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Zombie Norms in Indonesian Regional Law: Measuring Vertical Disharmony with the Job Creation Law Across Three Regulatory Domains

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ABSTRACT

The Job Creation Law (Law No. 11 of 2020, reconstituted as Law No. 6 of 2023) reorganised Indonesian business licensing, spatial-use control, and regional levies, abolishing a generation of sub-national instruments; yet harmonisation of the regional legislative stock has never been measured across domains. Six binary indicators of disharmony — obsolete legal basis, regulation of an abolished instrument, absence of new-regime terminology, pre-reform enactment still in force, a levy attached to an abolished instrument, and no post-2020 amendment or repeal — were aggregated into a 0–6 index. Eighty regional regulations (Perda) from seventy regions, enacted 2001–2025, were coded from official register metadata, each record carrying its verbatim legal-basis citation so that every coding decision is auditable. Seventy-seven instruments (96.3%) remain in force, at a mean index of 4.29 (SD 1.73). Disharmony is a legacy phenomenon: pre-reform instruments scored 5.22 (SD 0.77) against 1.82 (SD 0.91) post-reform (Welch $t(33.2) = 15.60$, $p < 0.001$, $d = 4.20$), an effect surviving controls for domain and tier ($b = -3.24$; $R^2 = 0.808$), while domains did not differ ($H = 5.66$, $p = 0.059$). Decisively, absence of post-2020 legislative action alone failed to discriminate between cohorts (Fisher's $p = 1.00$): regions draft new law correctly but almost never reopen the stock. Five instruments still rest on the colonial Hinder Ordonnantie of 1926. The failure is one of regulatory stock management, traceable to the removal of executive review of Perda in 2017 without substitution, and calls for statutory sunset rules rather than administrative annulment.

1. Introduction

Indonesia's Job Creation Law was the most ambitious regulatory consolidation in the country's post-reform history. Enacted as Law No. 11 of 2020, held conditionally unconstitutional for defects of legislative procedure, restored by Government Regulation in Lieu of Law No. 2 of 2022, and reconstituted as Law No. 6 of 2023, its administrative core was the replacement of a fragmented permit-by-permit system with risk-based business licensing operated through an integrated electronic platform.[1-3] Parallel reforms restructured spatial-use control, substituting conformity of spatial use for the location permit and the building approval for the building permit, while Law No. 1 of 2022 on Central–Regional Financial Relations replaced the levy framework of Law No. 28 of 2009 and required every region to consolidate its taxes and levies into a single instrument by January 2024.[4,5] The reform's premise was that administrative simplification at the national tier would translate into a lower burden at the counter where businesses are actually licensed.[6,7]

That premise depends on a step the statute could not itself perform. Because licensing, spatial control, and levies are administered at regency and municipal level, the reform's effectiveness depends on vertical harmonisation: thousands of regional regulations (*peraturan daerah*, hereafter Perda) must be revised or repealed so that the norms actually applied to citizens correspond to those the national legislature enacted.[8,9] Indonesian legislative science frames this obligation through the hierarchy of norms codified in Article 7 of Law No. 12 of 2011 and the maxim *lex superior derogat legi inferiori*, and treats harmonisation not as drafting hygiene but as a condition of legal coherence.[10-12] Yet the practical question — how far regional law has in fact converged, and whether convergence differs across policy domains — has been addressed almost exclusively through doctrinal commentary rather than measurement.[13,14]

This matters because unharmonised regional law is not merely untidy. A Perda that still requires an abolished permit, still attaches a levy to it, and still cites a repealed statute as its legal basis is what may usefully be called a zombie norm: formally valid, having been enacted by a competent body in due form and never repealed; substantively inoperative, its content displaced by a superior instrument; and yet institutionally alive in registers, in local administrative practice, and in the expectations of officials and applicants.[15,16] The term is borrowed by analogy from its established use in regulatory scholarship for rules that outlive their justification, and is given here a narrower and strictly doctrinal content: the state of a norm that satisfies every formal condition of validity while satisfying none of the conditions of operativeness. The construct is not merely descriptive. It isolates the precise gap between two doctrinal states — validity and operativeness — that Indonesian hierarchy doctrine declares to close automatically and that the register shows remaining open indefinitely. Such norms generate legal uncertainty of exactly the kind Article 28D(1) of the Constitution guarantees against, supply apparent cover for continued charging, and dilute the investment-climate gains the reform sought.[17,18]

The Indonesian constitutional position is distinctive and is what makes the problem intractable rather than merely neglected. Article 18(6) of the 1945 Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, hereafter UUD 1945) confers legislative power on regional governments, and Article 24A(1) vests review of instruments below statutory rank in the Supreme Court.[14] Until 2017, Article 251 of Law No. 23 of 2014 supplied a parallel administrative route: the Minister of Home Affairs and governors could annul non-conforming Perda, and did so at scale.[9] In Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016 the Constitutional Court struck that power down, holding that review of a legislative product is a judicial function.[2,8] The doctrinal gain in separation of powers came with an administrative cost that has never been quantified: the only low-cost, high-volume channel for retiring obsolete regional norms disappeared, and nothing replaced it.

This article therefore asks four questions. How prevalent are detectable anomalies in regional regulation after the reform? Is the pattern specific to business licensing, or general across policy domains? Does it vary by enactment cohort and tier of government? And what institutional mechanism best explains persistence? To answer them, the study applies a six-indicator detection protocol to eighty Perda drawn from seventy regions across three domains, records the verbatim legal basis of each instrument so that every coding decision is independently auditable, and models the results multivariately. Its contribution is fourfold: a doctrinal proposition, developed below, that Indonesian hierarchy doctrine contains a structural asymmetry between self-executing invalidity and petition-dependent erasure, which has not previously been articulated in this form and which holds independently of any dataset; a replicable measurement instrument for vertical disharmony; the first cross-domain estimate of post-reform disharmony in Indonesia; and an institutional diagnosis, grounded in the collapse of executive review, that yields specific and constitutionally compatible reform proposals.

The article first sets out the legal framework — the hierarchy of norms, the three reform regimes and the instruments they displaced, and the supervisory vacuum created in 2017 — and locates the study in the comparative regulatory-governance literature. It then describes the design, sampling, coding protocol, and analytical strategy. The results are reported next, covering prevalence, cohort, domain, multivariate, and forensic evidence, and are interpreted through statutory and case-law analysis, a comparative dimension, and a separation of *de lege lata* from *de lege ferenda*, before the limitations are stated and the argument concludes.

Indonesian doctrine treats harmonisation as a corollary of the hierarchy codified in Law No. 12 of 2011.[12,19] A Perda occupies the lowest statutory tier under Article 7(1), and Article 7(2) provides that the legal force of legislation accords with that hierarchy. Read grammatically, the provision is descriptive of a legal state rather than directive of official conduct: it states what the legal force *is*. A Perda provision inconsistent with a superior instrument therefore possesses no legal force from the moment of inconsistency, and nothing in the text conditions that consequence on repeal, annulment, or judicial declaration. The classical Indonesian legislative-science scholarship — Attamimi's account of the norms governing legislative formation, Indrati Soeprapto's standard treatment of instrument types and permissible content, and Asshiddiqie's analysis of validity and effectiveness — frames harmonisation as both a formal requirement of hierarchy and a substantive requirement of coherence, and supplies the distinction between formal validity and substantive operativeness on which the present study's central construct depends.[10-12]

Read systematically, however, the framework contains an asymmetry that its own doctrine obscures. Article 9(2) of Law No. 12 of 2011 assigns review of a Perda against a statute to the Supreme Court, and Article 24A(1) of the Constitution confirms that jurisdiction.[11,20] Invalidity thus operates automatically while *removal* operates only on petition. The system contains a self-executing rule of invalidity and a petition-dependent rule of erasure, and — since 2017 — nothing bridges them. The significance of this gap is easily missed when the provisions are read seriatim, and it is the structural condition that the empirical results below measure. So far as the present authors are aware, the asymmetry has not previously been articulated as a structural feature of the Indonesian framework rather than as an incident of the 2017 decisions, and it is advanced here as a doctrinal proposition in its own right: the hierarchy provisions create a legal state that no organ is charged with recording, and the register therefore diverges from the law by design rather than by neglect.

