

# 6 ADALAH

Buletin Hukum & Keadilan

## Regional Government Authority in Granting Building Approval Permits Under Indonesia's Job Creation Law: Centralization, Digitalization, and Local Administrative Power

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**Abstract:**

*This study examines the authority of regional governments in granting Building Approval Permits (Persetujuan Bangunan Gedung / PBG) under Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law. The study is motivated by the regulatory transformation from the former Building Construction Permit (Izin Mendirikan Bangunan / IMB) regime to the PBG system, which has significantly altered the distribution of authority between the central and regional governments within Indonesia's decentralized governance framework. This research employs a normative legal research method using statutory and conceptual approaches. The analysis is based on primary, secondary, and tertiary legal materials examined qualitatively to evaluate the legal position and*

*administrative authority of regional governments in implementing the PBG system under the current regulatory framework. The findings demonstrate that regional governments continue to hold a strategic role in the administration of building approvals, particularly in relation to technical assessments, supervision, and the implementation of norms, standards, procedures, and criteria established by the central government. Nevertheless, the Job Creation regulatory framework indicates a growing centralization of authority through the integration of digital licensing mechanisms, particularly the Online Single Submission (OSS) system, which has reduced the discretionary authority of regional governments in the licensing process. Furthermore, several implementation challenges remain evident, including limited human resources, inadequate technological infrastructure, and the lack of regulatory harmonization between central and regional authorities. This study concludes that the authority of regional governments in granting Building Approval Permits under Law Number 6 of 2023 remains legally recognized; however, such authority is primarily administrative and technical in nature within a more centralized regulatory structure. Therefore, strengthening institutional capacity, harmonizing regulations, and improving the integration of licensing systems are essential to achieving effective, efficient, and accountable public services in Indonesia's building governance sector.*

**Keywords:** *Regional government authority; Building Approval Permit (PBG); Job Creation Law; public administration; licensing system; decentralization; Online Single Submission (OSS); Indonesia.*

## A. INTRODUCTION

Pancasila Legal Theory is a legal theory that is based on the values of Pancasila as its ontological, epistemological and even axiological foundation.<sup>1</sup> The ontological foundation of philosophy, according to Aristotle, is the science that investigates the nature of something or about *reality*, existence or existence. Therefore, the ontological foundation of Pancasila is an investigation of Pancasila which is carried out as an effort to find out the essence of each precept in Pancasila.<sup>2</sup> The ontological foundation of Pancasila describes Pancasila as a philosophical system in essence also a system of knowledge in which there is rationality. The epistemological foundation of Pancasila philosophy is Pancasila as an ideology derived from its basic values, namely the philosophy of Pancasila. Furthermore, the axiological foundation of philosophy, which provides the definition that the precepts in Pancasila have values. The definition of value in the axiological foundation is the value of truth and goodness that are harmoniously related in the form of an inverted pyramid which means the precepts below are based on the precepts above and vice versa, the precepts above are based on the precepts below. The position of Pancasila in the perspective of law as the source of all sources of legal order in

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<sup>1</sup> Any Farida, Nasichin, *Pancasila Legal Theory as a Synthesis of Convergence of Legal Theories in Indonesia*, <https://publikasiilmiah.ums.ac.id/bitstream/handle/11617/9699/17.%20Any%20Farida%20dan%20Nasichin.pdf?sequence=1&isAllowed=y>, accessed February 10, 2023.

<sup>2</sup> Mutiara Sinta, *The Ontological Foundations of Pancasila Philosophy*, Padang: College of Economics " Finance, Banking and Development, 2021.

Indonesia, as stipulated in Article 2 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

Pancasila as a basic norm (*grundnorm*)<sup>3</sup> has unique characteristics in interpreting its existence. In the first precept, the One God becomes the soul of all the precepts of Pancasila, then in the second precept that the Indonesian nation respects the nature, dignity and dignity of human beings as creatures created by God Almighty becomes the soul from the third to the fifth precept. The third precept emphasizes the meaning of nationality which is based on state sovereignty, the fourth precept emphasizes the basis of people's sovereignty, and the fifth precept is interpreted as social justice as the basis for realizing the welfare of the people. Based on the explanation of each meaning of the precepts in Pancasila, it can be seen that the basic values in realizing the goals of the State of the Republic of Indonesia as enshrined in the second and fifth precepts, namely creating justice in the context of living together.

