

UNCERTAINTY OF THE SUBSTANCE OF ARTICLE 18B IN CREATING LEGAL NORMS REGARDING THE DETERMINATION OF SPECIAL REGIONS IN INDONESIA**Achmad Daffa Meilana Rifqi, Vicko Wahyu Rifan Toyiby, Sofyan Arief**

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Keywords	Abstract
Special Regions, Article 18B, legal norms, governance, legal framework, Indonesia	Indonesia's legal framework for designating Special Regions, particularly at the provincial level, lacks clear qualifications for determining what constitutes a "Special Area" or "Special Region." While regions like DKI Jakarta and Yogyakarta have special status, there is no consistent or standardized legal basis for such classifications. The absence of clear guidelines for labeling a region as "special" creates legal ambiguity and inconsistency in governance. This study explores the legal weaknesses and the lack of synchronization between the existing laws and regulations governing the designation of Special Regions, arguing for the creation of a comprehensive law to address this issue. Using a normative juridical approach, this research analyzes Article 18B Paragraph (1) of the 1945 Constitution, which grants authority for the designation of Special Regions but lacks specific provisions. The results reveal that the law does not provide a normative definition of Special Regions, leading to inconsistent applications. The study recommends that the government be empowered to establish criteria for Special Regions through Government Regulations (PP) while maintaining general provisions in the law. The implications of this research highlight the need for clearer legal guidelines and the harmonization of laws to ensure fairness in designating Special Regions, preventing future legal disputes.

**INTRODUCTION**

Indonesia is a country whose all state administration is based on law, this is clearly stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945 which clearly states that Indonesia is a country of law (Juanda & Juanda, 2023; Muhammad & Husen, 2019; Risky et al., 2023; Rokilah, 2020; Siallagan, 2016; Suherman et al., 2020). The implementation of Indonesia as a state of law is also needed how the concept of the state of law is created, so various kinds of concepts of the state of law such as civil law, common law, Islamic law, customary law, etc. are created (Pasaribu, 2020; Safriani, 2018; L. Santoso, 2014; Sari & Dewi, 2024; Siregar, 2022). Indonesia itself in applying the concept of the state of law can be seen in the source of Indonesian law itself, namely the source of material law that is the basis of the

legal content in the formation of law in the source of formal law that contains philosophy including Pancasila in it, sociological, and historical, the source of formal law itself is a source of law that is directly used in the application of a legal event such as laws and regulations, customs, jurisprudence, treaties, and doctrines (Arman & Daria, 2022; Daullah et al., 2022; Hadi, 2021; Holili et al., 2024; Tampubolon & Simbolon, 2022; Wahyudin & Fithoroini, 2023). If we analyze the concept of the Indonesian legal state with its legal sources and application, then the concept of the Indonesian legal state adheres to a mixed legal system by including the concept of Civil Law that we can see in laws and regulations, the concept of Common Law that we can see in jurisprudence, the concept of Customary Law that we can see in customs that are used as sources of formal law, the concept of Religious Law that we can see in the source of material law. It's just that in its implementation, laws and regulations are the main source of law in Indonesia. The existence of local governments for centrality that was always centered in the central government before the Regional Autonomy Law of 1999 was renewed and has now been perfected in Law Number 23 of 2015.

In this era, especially in our beloved Indonesia country, there are already several regions, especially provinces, that have been given a special region or special region label. Like the Province of DKI Jakarta, the Province of the Special Region of Yogyakarta, etc. The giving of the word "Special Region" or "Special Region" to an area, especially at the provincial level, is also believed to have no clear qualification to be said to be a "Special" or "Special" area".

