

# Understanding Delegated Legislation in The Natural Resources Sector

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## Understanding Delegated Legislation in The Natural Resources Sector

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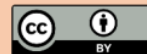
Source of Authority;

### ABSTRACT

The formation of statutory regulations is based on the authority to form. The formation of delegated regulations can originate from orders or authority. In the P3 Law, it is stated that delegated regulation is not only limited to (or "there is a space for delegated regulations other than ") Government Regulations, Presidential Regulations, and Regional Regulations, so it becomes hyper-regulation. This happens in laws and regulations in the field of natural resource management. This article aims to explain the condition of existing delegated regulation in the field of natural resources and its impact on the use of natural resources. The results of this research show that the position and types of delegated regulation in the field of natural resources are not only in the form of Presidential Regulations, Government Regulations, Ministerial Regulations, and Regional Regulations but also delegated legislation regulated in Article 8 of the P3 Law, which is not small in number. The implications of delegated legislation can provide technically detailed implementing regulations down to the lowest level institutions/institutions. However, delegation not explicitly limited by the delegation criteria causes hyper-regulation by the executive agency through its functional authority. Apart from that, it opens space for unsynchronization between the substance of higher regulations and delegated regulations, thereby causing ineffective use of natural resources. This study recommends that changes be made to the Law on the Establishment of Laws and Regulations, especially concerning its hierarchy.



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## 1. Introduction

For developing countries like Indonesia, development is always based on utilizing natural resources. The better the management of natural resources owned by a country, the closer it will be to achieving the welfare of its citizens. The Indonesian Constitution regulates control rights in the natural resource ownership regime and its allocation. The regulation of the control of natural resources is contained in the formulation of Article 33 of the 1945 Constitution of the Republic of Indonesia, which states that "Earth, water and the natural resources contained therein are controlled by the State and used for the greatest

prosperity of the people." The state, to supervise and control the exercise of control by the state over important branches of natural resource production and/or which govern the lives of many people for the greatest prosperity of the people, is carried out in several ways: a) implementing policies (*beleid*), b) actions of management (*bestuursdaad*), c) regulation (*regelendaad*), d) management (*beheersdaad*) and e) supervision (*toezichthoudensdaad*) to maximize the prosperity of the people.<sup>1</sup>

In state administrative law, government authority is closely related to the legal source that gives it authority. This is also known as the principle of legality, which determines the government's legitimacy in administering government. Legislative regulations are significant because the primary purpose of establishing legislative regulations in a rule-of-law state is to create a conducive atmosphere in social life.<sup>2</sup> Based on Article 1 number 2 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations (Law P3), Legislative Regulations are written regulations that contain generally binding legal norms and are formed or stipulated by state institutions or officials authorized person through the procedures stipulated in the Legislative Regulations.<sup>3</sup>

Due to the principle of legality, this requires the government to obey and obey the provisions of the law, which in some instances gives orders to the government to make more detailed and operational laws and regulations. The government must comply with the delegation of authority ordered by law in establishing and implementing regulations (delegated legislation). Implementing regulations can be formed with two conditions—source of authority, namely 1) ordered by higher statutory regulations or 2) formed based on authority. This can be referred to in Article 8 paragraph (1) of the P3 Law. The legislation implementing the law is referred to as "delegated legislation," which is legislation below the law or "subordinate legislation." Utilization of natural resources is the state's obligation to realize prosperity.<sup>4</sup> In its implementation, a legal basis is needed in the form of legislation at the central and regional levels. The abundance of natural resources in Indonesia, with various types, classifications, and characteristics, forces the government to manage natural resources carefully. Each type of natural resource, such as high and low carbon, has different permits, work areas, taxes, incentives, environmental management, and law enforcement regulations.

Unsurprisingly, the energy transition process has triggered the emergence of new technical regulations that aim to detail the above regulations technically so that they become concrete rules. These regulations are outlined in delegated regulations. For example, many implementing regulations have been issued in geothermal utilization alone. The authority for its formation is at least based on the Energy Law and Geothermal Law. The Job Creation Law, the Law regarding Ratification of the Paris Agreement for the energy transition, the Taxation Law, the Forestry Law, the State Finance Law, and the State Apparatus Law. This shows that the command of higher statutory regulations and the

<sup>1</sup> Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, and Willy Naresta Hanum, 'Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty', *Sriwijaya Law Review*, 6.2 (2022), 286–303 <https://doi.org/10.28946/slrev.Vol6.Iss2.1745.pp286-303>

<sup>2</sup> Ristania Intan Permatasari, Sapto Hermawan, and Abdul Kadir Jaelani, 'Disabilities Concessions in Indonesia: Fundamental Problems and Solutions', *Legality: Jurnal Ilmiah Hukum*, 30.2 (2022), 298–312 <https://doi.org/10.22219/ljih.v30i2.23814>

<sup>3</sup> L M R Zeldi and others, 'Application of Theory and Regulation of Hierarchy Legal Regulations in the Problem of Forest Area Status', *IOP Conference Series: Earth and Environmental Science*, 343.1 (2019), 012124 <https://doi.org/10.1088/1755-1315/343/1/012124>

<sup>4</sup> Khudzaifah Dimiyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 <https://doi.org/10.1016/j.heliyon.2021.e07865>

authority of positions to carry out government functions has resulted in quite a lot of delegated regulation. Even though the data above only regulates one sector of natural resource, Indonesia has various types, such as mining materials, new and renewable energy (solar, hydro, wind, bioenergy, marine, geothermal, including hydrogen and nuclear), and biodiversity (biological diversity including animals, plants and ecology on the earth's surface).<sup>5</sup>

The supremacy of law and statutory regulations, there are two things that cannot be separated, including the many statutory regulations that exist in Indonesia. As a rule-of-law country, Indonesia has guidelines for forming statutory regulations and their hierarchy.<sup>6</sup> Based on the author's research, there are several types of legislative regulations that exist in Indonesia today, namely, the 1945 Constitution of the Republic of Indonesia, Decree of the People's Consultative Assembly, Laws, or Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Regulations Provincial Regions, and Regency/ City Regional Regulations. Apart from the hierarchical form of statutory regulations, in Indonesia, there are also several regulations made by Ministries or State Institutions, such as Ministerial Regulations (including Joint Ministerial Decrees, Ministerial Circulars, and Ministerial Decrees), Supreme Court Regulations (including Supreme Court Circulars), Constitutional Court Regulations, The House of Representatives Regulations, Corruption Eradication Commission Regulations, Bank Indonesia Regulations, and Village Regulations.