Comparative and empirical scholarship supplies the counterpoint to the doctrinal account. Butt's analysis documented the proliferation of local laws inconsistent with national law in the decade after decentralisation, and Butt and Lindsey situate this within a broader account of weak enforcement of hierarchy in Indonesian practice.[13,21] The international regulatory-governance literature reaches a parallel conclusion from a different direction: regulatory stock management — the systematic review and retirement of obsolete rules — is as consequential for regulatory quality as the design of new rules, and is consistently the weakest component of regulatory systems across jurisdictions.[17,22,23] Radaelli's finding that regulatory instruments diffuse formally across jurisdictions while their operational effect is determined by domestic political context explains why a formally impeccable harmonisation duty can coexist with an almost complete absence of harmonisation in practice.[18] The domestic Indonesian commentary that has accumulated since 2021 on Job Creation Law implementation and on Perda harmonisation is predominantly doctrinal in method and national in focus: it examines the validity of the omnibus technique, the allocation of competence between tiers, and the interpretation of particular displacing provisions, and where it addresses regional conformity it does so through illustrative instruments rather than through systematic sampling. That literature and the present study are therefore complementary rather than competing, and the gap this study fills is specific. What the existing literature establishes is that disharmony exists and that stock management is hard; what it has not supplied, for Indonesia, is measurement — a common instrument applied across domains, yielding a quantity that can be compared, contested, and re-estimated.

The study spans three domains, each with its own reference regime, summarised in Table 1. In business licensing, risk-based licensing under Government

Regulation No. 5 of 2021 displaced the permit-by-permit model, and Government Regulation No. 6 of 2021 imposed concrete implementation duties on regional governments; the nuisance permit (*izin gangguan*) had already been abolished four years earlier when Regulation of the Minister of Home Affairs No. 19 of 2017 revoked its ministerial framework, and SIUP and TDP were absorbed into the single business identification number.[6,7] In spatial planning, Government Regulation No. 21 of 2021 replaced the location permit and cognate instruments with conformity of spatial use, while the building permit became the building approval under Government Regulation No. 16 of 2021.[7] In regional finance, Law No. 1 of 2022 replaced Law No. 28 of 2009 and, by Article 94, obliged regions to consolidate all taxes and levies into a single instrument within two years, so that a standalone levy Perda resting on the 2009 statute is anomalous twice over after January 2024: once because its enabling statute has been superseded, and again because the consolidation deadline has passed.[5]

Table 1. Reform regimes, displaced instruments, and the resulting duty to adjust regional law.

Domain	Displacing instrument	Instrument displaced	Operative date	Duty imposed on regions
Business licensing	PP No. 5/2021 (risk-based licensing, OSS-RBA, NIB); PP No. 6/2021 (regional administration)	Permit-by-permit licensing; SIUP; TDP	2 February 2021	Align regional licensing instruments with the national risk-based system (PP No. 6/2021)
Business licensing	Permendagri No. 19/2017 (revoking Permendagri No. 27/2009)	Izin gangguan (nuisance permit) and its ministerial framework	March 2017	Cease issuance; repeal or amend the enabling Perda
Spatial planning	PP No. 21/2021 (spatial planning implementation)	Izin lokasi; izin pemanfaatan ruang; izin peruntukan penggunaan tanah → KKPR	2 February 2021	Substitute conformity of spatial use for the displaced permits
Spatial planning	PP No. 16/2021 (building approvals)	Izin mendirikan bangunan (IMB) → persetujuan bangunan gedung (PBG)	2 February 2021	Replace the permit and its associated levy base
Regional levies	UU No. 1/2022 (HKPD), Art. 94	UU No. 28/2009 framework; standalone levy Perda	5 January 2022; consolidation deadline 5 January 2024	Consolidate all regional taxes and levies into a single Perda within two years

The mechanism for correcting non-conforming Perda changed fundamentally in 2017. Article 251 of Law No. 23 of 2014 had empowered the Minister of Home Affairs and governors to annul regional regulations administratively, and thousands were cancelled on that basis.[9] The *ratio decidendi* of Decision No. 137/PUU-XIII/2015 is that review of a Perda — a legislative product of a regional legislature — is a judicial function under Article 24A(1) of the Constitution, so that the ministerial annulment power over regency and municipal instruments cannot stand; Decision No. 56/PUU-XIV/2016 extended the same reasoning to provincial instruments.[2,8] Two limits on that holding matter for what follows and are routinely overlooked. First, the Court did not decide that executive involvement in regional legislation is impermissible as such: the *ex ante* instruments of facilitation, evaluation, and numbering under Articles 245 to 250 of Law No. 23 of 2014 were not before it and survive intact. Second, the Court did not prescribe or require any substitute mechanism; the absence of one is legislative omission, not constitutional command. Both points are load-bearing for the reform proposals developed later in the article.

Judicial review is a poor substitute for the withdrawn power, for reasons internal to its design rather than to its quality.[11] It is petition-driven and adversarial, and technically obsolete rules are precisely the category no litigant has an incentive to challenge: a business confronted with an unlawful permit demand has far cheaper options than litigation before the Supreme Court, and the official making the demand has no reason to challenge the instrument that authorises it. The predicted consequence is an accumulating stock that is never cleared. This study treats that vacuum as the leading candidate explanation for the persistence documented below, and tests it against the alternative explanations of drafting incapacity and sectoral pathology. The full architecture — the constitutional hierarchy, the three displacing reform regimes, the instruments each displaced, and the blocked outflow that results — is set out schematically in Figure 1.

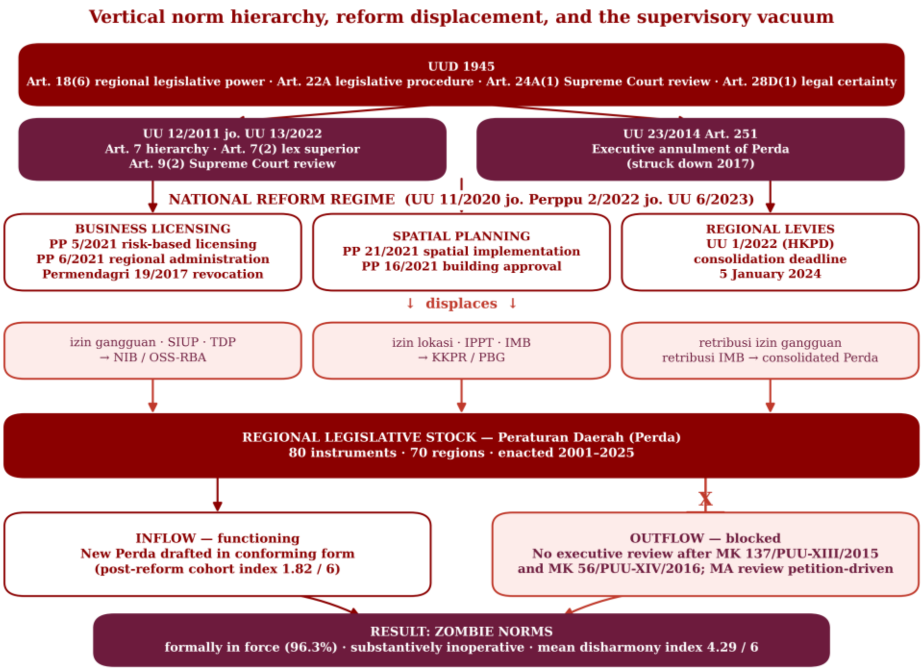

Figure 1. Vertical norm hierarchy, reform displacement, and the supervisory vacuum in Indonesian regional legislation.

2. Methods

Research type and design

This is empirical legal research of the quantitative, register-based variety — a cross-sectional content analysis of legislation — in which the legal instruments are themselves the units of observation rather than the authorities from which propositions are derived. It is not doctrinal research, although doctrinal method is deployed to interpret the instruments the analysis identifies, nor is it socio-legal research, since it observes the state of the legal stock rather than behaviour in the field. The unit of analysis is the individual Perda; the recording units are six binary disharmony indicators. The design is comparative in two internal respects — across enactment cohorts and across policy domains — and comparative in an external respect, in that the Indonesian stock-clearance configuration is later assessed against four foreign models by the method of functional equivalence, comparing mechanisms by the function they discharge rather than by their formal designation.[20,24,25]

Data source

Data were drawn from the national legal documentation database maintained by the Audit Board (*Database Peraturan*, JDIH BPK, peraturan.bpk.go.id), which publishes for each instrument a structured record comprising title, region, number and year, form, date of enactment, subject, formal status (*Berlaku* / *Tidak Berlaku*), an abstract reproducing the legal-basis list (*dasar hukum*) and content outline, and a status section recording repeals and amendments. Coding therefore rests on the official register rather than on secondary summaries or commercial compilations. The choice is substantive rather than merely convenient: the register is the document on which regional legal bureaus, supervising ministries, and — through published portals — applicants themselves rely, so its contents constitute the operative legal reality for administrative purposes, whatever the position in strict hierarchy doctrine.

