

# The Validity of Sanctions Arrangements in Regional Regulations



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## ABSTRACT

The principle of lower-level legislation in the hierarchy of legislation must not conflict with higher-level regulations and must be enforced. This includes regional regulations whose administrative sanction content must not deviate from higher-level regulations. This study aims to determine the validity of regional regulations in regulating the content of sanctions, the regulation of sanctions for regional head regulations that do not comply with the rules above them, and how binding they are when applied. The research method used is the normative legal method, including the approach to legislation and legal concepts. The comparative method is also used to compare this issue with Japan. The results of this study indicate that there is disharmony between regional regulations and their implementing regulations due to the lack of detailed regulations on the content of regional head regulations, which has the potential to cause deviations in the content and affect the validity of the legal product. This has a negative impact and confuses at the implementation level, especially on the content of sanctions that are not in sync with the rules above them. Meanwhile, in Japan, Japanese administrative sanctions are contained in a very structured and standardized manner to minimize inconsistencies in regulations at the regional level. Therefore, the formation of material content regarding sanctions in implementing regulations must be based on legal validity, both materially and formally.



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## 1. Introduction

The constitution establishes the principle that a country is a country of law, where all aspects of statehood, nationality, government, and society are based on law. A country of law is defined as one that applies the principle of legality, meaning that all state actions are based on law. The aim is that implementing state power does not violate legal provisions, so the law must be upheld.<sup>1</sup> Those in power must obey it. Applying fair and appropriate legal norms advances the

<sup>1</sup> Mas Pungky Hendra Wijaya and Mohammad Zulfikar Ali, 'Legislation Impediments in Reorganising Government Bodies in Indonesia', *BESTUUR*, 9.1 (2021), 1 <https://doi.org/10.20961/bestuur.v9i1.51633>

general welfare of its citizens, both physically and mentally.<sup>2</sup> This, in turn, is intended to ensure that fundamental rights or human rights are fulfilled, protected, and respected.<sup>3</sup>

Legal products used to regulate all aspects of the state can be national laws and regulations ratified at the central level and regional rules stipulated at the regional level based on delegated legal authority. These laws and regulations outline the limitations of rules and regulations that must be made in certain forms and procedures. These laws and rules can generally be enforced and bind the community, usually accompanied by sanctions.<sup>4</sup> Statutory regulations refer to written rules usually binding on authorized officials or agencies.<sup>5</sup> These laws and regulations are formed by official institutions and authorized officials by following established procedures.<sup>6</sup>

These regulations are generally binding legal norms, meaning they apply to specific individuals and any legal entity that meets the requirements stated in the provisions relating to behavioral patterns.<sup>7</sup> In Indonesia, the enactment of Law No. 12 of 2011 concerning the Formation of Legislation has provided essential guidance regarding the mechanism for forming legislation into one law.<sup>8</sup> Legislation making is a crucial aspect of national law progress, and it can only be achieved through clear and standard methods and procedures that regulate all institutions authorized to form legislation.<sup>9</sup>

Law No. 12 of 2011 regulates the classification and hierarchy of laws and regulations, including regional regulations. The legal reasoning of the regional

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<sup>2</sup> Ni Luh Gede Astariyani and I Gusti Ngurah Wairocana, 'Delegation of Governor Regulation in Ensuring Utility and Justice', *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8.3 (2019), 302 <https://doi.org/10.24843/jmhu.2019.v08.i03.p02>

<sup>3</sup> Muhammad Jamaluddin, 'The Role of the People in the Amendment of the 1945 Constitution Based on Democratic Constitution Making: Future Prospects', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 07.01 (2020), 19–42 <https://doi.org/10.22304/pjih.v7n1.a2>

<sup>4</sup> Resti Dian Luthviati, 'The Role of Local Governments in the Defense of Leading Products', *BESTUUR*, 8.2 (2020), 121 <https://doi.org/10.20961/bestuur.v8i2.43138>

<sup>5</sup> Bagus Hermanto, 'Deliberate Legislative Reforms to Improve the Legislation Quality in Developing Countries: Case of Indonesia', *The Theory and Practice of Legislation*, 11.1 (2023), 1–31 <https://doi.org/10.1080/20508840.2022.2080392>

<sup>6</sup> Simon Butt and Prayekti Murharjanti, 'What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia', *International Journal of Constitutional Law*, 20.1 (2022), 428–53 <https://doi.org/10.1093/icon/moac014>

<sup>7</sup> Agus Tri Widodo and Agus Riwanto, 'Harmonizing Regional Spatial Arrangements As Effort To Improve Law Number 11 Of 2020 On Job Creation To Optimize Regional Development', *Jurnal Dinamika Hukum*, 23.2 (2023), 286 <https://doi.org/10.20884/1.jdh.2023.23.2.3289>

<sup>8</sup> Nurfaika Ishak, Rahmad Ramadhan Hasibuan, and Tri Suhendra Arbani, 'Bureaucratic and Political Collaboration Towards a Good Governance System', *BESTUUR*, 8.1 (2020), 19 <https://doi.org/10.20961/bestuur.v8i1.42922>

<sup>9</sup> Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis, 'The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems', *Cogent Social Sciences*, 8.1 (2022) <https://doi.org/10.1080/23311886.2022.2104710>

regulation makers is highly correlated with the implementation of regional autonomy. Considering Law No. 23 of 2014 concerning Regional Government, which states that regions have the authority and responsibility to regulate and coordinate the interests of the community by applicable laws and regulations through the implementation of the principle of regional autonomy.<sup>10</sup> However, regional autonomy does not only focus on demands for greater authority but also on the nature of regional autonomy itself. Regional autonomy arises from the need for effective governance to provide better services to the people of Indonesia.<sup>11</sup> Thus, regional autonomy must also be interpreted as an effort to regulate the government with authority to meet the community's needs.<sup>12</sup>

To regulate its region, the regional government has the authority to establish regional regulations as part of its regional autonomy authority or as an implementer of the laws and regulations above it. This is stated in Law No. 12 of 2011; based on this law, regional regulations have binding legal force whose hierarchy is below the law. Regional regulations include provincial or district/city regulations and gubernatorial or regent/mayor regulations. Based on these provisions, regional regulations are recognized and have binding legal force as long as they are by higher laws and regulations or are formed based on authority. Moreover, based on Law Number 23 of 2014, gubernatorial and regent/mayor regulations are formed to implement regional regulations or based on the authority of statutory regulations. Therefore, the material's content cannot deviate from what is in the regulations above it, which have a higher hierarchy.<sup>13</sup>