Indonesia's many types and forms of statutory regulations cause overlapping authority and hyper-regulation. Also, various forms and types of statutory regulations sometimes have the same binding force, behavior, and effect but are made by different institutions. Failure to separate and divide powers in the executive, legislative, and judicial sectors and increase the number of laws and regulations with the same function. This is further exacerbated by the difficulty of synchronizing and harmonizing laws and regulations. Indonesia has an institution called the National Legal Development Agency, which is tasked with synchronizing and harmonizing laws and regulations.<sup>7</sup> Each institution competes and feels authorized to make regulations without any attempt to divide or separate legislative power. Thus, legislative power is almost inherent and owned by every government institution in Indonesia, from the President to the Village Head. For example, in responding to the realization of the energy transition, the Government seems sporadic in forming regulations, starting from Government Regulations, Presidential Regulations, Ministerial Regulations or Agency Head Regulations, Ministerial Decrees or Agency Head Decrees, and even Circular Letters.<sup>8</sup>

The formation of statutory regulations also does not follow statutory regulations. For example, there is a Regional Head Regulation which contains criminal sanctions. If you follow the rules in the Law on the Establishment of Legislative Regulations (P3 Law), only

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<sup>5</sup> Heru Wahyudi and Widia Anggi Palupi, 'Natural Resources Curse in Indonesia', *International Journal of Energy Economics and Policy*, 13.2 (2023), 349–56 <https://doi.org/10.32479/ijeeep.14077>

<sup>6</sup> Martin Krygier, 'Rule of Law (and Rechtsstaat)', 2014, pp. 45–59 [https://doi.org/10.1007/978-3-319-05585-5\\_4](https://doi.org/10.1007/978-3-319-05585-5_4)

<sup>7</sup> Tedi Sudrajat, 'Harmonization of Regulation Based on Pancasila Values Through the Constitutional Court of Indonesia', *Constitutional Review*, 4.2 (2018), 301 <https://doi.org/10.31078/consrev426>

<sup>8</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>

regional laws and regulations may prevent criminal sanctions.<sup>9</sup> If Presidential Regulations and Government Regulations are mandated to be formed by law, then there is a question regarding the source of authority for Ministerial Regulations and the like. Both Ministerial Regulations and the like are delegations of regulations from higher regulations or, more precisely, Ministerial Regulations and the like are formed at the discretion of state officials alone. This also confuses regulations made by state institutions at the ministerial level. Was its formation delegated from a higher regulation or carried out independently? However, ignoring the current concept, this will always be returned to the source of delegated regulation's authority in the form of orders and authority. However, it is also necessary to pay attention to the position of statutory regulations under the law, which must be included in the category of delegated regulations. What about all the regulations mentioned in Article 8 of the P3 Law that do not have a hierarchy like the statutory regulations in Article 7 of the P3 Law.<sup>10</sup>

Looking at previous research, for example, that was conducted by Aditya Rohmadhony et al. (2020), which examined the issue of family development regulations, delegated regulations are often not made immediately. The author criticizes the lack of consequences in the form of sanctions if the delegation provisions are not implemented. So that negligence or negligence on the part of the government does not have any legal consequences. This research is interconnected but contradictory because the problem in the author's research is over delegated regulation. The study was also conducted by Ridwan (2021), but this research only specifically questioned the existence and urgency of ministerial regulations in the administration of the presidential system government. The approach used is a constitutional approach.<sup>11</sup> Something similar to Ridwan was previously researched by Afdalis (2020), namely discussing the delegation of regulations from laws to ministerial regulations directly, as seen from the framework of the presidential system. Even though the two studies have an essential study section, they have different research focuses and case studies. Still discussing delegated regulation, emphasizes the existence of a hierarchy of presidential regulations only. Meanwhile, scientific research on reputable international databases is still rare. The author only found an old study by Zweifel P et al. (1993), which discussed the economics of delegated regulation with a focus on the EEC and insurance cases.<sup>12</sup>

However, you can find several journals that discuss hyper-regulation and over-regulation, where the legal system in a country opens up space for forming too many legislative regulations. This affects the synchronization and implementation of existing rules. For example, research by Aaron M. Lane (2018) examines excessive law in public services in the education sector, which causes a decline in the quality of public services. This is stated in Elena Caruso's (2023) article, which mentions hyper-regulation in the regulation of abortion, resulting in an excessive regulatory regime that is not in line with

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<sup>9</sup> Catur Wido Haruni, 'Constitutionality of Monitoring and Evaluation of Regional Regulation Drafts and Regional Regulations by Regional Representative Council', *Legality : Jurnal Ilmiah Hukum*, 30.1 (2022), 103–15 <https://doi.org/10.22219/ljih.v30i1.20532>

<sup>10</sup> Sholahuddin Al-Fatih and Asrul Ibrahim Nur, 'Does the Constitutional Court on Local Election Responsive Decisions?', *Journal of Human Rights, Culture and Legal System*, 3.3 (2023), 569–96 <https://doi.org/10.53955/jhcls.v3i3.74>

<sup>11</sup> Ridwan Ridwan, 'Eksistensi Dan Urgensi Peraturan Menteri Dalam Penyelenggaraan Pemerintahan Sistem Presidensial', *Jurnal Konstitusi*, 18.4 (2022), 828 <https://doi.org/10.31078/jk1845>

<sup>12</sup> P. Zweifel, R. Eisen, and W. Müller, 'The Economics of Delegated Regulation: The EEC and the Case of Insurance.', *Insurance: Mathematics and Economics*, 13.2 (1993), 169 [https://doi.org/10.1016/0167-6687\(93\)90936-J](https://doi.org/10.1016/0167-6687(93)90936-J)

evidence and best clinical practice in the field, as well as relevant international human rights law.<sup>13</sup> The difference with this research is that the author elaborates on the concept of delegated regulation, which is widely open to sharing types of regulations with conditions that may occur in the form of hyper-regulation in the field of natural resources.<sup>14</sup>

As mentioned above, government administration requires a rational legal basis. The formation of regulations and their position will impact technical implementation in society. Based on the background above, this article will discuss the condition of existing delegated regulation in the field of natural resources and its impact on the use of natural resources. This research is urgently carried out about implementing the energy transition in Indonesia, which the EBT Law will soon regulate. This will, of course, impact laws in other sectors. It may be projected that many delegated regulations will emerge to respond to new regulations, significantly impacting energy utilization in Indonesia.

## 2. Research Method

The method used in this research is a normative juridical legal research method. This research uses a statutory approach. The laws and regulations used include the P3 Law as the juridical basis for delegated regulation and laws and regulations in the field of natural resources, especially those relating to geothermal utilization and oil and gas management. In addition, this researcher uses a conceptual approach by basing the analysis on the concepts of delegated regulation, hyper-regulation, authority and sources of authority in state administrative law, the hierarchy of statutory regulations, and the theory of regulatory formation.<sup>15</sup> The legal material analysis technique used in this research is a prescriptive analysis based on existing data, concepts/theories, and norms. Thus, legal prescriptions regarding the understanding of delegated regulation in the field of natural resources are presented. This aims to produce new arguments or concepts based on the results of research on the reconstruction of delegation regulations. Based on the results of the analysis, we reached conclusions regarding the aim of our study, namely the condition of existing delegated regulation in the field of natural resources and its impact on the use of natural resources.<sup>16</sup>

