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LEX JOURNAL: KAJIAN HUKUM & KEADILAN

**Arrangements for Providing Fiscal Incentives in the Regions in Positive Law in
Indonesia**

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ABSTRACT

Article 278 paragraph (2) of Law Number 23 of 2014 concerning Regional Government (Law on Regional Government) regulates that Regional Government Organizers can provide incentives and/or facilities to the public and/or investors regulated in regional regulations, while Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments in Article 101 regulates that in supporting the policy of ease of investing governors/regents/mayors can provide fiscal incentives to business actors in their regions. This has led to regulatory disharmony and the juridical implications. This study aims to determine and analyze the juridical implications of arrangements for providing fiscal incentives in the regions based on the Law on Regional Government and the Law on HKPD. The research method used is juridical-normative with a statute approach, conceptual approach and history approach. The results of the study concluded that there is disharmony in the regulation of regional legal products that regulate the provision of fiscal incentives both from the definition, concept, and scope so that it can lead to legal uncertainty and laws and regulations cannot be implemented effectively and efficiently. The juridical implications of disharmony in the regulation of fiscal incentives in the regions result in disorderly regulations caused by disorderly authority, disorderly procedures, disorderly substance and disorderly implementation.

Keywords: Fiscal Incentives, Regulatory Disharmony, Regional Legal Products

1. INTRODUCTION

The government will run with the formation of various public policies that support the rotation of the wheels of government in a country. In the perspective of public law, government legal actions are outlined in and used several legal instruments and policies such as laws and regulations (*regeling*), policy regulations (*beleidsregel*), and decisions (*beschikking*).

The government in carrying out state administrative tasks issues many policies which are outlined in various forms such as *beleidslijnen* (lines of policy), *het beleid* (policy), *voorschriften* (regulations), *richtlijn* (guidelines), *regelingan* (instructions), *circulaires* (circular letters), *resoluties* (resolutions), *beleidsnota's* (policy notes), *reglemen* (ministerial regulations), *beschikkingen* (decisions), *bekendmaking* (announcements).

Public policies, such as fiscal policy, are policies related to the interests of the wider community, so they must be well designed, supported by strong data and analysis, and take into account the risks that may arise (Wibowo & Oktivalerina, 2022). For reasons of widespread impact, the enactment of public policy must obtain parliamentary approval (DPR-RI) as the people's representative. Incentive policy or fiscal stimulus is one of the efforts made by the government in supporting the acceleration of economic development. Economic theory defines fiscal policy as government activity related to efforts (collecting) state revenue and spending it (Mardiasmo, 2009).

Fiscal policy is an economic policy used by the government to manage or direct the economy to a better or desired condition by changing tax revenues and state spending (Christia & Ispriyarso, 2019). One of the interesting things in the course of government, the government also provides fiscal incentives to the regions. Fiscal incentives are funds sourced from the state revenue and expenditure budget given to regions for achieving performance based on certain criteria in the form of improvement and/or achievement of local government performance which can be in the form of

regional financial management, general government services, and basic services that support national strategic policies, and/or implementation of national policies.

The provision of fiscal incentives is intended to spur regions to improve the quality of regional financial management, accelerate economic recovery in the regions, support the business world, especially MSMEs which leads to job creation, maintain the stability of goods prices in the regions so that inflation at the national level and under control, support the development of MSME green technology, maintain the recovery of the tourism sector in the regions and as an appreciation for regional performance.

According to researchers, the implementation of fiscal incentives in the regions is experiencing difficulties, where there are laws and regulations that are still currently in effect regulating the same thing, namely fiscal incentives (Aribawa et al., 2025). Fiscal incentives are regulated in Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as the Law on Regional Government) and the birth of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments (hereinafter referred to as the Law on HKPD).

The provision of fiscal incentives in the regions to date has been based on the 2 (two) regimes of the law. Article 278 paragraph (2) of the Law on Regional Government states that:

"(2) To encourage the participation of the community and the private sector as referred to in paragraph (1), Regional Government administrators may provide incentives and/or facilities to the community and/or investors which are regulated in a Regional Regulation based on the provisions of laws and regulations."

