effective administrative instrument to ensure that gubernatorial regulations remain within the legal framework, creating inconsistencies in the legal system.

A direct implication of this fallacy is the emergence of a regulatory vacuum in the oversight of gubernatorial regulations. This vacuum is not only normative but also impacts the practice of regional governance. The Minister of Home Affairs' lack of explicit authority to revoke gubernatorial regulations results in the loss of a rapid and efficient oversight mechanism, while the Supreme Court's judicial review mechanism is not designed to intensively oversee all regional administrative products. This situation creates legal uncertainty, contrary to Article 28D paragraph (1) of the 1945 Constitution, as it is unclear who has the effective authority to correct problematic gubernatorial regulations.

Empirically, this vacuum has given rise to various concrete problems in practice. One example is the DKI Jakarta Governor Regulation Number 2 of 2025, which regulates Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, as amended by Government Regulation Number 45 of 1990, is in conflict with numerous of its provisions on marriage and divorce permits for state civil servants. In the governor's regulation, norms that were originally prohibitive in government regulations were changed to norms that provide room for discretion, thus opening up opportunities for practices that conflict with higher legal principles. In addition, empirical data show an increase in divorce cases related to the practice of polygamy in recent years, which indicates that regional regulations are not only normatively problematic but also have a real impact on the social conditions of society.

The fallacy of *ignoratio elenchi* is not only a theoretical problem in norm formation but also has significant practical implications for the effectiveness of the legal system. When legislators fail to respond appropriately to Constitutional Court decisions, what results is not only normative inconsistency but also the creation of a vacuum in the legal oversight system. This vacuum ultimately weakens the state's function in guaranteeing legal certainty, maintaining normative consistency, and protecting the public from the negative impacts of uncontrolled regulation. Therefore, legal reconstruction efforts are needed that not only improve normative text but also ensure that the process of formulating laws and regulations is based on legal reasoning that is logical, relevant, and consistent with constitutional principles.

The Impact of the Executive Review Vacancy on Legal Certainty and Gender Justice and the Need for Legal Reconstruction

The lack of an executive review mechanism following the amendment to Legal certainty in Indonesia's decentralized system has been greatly impacted by Law Number 23 of 2014 about Regional Government, as revised by Law Number 6 of 2023 concerning Job Creation. In the past, the Minister of Home Affairs could repeal regional head regulations that went against higher-level laws, the public interest, or morals under Article 251 of Law 23/2014. With the elimination of this norm, a swift and effective administrative mechanism for correcting problematic gubernatorial regulations is no longer available. The Republic of Indonesia's 1945 Constitution's Article 28D paragraph (1) guarantees legal certainty, which is in conflict with this circumstance, as it creates ambiguity regarding the oversight instruments and the authority authorized to revoke regional legal products.

This normative impact has direct implications for the practice of regional governance, where gubernatorial regulations have the potential to be enforced without adequate oversight. In a legal system that recognizes the hierarchy of norms as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, any lower-level regulation must not contradict a higher-level regulation. However, without an executive review mechanism, this principle becomes difficult to enforce effectively. The judicial review mechanism at the Supreme Court, as stipulated in Article 24A paragraph (1) of the 1945 Constitution, is indeed available, but it has limitations in terms of accessibility, time, and its reactive nature. This results in a gap in oversight that allows problematic regulations to remain in effect and have legal and social impacts on society. Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants, as amended by Government Regulation Number 45 of 1990, is contradicted in multiple provisions by Jakarta Governor Regulation Number 2 of 2025 concerning Marriage and Divorce Permits for Civil Servants. This governmental rule, the norm prohibiting the granting of divorce permits under certain circumstances is explicitly formulated as an imperative norm ("not granted"), while in the gubernatorial regulation, it is changed to a discretionary norm ("can be refused"). This change substantially weakens the legal protections established by higher-level regulations and opens up space for practices inconsistent with the regulatory objectives. This situation demonstrates that without effective administrative oversight, gubernatorial regulations can deviate from higher-level legal norms without prompt correction.

The impact of the lack of executive review is not only normative but also closely related to issues of gender equity. The provisions in this gubernatorial regulation implicitly reproduce patriarchal bias by placing women in a position vulnerable to discriminatory treatment,

particularly in the context of marriage and divorce. It contradicts the provisions of Article 250 paragraph (2) letter e of Law Number 23 of 2014 concerning Regional Government, which prohibits regional head regulations from contradicting the public interest, including the principle of non-discrimination. Furthermore, this situation is inconsistent with Indonesia's commitment to the principle of gender equality in various national and international legal instruments. Thus, the weakness of the oversight mechanism not only impacts legal certainty but also has the potential to reinforce structures of social injustice.

To address this problem, concrete steps are needed in the form of a comprehensive legal reconstruction. First, legislators need to revise Law 23/2014 by explicitly returning executive review authority to the Minister of Home Affairs, particularly for gubernatorial regulations as administrative products. Second, a preventative executive preview mechanism needs to be developed, requiring the evaluation of draft gubernatorial regulations before they are enacted to ensure their compliance with higher-level regulations and the principle of public interest. Third, clear operational standards for the oversight of regional head regulations, including time limits and revocation procedures, need to be established to ensure effective and accountable oversight.

Furthermore, integrating a gender justice perspective into the formulation of legislation must be part of any legal reform. It can be achieved through mandatory gender impact assessments in every regional regulation drafting process, as well as the involvement of ministries/institutions authorized to empower women in regulatory evaluation. Furthermore, civil society needs to be given broader access to participate in the oversight and review of regional regulations, both through administrative and judicial mechanisms. Therefore, legal reconstruction should not only focus on restoring oversight mechanisms but also on strengthening protection for vulnerable groups and improving the overall quality of regional regulations.

CONCLUSION

The total study leads to the conclusion that the modifications to the standards in Law Number 23 of 2014 concerning Regional Government, as modified by Law Number 6 of 2023 relating Job Creation contain a logical fallacy in the form of *ignoratio elenchi*, because it does not appropriately address the ratio decidendi of Constitutional Court Decision Number 56/PUU-XIV/2016 which affirms the existence of an executive review mechanism for gubernatorial regulations. Instead of maintaining this administrative oversight mechanism, legislators have replaced it with a coordinative approach that lacks an effective corrective function. As a result, a regulatory vacuum has emerged in the oversight of regional head regulations, which has an impact on weakening legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The impact is not only normative but also empirical, as seen in the emergence of gubernatorial regulations that conflict with higher regulations, including those that potentially contain discriminatory elements against women, thus indicating that the oversight vacuum has opened space for deviations from norms and the reproduction of injustice in regional regulatory practices. In this regard, strategic steps are needed in the form of comprehensive and sustainable legal reconstruction. First, lawmakers need to immediately revise Law 23/2014 by explicitly restoring the central government's executive review authority over gubernatorial regulations, in accordance with the

construction affirmed by the Constitutional Court. Second, a preventive oversight mechanism needs to be developed through executive previews of draft regional head regulations to ensure compliance with higher-level regulations and the public interest before they are enacted. Third, the integration of a gender justice perspective must be made a mandatory standard in the process of formulating legislation, including through the implementation of gender impact assessments and the involvement of relevant institutions. Furthermore, strengthening public participation and access to norm-testing mechanisms also needs to be increased to expand social control over regional legal products. Thus, the legal reconstruction undertaken not only aims to fill the gap in oversight mechanisms but also to ensure the creation of a legal system that is fairer, more consistent, and more responsive to the protection of the rights of the community, particularly vulnerable groups.

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