## 3. Results and Discussion

### 3.1. Existing Condition of Delegated Legislation in the Natural Resources Sector

In the concept of a modern legal state—*welvaarsstaat*—welfarestate, government tasks must be carried out in government administration. The government has an obligation to guarantee and realize general welfare (*bestuurszorg*), one of which is through the management or utilization of natural resources for the greatest prosperity of the people. To carry out government duties, they cannot be separated by dividing legislative, executive, and judicial power so that checks and balances occur. In this study, delegated regulation

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<sup>13</sup> Elena Caruso, 'The Hyper-regulation of Abortion Care in Italy', *International Journal of Gynecology & Obstetrics*, 163.3 (2023), 1036–42 <https://doi.org/10.1002/ijgo.15150>

<sup>14</sup> Kalim U Shah, Pravesh Raghoo, and Philipp Blechinger, 'Is There a Case for a Coal Moratorium in Indonesia? Power Sector Optimization Modeling of Low-Carbon Strategies', *Renewable and Sustainable Energy Transition*, 5 (2024), 100074 <https://doi.org/https://doi.org/10.1016/j.rset.2023.100074>

<sup>15</sup> Zaidah Nur Rosidah, Lego Karjoko, and Mohd Rizal Palil, 'The Government's Role in Interfaith Marriage Rights Protection: A Case Study of Adjustment and Social Integration', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 265–87 <https://doi.org/10.53955/jhcls.v3i2.105>

<sup>16</sup> Mohammad Jamin and Abdul Kadir Jaelani, 'Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City', *Bestuur*, 10.2 (2022), 198–212 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i2.66090>

will be closely related to the powers of the legislative and executive institutions. The legislative institution has a legislative function, which is held by the The People's Consultative Assembly, The House of Representatives, and Regional Representative Council. Meanwhile, in terms of carrying out government functions through its authority, the executive agency also has the function of forming statutory regulations, known as delegated regulation. The formation of delegated regulation is aimed at implementing government at a technical-operational level, which is different from the nature of statutory regulations issued by the legislative body. The types and hierarchy of statutory regulations established by both legislative and executive institutions are regulated in the P3 Law.<sup>17</sup>

The strata of a legal product or statutory regulation are a consequence of a legal concept with a level of norms. The higher the policy or position of statutory regulations, the stronger the binding. On the other hand, the lower the level, the more detailed the technical regulations it usually contains. Therefore, to be applied more technically, the Law needs to be elaborated with more complex rules. The concept of "Delegated Legislation," also known as delegation rules, was born through this elaboration. It is essential to understand the meaning of these two phrases to see and understand everything related to delegation rules. In "Rules" and "Delegation," the word "Rules" can refer to binding laws or a set of guidelines. Rules are broad guidelines designed for things that are still abstract.<sup>18</sup>

Meanwhile, "Delegation" is defined in Black's legal dictionary as 'the act of entrusting authority to or empowering another person to act as an agent or representative.' This concept is built on the doctrine of delegation, which can be explained as the concept of separation of powers, which limits the ability of legislative institutions to transfer their legislative powers to other government branches, especially executive institutions. This theory or principle states that legislators under existing authority provide basic guidelines and rules for the authorized bodies they are entrusted with. The institutions below are tasked with compiling and regulating laws at the regional level. Furthermore, "Delegation" refers to transferring a State Administrative agency or position whose jurisdiction already exists to another State Administrative agency, institution, or position after that agency or position has obtained government attributive authority.

Based on these two definitions, it can be concluded that the product of legislative regulations is, of course, made by legislative institutions. Still, apart from that, it is also recognized that there are legal regulations made other than by legislative institutions. Legal regulations made by other than legislative institutions are also recognized as part of the legislative regulatory product. Delegated regulations are regulated in Article 7 of the P3 Law, including Government Regulations, Presidential Regulations, and Regional Regulations (Provincial and Regency/ City). Apart from that, delegated regulation can also emerge through other institutions and several forms - but it is not included in the hierarchy of statutory regulations, which is regulated in Article 8 of the P3 Law.<sup>19</sup>

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<sup>17</sup> Fatma Ulfatun and Dinil Abrar, 'The Shaping of Future Sustainable Energy Policy in Management Areas of Indonesia ' s Energy Transition', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 361–82 <https://doi.org/https://doi.org/10.53955/jhcls.v3i2.110>

<sup>18</sup> Yordan Gunawan and Mohammad Hazyar, 'The Climate Change Litigation Based Human Rights Approach in Corporations : Prospects and Challenges', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 288–307 <https://doi.org/https://doi.org/10.53955/jhcls.v3i2.116>

<sup>19</sup> Herry Purnomo and others, 'Public and Private Sector Zero-Deforestation Commitments and Their Impacts: A Case Study from South Sumatra Province, Indonesia', *Land Use Policy*, 134 (2023), 106818 <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.106818>

These include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by law. or the Government by order of law, Provincial Regional People's Representative Council, Governor, Regency/City Regional People's Representative Council, Regent/Mayor, Village Head or equivalent. The delegated regulation in question will be recognized for its existence and have binding legal force by fulfilling two conditions: being ordered by higher legislation or being formed based on authority.<sup>20</sup>

Regarding delegated regulations ordered by higher statutory regulations, the basis for determining regulations that are not from the legislative body comes from regulations made by the legislative body itself. This cannot be done without legislative permission. Meanwhile, regarding delegated regulations, the source of the authority to form them is the authority of the position. Then, the delegated regulations are made by executive officials using the authority given to them by the main laws and regulations to implement and manage the needs of the main laws and regulations. These laws are also known as secondary, subordinate, or additional laws, which are laws made with legislative authority by a body other than the legislature.<sup>21</sup>

However, implementing the delegated regulation concept often becomes a stumbling block in the implementation of legal products. Legislative bodies often create laws that establish broad concepts and standards, grant authority to the executive branch, and determine how major components of the law should be implemented. Delegation rule means that a law originates from any source other than a sovereign authority. As a result, its existence or legality depends on a higher or more powerful authority. All countries adhering to the separation of powers face a similar conundrum. More and more laws in these countries are issued by the executive branch rather than the legitimate legislative body, namely the elected parliament. In today's states, lawmakers have delegated much of their ability to legislate to administrators due to emergencies or pressing demands. These changes have given administrators a very advantageous position. Thus, directing these powers has become one of the critical responsibilities of constitutional law and state government. While recognizing variations on the classic notion of separation of powers, all jurisdictions must also ensure that the delegation norm has sufficient democratic legitimacy.<sup>22</sup>

The formation of delegation regulations is also widely carried out in the field of natural resource utilization. According to the Environmental Protection and Management Law, natural resources are environmental elements consisting of biological and non-biological resources that, as a whole, form a unified ecosystem. In his writing, he states that natural resources are materials or substances in a place that can be used to support life for economic exploitation or materials from nature that have potential economic value to provide food for life. Natural resources are limited and have strategic value, and their use is controlled and regulated by the state. Article 33 of the 1945 Constitution explains that

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<sup>20</sup> Willy Naresta and others, 'The Geothermal Development Policy on Environmental in Indonesia and the USA', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 160–84 <https://doi.org/https://doi.org/10.53955/jhcls.v3i2.85>