Until finally it was further regulated in Government Regulation Number 24 of 2019 concerning Provision of Incentives and Ease of Investment in the Regions (hereinafter abbreviated as PP on Provision of Incentives and Ease of Investment in the Regions), in Article 7 paragraph (1) that: "(1) Providing incentives and/or providing

convenience to the Community and/or Investors shall be regulated by regional regulations".

Article 1 point 4 of the Government Regulation on the Provision of Incentives and Ease of Investment in the Region explains that the provision of incentives is a fiscal policy support from the Regional Government to the Community and/or Investors to increase investment in the region. The enactment of the Law on HKPD adds to the legal basis for providing fiscal incentives in the regions. Article 101 paragraph (1), paragraph (4) and paragraph (5) of the Law on HKPD states that:

- "(1) In supporting the policy of ease of investment, governors/regents/mayors may provide fiscal incentives to business actors in their regions.
- (4) The provision of fiscal incentives as referred to in paragraph (2) shall be notified to the DPRD by attaching the Regional Head's consideration in providing the fiscal incentives.
- (5) The provision of fiscal incentives as referred to in paragraph (2) shall be stipulated by Perkada."

The enactment of the Law on HKPD does not revoke or cancel Article 278 paragraph (2) of the Law on Regional Government, so the 2 (two) laws are still equally applicable based on positive law in Indonesia. Then the enactment of Government Regulation Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Retribution (hereinafter abbreviated as PP on PDRD), in Article 100 reaffirms that:

- "(1) The provision of fiscal incentives as referred to in Article 99 paragraph (1) shall be stipulated by Perkada and notified to the DPRD.
- (2) The notification to the DPRD as referred to in paragraph (1) shall be accompanied by the Regional Head's consideration in providing fiscal incentives.
- (3) Further provisions regarding the administration and procedures for providing fiscal incentives shall be regulated by Perkada."

Therefore, the 2 (two) parallel government regulations are still equally applicable. The difference in the form of fiscal incentives provided is that the PP on Providing

Incentives and Ease of Investment in the Regions can be provided in the form of, among others:

- a. Local tax reduction, relief, or exemption;
- b. Reduction, waiver, or exemption of regional retribution;
- c. Providing capital assistance to micro, small, and/or cooperative businesses in the regions;
- d. Assistance for research and development for micro, small, and/or cooperative enterprises in the regions;
- e. Assistance for vocational training facilities for micro, small, and/or cooperative businesses in the regions; and/or
- f. Low loan interest.

Meanwhile, in the PP on PDRD, fiscal incentives to business actors are limited in the form of reduction, relief, and exemption, or elimination of tax principal, Retribution principal, and/or sanctions. The application of fiscal incentive arrangements in the regions to the enactment of the 4 (four) laws and regulations above, will have an impact on whether they will be regulated in regional regulations or regional head regulations. It is necessary to study the background of the formation of these laws and regulations, so as to cause different regulatory norms in the regions and the consequences, namely if regulated by regional regulations, it must be approved jointly with the Regional People's Representative Council (DPRD) or regulated by regional head regulations without DPRD approval. This has legal consequences for the process of forming regional legal products used or the authority possessed by the regional head and DPRD.

The Law on Regional Government delegates the policy of providing fiscal incentives in the regions to be regulated in local regulations. This has the effect that the DPRD also has the right to propose such local regulations. However, the Law on HKPD stipulates that the provision of fiscal incentives in the regions is the absolute authority of the regional head. Therefore, the involvement of the DPRD will be lost and raise questions in the regions in the provision of fiscal incentives.

In the end, the impact of the disharmony of these arrangements is that the Regional Government is in a confusing position in at least 3 (three) things, first, it must

refer to which legal basis in providing fiscal incentives, second, it will be regulated in regional regulations or regional head regulations, and third, which fiscal incentive content material must be applied in the regions. The problem of potential disharmony in the regulation of fiscal incentives in the regions provides legal uncertainty. This legal uncertainty has an impact on the mismatch between the choice of the type of legislation and the content material it regulates, multiple interpretations, overlap, inconsistency, disharmony between laws and regulations both horizontally and vertically, ineffective and high cost. The occurrence of disharmony in the regulation of fiscal incentives in the regions indicates that the legal aspects of legal certainty, justice and legal hierarchy have not been fulfilled. This regulatory disharmony has an impact on authority, rights, obligations, protection, law enforcement, definitions or concepts.

