



Regulatory Review on Policy of Special Allocation Fund for Road Sector in 2015-2019

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ARTICLE INFORMATION	A B S T R A C T
<p>Received: December 27, 2022 Revised: February 25, 2023 Available online: April 30, 2023</p>	<p>Regulation is one of the critical instruments for implementing a policy. State regulations function at least to provide legal certainty, guidelines/instructions, frameworks, and limitations of program/policy implementation. The special allocation fund is an intergovernmental transfer for financing road infrastructure under the local government authority and aligned with national priorities. This study aims to analyze the regulatory framework that governs the implementation of this capital grant for the road sector by taking the 2015-2019 timeframe. The research is qualitative and uses a normative juridical method through a statute approach using primary material in the form of laws and regulations related to the 2015-2019 capital grants for the road sector. The results showed several regulatory incompleteness, discrepancies in content both horizontally and vertically, and weaknesses in legal blanket for monitoring and evaluation. This study recommends strengthening the harmonization of regulations to ensure no inconsistencies or contradictions. Furthermore, the study also emphasizes the importance of conducting regulatory review considering that the long-term development planning (RPJPN) of 2025-2045 is being drafted so that such precedents of disharmonization do not occur anymore.</p>
<p>KEYWORDS</p> <p>DAK, regulation, priority, road sector, special allocation fund</p>	
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INTRODUCTION

Regulations or laws are essential instruments for public policy. Its existence provides legitimacy and legality for every government policy in implementing development and governance (Seidman et al., 2001). In addition, the function of law/regulation itself is not only to regulate the pattern/behavior of society but also to channel public policy so that it can create new circumstances or change something in society (Rahardjo, 1979). In line with this opinion, Parsons (2005) suggests several policy instruments, including laws/regulations, public services, budgets, taxes, and economic instruments.

The Special Allocation Fund (Dana Alokasi Khusus/DAK) is one type of intergovernmental transfer to finance public infrastructure under the local government's authority and in line with national priorities according to Article 1 paragraph (72) of Law Number 1 of 2022 on Financial Relations Between the Central Government and Regional Governments. Following these objectives, the implementation of DAK certainly requires the support of an adequate regulatory framework. The link between the regulatory framework and development planning itself is very close. Development requires regulations to provide legitimacy and guidance, while legislation/regulation planning must also be in line with achieving national goals through development (PSHK, 2019). If these two things do not run in harmony, it could result in development planning and the regulatory framework running independently, not harmonious, and not synchronized (PSHK, 2019).

Regulatory issues often concern the incompatibility of types of regulations, overlap between regulations, errors in content material, and hyperregulation due to uncontrolled numbers. The Indonesian government already has various precedents to solve these problems. One is the issuance of the Job Creation Law which uses the Omnibus Law method to revoke and revise dozens of laws and regulations to facilitate investment and job creation (Mayasari et al., 2020).

A study focusing on overlaps between regulations to errors in content material was conducted by the Indonesian Center for Law and Policy Studies (PSHK) in 2019 in its report entitled "Review of Regulatory Reform in Indonesia: Key Issues and Strategies to Overcome." The PSHK study identified various problems, such as overlapping legislative planning, content material mismatching in several regulations, weaknesses in evaluating the implementation of PUU (ex-post evaluation), and hyperregulation. PSHK (P 2019) recommends the need to strengthen the synchronization between development and legislative planning both in the preparation of the National Medium-Term Development Plan (RPJMN) and the National Legislation Priority (Prolegnas), accelerating simplification efforts to institutionalizing monitoring and evaluation.

Concerning the focus of the research, which specializes in regulations surrounding the DAK policy for the Road Sector in 2015-2019, the determination is based on the fact that the allocation of DAK Road is the largest when compared to other types of DAK under the coordination of the Ministry of Public Works and Housing (MPWH). Throughout 2015-2019, the allocation reached 83.85 Trillion or 60% of the total allocation managed by the MPWH. However, this large allocation is not yet proportional to the achievement of regional road quality targets, where provincial roads still reached 70.81%, and regency/city roads were 60.82% in 2020 (MPWH, 2022).

As previously described, this study only focuses on evaluating the juridical aspects of the DAK Road 2015-2019, considering that DAK policies are regulated in various laws, ranging from the level of Law, Government Regulation, Presidential Regulation, and Ministerial Regulation. The dynamics of regulation changes are rapid and occur every year, considering that the state budget's planning cycle also occurs every year. Lane (2000) argues that modern society has a consensus on the need for regulatory reform. Therefore, this article raises a research question on how are the results of regulatory/juridical review on DAK Road policy in 2015-2019?