In the 1945 Constitution Article 18B, the state basically recognizes that there are areas that are "Special" or "Special", which are then stipulated in a law for further provisions. Indeed, the state has made a law that discusses the specificity of a region through Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta, but what we need to note is that the law only focuses on the specificity of an area, which is the Province of the Special Region of Yogyakarta. And so far, from the 1945 Constitution Article 18B mentioned earlier, the state has indeed recognized the existence of a special or special area determined through the Law. But then that the law on the specificity of an area does not contain and there is no law at all about the classification or conditions in general why an area can be called a "Special" or "Special" area and how the feasibility of a region as a special or special area.

Therefore, this journal will then discuss the legal weaknesses regarding the classification of the labeling of Special Regions for several regions in Indonesia, and in this journal will also discuss the insynchronization of the Laws and Regulations on the Determination of Special Regions with other laws and regulations. Therefore, making a law that regulates the specificity or privileges of an area that contains classifications and also general conditions, is considered necessary to be discussed immediately and then made a law. After that, there needs to be a discussion about synchronization between the Laws and Regulations on the Determination of Special Regions or Special Regions with other laws and regulations. Because if there is no law that regulates the specificity or privileges of a region that contains classification and conditions in general, it is feared that some or perhaps many regions that have their own characteristics will demand the state to label their respective regions "Special Regions" or "Special Regions".

Previous studies have highlighted the complexity of determining Special Region status in Indonesia.

B. Santoso (2019) explored the role of the Special Region of Yogyakarta and its unique legal status, noting the benefits it provides but also pointing out the legal ambiguities surrounding the process. However, Santoso's work did not provide a comprehensive legal framework applicable to all regions.

Widiarto (2021) examined the legal implications of regional autonomy in Indonesia, noting that while regions like Jakarta and Yogyakarta have special status, other regions with similar characteristics lack a defined process for achieving the same status. His research emphasized the need for clearer guidelines but did not delve into the legal uncertainties created by Article 18B.

In contrast, Pratama & Hadi (2020) focused on the legal challenges faced by provinces seeking special status, concluding that the lack of clarity in Article 18B contributes to legal inconsistencies. They suggested reforms to make the process more transparent, but their work did not suggest how these reforms should be structured or implemented.

While previous research has touched on the general issue of Special Regions in Indonesia, there is a gap in the detailed examination of Article 18B of the 1945 Constitution and its application to various regions. Much of the existing research focuses on specific cases, like the Special Region of Yogyakarta, without addressing the broader legal implications for other regions that seek similar recognition. This study seeks to fill that gap by providing a comprehensive analysis of the legal framework for Special Regions and the need for classification standards.

The novelty of this research lies in its focus on Article 18B of the 1945 Constitution and its implications for determining Special Regions. By examining the lack of a clear legal framework and the inconsistencies between national and regional laws, this study introduces a new perspective on the legal recognition of Special Regions. It also explores the sociopolitical impact of these legal uncertainties, making it one of the few studies to examine the intersection of legal classification, regional autonomy, and national legislation.

The objective of this research is to analyze the legal uncertainties surrounding Article 18B of the 1945 Constitution regarding the determination of Special Regions in Indonesia. The study aims to identify the weaknesses in the current legal framework, propose a comprehensive classification system, and recommend improvements for harmonizing the laws to create a clear and equitable process for recognizing Special Regions.

This research provides valuable insights for policymakers, legal experts, and regional authorities by clarifying the legal basis for the classification of Special Regions in Indonesia. It offers recommendations for creating a standardized framework that can be applied to all regions seeking special status. By addressing the legal inconsistencies, this study can contribute to the development of more transparent, fair, and effective regional governance policies, fostering equality and reducing potential conflicts.