Law Number 12 of 2011 regulates the content of statutory regulations but does not regulate regional regulations. In addition, Regulation of the Minister of Home Affairs No. 120 of 2018, which amends Regulation of the Minister of Home Affairs No. 80 of 2015 concerning the Formation of Regional Legal Products, also does not regulate the content of regional regulations. Let's look closely at the provisions contained in the two regulations. It can be seen that there are no laws or regulations explicitly regulating the content of regional head regulations.<sup>14</sup> Therefore, legal issues arise that need attention, such as determining what content material can be regulated in regional head regulations, especially regarding

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<sup>10</sup> Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *BESTUUR*, 10.1 (2022), 68 <https://doi.org/10.20961/bestuur.v10i1.59098>

<sup>11</sup> Charlotte Setijadi, 'The Pandemic as Political Opportunity: Jokowi's Indonesia in the Time of Covid-19', *Bulletin of Indonesian Economic Studies*, 57.3 (2021), 297–320 <https://doi.org/10.1080/00074918.2021.2004342>

<sup>12</sup> I. Made Subawa and others, 'Observance of the Legal Choice for the Settlement of Indonesia's Past Gross Violations of Human Rights', *Yuridika*, 39.2 (2024), 231–56 <https://doi.org/10.20473/ydk.v39i2.44828>

<sup>13</sup> Ni Luh Gede Astariyani and Made Nurmawati, 'Drafting the Substance Materials of The Regional Regulation of Badung Regency on Public Service', *Udayana Journal of Social Sciences and Humanities (UJoSSH)*, 1.1 (2017), 53 <https://doi.org/10.24843/UJoSSH.2017.v01.i01.p08>

<sup>14</sup> Subawa and others.

administrative sanctions, and whether or not the regulation of sanctions in regional head regulations is appropriate.

This is important to study because the law must be based on legal justice, certainty, and benefits. The ambiguity of the rules and regulations made by the government and lawmakers is not in line to provide clear direction for individuals and government officials. Unambiguous language is needed to prevent confusion in legal matters. This applies to legislative and executive institutions tasked with producing legal products. Compliance with laws and regulations is crucial to ensure that the government can implement them without causing confusion or misinterpretation, especially on the content of sanctions that require rules that provide legal certainty so that there is no deviation in the formation of sanction articles in regional regulations.

Conceptually, regional regulations as part of laws and regulations cannot be separated from the understanding related to the legal regulation system. Legislation (*wetgeving*, *gesetzgebung*, legislation) in question means: first, the process of forming state regulations from the highest type, namely laws (*wet*) to the lowest, which are produced through attribution or delegation of legislative power (*wetgevendemacht*, legislative power), second, the entire product of state regulations issued at the central and regional levels. In Indonesia's hierarchy of laws and regulations, regional regulations are the lowest. However, they have a strategic meaning to provide regional autonomy content.<sup>15</sup> Regional Regulations are a form of law that characterizes regions with the right to regulate and manage their regional affairs.

Based on several previous studies, Igrisa et al. (2023) concluded that the formation of regional regulations must harmonize with the draft regional regulations to avoid overlapping regional regulations. This study emphasizes a case study of the governor's regulations in Gorontalo Province, which was then proposed to be revised by referring to philosophical, sociological, and legal foundations.<sup>16</sup> In another study regarding the formation of legislation, Wedhatami et al. (2023) examined the necessity of implementing regional legal products. This study focuses on ways to form good legislation that must accommodate community participation after the amendment to Law Number 12 of 2011.<sup>17</sup> Al-Fatih et al. (2023) researched the model for structuring delegated legislation in the

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<sup>15</sup> Simon BUTT, 'The Indonesian Constitutional Court: Reconfiguring Decentralization for Better or Worse?', *Asian Journal of Comparative Law*, 14.1 (2019), 147–74 <https://doi.org/10.1017/asjcl.2018.19>

<sup>16</sup> Siti Rahmawaty Igrisa, Nur Insani, and Marwan Marwan, 'Harmonization of Contents the Draft Regional Regulation on Financial Management of Gorontalo Province', *Amsir Law Journal*, 4.2 (2023), 194–205 <https://doi.org/10.36746/alj.v4i2.206>

<sup>17</sup> Bayangsari Wedhatami, Ratih Damayanti, and Cindy Ayu Prasasi, 'Navigating Regional Regulatory Changes in Indonesia: An In-Depth Analysis of Post-Amendment Implementation of Law Number 12 of 2011 on Legislation Formation', *Unnes Law Journal*, 9.2 (2023), 237–64 <https://doi.org/10.15294/ulj.v9i2.78642>

hierarchy of legislation. Still, his research focused on regulations at the ministerial and state institution levels that have the potential to overlap.<sup>18</sup>

Another study by Lenaerts and Desomer (2005) examines the fact that the European Union legal system does not recognize the hierarchy of legal acts, which is found in the national legal order. The hierarchy in question is a pre-established ranking of various types of legal acts according to the democratic legitimacy of their respective makers and the adoption procedure, which is used as a means to resolve conflicts between multiple types of legal acts.<sup>19</sup> All of the above studies are different from this article, which examines the validity of the content of sanctions in regional head regulations that deviate or do not comply with higher regulations by taking a comparative method with other countries, namely Japan. Japan's parliamentary system of government limits the authority of Japan's autonomous regional governments, and regulations are more regulated at these national level. This certainly affects the validity of regulations in Japan's regions, both prefectural and municipal regulations.

Considering Hans Kelsen's Pure Theory, it is stated that the basis for the validity of a norm can only be another norm, which can be seen as a norm higher in the hierarchy. The legal order is seen as a structure of higher and lower norms.<sup>20</sup> Thus, regulations must not only be announced but also well designed in terms of how they are standardized (drafted/made) so that they do not contradict higher regulations and impact their validity.<sup>21</sup> A law cannot prohibit what another law permits. The law must not ask for the impossible.<sup>22</sup> The minimum moral quality of a legal product will encourage resistance to abuse by those in power.<sup>23</sup> This means that laws made by complying with morality, one of which is that laws cannot conflict with other rules, provide limitations for the authorities so as not to form arbitrary laws.