Justice in common life is further regulated in the form of laws and regulations, the principles of justice become the benchmark in the preparation of every positive law. To achieve the goal of justice, every preparation of laws and regulations must pay attention to the principle of legal justice (*gerechtigheit*). According to Aristotle, justice is an act that lies between giving too much and too little which can be interpreted as giving something to everyone according to

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<sup>3</sup> Fransiska Novita Eleanora, "Pancasila as a Basic Norm in the Indonesian Legal System", ADIL : Legal Journal Vol. 3 No. 1.

what is his right.<sup>4</sup> According to Notonegoro who argues that justice is a circumstance, it is said to be fair if it is in accordance with the provisions of the applicable law, while according to Thomas Hubbes who said that the definition of justice is an act is said to be fair if it is based on an agreement that has been agreed.<sup>5</sup>

The State of the Republic of Indonesia as a unitary state has the Constitution of the Republic of Indonesia in 1945 as the state constitution, the constitution has been regulated regarding the constitutional basis regarding the implementation of Regional Government in Indonesia, and by placing the Cabinet in the Central Government to be able to coordinate with the Regional Government units headed by the Regional Head. Thus, the relationship between the Central Government and the Regional Government has 4 (four) important dimensions to be observed, namely including the relationship of authority, institutional, financial, and supervision.<sup>6</sup>

The authority of local government in Indonesia has been regulated in Paragraph (5) and Paragraph (6) of Article 18 of the Constitution of the Republic of Indonesia in 1945.

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<sup>4</sup> I Gde Suranaya Pandit, *The Concept of Justice in the Perception of Bioethics in Public Administration*, Public Inspiration – Journal of Public Administration, 2017, p. Sec. 15.

<sup>5</sup> Ibid, 14.

<sup>6</sup> Andryan, "Harmonization of the Central Government with the Regions as the Effectiveness of the Government System" <https://fahum.umsu.ac.id/harmonisasi-pemerintah-pusat-dengan-daerah-sebagai-efektifitas-sistem-pemerintahan/>, accessed on February 11, 2023, at 10.32.

- (5) Government regions exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central Government.
- (6) Local governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance tasks.

Regarding the above, it is further described in Law Number 23 of 2014 concerning Regional Government. The relationship of authority between the Central Government and local governments as regulated in Article 18A Constitution of the Republic of Indonesia in 1945. The relationship of authority between the Central Government and the local governments of provinces, districts, and cities, or between provinces and districts and cities, is regulated by law by taking into account the specificity and diversity of the regions. This is further explained in Law Number 23 of 2014 concerning Regional Government and Law Number 30 of 2014 concerning Government Administration. As for financial relations, public services, the use of natural resources and other resources between the Central Government and local governments are regulated in Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments and are carried out fairly and harmoniously based on the law.

In Article 18A of the 1945 Constitution of the Republic of Indonesia, it can be seen that the constitution of the Republic of Indonesia has used the principle of justice in regulating the relationship of authority between the Central

Government and the Regional Government. This relationship of authority is also seen in the hierarchy of laws and regulations as stipulated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations which has been amended with the last amendment listed in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Article 7 paragraph (1) of Law Number 12 of 2011 regulates the types and hierarchy of Laws and Regulations consisting of:

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

Referring to the hierarchy of laws and regulations above, it is clear that the relationship between the authority of the Central Government and the Regional Government is clear.

Building Approval is one of the provisions that was previously the authority of the Regional Government but has now changed to the authority of the Central Government with the birth of Law Number 11 of 2020 concerning Job Creation and its implementing regulations as stipulated in Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings.

In 2020, Law Number 11 of 2020 concerning Job Creation underwent formal testing at the Constitutional Court and has been declared conditionally unconstitutional through Decision Number 91/PUU-XVIII/2020,<sup>7</sup> this certainly has juridical consequences for the enactment of Law Number 11 of 2020 concerning Job Creation, currently the Constitutional Court is still giving the opportunity to lawmakers to improve Law Number 11 Year 2020 concerning Job Creation with a period of two years (November 2023).

In 2022, the President of the Republic of Indonesia stipulated a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as an anticipatory step to face economic uncertainty in 2023 and at the same time ensure legal certainty, currently the Government Regulation in Lieu of Law has been stipulated into Law, namely Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 In 2022, Job Creation became a Law.

Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law changes a number of Regional Government authorities, one of which is regarding

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<sup>7</sup> Nano Tresna A, MK: Conditional Unconstitutional, Job Creation Law Must Be Amended Within Two Years, <https://www.mkri.id/index.php?page=web.Berita&id=17816>, accessed December 12, 2021

the management of building permits (Law Number 6 of 2023 concerning Job Creation).<sup>8</sup> Article 174 Law