Sampling across three domains

The sampling frame comprised Perda in three reform-affected domains, retrieved through systematic keyword searches. For business licensing the search terms were the abolished instruments (*izin gangguan*; *izin lokasi*; *tanda daftar perusahaan*; *surat izin usaha perdagangan*), the procedural instruments (*penyelenggaraan perizinan*; *pelayanan terpadu satu pintu*), and post-reform vocabulary (*perizinan* *berusaha*; *penanaman modal*); for spatial planning, *rencana tata ruang wilayah*, *rencana detail tata ruang*, *izin pemanfaatan ruang*, and *izin peruntukan penggunaan tanah*; and for regional levies, *retribusi perizinan tertentu*, *retribusi izin gangguan*, *retribusi izin mendirikan bangunan*, and *pajak daerah dan retribusi daerah*. Only instruments whose form was *Peraturan Daerah* were retained, so that regulations of the regional head and draft instruments were excluded. Selection maximised geographic spread and deliberately spanned pre- and post-reform enactment dates, so that harmonised comparators were included in every domain rather than assumed. The procedure yielded eighty Perda from seventy regions, enacted between 2001 and 2025: thirty-nine on business licensing, twenty on spatial planning, and twenty-one on regional levies. Records were retrieved and their status verified on a single reference date, stated in the supplementary materials; because register contents change as instruments are repealed and statuses updated, coding is reproducible only against the register as it stood on that date.

The sample is purposive rather than probability-based, and two consequences of the selection rule should be distinguished at the outset rather than deferred to the limitations. The first concerns prevalence: because searches deliberately targeted the vocabulary of abolished instruments, the sample is enriched for the anomaly-rich part of the stock, and the prevalence figures reported below accordingly describe the sampled instruments and are not national point estimates. The second concerns the internal comparisons, and cuts the other way. The selection rule operates on domain and subject matter rather than on enactment year or on the outcome, and search terms deliberately included both abolished-instrument vocabulary and post-reform vocabulary so that harmonised comparators entered every domain; the rule is therefore approximately orthogonal to the cohort contrast, which is what licenses the cohort comparison and the multivariate model as the study's more robust results. One qualification follows from the same reasoning and is stated for completeness: because abolished-instrument vocabulary was among the search terms, the pre-reform cohort is mechanically enriched for instruments governing abolished permits, so the cohort effects on indicators A2 and A5 are partly selection artefacts and should not be read behaviourally. The cohort effects on A1, A3, and A4 are not vulnerable in this way. The full retrieval, screening, selection, coding, and analysis sequence is shown in Figure 2.

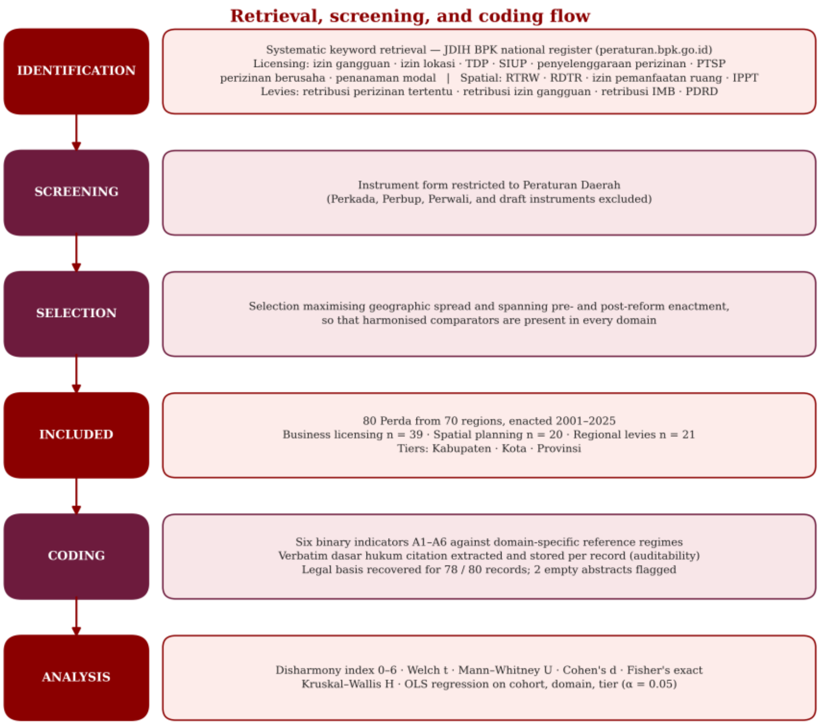

Figure 2. Retrieval, screening, and coding flow for the eighty purposively sampled regional regulations.

Coding scheme, index, and auditability

Six indicators were defined and applied with domain-specific reference regimes, as detailed in Table 2. Each was coded 1 (anomaly present) or 0 (absent) and summed into a disharmony index ranging from 0 to 6. The indicators are deliberately heterogeneous in what they detect: A1 and A3 are textual, capturing what the instrument cites and the vocabulary it uses; A2 and A5 are substantive, capturing what it regulates and charges for; A4 and A6 are temporal, capturing when it was made and whether it has since been touched. The index is a simple unweighted sum, which is the appropriate treatment where no theoretical basis exists for privileging one form of anomaly over another and where weighting would import precisely the discretion the instrument is designed to remove. It should be read as a count of detected anomalies rather than as a severity scale: an instrument scoring six is not twice as unlawful as one scoring three, and the regression coefficients reported below are changes in expected anomaly count, not in a latent quantity of disharmony.

One feature of the construct requires explicit acknowledgement, because it bears on how the summed score should be understood. Indicators A1 to A5 measure properties of the instrument's content; A6 measures the maintenance behaviour of the enacting body. On the institutional account developed below these are conceptually distinct, and the empirical behaviour reported below bears that out, since A6 is the one indicator statistically independent of enactment cohort. A6 is nonetheless retained in the index, for a reason that should be stated rather than assumed: from the standpoint of the person to whom the instrument is addressed, an unmaintained rule and a non-conforming rule are the same problem, and excluding A6 would remove from the measure the very failure the study identifies. The consequence — that the index sums two related but distinguishable facets — is addressed by the sensitivity analyses reported below, which re-estimate the principal results with each of the two structurally atypical indicators removed in turn.

Table 2. Disharmony indicators, coding rule, and domain-specific reference regimes.

Code	Indicator	Coded 1 if...	Reference regime	Provision engaged
A1	Obsolete legal basis	The verbatim dasar hukum list cites no instrument of the applicable reform regime	PP 5/2021; PP 21/2021; UU 1/2022; UU 11/2020 jo. UU 6/2023	Art. 7(1)–(2) UU 12/2011
A2	Regulates an abolished instrument	The instrument governs izin gangguan, izin lokasi, IPPT, SIUP, TDP, or IMB	Permendagri 19/2017; PP 5/2021; PP 21/2021; PP 16/2021	Art. 7(2) UU 12/2011
A3	No new-regime reference	No reference to risk-based licensing, OSS/NIB, KKPR, or the HKPD framework	Domain-specific	Art. 6 PP 6/2021
A4	Pre-reform yet in force	Enacted ≤ 2020 and register status remains “Berlaku”	UU 11/2020 jo. UU 6/2023	Art. 185 UU 11/2020
A5	Levy on an abolished instrument	Imposes a retribusi tied to an instrument the reform abolished	UU 1/2022; PP 5/2021	Art. 94 UU 1/2022
A6	No post-2020 amendment or repeal	The register records no repeal or amendment dated 2021 or later	Duty to adjust regional law	Art. 94 UU 1/2022; Art. 6 PP 6/2021

To make coding verifiable rather than assertive, the verbatim legal-basis citation of each instrument was extracted from the official abstract and stored as a field in the dataset. Indicator A1 can therefore be re-checked by any reader against the recorded citation list without re-retrieving the source. Legal bases were recovered for seventy-eight of the eighty records; two abstracts were empty in the source and are flagged as such rather than imputed. Those two records were coded conservatively as 0 on A1, that is, as not exhibiting an obsolete legal basis, on the principle that an anomaly should not be recorded where the register supplies no evidence of it. Both are retained in the denominator, so the reported A1 prevalence of 62 of 80 (77.5%) is a lower bound; were the two records excluded rather than coded conservatively, the figure would be 62 of 78 (79.5%). Coding was performed against written decision rules fixed before retrieval, and each indicator resolves to a determinate answer on the face of the register: whether a named instrument appears in the *dasar hukum* list, whether the title or content outline governs a named permit, whether the status field reads *Berlaku*, and whether the status section records a post-2020 event. The scope for coder judgement is correspondingly narrow, but it is not nil, and two indicators warrant explicit threshold rules. A2 was coded 1 where the instrument's title, subject field, or content outline identifies one of the named permits as an object of regulation, and 0 where a named permit appears only incidentally within an instrument directed at another subject. A3 was coded 1 where no term of the new regime appears in the title, subject field, or content outline, a generic reference to national legislation without naming a new-regime instrument or concept being insufficient to displace the coding. These rules were fixed before retrieval and are reproduced verbatim, with worked examples of borderline dispositions, in the supplementary materials. Coding was performed by a single analyst, with the consequences considered among the limitations; the stored citation field converts the residual scope for judgement on A1 — the indicator carrying the greatest interpretive load and the one on which the forensic findings depend — into something any reader can audit directly.

