

## Authority Sharing Between the Central and Regional Government in The Implementation of *Pesantrens* Law and Its Relevance to *Hifdz al-Dîn* Efforts

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**Abstract:** This study aims to examine the shift/sharing of authority between the Central and Regional Governments in the religious field, particularly regarding the implementation of Law Number 18 of 2019 concerning *pesantren*. The Law provides a portion of authority to the Regional Government to facilitate *pesantrens* in carrying out its functions as one of the centers for the development of Islamic religious knowledge. The Law also obliges the local Government to fund the *pesantrens* through regional revenue and expenditure budgets by their authority and guided by statutory provisions. This study uses a normative juridical method. The results of this research conclude that the existence of the *pesantrens* Law, on the one hand, shows that the Government has concern for efforts to maintain religion (*hifdz al-dîn*), on the other hand, indicating that there has been a shift in authority from the Central to the Regional Government in governing of religion, particularly in terms of administering *pesantrens*.

**Keywords:** distribution of government authority, *pesantrens*, *hifdz al-dîn*.

**Abstrak:** Penelitian ini bertujuan untuk mengkaji pergeseran/pembagian kewenangan antara Pemerintah Pusat dengan Pemerintah Daerah dalam bidang keagamaan, khususnya mengenai penyelenggaraan Pesantren. Undang-Undang Nomor 18 Tahun 2019 tentang Pesantren memberikan porsi kewenangan kepada Pemerintah Daerah, untuk memfasilitasi dalam menjalankan fungsinya sebagai salah satu pusat pengembangan ilmu agama Islam. Undang-undang itu juga mewajibkan Pemerintah Daerah untuk mendanai penyelenggaraan Pesantren melalui Anggaran Pendapatan dan Belanja Daerah, sesuai dengan kewenangannya dengan berpedoman pada ketentuan peraturan perundang-undangan. Penelitian ini menggunakan metode yuridis normatif. Penelitian ini menyimpulkan bahwa kehadiran Undang-Undang Nomor 18 Tahun 2019 tentang Pesantren, pada satu sisi menunjukkan bahwa Pemerintah memiliki kepedulian terhadap upaya pemeliharaan agama (*hifdz al-dîn*), pada sisi yang lain, mengindikasikan bahwa telah terjadi pergeseran kewenangan dari Pemerintah Pusat ke Pemerintah Daerah dalam pemerintahan di bidang agama, khususnya dalam hal penyelenggaraan Pesantren

**Kata kunci:** pembagian kewenangan pemerintah, *pesantren*, *hifdz al-dîn*.

## Introduction

*Pesantrens* is the oldest Islamic educational institution in Indonesia which plays an important role in providing education for the Indonesian nation, especially religious education.<sup>1</sup> The presence of *pesantrens* amid society is not only an educational institution but also a religious and social religious broadcasting institution. As a religious institution, *pesantrens* carries out *da'wah* activities among the community, in the sense of carrying out activities and fostering religious awareness to consistently implement Islamic teachings. As a social institution, the *pesantrens* are involved in dealing with social problems faced by society.<sup>2</sup> On this basis, the existence of *pesantrens* in Indonesia has greatly influenced the surrounding community, especially in terms of education. This is because, since its inception, *pesantrens* have been prepared to educate and disseminate Islamic teachings to the public through recitation, both with traditional and modern systems.

The general explanation of Law Number 18 of 2019 concerning *pesantrens* confirms that:

..... to increase faith and piety as well as noble character, Pesantrens that grow and develop in society with their particularities have made an important contribution in realizing Islam that is rahmatan lil'alam by giving birth to faithful people who have character, love the motherland and progress, and are proven to have a real role both in the movement and struggle for independence and in national development within the framework of the Unitary State of the Republic of Indonesia. Pesantrens as a subculture have characteristics that have taken root and live and develop in society in carrying out the functions of education, missionary functions, and community empowerment functions. Pesantrens are community-based institutions established by individuals, foundations, Islamic community organizations, and/or communities that instill faith and devotion to Allah SWT, cultivate noble character, and uphold the Islamic teachings of rahmatan lil'alam which are reflected in a humble attitude, tolerance, balance, moderation, and other noble values of the Indonesian nation through education, Islamic da'wah, exemplary, and

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<sup>1</sup> Imam Syafe'i, 'Lembaga Pendidikan Pembentukan Karakter', *al-Tadzkiyyah: Jurnal Pendidikan Islam*, 8.1 (2017): 61.

<sup>2</sup> Zulhimma, 'Dinamika Perkembangan Pondok Pesantren di Indonesia', *Jurnal Darul 'Ilmi*, 1. 2 (2013): 166.

community empowerment within the framework of the Unitary State of the Republic of Indonesia.