Law Number 6 of 2023 concerning Job Creation also adds one rule regarding the relationship between the Central Government and Regional Governments. This article regulates the authority of the Regional Government as part of the President's authority, "With the enactment of this law, the authority of Ministers, Heads of Institutions, or Regional Governments that have been stipulated in the law to implement or form laws and regulations must be interpreted as the exercise of the President's authority" Article 176 of Law Number 6 of 2023 concerning Job Creation also changes a number of Regional Government authorities. For example, the authority regarding licensing in article 350 of Law Number 23 of 2014 concerning Regional Government, it is regulated that the Regional Government is obliged to provide licensing services in accordance with the provisions of laws and regulations. However, with the birth of Law Number 6 of 2023 concerning Job Creation, it provides extra authority for the Central Government in licensing matters. The Central Government may take over licensing affairs if it is found that the Regional Government does not carry it out and does not heed the reprimand twice. So far, there has been a strict division of authority, including standards and conditions determined by the Regional Government. Prior to the enactment of Law Number 6 of 2023 concerning Job Creation,

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<sup>8</sup> Adminnanggulan, IMB replaced PBG. mandated by Law, <https://nanggulan.kulonprogokab.go.id/detil/1200/imb-diganti-pbg-amanat-undang-undang>, accessed August 20, 2022.

the authority of the Regional Government to issue permits, Standard Procedures and Criteria Norms (NSPK) was determined by the Regional Government, but this is based on higher laws and regulations, and is further regulated by the Regional Government concerned.<sup>9</sup> However, with the issuance of Law Number 6 of 2023 concerning Job Creation, this NSPK was stipulated by the Central Government. This means that the authority of the Regional Government is further narrowed and the main tasks of the Regional Government become simpler throughout its implementation in accordance with the NSPK. In addition, if the Regional Government does not implement or implement but is not in accordance with the NSPK, then the Central Government can take over the permit within certain limits.

Seeing so many impacts of Law Number 6 of 2023 concerning Job Creation on various legal products in the regions, as a follow-up to Law Number 6 of 2023 concerning Job Creation, Regional Governments must identify and inventory regional legal products, both Regional Regulations (Perda) and Regional Head Regulations (Perkada) whose content is related to Law Number 6 of 2023 concerning Job Creation. The direction is, of course, to make changes, repeal or stipulate Regional Regulations or Perkada that have been updated in accordance with Law Number 6 of 2023 concerning Job Creation. If it has been identified, then the Regional Regulation planning is stipulated outside the

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<sup>9</sup> Pahittartik, *Job Creation Law, What Should Local Government Do?*, <https://lombokpost.jawapos.com/opini/04/05/2021/uu-cipta-kerja-Pemerintah-Regions-must-what/>, (accessed on May 24, 2022\_.

Propemperda with the Decree of the DPRD and adds to the Regional Planning stipulated by the Decree of the Regional Head, in other words the Regional Government must be compliant and subject "voluntarily" to act actively to help realize the affairs delegated in Law Number 6 of 2023 concerning Job Creation.

One of the provisions amended through Law Number 6 of 2023 concerning Job Creation is in the licensing simplification cluster, one of the articles removes services regarding the elimination of services and the collection of Building Permits and subsequently replaced with Building Approvals. The fundamental difference for people who want to make Building Approvals after the issuance of Law Number 6 of 2023 concerning Job Creation is that Building Approvals do not require building owners to apply for permits before building buildings such as the previous Building Permit (IMB) rules<sup>10</sup> and adjustments to certain licensing levy guidelines, one of which is the building permit levy.

Building Permits are categorized as one of the types of Certain Licensing Levy, in Article 88 Paragraph (4) and Paragraph (5) of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments are regulated as follows:

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<sup>10</sup> Yuli Nurhanisya, *Infographic Between IMB and PBG When Building a Building*, Indonesia Baik, .id, <https://www.indonesiabaik.id/index.php/infografis/beda-imb-dan-pbg-saat-bangun-gedung>, accessed 01 February 2023.

- (4) The type of permit service that is the object of the Certain Licensing Levy as intended in Article 87 paragraph (1) letter c includes:
  - a. Building Approval
  - b. the use of foreign labour; and
  - c. management of people's considerations.
- (5) The Building Approval Levy as referred to in paragraph (4) letter a is a levy on the issuance of Building Approval by the Region.

The definition of Building Permit is regulated in Government Regulation Number 36 of 2005 concerning Implementation Regulations of Law Number 28 of 2002 concerning Buildings, Building Permits are permits granted by the Regency/City Government to building owners to build new, alter, expand, reduce, and/or maintain buildings in accordance with applicable administrative requirements and technical requirements.