<sup>21</sup> Wellem Anselmus Teniwut and others, 'Do Coastal Communities in Small Islands Value Marine Resources through Marine Protected Areas?: Evidence from Kei Islands Indonesia with Choice Modelling', *Marine Policy*, 157 (2023), 105838 <https://doi.org/https://doi.org/10.1016/j.marpol.2023.105838>

<sup>22</sup> Doina Stratu-Strelet and others, 'Developing a Theory of Full Democratic Consolidation: Exploring the Links between Democracy and Digital Transformation in Developing Eastern European Countries', *Journal of Business Research*, 157 (2023), 113543 <https://doi.org/10.1016/j.jbusres.2022.113543>

control of natural resources is in the hands of the state, or in other words, Indonesia adheres to state regimes. Excessive resource exploitation can lead to a condition that Hardin calls tragedy of the commons. Because joint properties (Common Pool Resource) are Subtractable (rivalrous in consumption) and Exclusion Difficult or Exclusion Easy Costly.<sup>23</sup>

Therefore, the characteristics of several natural resources that are strategic, economical, and affect many people's lives are given such regulation. The government exercises its authority by regulating the use of natural resources from the constitution to very technical Circulars. Delegated regulation was formed as a more technical implementing regulation to regulate natural resources, which can often be found in the directory of statutory regulations. In this study, the author provides limitations on the natural resources discussed because of the large number of natural resources and their implementing regulations. To see the projected urgency of regulating natural resources, this study focuses on looking at delegated regulation in the geothermal sector. Geothermal energy is a clean and renewable strategic energy that has quite a lot of potential in Indonesia and is being promoted as one of the energies that supply the energy mix for the energy transition.<sup>24</sup> Based on data processed by the author, the following is data on the number and types of several delegated regulations on geothermal energy:

Table 1. Delegated Regulation in the Natural Resources Sector - Geothermal

Geothermal				
	Government regulations	Source of Authority	Presidential Regulation	Source of Authority
Revoked/amended	1. Government Regulation No. 75 of 2014 concerning the Second Amendment to Government Regulation No. 59 of 2007 concerning Geothermal Business Activities	1. Presidential Authority	1. Presidential Regulation No. 5 of 2006 concerning National Energy Policy	1. Presidential Authority
	2. Government Regulation No. 59 of 2007 concerning Geothermal Business Activities	2. Presidential Authority	2. Presidential Regulation No. 68 of 2015 concerning the Ministry of Energy and Mineral Resources	2. Presidential Authority
	3. Government Regulation No. 70 of 2010 concerning Amendments to Government Regulation No. 59 of 2007 concerning Geothermal Business Activities	3. Presidential Authority	3. Presidential Regulation No. 75 of 2014 concerning Acceleration of Priority Infrastructure Provision	3. Presidential Authority
	4. Government Regulation No. 9 of 2012 concerning Types and Tariffs for Non-Tax State Revenues Applicable to the Ministry of Energy and Mineral Resources	4. Presidential Authority	4. Presidential Regulation No. 50 of 2005 concerning the National Productivity Institute	4. Legal Order
	5. Government Regulation No. 81 of 2019 concerning Types and Rates of Non-Tax State Revenues Applicable to the Ministry of Energy and Mineral Resources	5. Presidential Authority	5. Presidential Regulation No. 13 of 2010 concerning Amendments to Presidential Regulation No. 67 of 2005 concerning Government Cooperation with Business Entities in Providing Infrastructure	5. Presidential Authority

<sup>23</sup> Taiwo A. Olaiya, 'The Devil in the Number: Rethinking Garrett Hardin's The Tragedy of the Commons and Global Overpopulation Crisis', *International Journal of Research and Innovation in Social Science*, 05.07 (2021), 251–62 <<https://doi.org/10.47772/IJRIS.2021.5708>>.

<sup>24</sup> Ruth Soetendorp, 'Encyclopedia of Law and Development', *The Law Teacher*, 55.4 (2021), 555–56 <<https://doi.org/10.1080/03069400.2021.1928986>>.

	<p>6. Government Regulation No. 45 of 2003 concerning Tariffs on Types of Non-Tax State Revenue Applicable to the Department of Energy and Mineral Resources</p> <p>7. Government Regulation No. 61 of 2012 concerning Amendments to Government Regulation No. 24 of 2010 concerning Use of Forest Areas</p> <p>8. Government Regulation No. 105 of 2015 concerning the Second Amendment to Government Regulation No. 24 of 2010 concerning Use of Forest Areas</p> <p>9. Government Regulation No. 2 of 2008 concerning Types and Tariffs for Non-Tax State Revenues Derived from the Use of Forest Areas for Development Purposes Outside of Forestry Activities which are Applicable to the Forestry Department</p> <p>10. Government Regulation No. 24 of 2010 on the Use of Forest Areas</p> <p>11. Government Regulation No. 3 of 2005 concerning Amendments to Government Regulation No. 10 of 1989 concerning the Provision and Utilization of Electric Power</p> <p>12. Government Regulation No. 22 of 2010 concerning Mining Areas</p>	<p>6. Legal Order</p> <p>7. Presidential Authority</p> <p>8. Presidential Authority</p> <p>9. Legal Order</p> <p>10. Legal Order</p> <p>11. Presidential Authority</p> <p>12. Legal Order</p>		
<b>Partially Modified and/or Still Valid</b>	<p>1. Government Regulation No. 7 of 2017 concerning Geothermal Energy for Indirect Use</p> <p>2. Government Regulation No. 28 of 2016 concerning the Amount and Procedures for Providing Geothermal Production Bonuses</p> <p>3. Government Regulation No. 108 of 2015 concerning Amendments to Government Regulation No. 28 of 2011 concerning Management of Natural Reserve Areas and Nature Conservation Areas</p> <p>4. Government Regulation No. 25 of 2021 concerning the Implementation of the Energy and Mineral Resources Sector</p> <p>5. Government Regulation No. 26 of 2022 concerning</p>	<p>1. Legal Order</p> <p>2. Legal Order</p> <p>3. Legal Order</p> <p>4. Legal Order</p>	<p>1. Presidential Regulation No. 10 of 2021 concerning the Investment Business Sector, Presidential Regulation</p> <p>2. Presidential Regulation No. 49 of 2021 concerning Amendments to Presidential Regulation No. 10 of 2021 concerning the Investment Business Sector</p> <p>3. Presidential Regulation No. 112 of 2022 concerning the Acceleration of Renewable Energy Development for the Supply of Electric Power</p> <p>4. Presidential Regulation</p>	<p>1. Legal Order</p> <p>2. Presidential Authority</p> <p>3. Presidential Authority</p> <p>4. Presidential</p>

