

The Problem of Normative Inconsistency in Legislation in Indonesia: An Analysis from the Perspective of Legal Science

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Article Info

Article history:

Received: 6 December 2025

Publish: 18 December 2025

Abstract

Normative inconsistency within Indonesia's legal regulatory system continues to be a significant challenge that disrupts legal certainty, weakens policy implementation, and complicates coordination among government bodies. This study examines the various manifestations of inconsistent norms, explores the root causes behind these discrepancies, and presents solutions based on legislative drafting theory. Using a normative juridical approach, the research relies on extensive literature review of laws, regulations, and academic sources relevant to the topic. The results indicate that inconsistencies appear in several forms, such as overlapping authority between central and regional governments, a mismatch between legal provisions and on-the-ground implementation, unequal funding distribution, insufficient oversight, and inconsistent law enforcement. Contributing factors include inadequate regulatory harmonization, limited expertise among legal drafters, restricted public involvement, political and economic interests, and the proliferation of excessive regulations. From a legislative drafting perspective, addressing these problems requires strict adherence to foundational lawmaking principles, improved harmonization methods, enhanced capacity-building for regulatory drafters, and institutionalized post-legislative review. This study concludes that systematic regulation planning, integrated harmonization, and continuous evaluation are crucial to achieving a coherent and equitable national legal framework.

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1. INTRODUCTION

The issue of inconsistent norms within Indonesia's legal system often poses significant challenges to legal certainty and coordination between existing regulations. These differences or inconsistencies in norms can arise from the failure to update supporting regulations in line with changes in primary regulations, both within similar sectors and between the central and regional governments. This situation has the potential to trigger various obstacles, such as difficulties in law enforcement, confusion in the distribution of authority, and the risk of regulatory conflicts that create uncertainty for the general public. From a legal perspective, the phenomenon of norm inconsistency is a serious issue that can hinder the function of law as an effective and equitable regulatory instrument in society. Therefore, comprehensive harmonization and evaluation measures are needed to address overlapping and conflicting norms to achieve a consistent legal system that meets the needs of society and optimally supports national development. An analytical approach in legal science provides an important foundation for identifying the root of the problem and formulating solutions to uphold legal certainty and social justice in Indonesia.

2. RESEARCH METHODS

This research uses a normative legal research method with a normative juridical approach, which focuses the analysis on applicable laws and regulations relevant to the problem of norm inconsistency in the Indonesian legal system. This method involves library research as the primary data collection technique, by exploring legal documents such as laws, government regulations, and related literature related to the research theme. The analysis is conducted qualitatively by evaluating and interpreting the contents of legal norms to identify problems of inconsistency, overlap, and inconsistency between regulations. With this approach, the research seeks to provide an in-depth and systematic overview of these problems from a legal science perspective so as to produce recommendations for regulatory harmonization to create legal certainty and justice in Indonesia.

3. DISCUSSION

1. Forms and Factors Causing Normative Inconsistencies in Legislation in Indonesia

The inconsistency of norms in Indonesian laws and regulations is one of the fundamental problems in the national legal system. This inconsistency not only masks the weak harmonization between central and regional legal norms but also shows a lack of synchronization between the substance of regulations and their implementation in the field. Based on the results of research by Muslim Lobubun, Yohanis Anthon Raharusun, and Iryana Anwar, *Journal of Indonesian Legal Development* (2022), this inconsistency can be seen from two main aspects, namely the form of inconsistency and the causal factors.

1. Forms of Norm Inconsistency

A. Lack of synchronization of authority between sectoral regulations and regional government.

This occurs due to a lack of alignment in the division of functions between the central and regional governments. In practice, several sectors, such as forestry, mining, and maritime affairs, still experience overlapping authority, particularly regarding licensing.

B. The gap between legal norms and their implementation.

Many regulations are drafted without considering the real conditions on the ground, whether in terms of social, economic, or institutional capacity. As a result, there is a striking difference between what is regulated in the norms (*that should be*) and the reality of its implementation (*that is*).

C. Imbalance in funding and financing systems.

The principle of *money follows the* allocation of funds, which should be the basis for budget allocation between the central and regional governments, is not implemented proportionally. This hinders the implementation of the regional authority delegated by the central government.

D. Inconsistency in law enforcement.

Law enforcement is often formal and textual, without considering substantive aspects of justice. This situation creates legal uncertainty and undermines public trust in law enforcement agencies.