The granting of Building Permits by the Regional Government includes reviewing the design and monitoring the implementation of its construction so that it remains in accordance with the technical plan of the building and the spatial plan while still paying attention to several basic building coefficients. The role of the Regional Government in granting Building Permits is intended to encourage national development so that it can advance general welfare as contained in the 1945 Constitution of the Republic of Indonesia which is basically a focus on the development of the whole Indonesian human being and the development of all Indonesian society which emphasizes the balance of

development, external prosperity and inner satisfaction, in an Indonesian society that is advanced and socially just based on Pancasila.<sup>11</sup> Buildings are used as a place for residents/communities to carry out their activities, have a very important role in the formation of character, the realization of productivity, and the identity of the area they occupy. Therefore, the implementation of this building needs to be regulated and fostered by each region for the sake of the continuity and improvement of people's lives and livelihoods, as well as to realize a building that is functional, reliable, identity, and balanced, harmonious, and in harmony with its environment.<sup>12</sup>

Law Number 6 of 2023 concerning Job Creation replaces the provisions of Building Permits (IMB) to Building Approvals (PBG). The definition of Building Approval is based on Government Regulation Number 16 of 2021 concerning the Implementation Regulation of Law Number 28 of 2002 (Government Regulation Number 16 of 2021) stipulates that Building Approval is a permit granted to the owner of a Building to build a new building, alter, expand, reduce, and/or maintain a Building in accordance with the technical standards of the Building. Furthermore, a Building in Government Regulation Number 16 of 2021 is defined as a physical form of construction work that is integrated with its

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<sup>11</sup> Leks&Co "Law No. 28 of 2002 concerning Building in One Manuscript" [regulasi.hukumproperti.com/uu-no-28-tahun-2002-tentang-bangunan-gedung-dalam-satu-naskah/](https://regulasi.hukumproperti.com/uu-no-28-tahun-2002-tentang-bangunan-gedung-dalam-satu-naskah/), accessed January 20, 2022.

<sup>12</sup> Elsi Kartika Sari, *The Need for Building Permits in Buildings*, Journal of the 4th National Seminar of Scholars in 2018, Faculty of Law, Trisakti University.

location, partially or entirely on and/or in the land and/or water, whose activities, whether for residential or residential purposes, religious activities, business activities, social, cultural activities or special activities.

The implementation of buildings is grouped into 5 (five) types, namely:

1. Cultural Heritage Building (BGCB) is a building that has been determined its status as a cultural heritage building in accordance with the provisions of laws and regulations on cultural heritage;
2. Special Function Buildings (BGFK) are buildings that due to their function have a high level of confidentiality and security for the national interest or which due to their implementation can endanger the surrounding community and/or have a high risk of danger;
3. Green Building (BGH) is a Building that meets the technical standards of Building Buildings and has significant measurable performance in saving energy, water, and other resources through the application of BGH principles in accordance with the functions and classifications in each of its implementation;
4. Community Green Residential Buildings (H2M) are a group of buildings with a simple classification in the form of single residential houses in an administrative/thematic environment that meet the provisions of the H2M building work plan; and
5. State Building (BGN) is a building for official purposes that is State or Regional Property.

One of the purposes of the issuance of Law Number 6 of 2023 concerning Job Creation is to simplify the licensing

process in infrastructure development so that the implementation of investment in the Unitary State of the Republic of Indonesia can be further developed, the following are some of the provisions that were previously regulated in Law Number 28 of 2002 concerning Buildings (Law Number 28 of 2002) but with the birth of Law Number 6 of 2023 concerning Job Creation The terms are amended to be as follows:

1. The functions and classifications of buildings are regulated in separate Government Regulations;
2. Building administration requirements removed;
3. Building reliability requirements are eliminated; and
4. The ratification of the technical plan of the building by the Regional Government after receiving technical consideration by the expert team was abolished.

More interestingly, there have been fundamental changes to the technical standards of buildings that previously followed local social and cultural conditions, but with the birth of Law Number 6 of 2023 concerning Job Creation in Article 7, it is regulated to further provisions regarding technical standards as referred to in paragraph (1) regulated by Government Regulations.

The above is the starting point for the role of the Central Government in controlling the implementation of development from the aspect of building licensing in the regions. Furthermore, to support the implementation of Law Number 6 of 2023 concerning Job Creation. The Central Government through Government Regulation Number 16 of 2021 regulates the division of authority between the Central

Government and Regional Governments in the technical activities of granting Building Approvals, as follows:

1. The Expert Professional Team formed by the Ministry of Public Works and Public Housing carried out discussions related to the technical plan for the submission of Building Approvals for buildings other than single-storey single-storey residential houses with a maximum area of 72 square meters and two-storey single-storey houses with a maximum floor area of 90 square meters;
2. The Central Government makes an application for the Building Management Information System which is used for the submission of Building Approvals and Functional Fitness Certificates;
3. The Central Government establishes Norms, Standards, Procedures, and Criteria (NSPK);
4. The Central Government supervises the implementation of Building Approvals in the regions.

Based on the above provisions, it can be concluded that the Central Government has an important role in the process of managing Building Approvals in the hope that there will be no differences in licensing standards in each region and norms, standards, procedures, and criteria will be integrated. The material of Law Number 6 of 2023 concerning Job Creation as explained above further strengthens the pattern that leads to the conclusion of the practice of recentralization of power. This pattern is formed with the emergence of laws that have regulations such as the withdrawal of affairs from the Regional Government and instruments of approval or evaluation by the Central Government that are increasingly strict.

