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OPTIMIZE THE AUTHORITY TO JUDICIAL REVIEW BY THE SUPREME COURT

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Abstract: Determined by Supreme Court Regulation Number 1 of 2011 about the Right to Test Material, where one of the substances removes the strained period of the submission deadline Applications for approval were previously limited to 180 days after regulation laws and regulations determined as previously regulated in the Regulations Supreme Court Number 1 of 2004 should be welcomed as a positive step in to make the authority to review statutory regulations effective by Supreme Court. In the future, to further optimize authority Therefore, the Supreme Court Regulations Concerning the Right to Judicial Review need to be revised through the establishment of Supreme Court Regulations regarding regulatory review regulations that include the right to material review and the right to formal review, because However, the Supreme Court does not only have the authority to carry out material tests also formal testing where the two understanding authorities are better known as the term judicial review authority.

Keywords: Supreme Court, legislation ordinance, material liberties test, judicial review.

1. INTRODUCTION

Constitutional reform steps were rolled out through change after change to the substance of the 1945 Constitution over time 1999-2002 has brought fundamental changes in the Indonesian constitution. A series of changes such as separation and/or a more explicit division more assertive implementation of a more stringent and transparent system of checks and balances and the formation of new state institutions to accommodate the developing needs nation and the challenges of the time, (Siahaan, 2010) is a juridical fact that has emerged in amendments to the 1945 Constitution.

From several changes resulting from the amendments to the NRI Constitution In 1945 4 times, one of the successes that has been achieved by the nation Indonesia from constitutional changes, especially during the third amendment in 2001 is related to the regulation of judicial power carried out by two institutions different countries, namely the Supreme Court and the Constitutional Court. Referring to the regulations before the amendment to the 1945 Constitution, judicial power was only exercised by an institution known as the Supreme Court. Currently, the formation of the Constitutional Court has perfected the implementation of judicial functions, especially related to resolving constitutional problems. Country Indonesia is the 78th country to have MK, with placement separate from MA (Latif, et.al, 2009).

Explicitly, the authority of institutions implementing judicial power is regulated in Article 24, Article 24A, Article 24B, and Article 24C of the 1945 Constitution. According to the provisions of Article 24 paragraph (2) it is stated: "Judicial power is exercised by a Supreme Court and judicial bodies, which is Bellow the general justice environment, the judicial environment religion, the military justice environment, the State Administrative Court environment, and by a Constitutional Court". The essential meaning that can be understood from the provisions This is that the implementation of judicial power lies in two State institutions, namely MA and MK.

A fundamental point of structuring judicial power is changed The third issue of the 1945 NRI Constitution is the issue of regulating judicial review authority or rights testing carried out by the MA and MK. By Article 24A paragraph (1) of the 1945 Constitution, it is stated that the Supreme Court has the authority to try several cases at the cassation level, namely testing regulations under the law against the law. Meanwhile, the Constitutional Court's authority is related to the authority to review the constitutionality of law regarding the 1945 Constitution. This is by the provisions in Article 24C. Thus, officially, the third amendment to the 1945 NRI Constitution which was held in 2001 accepted the inclusion of the Constitutional Court in the Constitution in the perspective of constitutional theory, the judicial review system adopted is: is a form and effort to strengthen the concept of the rule of law that places the constitution as the highest law. Judicial review works based on regulations hierarchy structured

legislation. Right, to test (judicial review) is a doctrine that gives authority to the judiciary to review or even cancel regulations issued by agencies and government (Fuady, 2009) to protect the constitution from violations or irregularities that may be carried out by legislative bodies and executive actions (Widjaja and Perwira, 1996).

The Constitution is the main and fundamental basis for all legal products the level is lower. This is in line with Stufenbau's theory as put forward by Hans Kelsen, which explains that every legal order is a norm that has a hierarchical or hierarchical position. In the hierarchy of legal order, the legal rules of Lower levels gain strength from higher legal codes the level.

Furthermore, to follow up and operationalize the judicial review authority of the two institutions, each institution then issued further regulations as guidelines for implementing the said authority. The Constitutional Court issued Regulation Number 6/PMK/2005 concerning Procedure Guidelines in Legal Review Cases. Meanwhile, the Supreme Court has several times issued and revised its regulations related to its judicial review authority. Starting from Regulation Number 1 of 1993, then Regulation Number 1 of 1999, then Regulation Number 2 of 2002, and Regulation Number 1 of 2004 and finally outlined in Regulation Number 1 of 2011 which regulates the implementation of the Right to Material Review by the institution.