Hence, this research is relevant for two reasons. First, after the enactment of Law No. 1 of 2022 on Financial Relations between the Central and Local Governments, various adjustments and policy changes around DAK have implications for the various existing regulatory frameworks. This study can provide recommendations for improving the quality of DAK Road regulations. Up to this point, no research has focused on the juridical analysis of regulations surrounding DAK, especially the Road Sector. The study conducted by [Pambudi et al \(2022\)](#) only focuses on the synchronization of regional-central planning, analysis of allocations in Industrial Zones and Special Economic Zones, and road development problems in West Papua Province. Another study by [Saragih & Khoirunurrofik \(2022\)](#) focused on the relationship between DAK and political competition with road quality. This research is expected to fill the gap related to juridical analysis that has not been conducted in DAK for the Road Sector. The close relationship between the special allocation fund (DAK) policy and regulation is that both talk about welfare economics and handling externalities as the foundation for public regulation ([Lane, 2000](#)).

Second, formulation of the National Long-Term Development Plan (RPJPN) 2025-2045 is currently underway, so this study can improve the quality of development planning, particularly connectivity infrastructure. As a developing country, Indonesia requires accelerated development of basic service infrastructure, including connectivity infrastructure in the form of roads ([Abiad et al., 2017](#)). Any laws and regulations that cannot be implemented optimally must be immediately identified and responded to systematically through a series of stages and parameters to decide to revise or revoke them ([PSHK, 2019](#)). The existence of ineffective regulations can also be influenced by the ego-sectoral or dominance of the interests of sector ministries/agencies. This ego-sectoral is rooted in unclear and overlapping authority ([PSHK, 2019](#)). This study identifies some evaluative notes in the DAK Road Sector policy in 2015-2019 so that it can provide input for regulatory improvements.

METHOD

This research is qualitative and uses a normative juridical method with a statutory approach. This approach is suitable because it has a comprehensive, inclusive, and systematic nature to analyze various legislative precedents related to this research topic ([Marzuki, 2005](#)). Primary materials used are laws and regulations and official state documents related to the DAK Road

Sector policy in 2015-2019 such as Law No. 33 of 2004 on Financial Relations between the Central and Local Governments, Law No. 38 of 2004 on Roads, Law No. 23 of 2014 on Local Governments, Medium Term Development Planning of 2015-2019, Government Regulations on Intergovernment Transfers, Presidential Regulations on Development Priorities and Government Annual Work Plan, ministerial regulations on DAK and DAK Roads, and so on.

Secondary materials used are law books and journal articles on research results relevant to the topic. This research includes efforts to analyze vertical and horizontal synchronization between various laws and regulations related to DAK Road Sector in 2015-2019. The results then explained systematically based on findings; prioritization, consistency between content materials, and arrangements for DAK monitoring & evaluation.

RESULTS AND DISCUSSION

There are at least three main problems related to regulations for monitoring and evaluation (M&E) mechanisms ([PSHK, 2019](#)). First, the results of M&E by ministries/institutions are often partial because they only see issues per sector according to their duties, so constraints that are more general and cross-sectoral cannot be pointed out. Second, the nature of the M&E conducted is more focused on looking at the provisions in the regulations, even going into technical aspects such as dot-com writing, rather than on the relationship between regulations or the more extensive system in forming laws and regulations. Third, the implementation of M&E is not systematic and tends to be carried out only when a new regulation is promulgated. As a result, regulatory review is not seen as a stage connecting enactment and planning as a complete cycle of legislation formation but only to justify changing or forming new laws and regulations. Based on these arguments, this study outlines regulative findings related to DAK Road policy during 2015-2019.

Prioritization

DAK is allocated aligned with national priorities according to its type as specific purpose transfers as stated in various relevant laws and regulations. Table 1 shows the highlight or emphasizing of priority-based allocation that govern the DAK. Those regulations from Presidential Regulations to MPWH Regulations show the consistency of priority-based norms on allocating DAK.

Table 1. National Priority Setting in DAK Policy.

MPWH Regulation No. 21 of 2017	MPWH Regulation No. 2 of 2019	Govt. Regulation 55 of 2005	Presidential Regulation No. 123 of 2016
Article 1 paragraph (1): DAK is allocated to specific regions aligned with National Priorities.	Article 1 paragraph (1): DAK is allocated to specific regions, which are regional affairs aligned with National Priorities.	DAK is allocated to specific regions to help fund special activities that are regional affairs and aligned with national priorities.	DAK is allocated to specific regions to fund special regional affairs activities aligned with national priorities.
Article 3 paragraph (1): DAK as an effort to realize Nawacita and National Priorities and Regional Priorities	Article 4: DAK as an effort to realize Nawacita and National Priorities as well as Regional Priorities.		