The existence of *pesantrens* has become a capital for Indonesia's future progress. The Legal Politics of the *Pesantrens* Law places the Central and Regional Governments as important actors to facilitate *pesantrens* in the context of *da'wah* and community empowerment. In the era of regional autonomy, the role of the Regional Government to advance and empower regional potentials must be realized. Moreover, with the existence of a decentralization system, the shift of power from the central government to Regional Governments requires the transfer of government affairs from the central to Regional Governments, not only at the provincial level but also at the district and city levels throughout Indonesia. If in the previous conditions, the flow of government power moved from the regions to the central level, then ideally since the implementation of the regional autonomy policy the flow of power dynamics has moved in the opposite direction, namely from the center to the regions.<sup>3</sup>

Conceptually, decentralization means power to act independently (*vrije beweging*) given to state units to self-govern their regions, based on a self-initiative called autonomy, which Van Vollenhoven calls *eigenmeesterschap*.<sup>4</sup> According to Joeniarto's view,<sup>5</sup> decentralization is intended to give authority from the state government to local governments to regulate and manage certain affairs as their household affairs. Decentralization can also be interpreted as delegating government authority to other parties to implement it.

Based on the above concept, development in the era of regional autonomy is a strategic step to realize national development goals, especially in the education and religious sectors. Moreover, in the condition of a nation that is experiencing a moral crisis (degradation). *Pesantrens*, as educational institutions that form and develop moral values, appear as pioneers as well as inspirations for raising the nation's morals. Thus,

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<sup>3</sup> Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia* (Jakarta: Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI, 2005), p. 278.

<sup>4</sup> E. Utrecht, *Pengantar dalam Hukum Indonesia* (Jakarta: Ichtiar, 1966), p. 47.

<sup>5</sup> Joeniarto, *Perkembangan Pemerintahan Lokal* (Jakarta: Bumi Aksara, 1992), p. 15.

development does not become empty but more valuable and meaningful. Along with the noble desire to foster and develop society, *pesantrens*, with their independence, continuously make efforts to develop and strengthen themselves.

The Law on *Pesantrens* gives a portion of authority to Regional Governments, both Provincial and Regency/City to facilitate *pesantrens* in carrying out their functions, while at the same time stipulating the Regional Government to fund the implementation of the institution through regional revenue and expenditure budgets by their authority and provisions of laws and regulations. When it comes to the authority of the Regional Government, the *Pesantrens* Law certainly must be linked to the existence of Law Number 23 of 2014 concerning the Regional Government later amended by Law Number 11 of 2020 concerning Job Creation. The Regional Government Law is a law that regulates the authority and affairs owned by Regional Governments in carrying out regional autonomy within the framework of a unitary state.

In the NKRI Constitution, it is expressly stated that the Unitary State of the Republic of Indonesia is divided into provincial regions, and the provincial areas are divided into regencies and cities, each of which has a regional administration regulated by law. In carrying out their administration, provincial Regional Governments and district/city governments regulate and manage their government affairs according to the principle of autonomy and co-administration. Regional Governments carry out the widest possible autonomy, except for government affairs which are determined by law as the affairs of the Central Government. In the Regional Government Law, it has been explicitly regulated which government affairs are the authority of the central government, including general government affairs which are the authority of the president as head of government, and which concurrent government affairs are the authority of the regional government. Absolute government affairs include foreign policy, defense, security, justice, national monetary and fiscal, and religion. Outside of the absolute and general government affairs carried out by the president, the authority is fully delegated to the regions, which are then called concurrent government affairs.

The Regional Government Law does not regulate the authority of local governments to regulate matters relating to *pesantrens*. However, the regional authority that arises about *pesantrens* is more of a direct delegation from Law Number 18 of 2019 concerning *pesantrens* so the Regional Government is also obliged to facilitate and provide support for *pesantrens*. Needless to say, the implementation of facilitation and support for *pesantrens* carried out by the regional government must remain within the framework of regional autonomy as stipulated in the Regional Government Law. This means that the affairs of *pesantrens* which are closely related to religious affairs are absolute and remain under the authority of the central government, while a slice of the authority of the Central Government is delegated to the Regional Government.

The topic of *pesantrens* and government authority has been studied by many previous researchers. Among the studies referred to, one of them is Badrudin, Yedi Purwanto, and Chairil N Siregar's research which concluded that *pesantrens* as one of the religious education institutions in Indonesia have had a very long history and have made a real contribution to building the morals and morals of the nation's generation. Unfortunately, the political will and commitment of the Government to empowering *pesantrens* is very slow. Considering that *pesantrens* are struggling to achieve Indonesia's national education goals, the researcher recommends that the Ministry of Religion take strategic steps to make policies (as a political product) that can accelerate the empowerment and development of *pesantrens* so that they are more empowered, qualified, and worthy of being called religious educational institutions.<sup>6</sup> Another research with a different topic is Dahlia's research which discusses the absolute authority of the Central Government, as specifically regulated in Law Number 23 of 2014. Absolute authority is government affairs that become the authority of the Central Government. In the field of religion, three areas become the central authority, namely: 1. Determination of religious holidays. 2. Give recognition to the existence of a religion. 3. Establish policies in

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<sup>6</sup> Yedi Purwanto and Chairil N Siregar, 'Pesantren dalam Kebijakan Pendidikan Indonesia', *Jurnal Lektur Keagamaan*, 15.1 (2017): 233–72.

the administration of religious life.<sup>7</sup> Similar research is that of Deni Jaya Saputra which describes that there has been a development in absolute government affairs in the field of religion, especially in matters of zakat. In that research, Deni explained that in terms of zakat management, the Governor, including the Regents and Mayors, can propose the formation of a National Zakat Amil Agency in the regions to the Minister. The researcher also explained that matters related to zakat in the regions can be regulated through Regional Regulations.<sup>8</sup>

As far as the author has been able to trace, a special study discussing *pesantrens* about absolute government affairs in the field of religion has never been carried out. Moreover, specifically, regarding the division of authority between the central government and Regional Governments in the field of *pesantrens*. On this basis, the researcher tries to examine this topic and divides it into two sub-focuses. First, the division of authority between the Central Government and Regional Governments in *Pesantrens* Affairs. Secondly, the shift in absolute government affairs in the field of Religion, especially *pesantrens* affairs.

