



THE AUTHORITY OF LOCAL GOVERNMENTS REGARDING THE MANAGEMENT OF RENEWABLE ENERGY IN LAW NUMBER 23 OF 2014 ON REGIONAL GOVERNMENT

Puja Kharisma Permata Ayu¹, Sudarsono², Indah Dwi Qurbani³

^{1,2,3}Faculty of Law, Universitas Brawijaya, Indonesia

Corresponding E-mail: Pujakharismabrawijaya@gmail.com

Abstract

Law Number 23 of 2014 concerning Regional Government (UU Pemda) is the basis for the implementation of regional autonomy in Indonesia. The regulation of local government authority in New Renewable Energy affairs regulated in the Local Government Law has caused problems in achieving the national energy mix target. This research is a normative juridical research with a statutory and conceptual approach. The results showed that the lack of involvement of the role of local governments, both provincial and district/city areas for the utilization and management of NRE was due to limited regulations regarding the authority of local governments in NRE affairs to only regulate geothermal affairs. In addition, changes or improvements are needed in the Local Government Law that accommodates the definition of RES and the addition of authority arrangements for other types of RES.

Keywords: *RES, authority, local government, autonomy.*

1. INTRODUCTION

The increasingly alarming impacts of global climate change have become a concern for various entities worldwide, including Indonesia. This is because, according to the Intergovernmental Panel on Climate Change (IPCC) report, the process of climate change is becoming more evident and rapid, with wide-ranging effects on various aspects of people's lives across different regions of the world in recent years (Intergovernmental Panel on Climate Change (IPCC), 2016). Climate change has significant implications for human life, making it a serious issue that receives increasing attention from countries around the globe. Therefore, many countries under the auspices of the United Nations (UN) as an international organization have developed the United Nations Framework Convention on Climate Change (UNFCCC) and engage in negotiations to share roles and responsibilities in controlling and addressing the impacts of climate change.

Indonesia is one of the countries that ratified the Paris Agreement on April 22, 2016, which aims to limit the global average temperature increase to below 2°C above pre-industrial levels. As a party to the Paris Agreement, Indonesia is committed to supporting the reduction of greenhouse gas emissions as soon as possible to mitigate global temperature rise. Efforts to reduce greenhouse gas emissions include accelerating the energy transition, considering Indonesia's abundant resources in both fossil and non-fossil energy. However, referring to the energy sustainability index, the energy system in Indonesia is still not well-organized as a significant portion of domestic energy needs are still dominated by the use of fossil energy sources such as oil, gas and coal (World Energy Council, 2022).

Based on data from the Ministry of Energy and Mineral Resources (Ministry of ESDM), in 2016, Indonesia has a high dependence on fossil energy to meet its national energy needs. Petroleum and coal accounted for 46% and 21% respectively, while natural gas accounted for around 18% (Directorate General of New Energy, 2016). It is well known that fossil energy sources

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are non-renewable because their reserves are limited and depleting, which will inevitably have an impact on national energy security.

Energy, as one of the essential components in sustaining people's livelihoods, plays a crucial role in achieving sustainable development goals. It can be utilized to strike a balance among social, economic and environmental aspects, thereby contributing to national development. Additionally, energy serves as a key element driving the growth of various sectors, particularly the industrial sector. The level of energy consumption can be an indicator of a country's development progress (Garry Jacobs & Ivo Slaus, 2010). The increase in economic growth, social well-being, and population growth is closely linked to the rapid consumption of energy (OECD Green Growth Studies, 2011). Therefore, as an effort to reduce dependence on fossil energy utilization and reduce greenhouse gas emissions, the government has implemented a transitional energy policy by developing and harnessing the potential of non-fossil energy sources, namely Renewable Energy (RES) as an alternative energy source .

The optimization of the development and utilization of renewable energy sources aligns with the constitutional mandate concerning the goals of national development stated in the preamble. Furthermore, the optimization of renewable energy development and utilization is also in line with Article 33, paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that:

- 1) Key branches of production that are important for the country and vital to people's livelihoods are controlled by the state.
- 2) The land, water and natural resources contained therein are owned by the state and utilized for the greatest prosperity of the people (Optimalisasi Pengembangan Dan Pemanfaatan, 1945).