2. RESEARCH METHODS

The research method used is normative juridical research, namely research that refers to legal norms contained in laws and court decisions as well as norms that live and develop in society (Ali, 2019). Normative legal research is a research process to examine and study the law as norms, rules, legal principles, legal principles, legal doctrines, legal theories and other literature to answer the legal problems under study (Muhaimin, 2020). Researchers conducted research and studied the provision of fiscal incentives in the regions based on the Law on Regional Government and the Law on HKPD along with the implementing regulations of the Law based on legal principles, legal principles, and legal theories.

3. DISCUSSION

Arrangements for Providing Fiscal Incentives in the Regions in Indonesian Positive Law

a. Provision of Fiscal Incentives in the Regions Based on the Law on Regional Government

1) Law Number 22 Year 1999 on Regional Government

Researchers conducted a search of the Law on Regional Government and found that the regulation of fiscal incentives was first regulated in Article 83 of Law Number 22 Year 1999 on Regional Government (hereinafter abbreviated as Law No. 22 Year 1999) which states that:

- (1) To encourage Regional empowerment, the Government provides certain **fiscal** and non-fiscal **incentives**.
- (2) The provisions as referred to in paragraph (1) shall be stipulated by Government Regulation.

The Explanation in Article 83 paragraph (1) provides that what is meant by non-fiscal incentives is Government assistance in the form of ease of infrastructure development, distribution of strategic industrial locations, distribution of the location of national banking centers, and others.

The enactment of Law No. 22/1999 brought the New Order government to an end in 1998 with the promise of improved governance. The law improved the relationship between the center and the regions. Regions have authority in all areas of government, except foreign policy, defense and security, judiciary, monetary and fiscal, religion, and other areas of authority (See Article 7 paragraph (1) of the Law).

The spirit of Law No. 22/1999 has led to the transfer of power from provincial governments to district/municipal governments. Regents/mayors are more interested in becoming "little kings" in their regions, rather than being "hulu balang" in the country that will be formed (Hamdi, 2013). Law No. 22/1999 even

laid the foundation for a *radical change* in the relationship between the Center and the Regions, as well as in the Indonesian public administration system as a whole (Hamdi, 2013).

One of the rationales in this Law is to empower the community, foster initiative and creativity, increase community participation, and develop the role and function of the Regional People's Representative Council. Taking into account the experience of Regional Autonomy in the past which adhered to the principle of real and responsible autonomy with an emphasis on autonomy which is more of an obligation than a right, in this Law the granting of autonomy authority to Regency and City Regions is based on the principle of decentralization in the form of broad, real, and responsible autonomy.

The authority of broad autonomy is the regional discretion to organize the government which includes the authority of all areas of government, except the authority in the fields of foreign policy, defense and security, justice, monetary and fiscal, religion, as well as the authority of other fields that will be determined by Government Regulation.

Law No. 22/1999 states that the territory of the Unitary State of the Republic of Indonesia is divided into Provincial Regions, Regency Regions, and City Regions which are autonomous. The law stipulates that Provincial Regions and Regency Regions and City Regions do not have a hierarchical relationship.

The regulation of fiscal incentives that had never been regulated in the previous Law on Regional Government was also based on the events of the monetary crisis. This monetary crisis spread and became an economic crisis through 2 (two) channels, namely imported inflation due to the increase in general prices as a result of the sharp increase in the dollar exchange rate, and unemployment due to the closure of factories/large companies, especially those

that depend on imported raw materials, as well as the cessation of the building industry, which tends to be excessive. (Mubyarto, 2001).