Source: Ministry of Public Works & Housing.

During 2015-2019, DAK Road is included in the types of DAK allocated based on priority locations as stipulated in the following laws and regulation.

Table 2. Arrangement of Priority Development Sites.

No	Location	Reference	Number of Priority Locations
1	Disadvantaged Areas	Presidential Regulation No. 131 of 2015	122 (district)
2	Border Areas	Based on relevant agency regulations	13 provinces, 39 districts, 150 priority locations
3	Islands Region	Presidential Regulation No. 78 of 2015	95 island regions
4	Food Sovereignty	Based on relevant ministry regulations	50 agricultural areas
5	Tourism	Government Regulation No. 50 of 2011	88 KSPN
6	Special Economic Zones (SEZs)	Presidential Regulation No. 3 of 2016	11 KEK
7	Slum Area	Decree of Regional Head	333 districts/cities
8	Transmigration	Circular Letter from the Minister of Villages, Disadvantaged Regions, and Transmigration	26 Prov., 37 regencies, 104 settlement units

Source: Regulation Repository of the Ministry of State Secretary.

This arrangement regarding development priorities forms the basis for determining the allocation of DAK for Roads during 2015-2019. For example, arrangements such as allocations for border areas and Special Economic Zones are in line with the 2015-2019 RPJMN policy directions particularly on DAK Road Assignment and Affirmative. Nonetheless, this article does not elaborate on whether DAK has been allocated reflecting the urgency/priority principle, but instead focuses on normative analysis of those regulations.

However, in its implementation, there are several issues related to the completeness and incompatibility of the content material. Based on Article 1 paragraph 13 of Law No. 12 of 2011 on the Formation of Laws and Regulations, the term "content material of laws and regulations" is defined as "material contained in laws and regulations following the type, function, and hierarchy of laws and regulations." The following are some of the findings of this research.

Differences related to regional road quality targets

There are differences in regional road quality targets between those contained in MPWH Regulation No. 1/2014 on Minimum

Service Standards (MSS) for Public Works and Spatial Planning and the 2015-2019 National Medium-Term Development Plan (RPJMN). The MPWH Regulation No. 1/2014 did not include the road quality performance targets. After the stipulation of the RPJMN, until 2018, the MSS has not made any adjustments to the RPJMN on its road quality targets and yet the issuing of the new MSS regulation in 2018 with MPWH Regulation No. 29 of 2018 did not accommodate or excluded the Road Sector as part of the SPM for Public Works and Housing.

In addition, the Government Annual Work Plan (RKP), which is determined annually by Presidential Regulation, does not consistently contain targets for regional road quality as shown in Table 3. As can be seen in the table below, 2017, 2018, and 2019 RKP(s) didn't point out/determine the targets for road quality. Although the 2015 and 2016 RKP contained the targets for road quality, the absent of it in the next following 3 years reflected the inconsistency of government's development planning. As a form of RPJMN implementation, the RKP supposed to contain targets for regional road quality.

Table 3. Regional Road Quality Targets in RKP 2015-2019.

RKP 2015	RKP 2016	RKP 2017	RKP 2018	RKP 2019
1. Percentage of provincial road quality 60%	1. Percentage of provincial road quality 71.8%	There is no specific target for the regional road quality indicator.	There is no specific target for the regional road quality indicator.	No specific targets for regional road quality; only targets for national roads.
2. Percentage of district road quality 45%	2. Percentage of district road quality 61.2%			

Source: RKP, processed by researchers.

Lack of Road MSS regulation

There is a legal vacuum related to the Road MSS starting in 2019. The issuance of PP No. 2 of 2018 on MSS, followed by its implementing regulation, MPWH Regulation No. 29 of 2018 on Technical Standards for MSS for Public Works and Housing, no longer includes Roads as part of the MSS. This contradicts the RPJMN 2015-2019 and RPJMN 2020-2024, which still include SPM as a policy direction for DAK. In addition, Law No. 2 of 2022 on the Second Amendment to Law No. 38 of 2004 on Roads still regulates SPM for road operations.

Law No. 23 of 2014 on Regional Government in Article 298 paragraph (1) states that Regional Expenditure is prioritized to fund Mandatory Government Affairs related to Basic Services determined by MSS. The absence of MSS arrangements for Regional Roads as part of the mandatory basic services of public works is likely to cause Regional Governments to no longer prioritize their regional funding for Roads. This would be counterproductive to the spirit of improving road quality services needed to achieve good connectivity and mobility for the economy.

