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TWO REGIMES IN ONE YEAR: COMMENCEMENT GAPS BETWEEN STATUTE AND IMPLEMENTING REGULATION

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ABSTRACT
A regional regulation that implements a statutory provision cannot sensibly operate before that provision does. This article documents a case in which four Indonesian provinces enacted implementing instruments that took effect approximately one year before the statutory provisions they implement. Law No. 1 of 2022 took general effect on promulgation but deferred its provisions on motor vehicle taxation and the local surcharge by three years under Article 191(1), to 5 January 2025, while Article 187(c) preserved regional regulations made under the repealed law for the same interval. Four provinces nevertheless brought their new instruments into force in January 2024. The result is an interval of approximately twelve months in which two instruments both claimed to govern the same tax: a preserved regulation whose statutory basis had been repealed but whose validity was extended, and a new regulation whose statutory basis existed but had not yet commenced. The article argues that the difficulty is not one of conflict between norms but of a transitional scheme that fixed two dates independently and did not state which governs the overlap, and that a commencement provision deferring substantive articles should carry a matching direction to the instruments made under them.

1. INTRODUCTION

Commencement provisions are the least examined part of a statute and among the more consequential. They decide not what the law is but when it is, and where a statute operates through instruments made by other legislatures they decide that question twice: once for the statute and once, by implication or omission, for everything made under it.

Indonesia's Law No. 1 of 2022 on Financial Relations between the Central Government and Regional Governments contains an unusually elaborate temporal architecture. It took general effect on promulgation, but Article 191(1) deferred its provisions on motor vehicle tax, vehicle transfer duty and the local surcharge for three years, to 5 January 2025. Article 187(c) correspondingly preserved regional regulations made under the repealed Law No. 28 of 2009 until that date, so that the fiscal field would not be left ungoverned during the interval.

The scheme is coherent so long as provinces wait. Four of them did not. Central Java brought its new instrument into force on 1 January 2024, and East Java, North Sumatra and South Sulawesi on

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5 January 2024 — in each case approximately a year before the statutory provisions those instruments implement became operative. For that year two instruments claimed the same field.

The research gap is that transitional and commencement provisions are studied for their effect on the statute containing them, and rarely for their effect on the subordinate instruments the statute anticipates. Where a statute is implemented by regional legislatures acting on their own commencement discretion, the interaction of two independently fixed dates is a distinct problem, and it is the one this article examines.

2. LITERATURE REVIEW

2.1 Commencement as a substantive decision

Deferred commencement is usually justified by preparation: an administration needs time to build systems, taxpayers need notice, affected governments need to plan. Each of these is a real function and they do not all require the same interval, which is the first reason a single commencement date is a blunt instrument.

Ait-Aoudia (2025) examines legal certainty under conditions of crisis and treats predictability about when a rule binds as part of its minimum content rather than as an administrative detail. Kryvoi and Matos (2021), analysing non-retroactivity as a general principle, show that the principle is a family of narrower rules about the relationship between the time of an act and the time of a norm, and that these rules are frequently underspecified in the instruments that invoke them. Prasanna Bhattacharya and Makkar (2021), examining the transition period created by an Indian constitutional amendment, demonstrate that a provision governing an interval can carry substantive consequences its drafters did not articulate.

The common finding is that a transitional provision decides more than it says. It allocates risk between those who act during the interval and those who wait, and where it is silent on a foreseeable configuration, that silence is itself an allocation.

2.2 What happens to subordinate instruments in an interval

The second body of work concerns the validity of instruments made under a statute, and it bears directly because the provincial regulations examined here are such instruments.

Adams (2025), analysing criteria of validity, and Edgar and Stack (2019), on the authority and interpretation of regulations, both proceed from the position that a subordinate instrument derives its force from an enabling provision and is interpreted by reference to it. Taylor and Wilson (2026) propose a two-stage test for identifying delegated legislation, which presupposes that the enabling relationship can be located. Chng (2024) and Mills (2024), examining judicial review of secondary legislation, describe a practice whose central question is whether the instrument is within the power conferred.