				Authority
	Types and Rates of Non-Tax State Revenues Applicable to the Ministry of Energy and Mineral Resources	5. Presidential Authority	No. 11 of 2023 concerning Additional Concurrent Government Affairs in the Energy and Mineral Resources Sector in the New Renewable Energy Subsector	
6.	Government Regulation No. 1 of 2015 concerning Addition of State Capital of the Republic of Indonesia to the Share Capital of the Company (Persero) PT Geo Dipa Energi	6. Presidential Authority	5. Presidential Regulation No. 122 of 2016 concerning Amendments to Presidential Regulation No. 75 of 2014 concerning Accelerating the Provision of Priority Infrastructure	5. Presidential Authority
7.	Government Regulation No. 79 of 2014 concerning National Energy Policy	7. Legal Order	6. Presidential Regulation No. 28 of 2012 concerning Java-Bali Island Spatial Planning	6. Legal Order
8.	Government Regulation No. 62 of 2012 concerning Electric Power Support Services Businesses	8. Legal Order	7. Presidential Regulation No. 13 of 2012 concerning Sumatra Island Spatial Planning	7. Legal Order
9.	Government Regulation No. 52 of 2020 concerning Addition of State Capital of the Republic of Indonesia to the Share Capital of the Company (Persero) PT Geo Dipa Energi	9. Presidential Authority	8. Presidential Regulation No. 88 of 2011 concerning Sulawesi Island Spatial Planning	8. Legal Order
10.	Government Regulation No. 63 of 2015 concerning Addition of State Capital of the Republic of Indonesia to the Share Capital of the Company (Persero) Pt Geo Dipa Energi	10. Presidential Authority	9. Presidential Regulation No. 26 of 2008 concerning the Establishment of the National Energy Council and Procedures for Screening Candidates for National Energy Council Members	9. Legal Order
11.	Government Regulation No. 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies	11. Legal Order	10. Presidential Regulation No. 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands	10. Legal Order
12.	Government Regulation No. 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenue Derived from Administrative Fines in the Field	12. Legal Order		
13.	Government Regulation No. 58 of 2020 concerning Management of Non-Tax State Revenue	13. Legal Order		
14.	Government Regulation No. 49 of 2022 concerning Value Added Tax is Exempt and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods are Not Collected on the Import and/or Delivery of Certain Taxable Goods and/or Delivery of Certain Taxable Services and/or Utilization of Certain Taxable Services from outside the customs area	14. Presidential Authority		
15.	Government Regulation No. 33 of 2014 concerning Types and Tariffs for Non-Tax State Revenues Derived from the Use of Forest Areas for Development Purposes Outside of Forestry Activities which are Applicable to the Ministry of Forestry			

16. Government Regulation No. 69 of 2020 concerning Procedures for Determining Tariffs for Types of Non-Tax State Revenue			
17. Government Regulation No. 24 of 2021 concerning Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenue Derived from Administrative Fines in the Forestry Sector	15. Legal Order		
18. Government Regulation No. 23 of 2021 concerning Forestry Implementation			
	16. Legal Order		
	17. Legal Order		
	18. Legal Order		

*Source: Processed by Writers from the Legal Documentation and Information Network (JDIH)*

The data we present above may not all regulate technical matters specific to the geothermal sector in all regulations. However, the regulations we mentioned above at least regulate something related to geothermal energy, for example, taxes, incentives, capital investment for geothermal utilization, etc. We also base the existing data on written statutory regulations that have been passed. Considering the formation of delegated legislation above, we do not see that it is actually due to a statutory order. Still, by policy makers, it is connoted as delegated legislation from executive authority - see the basis for consideration. Based on the data above, at least 34 Government Regulations regulate the geothermal sector; 18 of them are still valid. Meanwhile, in the type of delegated regulation, Presidential Regulations contain 15 regulations; 10 of them are still valid. Some regulations that are still in effect have also changed. Apart from Government Regulations and Presidential Regulations, in the legal product data repository, researchers found more than 300 Ministerial Regulations regarding geothermal energy, with the number still in force/amended/partially revoked/amended and partially revoked being more than 180 regulations. Meanwhile, for Regional Regulations, at both provincial and district/city levels, there are more than 100 regulations.

Apart from tracking the number of delegated regulations, the author also collected data on sources of authority to form delegated regulations. The formation of Government Regulations originating from higher statutory orders shows a higher trend than the formation due to the President's authority to carry out functional government duties. Of the 34 regulations, 21 were formed based on higher statutory orders. Meanwhile, for Presidential Regulations, the formation of delegated regulations originates from statutory orders, and the President's authority is almost equal. Of the 15 regulations, 7 of them are based on statutory orders. Based on the data above, it was found that there are too many

regulations just to regulate the geothermal sector alone. We have yet to even go into researching the number of delegated regulations for other strategic sectors, such as oil and gas, coal, nickel, diesel, etc.<sup>25</sup>

In his study, Markus Hinterleitner, et.al (2023) stated that more policies are needed to regulate denser and more complex social interactions and keep dynamic systems "stable." However, policy growth will not only threaten and overburden the bureaucracy, thereby weakening policy effectiveness. It can also change the institutional structure of democratic states and make their politics more complex and conflictual. Other research states that the complexity of regulations will affect their implementation, so they must be considered in the government's "better regulatory" policy.<sup>26</sup> The concept of hyper-regulation is known as a condition where the number of statutory products is too large. Even though it is subjective in determining how many standard rules to regulate a sector is subjective, the impact of hyper-regulation can be seen. Too many regulations create new problems for legal synchronization. Mistakes in substance coverage are not impossible.<sup>27</sup>

### 3.2. The Impact of Delegated Legislation on Natural Resource Management

The government's authority to administer government is obtained from legal regulations, and to receive power derived from statutory regulations is in three ways: attribution, delegation, and mandate. H.D. van Wijk/Willem Koniinenbelt describes authority as follows based on three methods of obtaining it: 1) Attribution: *toekening van een bestuursbevoegdheid door en weigever aan een bestuursorgaan* (attribution is the granting of governmental authority by legislators to government organs). 2) Delegation: *overdracht van een bevoegdheid van het ene bestuursorgaan aan een ander* (delegation is the transfer of government authority from one government organ to another government organ). 3) Mandate: *een bestuursorgaan laat zijn bevoegdheid names hem uitoefenen door een ander* (a mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf).<sup>28</sup>

The Latin attribution of the phrase *ad tribuere* means to give. The technical concept of constitutional and administrative law defines attribution authority as the authority assigned or delegated to a particular position. Thus, attribution authority is the authority inherent in a position. Positions established by the 1945 Constitution of the Republic of Indonesia receive attribution of authority from the Constitution; for example, the President's attribution of authority based on the provisions of Article 4 paragraph (1) of the Constitution is to exercise government power, likewise with the attribution authority stipulated by the Constitution for other state institutions. Positions determined by law obtain the attribution authority specified by law. For example, the authority of the

<sup>25</sup> Erika Valerio and others, 'Analysis of the Agricultural Innovation System in Indonesia: A Case Study of the Beef Sector in Nusa Tenggara Barat', *Agricultural Systems*, 203 (2022), 103529 <https://doi.org/https://doi.org/10.1016/j.agsy.2022.103529>