Based on the constitutional mandate, specific regulations have been established to govern energy as a resource and a branch of production that influences people's livelihoods, namely Law Number 30 of 2007 concerning Energy (Energy Law). The Energy Law contains general and abstract legal norms that broadly regulate obligations (obligatre), prohibitions (prohibere), and permissions (permittere). Therefore, as a guide and basis for planning the implementation of energy mix, Government Regulation Number 79 of 2014 concerning the National Energy Policy (KEN Regulation) was enacted to determine energy mix targets. The targets for renewable energy in the energy mix set in the KEN Regulation are to reach a minimum of 23% by 2025 and a minimum of 31% by 2050.

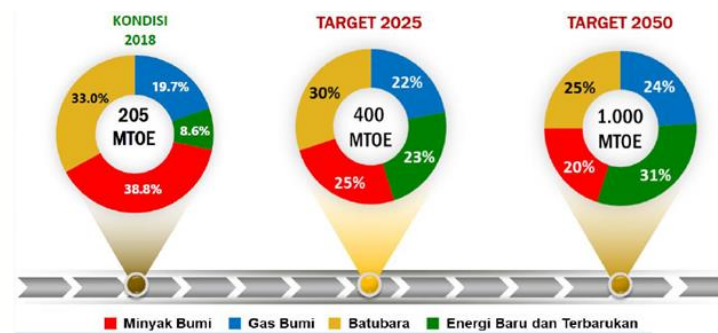


Figure 1 Presentation by the National Energy Council (DEN)

However, the energy mix target has not been optimally achieved to date due to low utilization of Renewable Energy (RES). Based on data from the Ministry of Energy and Mineral



Resources (Ministry of ESDM), the share of RES in the national energy mix only reached 9.15% in the first semester of 2020, which is still far below the target of 23% set for 2025. The significant gap between the target and the current achievement indicates the need for substantial efforts to optimize the utilization of RES. One of the reasons for the low utilization of RES is the limited authority of regional governments in terms of managing and developing renewable energy.

The optimization of renewable energy utilization should not only be the responsibility of the central government but also the responsibility of local governments, including provincial and district/city governments. This is because Indonesia is a unitary state divided into provinces, which are further divided into districts and cities. Article 18, paragraphs (2) and (5) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) grants extensive autonomy to local governments. Based on this article, Law Number 23 of 2014 concerning Regional Government (Regional Government Law) was enacted. The Regional Government Law serves as the basis for local governments to independently govern and manage their own affairs, following the principles of autonomy and delegated tasks, as long as those matters are not determined by law as the affairs of the central government.

However, the provisions in the Regional Government Law have not fully resolved the issue of achieving the national energy mix target. This is because the Regional Government Law only grants limited authority to local governments in managing renewable energy, specifically in the geothermal sector. However, if we refer to the General Provisions of Article 1 of the Energy Law, various types of renewable energy are explicitly mentioned, classified as new energy and renewable energy. New energy refers to energy derived from new energy sources, while renewable energy refers to energy derived from renewable energy sources. Renewable energy sources include geothermal, wind, bioenergy, solar, hydropower, and ocean energy. Therefore, the limited or lack of authority hinders regions from developing comprehensive programs for managing and utilizing renewable energy, which directly affects the absence of budget allocation as the basis for implementing such programs and development activities.

Based on the background description above, the research problem addressed in this study is as follows:

1. How is the authority of local governments in managing renewable energy sources (RES) regulated in Law Number 23 of 2014 concerning Regional Government?
2. How should the regulation on the management of renewable energy sources (RES) be formulated in Law Number 23 of 2014 concerning Regional Governments?

2. IMPLEMENTATION METHOD

This research is a normative juridical study conducted by examining various applicable laws and regulations and literature containing theoretical concepts that are then connected to the issues to be discussed in this study. The primary legal materials used in this research include Law No. 30 of 2007 concerning Energy, Law No. 23 of 2014 concerning Regional Government, and Presidential Regulation No. 11 of 2023 concerning Additional Concurrent Government Affairs in the Field of Energy and Mineral Resources, specifically in the sub-field of RES. Secondary legal materials used include academic texts, draft laws, books, and relevant scientific articles such as theses, dissertations, scientific journals, and papers. The analytical descriptive technique is used to analyze the legal materials, where the collected data is further analyzed descriptively by describing and presenting the data in a systematic explanation to draw meaningful conclusions in order to address the research problem.