None of these accounts addresses the temporal version of the question: whether an instrument may be within a power that has been conferred but has not yet commenced. Radziewicz (2019), on

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the constitutional review of incomplete regulation, comes closest by treating gaps in a regulatory scheme as reviewable defects rather than as matters outside the courts' concern. Hameed (2023), examining legislative disruption of implied repeal, shows that a legislature can displace ordinary presumptions about the relationship between statutes but must do so expressly.

2.3 Why the fiscal setting sharpens the problem

In most fields an interval of uncertain governance is tolerable because nothing turns on the precise date. In taxation it is not, because a liability arises on a date and the rate applicable is the rate in force on that date.

Varuhas (2020) sets out the principle of legality as a presumption operating where statutes bear on established rights, and van der Vlugt (2023) traces its fiscal form, showing that the demand for a statutory basis is a demand about the determinacy of the obligation. Loutzenhiser (2020) notes that the requirement is about who decides and on what authority. A taxpayer assessed during an interval in which two instruments both claim to apply is entitled to know which one did.

The fiscal federalism literature adds a second reason. Baskaran (2021) shows that rate differentials move the tax base itself, so the period during which a rate applies is not merely a formal matter. Agrawal and Shybalkina (2024) show that administrative rules governing a shared instrument redistribute revenue independently of economic activity. Where a rate change and a reassignment of revenue between tiers coincide, the date on which each takes effect determines who receives what.

2.4 The research gap

The gap is therefore specific. Transitional provisions are examined for their effect on the enacting statute; subordinate instruments are examined for their conformity to an enabling power; neither literature examines what happens when a subordinate instrument commences before the enabling provision does. Because Indonesian provinces set their own commencement dates, the configuration is not hypothetical, and this article documents four instances of it.

3. METHOD

The study is doctrinal. Its materials are Law No. 1 of 2022 on Financial Relations between the Central Government and Regional Governments (State Gazette of 2022 No. 4, Supplement No. 6757), read for its commencement and transitional provisions; Government Regulation No. 35 of 2023 on General Provisions on Regional Taxes and Regional Levies (State Gazette of 2023 No. 85, Supplement No. 6881); Law No. 12 of 2011 on the Formation of Legislation as amended; and four provincial regional regulations enacted under the mandate in Article 94 of the 2022 Law.

The provincial instruments are Regional Regulation of Central Java Province No. 12 of 2023, Regional Regulation of East Java Province No. 8 of 2023, Regional Regulation of North Sumatra Province No. 1 of 2024, and Regional Regulation of South Sulawesi Province No. 1 of 2024. Each was

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read in full from the signed text published by the relevant legal documentation service, and in each case the closing commencement article was read directly rather than taken from a summary.

Three limitations apply. Four provinces are not thirty-eight, so the incidence of the configuration nationally is unknown and this article reports instances rather than a rate. The analysis concerns the instruments as enacted and does not establish what any provincial revenue authority actually applied during the interval, which would require administrative records that are not published. And a fifth province, Aceh, was excluded because the promulgated text of its instrument is not publicly retrievable, so its commencement date could not be read.

4. RESULTS AND DISCUSSION

4.1 The statutory timetable

Law No. 1 of 2022 was promulgated on 5 January 2022. Its general commencement provision brings the Law into force on promulgation, and on that footing the repeal of Law No. 28 of 2009 on Regional Taxes and Regional Levies took effect immediately.

Two provisions then qualify that. Article 191(1) defers the operation of the provisions on motor vehicle tax, vehicle transfer duty and the associated surcharge for three years from promulgation, so those provisions commence on 5 January 2025. Article 187(c) provides that regional regulations concerning regional taxes and levies made under the repealed law remain valid until the same date.

The two provisions are complementary and their joint effect is intelligible. From 5 January 2022 to 5 January 2025 the substantive vehicle tax provisions of the new Law are enacted but dormant; the old regulations continue to govern; and provinces have three years to prepare replacements. On 5 January 2025 the new provisions commence and the preserved regulations lapse. Nothing in the scheme is obscure so long as the replacements commence on the same date.