Therefore, this study was conducted to examine how the arrangement of the material content of regional head regulations, especially in creating articles on sanctions. This article discusses the validity of regional regulations that regulate

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<sup>18</sup> Sholahuddin Al-Fatih and others, 'The Hierarchical Model of Delegated Legislation in Indonesia', *Lex Scientia Law Review*, 7.2 (2023), 629–58 <https://doi.org/10.15294/lesrev.v7i2.74651>

<sup>19</sup> Koen Lenaerts and Marlies Desomer, 'Towards a Hierarchy of Legal Acts in the European Union? Simplification of Legal Instruments and Procedures', *European Law Journal*, 11.6 (2005), 744–65 <https://doi.org/10.1111/j.1468-0386.2005.00285.x>

<sup>20</sup> Thomas Olechowski, 'Legal Hierarchies in the Works of Hans Kelsen and Adolf Julius Merkl', 2018, pp. 353–62 [https://doi.org/10.1007/978-3-319-73037-0\\_9](https://doi.org/10.1007/978-3-319-73037-0_9)

<sup>21</sup> Mark Bennett, 'Leaving the Hart-Fuller Debate and Reclaiming Fuller: Form, Agency, and Morality in Kristen Rundle's Forms Liberate', *Victoria University of Wellington Law Review*, 44.3/4 (2013), 461–86 <https://doi.org/10.26686/vuwlr.v44i3/4.4990>

<sup>22</sup> Colleen Murphy, 'Lon Fuller and the Moral Value of the Rule of Law', *Law and Philosophy*, 24.3 (2005), 239–62 <https://doi.org/10.1007/s10982-004-7990-3>

<sup>23</sup> Wibren van der Burg, 'Lon L. Fuller's Lessons for Legislators', *SSRN Electronic Journal*, 2014 <https://doi.org/10.2139/ssrn.2460614>

administrative sanctions that do not comply with the above rules and how binding they are when applied. It is because, in the preparation of legislation, there are several legislative theories and rules for the formation of legislation that must be obeyed. Legislative theories and rules of formation are essential guidelines for analyzing the process of drafting legislation formed by the legislature.<sup>24</sup> The ideal concepts for forming regional regulations can be used to assess the suitability of the content and the validity of regional head regulations that deviate from the rules for forming content.

## 2. Research Method

This study uses legal settlement based on micro-legal research, which Mathias Siems defines as a classification used to determine the originality of scientific legal work.<sup>25</sup> This is related to the use of coherence and consistency of legal materials through the approach of interpretive, synthetic, and systemic theories and historical,<sup>26</sup> including various aspects that influence applicable law.<sup>27</sup> The statutory and conceptual approaches are used to examine regulations related to the formation of regional regulations, especially in creating administrative sanction articles and their validity if there are deviations from the material content. The theory of regulatory hierarchy and legislative drafting is a determinant in determining the validity of a regulation. A comparative approach is used to determine how the formation of sanctions in regional regulations in Japan is valid so that a new model can be obtained for the formation of administrative sanction rules. Data is collected qualitatively to strengthen arguments and draw conclusions that are relevant to the title and discussion.

## 3. Results and Discussion

### *Unclear Sanction Rules in Regional Head Regulations in Indonesia*

Based on Law Number 23 of 2014, sanctions that can be included in regional regulations are regulated. This regulation is limited to the contents of regional regulations, not to regional head regulations. It is regulated that regional regulations can contain sanctions; in this case, what is meant is administrative sanctions. Some of the provisions are that regional regulations can stipulate provisions for imposing forced costs for implementing regional regulations, in whole or in part, against violators, by-laws, and regulations. Regional regulations

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<sup>24</sup> Susan S. Silbey, *Legal Culture and Legal Consciousness, International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, Second Ed (Elsevier, 2015), XIII <https://doi.org/10.1016/B978-0-08-097086-8.86067-5>

<sup>25</sup> Andri Gunawan Wibisana, 'Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya', *Jurnal Hukum & Pembangunan*, 49.2 (2019), 471 <https://doi.org/10.21143/jhp.vol49.no2.2014>

<sup>26</sup> Mathias M. Siems, 'The Taxonomy Of Interdisciplinary Legal Research: Finding The Way Out Of The Desert', *Journal of Commonwealth Law and Legal Education*, 7.1 (2009), 5-17 <https://doi.org/10.1080/14760400903195090>

<sup>27</sup> Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law', *Erasmus Law Review*, 2016 <https://doi.org/10.5553/ELR.000055>

can impose imprisonment or fines. In addition to these sanctions, Regional Regulations can consider imposing sanctions by restoring the original condition and imposing administrative sanctions. These administrative sanctions can be a) verbal warnings, b) written warnings, or c) temporary suspension of activities. Sanctions for violations of the Regional Government Law can be in the form of permanent suspension of activities, temporary or permanent revocation of permits, administrative fines, and/or other administrative sanctions as stipulated in laws and regulations. However, the sanctions that can be included in Regional Head Regulations are not explained in detail, but it is stated that these regulations apply *mutatis mutandis* to regional regulations. This causes legal uncertainty for the formation of regional head regulations because there is no comprehensive regulation on the content and sanctions of regional legal products made by the Governor, Regent, and Mayor.

Regional head regulations are laws and regulations whose formation authority is held by the Regent/Mayor and Governor. These regulations are independent of the legislature and are formed solely by the executive.<sup>28</sup> Regional head regulations drafted by regional heads generally aim to implement regional regulations more technically. Therefore, these regulations must not conflict with regional regulations to provide quality public services to the community. Legal products must not only be rigid and punitive but must also be a guideline for the community's daily actions, providing legal strength and direction.<sup>29</sup> Creating a legal order or product relating to internal government is a matter of public interest.<sup>30</sup> However, incomplete regulation-making guidelines are also confusing for regional regulation-makers.