E. Weak supervision and guidance functions.

Central government oversight of regional governments remains suboptimal, resulting in many regional regulations that conflict with higher-level laws. This indicates that the control and supervision system is not yet operating effectively.

2. Factors Causing Norm Inconsistency

A. Lack of harmonization and synchronization between regulations.

The legislative process tends to be carried out sectorally and separately, without coordination between ministries or agencies. As a result, conflicts between regulations often arise, both vertically and horizontally.

B. The quality of human resources for law-making is still limited.

The capacity and integrity of lawmakers, both legislative and executive, are inadequate. Understanding of the principles of sound regulatory formation remains weak, resulting in many legal products failing to meet substantial standards.

C. Lack of public participation in the legislative process.

The community is rarely involved in drafting laws, resulting in legal products not reflecting the aspirations and social needs of the community.

D. The absence of a continuous evaluation mechanism.

Most regulations are never evaluated after they are enacted. As a result, outdated regulations remain in effect, creating normative conflicts.

E. There are political and economic interests in the formation of laws.

The legislative process is often influenced by the interests of certain groups or political pressure, thus ignoring the principles of justice and public welfare.

F. Phenomenon over-regulation or hyperregulation.

The large number of institutions issuing regulations without coordination creates overlapping norms and reduces the effectiveness of law enforcement.

2. The Perspective of Legal Science in Explaining and Resolving Normative Inconsistencies

Legal science provides a crucial theoretical foundation for analyzing normative inconsistencies within Indonesia's legal system. By referring to the principles, methods, and techniques for establishing standard regulations, legal science can address the root causes of inconsistencies and provide more systematic and structured solutions.

1. Fundamental Principles in Legal Science

Legal science teaches several important principles that must be fulfilled in drafting regulations so that legal norms are consistent and harmonious, including:

A. Principle of Normative Hierarchy: Legislation must be built on clear levels in the hierarchy of norms to avoid conflicts that could lead to inconsistencies.

B. Principle of Consistency and Integration: Legal norms must be designed to complement each other horizontally and vertically, thus creating integration in the national legal system.

C. Principle of Legal Certainty: The regulations made must be very clear and easy to understand so as not to give rise to multiple interpretations that lead to legal uncertainty.

D. Principle of Participation and Transparency: Involving the public and stakeholders in the legislative process is crucial for creating regulations that are relevant and responsive to social needs.

2. Methods and Techniques in Forming Regulations

Legal science also offers methods and techniques that serve as guidelines for lawmakers in avoiding normative inconsistencies:

A. Synchronization and Harmonization Method: Arrangement and synchronization between regulations to prevent overlapping authority and conflicting norms.

- B. Regulatory Mapping Technique: Observing and evaluating the relationships between norms to detect potential conflicts and gaps in the existing legal system.
- C. Systematic Editorial Techniques: Consistent use of legal language and systematic drafting structure to prevent double interpretation and ambiguity.
- D. Strengthening the Integrated Evaluation Mechanism: Conducting periodic evaluations of existing regulations to anticipate the emergence of outdated and irrelevant norms.

3. Practical Solutions from a Legal Perspective

Based on the application of these principles and methods, several solutions that can be taken to overcome the inconsistency of norms in Indonesia are:

- A. Drafting regulations that are oriented towards systems and continuity to avoid conflicts between norms at both the central and regional levels.
- B. Strengthening coordination between law-making institutions, particularly between ministries and regional governments, to achieve better harmonization of norms.
- C. Increasing the capacity of human resources in regulatory formation by providing technical training and a deeper understanding of legal principles.
- D. Increasing public participation at every stage of the formation of new regulations, to ensure the creation of legal products that represent the aspirations of the community.
- E. Development and utilization of integrated legal information technology, such as legal audits and legislative databases, as an effort to prevent and improve normative inconsistencies on an ongoing basis.

With this theoretical and practical foundation, legal science not only identifies problems of norm inconsistency but also presents solutions that can strengthen the harmonization of norms in the Indonesian legal system, thereby creating better legal certainty and higher public trust.

3. Strategic Steps That Can Be Taken to Strengthen the Harmonization and Consistency of Norms in the Legal and Regulatory System in Indonesia

To address the problem of normative inconsistency, a series of comprehensive, structured, and integrated strategic steps are required. These steps must be based on the principles of legal science and aimed at ensuring legal certainty and justice within the national legal system:

1. Strengthening Systemic and Integrated Regulatory Planning. Harmonization of norms must be initiated from the planning stage of the legislative program to prevent norm conflicts in the future.

