

Legal Study of Materiil Testing Rights Supreme Court in Indonesia

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Abstract

The authority of the Supreme Court to examine statutory regulations under the law or in this case referred to as judicial review is a mandate of the 1945 Constitution. Article 24A paragraph (1) of the 1945 Constitution which is the result of the Third Amendment states, "The Court The Supreme Court has the authority to judge at the level of cassation, examine the legislation under the law against the law, has other powers granted by law. From these provisions it is clear that the 1945 Constitution provides 3 (three) categories of authority to the Supreme Court, namely (1) adjudicating at the level of cassation, (2) examining statutory regulations under the law against the law, and (3) other powers granted by law. Specifically for the third provision, the 1945 Constitution stipulates that the authority of the Supreme Court is open, which means that it is possible to increase the authority of the Supreme Court as long as it puts the regulation of the additional authority into or by law. The examination is carried out on a statutory provision against a higher statutory regulation or against the constitution as the highest law. That is, judicial review works on the basis of legal norms or statutory regulations that are hierarchically structured. Without this hierarchy, it is impossible to conduct a judicial review. At this time in Indonesia the hierarchy of laws and regulations is regulated in Article 7 of Law no. 12 of 2011 concerning the Establishment of Legislation.

Keywords : Legal Study, Materiil Testing Rights, Supreme Court.

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1. Introduction.

The development of the state administration practice of separating the testing of laws and regulations both at the Constitutional Court and at the Supreme Court as regulated in Article 24A paragraph (1) of the 1945 Constitution creates weaknesses and problems both from the aspect of regulation and implementation. Therefore, it is very important to carry out a thorough evaluation both from the regulatory and implementation aspects regarding the review of the Act against the 1945 Constitution at the Constitutional Court, as well as the review of the legislation under the Act against the Law at the Supreme Court. Related to the above, in the context of testing legislation by two state institutions, several problems emerged which later became constitutional issues.

The authority to examine the validity of the rule of law in Indonesia is left to the judiciary, namely the Constitutional Court and the Supreme Court, not to other institutions, including even the legislature. The development of influence influencing the judicial power itself is presented in the development of Indonesia's constitutional political history, the outline of which starts from and can be seen from Law no. 19 of 1964 concerning the Basic Provisions of Judicial Power. In several articles it authorizes the President (executive institution) to intervene in the judicial power (Article 19 of Law No. 19 of 1964).

The influence of the government is then also seen in Law no. 13 of 1965 concerning Courts within the General Courts and the Supreme Court which emphasizes that judges in carrying out their functions must comply with the political vision of the government. These two laws were later repealed and replaced by Law no. 14 of 1970 concerning the Basic Provisions of Judicial Power.

The revocation of these two laws was carried out in response to the demands of various groups in society regarding the establishment of the rule of law in the context of purification of the implementation of Pancasila and the 1945 Constitution. Furthermore, the principles and principles of independence of judicial power were

reaffirmed in Article 11 paragraph (1) of MPR Decree No. III/MPR/1978, Law no. 14 of 1985, Law no. 2 of 1986, Law no. 5 of 1986, and Law no. 7 of 1989 which regulates the Religious Courts.²² Law no. 14 of 1970 was then amended by Law no. 35 of 1999 and was last amended by Law no. 4 of 2004 concerning Judicial Power.

Based on the above background, the writer will analyze the Legal Study of the Judicial Rights of the Supreme Court in Indonesia, in this case reviewing the types of legislation under the law that can be submitted for judicial review rights.

2. Analysis and Discussion.

The State of Indonesia is a state of law, as stated in the 1945 Constitution of the Republic of Indonesia in Article 1 paragraph (3). Law can be formulated as a set of written and unwritten rules of conduct and is distinguished as public law and private law. All actions of state equipment are based on law or in other words regulated by law (Abu Daud Busro, 2003:111). The Supreme Court Judicial Rights Law in Indonesia must be legally regulated based on the prevailing laws and regulations in Indonesia as a country that adheres to a state law system.

Based on the hierarchy of laws and regulations, Article 9 of Law No. 12 of 2011 states that in the event that a law is alleged to be in conflict with the 1945 Constitution, the review is carried out by the Constitutional Court. Meanwhile, in the event that a statutory regulation under the Act is alleged to be contrary to the Act, the review is carried out by the Supreme Court.

In this regard, the provisions regarding the authority of the Supreme Court to examine the statutory regulations under the law against the law have been confirmed long ago in Article 31 paragraph (1) to paragraph (5) of Law no. 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court. The authority of the Supreme Court to examine statutory regulations under the law or in this case referred to as judicial review is a mandate of the 1945 Constitution. Article 24A paragraph (1) of the 1945 Constitution which is the result of the Third Amendment states, "The Court The Supreme Court has the authority to judge at the level of

cassation, examine the legislation under the law against the law, has other powers granted by law.