Indroharto stated the reasons that justify the formation of regional head regulations that are not regulated in detail are that the scope of administration is vast, so it is not practical to include it entirely in the law.<sup>31</sup> In addition, the regional head's authority is needed to efficiently provide public services quickly. Finally, technical matters that cannot be detailed in the law require more precise regulation by the regional head. Regional head regulations, also known as policy regulations because of their responsibility to provide public services, have different consequences from other laws and regulations. Policy regulations serve

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<sup>28</sup> Fitra Arsil, Qurrata Ayuni, and Ariesty Tri Mauleny, 'The Disappearance of the "Legislative Model": Indonesian Parliament's Experience in Response to Covid-19"', *The Journal of Legislative Studies*, 30.3 (2024), 265–87 <https://doi.org/10.1080/13572334.2022.2067948>

<sup>29</sup> Asrinaldi, Mohammad Agus Yusoff, and dan Zamzami Abdul Karim, 'Oligarchy in the Jokowi Government and Its Influence on the Implementation of Legislative Function in Indonesia', *Asian Journal of Comparative Politics*, 7.2 (2022), 189–203 <https://doi.org/10.1177/2057891121995564>

<sup>30</sup> Bagus Hermanto and Nyoman Mas Aryani, 'Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice', *The Theory and Practice of Legislation*, 9.3 (2021), 425–50 <https://doi.org/10.1080/20508840.2022.2027162>

<sup>31</sup> Roland Rich, 'Designing the DPD: Indonesia's Regional Representative Council', *Bulletin of Indonesian Economic Studies*, 47.2 (2011), 263–73 <https://doi.org/10.1080/00074918.2011.585953>

as a means of implementing government initiatives during regional government operations.

In this case, the direction of the regional head can be said to be a concrete action of the government intended to advance the function of government within its jurisdiction. These policy regulations are only provisions and decisions without causing legal consequences. The position of regulations, including regional head regulations, follows previously established regional regulations.<sup>32</sup> This is by the Regional Government Law, which outlines that regional heads establish regional head regulations to implement regional regulations. This means that regional regulations delegate authority to regional heads to make regulations and technical arrangements, namely regional head regulations.

For example, Bali Governor Regulation No. 1 of 2020 concerns managing Balinese Special Beverages, which regulates sanctions provisions. Based on the Bali Arak Governor Regulation, business actors who violate the provisions of the rules can be subject to administrative sanctions. Likewise, artisans or cooperatives who violate are also subject to administrative sanctions. Administrative sanctions include verbal and/or written warnings, temporary suspension of fermentation, distillation, distribution/sale of fermented and/or distilled Balinese unique beverages, and revocation of business licenses.

Sanctions are given by the provisions of laws and regulations. The imposition of sanctions is based on the need for legal certainty and ease of business credit for producing fermented and/or distilled Balinese unique beverages through business partnerships. This approach ensures that producers meet quality and food standards that guarantee consumer protection, as well as the obligation to distribute fermented and/or distilled beverages typical of Bali that are specifically for specific purposes and whose distribution is limited by the contents of the Governor's Regulation on Balinese Arak. Sanctions will be imposed by the provisions of the Laws and Regulations.

The regulations above show that regional head regulations can contain sanctions but are limited to administrative sanctions.<sup>33</sup> This means that regional head regulations are considered valid when *mutatis mutandis* are interpreted only as administrative sanctions, not criminal sanctions. However, to avoid ambiguity or uncertainty about the appropriateness of including provisions on sanctions,

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<sup>32</sup> Ni Luh Gede Astariyani, Ni Putu Wiwin Setyari, and Bagus Hermanto, 'Regional Government Authority in Determining Policies on the Master Plan of Tourism Development', *Kertha Patrika*, 42.3 (2020), 210 <https://doi.org/10.24843/KP.2020.v42.i03.p01>

<sup>33</sup> Ratih Adiputri, 'The Empowerment of Parliament in the Transition from an Authoritarian to a Democratic Regime: Indonesian Experiences and Problems', *Parliaments, Estates and Representation*, 38.1 (2018), 49–62 <https://doi.org/10.1080/02606755.2018.1427319>



including criminal sanctions, in regional head regulations.<sup>34</sup> Criminal sanctions are regulated only by laws or regulations instead of laws and regional regulations. It is generally believed that regional head regulations should not contain sanctions, especially criminal sanctions. This means that regional head regulations are not allowed to regulate criminal sanctions. However, no specific rules regulate the content of regional head regulations. Likewise, there are rules that state that the rules on sanctions in regional head regulations are *mutatis mutandis*, but this is excluded for criminal sanctions. This is because it is essential to maintain objectivity and avoid subjective assessments when discussing criminal sanctions. The application of sanctions results in a reduction in rights for individuals or the community.

More important than the debate on the rules for formulating sanctions in regional head regulations is the debate on the validity of regional head regulations whose sanction content deviates from regional regulations, which are at a higher level. Sanctions are formulated to increase the effectiveness of the law and ensure compliance because the community tends to ignore the law without consequences.<sup>35</sup> Pospisil suggests including sanctions in regulations. Sanctions are an essential aspect of the law, along with authority, purpose, rights, and obligations. They enforce the law and ensure compliance since society often ignores laws without consequences. Sanctions are used to deter and coerce those who violate them, build social order, and achieve the objectives of the law.

However, what if the content of the sanctions regulated in the regional head regulation is not regulated in the existing regional regulation, or even deviates from it. Worse, the regional head regulation has passed the harmonization and synchronization stage, and it has been stipulated. Is this regional head regulation still valid and needs to be implemented or not. There are implications if a law is passed with a procedure that deviates from the procedure stipulated in the Constitution or higher regulations or if the law has content that the Constitution prohibits. Given that higher regulations stipulate the prerequisites that form the basis for the validity of the law. Lower regulations further explain higher legislation and/or function to implement higher and general regulations.<sup>36</sup>

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<sup>34</sup> Gabriel Lele, 'Revisiting the Virtues of Veto Point: Political Corruption in Post-Soeharto Indonesia', *The Journal of Legislative Studies*, 26.2 (2020), 275–94 <https://doi.org/10.1080/13572334.2020.1738688>

<sup>35</sup> Ahmad Siboy and others, 'Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State', *BESTUUR*, 11.1 (August) (2023), 144 <https://doi.org/10.20961/bestuur.v11i1.71055>