The theory initiated by Montesquieu is that a democratic constitutional arrangement requires the division of government power in the central part itself and also requires the division of power between the central and the regions. The principle of democracy and decentralization of government personnel is contrary to the principle of gathering everything at the center of government. The birth of Law Number 6 of 2023 concerning Job Creation, which has a recentralization approach, *mutatis mutandis* the value of *checks and balances* has become increasingly vague<sup>13</sup>.

The revenue of the Certain Permit Levy obtained from the granting of Building Approvals is one of the regional revenues whose funds are reused for the development of each region, but in the process of granting approval becomes the authority of the Central Government, the Regional Government should be given space to manage its Regional Original Revenue as a form of independence of each region. The existence of the right to regional autonomy has been an important thing in the implementation of Regional Government. The amendment of Article 18 of the 1945 Constitution of the Republic of Indonesia became the legal basis for the implementation of the right to regional autonomy. Through the establishment of Regional Government, it is hoped that it can accelerate the realization of regional progress and people's welfare in the regions, as well as improve the quality of democracy in the regions. All of

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<sup>13</sup> Muhammad Addi Fauzani "Law on Job Creation and Regional Autonomy Rights" <https://news.detik.com/kolom/d-5203031/uu-cipta-kerja-dan-hak-otonomi-daerah>, accessed November 20, 2021.

these provisions are formulated permanently, in the framework of guaranteeing and strengthening the Unitary State of the Republic of Indonesia, so that the relationship of authority between the Central Government and the Regional Government is formulated by taking into account the specificity and diversity of the region. This is clearly not in line with the implementation of Law Number 6 of 2023 concerning Job Creation, the simplification of licensing clusters, especially related to Building Approvals where the Central Government no longer gives full authority to the Regional Government.

This practice of recentralization has clearly violated the purity of the intention of regional autonomy with the concept of decentralization that gives birth to a provision in the constitution that states that the widest possible autonomy is owned by the Regional Government. The direction and pattern of recentralization certainly violates the principle of decentralization that has been maintained and guaranteed in the constitution. Decentralization means the delegation of government power from the central government to regions that take care of their own households (autonomous regions). Decentralization is also a way or system to realize democracy that provides opportunities for the people to participate in the country's government.

Based on the researcher's research, there has been no research on the Authority of Local Governments in Granting Building Approvals Based on Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, but there are several studies that have similarities, namely:

First, the researcher found research in *Iuris Studia – Journal of Legal Studies* Volume 2 Number 3, October 2021 on behalf of Roman Situngkir with the title "The Transition of Building Permits to Building Approvals Based on Law Number 11 of 2020 concerning Job Creation. Indeed, this study focuses on Building Approvals but focuses more on distinguishing building technical standards and supervising the implementation of IMB and PBG grants.

Second, the researcher found research in *Fiat Justisia Journal of Law* Volume 9 No. 4, October-December 2015 on behalf of Abdul Rauf Alauddin Said with the title "The Division of Authority of the Central Government of Regional Governments in the Widest Autonomy According to the 1945 Constitution" where the formulation of the problem includes how the concept of the division of authority between the Central Government and Regional Governments based on the widest autonomy according to the 1945 Constitution of the Republic of Indonesia. This study also discusses the division of authority between the Central Government and the Regional Government but has not been linked to the Building Approval.

Departing from some of the studies above, when compared to the research, the researcher is clearly very different, here the researcher examines about: How is the implementation of Building Approval based on Law Number 6 of 2023 concerning Job Creation? and How can the authority to grant Building Approval be carried out based on laws and regulations?

## RESULTS AND DISCUSSION

## **B. Granting of Building Approvals based on Law Number 6 of 2023 concerning Job Creation**

Based on the results of the research on the application of the authority to grant Building Approvals to the Tangerang Regency Government and the Tangerang City Government, it is known that the application of the authority to grant Building Approvals is as follows:

1. The division of authority between the Expert Professional Team and the Technical Assessment Team processed by the SIMBG application has not been fully in accordance with Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings;
2. The NSPK prepared by the Central Government has not paid attention to the regional conditions in each district/city (regional development and economic growth) which is an obstacle for the Applicant to apply for Building Approval;
3. Government Regulation Number 16 of 2021 concerning Implementation Regulation of Law Number 28 of 2002 concerning Buildings has not regulated all building components completely and clearly;
4. Supervision of the implementation of buildings and buildings in the region by evaluating technical substances in accordance with laws and regulations has never been communicated to the Regional Government

Based on the explanation above, the Regional Government cannot provide services for Building Approval applications optimally, this certainly has an impact on the decrease in the revenue of certain licensing levies – Building Approvals both in the Tangerang Regency Government and the Tangerang City Government;