3. RESULTS AND DISCUSSION

The relationship pattern between the central government and regional governments cannot be separated from the influence of the form of the state, such as whether a country has a unitary state, a federal state, or other forms. The theory and opinions of experts on the relationship pattern between the central government and regional governments in a unitary state, as proposed by Thorsten V. Kalijarvi, are as follows :

"In countries where all powers are centralized in one or several central organs, without the division of power between the central government and the government of state parts. The government of state parts only becomes part of the central government, acting as representatives of the central government to carry out local administration."

This means that the sovereignty of the state in a unitary state (both internal and external sovereignty) is fully vested in the central government. Although the central government has the authority to delegate some of its powers to autonomous regions based on a decentralization system, the ultimate authority still lies with the central government. Thus, the essence of a unitary state is that its sovereignty is singular and undivided, or it can be said that the power held by the central government is not limited. Meanwhile, Jimly Assyiddiqie, in his opinion, asserts that the original power in a unitary state lies with the central government, not the regions. The regions obtain power from the center through the explicit transfer of authority, commonly referred to as "kewenangan." (Jimly Asshyiddiqie, n.d.). herefore, it can be concluded that regional autonomy is granted by the central government, while the regions only receive the transfer from the central government.

In a unitary state, the authority to administer government affairs rests with the central government. Therefore, the extent of autonomy granted to the regions depends on the political will of the government. Sri Soemantri states that a unitary state holds the highest authority, and this authority cannot be disrupted by the transfer or delegation of power to the regions. Regional authority refers to a principle of division that does not undermine the unity (eenheid) of the highest authority in the governance of the state.

Philip Mawhood defines the relationship between the government and regions as follows:

"decentralized government, as we have defined it, is a semi-dependent organization. It has some freedom to act without referring to the center for approval, but its status is not comparable with that of a sovereign state. The local authority power, and even its existence, flow from a decision of the national legislature and can be cancelled when that legislature so decides".(Agussalim Andi Gadjong, 2007)

This means that essentially, in a decentralized unitary state, there will always be various government affairs that are centrally organized. This is in line with the opinion of Bhenyamin Hossein, who states that it is impossible for there to be a government affair that is fully and completely decentralized.(Agussalim Andi Gadjong, 2007). The unitary state system is structured with the main levels of government consisting of the central government and regional governments. Regional governments are divided into provincial and district/city governments. In terms of sovereignty, it is fully held by the central government. Whereas in terms of authority, it is fully held by the central government, which is then transferred or delegated to the regions.

The principles of power or authority division in a unitary state include the following: Firstly, power or authority fundamentally belongs to the central government. Regional governments are granted rights and obligations to manage and administer a portion of the government's authority through the process of authority transfer as regulated. Secondly, the central government and regional governments maintain a chain of command and hierarchical relationship. The central



government acts as the subordination of regional governments, but the relationship is not intended to intervene or dictate the authority of regional governments. Thirdly, under certain conditions, the authority or power that has been transferred to regional governments can be revoked by the central government if the regional governments are unable to execute it properly.

The relationship between the central government and regional governments often leads to a spanning of interests, as stated by Muhammad Fauzan (2006). Embracing the principle of decentralization in a country does not mean abandoning the principle of centralization because the two are not dichotomous but rather on a continuum. The principle of decentralization cannot be implemented without the principle of centralization first. This is because regional autonomy without centralization would lead to disintegration. Essentially, regional autonomy entails freedom and flexibility in administering its own government affairs. However, the role of the central government is still necessary to ensure supervision and prevent it from turning into sovereignty. Regional autonomy and autonomous regions are creations of the government. Nevertheless, the relationship between autonomous regions and the government is reciprocal. (Ni'matul Huda, 2007a).

The division of authority in the relationship between the central and regional governments concerns the division of domestic affairs, or commonly known as government affairs in legislation. Ni'matul Huda categorizes government affairs into two groups. First, there are government affairs that are fully administered by the government without the principle of decentralization. Various government affairs become the exclusive authority of the government, whether it is a unitary or federal government. Some of these government affairs are administered through centralization, deconcentration, and task delegation. Rondinelli once stated that: (Dennis A. Rondinelli, 2005)

“...that not all function of the state can or should be decentralized. Those functions are essential to survival of a nation, services the benefit from economies of scale and standardization in production, that depend on large networks of facilities or hierarchy of services, that can only distributed wealth in the face of opposition, that create territorial spillover effects, or that depend on massive capital investments, may be better administered by central government than by decentralized units.”