Referring to the Minutes of the Session of the House of Representatives of the Republic of Indonesia at the 15th Plenary Meeting of the Session III Period of Session Year 1999-2000 regarding the State Budget Bill for the Year 2000, which was delivered by H. Abdullah Zaini, S.H. always the Vice Chairman of the Budget Committee explained the main points of the results of the Preliminary talks as follows (Secretariat General of the House of Representatives of the Republic of Indonesia, n.d.):

1. The preparation of the 2000 Draft State Budget was based on the aspirations, will and demands of the people, as set out in the 1999-2004 Guidelines for State Policy (GBHN). The Guidelines outlined a number of key points regarding the management of fiscal policy, namely:
 - a. Develop fiscal policy by taking into account the principles of transparency, discipline, fairness, efficiency, effectiveness, to increase state revenue, and reduce dependence on foreign funds;
 - b. Optimizing the use of foreign loans for productive economic activities that can increase economic growth in a transparent, effective and efficient manner;
 - c. Make the state budget healthy by reducing the budget deficit through improved budget discipline, selective reduction of subsidies and gradual reduction of foreign loans, increase in fair and honest progressive tax revenues, expenditure savings, and eliminate corrupt practices.
2. In order to actualize or reflect the *sense of crisis* in various fields of life and accelerate efforts to recover the economy, the strategic objectives that will be outlined in the 2000 Draft State Budget, among others:
 - a. Reflecting the *political will* of the Central Government in responding to demands from various regions to immediately implement Law No. 22/1999 on Regional Government and Law No. 25/1999 on Financial Balance between Central and Regional Governments, in Fiscal Year 2000 this will be realized by gradually increasing the allocation of aid or subsidies (transfers) to Regional Governments in the form of routine and development funds in line with the state's financial ability to overcome various national crises.

- b. In an effort to increase state revenue targets, tax revenue is a mainstay source to strengthen the domestic revenue base, in an effort to support an independent and *sustainable* fiscal policy. This revenue still has a great opportunity to be increased, considering that there is still a large enough tax potential that can be explored or optimized, related to the many tax facilities provided in previous budget years, both in the form of *tax* exemptions, taxes not collected, taxes borne by the government, and tax delays in various sectors or certain tax objects that are felt to be unfair and distortive. In addition, tax revenues are expected to increase in relation to the improving conditions of the national economy in the coming fiscal year.

Based on the minutes of the session, it can be concluded that the regulation of fiscal incentives was set to overcome the consequences of the economic crisis that befell Indonesia, so that it was expected to restore the economy at that time. Researchers traced the existence of government regulations mandated in Article 83 paragraph (2) of Law No. 22/1999, namely the issuance of Government Regulation No. 25/2000 on Government Authority and Provincial Authority as Autonomous Regions (hereinafter abbreviated as PP No. 25/2009).

Government Regulation No. 25/2009 reaffirms the authority of the Central Government, which includes authority in the fields of foreign policy, defense and security, justice, monetary and fiscal affairs, religion and authority in other fields (See Article 2). However, the Government Regulation does not explain in detail the fiscal arrangements in question.

2) Law Number 32 Year 2004 on Regional Government

Since the introduction of regional autonomy in 2001, the granting of authority in regional fiscal management follows the division of local government affairs as mandated in Law No. 32/2004 on Regional Government (hereinafter abbreviated as Law No. 32/2004). The granting of such authority is inseparable from the granting of fiscal management authority in the regions, which is realized

through the collection of local taxes and levies and the provision of transfers of funds from the center to the regions.

In Law No. 32/2004, the division of government affairs is emphasized by explaining in more detail the separation of government affairs. The law has explicitly mentioned government affairs that are shared between levels of government (concurrent affairs). In order to ensure the achievement of basic services to the community in the regions, concurrent government affairs which are the authority of the regions are divided into mandatory and optional affairs.

Fourth Paragraph Providing Incentives and Ease of Investment, Article 176 of Law No. 32 Year 2004 states that:

Local governments in improving the regional economy can provide incentives and /or facilities to the community and/or investors regulated in local regulations based on statutory regulations.

In the Explanation of Article 176, it is explained that what is meant by incentives and/or facilities in this paragraph is a provision from the Regional Government, among others, in the form of provision of facilities, infrastructure, stimulant funds, provision of business capital, provision of technical assistance, fee waivers and acceleration of license granting.