RESEARCH METHODS

In this study, we use a normative juridical approach by combining various literature that is both primary and secondary data. This journal was created based on a Clinical Study of the Faculty of Law, University of Muhammadiyah Malang at the Provincial Government of the Special Region of Yogyakarta from July to August 2023, then several questions were formed

which were then used as discussions in this journal. The purpose is to provide input in making policies related to the provision of label in an area that is "special" or "special" in nature that is the topic of analysis. This paper refers to several books, academic journals and the views of experts. This paper also aims to find out the specifics of the impact of public policy and explore information on the labeling of an area that is "special" and "special"

RESULTS AND DISCUSSION

Legal Weaknesses Regarding General Provisions for the Granting of Special Regions in Indonesia

Law is a written and unwritten provision that regulates people and sanctions their violators, then a law that is adjusted to concrete social circumstances. Law in Indonesia is a law that has characteristics by using the Civil Law school or it can be said to use a law in written form with legal products in the form of Laws and Regulations. It is different from the school of Common Law which uses Jurisprudence as a product of the application of the law which refers to the decisions of previous judges. Written law itself cannot be separated from how the purpose of law itself moves, with reference to Gustav Radbruch's theory then the purpose of law itself is in the form of Justice, Certainty, and Utility. From this we can also draw to the theory of Progressive Law from Prof. Dr. Satjipto Rahardjo, S.H which states "Law is created for humans, not humans for law", so thus all forms of legal implementation are needed for human needs themselves, from this theory we can also actually draw variables from written legal products that are not in accordance with the needs of society in the form of:

- a. Legal products created violate the needs of society
- b. The legal products that are created are not the needs of the community

Then this can be expressed and played with using a form in the form of a legal interpretation method that has implications for the weakening of the law caused by legal products with multi-interpreted legal language, the insynchronization of legal products and the lack of articles or other legal products that regulate concretely.

The determination of special regions in Indonesia is regulated by Article 18B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. From this article, it can be concluded that the provisions of the special region are further regulated by legal products in the form of laws, but from this article it can be found that there are shortcomings regarding provisions that force to create a general provision by directly giving it to something special. The implications of this can be seen and questioned against:

What exactly is the normative definition of a special region?

We can only see the definition of a special normative provision such as Article 1 numbers 1, 2, and 3 of Law Number 13 of 2012. From the legal product in the form of this Law is a provision that regulates specifically, in the sense that the provisions regarding this matter only apply to the area, especially DIY Yogyakarta. The Special Regional Regulation abbreviated as Perdasus is the Regional Regulation of Papua Province and West Papua Province. The DIY Special Regional Regulation, abbreviated as Perdais, is a DIY Regional Regulation formed by the DIY DPRD together with the Governor of Unique Local Guidelines, which can be abbreviated as Perdasus, which regulates the exercise of special powers.

If we refer to the structure of laws and regulations, there is a hierarchy where the regulations under it only regulate specifically from the regulations above. In this discussion, the problem lies in the substance of article 18B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which provides a specific direct mandate and in the application of this article in the form of providing direct ownership to legal products in the form of laws, so that in this case it is proven that there are no general provisions regarding special regions, even in the Regional Government Law itself there is no provision in general to the normative definition of special areas. Actually, regarding this matter, the determination of the special region can be given to the government with a legal product in the form of a PP, then the Law only provides general provisions for the special region and provides for the determination of the special region through a legal product in the form of a PP.

Regarding the definition obtained about special regions in general, it only comes from theories, theories and doctrines from experts, not from the provision of laws and regulations that govern. If we refer to the source of law, the doctrine can be classified as a source of formal law where the doctrine is implemented in laws and regulations. One of the doctrines that defines a special region is a state that recognizes the freedom and the starting point of local government units starting from Indonesian special regulations. So if we dissect from this doctrine, we can take the object that gives the recognition in the form of "Indonesian original law", then we pull it to article 18B paragraph (1) of the 1945 Constitution of the Republic of Indonesia, then the legal product used is in the form of a law, but if we use the concept of granting special territory to legal products in the form of PP with the pull in the form of the theory mentioned earlier, so with this concept it actually creates a more systematic concept with the division of provisions between the Law and the Government Regulation.

There are no normative classification provisions and special area requirements

Referring to article 18B of the 1945 Constitution of the Republic of Indonesia which provides full regarding the granting of special regions to the Law as discussed previously which does not include provisions in general, then this related has implications also for how the conditions and classification of the determination of a benchmark of a region can be said to be a special region. In the sense that the determination of the granting of the special region can be said to be based on an assessment that is non-standard and can be said to be subjective in its determination.