<sup>26</sup> Juan de Lucio and Juan S. Mora-Sanguinetti, 'Drafting "Better Regulation": The Economic Cost of Regulatory Complexity', *Journal of Policy Modeling*, 44.1 (2022), 163–83 <https://doi.org/10.1016/j.jpolmod.2021.10.003>

<sup>27</sup> Nurul Syazwani Ahmad Sabri and others, 'Future Aspects of Insects' Ingestion in Malaysia and Indonesia for Human Well-Being and Religion Regulation', *Future Foods*, 8 (2023), 100267 <https://doi.org/https://doi.org/10.1016/j.fufo.2023.100267>

<sup>28</sup> Gregorius Agung Setyonugroho and Norio Maki, 'Policy Implementation Model Review of the Post-Disaster Housing Reconstruction in Indonesia Case Study: Aceh, Yogyakarta, and Lombok', *International Journal of Disaster Risk Reduction*, 100 (2024), 104181 <https://doi.org/https://doi.org/10.1016/j.ijdr.2023.104181>

Governor and Regent/Mayor is regulated in Law No. 32 of 2004 concerning Regional Government (in Article 25 onwards). The following table illustrates the differences between attribution, delegation, and mandate authority.

Table. 2 Differences Between Attribution, Delegation, and Mandate Authority

Attribution	Delegation	Mandate
Authority to Share Procedure	In the routine relationship of subordinate superiors: ordinary unless expressly prohibited	From one organ of government to another: by laws and regulations
Responsibilities	Stick to the mandate giver	Responsibilities given to delegates
The possibility of the giver using that authority again	At any time can use the authority that is spilled itself	Cannot exercise that authority again except after there is a repeal by adhering to the principle of <i>contrarius actus</i>
Service script	a.n., u.b., a.p.	Without a.n., u.b, a.p., (direct)

As explained, authority is obtained through three sources: attribution, delegation, and mandate. Attribution authority is usually expressed through dividing state power based on the constitution. Meanwhile, the authority and mandate of delegation is the authority that originates from delegation if the delegation regarding the procedures for delegation originates from one government organ to another government organ according to statutory regulations, with responsibility shifting to the delegate. Delegates cannot exercise their authority again, except after revocation, by adhering to the *contrarius actus* principle. It means that every change or revocation of a regulation implementing a law is carried out by the official who stipulates the regulation and is carried out with equivalent or higher regulations. Regarding trust, delegation procedures within the context of superior relations are routine. Responsibility and accountability remain with the mandate giver. The mandate giver can carry out the delegated authority at any time.<sup>29</sup>

The concept of delegation, considered loose and tight, is influenced by whether the delegation arises from a legal order or authority. Scholars believe that delegated regulations arise from authority because they depart from the perspective that the concept of government is not only *besturen* but also has *regelen* authority, namely to regulate. Therefore, what is happening now is that, in practice, delegated regulations are also made because of authority. The impact is hyper-regulation in various sectors. Natural resource management should be able to be carried out with simple rules but must face the challenge of the emergence of delegated regulation from many institutions, especially related ministries. In Indonesia, one of the problems of hyper-regulation is resolved with the Omnibus Law.<sup>30</sup> However, this method is not yet recognized in the summary of implementing regulations. The President's authority to implement regulations is a consequence of the Presidential system, so it appears to provide ample space for the President and Ministers to issue implementing regulations. The issue of structuring the appropriate hierarchy of statutory regulations must be reformulated by the Presidential System. According to Saldi Isra, questions arise regarding the Presidential System, which gives more significant space to power outside the legislative body, which is given the

<sup>29</sup> Daniel Béland and Kimberly J. Morgan, 'Governance', in *The Oxford Handbook of the Welfare State*, ed. by Daniel Béland and others (Oxford University Press, 2021), pp. 172–87 <https://doi.org/10.1093/oxfordhb/9780198828389.013.10>

<sup>30</sup> Ricca Anggraeni and Cipta Indra Lestari Rachman, 'Omnibus Law in Indonesia: Is That the Right Strategy?', in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)* (Paris, France: Atlantis Press, 2020) <https://doi.org/10.2991/aebmr.k.200513.038>

authority to form regulations. Saldi also mentioned that hyper-regulation occurred in the executive area<sup>31</sup>.

In Roman times, the king's prominent power was to make regulations through royal decrees. This power is then delegated to other government officials so that government officials can make regulations for judges to decide disputes. This habit occurs in European countries today. Delegated legislation is also an ancient principle of English legal jurisprudence, dating back centuries, such as the Wool Export Act of 1337 and the Staples Statute of 1388. It is important to note that the above legislation did not have power limitations. There was a tremendous increase in delegated legislation in the 19th century, with England alone passing around three to four thousand delegated pieces of legislation each year. These laws vary, ranging from simple to complex issues of public interest. Still, one of the unique characteristics of most of these laws is that they relate to citizens' daily lives because they are part of the broad legislative instruments that regulate the behavior of citizens.<sup>32</sup>

Lord Hewart described the phenomenon of government power exceeding parliamentary sovereignty and being outside the scope of the courts, the concept of delegated legislation emerged.<sup>33</sup> Hewart, who served as Chief Justice of England and Wales, was dissatisfied with the transfer of powers from the courts. Parliament to government institutions.<sup>34</sup> Later, John Willis discovered through his investigation of the British Parliament that the British Parliament gave the government, through specific departments, the authority to pass final laws, amend Acts of Parliament through regulations, or create an overall legislative framework through rules. Due to the King's omnipotence in Parliament, there are no constitutional restrictions on transferring legislative and judicial powers to the executive in England.

However, it should be remembered that statutory regulations are divided into two groups: 1) Main legal/core functions and 2) Extra/incidents. Delegation legislation must be made to the objectives stated in the legislation. Please remember that delegation of fundamental legal duties is never permitted and is excessive delegation. Therefore, two factors should always be considered when determining whether delegation is excessive: whether legislative policy has been created and whether or not critical legal functions have been delegated.<sup>35</sup> Therefore, delegated regulations, especially those originating from the President's authority over his functional position (not statutory orders), can be strictly checked for urgency.

