

# State Institutions and Regional Institutions: A Derivation?

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## Keywords:

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**Abstract.** The existence of regional institutions that have similarities with state institutions nomenclature but it needs to be analyzed whether regional institutions are derivatives of state institutions or instead regional governments are given autonomy to form regional institutions as long as they are regulated in laws and regulations and needed by regional governments. This study used normative juridical methods. The results showed that local governments have the authority to make proposals and procedures for the administration of local government regulated in law because they are accommodated in Article 18 paragraph (7) of the Constitution of the Republic of Indonesia Year 1945 so that if needed, local governments can form regional institutions as long as needed by regional governments and can innovate on regional institutional concepts that are needed and not necessarily conform to the concept of state institutions.

## 1. INTRODUCTION

The 1945 Constitution affirms that the Indonesian state is a unitary state in the form of a republic. It is also emphasized that Indonesia is a country of law with the people's will. Thus, the Indonesian state is a constitutional state, democratic in the form of a unitary republic. To organize the Indonesian state, the highest state institutions were formed, including legislative institutions, executive agencies, judicial institutions, and financial audit agencies (Budi, 2022). The legislature consists of the House of Representatives and the Regional Representative Council, both of which form the People's Consultative Assembly. However, considering that the territory of the Indonesian state is very large with a wide geographical range and diverse socio-cultural conditions, the 1945 Constitution then regulates the need for local government (Akmal, 2022). Article 18 of the 1945 Constitution affirms that the Indonesian state is divided into regions (provinces) and small autonomous regions, taking into account the origins of the regions concerned as privileges. Thus, in the government system of the Republic of Indonesia, the existence of a regional government is a constitutional provision that must be realized (Allo et al., 2025).

State institutions in Indonesia are divided into two types, namely constitutional state organs and state auxiliary organs. Constitutional state organ is a state institution whose authority is granted by the 1945 Constitution (Zaini & Ridho, 2023). Meanwhile, a state auxiliary organ is a state institution whose authority is granted not by the 1945 Constitution but by other laws and regulations. Some state auxiliary organs although their authority is established by other laws and regulations but there is also constitutional authority (Arifin, 2024).

Regarding the position/ relationship between regional and central institutions, the state government is a system that can be seen hierarchically and functionally (Tang, 2021). Hierarchically it can be distinguished the existence of a level of suprasystem and each has a duty and function in exercising its unanimous and intact rights and obligations and its smaller and lower subsystems are subject to the principles of managing higher government. This explains that hierarchical government is an integrated system under the central government, namely the Provincial Government and Regency/City Government and Village Government, each of which is a round and complete system in carrying out its duties (Burhanuddin et al., 2024).

There are several state institutions that are practiced at the local government level with nomenclature that adapts to state institutions but with concepts and implementations that can differ according to regional needs (McNaught, 2023). Thus, it is necessary to analyze whether state institutions can be derived into regional institutions or instead local governments are given the freedom to form regional institutions as long as they are regulated in laws and regulations and formed as long as needed by the regions.

## 2. METHOD

This type of research is normative juridical research, which deals with determining the correctness of coherence to determine whether there is a rule of law based on legal norms. The research design adopted in this study is evaluative, with the aim of providing a rationale for the research findings (Christiani, 2015). The researcher will evaluate the findings of the study, determining whether the hypothesis derived from the suggested legal theory is accepted or rejected. This legal research uses a doctrinal approach to find research results that are philosophical in nature. A deductive approach is used in drawing conclusions, which involves the conclusion of a general object in order to draw certain conclusions. The research approach is with a statute approach by analyzing laws and regulations (Muammar & Taufik, 2024).

### 3. DISCUSSION AND ANALYSIS

#### 3.1. The Nature of State Institutions and Regional Institutions

In the Big Indonesian Dictionary, the word "institution" is defined as the origin or potential (Which will become something) original form (Appearance, form) of reference, a body or organization that aims to conduct scientific research or carry out an established behavioral pattern consisting of structured social interactions.