<sup>36</sup> Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith, 'Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia', *Journal of Indonesian Legal Studies*, 8.1 (2023), 333–78 <https://doi.org/10.15294/jils.v7i2.60096>

The hierarchy of legal regulations is essential in a country that adopts a civil law system. This hierarchy will affect the suitability of the regulations below to the rules above. Hans Kelsen argues that law regulates how it is formed because a legal norm determines how other legal norms are made, to a certain degree, determining the content of the different norms.<sup>37</sup> Therefore, one legal norm is valid because it is made in a manner determined by another legal norm. Norms are tiered and layered in a hierarchical structure. The consequence is that the below legal norms apply and are sourced from and based on higher norms. Likewise, higher norms originate and are based on even higher norms until they stop at the highest norm.<sup>38</sup>

Thus, ideally, if there are implementing regulations that deviate from the contents of the higher regulations, then any deviation from these prerequisites, no matter how small, must result in the law having no legal force; that is, the law is null and void. However, in practice in Indonesia, some regional regulations remain in effect. This is related to regulations that have been set that must still be implemented as long as there is no request for a judicial review. In the context of regional regulations, the judicial review is submitted to the Supreme Court. Another reason is the unawareness of policymakers and the addressee if there is a deviation from the rules. This practice is highly deviant, but it happens. Ideally, lower regulations or implementing regulations remain null and void by law. The higher regulations are used as the legal basis as long as there are no new implementing regulations.<sup>39</sup>

### ***Validity of Administrative Sanctions Regulations on Deviant Local Regulations in Japan***

Assessment of the validity of statutory regulations aims to ensure that a regulation meets the legal requirements of being valid, effective, and fair.<sup>40</sup> The regulatory frameworks of Japan and Indonesia differ fundamentally due to their governmental systems. Japan implements a parliamentary system of government with a centralized structure.<sup>41</sup> Meanwhile, Indonesia implements a presidential system of government in a decentralized unitary state.<sup>42</sup> Japan applies the concept

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<sup>37</sup> Olechowski.

<sup>38</sup> John GILLESPIE, 'Public Discourse and Constitutional Change: A Comparison of Vietnam and Indonesia', *Asian Journal of Comparative Law*, 11.2 (2016), 209–18 <https://doi.org/10.1017/asjcl.2016.17>

<sup>39</sup> Aurel Croissant, 'Provisions, Practices and Performances of Constitutional Review in Democratizing East Asia', *The Pacific Review*, 23.5 (2010), 549–78 <https://doi.org/10.1080/09512748.2010.521851>

<sup>40</sup> Masfi Sya'fiatul Ummah, *Rules of Law and Laws of Ruling: On the Governace of Law, Sustainability (Switzerland)*, 2019, xi <https://doi.org/10.4324/9781315607139>

<sup>41</sup> H. Koga, S. Bouzarovski, and S. Petrova, 'Unsettling Mainstream Academic Debates on Community-Based Energy Governance: Exploring the Japanese Experience', *Renewable and Sustainable Energy Reviews*, 207, July 2023 (2025), 114994 <https://doi.org/10.1016/j.rser.2024.114994>

<sup>42</sup> Takeyoshi Imai, 'Evolution in Japan's Legal System for Ensuring Traffic Safety', *IATSS Research*, 48.3 (2024), 456–63 <https://doi.org/10.1016/j.iatssr.2024.07.005>

of a tiered legal pyramid hierarchy to assess the validity of its laws and regulations.<sup>43</sup> Japan's parliamentary system has consequences for more strictly assessing the level of validity of the regulatory hierarchy, even though several Japanese regulations are only regulated at the national level.

However, the Japanese government still divides power vertically among regional governments in its administrative governance.<sup>44</sup> Japan and Indonesia both apply the principle of local autonomy. The division of Japanese regional government power is classified into two levels: first, prefectures are regional authorities consisting of municipalities, and each prefecture has a governor and a legislative council as policymakers. Second, municipalities are entities divided into cities, sub-districts, and villages. Each municipality has a mayor and a city council as policymakers. In addition, local public entities are established for particular purposes, such as districts led by district mayors. Meanwhile, in Indonesia, the central government gives the central government's vertical division of government power to provincial, district/city, sub-district, and village governments. The consequences of the division of autonomous regions in Japan have implications for the authority to make policies that require each regional area to have regional regulations subject to national regulations. The parliamentary system encourages stability, harmony, and efficiency in making regional regulations relevant to the above rules.<sup>45</sup> However, the consequence is that the authority of Japan's autonomous regional governments is more limited. In contrast, regional regulations in Indonesia show greater regional independence and flexibility because they are influenced by the principle of decentralization, which balances national and regional interests but can challenge the consistency and coordination of regulations between regions.<sup>46</sup>

The authority of Japanese local governments to establish effective local regulations is closely related to the regulation of sanctions, one of which is administrative sanctions.<sup>47</sup> Prefectural and municipal governments stipulate administrative sanctions in local regulations that follow the abovementioned regulations. These regulations are generally contained in the Administrative Procedure Act, which regulates general administrative procedures.<sup>48</sup> The

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<sup>43</sup> Masfi Sya'fiatul Ummah, *Japanese Legal System, Sustainability (Switzerland)*, 2019, xi <https://doi.org/10.4324/9781843143222>

<sup>44</sup> Ummah, *Japanese Legal System*, xi.

<sup>45</sup> Kay Wah Chan, 'Justice System Reform and Legal Ethics in Japan', *Legal Ethics*, 14.1 (2015), 73–108 <https://doi.org/10.5235/146072811796373041>

<sup>46</sup> Wardhani, Noho, and Natalis.