In addition, even though some other government affairs can be administered based on the principle of decentralization, various government affairs do not fully fall under the authority of autonomous regions. Apart from the government affairs that cannot be administered by subnational governments, Maddick explains that parts of those government affairs also fall under the authority of the central government, while other parts are decentralized. (Henry Maddick, 2005).

Broad autonomy is usually based on the principle that all government affairs essentially fall under the domestic affairs of the regions, except those designated as central government affairs. To implement this, the regional domestic system serves as the foundation for the administration of regional governments by dividing the authority, tasks, and responsibilities for governing and managing government affairs between the central government and regions. Regarding the division of authority in government affairs, three main doctrines are conceptually recognized: the formal household doctrine, material household doctrine, and actual household doctrine. R. Tresna refers to it as "the authority to regulate domestic affairs," while Bagir Manan refers to it as the "regional domestic system," defined as the arrangement related to dividing the authority, tasks, and responsibilities to regulate and manage government affairs between the central government and regions (Bagir Manan, 1994). Although different terminologies are used, they still share the same understanding that the formal household doctrine, material household doctrine, and actual

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household doctrine relate to the arrangement concerning the division of authority, tasks, and responsibilities to regulate and manage government affairs between the central government and regions. (Ni'matul Huda, 2007b).

4.1 The authority of regional governments in managing Renewable Energy Resources (RES) under Law No. 23 of 2014 concerning Regional Governments (Regional Government Law)

Law No. 23 of 2014 concerning Regional Governments (Regional Government Law) was enacted to serve as a guideline for implementing regional autonomy and the division of government affairs between the central government and regional governments. Government affairs under the Regional Government Law are divided into three categories: absolute government affairs (government affairs that are solely within the authority of the central government), concurrent government affairs (government affairs shared between the central government and provincial and district/city governments, consisting of mandatory government affairs and optional government affairs), and general government affairs (government affairs under the authority of the President as the head of government). Government affairs that fall under absolute government affairs include foreign policy, defense, security, justice, monetary and fiscal matters, and religion. The division of concurrent government affairs is further detailed in Article 12 of the Regional Government Law, which states:(Tentang Pemerintahan Daerah, 2014)

Article 12

(1) Mandatory Government Affairs related to Basic Services as referred to in Article 11 paragraph (2) includes:

- a. Education;
- b. Health;
- c. Public works and spatial planning;
- d. People's housing and settlements;
- e. Public order, security, and community protection; and
- f. Social affairs.

(2) Mandatory Government Affairs not related to Basic Services as referred to in Article 11 paragraph (2) includes:

- a. Labor;
- b. Women's empowerment and child protection;
- c. Food;
- d. Land;
- e. environment;
- f. Population administration and civil registration;
- g. Community and village empowerment;
- h. Population control and family planning;
- i. Transportation;
- j. Communication and informatics;
- k. Cooperatives, small and medium enterprises;
- l. Investments;
- m. Youth and sports;
- n. Statistics;
- o. Cryptography;



- p.s. culture;
- q. Libraries; and
- r. Archives.

(3) Optional Government Affairs as referred to in Article 11 paragraph (1) includes:

- a. Marine and fisheries;
- b. tourism;
- c. agriculture;
- d. forestry;
- e. Energy and mineral resources;
- f. trades;
- g. Industry; and
- h. Transmigration.

The details of the division of authority are further regulated in the Appendix of the Regional Government Law as stipulated in Article 15 paragraph (1), which is an integral part of the Regional Government Law. In the Appendix of the Regional Government Law, specifically under letter CC, the division of authority in the field of Energy and Mineral Resources Governance is mentioned, stating that both provincial and district/city governments have the authority in the subsector of Renewable Energy, as shown in the table below.