An institution is a structured process, which people use to organize its activities. Then Literally the term government or in English is a pedanan of the word government. So, local government is an institution or public body that has made efforts to achieve state goals. Each regional institution carries out its role in accordance with its position, main duties, and functions in the Indonesian state administration system (Nugraha & Kusumah, 2024).

Indonesia is a country of laws. The division of powers in the administration of the state is carried out in the conception of the legal state. The purpose of the division of power is not to concentrate power on one hand to avoid the emergence of abuse of power. In the implementation of power in Indonesia, it is carried out by state institutions (Chandranegara & Cahyawati, 2023).

To understand the concept of state institutions when using a comparative approach to the concept of state institutions in Germany, the German Constitution distinguishes between state organs and constitutional organs. Constitutional organs are only concerned with institutions (organs) whose status and authority are directly regulated by the constitution. Meanwhile, state organs are institutions within the German state that are considered to act on behalf of the German state. By (Vinx, 2021), in comparison to the German constitutional system, we should distinguish state institutions whose status and authority are directly regulated by the Constitution from state institutions which are only referred to in the Constitution but whose authority is delegated by Peters (2018), law.

Meanwhile, the position of regional institutions in the constitutional system, provincial, district and municipal governments that regulate and manage their own government affairs according to regional autonomy and auxiliary duties, local governments have the right to establish regional regulations and other regulations to exercise their authority in managing regional households (Uzdah et al., 2024). The central and local governments must be able to communicate in order to avoid abuse of authority, the relationship in question is financial relations, public services, utilization of natural resources and others that are regulated fairly and in harmony, the authority that the regions have is related to democracy and local values to realize good, effective and efficient governance.

In contrast to regional institutions, local governments are governors, regents, or mayors, and regional officials as elements of local government administration. Regional Apparatus is an organization or institution in the local government that is responsible to the Regional Head in the context of implementing government in the region (Widaningsih et al., 2024). In the Provincial Regions, the Regional Apparatus consists of the Regional Secretariat, Regional Offices, and Regional Technical Institutions. In the Regency/City Region, the Regional Apparatus consists of the Regional Secretariat, Regional Offices, Regional Technical Institutions, Sub-districts, and Kelurahan. Regional Devices are formed by each Region based on considerations of the characteristics, potentials, and needs of the Regions. Regional Apparatus Organizations are determined by Sarihati and Mukhlisiana (2020), local Regional Regulations with reference to Government Regulations. Control of the organization of regional apparatus is carried out by the Central Government for the Province and by the Governor for the Regency / City with reference to Government Regulations. The formation and requirements for the position of regional apparatus are determined by Hadi et al. (2024), a Regional Head Regulation based on a Government Regulation. All of these regional institutions are directed to accelerate the realization of community welfare through improving services, empowerment and community participation, as well as increasing regional competitiveness by Purnamawati et al. (2023), taking into account the principles of democracy, equity, justice and specificity of a region in the Unitary State system of the Republic of Indonesia.

Regional Government according to Law Number 23 of 2014 concerning Regional Government explained that: "Regional Government is the administration of government affairs by Salmon and Lekipiouw (2024), local governments and regional people's representative councils according to the principle of autonomy and auxiliary duties with the principle of autonomy and the principle of autonomy as widely as possible- the breadth in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia". So, a local government institution is a structured system of rules or processes, which is used to organize local government. This system of rules is then concreted into an organization. So, an organization is a concrete form of an institution that is abstract (Salvador & Sancho, 2023). Through this form of organization, local government agencies carry out their activities to achieve goals.