Article 94 supplies the drafting mandate, requiring each province to enact a single consolidated instrument on regional taxes and levies. It does not state when that instrument is to commence, and no other provision of the Law does either. The date is therefore left to the province, which is where the difficulty originates.

4.2 What the provinces did

Table 1 sets out the commencement provision of each instrument and the interval it creates against the statutory date of 5 January 2025.

Table 1. Commencement of provincial instruments against the statutory commencement date

Province	Instrument	Promulgated	In force from	Interval before Art. 191(1)
Central Java	Perda 12/2023	23 Nov 2023	1 Jan 2024 (Art. 112)	approx. 12 months
East Java	Perda 8/2023	29 Dec 2023	5 Jan 2024 (Art. 124)	approx. 12 months
North Sumatra	Perda 1/2024	5 Jan 2024	on promulgation (Art. 101)	approx. 12 months

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Province	Instrument	Promulgated	In force from	Interval before Art. 191(1)
South Sulawesi	Perda 1/2024	5 Jan 2024	on promulgation (Art. III)	approx. 12 months

Sources: the four provincial instruments named, read in full from the signed texts published by the national and provincial legal documentation services, 2023 and 2024 (retrieved 2026); Law No. 1 of 2022, Articles 187(c), 191(1) and 194. Intervals are computed from the commencement date stated in each instrument to 5 January 2025.

Two of the four fix an express date and two commence on promulgation, but the effect is the same in each case: the instrument entered into force in January 2024, approximately twelve months before the statutory provisions it implements. East Java's choice of 5 January 2024 is notable because it matches the anniversary of promulgation of the national Law rather than the commencement date of the provisions at issue, which suggests the drafters read the three-year deferral as already spent.

The pattern is not a drafting slip in a single province. Four instruments prepared by four legislatures with four sets of advisers reached the same position, which indicates a shared reading of the timetable rather than an isolated error.

4.3 What governed vehicle taxation during the interval

The question the scheme does not answer is which instrument applied to a vehicle tax liability arising in, say, June 2024. Three answers are available and the statute does not choose between them.

On the first, the preserved regulation governed. Article 187(c) states in terms that regulations made under the repealed law remain valid until 5 January 2025, and a provision expressly extending validity is not displaced by a later instrument whose own enabling provisions have not commenced. On this reading the new provincial instruments, though validly enacted and formally in force, had nothing to operate on in the vehicle tax field until the statutory provisions arrived.

On the second, the new regulation governed. It is a validly enacted provincial instrument that states its own commencement, it was made under Article 94 of a Law that was itself in force, and Article 187(c) preserves the old regulation without providing that the preservation is exclusive. On this reading the province exercised its own commencement discretion and the earlier instrument was superseded in fact.

On the third, the answer differs by tax. The deferral in Article 191(1) is confined to the vehicle tax provisions; the remainder of the Law commenced on promulgation. A consolidated provincial instrument covers a dozen taxes, most of which were unaffected by the deferral. On this reading the new instrument governed everything except vehicle taxation from January 2024, and vehicle taxation from January 2025, so a single instrument commenced in parts.

The third reading is the most defensible and the least convenient. It is defensible because it gives effect to both Article 191(1) and the provincial commencement articles without treating either as inoperative. It is inconvenient because nothing in any of the four provincial instruments says so, and a taxpayer reading the instrument would find a single commencement article applying to the whole.

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4.4 Why this is a gap rather than a conflict

It is worth being precise about the character of the difficulty, because the label determines what would fix it.

It is not a conflict of norms in the sense Article 7(2) of Law No. 12 of 2011 addresses. That provision makes legal force follow the hierarchy, so a provincial regulation contrary to a statute is defective. Here no provincial regulation contradicts the statute: each sets rates within the ceilings and each commences on a date the statute leaves to the province. Conformity review would find nothing.

Nor is it a case of retroactivity in the sense Kryvoi and Matos (2021) analyse. Nothing operates backwards. The difficulty is the mirror image — an instrument operating forwards from a date earlier than the provision that gives its content effect.