Social implications related to the granting of special region status

The urgency of giving the classification is very necessary by referring to the possible social implications that can occur in the form of regional and ethnocentric social jealousy that is regional egocentrism that causes a social conflict. The most common causes of cross-cultural communication conflicts are stereotypes, prejudices, and frequent threats and anxiety about new cultures. The granting of special or special regional status can improve the welfare and political participation of the people in the area and can also have an impact on accelerating regional development, which in turn affects the socio-economic conditions of the local community. In the dictionary of psychology, the definition of stereotype is the perception of an object, individual or group that is rigid or irreversible."

Implications of Laws and Regulations on the Determination of Special Regions with Other Laws and Regulations

The juridical implications of the determination of special regions with other laws and regulations can include various aspects, including authority, harmonization of regulations, and constitutionalism. Article 18 paragraph (6) of the 1945 Constitution states that local governments have the right to establish regional regulations and other regulations to implement regional autonomy. For example, in the context of the Special Region of Yogyakarta, there is a polemic around the mechanism for determining regional heads that involve consideration of constitutionalism and democracy. In addition, juridical implications can also be related to the hierarchy of laws and regulations and the obligation of legislative institutions to discuss them. Thus, the juridical implications of the determination of the special region with other laws and regulations involve the legal aspects, authority, and harmonization of laws and regulations related to the Special Region of Yogyakarta (DIY):

- a) Mechanism for Determining Regional Heads: There is a polemic related to the mechanism for determining regional heads of Yogyakarta, which involves consideration between direct election and determination by the President. This has caused debates related to public participation, the process of selecting candidates, and competition in the election of regional heads.
- b) Community Welfare: Although the Yogyakarta Privileges Law provides additional authority, its implementation has not effectively impacted the welfare of the local community. Several factors, including failures in improving community well-being, deserve attention in further studies.
- c) Harmonization of Regional Regulations: It is important to ensure alignment between Yogyakarta regional regulations and other laws and regulations to ensure effective and sustainable implementation.

The sociological implications of laws and regulations related to the determination of the Special Region of Yogyakarta (DIY) with other laws and regulations include aspects of public participation, community welfare, and legal harmonization. In the context of the mechanism for determining the regional head of Yogyakarta, polemics related to public participation and the candidate selection process can affect community involvement in the local political process. In addition, the implementation of the DIY Privileges Law also has an impact on the welfare of the local community, which needs to be evaluated sociologically to understand its impact as a whole. Furthermore, the harmonization of Yogyakarta regional regulations with other laws and regulations also has sociological implications, especially in ensuring the protection of the rights and interests of the community fairly and equitably. Therefore, an in-depth understanding of the sociological implications of laws and regulations related to DIY is essential to ensure the justice and welfare of the local community.

The sociological implications of laws and regulations that are contrary to special regional regulations can include several aspects, namely:

- 1) This can affect community involvement in the local political process, due to the conflict between nationally enforced regulations and local regulations.

2) The impact can also be felt on the welfare of the local community, which needs to be evaluated sociologically to understand the implications comprehensively.

The harmonization between special regional regulations and national laws and regulations also has sociological consequences, especially in ensuring the protection of people's rights and interests fairly and equitably. Therefore, an in-depth understanding of the sociological implications of conflicts between laws and regulations and special regional regulations is essential to ensure the justice and welfare of local communities. Laws and regulations that are contrary to special regional regulations can affect public policies by hindering the implementation of policies taken by local governments. Conflicts between nationally enforced regulations and local regulations can affect public participation in local political processes and affect the well-being of local communities. If there is no harmonization, then the implementation of public policies can be hampered and ineffective. Therefore, it is important to harmonize regional regulations with other laws and regulations to ensure the effective and sustainable implementation of public policies.

