

ABSTRAK

RESTRUKTURISASI PERATURAN DI LUAR HIERARKI PERATURAN PERUNDANG-UNDANGAN BERDASARKAN PERSPEKTIF HIERARKHI *STUFENBAU THEORY* DI INDONESIA

Oleh:
Reisa Malida

Tujuan penelitian ini adalah menganalisis dan mendeskripsikan kedudukan peraturan di luar hierarki peraturan perundang-undangan ditinjau dari perspektif *Stufenbau Theory* Hans Kelsen, serta menganalisis restrukturisasi hierarki melalui redefinisi jenis dan reposisi hierarki peraturan di luar hierarki peraturan perundang-undangan. Berdasarkan metode penelitian hukum yuridis normatif (*normative legal reserch*) dengan pendekatan pperundang-undangan (*statute approach*) dan pendekatan konseptual (*conseptual approach*), didapatkan hasil penelitian yang menunjukkan bahwa: Pertama, berdasarkan perspektif *Stufenbau Theory*, kedudukan peraturan perundang-undangan di luar hierarki yang sudah diatur dalam UU 12/2011 berada pada hierarki Kelompok IV yaitu *verordnung* dan *autonome satzung* (aturan pelaksana dan aturan otonom). Kedua, berdasarkan redefinisi jenis dan reposisi hierarki diusulkan restrukturisasi terhadap peraturan di luar hierarki peraturan perundang-undangan dengan kedudukan sebagai berikut: (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945; (2) Ketetapan Majelis Permusyawaratan Rakyat; (3) Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang; (4) Peraturan Pemerintah; (5) Peraturan Presiden, Peraturan DPR, Peraturan DPD, Peraturan MK, Peraturan MA dan Peraturan BPK; (6) Peraturan Menteri, Peraturan Komisi Yudisial, Peraturan Bank Indonesia, (dan badan, lembaga, atau komisi setingkat lainnya yang dibentuk dengan Undang-Undang); (7) Peraturan Daerah Provinsi; (8) Peraturan Gubernur; (9) Peraturan Daerah Kabupaten/Kota; (10) Peraturan Bupati/Walikota, (11) Peraturan Kepala Desa.

Kata Kunci : restrukturisasi, harmonisasi, *steufenbau theory*, hierarki peraturan perundang-undangan.

ABSTRACT**RESTRUCTURING OF REGULATIONS OUTSIDE THE LEGAL
REGULATIONS HIERARCHY BASED ON *THE STUFENBAU THEORY*
HIERARCHY IN INDONESIA**

By:
Reisa Malida

The purpose of this study is to analyze and describe the position of regulations outside the statutory hierarchies from the perspective of *Stufenbau Theory* Hans Kelsen, as well as to analyze hierarchical restructuring through the redefinition of types and repositioning the regulatory hierarchy outside the hierarchy of statutory regulations. Based on the research method of normative legal research (*normative legal research*) with statutory approach (*statute approach*) and conceptual approach (*conceptual approach*), the research results show that: First, based on the perspective of *Stufenbau Theory*, the position of laws and regulations outside the regulated hierarchy in Law 12/2011 are in the Group IV hierarchy, namely *verordnung* and *autonome satzung* (executing rules and autonomous rules). Second, based on the redefinition of types and hierarchical repositioning, it is proposed to restructure regulations outside the hierarchy of laws and regulations with the following positions: (1) Constitution of the Republic Indonesia 1945; (2) Decree of the People's Consultative Assembly; (3) Laws/Government Regulations in Lieu of Laws; (4) Government Regulations; (5) Presidential Regulations, House of Representatives Regulations, Regional Representative Council Regulations, Constitutional Court Regulations, Supreme Court Regulations and Financial Supervisory Agency Regulations; (6) Ministerial Regulations, Judicial Commission Regulations, Bank of Indonesian Regulations, (and other equivalent bodies, institutions or commissions established by law); (7) Provincial Regulations; (8) Governor Regulation; (9) Regency/City Regional Regulations; (10) Regents/Mayors Regulations, (11) Village Chief Regulations.

Keywords: restructuring, harmonization, *stufenbau theory*, hierarchy of laws and regulations.