Analytical strategy

Prevalence and index distributions were computed overall and by domain, cohort, and tier. Enactment cohorts — pre-reform (≤ 2020) and post-reform (≥ 2021) — were compared using Welch's t-test, which does not assume equal variances, and the Mann–Whitney U test as a distribution-free corroboration, with Cohen's d as the effect-size measure; each indicator was tested against cohort with Fisher's exact test, appropriate given the sparse cells produced by indicators with zero post-reform occurrences. Differences across the three domains were tested with the Kruskal–Wallis H test. Finally, an ordinary-least-squares model regressed the index on reform cohort, domain, and tier simultaneously, to establish whether the cohort effect survives controls. The index is an unweighted count with a plausibly interval interpretation over its range, which makes OLS an acceptable estimator; the substantive conclusions rest on the magnitude and precision of the cohort coefficient rather than on any distributional assumption. All p-values were computed from analytically implemented t, chi-square, F, and normal distribution functions rather than from a statistical package, so that every reported quantity is reproducible from the published scripts without dependence on a particular software version; α was set at 0.05 and all tests were two-tailed. Fitted values from the regression span 1.01 to 5.55 and therefore fall wholly within the attainable range of the index, which disposes of the principal objection to applying a linear estimator to a bounded count.

Ethics

The study analyses publicly available legal instruments and involved no human subjects.

3. Results and Discussion

Overall prevalence

The figures in this subsection describe the eighty purposively sampled instruments and are not national point estimates; for the reasons given above they are weighted toward the anomaly-rich part of the stock. Within the sample, seventy-seven of eighty Perda (96.3%) remain formally in force. The mean disharmony index was 4.29 of 6 (SD 1.73); twenty-two instruments (27.5%) scored the maximum of six, while eighteen (22.5%) scored two or fewer. The distribution is markedly bimodal rather than centred on its mean: half the sample sits at one extreme or the other, and the mean of 4.29 describes a point at which comparatively few instruments actually lie. That bimodality is itself informative, and what separates the two modes is identified below. The most frequent anomaly was the absence of any post-2020 legislative action (76 of 80; 95.0%), followed by the absence of new-regime terminology (70; 87.5%), an obsolete legal basis (62; 77.5%), pre-reform enactment combined with continuing force (55; 68.8%), regulation of an abolished instrument (54; 67.5%), and a levy attached to an abolished instrument (26; 32.5%). Of fifty-four Perda that govern an instrument the reform abolished or replaced, fifty-two remain in force. Prevalence by domain is set out in Table 3 and displayed graphically in Figure 3.

Table 3. Prevalence of each disharmony indicator, overall and by policy domain.

Indicator	Overall (N = 80)	Business licensing (n = 39)	Spatial planning (n = 20)	Regional levies (n = 21)
A6 No post-2020 action	76 (95.0%)	38 (97.4%)	20 (100%)	18 (85.7%)
A3 No new-regime reference	70 (87.5%)	34 (87.2%)	18 (90.0%)	18 (85.7%)
A1 Obsolete legal basis	62 (77.5%)	30 (76.9%)	14 (70.0%)	18 (85.7%)
A4 Pre-reform still in force	55 (68.8%)	27 (69.2%)	15 (75.0%)	13 (61.9%)
A2 Abolished instrument	54 (67.5%)	26 (66.7%)	14 (70.0%)	14 (66.7%)
A5 Levy on abolished instrument	26 (32.5%)	6 (15.4%)	3 (15.0%)	17 (81.0%)
Mean disharmony index	**4.29 (SD 1.73)**	**4.13**	**4.20**	**4.67**

Note: Cell entries are counts, with the percentage of the column n in parentheses. Estimates on domain cells of 20 and 21 observations carry wide uncertainty: a prevalence of 70.0% on n = 20 has a 95% Wilson interval of 48.1–85.5%, and 81.0% on n = 21 an interval of 60.0–92.3%. Apparent domain differences should be read accordingly; a formal test of equality across domains is reported in the text. Mean index values are computed directly from the cell counts shown. A5 concentrates in the levy domain by construction.

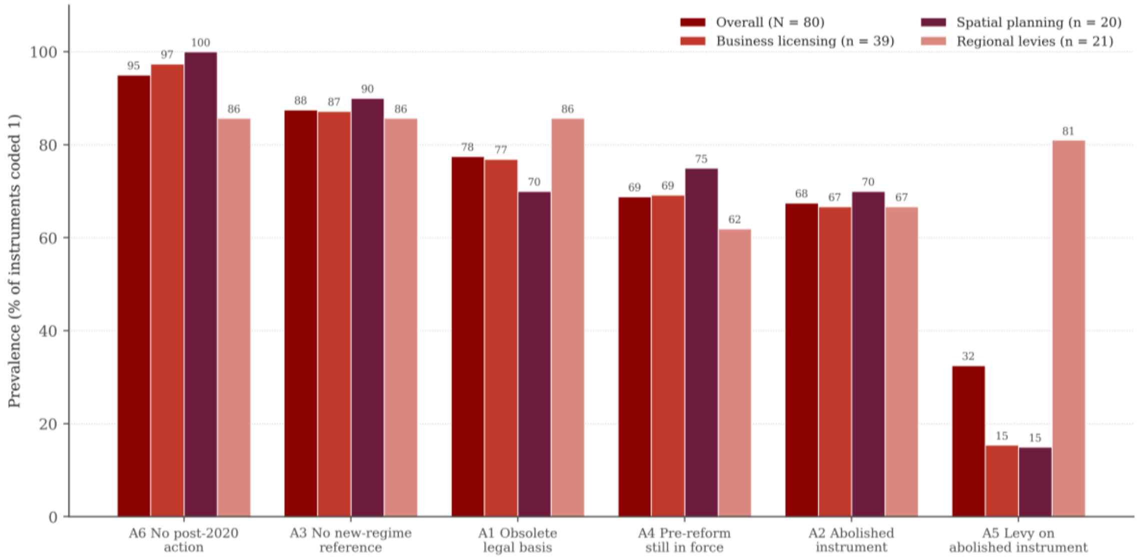

Figure 3. Prevalence of disharmony indicators, overall and by policy domain. Percentages are of the domain column n, not of N = 80; cell counts are given in Table 3.

Disharmony is overwhelmingly a legacy phenomenon. Pre-reform Perda (n = 58) scored a mean index of 5.22 (SD 0.77) against 1.82 (SD 0.91) for post-reform Perda (n = 22): Welch $t(33.2) = 15.60$, $p < 0.001$, Cohen's $d = 4.20$, corroborated non-parametrically (Mann–Whitney $U = 9.0$, $z = −7.05$, $p < 0.001$). The rank statistic is the more informative of the two here, because it makes no assumption that the index is interval-scaled: with $n_1 = 58$ and $n_2 = 22$ the maximum attainable U is 1,276, so $U = 9.0$ corresponds to a common-language effect size of 0.993 — the probability that a randomly drawn pre-reform instrument scores higher than a randomly drawn post-reform instrument. The separation is very nearly complete. An effect size above four standard deviations is unusual in empirical legal work, and it reflects the fact that the cohorts are separated by a near-categorical difference in what the instruments cite and regulate rather than by a difference of degree along a continuous quantity: on three of the six indicators the post-reform cohort registers one occurrence or none at all. Indicator-level tests show the same pattern, as detailed in Table 4: obsolete legal basis fell from 58 of 58 to 4 of 22, regulation of an abolished instrument from 53 of 58 to 1 of 22, and levies on abolished instruments from 26 of 58 to 0 of 22, each with $p < 0.001$.

One indicator behaves differently, and it is the most diagnostic. The absence of any post-2020 amendment or repeal does not discriminate between cohorts at all:

55 of 58 pre-reform and 21 of 22 post-reform instruments have never been revisited (Fisher's exact $p = 1.00$). The asymmetry is worth stating precisely, because it does the analytical work of the entire study. Every indicator that measures the *content* of an instrument improves sharply after the reform; the single indicator that measures whether an instrument is ever *reopened* does not improve at all. Regions are drafting new law correctly, but the legislative stock — old and new alike — is simply never revisited. That is the signature of a stock-management failure rather than a drafting failure. Both the cohort index contrast and the indicator-level breakdown are displayed in Figure 4.