<sup>47</sup> Gabriela A. Oanta, 'The Application of Administrative Sanctions in the Fight against IUU Fishing: An Assessment of Spanish Practice', *Marine Policy*, 144.May (2022), 105211 <https://doi.org/10.1016/j.marpol.2022.105211>

<sup>48</sup> Jin-Li Hu, Satoshi Honma, and Shen-Yuan Chang, 'Renewable Energy Generation Efficiency of Japan's Administrative Regions: An Application of the Dynamic Slacks-Based Measure', *Next Energy*, 1.3 (2023), 100029 <https://doi.org/10.1016/j.nxener.2023.100029>

classification of administrative sanctions in Japan is as follows:<sup>49</sup> First, a warning (*keikoku*) is a light sanction given for minor administrative violations so that the violator can correct the maladministration that has been committed. Second, an order to improve (*shidō/mērei*) is an order issued by the government so that the violator makes efforts to enhance and increase the evaluation of administration-related actions. Third, an administrative fine (*karyo*) is a financial sanction for administrative policy violations. The nominal fine is determined in a special law that regulates the types of administrative violations. Fourth, the revocation of a permit (*menkyo no torikeshi*) is the revocation of a license by the government, such as a business permit and an environmental permit.<sup>50</sup> Fifth, asset confiscation is confiscating objects that the Japanese government violates and causes public losses.<sup>51</sup> Sixth, public disclosure is the announcement of the violator's name and details of the violation.<sup>52</sup>

Japanese administrative sanctions are contained in highly structured and standardized regulations with central regulations. The regulations clearly define the scope and application of sanctions in various sectors. Japanese regulations are accompanied by clear guidelines and updates consistently communicated to the public and regulated entities. However, if a local regulation conflicts with national regulations, the Japanese central government can override or revise the local regulation. This can create uncertainty about the enforceability of sanctions and weaken the deterrent effect of sanctions.<sup>53</sup>

Meanwhile, suppose the application of administrative sanctions in a regional regulation is invalid with the abovementioned regulations. In that case, there are several legal consequences imposed by the Japanese government, including (1) Cancellation or elimination of regulations by the central government; this is regulated in the Local Autonomy Law, which gives the central government the authority to revise or cancel regulations at the regional level; (2) Judicial review by the court, testing at the supreme court can be submitted if there is a party that files an objection to the substance of the regional regulation; (3) Suspension of the implementation of regional regulations is a temporary measure against regional regulations that are in the evaluation or review stage, its function is to prevent the negative impact of the regulation; and (4) Implementation of corrective policies,

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<sup>49</sup> Chan.

<sup>50</sup> Hiroshi Ohta and Brendan Barrett, 'Politics of Climate Change and Energy Policy in Japan: Is Green Transformation Likely?', *Earth System Governance*, 17.July (2023), 100187 <https://doi.org/10.1016/j.esg.2023.100187>

<sup>51</sup> Chengquan Zhang and others, 'Multi-Agent Simulation of the Effects of Japanese Electricity Market Policies on the Low-Carbon Transition', *Energy Strategy Reviews*, 52.April 2023 (2024), 101333 <https://doi.org/10.1016/j.esr.2024.101333>

<sup>52</sup> M. Lomaeva and others, 'Subnational Governments and Non-State Actors in Environmental Governance: Japan, Russia, and the Northern Fur Seal', *Polar Science*, 41.November 2023 (2024), 101099 <https://doi.org/10.1016/j.polar.2024.101099>

<sup>53</sup> Lomaeva and others.

such as budget restrictions or subsidies if the policy causes more general conflicts. Meanwhile, in Indonesia, the inconsistency between regional regulations and the regulations below them can result in the cancellation of the judicial review agenda. Indonesia implements a more stringent and formal judicial role in the legal hierarchy structure to ensure that administrative sanctions in regional regulations are always by higher norms.

In this study, one example of the application of administrative sanctions at the regional regulation level was taken, namely regarding the production and sale of wine. The Japanese government regulates wine production guidelines at the national level, not local regulations.<sup>54</sup> The scope of the substance is liquor tax, wine labeling, production methods, materials used, sanitation, registration of geographical indications, and administrative sanctions. However, it is interesting because if the local government wants to make particular guidelines, it is based on regional initiatives, not legal orders. For example, the Yamanashi and Hokkaido prefectures are areas that have special regulations for wine because the intensity of production is the largest in Japan. The regulatory framework related to wine in Japan is practical by implementing fines and license revocations. Still, due to the lack of solid local regulatory control, local governments have limited authority to enforce certain practices outside the scope of national law.<sup>55</sup>

Thus, as in Indonesia, valid administrative sanctions are enforced and substantially regulated in Japanese local, prefectural, and municipal regulations. The form of regulatory reform related to the regulation of Japanese administrative sanctions aims to simplify administrative procedures and increase the efficiency of sanction enforcement, such as reducing bureaucracy and accelerating the law enforcement process. In addition, Japan has always innovated and digitalized administrative sanction enforcement. This makes reporting violations and managing administrative data more effective in increasing transparency and accountability. The Japanese government believes that collaboration between government institutions at the regional level is essential in creating an integrated approach to effective and standardized administrative sanction enforcement.

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<sup>54</sup> Nicolas Depetris Chauvin and others, 'Country-of-Origin as Bias Inducer in Experts' Wine Judgments - A Sensory Experiment in a World Wine Fair', *International Journal of Gastronomy and Food Science*, 35.December 2023 (2024) <https://doi.org/10.1016/j.ijgfs.2024.100883>

<sup>55</sup> Zihan Wang and others, 'Quality of Jujube Wines Fermented by Different Jujube Varieties: Physicochemical Parameters, Antioxidant Activity, Non-Volatile and Volatile Substances', *Lwt*, 208.May (2024), 116698 <https://doi.org/10.1016/j.lwt.2024.116698>

### *Validity Model of Administrative Sanctions Arrangements in Regional Regulations*

A regulation must fulfill the ideality of legal objectives to realize an ideal model of validity for regulating sanctions in regional regulations.<sup>56</sup> Legal norms must fulfill three main objectives: certainty, utility, and justice. Hans Kelsen argued that the chain of validity would form a tiered legal hierarchy pyramid or Stufenbau theory to ensure the achievement of legal objectives.<sup>57</sup> Kelsen explained that each legal norm has a different position in the legal system. The norms at a higher level regulate the norms below them. Each norm is declared valid if it follows the material content standards set by higher regulations.