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<sup>31</sup> Eva Julia Lohse, 'Comparative Administrative Law Perspectives – Europe, Latin-America, Africa', in *Sustainability through Participation?* (Brill | Nijhoff, 2023), pp. 75–115 [https://doi.org/10.1163/9789004509382\\_005](https://doi.org/10.1163/9789004509382_005)

<sup>32</sup> Kingsley Osinachi N. Onu, 'Delegated Legislation In Nigeria: Taming the Wilddog While It's Still Early', *LEGAL BRIEF*, 11.3 (2022), 1546–57 <https://doi.org/10.35335/legal.v11i3.312>

<sup>33</sup> Ken Rasmussen, 'The Administrative Liberalism of R. MacGregor Dawson', *Canadian Public Administration*, 33.1 (1990), 37–51 <https://doi.org/10.1111/j.1754-7121.1990.tb01384.x>

<sup>34</sup> Michael Taggart, 'From "Parliamentary Powers" to Privatization: The Chequered History of Delegated Legislation in the Twentieth Century', *University of Toronto Law Journal*, 55.3 (2005), 575–627 <https://doi.org/10.1353/tlj.2005.0030>

<sup>35</sup> Ashish Srivastava, 'The Notion of Delegated Legislation in India- A Critical Analysis', *Scholars International Journal of Law, Crime and Justice*, 02.11 (2019), 348–51 <https://doi.org/10.36348/sijlcj.2019.v02i11.002>

In the previous discussion, there is a lot of delegated legislation in the field of natural resources, and it has undergone repeated revisions. The author only presents data for one sector—geothermal. The results are pretty interesting, with hundreds of existing delegated regulations. It should be remembered that hyper-regulation burdens the synchronization and harmonization of laws and regulations in Indonesia. There is not even a single institution capable of monitoring and evaluating the existence of this hyper-regulation, except for preventive action by the institution's Legal Team during the process of drafting regulations. There is a view that there is currently a culture of bureaucracy in the public sector in various countries. Unfortunately, public officials and staff are trapped in a bad reputation because they are too busy following strict regulatory interpretations, so they don't consider the satisfaction of the people who rely on their services. Utilization of natural resources that is not fully effective can be caused by hyper-regulatory delegation of regulations. In his book, Mitja Kovac (2020) uses the phrase over-regulation to criticize policymakers in the economic field—suboptimal regulation and implementation of sustainable practices found in excessive regulation.<sup>36</sup>

In Theresa Reinold's research (2018), she comments on Monica Hakimi's concept; in her writing, it is stated that there is an impact of issuing informal regulations that create law. This makes a distinction between legality and legitimacy. Informal regulations are created in the realm of international law, and there is a tendency to be uncritical of the particularistic nature of these regulations. Reinold said this has implications for a situation he calls "hyper-responsive" laws. Being too responsive is a problematic idea. This is because every momentary political constellation will always carry along the makers of regulations, and these changes must be reflected in the contents of the law.<sup>37</sup> Changes and the number of delegation regulations on natural resources can also be highlighted as a reaction by policymakers to avoid being left behind by political attitudes. For example, regarding the energy transition, the government issued various regulations to support electric vehicles even though their implementation still requires a lot of study. Apart from that, hyper-regulation is also highlighted in ensuring that public space in Australia is increasingly narrowed. Through local authorities, the government issues far-reaching regulations that include criminal sanctions. It was suggested that the government imposed 'unnecessary' restrictions targeting vulnerable society.<sup>38</sup> This means that the desire to regulate everything makes the government do something that exceeds its limits.

The source of authority becomes misdirected due to the desire of the executive agency to infringe too much on legislative power. If you look closely, there are many delegated regulations on the use of natural resources; if you look at the basis of laws that order the formation of implementing regulations, but at the legal level, many things are still disharmonized. For example, laws in the agrarian and natural resources sectors overlap.<sup>39</sup> Regulations on the use of conservation forest areas as geothermal work areas are not in harmony with the function of the area.<sup>40</sup> Therefore, regulations that open up space for

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<sup>36</sup> Mitja Kovac and Ann-Sophie Vandenberghe, 'Over-Regulation, Degradation of the Rule of Law and Implementation of Sustainable Practices', in *Challenges on the Path Toward Sustainability in Europe* (Emerald Publishing Limited, 2020), pp. 271–95 <https://doi.org/10.1108/978-1-80043-972-620201015>

<sup>37</sup> Theresa Reinold, 'Informal Regulation and the Hyper-Responsiveness of International Law', *AJIL Unbound*, 112 (2018), 97–101 <https://doi.org/10.1017/aju.2018.39>

<sup>38</sup> Kevin J. Brown, 'The Hyper-Regulation of Public Space: The Use and Abuse of Public Spaces Protection Orders in England and Wales', *Legal Studies*, 37.3 (2017), 543–68 <https://doi.org/10.1111/lest.12175>

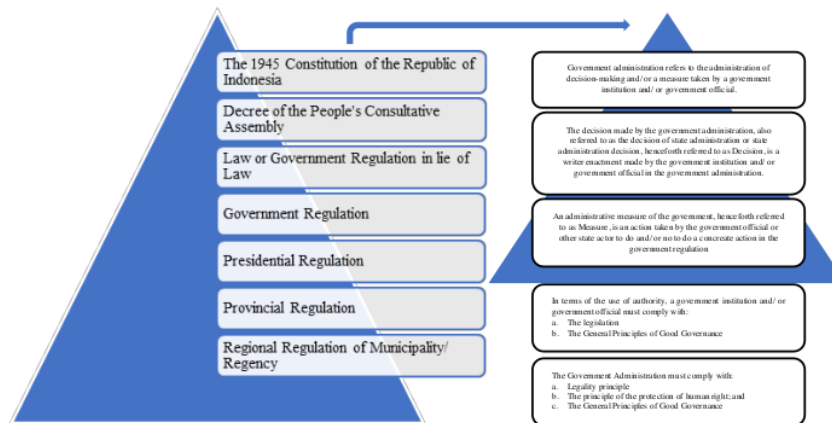
<sup>39</sup> Rofi Wahanisa, 'Tinjauan Pengaturan Hukum Konservasi Sumber Daya Alam Hayati Dalam Berbagai Putusan Mahkamah Konstitusi', *Jurnal Konstitusi*, 18.2 (2021), 391 <https://doi.org/10.31078/jk1826>

<sup>40</sup> Naresta and others.

hyper-regulation to occur in delegated regulation must be addressed by considering the concept of a presidential system.

As a democratic rule of law, the Constitution must be the foundation for all state institutions and organs. It must be emphasized that the Constitution is enforced to ensure that state administrators do not act arbitrarily and have clear intentions in exercising their powers.<sup>41</sup> The division of authority or power, either exclusively or by sharing, can be done through delegation whose source comes from one party (other than the Constitution) and will be canceled by that source as well, or can be done through constitutional provisions which can only be changed formally through constitutional amendments. The allocation of powers can be changed within certain limits based on the interpretation of the Constitution. Furthermore, the division of power, either exclusively or through delegation or constitutional provisions, can be carried out to elect or appoint certain government officials. For example, the chairman of the Supreme Court can be determined exclusively by the House of Representatives or jointly selected by the House of Representatives and the President.<sup>42</sup>

Chart 1. Hierarchy Concept of Legislative Regulations



The chart above shows the hierarchy of laws and regulations in Indonesia that are regulated by the P3 Law. Some conditions/criteria must be met to form a type of rule.<sup>43</sup> This is used to limit rule makers from arbitrarily issuing legal products that end up in a condition of hyper-regulation, which is made worse by inconsistencies in the substance of the material being regulated. The granting of authority in state administrative law gave birth to a delegated regulation. Government and Ministerial regulations are basically positioned as delegation regulations, which can only be formed after obtaining a

<sup>41</sup> A Salman Maggalatung, 'Indonesia Negara Hukum Demokratis Bukan Negara Kekuasaan Otoriter', *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 2.2 (2015) <https://doi.org/10.15408/sjsbs.v2i2.2379>