Previously, through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into a Government Law, the government abolished Building Permits into Building Approvals. In the context of Building Approval, the Job Creation Law is expected to provide several changes and simplifications in the licensing process, including in the permit for the construction of buildings in districts/cities. The goal is to simplify and speed up the licensing process, as well as encourage investment in the construction and property sectors. Some important points related to the application of the authority to grant Building Approval in the Job Creation Law are:

1. Principle License: The Job Creation Act introduces the concept of a "principle license" that allows developers to start a development project immediately after obtaining a principle license from the competent authority. This principle permit replaces the separate permit requirements previously required to start a project.
2. Construction Notice: For low- or medium-risk building projects, developers can start construction after submitting a construction notice to the relevant

authorities. This notice replaces the more complicated and time-consuming permission requirements.

3. **Integrated Licensing:** The Law on Job Creation aims to simplify and integrate the various permits required for the construction of buildings. This includes environmental permits, site permits, and other related permits. In practice, this integrated licensing will reduce the number of documents required and speed up the approval process.

The technical provisions for the implementation of Building Approvals are regulated in Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Building Regulations regulating the requirements, procedures, and procedures for building construction in Indonesia. Its implementation involves various stages and requirements that must be met by the owner or developer of a building, including:

1. **Planning and Design:** The owner or developer of a building shall prepare a building plan and design in accordance with the provisions set forth in this law. This includes structural, architectural, spatial planning, and other technical aspects.
2. **Construction and Technical Requirements:** The building must meet the construction and technical requirements set forth in this law. These requirements cover aspects of the building's structure, material strength, layout, safety, and environmental health.

3. **Building Permits:** The owner or developer of a building must obtain a building permit from the competent authority before commencing construction. The licensing process involves submitting documents such as building plans, technical drawings, and declarations of conformity with the provisions of the law.
4. **Supervision and Inspection:** During construction, supervision and inspection are carried out to ensure that the building complies with the planning, design, and requirements that have been set. This aims to ensure the safety, quality, and reliability of the building.
5. **Building Certification and Use:** Once construction is complete, the building owner or developer can apply for building certification to the competent authority. This certification confirms that the building has met the set requirements and can be used according to its function.

The results of the review of the Job Creation Law and its implementing regulations found that the function of the Regional Government is limited as an administrator or the party in charge of handling administrative matters, while the 4 (four) fundamental authorities and have a major impact on regional development as explained in Chapter III are currently the authority of the Central Government. If this fact is faced with the theory of decentralization that was born as a result of society's demand to improving public services and individual welfare in each region, then the handover of authority to the Regional Government (in the form of regional autonomy) should also be applied to the authority to grant Building Approval. Meanwhile, with the application of the principle of

decentralization, the Regional Government (district/city) can accelerate the achievement of community welfare, but this also does not apply in the application of the authority to grant Building Approval. Then how can welfare be achieved if the region cannot manage the implementation of its buildings independently, so that the region can generate levy income from the implementation of buildings. Decentralization with an emphasis on regional autonomy recognizes the existence of the Regional Government independently, does not mean that it is free from the power of the Central Government, but is still under the auspices of the Central Government because as stated in Article 1 Paragraph (1) of the constitution of the Republic of Indonesia, namely the State of Indonesia is a Unitary State.

Law Number 23 of 2014 concerning Regional Government regulates Concurrent Government Affairs with Building Sub-Affairs, the Central Government is authorized to determine buildings for national strategic interests and the implementation of buildings for national strategic interests and the implementation of buildings for national strategic interests and the implementation of special function buildings. This division of authority is clearly regulated by the authority of the Central Government, not to the extent of providing an assessment of the technical plan of residential houses with a certain area is also the affair of the Central Government through the TPA. This is clearly contrary to the perspective of regional autonomy. Regional autonomy was born with the presence of decentralization, therefore decentralization and regional autonomy certainly have the same perspective. If seen from the success rate of the implementation of regional

autonomy which is determined by the lower level of dependence of the Regional Government on the Central Government and the ability of the regions to increase economic growth and fiscal independence so as to increase the rate of financial growth in the regions, then the term regional independence is again important. When the Central Government can provide a place for the Regional Government to organize its buildings independently, the Central Government can supervise. In contrast to the current condition where the position of the Regional Government is only as an administrator while all technical matters related to Building Approval are regulated and provided by the Central Government. In the implementing regulation, it is also stated that the Central Government supervises the implementation of buildings in the regions, the implementation of this supervision is carried out in the form of an evaluation of the technical substance determined by the Central Government, this policy violates the principle of authority, the Central Government as the owner of authority for almost all classifications of Building Approvals, then the Central Government also has the authority to carry out supervision. This pattern further weakens the position of the Regional Government as an autonomous region.