Inconsistency between content materials

There are several precedents regarding disharmony between content materials, both horizontally and vertically. First, Article 12 paragraph (5) of the 2016 State Budget Law states that DAK for Regional Public Infrastructure is used to fund activities in the field of public infrastructure aligned with regional needs. This article can be interpreted variously considering that when talking about "regional needs", DAK Regular and Affirmation both contain elements of regional needs to fund their development where Regular is for the fulfillment of MSS and Affirmation is for areas with certain conditions/characteristics such as Disadvantaged Areas, Isolated Areas, etc. Manshur (2020) said that using Regular and Affirmation terminology also substantively tends to be misleading and confusing. Although the law is no longer valid because the APBN regulation is always regulated by a new law every year, this reflects the need for clarity of norms and diction in legislative arrangements.

Secondly, Government Regulation No.55 of 2003 Article 51 paragraph (2) states that certain regions can receive DAK allocations based on general, special, and technical criteria. This article does not explicitly state whether the use of the three criteria is done in stages to eliminate regions or whether, as long as a region falls under one of the criteria, it can receive an allocation. This has led to implementation problems where the use of criteria is not an elimination process, so almost all regions receive DAK (including the road sector). This is in line with the findings of several previous studies, which state that the use of criteria is biased in purpose (Affandi, 2014). Precedents related to the lack of firm criteria for the elimination of recipient regions can be seen from the number of local governments receiving DAK allocations for the Road, reaching 99% in 2015-2019. This contradicts the mandate of 2015-2019 RPJMN, which encourages the sharpening of DAK recipient areas due to funding limitations.

Table 4. Regional Recipients of DAK Road in 2015-2019.

Year	Total Local Government	DAK Recipients	Percentage
2015	449	445	99,1%
2017	548	538	99,3%
2018	548	539	99,4%
2019	548	536	98,9%

Source: Ministry of Finance, processed by researchers.

One example of the need for more clarity in the use of criteria is shown in the comparison of the DAK Road allocation received by East Java Province with Gorontalo Province in 2019. Gorontalo, which has lower fiscal independence and road quality, received less allocation than East Java.

Table 5. Comparison of DAK Road Allocation in Gorontalo and East Java.

Province	DAK Road 2019	DAK Regular Allocation	Fiscal Capacity	Road Quality
East Java	56.456.908	23.946.392	0,5767	90,31%
Gorontalo	38.028.511	19.667.020	0,2233	41,46%

Source: processed by researchers.

Which states that "Additional DAK P3K2 is allocated based on special criteria and technical criteria to accommodate programs/activities to increase food sovereignty, develop/revitalize traditional markets, improve road connectivity in priority provinces in eastern Indonesia and improve the quality of health services to support the priority programs of the Working Cabinet". The absence of the phrase "general criteria" as mandated in Article 51 paragraph (2) and Article 54 paragraph (2) of Govt. Regulation 55 of 2005 should be questioned considering that according to the legal principle of *lex superior derogate legi inferiori*, laws and regulations with a lower degree must not contradict regulations with a higher position, where Govt. Regulation 55 of 2005 has a higher position than MoF Regulation No.92 of 2015 so that MoF Regulation must comply with the rules of the underlying Govt. Regulation.

Fourth, MoF Regulation No. 92 of 2015 also interprets differently what is stated in Article 10 paragraph (7) of Law No. 27 of 2014 on State Budget FY 2015, which states that additional DAK is allocated to underdeveloped and border regions with relatively low financial capacity. Regarding Government Regulation No. 55 of 2005, the characteristics of "underdeveloped and border regions" are regional characteristics that formulate specific criteria, while regional financial capacity is a general criterion. This is interpreted differently in MoF Regulation No. 92 of 2015, which states that additional DAK is allocated based on specific and technical criteria without including elements of general criteria. In fact, the technical criteria (which are indicated through sectoral technical indicators) are not contained in Law No. 27 in 2014. This shows the problem of harmonization of DAK regulations, which also affects the allocation of the Road sector.

Fifth, the policy direction of DAK in RKP 2015-2019 is not firm and tends to be normative. This is as previously explained in the Priority-Based Allocation section, which shows the changes in classification and policy direction on DAK every year. In addition, another example can be seen from the difference in arrangements related to the classification of DAK in Law No. 18 of 2016 on the State Budget Fiscal Year 2017 with Presidential Regulation No. 45 of 2016 on the RKP 2017. The difference lies in the classification of DAK, where Article 12 paragraph (3) of Law No. 18 of 2016 states that DAK consists of DAK Regular, Assignment, and Affirmation, while RKP 2017 states that DAK consists of DAK Regular and Assignment. This point is in line with the results of Manshur's study (2020), which concluded the low consistency of DAK policies in general in 2015-2019.