Table 4. Indicator prevalence by enactment cohort, with Fisher's exact tests.

Indicator	Pre-reform (n = 58)	Post-reform (n = 22)	Fisher's exact p
A1 Obsolete legal basis	58 / 58 (100%)	4 / 22 (18.2%)	< 0.001
A2 Abolished instrument	53 / 58 (91.4%)	1 / 22 (4.5%)	< 0.001
A3 No new-regime reference	56 / 58 (96.6%)	14 / 22 (63.6%)	< 0.001
A4 Pre-reform still in force	55 / 58 (94.8%)	0 / 22 (0%)	< 0.001
A5 Levy on abolished instrument	26 / 58 (44.8%)	0 / 22 (0%)	< 0.001
A6 No post-2020 action	**55 / 58 (94.8%)**	**21 / 22 (95.5%)**	**1.00 (n.s.)**
Mean disharmony index	5.22 (SD 0.77)	1.82 (SD 0.91)	< 0.001

Note. Index by cohort: pre-reform 5.22 (SD 0.77) versus post-reform 1.82 (SD 0.91); Welch $t(33.2) = 15.60$, $p < 0.001$, Cohen's $d = 4.20$; Mann–Whitney $U = 9.0$, $z = -7.05$, $p < 0.001$, common-language effect size 0.993. A6 is the sole indicator not discriminating between cohorts.

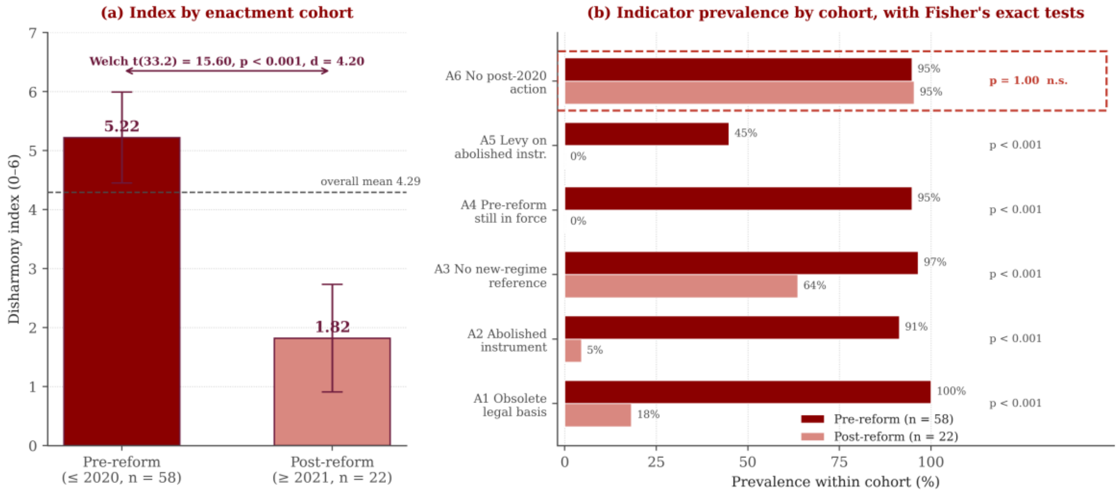

Figure 4. Disharmony index by enactment cohort (a), and indicator prevalence by cohort with Fisher's exact tests (b). Error bars in panel (a) are ±1 standard deviation, not standard errors; underlying counts are given in Table 4.

The pattern is general, not sector-specific

Mean index scores were similar across domains: business licensing 4.13 (n = 39), spatial planning 4.20 (n = 20), and regional levies 4.67 (n = 21). The Kruskal–Wallis test does not reject equality across the three domains ($H = 5.66$, $df = 2$, $p = 0.059$), and in the multivariate model neither domain dummy approaches significance. The domain difference that does appear is structural rather than behavioural: levies score highest largely because indicator A5 applies to them by construction, at 81.0% against approximately 15% elsewhere. Removing A5 from the index does compress the domain means, and by more than the qualification implies: on a five-indicator index excluding A5 the domain means are 3.97 for business licensing, 4.05 for spatial planning, and 3.86 for regional levies, so the spread across domains falls from 0.54 to 0.19 points and the ordering reverses, with levies becoming the lowest-scoring domain rather than the highest. The apparent levy effect is thus an artefact of index composition rather than a property of levy instruments. The reasonable reading is that vertical disharmony is a general feature of the regional legislative stock rather than a pathology of any one policy field — a finding that materially constrains the range of admissible explanations, since a sector-specific cause cannot produce a sector-general effect.

Multivariate model

The multivariate results are reported in Table 5, and the same coefficients are displayed with their 95% confidence intervals in Figure 5. The model explains 80.8% of variance (adjusted $R^2 = 0.795$; $F(5, 74) = 62.3$, $p < 0.001$). The cohort coefficient is large and precisely estimated: post-reform enactment is associated with 3.24 fewer anomalies out of six (95% CI −3.65 to −2.83; $p < 0.001$), holding domain and tier constant. Neither domain dummy is significant, confirming the bivariate finding. Among tiers, provincial instruments score 0.93 lower than regencies ($p = 0.013$), consistent with the expectation that obsolescence concentrates where permits are actually issued and levies actually collected, while the municipal coefficient is not significant. The functional explanation is plausible but it is not the only one the data admit, and the design cannot discriminate among the candidates. Provinces maintain larger and better-resourced legal bureaus, so the effect may reflect drafting and maintenance capacity rather than function. Provinces enact fewer licensing instruments, so the provincial subsample may be differently composed by domain in a way the domain dummies do not fully absorb. And provinces occupied the other side of the annulment power before 2017, governors having been annulling authorities in their own right under Article 251, which may have left a different institutional culture of regional legal maintenance behind it. The third possibility is the most interesting because it is directly continuous with this article's own thesis, and it is offered as a question for further work rather than as an explanation established here. That a single binary predictor of enactment date accounts for four-fifths of the variance in a legal-conformity measure is itself the finding: conformity is determined almost entirely by when an instrument was written, and almost not at all by what it is about or who wrote it.

Table 5. Ordinary-least-squares regression of the disharmony index (N = 80).

Predictor	b	SE	95% CI	t	p
Constant	5.179	0.152	4.876 – 5.482	33.99	< 0.001
Post-reform cohort (≥ 2021)	−3.241	0.207	−3.653 – −2.829	−15.64	< 0.001
Domain: Regional levies	0.368	0.222	−0.074 – 0.810	1.66	0.102
Domain: Spatial planning	0.212	0.217	−0.221 – 0.645	0.98	0.332
Tier: Kota (municipality)	−0.267	0.198	−0.662 – 0.128	−1.35	0.180
Tier: Provinsi (province)	−0.930	0.366	−1.659 – −0.201	−2.54	0.013

Note. Estimator: ordinary least squares with conventional standard errors. Reference categories: pre-reform cohort, business licensing, Kabupaten. $R^2 = 0.808$; adjusted $R^2 = 0.795$; $F(5, 74) = 62.3$, $p < 0.001$. Confidence intervals computed at $t(74) = 1.993$. t-ratios are computed from unrounded standard errors. All fitted values lie within [1.01, 5.55].

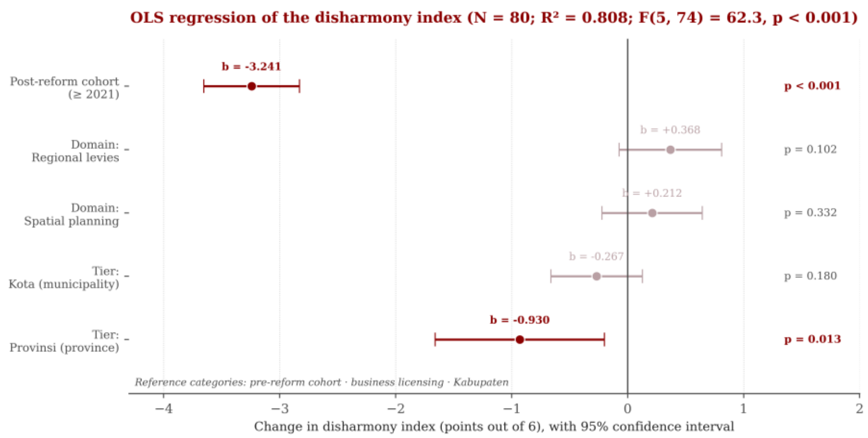

Figure 5. Ordinary-least-squares regression coefficients for the disharmony index, with 95% confidence intervals computed at $t(74) = 1.993$. Coefficients correspond to Table 5.