Implementing the meaning contained in the purpose of the delegation of authority from the Central Government to the Regional Government is how to develop the region not in the narrow sense of ignoring the interests of other regions. With this authority, it is expected to create adequate investment opportunities not only for physical facilities, but also non-physical, for example the issuance of local regulations that can be used as a spur for the presence of investors (Dapu, 2014).

Government Regulation No. 45/2008 on Guidelines for the Provision of Incentives and Ease of Investment in the Regions was issued based on Article 176 of Law No. 32/2004. Although the Government Regulation emphasizes more on

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investment activities. This Government Regulation is intended so that the provision of incentives and/or ease of investment in the regions is right on target and achieves the expected goals and does not conflict with the provisions of laws and regulations.

3) Law Number 23 Year 2014 on Regional Government

Regulations regarding the provision of incentives are regulated in Article 278 of Law Number 23 of 2014 concerning Regional Government (hereinafter abbreviated as Law No. 23 of 2014) which reads:

- (1) The Regional Government Organizer involves the participation of the community and the private sector in regional development.
- (2) To encourage the participation of the community and the private sector as referred to in paragraph (1), Regional Government administrators may provide incentives and/or facilities to the community and/or investors which are regulated in the Regional Regulation by referring to the provisions of laws and regulations.

Then it is also mentioned in Article 279 paragraph (2) of Law No. 23/2014 which emphasizes:

- (2) Financial relations in the implementation of Government Affairs handed over to the Regions as referred to in paragraph (1) include:
 - a. provision of regional revenue sources in the form of regional taxes and regional retributions;
 - b. the provision of funds sourced from the financial balance between the Central and Regional Governments;
 - c. the provision of funds for the implementation of special autonomy for certain Regional Governments as stipulated in laws and regulations; and
 - d. provision of loans and/or grants, emergency funds, and (fiscal) incentives.

However, this article has been revoked with the issuance of Law Number 1 Year 2022 on Financial Relations between the Central Government and Regional Governments. Then Article 388 paragraph (11) and paragraph (12) of Law No. 23/2014 also regulates incentives:

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- (11) The Central Government provides awards and/or incentives to Local Governments that successfully implement innovations.
- (12) The Regional Government provides awards and/or incentives to individuals or Regional Apparatus that innovate.

This regulation again strengthens the foundation for providing fiscal incentives in the regions. In the end, after tracing the history of the regulation, an implementing regulation of Law No. 23 of 2014 was formed, which is regulated in the PP on Providing Incentives and Ease of Investment in the Regions, on the basis of following up on Article 278 of Law No. 23 of 2014 in order to increase investment and ease of doing business, support economic growth, and encourage the participation of the community and the private sector in regional development through the provision of incentives and/or ease of investment by the Regional Government. Local Governments need to improve the equitable distribution of economic and investment activities in the regions by providing incentives and/or facilities to the community and/or investors in accordance with the potential in the regions.

The important role of investment is to increase community income, absorb labor, empower local resources, improve public services, increase gross regional domestic product and develop micro, small and cooperative businesses.

b. Provision of Fiscal Incentives in the Regions Based on the Law on HKPD

Fiscal incentives are also regulated in the Law on HKPD, so it is necessary to trace the history of its regulation. One of the backgrounds for the establishment of the Law on HKPD is Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments needs to be improved in accordance with the development and implementation of fiscal decentralization. Law No. 28/2009 on Regional Taxes and Levies also needs to be improved in accordance with the development of circumstances and the implementation of fiscal decentralization (See Basis for Considering the Law).

1) Law No. 33/2004 on Financial Balance Between the Central Government and Local Governments

The establishment of Law No. 33 of 2004 on Financial Balance Between the Central Government and Regional Governments (hereinafter abbreviated as Law No. 33 of 2004) is based on the consideration that Law No. 25 of 1999 on Financial Balance Between the Central and Regional Governments is no longer in accordance with the development of the situation, state administration and the demands for the implementation of regional autonomy.