### **C. Regulation of the Authority to Grant Building Approval based on Laws and Regulations**

Based on the results of the analysis in Sub Chapter A above, the implementation of the granting of Building Approvals is associated with the implementation of the granting of government authority is still not in accordance

with the application of decentralization theory with an emphasis on regional autonomy and authority theory. The authority of the Regional Government is the authority of attribution because the granting of authority is carried out through Article 18 Invite- The Constitution of the Republic of Indonesia of 1945, which reads:

The provincial, district and city governments regulate and manage their own government affairs according to the principle of autonomy and assistance duties.

The principle of autonomy is the implementation of Regional Government based on regional autonomy. Currently, the principle of autonomy is faced with laws and regulations that do not reflect the existence of regional autonomy in it. Through Government Regulation Number 16 of 2021 concerning the Implementation Regulation of Law Number 28 of 2002 concerning Buildings, the Central Government tries to withdraw the authority that was previously in the Regional Government, namely the provision of IMB, but not only that the Central Government through its implementing regulations provides a small part of the authority of the Regional Government including:

- a. The authority of the Technical Assessment Team for the assessment process of the technical plan of a single residence with a maximum area of 72 square meters and a two-story single residence with a maximum floor area of 90 square meters;
- b. Authority to give approval for the demolition of the building;

- c. Appointing the Landfill to provide technical considerations in the implementation of the building;
- d. Preparing a City Plan Statement;

Through the Job Creation Law and its implementing regulations, it can be identified that the pattern of delegation of authority that was originally in the form of attribution turned into delegation, this can be seen from the role of the Central Government in withdrawing the authority of the Regional Government to grant IMB and then re-granting some authority from the Regional Government using Government Regulations.

One of the principles in the state of law is *wetmatigheid van besturr* or government based on legislation. In other words, all government legal actions, both in carrying out regulatory functions and service functions, must be based on the authority granted by the applicable laws and regulations. Local Government in Article 18 of the State Constitution as previously explained that:

Local governments exercise the widest possible autonomy, except for government affairs which are determined by law to be the affairs of the Central Government.

Referring to the development of laws and regulations regarding Regional Government, it is clearly regulated that the granting of permits for the operation of buildings known as IMB and Building Approvals is not grouped into absolute government affairs but rather into concurrent government affairs, mandatory government sub-affairs related to basic services, namely related to the field of public works and

spatial planning and public housing and public areas, Thus, the existence of authority from the Central Government as a party that plays a major role in granting Building Approval in the implementation of buildings in the regions as stipulated in the Law on Job Creation creates confusion for the Regional Government and the applicant for Building Approval. Considering that buildings and buildings are built in the Regional Government area and have a direct impact on the community and infrastructure in the area, therefore the Regional Government should be the party that plays the most role in granting Building Approval.

The theory of regional autonomy emphasizes the principle of decentralization that gives authority and responsibility to local governments in managing government affairs in their regions. In the context of granting Building Approvals, the Regional Government plays an important role and plays a more important role than the central government because:

1. Local Knowledge: Local governments have a better understanding of local conditions, needs, and challenges in their area. They can implement policies and requirements that are more in line with the characteristics and needs of their area, taking into account the social, cultural, economic, and environmental aspects of the local environment in granting Building Approvals.
2. Faster Decision Making: By granting wider authority to Local Governments, the decision-making process related to Building Approvals can be carried out more efficiently. Local governments can respond to the needs of the

community and investors more quickly, thereby accelerating the process of approval and development of buildings.

3. **More Effective Supervision and Law Enforcement:** Within the framework of regional autonomy, Local Governments have the authority to supervise and enforce regulations related to building construction in their areas. This allows them to conduct more intensive oversight of compliance with applicable requirements and regulations, as well as take enforcement actions if necessary.
4. **Community Participation:** The theory of regional autonomy encourages the active participation of communities in decision-making that impacts their territory. In granting Building Approvals, the Regional Government can involve the community in the consultation and decision-making process. This allows the aspirations and needs of the community to be better represented in the approval and construction of buildings.
5. **Local Economic Development:** Regional autonomy gives Local Governments the opportunity to encourage local economic development through the granting of Building Approvals that support investment and growth of the construction and property sectors in their areas. Local governments can develop policies and incentives that encourage investment and create jobs in the sector.

The role of the Central Government in granting Building Approvals also remains important, especially in establishing general policy frameworks, national regulations,

and providing guidelines to Regional Governments. However, within the framework of regional autonomy, the Regional Government has greater authority and responsibility in granting Building Approvals in accordance with local conditions and needs in each region.

Returning to the theory of decentralization which means the legal handover of power to handle certain fields or functions to the autonomous region, the Regional Government as an autonomous region should be given its authority in its entirety as stipulated in the constitution of the Republic of Indonesia. In addition, the existence of Law Number 23 of 2014 concerning Regional Government is still in force, thus the granting and regulation of Building Approval should still be the authority of the Regional Government.