Answering the question related to the validity of the material content of regional and regional head regulations, it is indeed not precisely and rigidly regulated in Law No. 12 of 2011. The fundamental difference in controlling the material content of regional regulation sanctions has been regulated in Law No. 23 of 2014. However, the material content of regional head regulation sanctions is not explained in detail, but it is stated that the regulation applies *mutatis mutandis* to the regional regulations above it. Regional regulations can regulate sanctions in the form of administrative sanctions and/or criminal sanctions, such as imprisonment or fines. Meanwhile, regional head regulations can also determine sanctions in their material content but are limited to administrative sanctions and are not allowed to regulate criminal sanctions. This means that regional head regulations are considered valid when *mutatis mutandis* are interpreted only as administrative sanctions, not criminal sanctions.

The ideal validity of the regulation of sanctions in regional and regional head regulations is assessed from the material and formal standardization of the abovementioned regulations. Thus, to determine the validity of sanctions regulations, Kelsen sets out the following standards of regulatory validity:<sup>58</sup> First, the suitability of the source of the material content of the regulation. It is said to be valid if the source of sanctions in regional regulations must be based on the material content of the legislation above it, with the provision that it can regulate administrative or criminal sanctions. Meanwhile, the validity of the source of sanctions in regional head regulations applies *mutatis mutandis*, which is limited to administrative sanctions, not to regulate criminal sanctions therein. The application of criminal sanctions results in a reduction of rights for individuals or communities. Therefore, it is essential to maintain objectivity when discussing criminal sanctions.

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<sup>56</sup> Rafael González-Val, Domingo P. Ximénez-de-Embún, and Fernando Sanz-Gracia, 'A Long-Term, Regional-Level Analysis of Zipf's and Gibrat's Laws in the United States', *Cities*, 149, September 2023 (2024) <https://doi.org/10.1016/j.cities.2024.104946>

<sup>57</sup> Sandrine Baume, 'On Political Theology: A Controversy between Hans Kelsen and Carl Schmitt', *History of European Ideas*, 35.3 (2009), 369–81 <https://doi.org/10.1016/j.histeuroideas.2009.01.001>

<sup>58</sup> Baume.

Second, conformity with higher norms. In Indonesia, inconsistencies between regional regulations and the rules below them can result in the cancellation of the judicial review agenda. Meanwhile, Japan tends to resolve problems through administrative mechanisms. Consequently, the central government can order regional governments to revise conflicting regulations without bringing the case to court. This means that although the principle of conformity is recognized, the correction mechanism tends to be administrative, not judicial. The Japanese government considers this to be more effective and efficient.

Third, the procedure for establishing the validity of sanctions.<sup>59</sup> If there is a procedure for forming regional regulations not by Japan or Indonesia, then all substances, including administrative sanctions, are considered invalid. So, to achieve the ideal validity of legal regulations, validity is realized materially and formally—fourth, control and supervision of the validity of regulations. Japan recommends a more flexible administrative supervision system where the central and regional governments have the authority to supervise administrative sanctions so that if there is a violation, the central government also has the right to evaluate. However, Japan rarely opens judicial review because the primary control is more administrative. This differs from Indonesia, which prioritizes judicial review's role in assessing validity and conformity with normative objectives.

Thus, if the ideal parameters for regulating administrative sanctions in regulations are carried out correctly, then the law is oriented towards achieving its three main objectives, namely, guaranteeing legal certainty as a protector from arbitrary actions.<sup>60</sup> Administrative sanctions in regional regulations must be clear and valid. They must be unambiguous about the type of violation, enforcement procedures, and sanctions received.<sup>61</sup> The regulatory recommendations that can be implemented in Indonesia are the standardization of administrative sanctions in regional regulations to ensure that the law is appropriate between regions. Essential elements of standardization of administrative sanctions in regional regulations that can also be implemented include the national legal framework, proportionality of sanctions based on the type of violation, periodic review and evaluation mechanisms, transparency and internalization to the community, and the use of technology in enforcing administrative sanctions. So, although each region has the authority to formulate special regulations for its local needs, implementing administrative sanctions remains within the framework set by

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<sup>59</sup> Baume.

<sup>60</sup> Salahuddin Gaffar and others, 'The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia', *Heliyon*, 7.4 (2021), e06690 <https://doi.org/10.1016/j.heliyon.2021.e06690>

<sup>61</sup> Vladislav Arkhipov and Victor Naumov, 'The Legal Definition of Personal Data in the Regulatory Environment of the Russian Federation: Between Formal Certainty and Technological Development', *Computer Law and Security Review*, 32.6 (2016), 868–87 <https://doi.org/10.1016/j.clsr.2016.07.009>

national standardization. Thus, legal certainty in implementing administrative sanctions can be guaranteed so that regulations become valid and effective.<sup>62</sup>

Second, a guarantee of legal benefits<sup>63</sup> The application of administrative sanctions in regional regulations can be assessed from aspects related to efficiency, community compliance, and positive impacts on public order.<sup>64</sup> The application of administrative sanctions can provide benefits, including preventing violations and increasing compliance;<sup>65</sup> efficiency in law enforcement; educational and corrective approaches;<sup>66</sup> increasing the role of technology in enforcing administrative sanctions, increasing public trust, and having a positive economic impact.

Third, guaranteeing legal justice. Ideal legal justice is a condition in which the law is enforced correctly and provides a sense of justice evenly distributed to all parties. Recommendations for a model for implementing administrative sanctions in regional regulations in a structured and standardized manner, such as Japan, can consistently guarantee legal justice. Administrative sanctions in Japan are determined by clear guidelines and adjusted to the level of violation. The forms of guaranteeing legal justice that can be achieved as a result of this standardization include equality of treatment, accountability, and transparency in law enforcement;<sup>67</sup> efficiency of enforcement and reduction of burden on the justice system; and the use of technology in supporting standardization and legal justice.<sup>68</sup>

Thus, the administrative sanction regulation model in regional and regional head regulations must at least meet the validity of the hierarchy of laws and regulations per Stufenbau's theory and the purpose of law formation. It becomes valid if the source of sanctions in regional regulations is the material content of the laws above, with the provision that it can regulate administrative and criminal

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<sup>62</sup> Alberto Febbrajo, *Law, Legal Culture and Society*, Law, Legal Culture and Society, 2018 <https://doi.org/10.4324/9781351040341>

<sup>63</sup> Joanna Maria Studzinska, 'Electronic Bailiff Files as a Tool for Computerization the Administration of Justice in the Polish Legal System', *Procedia Computer Science*, 192 (2021), 2943–51 <https://doi.org/10.1016/j.procs.2021.09.066>

<sup>64</sup> Febbrajo.