## Research Methods

This type of research is normative legal research conducted through literature studies and statutory regulations, especially those related to the division of authority between the central government and Regional Governments in implementing *pesantrens*. Legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials consist of Law Number 18 of 2019 concerning *pesantrens*, Law Number 23 of 2014 concerning Regional Government, and Regional Regulations that regulate *pesantrens*. Secondary legal materials include books, journals, and various literature related to the division of authority between the central government and Regional Governments in managing *pesantrens*

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<sup>7</sup> D Dahlia, 'Analitis Kewenangan dalam Bidang Agama dan Delegasi Kewenangannya Kepada Pemerintah Daerah', *HERMENEUTIKA: Jurnal Ilmu Hukum*, 4.2 (2020): 97–102.

<sup>8</sup> Deni Jaya Saputra, *Kewenangan Pemerintah Daerah dalam Bidang Agama Menurut Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah* (Pekanbaru: UIR Pekanbaru, 2020), p. 114.

and the concept of *hifdz al-din*. Techniques for collecting legal materials through literature study. The legal material analysis technique uses a qualitative descriptive method.

## Results and Discussion

### *Pesantrens* and Efforts to Preserve Religion (*Hifdz al-Din*)

The existence of the *Pesantrens* Law is an effort to recognize and affirm the State for this institution since *pesantrens* has made an important contribution in realizing Islam that is *rahmatan lil'alamîn* by giving birth to faithful people with character, love for the motherland and progress, and are proven to have a real role both in the movement and in the struggle to achieve independence and national development. *Pesantrens* has an important contribution to forming a moderate understanding of religion and religiosity as well as forming behavior that encourages the creation of religious harmony.<sup>9</sup>

Concerning the objectives of Islamic law, the existence of the *Pesantrens* Law can be seen as a form of effort to maintain religion (*hifdz al-din*). The existence of religion is natural for every human being. Therefore positive law must protect a form of human rights from threats or harassment from any party. In diversity, Islamic law always develops an attitude of *tasâmuh* (tolerance) toward followers of other religions, as long as they do not interfere with one another.<sup>10</sup>

Conceptually and in practice, *pesantrens* has a characteristic as an entity or institution that spreads Islam through education. The pattern of broadcasting and Islamic education in *pesantrens* cannot be separated from the existence of 2 main elements of *pesantrens*. First, the *kyai*. The pattern of broadcasting and Islamic education in *pesantrens* is carried out through the existence of *kyai*, a figure who is considered to have a high level of knowledge in the Islamic religion and is considered to play

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<sup>9</sup> Allan Fatchan and others, 'The Relativity in the Absolute Authority of the Central Government in Religious Affairs', *KnE Social Sciences* (2023): 523–531 <<https://doi.org/10.18502/kss.v8i9.13366>>.

<sup>10</sup> Rohidin, *Pengantar Hukum Islam: dari Semenanjung Arabia Hingga Indonesia* (Yogyakarta: Lintang Rasi Aksara Books, 2016), p. 30.

a role as a figure, role model, and/or caretaker of the *pesantrens*.<sup>11</sup> The existence of the *kyai* has a central position in the life of the *pesantrens*, this is because the *kyai* is the main support for the continuity of the education system in the *pesantrens*, but also because the figure of the *kyai* is a reflection of the values that live in the *santri* community. It can be said, the presence of *kyai* is a characteristic of the pattern of Islamic education and teaching in *pesantrens* which is not found in other educational institutions or entities.

Second, the *santri*. Etymology, the word “*santri*” comes from the Sanskrit word “*satri*” which means literacy. The word *santri* is also said to come from the Javanese language “*cantrik*” which means someone who always follows a teacher where the teacher lives.<sup>12</sup> Based on this description, it can be said that *santri* are students who have the goal of learning from teachers, who in this case are called *kyai* in *pesantrens*. *Santri* has an important presence as students who educate and become followers in broadcasting and Islamic education in *pesantrens*.

The above description shows that the existence of *pesantrens* has an important role as an effort to embody the value of Belief in One God and humanity that is just and civilized in forming educated Indonesians and for residents who are Muslim as a place of Islamic education and teaching. The existence of *pesantrens* is an entity or institution that has an important role in efforts to realize the goals of the Indonesian Nation as stated in the 4th Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, namely to educate the life of the nation. In addition, *pesantrens* also have strong roots and closeness to the community.