Table 1

NUMBER	SUB SECTOR	CENTRAL GOVERNMENT	PROVINCIAL GOVERNMENT	DISTRICT/CITY GOVERNMENT
4.	Energi Baru Terbarukan	a. Determination of geothermal working areas. b. Auctioning of geothermal working areas. c. Issuance of permits for direct utilization of geothermal energy across provincial regions. d. Issuance of permits for indirect utilization of geothermal energy. e. Setting electricity and/or steam prices for geothermal energy. f. Designation of entities as water energy managers for power generation. g. Issuance of certificates for registered supporting service businesses whose activities extend across provincial regions. h. Issuance of permits for commercial	a. Issuance of permits for direct utilization of geothermal energy across districts/cities within one provincial region. b. Issuance of certificates for registered supporting service businesses whose activities are within one provincial region. c. Issuance, development, and supervision of permits for commercial trade of biofuels as alternative fuels with a supply capacity of up to 10,000 (ten thousand) tons per year.	Issuance of permits for direct utilization of geothermal energy within districts/cities.

		trade of biofuels as alternative fuels with an annual supply capacity exceeding 10,000 (ten thousand) tons.		
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It can be seen that the Regional Government Law has granted authority to local governments and provincial governments in the subsector of Renewable Energy. However, this regulation is incomplete as it only refers to geothermal energy within the scope of Renewable Energy. This is because the general provisions of the Regional Government Law do not provide a definition of what is meant by renewable energy. However, the Energy Law No. 30 of 2007 clearly defines the concept of renewable energy.

To address the potential incompleteness of the regulations, Article 15 paragraphs (2) and (3) of the Regional Government Law allow for the addition of authority through a delegation mechanism to the Presidential Regulation to determine concurrent matters not listed in the appendix of the Regional Government Law. On January 26, 2023, the President issued Presidential Regulation No. 11 of 2023 regarding Additional Concurrent Government Affairs in the Field of Energy and Mineral Resources, specifically in the subsector of Renewable Energy (Presidential Regulation on Additional Renewable Energy Affairs). The aim of this regulation is to accelerate the achievement of energy mix targets and facilitate the transition to renewable energy. The Presidential Regulation on Additional Renewable Energy Affairs provides a definition of Renewable Energy. It defines Renewable Energy as energy derived from new energy sources or renewable energy sources. However, the issuance of this Presidential Regulation has reduced the authority of district/city governments in the management of renewable energy as stated in Article 4 of the Presidential Regulation on Additional Renewable Energy Affairs:

The implementation of Additional Concurrent Government Affairs in the field of energy and mineral resources, specifically in the subsector of Renewable Energy, becomes the authority of provincial regions as stipulated in Article 2, paragraph (2), which includes:

- a. Management of the supply of Biomass and/or Biogas within the provincial region;
- b. b.Management of the utilization of Biomass and/or Biogas as fuel within the provincial region;
- c. Management of various Renewable Energy sources derived from sunlight, wind, water flow and waterfall, as well as the movement and temperature differences in deep sea layers within the provincial region;
- d. Management of Energy Conservation for activities that require permits issued by the provincial region;
- e. Implementation of Energy Conservation in facilities and infrastructure managed by regional agencies responsible for energy and mineral resources governance; and
- f. Development and supervision of the implementation of Energy Conservation carried out by stakeholders at the provincial level (Tentang Urusan Pemerintahan Konkuren Tambahan Di Bidang Energi Dan Sumber Daya Muneral Pada Subbidang Energi Baru Terbarukan., 2023).



From the provisions of the mentioned article, it can be seen that the authority granted to provincial governments is to manage various Renewable Energy sources derived from biomass and/or biogas, sunlight, wind, water flow and waterfall, as well as the movement and temperature differences in deep sea layers within the provincial region (authority in the renewable energy sector), as well as related to energy conservation. This means that only provincial governments have the authority to manage renewable energy, while district/city governments are not given the authority to. Therefore, the issuance of the Presidential Regulation on Additional Renewable Energy Affairs, which removes the authority of district/city governments, certainly raises new issues as it contradicts the mandate of Article 18, paragraphs (2) and (5) of the 1945 Constitution of the Republic of Indonesia, which grants extensive autonomy to regions. Additionally, many potential renewable energy sources are found within the territories of district/city governments. This means that these district/city regions become areas that are potentially affected directly by the management and utilization of renewable energy, both positive and negative impacts.