The establishment of Law No. 33/2004 was intended to support funding for the transfer of affairs to the Regional Government as stipulated in the Law on Regional Government. Such funding adheres to the principle of *money follows function*, which means that funding follows the government functions that are the obligations and responsibilities of each level of government (See General Elucidation of *the* Law).

The Balancing Fund is regional funding sourced from the APBN which consists of Revenue Sharing Fund (DBH), General Allocation Fund (DAU), and Special Allocation Fund (DAK). The emergence of DAU aims to equalize inter-regional financial capacity which is intended to reduce inequality in inter-regional financial capacity through the application of a formula that considers the needs and potential of the Regions. The DAU of a Region is determined by the size of the *fiscal gap of* a Region, which is the difference between the *needs of* the Region (*fiscal need*) and the potential of the Region (*fiscal capacity*).

This law reaffirms the fiscal gap formula and the addition of DAU variables. DAU allocations for regions with large fiscal potential but small fiscal needs will receive relatively small DAU allocations. Conversely, regions with small fiscal potential but large fiscal needs will receive relatively large DAU allocations. Implicitly, this principle emphasizes the function of DAU as *a* factor of equalizing

fiscal capacity (see General Elucidation of the Law). Article 12 paragraph (3) of Law No. 33/2004 states that:

- (3) 10% (ten percent) of the Government's share of PBB revenue is distributed to all districts and cities based on the realization of PBB revenue in the current fiscal year with the following balance:
 - a. 65% (sixty-five percent) is distributed equally to all regencies and cities; and
 - b. 35% (thirty-five percent) is distributed as an incentive to regencies and municipalities whose realization in the previous year reached/exceeded the revenue plan for certain sectors.

The provision of incentives is intended to encourage the intensification of PBB collection. Hence the emergence of the term fiscal incentive for the first time in the Law.

2) Law Number 28 Year 2009 on Regional Taxes and Retribution

The term tax is a translation of foreign languages, namely *tax*, *fiscal* (English), *belasting* (Dutch), *steuer* (German). The Big Indonesian Dictionary Taxes are defined as mandatory levies, usually in the form of money that must be paid by residents as mandatory contributions to the state or government in connection with ownership income, purchase prices of goods and so on (Minollah, 2022).

The imposition of levies on the community is the right of the region in organizing local government. In the implementation of regional autonomy, the independence of local governments is required to be able to implement fiscal decentralization policies more responsibly. Therefore, local taxes and levies that have been handed over to local government affairs as part of the fiscal decentralization policy for both provinces and districts / cities must be managed and improved as a source of local revenue.

Local governments can determine and collect various types of local taxes according to their potential. This is very possible if the local government has the

ability to determine the types of local taxes it collects on its own, without any intervention from higher levels of government . (Minollah, 2022) . Article 171 of Law No. 28/2009 on Local Taxes and Levies states that:

- (1) Agencies implementing tax and levy collection may be incentivized based on the achievement of certain performance.
- (2) The provision of incentives as referred to in paragraph (1) is stipulated through the Regional Budget.
- (3) The procedures for providing and utilizing the incentives as referred to in paragraph (1) shall be regulated by Government Regulation.

The granting of the amount of the incentive is conducted through a discussion between the Regional Government and the organs of the Regional People's Representative Council in charge of financial matters (See the Explanation of Article 171 paragraph (2) of Law Number 28 Year 2009 on Regional Taxes and Levies). The follow-up to this regulation is regulated in Government Regulation Number 69 of 2010 concerning Procedures for Granting and Utilizing Incentives for Collecting Regional Taxes and Levies, which is still valid until now and has not been amended. Tax and levy collection incentives are additional income provided as a reward for certain performance in implementing tax and levy collection (See Article 1 point 1 of Government Regulation Number 69 of 2010 on Procedures for Providing and Utilizing Local Tax and Levy Collection Incentives).

The incentives are given to implementing agencies that collect taxes and levies, among others:

- 1) officials and employees of the Tax and Retribution Collecting Implementing Agency in accordance with their respective responsibilities;
- 2) regional head and deputy regional head as responsible for regional financial management;
- 3) regional secretary as the coordinator of regional financial management;
- 4) land and building tax collectors at the village/kelurahan and kecamatan levels, village/lurah heads or other designations and sub-district heads,

- and other personnel assigned by the tax collecting implementing agency;
and
5) other parties that assist the tax and levy collection agency.