*Pesantrens*, with all their elements, have a strategic role in developing an attitude of tolerance and have been proven to have a real contribution to the development of national character. *Pesantrens* also has a missionary function. To preserve religion, Islam commands preaching and *jihād* to defend and fight for religion. In addition, *pesantrens* education aims to

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<sup>11</sup> Nurhayati Nurhayati, ‘Penyelesaian Sengketa dalam Hukum Ekonomi Islam’, *Jurnal Hukum Ekonomi Syariah*, 3.1 (2019): 1–11 (p. 55) <<https://doi.org/10.26618/j-hes.v3i1.2118>>.

<sup>12</sup> Yasmadi, *Modernisasi Pesantren: Kritik Nurcholish Madjid Terhadap Pendidikan Islam Tradisional* (Jakarta: Ciputat Press, 2005), p. 61.

create individuals who understand Islam as a way of life (*tafaqquh fi al-dîn*) by emphasizing noble ethics and morals (*akhlâq karîmah*) in society.<sup>13</sup>

With the existence of the *Pesantrens* Law, the state has supported Muslims to continue to spread *da'wah*, especially *da'wah* related to the problems of the people. According to Hamdan Zoelva, with the existence of this law, it can be said that Islam has priority in policy, and has the most important hierarchy, without reducing the interests and services of other religions. This is reasonable because Indonesia not only has a Muslim majority population but also the history of the birth of the Indonesian nation of independence and the initial formulation of the 1945 Constitution is very closely related to the interests of Muslims.<sup>14</sup>

### **Authority Sharing between the Central and Regional Governments on *Pesantrens* Affairs**

The Unitary State of the Republic of Indonesia (NKRI) is divided into provincial regions, and the provincial areas are subdivided into regencies and cities, each of which has administrative authority as regulated by law.<sup>15</sup> Such an affirmation is meant to further clarify the division of regions within the Unitary State of the Republic of Indonesia which includes provinces, which include districts, and cities.<sup>16</sup> At present, the authority relationship between the central government and Regional Governments is not limited to matters regulated in the Regional Government Law. The emergence of sectoral laws also has the potential to even regulate the division of authority between the central government and Regional Governments.

The impact of regional autonomy on the development of the authority relations between the central government and Regional Governments is very broad and spread out in various regulations. The central government,

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<sup>13</sup> Yusuf Hanafi and others, 'The New Identity of Indonesian Islamic Boarding Schools in the "New Normal": The Education Leadership Response to COVID-19', *Heliyon*, 7.3 (2021) <<https://doi.org/10.1016/j.heliyon.2021.e06549>>. p.2.

<sup>14</sup> Hamdan Zoelva, 'The Development of Islam and Democracy in Indonesia', *Constitutional Review*, 8.1 (2022): 37–61 <<https://doi.org/10.31078/consrev812>>.

<sup>15</sup> Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

<sup>16</sup> Ni'matul Huda, *Hukum Pemerintahan Daerah* (Bandung: Nusa Media, 2009), p. 49.

in drafting laws and regulations, must always pay attention to the interests and powers of Regional Governments.<sup>17</sup> Moreover, with the existence of regional autonomy, each region will be given the freedom to develop programs and submit them to the central government. In fact, through regional autonomy, it is hoped that in the future it can give birth to regional creativity and innovation which will contribute to the realization of effective regional governance.<sup>18</sup>

In terms of managing *pesantrens*, the authority of the local government appears through Law Number 18 of 2019 concerning *Pesantrens*. The *Pesantrens* Law is a law that was formed to optimize and accommodate developments in the aspirations and legal needs of the community and to create a legal umbrella that is integrated with the interests of *pesantrens*.<sup>19</sup> The *Pesantrens* Law strengthens the legality of *Pesantrens* governance, which so far has only been regulated through regulations from the Ministry of Religion. With the existence of the *Pesantrens* Law, the central government and Regional Governments are also obliged to facilitate and provide support for the development of these institutions.

The *Pesantrens* Law provides an obligation for local governments to provide support and facilitation to the *pesantrens* in the form of budgetary policies in funding or financial assistance schemes. There are three activities for organizing *pesantrens* which must be part of the budget ceiling allocation in the Regional Revenue and Expenditure Budget (APBD), namely (i) the allocation of financing for the *Masyâyikh* Assembly (Managers); (ii) support for the implementation of the missionary function; and (iii) support and facilitation of the implementation of the community empowerment function. This shows the amount of attention and support from the government in supporting and facilitating the implementation of *pesantrens*.

The *Pesantrens* Law rigidly regulates local governments to assist in funding the implementation of *pesantrens* through the regional budget

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<sup>17</sup> Sani Safitri, 'Sejarah Perkembangan Otonomi Daerah di Indonesia', *Jurnal Pendidikan Sejarah*, 5.9 (2016): 79–83.

<sup>18</sup> Andi Azikin, 'Makna Otonomi Daerah dalam Penyelenggaraan Pemerintahan Daerah Pada Era Reformasi', *Jurnal Manajemen Pemerintahan*, 5.1 (2018): 35–41.

<sup>19</sup> The preamble of letter d of Law Number 18 of 2019 concerning *Pesantrens*.

following their authority and statutory provisions.<sup>20</sup> Local governments are required to make budget ceilings to help organize *pesantrens* following their needs. In terms of statutory regulations, local governments need more detailed or detailed regulations regarding the budgeting mechanism to be implemented, so that funding support and facilities can continue to be implemented. in an accountable and responsible manner.