It is a gap of the kind Radziewicz (2019) describes: a scheme whose components are individually valid and jointly silent on a configuration they together make possible. Hameed (2023) shows that legislatures can displace ordinary presumptions about the relationship between statutes but must do so expressly, and the converse holds here. Having chosen to defer part of the Law and to preserve the old regulations for the same period, the drafters could have directed that instruments made under Article 94 commence on the date fixed by Article 191(1). They did not, and the omission left four provinces to choose.

4.5 Why the provinces' reading was reasonable

It would be wrong to treat the four provinces as having erred, and the reason is that the timetable invites their reading.

The Law was in force from 5 January 2022. Article 94 required a consolidated instrument and did not say when. A province that waited until January 2025 to bring its instrument into force would have spent three years with a mandate it had not discharged, and would have had to explain why an instrument enacted in 2023 sat dormant. Enacting and commencing promptly is the ordinary expectation of a legislature under a statutory mandate, and Feldman (2025), examining what it means to unenact legislation, notes that the presumption runs strongly toward instruments operating once made.

There is also a practical consideration. A consolidated instrument replaces a dozen separate regulations. Deferring its commencement to match the vehicle tax provisions would have deferred every other tax as well, or required a split commencement the drafters would have had to construct themselves. Commencing the whole instrument at once is the simpler course and, for eleven of the twelve taxes, the correct one.

The reading is therefore not careless. It is the natural response to a mandate with no date attached, and the difficulty arises from the interaction with a deferral provision located elsewhere in the Law and addressed to a different subject.

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4.6 What a better-drafted scheme would have said

The remedy is a single sentence and its absence is the finding. A commencement provision that defers specified substantive articles should state the commencement of instruments made under those articles.

Three forms would work. The Law could have provided that a regional regulation made under Article 94 commences, so far as it concerns the taxes deferred by Article 191(1), on the date fixed by that Article. It could have required provinces to include a split commencement article in their instruments, which would put the position in front of the taxpayer reading the instrument rather than requiring the taxpayer to combine two statutes. Or it could have deferred Article 94 itself, so that the mandate and the substance arrived together.

The third is the least attractive because it would have compressed the preparation period the deferral was designed to create. The second is the most useful to the taxpayer, and it is what Ait-Aoudia (2025) treats as the minimum content of legal certainty: the person bound should be able to establish from the instrument that binds them when it binds them. The first is the least intrusive on provincial drafting discretion.

That none of the three appears is consistent with a pattern the transitional-provisions literature reports. Prasanna Bhattacharya and Makkar (2021) find that transition provisions are drafted with the enacting instrument in view and not with the instruments that will be made under it, so foreseeable interactions go unaddressed.

A final observation places the finding in comparative context. The difficulty documented here arises because two legislatures hold commencement discretion over parts of one scheme, which is a structural feature of systems that implement national tax statutes through subnational instruments rather than through central regulations. Ladner, Keuffer and Bastianen (2025) treat the presence of such discretion as one of the dimensions on which local autonomy is measured, and by that measure Indonesian provinces score highly: they choose their own commencement date and no national provision constrains it. Sethia (2021), separating the vertical and horizontal questions in Canadian fiscal federalism, shows that the two are governed by different instruments and that coordination between them is rarely automatic. The interval examined in this article is what non-coordination looks like when it falls on a date rather than on an amount.

4.7 Two objections

The first objection is that the problem is theoretical: provincial revenue authorities will have applied the correct rates whatever the instruments said, because the rates in the old and new regulations were in most cases similar and because administrative practice follows the ministry's guidance rather than the text. The objection may well be right as a matter of fact, and the article cannot refute it because administrative records are not published. It does not dispose of the point. A rule that produces the right answer because officials know what was intended is not the same as a rule that states the answer, and the taxpayer who wishes to check has only the instruments.