A Local Government Institution is an organization that is given power from the Central Government, implementing and regulating the interests of the nation and state in a region that has a system or rules that are structured in detail so that in its implementation the Regional Government has guidelines for the administration of the government. Empirically, the law was implemented in the implementation of local government before the enactment of LAW No.22 of 1999, namely Law No.5 of 1974 and the previous law provided implementation of the position and formal role of executive power more dominant than regional legislative power (Sudrajat, 2020). In LAW No.5 of 1974 and the previous law, it has greater authority than the position of the Regional People's Representative Council as the exercise of legislative power. In the extreme, it can be said that the regional head cannot be dismissed directly by the Regional House of Representatives (Khosla & Vaishnav, 2024). The regional head is not fully responsible to the Regional House of Representatives and the duration of its implementation of its duties is only to provide information on accountability.

According to Moh. Mahfud MD in his book *The Politics of Law*, Local Government consists of the Regional People's Representative Council and the Local Government Council chaired by the Regional Head. So, the government in the regions is carried out collegially and the regional head is not a separate operating unit because he belongs to the local government even though the appointment of the regional head is carried out by the central government.

Local Government Institutions which are a forum for the implementation of government functions and as a process of interaction between local governments and other regional institutions and also with local communities. Such institutions can be referred to as regional institutions, as long as they are financed by Mwasaga (2021), state or local spending guarantees. According to Jimy regional institutions can be distinguished by:

1. Regional Institutions established based on the Basic Law, Law, Government Regulation or Presidential Regulation and the appointment of members is carried out by Presidential Decree.
2. Regional Institutions formed based on central-level regulations or Provincial Regulations, and the appointment of their members is determined by Presidential Decree or it can be with Central Officials.

3. Regional Institutions whose authority is regulated in provincial regulations and the appointment of their members is carried out by a Decree of the Governor.
4. Regional Institutions established under the Governor's Regulation and the appointment of their members are determined by a Decree of the Governor.
5. Regional Institutions established based on the Governor's Regulation and the appointment of their members are determined by decision of the Regent/Mayor.
6. Regional Institutions formed based on Regency/City Regional Regulations and the appointment of their members are determined by a Decree of the Regent/Mayor.
7. Institutions formed based on Regent/Mayor Regulations and their membership are determined by Decree of the Regent/Mayor.

In the Indonesian constitutional system, the highest position is if the existence of organs and their authority is regulated by Yunus et al. (2022), the Basic Law. In this category, the state organ is referred to as an institution whose authority is granted by Sarkawi and Ainuddin (2023), the Basic Law, such institutions as governors, regents, mayors, regional people's representative councils (provincial or regency/city areas). In addition, Article 18B paragraph (1) says that there are special or special units of local government. Then the second position is a regional institution that is formed and buried with or based on the Law. Such as the Regional Election Commission as the organizer of the selection of regional heads (Law No. 32 of 2004 Article 57 paragraph (1) concerning Regional Government (State sheet of the Republic of Indonesia of 2004 No. 125, Supplement to the State Gazette of the Republic of Indonesia No. 4437) juncto Constitutional Court Decision on Case no. 072-073 / PUU-II / 2004).

Regional institutions each have a position and function in accordance with the laws and regulations in the Indonesian constitutional system. From the discussion, the author can conclude several things such as that the Local Government Institution is an organization that is given power from the Central Government, in its implementation the Regional Government has guidelines for the rules for organizing its government (Mukhlis et al., 2025). Local Government Institutions which are a forum for the implementation of government functions and as a process of interaction between local governments and other regional institutions and also with local communities.

Then it is the opinion of Jimly Asshiddiqie, that regional institutions can be distinguished from institutions established under the Basic Law, Law, Government Regulation or Presidential Regulation and the appointment of members is carried out by Qamar et al. (2023), Presidential Decree, institution dearth which is formed based on central level regulations or Provincial Regulations, and the appointment of its members is determined by Pramono (2024), Presidential Decree or it can also be with Pu sat Officials, institutions whose authority is regulated in Provincial Regulations and the appointment of its members is carried out by Sadiq and Diamantina (2024), a Decree of the Governor, I regional institutions formed based on the Governor's Regulation and the appointment of its members is determined by Ridwan and Rikmadani (2022), the Decree of the Governor, an Governor, institutions formed based on the Governor's Regulation and the appointment of its members are determined by Leshar (2012), decree of the Regent/Mayor, institutions established based on the Regency/City Regional Regulations and the appointment of its members are determined by Decree of the Regent/Mayor, etc. which are formed based on the Regent/Mayor Regulation and whose membership is determined by a Decree of the Regent/Mayor.