- Preparation of Mandatory and Quality Academic Papers (NA): Every drafting of legislation, both at the central (Prolegnas) and regional (Prolegda) levels, must be supported by in-depth NA. This NA must contain an inventory of existing regulations (*legal inventory*) and Regulatory Impact Analysis (*Regulatory Impact Assessment- RIA*) to comprehensively map potential overlaps and their impacts on other sectors.
- National Legal Database Integration (*Legal Information System*): The government needs to integrate all regulatory data into one integrated legal information system in real-time. This system must be equipped with an automatic norm conflict detection feature, both vertically (contradicting higher regulations) or horizontally (overlapping with regulations at the same level).

2. Optimization of Harmonization Functions at the Institutional Level

The implementation of harmonization of the substance of norms by authorized institutions must be tightened and its methodology strengthened.

1. Strict Implementation of Horizontal and Vertical Synchronization Techniques: The harmonization process (by the Ministry of Law and Human Rights or regional legal bureaus) must follow standard rules (in accordance with Law No. 12 of 2011 and its amendments). This includes verification to ensure:
 - Vertical Consistency (Hierarchy): New norms do not exceed or contradict the content of higher regulations.
 - Horizontal (Sectoral) Consistency: New norms are in line with other sectoral regulations at the same level, especially regarding the division of authority and government affairs.
2. Strengthening the Capacity of Legislative Regulation Designers (*Legal Drafter*): The technical competence of designers must be improved periodically. They must have a thorough understanding of editorial techniques, consistent legal terminology, and the formal principles of regulatory formation to avoid ambiguity and multiple interpretations.

3. Improving the Quality of Human Resources and the Ethics of Legal Formation

The human factor involved in the legislative process has a crucial role in creating quality legal products.

- Special Training on the Principles of Regulation Formation: All actors involved (legislative and executive) must receive ongoing training on the principles of the material content of statutory regulations (such as the principle of clarity of formulation, the principle of usefulness and effectiveness) and the principles of good governance.
- Building an Anti-Sectoral Culture (*Ego Sectoral*): There is a political and professional commitment to abandon sectoral egos in policy formulation. Every regulation must be viewed as part of a unified national legal system, so that the public interest is always prioritized over the interests of groups or sectors.

4. Implementation of Evaluation and Legal Audit Post-Legislation

Correction mechanisms for existing regulations are essential to maintain the relevance and consistency of norms.

- *Legal Audit And Review Periodic*: Need to institutionalize mechanisms for legal audit (legal eligibility assessment) and review (re-examination) periodically of the regulations that have been in force. The focus is on identifying outdated norms, norms that give rise to disputes, and norms that hinder the effectiveness of policies or investments.
- Optimization of Regulatory Testing Function (*Judicial Review*): The process of reviewing legislation by the Supreme Court and the Constitutional Court must be effective and efficient. Decisions resulting from the review must be followed up quickly by the relevant regulatory bodies through revocation or administrative revision mechanisms.

4. CONCLUSION

By implementing these strategic steps, the legal regulatory system in Indonesia will have a more solid and consistent foundation and will be able to provide better legal certainty for the community. The disharmony of norms in Indonesian laws and regulations is a fundamental problem that affects legal certainty, the effectiveness of government administration, and public trust in the legal system. This study shows that normative inconsistencies arise in various forms, ranging from overlapping authority between the central and regional governments, discrepancies between written regulations and their

implementation practices, disparities in funding support, weakened oversight mechanisms, to disharmony in the law enforcement process. The main causes include suboptimal harmonization of regulations, limited capacity of regulatory drafters, limited space for public participation, the dominance of certain political interests, and the increasing number of regulations issued without sufficient coordination (hyperregulation).

From a legal perspective, addressing normative inconsistencies requires implementing sound regulatory principles, strengthening harmonization and synchronization processes, developing more structured regulatory wording, and improving the quality of human resources involved in legislation. Furthermore, regular regulatory evaluation and review are necessary to update or revoke outdated regulations. With this approach, the Indonesian legal system is expected to move toward a more consistent and adaptive regulatory framework that ensures certainty and justice for the public.

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