However, number 2) and number 3) can be given if the provisions regarding remuneration have not been enacted in the region concerned. The provision of such incentives is intended to improve the performance of the agency, the morale of agency officials or employees, regional revenue, and services to the community (See Article 4 of Government Regulation No. 69/2010), and services to the community (See Article 4 of Government Regulation No. 69/2010 on Procedures for Providing and Utilizing Incentives for Collecting Regional Taxes and Levies). The provision of incentives is expected to make the tax and retribution collection officers work honestly, cleanly and responsibly.

3) Law No. 1 Year 2022 on Financial Relations between the Central Government and Regional Governments

The establishment of the Law on HKPD is a form of improvement of Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments and Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. The financial relationship between the central government and local governments is a system of financial administration that regulates financial rights and obligations between the central government and local governments that are implemented in a fair, transparent, accountable, and harmonious manner based on laws and regulations (See Article 1 point 1 of Law No. 1 of 2022 on Financial Relations Between the Central Government and Local Governments).

The improvement of the implementation of financial relations between the central government and regional governments is carried out as an effort to create an efficient allocation of national resources through financial relations between the central government and regional governments that are transparent, accountable,

and equitable, in order to realize equitable distribution of public services and improvement of people's welfare in all corners of the Unitary State of the Republic of Indonesia, transparent, accountable, and equitable, in order to realize equitable distribution of public services and improvement of people's welfare in all corners of the Unitary State of the Republic of Indonesia (See General Elucidation of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Governments).

In realizing these objectives, the financial relationship between the central government and local governments is based on 4 (four) main pillars, namely: developing a taxation system that supports the efficient allocation of national resources, developing financial relations between the central government and regional governments in minimizing vertical and horizontal inequality through TKD and regional debt financing, encouraging improvements in the quality of regional spending, as well as harmonizing fiscal policies between the government and regions for optimal public service delivery and maintaining fiscal sustainability. Article 101, Article 104 and Article 135 of the Law on HKPD explain that:

Article 101

- (1) In supporting the ease of investment policy, governors/regents/mayors can provide fiscal incentives to businesses in their regions.
- (2) Fiscal incentives as referred to in paragraph (1) are in the form of reduction, relief, and exemption, or elimination of tax principal, retribution principal, and/or sanctions.
- (3) Fiscal incentives as referred to in paragraph (2) may be given at the request of taxpayers and retribution payers or given ex officio by the Regional Head based on considerations, among others:
 - a. ability to pay taxpayers and retribution payers;
 - b. certain conditions of the tax object, such as the tax object is affected by natural disasters, fires, and / or other causes that occur not due to deliberate elements carried out by taxpayers and / or other parties with the aim of avoiding tax payments;
 - c. to support and protect micro and ultra-micro businesses;

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- d. to support Regional Government policies in achieving regional priority programs; and/or
- e. to support government policies in achieving national priority programs.
- (4) The provision of fiscal incentives as referred to in paragraph (2) shall be notified to the DPRD by attaching the consideration of the regional head in providing the fiscal incentives.
- (5) The provision of fiscal incentives as referred to in paragraph (2) shall be stipulated by Perkada.
- (6) Further provisions regarding the procedures for providing fiscal incentives as referred to in paragraph (2) shall be regulated by or based on Government Regulations.

Article 104

- (1) Agencies that carry out tax and retribution collection may be incentivized on the basis of achieving certain performance.
- (2) The provision of incentives as referred to in paragraph (1) is stipulated through.
- (3) Further provisions concerning the procedures for granting and utilizing incentives as referred to in paragraph (1) shall be regulated by or based on Government Regulations.

Article 135

- (1) The government may provide fiscal incentives to regions for performance achievement based on certain criteria.
- (2) Certain criteria as referred to in paragraph (1) are in the form of improvement and/or achievement of Regional Government performance, including Regional Financial management, general government services, and basic services.