In the constitutional system at a glance, the Governor, Regent/Mayor and the Regional People's Representative Council can be referred to as different and segregable constitutional institutions. The governor, regent/mayor is the head of local government, while the regional people's representative council is a local government institution that functions as a regional people's representative institution with legislative, supervisory, and budgetary functions.

The Regional Apparatus is a local government agency that is responsible to the Regional Head in the context of implementing government in the regions (Sujarwo et al., 2025). The provincial apparatus consists of the regional secretariat, the secretariat of the regional people's representative council, regional offices, and regional technical institutions. the district/city apparatus consists of the regional secretariat, the secretariat of the regional people's representative council, regional offices, regional technical institutions, sub-districts, and sub-districts.

Therefore, regional governance is expected to provide great benefits in the lives of the community, nation and state, especially in the development of democratic life, strengthening the position and ability of local governments, improving public services and improving the welfare of the people through regional development, especially the existence of regional institutions needed by local governments (Rijal, 2023).

### 3.2. State Institutions and Regional Institutions: A Derivation?

Indonesia is a country whose territory is divided into provinces. The provincial area was subdivided over the Regency area and the city area. Each province, regency, and city area have a local government that is regulated by Ohoiwutun (2023), law. Regional Government is the implementation of government affairs by the Regional Government and the Regional People's Representative Council according to the principle of autonomy and auxiliary duties with the principle of the widest autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution. The affairs of the implementation of local government are regulated in Law Number 32 of 2004 concerning Regional Government. Where the actions and authorities of regional governments must be based on the norms of authority, since the norms of authority form the basis of the validity of government acts, and the authority derived from the law is this formal legality in accordance with the concept of the state of law.

Government that is run on the principle of decentralization means the handover of government affairs from the center to each region or the formation of autonomous regions. Meanwhile, a government that is run on the principle of deco centralization means the delegation of central government affairs to each regional head as the person in charge of general government affairs or the delegation of part of the central government's authority to the tools of the central government in the regions.

Local Government is one of the tools in the system of governance. This Local Government refers to the administrative authority in an area smaller than a State where the State of Indonesia is a country whose territory is divided into Provincial areas which are then subdivided into Regency areas and City areas, and this local government itself has certain duties or affairs handed over by the central government to the regions to be organized in accordance with discretion, regional initiatives and capabilities (Fatimah et al., 2024).

The government system in Indonesia does not recognize a system of separation of powers, but there is a system of division of powers that includes the power to carry out government functions in the sense that executive power is exercised by the president and his ministers (Halim, 2024). The power to make laws or legislatures is exercised by the House of Representatives, and the

judicial or judicial powers, are exercised by the Supreme Court along with the apparatus in the regions. A Local Government Institution is an organization that is given power from the Central Government, implementing and regulating the interests of the nation and state in a region that has a system or rules that are structured in detail so that in its implementation the Regional Government has guidelines for the administration of the government (Okorie et al., 2023). Empirically, the law in the implementation of local government before the enactment of Law No.22 of 1999, namely LAWNo.5 of 1974 and the previous law provides for the implementation of the position and formal role of executive power more dominant than regional legislative power. In LAWNo.5 of 1974 and the previous law, it has greater authority than the position of the Regional People's Representative Council as the exercise of legislative power. In the extreme, it can be said that the regional head cannot be dismissed directly by the regional house of representatives. The regional head is not fully responsible to the regional people's representative council and the duration of its implementation of its duties is only to provide information of accountability (Suatmiati et al., 2023).

Local government according to C.F Strong is an organization in which the right to exercise sovereign or supreme power is placed. Government as a necessity has the main purpose of maintaining a system of order so that ordinary people live a reasonable life.