Forensic evidence from the legal-basis field

Because each record carries its verbatim legal basis, the obsolescence coding can be inspected directly rather than inferred, and the results are striking, as displayed in Figure 6. Five Perda — in Padang Panjang, Badung, Nunukan, Muaro Jambi, and Purbalingga — still cite the colonial-era *Hinder Ordonnantie* (Staatsblad 1926 No. 226) as a foundation of their nuisance-permit regimes, and all five remain formally in force in 2026: a century after the ordinance was promulgated for a colonial administration, and nine years after the ministerial framework for that permit was revoked.[4] Two instruments still rest on Regulation of the Minister of Home Affairs No. 27 of 2009, itself revoked in 2017.[3] Twenty-seven Perda cite Law No. 28 of 2009 on regional taxes and levies — replaced in its entirety by Law No. 1 of 2022 — and twenty-five of those remain in force well past the January 2024 consolidation deadline fixed by Article 94 of the replacing statute.[5] These are not inferences from silence; they are citations recorded in the national register and reproducible from the published dataset.

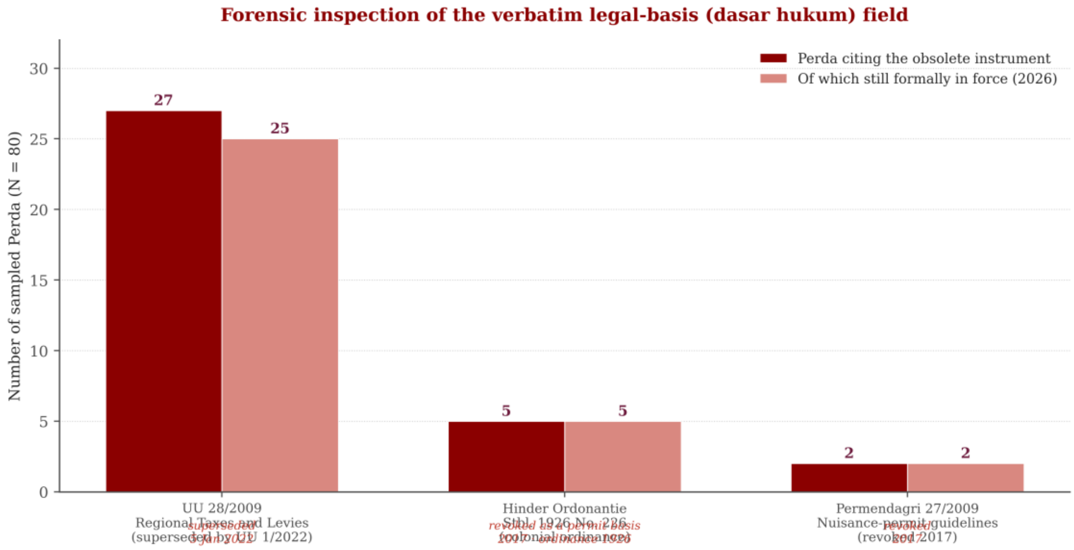

Figure 6. Forensic inspection of the verbatim legal-basis (dasar hukum) field across the eighty sampled instruments.

Robustness and sensitivity

Because two of the six indicators are structurally atypical — A5 applies to the levy domain substantially by construction, and A6 measures maintenance behaviour rather than instrument content — the principal results were re-estimated with each removed in turn. Excluding A5, the domain means converge as reported above and the cross-domain spread falls by roughly two-thirds, strengthening rather than weakening the conclusion that disharmony is general rather than sectoral. Excluding A6, the cohort separation widens in proportional terms: on a five-indicator index the pre-reform mean is 4.28 of 5 (85.5% of the attainable maximum) against 0.86 of 5 (17.3%), compared with 87.0% and 30.3% on the full six-indicator index. The headline cohort effect is therefore not an artefact of including an indicator that does not discriminate between cohorts; including A6 in fact understates the content-conformity gap.

Two further checks are reported for completeness. All fitted values from the regression lie within the attainable range of the index, so no prediction is inadmissible. And the substantive conclusion — that enactment cohort dominates while domain does not — is present identically in the bivariate comparison, in the rank-based test, and in the multivariate model, so it does not depend on any single specification. Three diagnostics that would ordinarily accompany a regression of this kind are not reported here because they require observation-level quantities that the published summary does not contain: variance inflation factors for the cohort and tier predictors, heteroscedasticity-robust standard errors, and observation-level influence measures. These are computable from the deposited dataset and are provided in the supplementary materials; given a cohort coefficient of −3.24 with a standard error of 0.207, none is capable of disturbing the substantive conclusion, and they are noted here so that a reader may verify rather than assume that.

Four findings and what they exclude

Four findings carry the analysis. First, vertical disharmony is systemic within the sampled domains: instruments average 4.29 of six measured anomalies and 96.3% remain formally in force. Second, it is a legacy rather than a drafting problem; the cohort effect is very large (d = 4.20) and survives controls for domain and tier, with the model explaining four-fifths of the variance. Third, the problem is general rather than sectoral: mean scores are statistically indistinguishable across licensing, spatial planning, and levies. Fourth, and most diagnostically, the one indicator that does not differ between cohorts is the absence of any post-2020 amendment or repeal, at 95% across the entire stock.

Taken together these findings operate by elimination — an inference to the best explanation rather than a demonstration — and it is the eliminations that give the diagnosis its force. If disharmony were a drafting-capacity problem, it would appear in newly drafted law; it does not, and the post-reform cohort scores 1.82 of six. If it were a sectoral problem — an artefact of licensing complexity, or of the unusual technicality of spatial planning — it would concentrate in one domain; it does not. If it were an artefact of the constitutional turbulence surrounding the reform, it would have abated after Decision No. 54/PUU-XXI/2023 settled the validity of Law No. 6 of 2023 in October 2023; the A6 result shows it did not.[2] What remains is a system with a functioning inflow and a blocked outflow: new instruments enter the stock in conforming form, while non-conforming instruments are almost never removed from it. The legal-basis forensics make the point vivid. A nuisance-permit Perda resting on a 1926 colonial ordinance is not a contested interpretation of a higher norm on which reasonable officials might differ; it is a rule whose foundation has been gone for decades and which nothing in the system is designed to notice.[16]

The historical dimension of that last observation deserves developing, because it answers the most natural objection to the institutional argument. It might be said that four years is a short interval, that legislative revision is slow everywhere, and that regions have simply not yet reached the task. The nuisance-permit evidence forecloses that reading. The relevant interval in that domain is not four years but a century, and the pattern is one of accumulation by accretion: the colonial ordinance of 1926 was given a ministerial re-articulation in 2009, that ministerial framework was revoked in 2017, the underlying licensing model was displaced in 2021, and at each stage the national layer changed while the regional layer beneath it did not.[17,22] Five instruments now rest simultaneously on a revoked ministerial regulation and a colonial ordinance, and all five remain formally in force. The stock-management failure this study measures therefore long predates the reform under study. The 2017 withdrawal of executive review did not create the condition; it removed the one mechanism that had been arresting it, and the Job Creation Law then made a further stratum of the accumulation visible without disturbing it.

The institutional explanation

The institutional explanation lies in the vacuum created by Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016.[9,11] Before them, the Minister of Home Affairs and governors could annul non-conforming Perda administratively, and did so at scale; after them, annulment requires judicial review at the Supreme Court.[19,20] The decisions were doctrinally coherent — the objection that an executive organ should not annul the product of an elected legislature is a serious one, and the Court's reasoning from Article 24A(1) is orthodox — but they removed the only low-cost, high-volume channel for clearing obsolete regional law without substituting an alternative.[14] Judicial review is petition-driven, and obsolete rules are precisely those least likely to attract a petitioner: the party burdened by an unlawful permit demand has cheaper remedies than constitutional litigation, and the party benefiting from it has no reason to litigate at all. The predicted consequence — an accumulating stock that is never cleared — is what the A6 result measures, and the near-identity of the pre- and post-reform figures (94.8% and 95.5%) shows that non-revision is uniform across generations of instruments, which is what a system-level rather than a cohort-level cause would predict.

It is worth being precise about the causal claim. This design cannot establish that the 2017 decisions *caused* the observed persistence, since it observes no pre-2017 comparison period and no counterfactual jurisdiction. What it can do, and does, is establish that the observed pattern is the pattern the vacuum predicts, and that the leading alternative explanations are inconsistent with the data. That is a weaker claim than causation and a stronger one than speculation, and it is the appropriate claim for a cross-sectional design to make.