Local government support for the implementation of community empowerment functions is also regulated in the minimum rules; In other words, the provision of support to *pesantrens* must have a minimum limit and must be guaranteed.<sup>21</sup> This means that further regulations related to the implementation of support and facilitation are still needed. This is because the form of community empowerment by *pesantrens* has very broad potential.<sup>22</sup> Details of the authority of the Regional Government in the Islamic Boarding School Law include as follows:

**Table 1. Regional Government Authority in the *Pesantrens* Law**

No	Article	Authority
1.	Article 11 paragraph (3)	The Central Government and Regional Governments, following their authority, can facilitate <i>pesantrens</i> or dormitories to fulfill the aspects of accommodation, comfort, cleanliness, health, and safety
2.	Article 12 paragraph (2)	The Central Governments and Regional Governments, following their authority, can facilitate mosques or <i>pesantrens</i> to fulfill the aspects of capacity, comfort, cleanliness, health, and security.
3.	Article 32	Sources of funding for the <i>Masyayikh</i> Assembly can come from assistance from the Central Government, Regional Governments, the community, and/or other sources that are legal and non-binding.
4.	Article 42	The Central Government and Regional Governments provide support for the implementation of <i>pesantrens'</i> missionary functions in the form of program cooperation, policy facilitation, and funding.

<sup>20</sup> Article 48 paragraph (3) of Law Number 18 of 2019 concerning *Pesantrens*.

<sup>21</sup> Article 46 paragraph (2) of Law Number 18 of 2019 concerning *Pesantrens*.

<sup>22</sup> Article 45 of Law Number 18 of 2019 concerning *Pesantrens*.

No	Article	Authority
5.	Article 42 paragraph (1)	The Central Government and Regional Government provide support and facilitation to <i>pesantrens</i> in carrying out the function of community empowerment.
6.	Article 42 paragraph (2)	Support from the Central Government and Regional Governments as referred to in paragraph (1) shall at least be in the form of: a. financial assistance; b. facilities and infrastructure assistance; c. technology assistance; and/or d. skills training.
7.	Article 42 paragraph (3)	The support and facilitation referred to in paragraph (1) are provided following the financial capacity of the Central Government and Regional Governments and are carried out following the provisions of laws and regulations.
8.	Article 48 paragraph (3)	The Regional Government helps finance the implementation of <i>pesantrens</i> through the regional income and expenditure budget by their authority and the provisions of laws and regulations.

The sharing of authority above will have an impact on the delegation of authority and duties to the Regional Government to provide financial support and facilities to *pesantrens*. These tasks and authorities are at least in the form of annual and/or 5 (five) yearly support planning, setting minimum standards for support and facilities, budget allocation, as well as guidance and supervision to the *pesantrens* in utilizing the support and facilitation provided.

For the *pesantrens* themselves, the existence of this law will become a legal basis and an opportunity to obtain support and facilities from the Regional Government to carry out the function of *da'wah* and community empowerment. Apart from that, The Pesantren will also receive guidance to optimize the support and implementation facilities obtained so that they can develop, be qualified, empowered, and skilled in managing Islamic educational institutions.

The delegation of authority and duties, as described above, will also have a direct impact on the regional government's financial burden as stipulated in the Regional Revenue and Expenditure Budget (APBD). As mandated in Article 32 of Law Number 18 of 2019 concerning *Pesantrens*

and Article 9 of Presidential Regulation Number 82 of 2021 concerning Funding for *Pesantrens*, the support from the Regional Government helps fund the development of *pesantrens*, the implementation of educational functions, *da'wah*, Islamic community empowerment, including incentives to the organizers known as the *Masyâyikh Assembly*.<sup>23</sup>

The presence of regulations related to the implementation of the *Pesantrens* Law overlaps with other regulations such as the Regional Government Law and also with various regulations in certain sectors and other fields. This is in line with the need for autonomy in regional government which is intended to increase the authority to regulate and manage their households and minimize the intervention of the central government in regional household affairs. With the condition that Indonesia consists of various cultures and subcultures that spread throughout Indonesia and the variety of very diverse localities, the choice of autonomy provides the widest possible opportunity for each region to develop according to the natural potential and resources that exist in each region, which at the same time will create an atmosphere of inter-regional competition in realizing prosperity for its people.<sup>24</sup>

Furthermore, with the implementation of regional autonomy, the burden on the central government in the field of service to the community can be reduced.<sup>25</sup> Through this system, the central government and local governments can collaborate according to their respective roles, duties, and authorities. Specifically in the context of *pesantrens*, this collaboration of authority is not intended to interfere with *pesantrens* but is interpreted as the obligation of the local government to *pesantrens* as mandated by law. In addition, the presence of the Islamic Boarding School Law has a mission to create a moderate understanding of religion, love of the motherland, and religious harmony, and to form the character of a nation's

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<sup>23</sup> The *Masyâyikh* Council is an independent institution as a representative of the management in formulating and establishing the education quality assurance system of the *pesantrens*. See Article 1 number (11) of the Law Number 18 of 2019 concerning *Pesantrens*.