The principle of hierarchy also plays a role in the harmonization of regional regulations with laws and regulations, referring to the order of validity and legal force of these regulations. In Indonesia, the principle of the hierarchy of laws and regulations is regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Based on this hierarchy, the order of laws and regulations in Indonesia is as follows:

1. Constitution of the Republic of Indonesia in 1945.
2. Decree of the People's Consultative Assembly.
3. Laws/Government Regulations in Lieu of Laws.
4. Government Regulations.
5. Presidential Regulation.
6. Provincial Regulations.
7. Regency/City Regional Regulations.

In the context of regulatory harmonization, the principle of hierarchy is implemented through the cancellation of regional regulations by the Government if it conflicts with laws and regulations higher in the hierarchy. Here are some important points related to the principle of hierarchy in harmonizing regional regulations with laws and regulations:

Hierarchy of Rules

Knowing the order of validity and legal force of these regulations, as stipulated in Article 7 paragraph (1) of Law 12/2011.

Alignment and Compatibility

Towards harmony and harmony between one regulation and another so that there is no overlap, and provides good harmony in answering legal questions.

Harmonization Process

Involve different stakeholders, such as the government, the community, and law enforcement, in harmonizing laws and regulations.

Thus, further studies and thorough evaluations related to the implications of laws and regulations on DIY are needed to ensure that the policies taken can provide optimal benefits to the local community.

CONCLUSION

The current legal framework in Indonesia regarding the designation of Special Regions, particularly at the provincial level, lacks clear qualifications for determining what constitutes a "Special Area" or "Special Region." While regions like DKI Jakarta and the Special Region of Yogyakarta are granted special status, there is no consistent or standardized legal basis for such classifications. The absence of detailed guidelines or conditions for labeling a region as "special" contributes to legal ambiguity and inconsistencies. This article discusses the legal weaknesses in the current classification system and highlights the lack of synchronization between existing laws and regulations regarding the designation of Special Regions. It argues that a comprehensive law, which includes classification criteria and general conditions, is urgently needed to ensure fairness and clarity. Without such legal provisions, there is a risk that other regions with distinct characteristics may demand similar special status, leading to legal disputes and potential challenges.

The issue also lies in the substance of Article 18B Paragraph (1) of the 1945 Constitution, which grants authority for the designation of Special Regions but does not offer general provisions regarding their classification. The law currently fails to provide a normative definition of Special Regions, creating a gap in legal clarity. This article suggests that the government should be empowered through a legal product in the form of a Government Regulation (PP) to establish the criteria for Special Regions, with the law providing only general provisions. To ensure the efficient application of legal norms and prevent inconsistency, future research should explore the practical implications of harmonizing national laws with local regulations concerning Special Regions. Additionally, studies should focus on creating clear guidelines for the designation of Special Regions and evaluate how such a system would impact local governance, public policy, and regional development.

REFERENCES

- Arman, Z., & Daria, D. (2022). Memulihkan Hukum Adat Sebagai Sumber Hukum Dalam Pembangunan Sistem Hukum Indonesia. *TERAJU*, 4(01). <https://doi.org/10.35961/teraju.v4i01.423>
- Daullah, R., Srinita, D., Ramadhani, O., & Fitriono, R. A. (2022). Pancasila Sumber Dari Segala Sumber Hukum. *Gema Keadilan*, 9(2). <https://doi.org/10.14710/gk.2022.16268>
- Hadi, S. (2021). Eksistensi Pancasila Sebagai Sumber Segala Sumber Hukum Dalam Konstitusi Indonesia. *Indonesian Journal of Law and Islamic Law (IJLIL)*, 3(2). <https://doi.org/10.35719/ijl.v3i2.128>
- Holili, H., Yunus, M., & Winarto, W. (2024). Kedudukan Yurisprudensi sebagai Sumber Hukum di Indonesia sebagai Penganut Sistem Civil Law. *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat*, 3(09). <https://doi.org/10.59141/comserva.v3i09.1140>
- Juanda, O., & Juanda. (2023). The Ideal Law State Concept in Indonesia; The Reality and The Solution. *Journal of Law, Politic and Humanities*, 3(2). <https://doi.org/10.38035/jlph.v3i2.172>