The Regulation that Should be Applied to the Authority of Regional Governments in Managing Renewable Energy

The implementation of regional governance is a realization of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which aims to make regional governments part of the Indonesian governance system and regulate the relationship between the central government and regional governments. This is stated in Article 18 of the 1945 Constitution, which states that the government is an organ led by the President as the Head of Government and the highest government administrator, consisting of the Central Government, Provincial Government, and District/City Governments. Based on the theory of decentralization, it is known that decentralization involves the delegation of authority from higher levels of government to lower levels. Decentralization as a governance system grants autonomy to regional governments. Autonomy is the result of decentralization, regulated by law, and serves as the basis for the implementation of regional governance in order to achieve the same goals as stated in the constitution. The transfer of authority is carried out through the delegation of certain matters to regional governments, along with the responsibility for the activities carried out in the implementation of autonomy or the specific delegated matters.

Sudarsono further explains that decentralization involves a delegation that serves as the source of authority for regions to carry out activities. Delegation must be based on the law, so that the activities and responsibilities undertaken by the regions are legally valid. In the context of the rule of law, decentralization should not be understood as "power," but rather as "authority" or "kewenangan." (Sudarsono, 2022). Therefore, in the context of managing renewable energy, the regulation should provide clear guidelines and allocation of authority to regional governments, particularly to provincial and district/city governments, to enable them to effectively manage and utilize renewable energy sources within their respective jurisdictions. This should be based on the principles of decentralization and the autonomous rights of regional governments, as enshrined in the constitution.

The management policy of natural resources needs to consider and integrate the following principles : (I Nyoman Nurjaya, 2008)

- a. Natural resources should be utilized and managed for the purpose of prosperity and well-being of the people in a sustainable manner from one generation to the next.

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- b. Natural resources should be utilized and allocated fairly and democratically among different generations and gender equality.
- c. The utilization and management of natural resources should create social cohesion among different layers and groups of society, as well as protect and preserve the existence of local cultures, including the living and evolving legal systems of indigenous/local communities
- d. The management of natural resources should be approached systematically to prevent partial, sectoral, and uncoordinated management practices.
- e. Policies and practices regarding the management of natural resources should be locally specific and adapted to the ecosystem conditions of the local community.

The essence of these principles is that the policy for managing natural resources is not oriented towards exploitation but rather focuses on the sustainability of natural resource functions. It is not centralized but decentralized, not sectoral but holistic in nature. It provides living space for local cultures, including the diversity of legal systems that are alive and evolving within the community. In principle, the implementation of regional governance aims to accelerate the realization of societal well-being through improved services, empowerment, and community participation, as well as enhancing the competitiveness of regions while considering the principles of democracy, equity, justice, and the uniqueness of each region within the unitary state of the Republic of Indonesia. The efficiency and effectiveness of regional governance need to be enhanced by considering the aspects of the relationship between the central government and the regions, inter-regional dynamics, regional potentials and diversities, as well as the opportunities and challenges of global competition within the unified system of national governance.

With the enactment of Presidential Regulation No. 11 of 2023 as a complement to Law No. 23 of 2014 on Regional Governance, which overrides the authority of the regency/city governments, the jurisdictional regulation in the subsector of renewable energy within the scope of regency/city governments is taken over by provincial governments as representatives of the central government. The regulation of jurisdiction in the subsector of renewable energy should be consistent with the principle of autonomy. This is done to accelerate the realization of societal well-being through improved services, empowerment, community participation, and independent, effective, and efficient regional governance, while considering the principles of democracy, justice, and the uniqueness of each region within the unitary state of the Republic of Indonesia.

4. CONCLUSION

The authority of regional governments in the management of renewable energy (RES), as regulated in Law No. 23 of 2014 on Regional Governance (UU Pemda), is limited to geothermal energy. The regulation regarding other sources of renewable energy apart from geothermal has not been accommodated in UU Pemda. This limitation of authority in the matter of RES becomes problematic in achieving the national energy mix targets. Additionally, UU Pemda does not provide a definition of what is meant by RES. Considering that RES is an important sector for the country's production and it impacts the livelihood of many people, it should be under the control of the state in order to benefit the prosperity of the people to the greatest extent. Therefore, the regulation of RES matters in UU Pemda should firmly adhere to the principle of regional autonomy as mandated by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).



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