<sup>24</sup> Badan Pengkajian Majelis Permusyawaratan Rakyat Republik Indonesia, *Kajian Akademik Pelaksanaan Otonomi Daerah* (Jakarta: Badan Pengkajian MPR RI, 2018), p. 220.

<sup>25</sup> Kiki Endah, 'Pelaksanaan Otonomi Daerah di Indonesia', *Moderat: Jurnal Ilmiah Ilmu Pemerintahan*, 2.2 (2016): 797–804 (p. 804) <<https://doi.org/10.25147/moderat.v2i2.2697>>.

civilization that is intellectual, dignified, and progressive.<sup>26</sup> This means that the presence of Law Number 18 of 2019 is also an affirmation of the importance of *pesantrens*, which are currently known as propagators of the concept of *Washatiyah Islâm* (moderate Islam). *Pesantrens* will have a huge opportunity to expand and strengthen their work in various fields, especially in the aspects of *tafaqquh fi al-dîn*, da'wah, community empowerment, community economic empowerment, and many other aspects that *pesantrens* can work on.<sup>27</sup>

On the other hand, local governments also need participatory channels so that the community can provide input on the implementation of *Pesantrens* Law.<sup>28</sup> Since the *pesantrens* have a close relationship with the community, criticism, and suggestions, therefore, are needed as a control and evaluation mechanism for policies implemented by the local government. This means that the regulation of the monitoring system and mechanism for follow-up is very necessary.

### Shift in Absolute Government Affairs in the Field of Religion, Particularly Regarding

There are 4 (four) points to assess whether the emergence of this law on *pesantrens* has shifted the paradigm of absolute government affairs from the Central Government to the Regional Governments.

*First*, related to the definition of absolute government affairs. Absolute government affairs are affairs that fully fall under the authority of the Central Government. Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia stipulates that the Regional Government shall exercise the widest possible autonomy, except for governmental affairs which are determined by law as the affairs of the Central Government. Furthermore, Law Number 32 of 2004 concerning Regional Government

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<sup>26</sup> Rz. Ricky Satria Wiranata, 'Kata Kunci: Filsafat, Progresivisme, UU Pesantren', *Komunikasi dan Pendidikan Islam*, 8 (2019): 103–129.

<sup>27</sup> Miftahul Khairani, Hapzi Ali, and Kemas Imron Rosadi, 'Analisis Perumusan Undang-Undang Nomor 18 Tahun 2019 Tentang Pesantren Sebagai Produk Politik dan Kebijakan Pendidikan Islam', *Jurnal Ilmu Manajemen Terapan*, 3.1 (2021): 86–95 <<https://doi.org/10.31933/jimt.v3i1.705>>.

<sup>28</sup> Article 51 paragraph (2) letter b of Law Number 18 of 2019 concerning *Pesantrens*.

has emphasized that Central Government affairs include foreign policy, defense, security, justice, national monetary and fiscal, as well as religion. However, Law Number 32 of 2004 only regulates government affairs and their authority, it does not explain the distribution of authority, rights, and obligations between the Central Government and Regional Governments.<sup>29</sup>

After the publication of the new Regional Government Law, namely Law Number 23 of 2014 concerning Regional Government, then 3 (three) classifications of government affairs were regulated in detail, namely absolute government affairs, concurrent government affairs, and general government affairs. Absolute government affairs are affairs which are fully under the authority of the Central Government. Concurrent Government affairs are affairs which are divided between the Central Government and Provincial/district/city regions which become the basis for the implementation of Regional Autonomy. While general governmental affairs are affairs which fall under the authority of the President as the head of government

Normatively, absolute government affairs are then spelled out in Article 10 of Law Number 23 of 2014 concerning Regional Government which includes: foreign policy, defense, security, justice, national monetary and fiscal, and religion. Specifically on religious affairs, the elucidation of Article 10 of Law Number 23 of 2014 concerning Regional Government, explains that what is meant by "religious affairs" is for example: establishing religious holidays that apply nationally, giving recognition to the existence of a religion, establishing policies in the implementation religious life, and so on. Regions can provide grants for the implementation of religious activities as an effort to increase regional participation in fostering religious life, for example organizing *Musâbaqah Tilâwatil Qur'ân* (MTQ), developing the field of religious education, and so on.<sup>30</sup>

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<sup>29</sup> I. B. Gede Wahyu Pratama and I. Ketut Suardita, 'Perubahan Kewenangan Pemerintah Daerah Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah', *Kertha Negara: Journal Ilmu Hukum*, 2015 <<https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/13088>>.

<sup>30</sup> Explanation of Article 10 paragraph (3) letter f of Law Number 32 of 2004. What is meant by religious affairs, for example establishing religious holidays that apply nationally,

Furthermore, Article 10 Paragraph (2) Law Number 23 of 2014 Regional Government stipulates that in carrying out absolute government affairs, the Central Government carries out itself or delegates authority to Vertical Agencies in the Regions or governors as representatives of the Central Government based on the principle of Deconcentration. This shows that the concept of absolute government affairs in the field of religion is very limited both in terms of the type of activity and the technical implementation of its authority. The types of religious affairs activities which are the affairs of the central government have been regulated in the elucidation of Article 10 of the Regional Government Law as mentioned above. As for the technical implementation of authority, the Central Government can carry out the authority itself or delegate authority to Vertical Agencies (in religious matters meaning the Ministry of Religion which has the Department of Religion) in the Regions or governors as representatives of the Central Government based on the principle of Deconcentration.