Seeing the influence of the use of Building Approvals on the Regional Governments of the Regency and City of Tangerang, there are still no positive things as aspired to in the Job Creation Law, both in terms of regional revenue, investment climate, and simplification of adultery. Based on the theory of authority in the context of the division of authority between the Regional Government and the Central Government regarding the granting of Building Approvals to ensure that the requirements and standards for building construction have been met comprehensively and in accordance with local needs while maintaining alignment with national policies, the implementation of the authority to grant Building Approvals can be carried out by:

1. Local Government Authority: Local governments have the authority to regulate and give approvals related to the

construction of buildings in their area. They can establish regulations and requirements that suit local needs, including environmental impact assessments, spatial planning, and other technical aspects. Local governments are also responsible for supervision, implementation, and law enforcement related to the construction of buildings in their areas.

2. Authority of the Central Government: The central government has the authority to establish a general policy framework related to the implementation of buildings throughout the country in the form of laws, government regulations, and national guidelines that regulate the minimum standards and requirements that must be met in the granting of Building Approvals. The Central Government is also responsible for supervising and providing direction to the Regional Government in implementing regulations and policies related to the implementation of buildings.
3. Separation of Authority: The division of authority between the Regional Government and the Central Government can be carried out through the principle of subsidiarity. According to this principle, authority is given to the Regional Government as long as they are able to carry out the task effectively and efficiently. The Central Government retains the authority to establish a general policy framework and ensure coordination between Regional Governments in terms of granting Building Approvals.
4. Coordination and Collaboration: Regional Governments and Central Governments to establish coordination and

collaboration. This includes information exchange, consultation, and cooperation in developing regulations, guidelines, and best practices that support sustainable building construction and in accordance with community needs.

Furthermore, problems arise when the Law on Job Creation and its implementing regulations do not regulate the existence of Regional Regulations on the technical material of building requirements (NSPK), in other words the NSPK is entirely the authority of the Central Government. The Regional Government is only asked to adjust the provisions related to the levy rate and change the nomenclature of IMB to PBG. The problem with the Tangerang City Government is that there are types of billboard tower buildings that have not been regulated in Government Regulation Number 16 of 2021 concerning Implementation Regulations of Law Number 28 of 2002 concerning Buildings, then what about the legal certainty for the applicant to submit a billboard tower Building Approval to the Tangerang City Government, what kind of technical guidelines must be used by the Tangerang City Government. Therefore, the Tangerang City Government took steps by making Tangerang Mayor Regulation Number 106 of 2022 concerning the Implementation of Billboards. The Mayor's Regulation was prepared based on the initiative of the Tangerang City Government with the aim of providing legal certainty to applicants for Billboard Tower Building Approval. The step taken by the Tangerang City Government is categorized as a form of discretion, referring to Article 22 Paragraph (1) and (2) of Law Number 30 of 2014 concerning Government Administration which states that every use of

discretion by government officials aims to provide legal certainty.

In contrast to the Tangerang Regency Government, which based on the results of the inventory of Regional Regulations or Regent Regulations, there is no regulation regarding the Building Approval of billboard towers, this shows that each regency/city government gives a different response to the non-regulation of certain materials in the implementing regulations of Building Approval. This results in the non-standardization of technical arrangements for Building Approvals in each region.

Based on the above description, the presence of the Law on Job Creation and its implementing regulations is felt as a challenge by the Regional Government, the principle of decentralization that has been enforced so far is in line with the principle of regional autonomy as widely as possible is slowly starting to shift to recentralization in the context of accelerating development. The results of research conducted on the Tangerang Regency Government and the Tangerang City Government are known that the Building Approval Regulation through the Law on Job Creation, has not been able to provide legal certainty and the best service to the community, and has not been able to simplify and accelerate the licensing process, as well as encourage investment in the construction and property sectors.

## D. CONCLUSION

Based on the discussion and analysis of the description of the previous chapters, the author draws several conclusions as an answer to the main problems in this writing, including:

1. The application of authority over the granting of Building Approvals in the regions based on Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and Government Regulation Number 16 of 2021 concerning Implementing Regulations of Law Number 28 of 2002 concerning Buildings has not had a positive impact as expected with the birth of the Job Creation Law, namely providing ease of doing business, developing investment, create justice, and the welfare of the people.
2. Authority over the Granting of Building Approvals by the Central Government as stipulated in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law is not in accordance with the principle of decentralization with an emphasis on the widest possible regional autonomy as stipulated in the Constitution of the Republic of Indonesia of 1945 and UStuttgart Number 23 of 2014 concerning Regional Government and has not been able to create legal certainty, especially for the implementation of buildings in the form of billboard towers.

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