Arrangements for monitoring and evaluation of DAK

The study results show that the division of roles/authorities between each agency in monitoring and evaluation of the implementation of DAK has been regulated. This is stipulated in Govt. Regulation No. 55 of 2005, the Joint Circular of the Minister of Development Planning, Minister of Finance, and Minister of Home Affairs in 2008, as illustrated in Figure 3. In addition, the Regulation of MPWH, which regulates technical implementation guidelines, has also contained arrangements regarding monitoring and evaluation of DAK (including for Road Sector) as a form of implementation of technical supervision, as shown in Table 6.

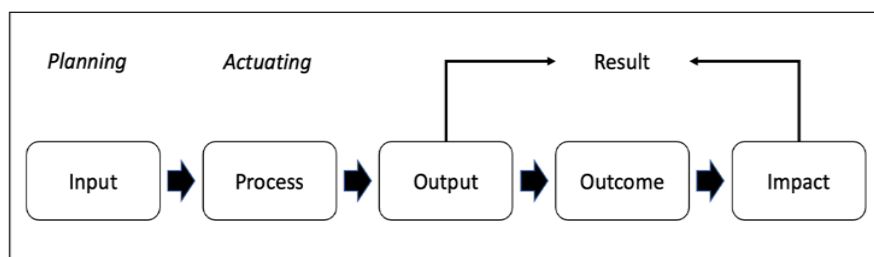


Figure 1. Stages of DAK Evaluation.
Source: Joint Decree of 3 Ministers in 2008.

Table 6. DAK M&E Arrangement in MPWH Regulation.

MPWH Regulation	Article
MPWH Regulation No. 3 the Year 2015 on Technical Guidelines for the Use of DAK Infrastructure	Article 13
MPWH Regulation No. 47 the Year 2015 on Technical Guidelines for the Use of DAK Infrastructure	Article 13 and 19
MPWH Regulation No. 33 the Year 2016 on Technical Guidelines for the Use of DAK Infrastructure	Article 9
MPWH Regulation No. 21 the Year 2017 on Technical Guidelines for the Use of DAK Infrastructure	Article 23
MPWH Regulation No. 2 the Year 2019 on Technical Guidelines for the Use of DAK Infrastructure	Article 21

Source: Ministry of Public Works and Housing.

However, if examined more deeply, the involvement of the Ministry of Home Affairs in the M&E of DAK does not have a solid legal blanket because it has not been stated in Government Regulation No. 55/2005, especially in Article 64. The article only mentions that the Minister of Development Planning, together with the Technical Minister, conducts monitoring & evaluation of the technical implementation & benefits of DAK and the Minister of Finance for DAK financial management. Even though a Joint Circular of 3 Ministers was later issued on the Implementation Guidelines for Monitoring Technical Implementation and Evaluation of DAK Utilization, it is also legally weak because it is not a product of legislation. The Ministry of Home Affairs' authority itself guaranteed by Government Regulation No. 12 of 2017 on the Development and Supervision of Regional Government Implementation, where Article 2 states that the Ministry of Home Affairs coordinates the local government counseling nationally. The general guidance carried out by the Ministry of Home Affairs also includes regional finances as stated in Article 3 paragraph (2) letter d of that Govt. Regulation.

CONCLUSION

The research shows several contradictions and disharmony between regulations in the DAK Road policy in 2015-2019. Contradictions and disharmony reflected on the regulation of prioritization, target of road quality, and inconsistency in content materials and criteria used for allocation determination particularly in technical ministerial regulations.

In addition, the role of the Ministry of Home Affairs in the M&E of DAK does not yet have a robust legal blanket. The elimination of roads as part of the MSS for Public Works and Public Housing currently provides the potential for non-prioritization of road handling through regional spending. This elimination can have implications on local government performance in maintaining their road quality. This study recommends eliminating contradictions among regulations both vertically and horizontally through harmonization, the need to revise Government Regulation No. 2 of 2018 on MSS and MPWH Regulation No. 29 of 2018 to accommodate Roads as part of MSS and ensure the Draft of Government Regulation on Financial

Relation Between Central & Local Government will provide a legal blanket for the Ministry of Home Affairs' role in DAK M&E.

This study has several limitations particularly on specific/technical content of MPWH Regulation on DAK Road which requires in-depth analysis on engineering perspective. The other limitation is that this study hasn't include the analysis of Presidential Instruction No. 3 of 2023 on Acceleration of Local Roads Connectivity which stipulated after this study has completed.

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