Making changes after changes to the operational regulations regarding the authority for the right to judicial review can be said to be an effort to maximize the regulatory review authority that the Supreme Court has so that it is expected to run well in the future. To unravel the optimization of the Supreme Court's judicial review authority through Perma No. 1/2011, this paper will attempt to analyze Perma No. 1 in the Year 2011, this paper will try to analyze it through further description in the next section.

2. METHODS

This research is normative juridical research where the study material is mainly sourced from secondary data as legal material. study material (Hendri,2023) is mainly sourced from secondary data as legal material. The legal materials legal material is

studied through a legislative approach and also a historical approach related to the history of the historical approach related to the history of the regulation of testing legislation by the Supreme Court. The analysis is carried out in a descriptive qualitative manner which is then analyzed systematically based on the study of documents and literature relevant to the object under study. relevant to the object under study. Based on the results of the analysis, conclusions are drawn which will then be used as the basis for drafting the conclusions are drawn which will then be used as the basis for preparing research recommendations.

3. RESULTS AND DISCUSSION

3.1. Brief History of Judicial Review in Indonesia

In Indonesia's constitutional history, the idea or concept of institutionalizing the authority of judicial review has long been raised. judicial review authority, especially the right to judicial review, has long been raised. Even since the beginning of the formation of the 1945 Constitution of the Republic of Indonesia by the Investigative Body for Preparatory Work for the Independence of Indonesia, which convened on 15 July 1945, proposals to establish an institution that has the authority to exercise the right to review (judicial review) had already surfaced at that time. However, during the period of the 1945 Constitution's enactment, there was no record of However, during the period of enactment of the 1945 Constitution, there was no record of the development of the right to judicial review either in theory or practice (Fatimah, 2005).

Then, during the enactment of the constitution of the Republic of Indonesia of the United States of America (RIS) in 1949, the concept of judicial review became one of the authorities possessed by the Supreme Court. Article 156 paragraph (1) illustrates that if the Supreme Court or other courts that adjudicate in cases of other courts that hear civil cases or in civil law matters considers that a constitutional regulation or a law of a region contrary to the constitution, then in the judicial decision it is also the provision is expressly declared to be unconstitutional. Meanwhile, Article 156 paragraph

(2) states that the statement is not by the constitution, whether or not there is a case is not a benchmark but can be declared unconstitutional. case is not the benchmark, but can also be based on a letter of request submitted by or on behalf of the Attorney General filed by or on behalf of the Attorney General (Gultom, 2007). Thus, it can be explained Thus, it can be explained that the 1949 RIS Constitution recognizes the existence of the authority of judicial review, but only limited to the review of State laws against the Constitution, and that authority is only available to the Supreme Court. that authority only exists in the Supreme Court.

Then, at the time of the enactment of the Provisional Constitution (UUDS) in 1950, the authority of judicial review was again abolished. This was in line with the change in the form of the state, from what was previously a federation according to the 1949 RIS constitution to a unitary state in the 1950 UUDS. After the birth of the Presidential Decree of 5 July 1959, one of which stated that the constitution of the nation of Indonesia constitution was returned to the 1945 Constitution of the Republic of Indonesia, the idea of establishing the authority for judicial review authority returned to the scene. One of them was initiated by Sri Soemantri during the Second National Law Seminar in Semarang in 1968. National Law Seminar II in Semarang in 1968 (Gultom, 2007) . However, the idea did not However, the idea did not come to fruition to realize the authority of judicial review. The debate that emerged at that time was only about what could be the object of judicial review and which institution would hold that authority.

In later developments, through Law No. 14 Year 1970 Concerning the Basic Provisions of Judicial Power, the authority of judicial review is only accommodated in Article 26. judicial review is only accommodated in Article 26 which reads:

1. The Supreme Court is authorized to declare invalid all laws and regulations legislation of a lower level than the law on the grounds of contrary to higher laws and regulations;
2. The decision on the declaration of invalidity of such laws and regulations may be made in connection with the examination at the cassation level. maybe taken in

connection with the examination at the cassation level. Revocation of the legislation declared invalid, shall be carried out by the relevant agency concerned.