- Muhammad, M., & Husen, L. O. (2019). State Civil Apparatus in Indonesia in the Conception of Welfare State: A Study of Legal Material Law Number 5 Year 2014 on State Civil Apparatus. *Asian Social Science*, 15(3), 64.
- Pasaribu, M. (2020). Kedudukan Hukum Islam Dalam Sistem Civil Law dan Sistem Common Law Muksana Pasaribu). *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora*, 7(1).
- Pratama, R., & Hadi, S. (2020). Kendala Hukum dalam Pemberian Status Keistimewaan Daerah di Indonesia: Telaah Terhadap Pasal 18B UUD 1945. *Jurnal Hukum Dan Pembangunan*, 50(3), 455–472.
- Risky, S., Al-Fatih, S., & Azizah, M. (2023). Political Configuration of Electoral System Law in Indonesia from State Administration Perspective. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6(1). <https://doi.org/10.24090/volksgeist.v6i1.7940>
- Rokilah, R. (2020). Dinamika Negara Hukum Indonesia: Antara Rechtsstaat dan Rule Of Law. *Nurani Hukum*, 2(1). <https://doi.org/10.51825/nhk.v2i1.8167>
- Safriani, A. (2018). Hakikat Hukum Dalam Perspektif Perbandingan HUKUM. *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 5(2). <https://doi.org/10.24252/jurisprudentie.v5i2.6414>
- Santoso, B. (2019). Keistimewaan Yogyakarta dalam Perspektif Hukum Tata Negara. *Jurnal Konstitusi*, 16(2), 267–283.
- Santoso, L. (2014). Perbandingan Sistem Civil Law dan Hukum Islam Serta Interaksinya dalam Sistem Hukum Indonesia. *Hermeneia*, 14(2).
- Sari, I. P., & Dewi, A. T. (2024). Perbandingan Hukum Pragmatic Legal Realism Di Dalam Sistem Hukum Civil Law Dan Common Law. *Warta Dharmawangsa*, 18(1). <https://doi.org/10.46576/wdw.v18i1.4260>
- Siallagan, H. (2016). Ambiguity of Indonesia State Law Concept. *Sosiohumaniora*, 18(2).
- Siregar, P. J. W. S. (2022). Perbandingan Sistem Hukum Civil Law Dan Common Law Dalam Penerapa. *Dharmasisya Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia*, 2(2).
- Suherman, H., Ismansyah, I., & Rias, I. (2020). Criminal Execution of Special Minimum Amercement Sanctions in Law of the Republic of Indonesia Number 35 of 2009 Concerning Narcotics (Case In jurisdiction of the Dharmasraya State Prosecutor's Office Jurisdiction). *International Journal of Multicultural and Multireligious Understanding*, 7(1), 459–467.
- Tampubolon, M., & Simbolon, P. G. M. (2022). Perbandingan Sistem Hukum Inggris Dengan Jerman (Refleksi Terhadap Sumber Hukum Dan Penerapan Hukum Indonesia). *Yurispruden : Jurnal Fakultas Hukum Universitas Islam Malang*, 5(2). <https://doi.org/10.33474/yur.v5i2.11114>
- Wahyudin, A., & Fithoroini, D. (2023). Konsep Islam Tentang Adat: Telaah'urf Sebagai Sumber Hukum Islam Di Indonesia. *Justicia Religia*.
- Widiarto, A. (2021). Otonomi Daerah dan Keistimewaan Wilayah: Tinjauan Terhadap Ketimpangan Regulasi di Indonesia. *Jurnal Desentralisasi*, 19(1), 112–129.