From these provisions it is clear that the 1945 Constitution provides 3 (three) categories of authority to the Supreme Court, namely (1) adjudicating at the level of cassation, (2) examining statutory regulations under the law against the law, and (3) other powers granted by law. Specifically for the third provision, the 1945 Constitution stipulates that the authority of the Supreme Court is open, which means that it is possible to increase the authority of the Supreme Court as long as it puts the regulation of the additional authority into or by law.

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The examination is carried out on a statutory provision against a higher statutory regulation or against the constitution as the highest law. That is, judicial review works on the basis of legal norms or statutory regulations that are hierarchically structured. Without this hierarchy, it is impossible to conduct a judicial review. At this time, the hierarchy of laws and regulations is regulated in Article 7 of Law no. 12 of 2011 concerning the Establishment of Legislation consisting of:

1. The 1945 Constitution of the Republic of Indonesia;

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

In addition, according to Article 8 of Law No. 12 of 2011, other types of legislation are also recognized which include regulations set by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution, or a commission of the same level established by law or the Government on the orders of the Act, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, Village Head or equivalent. These laws and regulations are recognized to exist and have binding legal force as long as they are ordered by higher laws and regulations or are formed based on authority.

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1. The Supreme Court has the authority to examine the legislation under the law against the law;

2. The Supreme Court declares that the statutory regulations under the law are invalid on the grounds that they are contrary to the higher statutory regulations or their establishment does not meet the applicable provisions;
3. Decisions regarding the invalidity of the laws and regulations as referred to in paragraph (2) may be taken either in connection with an examination at the cassation level or based on a direct application to the Supreme Court;
4. Legislation declared invalid as referred to in paragraph (3) does not have binding legal force;
5. The decision as referred to in paragraph (3) must be published in the State Gazette of the Republic of Indonesia within a period of no later than 30 (thirty) working days after the decision is pronounced.

Furthermore, between Article 31 and Article 32, 1 (one) new article is inserted, namely Article 31A which states as follows.

(1) An application for review of statutory regulations under the law against the law is submitted directly by the applicant or his proxies to the Supreme Court, and is made in writing in the Indonesian language;

(2) The application must at least contain:

a. the name and address of the applicant;

b. a description of the subject on which the application is based, and must clearly describe that:

1. the content of paragraphs, articles, and/or parts of laws and regulations is deemed to be contrary to higher laws and regulations; and/or

2. The establishment of laws and regulations does not meet the applicable provisions.

c. things that are asked to be decided.

(3) In the event that the Supreme Court is of the opinion that the applicant or his application does not meet the requirements, the decision shall declare that the application is not accepted;

(4) In the event that the Supreme Court is of the opinion that the petition is grounded, the ruling shall state that the petition has been granted;

(5) In the event that the application is granted as referred to in paragraph (4), the decision shall state clearly the content of the paragraph, article, and/or part of the legislation that is contrary to the higher legislation;

(6) In the event that the statutory regulations do not conflict with higher statutory regulations and/or do not conflict with their formation, the decision shall state that the application is rejected;

(7) Further provisions regarding the examination of statutory regulations under the law shall be regulated by the Supreme Court.

Furthermore, based on Article 11 paragraph (3) of Law No. 4 of 2004, regarding the authority to examine the legislation under the law against the law, it is affirmed that the statement that the legislation does not apply as a result of the test can be taken either in examination at the level of cassation or based on a direct application to the Supreme Court. Thus, there are 2 (two) doors for testing the legislation under the law against the law, namely (1) in the examination of the cassation level and (2) based on a direct application to the Supreme Court.

Against Supreme Court Regulation No. 1 of 2011, there are several notes to pay attention to because in practice, the procedural law of judicial review rights at the Supreme Court is considered unable to meet the expectations of justice seekers. The most frequent criticism is mainly due to Supreme Court Regulation No. 1 of 2011 has not fully accommodated the legal principles of the procedural review of laws and regulations, which include:

1. Ius Curia Novit (Judges may not reject a case on the pretext that there is no law);
2. The trial is open to the public;
3. Independent and Impartial;
4. Fast, Simple, and Low Cost Judiciary;
5. Audi Et Alteram Partem (Rights to be heard equally);
6. Judges are Active in Trials;
7. Presumptio Iustae Causa (Presumption of Validity).

The term Regulatory System (A.Hamid S. Attamimi, 1993:10), in a post-service speech entitled Law on Legislation and Policy Regulations (Law of Regulatory Orders. Tata means rules, regulations, arrangements, methods, systems. Arrangements means the process, method, act of regulating. So it can be concluded that the notion of regulation is a rule or rule regarding the act of regulating whose regulation (regeling) can be found in laws and regulations (algemeen verbindende voorschriften), internal regulations that apply to internal regulations (interne regelingen) and policy regulations (beleidregel). Attamimi stated that the regulatory system includes all types of laws and regulations which are indeed a series of related policy regulations, which are often perceived by the public as having no different format, form and binding power from the laws and regulations. Van Vollenhoven state function which divides into four functions (chess praja) namely regeling (regulation), bestuur (government in the narrow sense of administrative), politie (security), and rechtspraak / judiciary (Diana Halim Koentjoro, 2004:17).