<sup>42</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 Emergency: A Lesson from Indonesia', *Legality: Jurnal Ilmiah Hukum*, 30.2 (2022), 283–97 <https://doi.org/10.22219/ljih.v30i2.23553>

<sup>43</sup> M. Angga Maulana Hasibuan, 'Online Single Submission Risk Based Approach: Conflict of Authority Between Central and Local Government', *Locus Journal of Academic Literature Review*, 2022, 198–209 <https://doi.org/10.56128/ljoalr.v1i4.69>

delegation order from the abovementioned regulations. However, suppose you adhere to the doctrine of administrative law, where a position and institution is vested with the authority to administer the government in a functional sense. In that case, there is a gap for the President and ministers to be able to form a regulation even without an order from the regulations above. This is also reflected in the government regulations presented in Table 1, which show that not all government regulations are explicitly made to implement the articles in the law that order government regulations to be formed.<sup>44</sup>

Referring specifically to Ministerial regulations, of which in this study there are hundreds of ministerial regulations for the geothermal sector alone from various ministries, it is necessary to be firm in granting authority to form delegated regulations. For example, a ministerial regulation will never be formed if it does not receive a delegation from a higher regulation. This is because the minister is an assistant to the President, which means he does not have genuine authority. Its authority arises from the President's authority so that ministerial regulations are no longer issued within the framework of technical regulations that are binding outside but are internal to the ministry. However, this does not mean that everything must be regulated and accommodated in regulations because it can still refer to the rules that provide delegation. Therefore, a ministerial regulation can only be formed if you receive a direct order from the law, government, and presidential regulations. This legal product is used as a control and limiting mechanism to form Ministerial regulations. This cannot be implemented immediately; if implementing regulations are cut, the consequence is that the law cannot be implemented.<sup>45</sup>

In contrast to Government Regulations, Presidential Regulations, and Regional Regulations, the authority to form them is based on the regulatory orders above them or can be formed based on their authority. The legal basis can be referred to the provisions of Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which allows the president to issue presidential regulations. This means that Presidential Regulations receive direct attribution from the Constitution and are attached to the president's authority in government affairs. Presidential regulations can arise due to legal orders and can be issued without legal charges. This is also in line with the findings in Table 1, where Presidential Regulations are partly formed based on the president's authority, not because they are ordered by law. Likewise, regional regulations can be formed based on their authority, not only because of legal orders but also because there is an attribution of regional authority regulated in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia.<sup>46</sup>

Based on the legal system and constitution, there is room for granting authority to form delegated regulations. Therefore, it is necessary to thoroughly review the hierarchy of regulatory delegation in Indonesia based on definite criteria and not just doctrine. For example, based on the source of the institution's power or the extent to which the regulations are legally binding. The natural resources sector is a concrete example of how excessively implemented regulations are. Meanwhile, rule-makers should consider the

<sup>44</sup> Nugroho Agung Pambudi and Desita Kamila Ulfa, 'The Geothermal Energy Landscape in Indonesia: A Comprehensive 2023 Update on Power Generation, Policies, Risks, Phase and the Role of Education', *Renewable and Sustainable Energy Reviews*, 189 (2024), 114008 <https://doi.org/https://doi.org/10.1016/j.rser.2023.114008>

<sup>45</sup> Nicky Rahmana Putra and others, 'Advancements and Challenges in Green Extraction Techniques for Indonesian Natural Products: A Review', *South African Journal of Chemical Engineering*, 46 (2023), 88-98 <https://doi.org/https://doi.org/10.1016/j.sajce.2023.08.002>

<sup>46</sup> Tries B Razak and others, 'A Review of the Legal Framework for Coral Reef Restoration in Indonesia', *Ocean & Coastal Management*, 248 (2024), 106944 <https://doi.org/https://doi.org/10.1016/j.ocecoaman.2023.106944>

scope of the rules and the accuracy of their regulations rather than just implementing rules, even though they can still be referred to in the law. Thus, delegated legislation should be expected to enforce regulations at the technical level effectively. On the other hand, hyper-regulations actually complicate things and cause legal complications.<sup>47</sup>

#### 4. Conclusion

The harnessing of natural resources controlled by the state is based on law to ensure the community's welfare. Apart from that, its use at a technical and detailed level is based on delegated legislation promulgated by the executive branch. The formation of delegated legislation originates from orders from higher statutory regulations or authority. In the field of natural resources, there is quite a lot of delegated legislation in the form of Presidential Regulations, Government Regulations, Ministerial Regulations, and Regional Regulations, and delegated legislation regulated in Article 8 of the P3 Law and is often subject to change. Delegated legislation can provide technically detailed implementing regulations down to the lowest level institutions/institutions to provide legal certainty and ease of implementation. However, delegation not explicitly limited by the delegation criteria causes hyper-regulation by the executive agency through its functional authority. Apart from that, hyper-regulation opens up space for unsynchronization between the substance of higher regulations and delegated regulation, thereby causing ineffective use of natural resources.

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<sup>47</sup> Cindy Rianti Priadi and others, 'Policy and Regulatory Context for Self-Supplied Drinking Water Services in Two Cities in Indonesia: Priorities for Managing Risks', *Environmental Development*, 49 (2024), 100940 <https://doi.org/https://doi.org/10.1016/j.envdev.2023.100940>

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# Understanding Delegated Legislation in The Natural Resources Sector

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**Understanding Delegated Legislation in The Natural Resources Sector**

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**Keywords**  
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The formation of statutory regulations is based on the authority to form. The formation of delegated regulations can originate from orders or authority. In the P3 Law, it is stated that delegated regulation is not only limited to (or there is a space for delegated regulations other than "1) Government Regulations, Presidential Regulations, and Regional Regulations, so it becomes hyper-regulation. This happens in laws and regulations in the field of natural resource management. This article aims to explain the condition of existing delegated regulation in the field of natural resources and its impact on the use of natural resources. The results of this research show that the position and types of delegated regulation in the field of natural resources are not only in the form of Presidential Regulations, Government Regulations, Ministerial Regulations, and Regional Regulations but also delegated legislation regulated in Article 8 of the P3 Law, which is not small in number. The implications of delegated legislation can provide technically detailed implementing regulations down to the lowest level institutions/institutions. However, delegation not explicitly limited by the delegation criteria causes hyper-regulation by the executive agency through its functional authority. Apart from that, it opens space for unsynchronization between the substance of higher regulations and delegated regulations, thereby causing ineffective use of natural resources. This study recommends that changes be made to the Law on the Establishment of Laws and Regulations, especially concerning its hierarchy.

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**1. Introduction**

For developing countries like Indonesia, development is always based on utilizing natural resources. The better the management of natural resources owned by a country, the closer it will be to achieving the welfare of its citizens. The Indonesian Constitution regulates control rights in the natural resource ownership regime and its allocation. The regulation of the control of natural resources is contained in the formulation of Article 33 of the 1945 Constitution of the Republic of Indonesia, which states that "Earth, water and the natural resources contained therein are controlled by the State and used for the greatest

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