If related to the development of the implementation of *pesantrens*, the Islamic Boarding School Law has regulated and divided the roles of the central government and the role of regional (provincial/district/city) governments in implementing *pesantrens*. Even local governments following their authority can facilitate the development of *pesantrens*. Therefore, the existence of regional government authority in the implementation of *pesantrens* indicates that there has been a shift in affairs from absolute to relative.

*Second*, related to the debate about whether this Islamic boarding school is a matter in the field of religion, *pesantrens* is a religious affair. Article 1 number (1) of the *Pesantrens* Law defines that *pesantrens* are community-based institutions and are established by individuals, foundations, Islamic community organizations, and/or communities that instill faith and piety to Allah SWT, cultivate noble character and

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giving recognition to the existence of a religion, establishing policies in the administration of religious life, and so on; and certain parts of other government affairs on a national scale, not left to the regions. Especially in the religious field, some of the activities can be assigned by the Government to the Regions as an effort to increase the participation of the Regions in fostering religious life.

adhere to the Islamic teachings of *rahmatan lil'alamîn* which is reflected in the attitude of humility, tolerance, balance, moderation, and other noble values of the Indonesian nation through education, Islamic *da'wah*, and exemplary, community empowerment within the framework of the Unitary State of the Republic of Indonesia.

Furthermore, Article 3 of the Islamic Boarding School Law stipulates that *pesantrens* are organized with the objectives of: a. forming superior individuals in various fields who understand and practice the values of their religious teachings and/or become experts in religious knowledge who are faithful, pious, have a noble character, are knowledgeable, independent, helpful, balanced, and moderate; b. forming a moderate understanding of religion and diversity and love for the motherland as well as forming behavior that encourages the creation of religious harmony, and; c. improving the quality of life of people who are empowered to meet the educational needs of citizens and social welfare of the community.

Furthermore, Article 5 of the Islamic Boarding School Law stipulates that *pesantrens* are divided into (1) *Pesantrens* which organize education in the form of studying the Yellow Book; (2) *Pesantrens* which organize education in the form of Islamic Dirasah with the Muallimin Education Pattern; (3) *Pesantrens* that provide education in other forms that are integrated with general education. Apart from this division, *Pesantrens* must at least fulfill the following elements: a. *Kyai*; b. *Santri* who live in *Pesantrens*; c. cottage or dormitory; d. mosque or prayer room; and e. study of the *Yellow Book* or Islamic *Dirâsah* with *Muallimîn* Education Patterns.

Based on the definitions, objectives, and elements of *pesantrens* above, it is clear that *pesantrens* are affairs in the field of religion, especially Islam. *Pesantrens* are one of the institutions that become centers for the development of religious knowledge. Therefore, the regulation regarding *pesantrens* emphasizes that the *pesantrens* is a religious issue. This means that both the Central Government and Regional Governments have the authority to be involved in the implementation and development of *pesantrens*. This explanation reinforces the previous point, that the

emergence of the *Pesantren* Law has shifted the paradigm of absolute government affairs.

*Third*, related to authority. Referring to the discussion of the previous sub-chapter, the *Pesantrens* Law has regulated and divided the roles of local governments in implementing *pesantrens*. The Regional Government Law, indeed, does not regulate the authority of Regional Governments to regulate matters relating to *pesantrens*. However, the regional authority that arises is related to *pesantrens*, more to direct delegation in the *Pesantrens* Law. The Regional Government is also obliged to facilitate and provide support for *pesantrens*. However, the implementation of facilitation and support for *pesantrens* carried out by the local government remains within the framework of regional autonomy as regulated in the Regional Government Law.

As a follow-up to the *Pesantrens* Law, several provinces/districts have even established Regional Regulations, as shown in the following table:

**Table 2. Regional Regulations at the Provincial Level Regarding *Pesantrens***

Provinces	Regional Regulations
West Java	Regional Regulation of West Java Province Number 1 of 2021 Concerning Facilitation of <i>Pesantrens</i> .
Banten	Regional Regulation of Banten Province Number 1 of 2022 Concerning Facilitation of <i>Pesantrens</i> .
Special Region of Yogyakarta	Regional Regulation of Special Region of Yogyakarta Number 10 of 2022 Concerning Facilitation of <i>Pesantrens</i> .
East Java	Regional Regulation of East Java Province Number 3 of 2022 Concerning Facilitation of ( <i>Pesantrens</i> ).