Consequences for legal certainty and administrative practice

The consequences are unlikely to be merely formal, and it is important to state precisely what this design can and cannot establish about them. Where an abolished licence still appears in a formally valid Perda, and especially where a levy remains attached — as in the 32.5% of instruments coded on A5, rising to 81.0% in the levy domain — the register establishes the *precondition* for continued collection: an official who charges for an abolished permit can point to a formally valid instrument authorising the charge, and an applicant who disputes it must assert the superiority of a national norm against a local text that has never been repealed.[5] Whether collection in fact continues, and whether the resulting discretionary space is used to extract informal payments, are questions about administrative behaviour that a register-based design does not observe and this study accordingly does not answer. The comparative literature documents that regulatory stock failures elsewhere translate into transaction costs and informal payments by precisely this route, which is what makes the hypothesis worth stating and worth testing.[16,18] It remains a hypothesis, and it is the specific proposition that the field verification proposed in the limitations is designed to examine.

Read teleologically, the constitutional harm is sharper than the economic one. The purpose of the hierarchy provisions, taken with the guarantee of legal certainty in Article 28D(1) UUD 1945, is that the norms addressed to a person should be ascertainable by that person.[7,15] A register in which the great majority of instruments governing abolished permits remain marked *Berlaku* defeats that purpose precisely for the class least equipped to resolve the contradiction. A large firm with counsel can assert *lex superior* against a demand for an abolished permit; a small applicant at a service counter, facing an official holding a printed and formally valid Perda, cannot. The doctrine of automatic invalidity thus transfers the burden of ascertaining the law from the register to the individual, and distributes that burden in inverse proportion to the capacity to bear it. This is why the problem cannot be dismissed as one of tidiness: the formal position and the operative position diverge exactly where the law's addressees are weakest.

Comparative perspective: how other systems clear the stock

Assessed against Recommendation 5 of the OECD Recommendation of the Council on Regulatory Policy and Governance, which requires adherents to conduct systematic programme review of the stock of significant regulation, Indonesia currently has no compliant mechanism at the regional tier.[17,23] It possesses neither an automatic device, nor a programmed review cycle, nor a functioning *ad hoc* clearance channel, the last having been withdrawn in 2017. Four foreign models, compared in Table 6 by the function they discharge rather than by their formal designation — the method of functional equivalence associated with Zweigert and Kötz — indicate what a compliant mechanism might look like.[20,24-26]

Australia operates the most complete automatic mechanism: under Part 4 of the Legislation Act 2003 (Cth), legislative instruments sunset on the tenth anniversary of registration unless positively remade, so that inaction produces repeal rather than persistence.[24] The United States Regulatory Flexibility Act imposes a lighter obligation, requiring periodic review of rules with significant small-business impact but attaching no automatic consequence to a failure to review.[25] Germany embeds time limitation *ex ante* in drafting discipline: under the Joint Rules of Procedure of the Federal Ministries, a draft instrument must address whether it is to be time-limited, making *Befristung* an expected feature of the instrument at the moment of enactment rather than a correction applied afterwards.[26] The Republic of Korea administers a centralised sunset and re-examination regime through a national Regulatory Reform Committee, and is the closest structural analogue to Indonesia as a unitary state with a strong central coordinating ministry.[20]

The Indonesian constitutional position is decisive in selecting among these. Because the objection sustained in 2017 was to *executive annulment of a legislative product*, a Korean-style committee empowered to review and terminate enacted Perda would confront the same objection in the same form.[2,9] The Australian and German models do not, and for the same underlying reason: neither operates as an executive act directed at a particular enacted instrument. Australian sunsetting is the operation of a statute of general application binding on all instruments prospectively; German time limitation is a self-imposed feature of the enacting body's own drafting. Both work *through* legislative power rather than *over* it. That distinction, rather than any judgement about administrative effectiveness, is what determines transplantability here.

Table 6. Comparative regulatory-stock clearance mechanisms and their transplantability to Indonesia.

Dimension	Australia	United States	Germany	Republic of Korea	Indonesia
Legal basis	Legislation Act 2003 (Cth), Part 4	Regulatory Flexibility Act, 5 U.S.C. § 610	Joint Rules of Procedure (GGO), § 44	Framework Act on Administrative Regulations, Arts. 8, 19-2	None since 2017
Mechanism type	Automatic sunset	Programmed periodic review	Ex ante time limitation at drafting	Centralised sunset and re-examination	Ad hoc; withdrawn
Scope	Legislative instruments generally	Rules with significant small-business impact	Federal draft instruments	Administrative regulations generally	—
Trigger	Tenth anniversary of registration	Ten-year review cycle	Date stated in the instrument	Committee-set review date	Petition to the Supreme Court
Default on inaction	Instrument lapses	Instrument continues	Instrument lapses on stated date	Instrument lapses or is re-examined	Instrument persists
Enforcing organ	Parliament (tabling and disallowance)	Enacting agency; OMB oversight	Enacting ministry	Regulatory Reform Committee	—
Burden on the sub-national body	None unless the instrument is to be preserved	Recurring, on every reviewing body	Trivial, at drafting only	Recurring, plus central committee cost	—
Transplantability	**High** — operates through a statute of general application, not executive annulment; compatible with MK 137/56	Moderate — review duty is cheap but produces no default consequence	**High** — purely procedural, applies to the region's own drafting	Moderate — a central committee reviewing enacted Perda risks the 2017 objection	—

Note. Transplantability is assessed against a single Indonesian criterion: whether the mechanism would engage the objection sustained in Constitutional Court Decisions No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016, namely that an executive organ may not annul the legislative product of an elected legislature.

De lege lata: the position under existing law

As the law stands, four propositions hold. First, a Perda provision regulating an instrument abolished by a superior norm is without legal force from the moment of inconsistency, by operation of Article 7(2) of Law No. 12 of 2011, and no official act is required to produce that result.[11] Second, notwithstanding that invalidity, the instrument remains formally in force in the national register until repealed by the enacting regional legislature or annulled by the Supreme Court — and the register, not the doctrine, is what administrative practice relies upon. Third, since 2017 no organ possesses a general power to clear such instruments on its own motion: the ministerial annulment power is void and the Supreme Court's jurisdiction is petition-driven.[2,9] Fourth, the duty to adjust is nonetheless real, specific, and dated: Government Regulation No. 6 of 2021 imposes concrete alignment obligations in the licensing domain, and Article 94 of Law No. 1 of 2022 fixed a hard consolidation deadline of 5 January 2024 in the levy domain.[5,7] The legal position is therefore not ambiguous. It is a duty without a default, and an invalidity without an eraser. The principal legal sources, the provisions engaged, and the gap each leaves are set out in Table 7.

Table 7. Primary legal sources: provision, principle, analysis, and identified gap.

Instrument / decision	Provision	Principle	Analysis	Gap
UUD 1945	Arts. 18(6), 24A(1), 28D(1)	Regional legislative autonomy; judicial review of sub-statutory norms; legal certainty	Autonomy and certainty are held in tension: the Constitution empowers regions to legislate but guarantees citizens an ascertainable law	No constitutional allocation of the stock-clearance function to any organ
UU No. 12/2011	Art. 7(1)–(2); Art. 9(2)	Lex superior derogat legi inferiori; Supreme Court review	Invalidity is self-executing; erasure is petition-dependent. Grammatical reading yields voidness without any act	No mechanism converts automatic invalidity into a register entry
UU No. 23/2014	Art. 251; Arts. 245–250	Executive annulment (void); facilitation and evaluation (intact)	The 2017 decisions removed annulment but left the ex ante supervisory instruments untouched	The surviving ex ante instruments were never repurposed for stock clearance
UU No. 11/2020 jo. UU No. 6/2023	Art. 185 and transitional provisions	Risk-based licensing supersedes prior permits	The displacing norm is unambiguous from October 2023, when MK No. 54/PUU-XXI/2023 settled validity	No lapse date attached to displaced regional provisions
UU No. 1/2022	Art. 94	Consolidation of regional taxes and levies into a single Perda	A hard deadline of 5 January 2024, expressed in mandatory terms	No consequence attaches to breach; 25 instruments citing UU No. 28/2009 remain in force past it
PP No. 6/2021	Arts. 5–7	Regional administration of risk-based licensing	Imposes concrete alignment duties, converting non-adjustment from untidiness into non-compliance	No sanction, no reporting duty, no monitoring
MK No. 137/PUU-XIII/2015 and No. 56/PUU-XIV/2016	Operative provisions	Review of a legislative product is a judicial function	Ratio is confined to annulment of enacted Perda; ex ante supervision and statutes of general application are untouched	No substitute mechanism was mandated or enacted

This reveals an internal inconsistency in the reform framework that the empirical results throw into relief. Law No. 1 of 2022 imposed a hard deadline and attached no consequence to missing it; Government Regulation No. 6 of 2021 imposed alignment duties and specified no sanction for non-alignment; Law No. 12 of 2011 declares inconsistent provisions to be without legal force and provides no mechanism by which that declaration becomes visible in the register a citizen actually consults.[8,13] In each case the national legislature enacted an obligation whose breach produces no legal event. The observed 95% non-revision rate is therefore not evidence of regional defiance. It is the predictable equilibrium of a system in which compliance is costly, non-compliance is costless, and the duty's addressee is also the only organ competent to discharge it.