By the sound of the law in question, especially Article 26, it is emphasized that the Supreme Court has the authority to carry out the practice of judicial review, but this authority only applies to statutory regulations under the law against the law. Meanwhile, the judicial institution's authority to review laws against the Constitution is completely unknown and not yet in force. Even though Law Number 14 of 1985 concerning the Supreme Court has been established, the concept of judicial review authority as confirmed in Article 31 of the law is not much different from what is confirmed in Law Number 14 of 1970, specifically in Article 26.

In fact, since the issuance of Law No. 14/1970, the Supreme Court's authority to conduct anticipatory judicial review has been wide open. Supreme Court's authority to conduct anticipatory judicial review has been wide open. Article 25 of Law No. 14/1970 states that all courts may provide information, judgment, and advice on legal matters to other state institutions if requested. to other state institutions if requested. Then Article 11 paragraph (2) of the MPR Decree No. VI/ (TAP) MPR No. VI/MPR/1973 and TAP MPR No. III/MPR/1978 concerning the Position and Working Relationship of the Supreme State Institution with/ or between Highest State Institutions mentions that the Supreme Court can provide considerations in the field of law. considerations in the field of law, whether requested or not to high state institutions. state institutions.

This provision can be interpreted as a form of judicial review authority. (anticipatory judicial review). Unfortunately, during the enactment of this provision, the Supreme Court has not been sufficiently active in responding to and exercising its authority. its authority. Even the procedure is not specified except in the form of "consultation" between the Supreme Court and higher state institutions at that time (Falaakh, 2001). Then after the issuance of MPR Decree No. III/MPR/2000 on Sources of Law and the Order of Laws and Regulations, there has been a change in the authority to review laws and regulations in Indonesia. testing of laws and regulations in

Indonesia. There are 2 (two) institutions that institutions that exercise the authority to review laws and regulations, namely the MPR and Supreme Court.

It was only after the reform era, which was then followed by amendments to the 1945 Constitution, that the concept of judicial review was introduced. UUD NRI 1945, which has been amended 4 (four) times, the concept of judicial review began to mature review began to approach the maturation stage. Of course, the formation of the Constitutional Court as accommodated through the third amendment to the 1945 Constitution should be interpreted as an effort to build a more capable system of judicial review authority in the Indonesian legal system. Since the presence of the Constitutional Court, several issues that were previously untouchable by the law, such as the mechanism of judicial review of laws, have been addressed law, such as the mechanism of judicial review of laws against the Constitution, have now been answered by the presence of the Constitutional Court 16. answered by the presence of the Constitutional Court (Sutiyoso, 2009). The Constitutional Court was given the authority to review laws against the Constitution, while the Supreme Court remains in its original position of authority, which is to conduct judicial review of laws and regulations under the law against the laws against the law. The development of the issue of the authority of judicial review authority in the country can be understood considering that the mechanism of legal testing is quite recognized as a modern legal state's way of controlling and balancing (checks and balances) the tendency of existing powers and balances) the tendency of power in the hands of government officials, which has the potential to give birth to arbitrariness.

3.2. The Dynamics of Supreme Court Regulations on the Right to Material Test

As described in the previous section, the history of the journey of the Supreme Court's authority of the Supreme Court's right to judicial review has gone through several stages and several orders of government. government. Along with that, the Supreme Court has issued several regulations in the form of Perma related to the authority to exercise the right of judicial review. regulations in the form of Perma

related to the authority to exercise the right of judicial review. The Supreme Court has issued several regulations in the form of Perma about the authority to exercise its right to judicial review. Regulations at the level of Supreme Court Regulations that have been issued in the context of the operationalization of the authority to exercise the right to judicial review owned by the Supreme Court, began with the enactment of Perma No. 1. began with enactment of Supreme Court Regulation No. 1/1993 on the Right of Judicial Review.