Based on the explanation with the *historical approach* above, Law Number 22/1999 concerning Regional Government became the initial legal product for regulating the provision of fiscal incentives in the regions to encourage regional empowerment. Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) stipulates that the Unitary State of the Republic of Indonesia is divided into provinces and the provinces are divided into regencies and cities, each of which has a regional government, which is regulated

by law. Paragraph (2) states that the provincial, district and city governments regulate and manage their own government affairs according to the principles of autonomy and assistance tasks. Paragraph (6) states that regional governments exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central government (See Article 18 of the 1945 Constitution of the Republic of Indonesia).

The regulation of Article 18 paragraph (1), paragraph (2), and paragraph (6) shows that regional autonomy in each province, district, and city is recognized by the 1945 Constitution. Thus, local governments have the right, authority, and obligation to regulate and manage their own government affairs and community interests in the regions within the framework of the Unitary State of the Republic of Indonesia system (Sirait, 2023).

The success of a nation in carrying out national development is largely determined by the nation's ability to advance the welfare of society. One of the efforts that can be made to achieve the success of national development is through taxation activities (Pracsya, 2021). Taxes are as assets from the community based on the 1945 Constitution of the Republic of Indonesia, where taxes must be given by the people to the state without getting individual and direct contraprestation from the state (Diamastuti, 2016).

Tax is one of the fundamental things in the administration of a country. Tax collection carried out by the Government to the community is not because the Government or the state wishes to see its citizens miserable, but this tax collection cannot be avoided by the Government because the Government has limitations in creating revenue to finance the government apparatus and carry out development for the public interest (Pandiangan, 2015).

Article 23A of the 1945 Constitution states that taxes and other compelling levies for state purposes are regulated by law. The *rechtsfilosofis* principle is the

principle of justification for tax collection by the state. This principle is elaborated in the theory of carrying capacity (Sihombing & S, 2020) . The theory of carrying capacity explains that the basis for the justice of tax collection lies in the services provided by the state to the community in the form of protection of life and property. Therefore, for the sake of protection, the community will pay taxes in accordance with their carrying capacity.

Article 18 and Article 23A of the 1945 Constitution also demonstrate the sovereignty of the state. Outside the state, no one has the authority to make law. The state is the only source of law that has supreme power or sovereignty. Likewise, the fiscal incentive policies stipulated in various laws and regulations are a manifestation of state sovereignty. The fiscal incentive policy is in line with the theory of carrying capacity, where the state provides convenience or relief to taxpayers so that the business or income generated does not die or stop. The basis of this carrying capacity theory is the principle of justice, namely that tax pressure must be in accordance with the carrying capacity of each (Sariwati, 2021).

According to *Jellinek*, law is the incarnation of the will of the state, so the law is created by the state, thus the only source of law is the state . (Rudy, 2013) . Jellinek's theory is known as *selbstbindungstheorie* (*auto-obligation of the state*), namely in reality, the supreme power is in the state and because the state is abstract, in reality the power is in the head of state. In the submission of the people to regulations is because they voluntarily submit to state products (law) (Andryan, 2020).

So the state forms fiscal incentive policies both at the center and in the regions as a form of state sovereignty to regulate its own affairs, so that it is obeyed by its people as its main form, namely to encourage investment in Indonesia.

4. CONCLUSION

There is regulatory disharmony in regional legal products that regulate the provision of fiscal incentives both from the definition, concept, and scope, so that it can cause legal uncertainty and laws and regulations cannot be implemented effectively and efficiently. This occurs due to the use of different legal bases for the formation of regional legal products, namely the Law on Regional Government, the Law on HKPD and the Law on Investment, which results in differences in regulatory content.

The juridical implications of disharmony in the regulation of fiscal incentives in the regions result in disorderly regulations caused by the disorderly authority to form regional regulations or regional head regulations related to the regulation of fiscal incentives in the regions, disorderly procedures because the Law on Regional Government delegates in the form of regional regulations while the Law on HKPD delegates in the form of regional head regulations which have different procedures in their formation, disorderly substance, namely the scope of different arrangements for the same thing, and disorderly implementation due to the potential for sectoral ego and inefficiency.

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