In the Supreme Court's Decision Number developments, the Supreme Court tested the Circular Letter of the Director General of Mineral, Coal and Geothermal, Ministry of Energy and Mineral Resources R.I. Number: 03.E/31/DJB/2009, dated January 30, 2009, concerning Mineral Mining Licensing and Coal (hereinafter referred to as Circular). The Supreme Court's decision Number 23 P/HUM/2009 became a monumental decision by the Supreme Court by granting the objection request to the Circular which was classified as a Policy Regulation.

The pros and cons continue to run between positivist understanding and progressive understanding which justify or reject the Supreme Court's steps in granting the petition for objections to the Circular. This paper aims to analyze, study and use scientific paradigms in the matter of policy regulations that can be tested in the Supreme Court (Ni Luh Gede Astariyani, Bagus Hermanto, 2019:433), Circulars are not known in the system of laws and regulations applicable in the Act. No. 10 of 2004 concerning the Establishment of Legislation therefore does not meet the applicable provisions. The form and formation of the Circular Letter also does not

meet the applicable provisions in Article 7 paragraph (4) of Law No. 10 of 2004 stating that: "Types of legislation other than those referred to in paragraph (1) are recognized for their existence and have binding legal force. as long as it is ordered by a higher statutory regulation". These regulations in the theory of legislation are called Policy Regulations / *Beleidsregel*, Policy rules, or *Pseuduwetgeving* (A. Hamid S. Attamimi, 1993:10).

Revolutionary progressive law enforcement as a new leap from the dominance of the dogmatic juridical / normative juridical positivism paradigm to a new paradigm in law enforcement and it is hoped that law enforcers (advocates, police, prosecutors and judges) are not trapped in a very dogmatic juridical absolutism. The new paradigm offered for scientists and legal practitioners is an integrated paradigm that views the existing paradigms, namely normative, sociological and philosophical, as being used in an integrated manner (Yusriadi, 2004:19). With the legal paradigm, law studies and law enforcement will see the law in its entirety with a normative dimension, a sociological dimension and a philosophical dimension.

As a state of law, all aspects of society, nationality, and the state, including government, must always be based on law. So that to realize the rule of law, an orderly order is needed, including in the field of legislation (Rumiarta, I Nyoman Prabhu Buana, 2015,:1-2). Specifically for the Supreme Court, which is a judicial institution that has constitutional authority as regulated in Article 24A paragraph (1) of the 1945 Constitution, it is determined that the Supreme Court has the authority to judge at the level of cassation, examine statutory regulations under the Act against the Act, and have other powers granted by law. Thus, the constitution grants 2 (two) constitutional powers to the Supreme Court, namely (1) adjudicating at the cassation level, and (2) examining statutory regulations under the Act against the Act. Meanwhile, other powers granted by the law that belong to the Supreme Court are additional powers that are constitutionally mandated through the legislators.

The delegation of judicial review authority to the Supreme Court and the

Constitutional Court will also leave other complications in terms of judicial review cases that do not directly contradict the regulations at the level above, but conflict with the regulations at the higher level. Concretely, if a Regional Regulation or Government Regulation does not contradict the Law, but is in direct conflict with the 1945 Constitution, then which institution has the competence to conduct a judicial review of this kind of issue. From the perspective of legal force and binding power, the decision of the Supreme Court in this case can also be perceived as having legal force because of the legal basis for testing it. The decision of the Supreme Court is final, i.e. the decision of the Supreme Court immediately gains legal force from the moment it is pronounced and there are no legal remedies that can be taken. This is final because the a quo examination does not go through an cassation case, but goes directly to the Supreme Court.

3. Conclusion.

The review carried out by the Supreme Court was carried out on statutory regulations under the Act against the Act but in its development there was also a Supreme Court decision to examine the SE in the Supreme Court Decision Number 23P/HUM/2009 into a monumental decision by the Supreme Court with the grant of the petition objection to the Circular which is classified as a Policy Regulation. The Supreme Court is a judicial institution that has constitutional authority as regulated in Article 24A paragraph (1) of the 1945 Constitution determines that the Supreme Court has the authority to judge at the level of cassation, examine statutory regulations under the Act against the Act, and has the authority otherwise provided by law. Thus, the constitution grants 2 (two) constitutional powers to the Supreme Court, namely (1) adjudicating at the cassation level, and (2) examining statutory regulations under the Act against the Act. Meanwhile, other powers granted by the law that belong to the Supreme Court are additional powers that are constitutionally mandated through the legislators. From the perspective of legal force and binding power, the decision of the Supreme Court in this case can also be perceived as having legal force because of the legal basis for testing

it. The decision of the Supreme Court is final, i.e. the decision of the Supreme Court immediately gains legal force from the moment it is pronounced and there are no legal remedies that can be taken. The binding power of the judicial review rights that are directly submitted by the Supreme Court and those submitted in connection with the cassation have the same binding power but will be strictly separated in the future.

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