In local institutions, local governments are governors, regents, or mayors, and regional officials as elements of local government administration. Regional Apparatus is an organization or institution in the local government that is responsible to the Regional Head in the context of implementing government in the region (Tolang & Dibaba, 2022). In the Provincial Regions, the Regional Apparatus consists of the Regional Secretariat, Regional Offices, and Regional Technical Institutions. In the Regency/City Region, the Regional Apparatus consists of the Regional Secretariat, Regional Offices, Regional Technical Institutions, Sub-districts, and Kelurahan. Regional Devices are formed by each Region based on considerations of the characteristics, potentials, and needs of the Regions. Regional Apparatus Organizations are determined by local Regional Regulations with reference to Government Regulations. Control of the organization of regional apparatus is carried out by the Central Government for the Province and by the Governor for the Regency / City with reference to Government Regulations (Jakani et al., 2023). The formation and requirements for the position of regional apparatus are determined by a Regional Head Regulation based on a Government Regulation. All of these regional institutions are directed to accelerate the realization of community welfare through improving services, empowerment and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice and specificity of a region in the Unitary State system of the Republic of Indonesia.

As a rule of law, the constitution is laid down as the supreme of the land. Consequently, in order to guarantee and protect this position, it is known that there is a testing mechanism to ensure that the laws and regulations under it do not conflict with the constitution, either contrary in terms of material norms or contrary to the principles in the constitution concerned. This is a fundamental constitutional arrangement; and the division and limitation of constitutional duties of a fundamental nature. In addition, the 1945 Constitution explicitly mentions two principles that animate the text, namely that Indonesia is a country based on law and government based on the Constitutional System (Dimiyati et al., 2021).

The Indonesian constitution regulates regional institutions that contain their functions and authorities in the implementation of government. Article 4 of PP Number 18 of 2016 concerning regional apparatus regulates that "Regional Institutions are organizations that are given power from the Central Government, implementing and regulating the interests of the nation and state in an area that has a system or rules that are structured in detail so that in its implementation the Regional Government has guidelines for the rules for carrying out the government".

In the hierarchy of laws and regulations, it is desirable that every institution in this country have the appropriate regulatory authorities. Provincial institutions are part of the continuation of the existing system and this is a continuation of the delegation of authority granted to each regional institution in accordance with the regulations imposed.

As we know so far, in the 1945 Constitution Article 18 paragraph (1) states that the Unitary State of the Republic of Indonesia (NKRI) is divided into provincial areas and the provincial area is divided into regencies and cities, each of which has a region, which is regulated by law. This then allows each region to require the existence of institutions that have a focus or concentration in the management of their respective regions, such as provincial-level executive agencies, provincial-level legislatures and others (Herrfahrdt-Pähle et al., 2020).

The position of state institutions is one of the important elements in implementing existing governance, this is as stated in the Basic Law (Constitution). As a country of law, it is certainly a sure thing that in carrying out every existing governance must be in accordance with applicable rules.

There are three important things related to the legal politics of the implementation of local government that is carried out during the period of enactment of Law No. 22 of 1999, namely.

1. Improvement of various policies and laws and regulations in the field of local government.
2. Reform and functionalization of the organizing organs of local government.
3. Strengthening the institution of local people's representatives and their control function over the power of local governments in carrying out their duties in the field of local government.

Based on its function, the regional institutions that have the highest position are the Governor, Regent/Mayor and the Regional People's Representative Council; their authority is regulated in the Undang – Law Dasar. At the second level, there are regional institutions that have been formed and dissolved based on laws, while at the third level are regional institutions that have been formed based on central regulations under the law (Adiputri, 2018). And at the fourth level are regional institutions that are purely regulated and formed by local governments. In addition, regional institutions explicitly mentioned in the 1945 Constitution of the Republic of Indonesia such as governors, regents, mayors and regional people's representative councils. The existence was originally regulated jointly in the Law on local government and has now been regulated in a separate Law, namely the Law on villages. In village government, regional institutions are formed at the same level as the district/city level and the provincial level. Where is the local government and the local people's representative council. In the village government unit, there is also a village government that has been led by the Village Head and the village representative council called the Village Consultative Body (Arif et al., 2023). The mechanism of State Institutions being regional institutions, can be described through the following scheme:



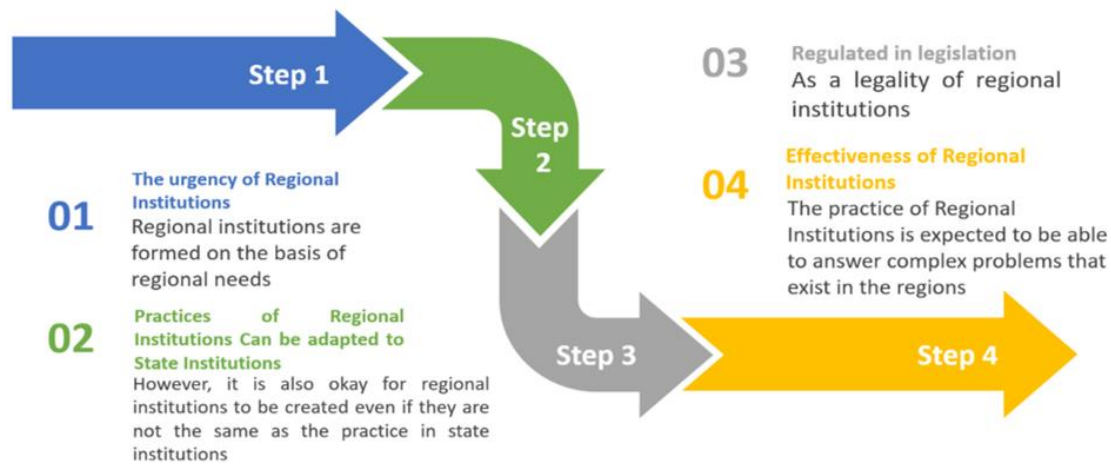


Figure 1: The hierarchical relationship between state institutions and regional institutions in Indonesia.

For example, there are 7 new state institutions formed by President Jokowi such as the Pancasila Ideology Development Agency (BPIP), the State Cyber and Password Agency (BSSN), the Marine Security Agency (BAKAMLA), the National Committee for Sharia Finance (KNKS), the Peatland Restoration Agency (BRG), the Presidential Staff Office (KSP), the Tourism and Creative Economy Agency (BEKRAF) (Hadita & Harijanti, 2023). In practice, there are state institutions that are almost the same as regional institutions but with different concepts including the reach of their authority such as the People's Representative Council and Regional People's Representative Council, the Judicial Commission and the Liaison Judicial Commission, the General Election Commission of the Republic of Indonesia and the Provincial/Regency/City General Election Commission, the General Election Supervisory Board of the Republic of Indonesia and the Provincial/District/City General Election Supervisory Agency (Junaidi et al., 2024).

Infect, the emergence of new state institutions or regional institutions is not only to increase the quantity of existing institutions, but the dynamic development of the times with various complex problems on the other hand as long as state institutions or regional institutions are needed, then they can be constructed in a country (Walker et al., 2021). Thus, the emergence of new institutions is not only a form of creating a hyper-state institution. In this case, the central and local governments may form regional institutions that are almost the same as state institutions, or may form regional institutions that do not have to be the same as those practiced in the central government as long as the regional institutions are urgently constructed in a region.

#### 4. CONCLUSION

Regional institutions do not have to be derivatives of state institutions, based on Article 18 paragraph (7) of the 1945 Constitution of the Republic of Indonesia local governments have the authority to make the structure and procedures for the administration of regional government regulated in law, besides that regional governments based on regional autonomy can form regional institutions as long as needed by regional governments and can innovate on the concept of regional institutions needed and does not have to adjust to the concept of state institutions.

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