De lege ferenda: constitutionally compatible reform

Because the constitutional objection was to executive annulment of legislative products, a compliant substitute must operate through the regions' own legislative power rather than over it. Four proposals follow, in ascending order of legislative cost.

First, a statutory sunset rule. An amendment to Law No. 12 of 2011, or a transitional clause inserted in each displacing statute, should provide that a regional provision governing an instrument abolished by national law lapses automatically on a date fixed by that national law.[12,24] This achieves the clearance function without reinstating executive review, because the lapse is the operation of a statute of general application rather than an executive act directed at a particular instrument. It also converts the present default — persistence — into its opposite, which is the single most important design feature of the Australian model. Drafting should specify the lapse date, preserve savings for accrued rights and pending applications, address the position of a levy assessed but not yet collected at the lapse date — where the first litigation is most likely to arise — and require the register to record the lapse administratively rather than constitutively.

Second, a mandatory periodic review duty with fiscal incentive. Regions should be required to review their licensing, spatial, and levy stock on a three-year cycle and to report conformity, with a component of the general allocation transfer conditioned on the report.[5,14] The vehicle is an amendment to the supervisory provisions of Law No. 23 of 2014 that survived the 2017 decisions, with an implementing regulation under Law No. 1 of 2022. Because the mechanism operates by incentive rather than command and leaves regional legislative discretion formally intact, it does not engage the Constitutional Court's objection.

Third, *ex ante* time limitation in regional drafting. The drafting guidelines issued under Law No. 12 of 2011 should require every new Perda establishing a licensing or levy instrument to state a review date at enactment, on the German model.[11,26] This is purely procedural, applies to the region's own drafting practice, requires no primary legislation, and can be checked at the existing facilitation and evaluation stage that the 2017 decisions left untouched.[9] Its yield is prospective only, which is precisely why it should accompany rather than replace the first proposal.

Fourth, continuous automated register monitoring. The national database already records legal basis, status, and amendment history in structured form, so the six-indicator protocol applied here could be run continuously over the entire national stock and published as a standing conformity dashboard for the Ministry of Home Affairs and regional legal bureaus.[23,27,28] This converts a research exercise into administrative infrastructure at negligible marginal cost, requires only a ministerial regulation, and has no legal effect on any instrument — which is both its constitutional virtue and the reason it cannot substitute for the first proposal.

One dimension cuts across all four proposals and will largely determine which is politically survivable in a country with more than five hundred regencies and municipalities: the distribution of drafting and administrative burden. A statutory sunset rule imposes no burden whatever on a region that does nothing, and a substantial burden only on a region wishing to preserve a lapsing provision — which is why it clears the stock, and equally why it will be resisted by regions holding large legacy stocks. A periodic-review duty imposes a recurring burden on every region regardless of the state of its stock, making it the most equitable and the most expensive. *Ex ante* time limitation imposes a trivial burden at drafting and none thereafter, but yields nothing for a decade. Automated monitoring imposes no burden on regions at all, and correspondingly clears nothing. The inverse relation between burden borne and stock cleared is not incidental to these proposals; it is the structure of the policy problem.

The four are complementary rather than alternative, and their sequencing matters. Monitoring identifies the stock; sunset clears it; periodic review prevents its reaccumulation; *ex ante* limitation stops the next generation from entering it unbounded. Adopting the fourth alone — the cheapest and most likely path — would produce an accurate measurement of a problem that nothing in the system is empowered to solve.

Limitations

Four limitations qualify the findings. The sample is purposive (N = 80), constructed for domain and geographic breadth rather than probability. Because searches deliberately targeted instruments governing abolished licences, the raw prevalence figures are weighted toward the anomaly-rich part of the stock and should not be read as national point estimates. The cohort comparison and the multivariate model, which are internal to the sample and therefore unaffected by the selection rule that generated it, are the more robust results, and it is on those that the paper's conclusions rest.

Coding relied on the official register — title, abstract, legal-basis list, and status — rather than on the full text of every instrument. A small number of records had empty abstracts and were flagged rather than imputed. Full-text coding would permit finer indicators, most importantly the detection of non-conforming provisions embedded within otherwise valid Perda, which the present protocol cannot see and which would raise rather than lower the estimated prevalence.

The index sums two conceptually distinguishable facets. Indicators A1 to A5 measure properties of an instrument's content, while A6 measures whether the enacting body has revisited it, and the empirical independence of A6 from enactment cohort confirms that the distinction is real rather than notional. The decision to retain A6 is defended above and its consequences are tested in the sensitivity analyses; a reader should nonetheless understand the headline index as a composite rather than as a measure of a single latent quantity. A related point applies across domains: because A5 is close to inapplicable outside the levy domain, the effective ceiling of the index is not identical in every domain, so the cross-domain comparison is conducted on scales that are not strictly equivalent. That non-equivalence works against the null finding on cross-domain equality rather than manufacturing it, and the five-indicator sensitivity analysis addresses it directly.

Coding was performed by a single analyst against decision rules fixed before retrieval, so no inter-rater reliability statistic is reported. Three considerations mitigate this and one does not. In mitigation: the indicators resolve to determinate facts on the face of the register rather than to evaluative judgements; the threshold rules for the two indicators involving any appreciable judgement, A2 and A3, are stated above and reproduced with worked examples in the supplementary materials; and the verbatim legal-basis field is published with the dataset, so the coding of A1 — the indicator carrying the greatest interpretive load and the one on which the forensic findings depend — is directly auditable by any reader without recourse to the authors. What is not mitigated is that a reliability coefficient would be cheap to obtain: independent double-coding of a random subsample of twenty instruments, with Cohen's κ reported overall and separately for A2 and A3, represents perhaps two days of work at register level. It is proposed here as the first component of the extension described below, and its absence should be weighed as a limitation of the present study rather than explained away.

Finally, formal status in the register is not identical to administrative practice. Some regions may have ceased applying an obsolete Perda without recording its repeal, in which case the study overstates practical disharmony; others may continue to apply instruments whose repeal is recorded, in which case it understates it. The study measures the state of the legal stock, not street-level enforcement. Field verification in a subset of regions would establish how far the two diverge, and is the natural companion to extending the protocol to a probability sample of the national stock. It is also the design that would test the mechanism hypothesis advanced earlier, which the present study states but cannot examine.

4. Conclusion

Applying a six-indicator detection protocol to eighty purposively sampled Perda from seventy regions, this study found a mean disharmony index of 4.29 of 6, with 96.3% of instruments still formally in force and fifty-two of fifty-four regulating an abolished instrument still valid. Disharmony is concentrated in the pre-reform cohort (5.22 versus 1.82; $d = 4.20$), a gap surviving controls in a model explaining 80.8% of variance, while domain differences are not significant. The single non-discriminating indicator — no post-2020 amendment or repeal, at 95% across both cohorts — identifies the mechanism: the stock is not maintained. The diagnosis is institutional rather than technical. Indonesian regions largely make new regulation consistent with national reform; what is missing is any routine means of retiring the old, a gap dating from the removal of executive review without replacement. The remedy lies not in restoring administrative annulment, which the Constitutional Court has foreclosed, but in constitutionally compatible stock-management devices — a statutory sunset rule, an incentivised periodic-review duty, *ex* *ante* time limitation in drafting, and continuous automated monitoring of the national register.

Declarations

Author contributions

AFS: conceptualisation, methodology, formal analysis, data curation, and writing — original draft. GP: conceptualisation, methodology, supervision, project administration, and writing — review and editing. HN: investigation, validation, data curation, and writing — review and editing. All authors read and approved the final version of the manuscript.

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Conflicts of interest

The authors declare no conflict of interest.

Ethics

The study analyses publicly available legal instruments and involved no human subjects.

Data availability

The coded dataset — including, for each of the eighty regulations, its database record URL and the verbatim legal-basis citation on which indicator A1 was coded — together with the coding decision rules, worked examples of borderline dispositions, the register reference date, the analysis scripts, and the derived figures, accompanies this article as supplementary files. All regulations are publicly available through the JDIH BPK database at peraturan.bpk.go.id.

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