<sup>65</sup> Quyen Thao Dang and others, "'Caught in the Middle": Effects on and Reactions of Vietnamese Timber Exporters in the Context of US-China Economic Sanctions', *Journal of World Business*, 59.6 (2024), 101583 <https://doi.org/10.1016/j.jwb.2024.101583>

<sup>66</sup> Petter Gottschalk, 'How Convenient Is Deviance to Circumvent and Evasion Sanctions against Russia? The Case of Alleged Economic Crime in a Norwegian Seafood Company', *Journal of Economic Criminology*, 3.December 2023 (2024), 100045 <https://doi.org/10.1016/j.jeconc.2023.100045>

<sup>67</sup> Fabio Bassan and Maddalena Rabitti, 'From Smart Legal Contracts to Contracts on Blockchain: An Empirical Investigation', *Computer Law and Security Review*, 55.September (2024), 106035 <https://doi.org/10.1016/j.clsr.2024.106035>

<sup>68</sup> Niklas Kruse and Julius Schöning, 'Legal Conform Data Sets for Yard Tractors and Robots: AI-Based Law Compliance Check on the Right to One's Image', *Computers and Electronics in Agriculture*, 223.March (2024), 109106 <https://doi.org/10.1016/j.compag.2024.109106>



sanctions. Meanwhile, the material content of regional head regulations applies *mutatis mutandis*, which is limited to administrative sanctions, not criminal ones. The pattern of implementing administrative sanctions in Japan can be used as a recommendation for administrative sanctions in Indonesia.

Standardizing sanction enforcement is an essential point in its regulation. The enforcement of administrative sanctions in Japan is centralized and consistent and is also supported by sophisticated technology and a comprehensive data system,<sup>69</sup> such as digitalizing administrative procedures, using AI and data analysis, real-world surveillance and monitoring technology, online platforms for fine payment and dispute resolution, and blockchain for transparent data management.<sup>70</sup> Meanwhile, in Indonesia, there are still many variations in law enforcement between regions, with technological gaps. Reliance on manual processes still creates inconsistencies and inefficiencies in law enforcement.

The enforcement of administrative sanctions in Japan is also greatly influenced by the internalization of the culture of community discipline towards customs, regulations, and government policies.<sup>71</sup> The Japanese culture of discipline creates a higher level of social order than Indonesia.<sup>72</sup> Chinese culture's influence on values and morals created a complex structure in which administrative sanctions were applied by collaborating with existing traditions.<sup>73</sup> For example, administrative fines in Japan are often effective because they are implemented in a cultural context that values harmony, legitimacy, and customary order. Meanwhile, in Indonesia, the variety of regulations results in differences in the internalization of community compliance with administrative fines.<sup>74</sup>

Ultimately, in Indonesia, if it turns out that the content of regional regulations or regional heads deviates from the validity standards of the content above. Of course, it will have legal consequences because if the legislation is passed with a procedure that differs from the procedure set out in the constitution or higher rules, or if the regulation has content prohibited by the constitution, it can fail to realize the guarantee of legal objectives. Ideally, if the implementing regulation

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<sup>69</sup> Hiroshi Miyashita, 'Human-Centric Data Protection Laws and Policies: A Lesson from Japan', *Computer Law and Security Review*, 40.142 (2021), 105487 <<https://doi.org/10.1016/j.clsr.2020.105487>>.

<sup>70</sup> Dimitri Vanoverbeke, *Juries in the Japanese Legal System*, Routledge, 2015 <https://doi.org/10.4324/9781315709901>

<sup>71</sup> Timothy, *Inside the World of Japanese Popular Culture*, 2015 <https://doi.org/10.4324/9781315703220>

<sup>72</sup> Aluisius Hery Pratono and Ari Sutanti, 'The Ecosystem of Social Enterprise: Social Culture, Legal Framework, and Policy Review in Indonesia', *Pacific Science Review B: Humanities and Social Sciences*, 2.3 (2016), 106–12 <https://doi.org/10.1016/j.psrb.2016.09.020>

<sup>73</sup> Fu Shulan, 'The Formation of the Legal System for Modern Planning in China before 1950: Comparison with Japan's 1919 Act', *Journal of Asian Architecture and Building Engineering*, 19.3 (2020), 285–94 <https://doi.org/10.1080/13467581.2020.1726761>

<sup>74</sup> Miranda Risang Ayu Palar, Laina Rafianti, and Helitha Novianty Muchtar, 'Inclusive Rights to Protect Communal Intellectual Property: Indonesian Perspective on Its New Government Regulation', *Cogent Social Sciences*, 9.2 (2023), 1–19 <https://doi.org/10.1080/23311886.2023.2274431>

deviates from the higher content in any form and size, it will be legally null and void. In addition, regional regulations that are found to have deviations in content can be requested for a judicial review by the Supreme Court.

#### 4. Conclusion

The arrangement of the material content of the legislation in the formation of regional head regulations is still not detailed and confusing, especially regarding the rules for the formation of material regarding administrative sanctions. Law No. 12 of 2011 only regulates the provisions of criminal sanctions, which can only be formed in Laws, Provincial Regulations, and Regency/City Regulations. Meanwhile, Law No. 23 of 2014 only regulates guidelines for the formation and content of regional regulations, which *mutatis mutandis* apply to the principles of the formation and content of Regional Regulations. This has a logical effect on determining the validity of Regional Regulations containing sanctions, especially in regional head regulations that deviate so that their validity becomes null and void by law. Meanwhile, in Japan, valid administrative sanctions are enforced and substantially regulated in regional regulations, both prefectural regulations and municipal regulations. This validity affects the effectiveness of its implementation. Therefore, an ideal model of administrative sanctions in Indonesian regional regulations is needed and has material and formal standards for legal validity. The ideality parameter is based on the accuracy of forming legislation by the hierarchy and guarantees for legal objectives. The application pattern of administrative sanctions in Japan can be used as a recommendation for administrative sanctions in Indonesia, and the standardization of material and formal validity is an essential point in its regulation.

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