There are at least two main reasons behind the issuance of Perma No. 1/1993, namely, first, that the Supreme Court has the authority to issue a judicial review. First, that Article 11(4) of MPR-RI Decree No. III/MPR/1978, Article 11(4) of MPR-RI Decree No: III/MPR/1978, Article 26 of Law No. 14 of 1970, and Article 31 of Law No. 14 of 1985 authorize judicial review. Law No. 14 of 1985 authorized the Supreme Court to materially test against laws and regulations under the law. Second, until the issuance of the Perma in question, there has been no procedural law governing the implementation of judicial on the implementation of the judicial right of judicial review. Based on in light of these considerations, it is deemed necessary for the Supreme Court to regulate further the matters necessary for the smooth administration of justice regarding the right to judicial review, in particular regarding matters that have not been sufficiently regulated in the provisions of the Supreme Court. right of judicial review, particularly about matters that have not been adequately regulated in the applicable statutory provisions. applicable legislation.

Substantially, the Perma does not only regulate the procedural law regarding the implementation of the right to judicial review but also includes the expansion of the authority to test the material. implementation of the right to judicial review, but also includes the expansion of judicial review authority for all levels of the judiciary, both in the District Court, the CA, and the Supreme Court. for all levels of the judicial environment, both in the District Court, the CA, and the Supreme Court. This is not in line with This is not in line with Article 7 of Law No. 14 of 1985 which only delegates the authority of judicial review to the Supreme Court to formulate regulations to facilitate the exercise of this authority. This is not in line with Article 7 of Law No. 14 of

1985 which only delegates the authority of the right to test to the Supreme Court to form regulations to facilitate the exercise of the authority referred to 18. Then in the next development Subsequently, Supreme Court Regulation No. 1 Year 1993 was replaced by the presence of Supreme Court Regulation No. 1 Year 1999. Perma No. 1/1999 on the Material Right of Review. However, along with the development of a constitutional system of the Republic of Indonesia, especially about efforts to provide opportunities for legislators in case of material test rights, then this Perma was replaced by the presence of Perma Number 1 Year 2004 concerning the Right to Material Test.

The birth of Perma No. 1 Year 2004 was an effort to harmonies the birth of Law No. 4/2004 on Judicial Power and Law No. 5/2004 on the Supreme Court. One of the important points that should be noted from Perma No. 1 Year 2004 is related to the provisions in Chapter II on the Procedure for Filing an Objection Petition, in particular Article 2 paragraph (4) which reads "an objection request shall be submitted within a period of 180 (one hundred and eighty) days from the enactment of the legislation in question". legislation concerned". Thus, the time limit for filing objections to laws and regulations that can be submitted for judicial review to the Supreme Court is 180 days after the legislation is enacted by the authorized institution.

In the next development, Perma No. 1 of 2004 was replaced by Supreme Court Regulation Number 1 of the Year 2011 on the Right to Material Test. The birth of Perma Number 1 Year 2011 was motivated by an effort to abolish the application deadline which was previously limited to 180 days from the previously limited to 180 days from the enactment of the legislation to be challenged. to be challenged is enacted. The limitation of filing an objection to the right of judicial review material test is considered inappropriate for a general regulation (regaling) because in line with the development of (regaling) because it is in line with the development of the law in such a way that it is not by the living law. considered not by the living law that applies in this country.

3.3. Establishment of Supreme Court Regulation Number 1 Year 2011 as an Optimisation Step

The enactment of Supreme Court Regulation No. 1/2011 on the Right of Judicial Review is a step towards optimizing the authority of the Supreme Court. The establishment of Perma No. 1/2011 on the right to judicial review is a step towards optimizing the authority of the Supreme Court. It is known that before the enactment of Supreme Court Regulation No. 1/2011, the Supreme Court limited the period for objection to a law that is under its authority. legislation under its authority to conduct judicial review for 180 days from the enactment of the law. 180 days from the enactment of the legislation in question. Article 2 paragraph (4) of Supreme Court Regulation No. 1/2004 on the Right of Judicial Review states that a petition for judicial review must be filed within 180 days of the enactment of the legislation in question.

States that an objection request is submitted within 180 days of the enactment of the legislation in question. since the enactment of the legislation mentioned. With this limitation, of course, the space for justice seekers to question laws and regulations below the law becomes very narrow. Meanwhile, it is not certain that the losses that will arise from the implementation of the legislation have legislation has arisen within 180 days of the legislation being legislation is enacted. This means that the loss that will arise from the enactment of a statutory regulation may occur after 180 days have passed since the enactment of the statutory regulation. the enactment of the legislation in question. If that is the case, then the opportunity for the parties to conduct a judicial review of the legislation in question is closed. the legislation in question. As a consequence, the regulation will remain in force and the parties who feel aggrieved must resign themselves to accepting that fact. accept that fact. For this reason, the birth of Perma Number 1 Year 2011 with the elimination of the grace period for filing a petition for judicial review at the Supreme Court should be interpreted as a step to optimize the authority of the Supreme Court in the field of judicial review authority.