Meanwhile, districts/cities that also have regional regulations governing the implementation/development of Islamic boarding schools include:

**Table 3. Regency Regional Regulations Related to Islamic Boarding Schools**

<b>Regency</b>	<b>Regional Regulations</b>
Kendal Regency	Regional Regulation of Kendal Regency, Central Java Number 4 of 2021 concerning Facilitation of Islamic Boarding School Development.
Tegal Regency	Regional Regulation of Tegal Regency, Central Java Number 9 of 2021 concerning Facilitation of Islamic Boarding School Development.
Pekalongan City	Regional Regulation of Pekalongan City, Central Java Number 3 of 2022 concerning Facilitation of Islamic Boarding School Development.
Purworejo Regency	Regional Regulation of Purworejo Regency, Central Java Number 4 of 2022 concerning Facilitation of Islamic Boarding School Development.
Boyolali Regency	Regional Regulation of Boyolali Regency, Central Java Number 17 of 2022 concerning Facilitation of Islamic Boarding Schools.
Kediri Regency	Regional Regulation of Kediri Regency, East Java Number 7 of 2020 concerning Facilitation of Implementation of Islamic Boarding Schools.
Jombang Regency	Regional Regulation of Jombang Regency, East Java Number 1 of 2021 concerning Facilitation of Islamic Boarding Schools.
Kotabaru Regency	Regional Regulation of Kotabaru Regency, South Kalimantan Number 8 of 2022 concerning Facilitation of Development of Islamic Boarding Schools and Santri Scholarships.
Bogor City	Bogor City West Java Regional Regulation Number 2 of 2022 concerning Facilitation of Islamic Boarding Schools.
Depok City	Regional Regulation of Depok City, West Java Number 1 of 2022 concerning Facilitation of Islamic Boarding Schools.

The stipulation of Regional Regulations, both Provincial and Regency/City above, has implications for the strong role and duties of the Regional Government in facilitating the development of the *pesantrens*, namely: (1) The regional government must stipulate policies

for facilitating the development of *pesantrens* into the regional medium-term development plans (RPJMD) and regional government work plans (RKPD). (2) The Regional Government must establish a minimum standard for the Facilitation of Islamic Boarding Schools. (3) The Regional Government must allocate the budget for the facilitation of *pesantrens*, carry out guidance and supervision in the implementation of *pesantrens*, and implement facilitation, based on statutory provisions.

*Fourth*, democracy requires that all government policies, especially in the regions, are based on community participation and are fully oriented toward people's welfare. As emphasized by Siti Zuhro, in the perspective of democracy, Regional government is a collection of local units of government that are autonomous, independent, and free from central control. In this system, local government includes institutions or organizations that provide services to the community.<sup>31</sup> Democratic institutions, in local politics, reflect community participation because community involvement in the decision-making process is one of the main characteristics of regional autonomy.

The effectiveness of local government institutions largely depends on the functioning of local government decision-making and implementation. The right of civil society to gain access to politics and the opportunity to fight for their interests is important in the context of local politics. More than that, in the current era of regional autonomy, local governments are expected to prioritize the interests of the community. Without community support, the realization of government policy programs will not achieve maximum results. In addition, in the context of central-regional relations, a centralistic perspective that tends to be hierarchical-dominative and sees the regions as subordinate to the center is of course no longer following the demands for reform and democratization.<sup>32</sup>

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<sup>31</sup> R. Siti Zuhro, 'Demokrasi, Otonomi Daerah dan Pemerintahan Indonesia', *Interaktif : Jurnal Ilmu-Ilmu Sosial*, 10.1 (2018): 1–41.

<sup>32</sup> Rahmat Robuwan, Wirazilmustaan Wirazilmustaan, and Rio Armanda Agustian, 'Konsep Hubungan Kewenangan Antara Pemerintah Pusat dan Pemerintah Daerah dalam Bingkai Negara Kesatuan dengan Corak Otonomi Luas', *PROGRESIF: Jurnal Hukum*, 12.2 (2018): 2131–45. <<https://doi.org/10.33019/progresif.v12i2.976>>.

Regarding the policy towards *pesantrens* in the regions, the reality is that the number of *pesantrens* in Indonesia is very large, each region has a varying number with different characteristics. This phenomenon results in efforts to facilitate the implementation of *pesantrens* carried out by the Regional Government which will also vary in each region. Community participation in the regions will be more effective if the government's policies towards the *pesantrens* are carried out in a bottom-up and not top-down manner.

## Conclusion

Based on the above explanation, it can be concluded that: *First*, *pesantrens* aim to create individuals who understand Islamic knowledge as a way of life (*tafaqquh fi al-dîn*) by emphasizing noble ethics and morals (*akhlâq karîmah*). Therefore the existence of this institution needs to be strengthened because it has an important role in maintaining religion (*hifdz al-dîn*). *Second*, the relationship between the authority of the central government and the post-reform Regional Governments has developed dynamically. The regulation of the relationship of authority is not limited to what is stipulated in the Regional Government Law but has also developed in various sectoral regulations, one of which is Law Number 18 of 2019 concerning *Pesantrens*. *Third*, the *Pesantrens* Law obliges local governments to provide support to the institution in the form of budgetary policies in funding or financial assistance schemes. This phenomenon indicates a shift in authority from the Central Government to Regional Governments where the Central Government is no longer dominant in managing Islamic Boarding School affairs. With the emergence of the *Pesantren* Law, religious affairs which were originally absolute government affairs shifted to relative affairs; in other words, it is no longer only the authority of the Central Government, but also part of the authority of Regional Governments, both at the provincial, district or city government level.

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