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The second objection is that the interval has passed, so the analysis is of historical interest only. Two considerations answer it. The configuration recurs whenever a statute defers part of itself while mandating subordinate instruments, which is a common drafting pattern rather than a peculiarity of this Law. And the interval is not closed for every purpose: an assessment made during 2024 may still be disputed, and a dispute would require the question this article identifies to be answered.

It is worth stating what would settle the question if it were litigated, since the article offers three constructions without predicting an outcome. A court would have to decide whether Article 187(c) is permissive or exclusive — whether it merely extends the validity of the old regulations or additionally forecloses their replacement before the date it names. The provision is drafted in the language of continued validity rather than of exclusive application, which points toward the permissive reading; but a permissive reading leaves the deferral in Article 191(1) doing no work at the provincial level, since a province could commence its own instrument at any time and thereby bring forward the substance the deferral postponed. A court reluctant to render a commencement provision ineffective would be pushed toward the exclusive reading, and a court attentive to the ordinary language of Article 187(c) would be pushed the other way. That the two pressures point in opposite directions is why the article characterises the position as unsettled rather than merely unlitigated.

One consequence of that unsettled state deserves recording. Where the governing instrument for a period is genuinely uncertain, the burden of the uncertainty falls asymmetrically. A revenue authority applying whichever instrument produces the higher assessment is unlikely to be challenged, because the amounts at stake for an individual vehicle owner are small relative to the cost of contesting them. The aggregate at stake across a provincial fleet is not small. This is the ordinary pattern with low-value high-volume taxes, and it means that an interpretive gap of the kind documented here is corrected, if at all, by administrative practice rather than by adjudication.

4.8 Limitations

Four limitations bound the analysis. The sample is four provinces, so nothing is claimed about how many of the thirty-eight adopted the same commencement pattern; a census would establish the incidence and is proposed below. Aceh could not be included because the promulgated text of its instrument is not publicly retrievable.

The article establishes what the instruments provide and not what was applied. Whether any taxpayer was in fact assessed under one instrument rather than the other, and whether any assessment was disputed on that ground, cannot be determined from published sources. And the three readings offered in Section 4.3 are advanced as the available constructions rather than as a prediction of how a court would decide, since no decided case addresses the question.

4.9 Summary of findings

The documentary findings are three. Law No. 1 of 2022 defers its vehicle tax and surcharge provisions to 5 January 2025 under Article 191(1) and preserves regulations made under the repealed law until the

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same date under Article 187(c), while Article 94 mandates a consolidated provincial instrument without stating when it is to commence. Four provinces brought their instruments into force in January 2024, approximately twelve months earlier: Central Java on 1 January under Article 112 of its instrument, East Java on 5 January under Article 124, and North Sumatra and South Sulawesi on promulgation under Articles 101 and 111 respectively. For that interval two instruments claimed the vehicle tax field.

The interpretive claims are three. The difficulty is a gap in the transitional scheme rather than a conflict of norms, since each component is valid and none contradicts another. The provinces' reading was reasonable given a mandate with no date attached and a consolidated instrument covering taxes mostly unaffected by the deferral. And the remedy is a drafting one: a provision deferring substantive articles should carry a matching direction for instruments made under them.

5. CONCLUSION

A statute deferred part of itself for three years and preserved the old regulations for the same period. It also required every province to enact a replacement and said nothing about when the replacement should begin. Four provinces began in January 2024, a year before the provisions they were implementing came into force, and for that year the question of which instrument governed vehicle taxation has three defensible answers and no stated one.

The general claim is that a deferred commencement provision is incomplete unless it addresses the subordinate instruments the same statute mandates. Deferring substance while leaving implementation to the ordinary commencement discretion of another legislature creates an interval whose governance depends on which of two independently fixed dates is treated as controlling, and neither legislature has been asked to decide that.

Three extensions follow. A census of all thirty-eight provincial instruments would establish how widely the pattern occurs. Administrative records, if obtainable, would show which rates were in fact applied during 2024 and whether the discrepancy had practical effect. And a survey of Indonesian statutes using deferred commencement together with a mandate to make subordinate instruments would establish whether the omission identified here is characteristic of the drafting practice or particular to this Law.

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