Nevertheless, to further optimism the settlement mechanism request for judicial review at the Supreme Court after the enactment of Supreme Court Regulation No. 1 Year 2011, then further efforts are still needed in the future. One of the areas that requires further revision is related to the basis of the petition of the parties who feel

aggrieved by the enactment of a law parties who feel aggrieved by the enactment of a regulation below law. As affirmed in Article 31 A paragraph (3) letter b of Law Number 3 Year 2009 on the Second Amendment to Law Number 3 Year 2009. Law No. 3/2009 on the Second Amendment to Law No. 14 Year 1985 Concerning the Supreme Court, the basis of the petition which must be described clearly are:

1. The content material of paragraphs, articles, and/or parts of laws and regulations under the laws are considered contrary to higher laws and regulations; and/or higher legislation; and/or

2. The formation of legislation does not fulfill the applicable provisions.

The reasoning in the first part is the basis for testing material, while the reasoning in the second part is the basis for the formal testing. Meanwhile, in the provisions of Article 31 paragraph (2) of Law Number 5 the Year 2004 Concerning the First Amendment to Law Number 14 the Year 1985 concerning the Supreme Court, it is stated that "the Supreme Court declares invalid the regulations legislation under the law because it conflicts with higher legislation or its establishment does not fulfil the applicable provision". Based on this provision, if in regulation, it is found that the content of paragraphs, articles, and/or parts of a regulation legislation it is found that the content material of paragraphs, articles, and/or parts of an under the law contradicts the law, then the Supreme Court declares that the legislation is invalid and has no binding legal force by the provisions of Article 31 paragraph (4) of the law. Then what if it turns out that a judicial review process carried out by the Supreme Court finds that only one paragraph or one article is contrary to a higher based on this provision, then the Supreme Court will only find one paragraph or one article that contradicts higher laws and regulations.

Based on this provision, the Supreme Court will give a decision stating that the entire legislation is invalid based on this provision, then the Supreme Court will give a decision stating that the entire legislation is invalid and has no binding legal force as

Based on this provision, the Supreme Court will give a decision stating that the entire legislation is invalid and does not have binding legal force as is appropriate in a formal examination (Simamora, 2011).

This is very ineffective because the material review applies the decision as a whole, not based on paragraphs, articles, or other parts that contradict the higher laws and regulations. that contradicts higher laws and regulations. In addition to that, the reason for declaring the invalidity of regulation legislation under the law by the Supreme Court is very possible with considerations contrary to higher laws and regulations (material test) and the formation of the material test) and its formation does not fulfill the applicable provisions (formal test). Meanwhile, special rules related to procedural guidelines in judicial review cases, formally and materially, have not been found to date. Because available are only procedural guidelines in the material test, while the formal test has not been established until now formal review has not been established to date. This condition requires further improvement to further optimize the right to review in the Supreme Court.

4. CONCLUSIONS

By the constitutional mandate, the Supreme Court's authority, one of which is related to the authority to review regulations under the law against the law. This is stated expressly in Article 24A paragraph (1) of the 1945 Constitution. As an effort to follow up on this provision, Supreme Court Regulation Number 1 of 2011 concerning the Right to Judicial Review was established as an operational regulation. The regulation can be said to be an optimization step the Supreme Court's right to judicial review because it has abolished the grace period for the filing of period, which was previously limited to 180 days after the legislation was enacted, as days from the enactment of the legislation as stipulated in Supreme Court Regulation No. 1/2004. Perma Number 1 Year 2004.

In order to further optimize the implementation of the authority regarding the Right to Judicial Review by the Supreme Court, it is certainly appropriate and

reasonable to think about redesigning the regulations governing the right to judicial review. However, the existing facts show that the regulatory review process is not limited to just the right to judicial review, but also includes the right to formal review. Based on this idea, Perma Number 1 of 2011 concerning the Right to Judicial Review needs to be redesigned and restructured by issuing a Perma that accommodates judicial review, both material and formal.

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