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ARRANGEMENT OF JUDICIAL POWER IN INDONESIA THROUGH THE IMPLEMENTATION OF ONE-STOP JUDICIAL REVIEW AT THE CONSTITUTIONAL COURT

PENATAAN KEKUASAAN KEHAKIMAN DI INDONESIA MELALUI PENERAPAN JUDICIAL REVIEW SATU PINTU DI MAHKAMAH KONSTITUSI

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Abstract:

As it is known that the Constitutional Court (MK) has the authority to examine laws against the 1945 Constitution of the Republic of Indonesia, while the Supreme Court (MA) has the authority to examine regulations under laws against laws. The problems will arise if the review of statutory regulations against the law is taking place in the Supreme Court, while the law that is the touchstone is also being tested in the Constitutional Court and declared contrary to the 1945 Constitution of the Republic of Indonesia. So that, regarding on this issue, an idea emerged to carry out legal reforms related to the authority to conduct judicial reviews, namely by centralizing the authority of judicial review in the Constitutional Court or what is called a one-stop judicial review. The purpose of this research is to analyze the institutional model of judicial power in other countries in dealing with judicial review cases. In addition, the purpose is to analyze the legal reasoning for the application of one-stop judicial review in the Constitutional Court. As well as analyzing the design of a one-stop judicial review arrangement in the Constitutional Court. The method used is normative legal research using statutory, conceptual, and comparative approaches. The results of the study show that the consistency of the implementation of a judiciary is an important issue to achieve tiered norm justice. Norm disputes will not be a problem in judicial practice, both at the MK and MA institutions. However, it is different if the legal norms given by the court's decision contradict each other. So that it becomes a necessity to organize the judicial power in Indonesia through the one-stop judicial review authority in the Constitutional Court.

Keywords: One Stop Judicial Review; Legal Reform; Rearrangement Judicial Power

INTRODUCTION

Based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), one of the powers possessed by the Constitutional Court (MK) is the authority to try at the first and last levels whose decisions are final and binding to review the Law (UU) against the 1945 Constitution of the Republic of Indonesia. Meanwhile, regarding the review of statutory regulations under the law against the law, the authority is given to the Supreme Court (MA) (Syahuri, 2014). The existence of a review of these laws and regulations is also related to the existence of a hierarchy of laws and regulations (Article 7 paragraph (1) of Law Number 12 of 2011 *jo.* Law Number 15 of 2019 concerning the Establishment of Legislation).

According to Bagir Manan in Hajri and Rahdiansyah (2018), that hierarchy contains several principles, namely:

First, laws and regulations that have a higher position can be used as the basis or legal basis for laws and regulations that are lower or below them. Second, lower level laws and regulations must originate or have a legal basis from a higher laws and regulations. Third, the content or contents of lower level laws and regulations may not deviate from or conflict with higher-level laws and regulations. Fourth, laws and regulations can only be revoked, replaced, or changed by higher laws and regulations, or at least with an equivalent one. Fifth, if laws and regulations of the same type regulate the same material, then the latest regulation must be enforced. However, it is not explicitly stated that the old regulation is repealed. In addition, laws and regulations governing more specific matters must take precedence over more general laws and regulations.

Implementation consistency is also an important issue to achieve tiered norm justice.

Norm disputes are basically not a problem in judicial practice, both at the Constituional Court and Supreme Court institutions. However, it is different if the legal norms given by a court decision are contradictory. Problems will arise if the review of statutory regulations against laws is taking place in the Supreme Court, while the laws that are the touchstone are also being reviewed in the Constitutional Court and are declared contrary to the 1945 Constitution of the Republic of Indonesia, then it becomes irrelevant for the application for judicial review in the Supreme Court to be implemented, because the Law which is used as a touchstone has been declared no longer valid (Putra, 2018).

Then the judicial review at the Supreme Court can also be assessed as running ineffectively. In addition to the problems above, the burden of cases handled by the Supreme Court each year can be said to exceed their capacity. This certainly can hamper the judicial review process that is currently underway at the Supreme Court, considering that the Supreme Court is the culmination of trials relating to demands for the struggle for justice for individuals or other legal subjects (Asshiddiqie, 2015).

Therefore, through this research the author wants to initiate a legal reform by structuring judicial power in Indonesia through the application of one-door judicial review in the Constitutional Court. The focus of the discussion in this study is: First, the institutional model of judicial power in other countries in handling cases of judicial review. Second, legal reasoning for the application of one-stop judicial review at the Constitutional Court. Third, the design of a one-stop judicial review arrangement at the Constitutional Court.

METHOD

The research method used is normative legal research using statutory, conceptual and comparative approaches. The statutory regulation approach in question is the statutory regulations relating to the authority of the MK and MA, as well as other related regulations. Then within the conceptual framework, the author examines the concepts associated with the authority of the Constitutional Court in conducting judicial reviews, the concept of legal certainty, and

the theory of hierarchy of norms. While on a comparative approach, the author provides a comparison regarding the authority of judicial review in other countries.

ANALYSIS AND DISCUSSION

The Institutional Model of Judicial Power in Other Countries in Handling Judicial Review Cases

1. Judicial Review in Germany

In Germany, a written constitution that serves as the basic law is called Grundgesetz. This basic German law is the result of the unification that occurred in 1949. This unification is none other than a form of control given to the Federal Constitutional Court as the guardian and supervisor of the constitutional mandate (Kommers, 2019). Before the existence of the Federal Constitutional Court, Germany already had a kind of State Court in 1815 whose authority was almost similar to that of the Federal Constitutional Court. The formation of the state court at that time was in response to dealing with problems regarding disputes over authority that occurred between states that were members of the German Confederation in 1815 (Asshiddiqie and Syahrizal, 2012).

The duties and powers possessed by the Federal Constitutional Court are regulated in 10 articles in the German Basic Law including regulating the authority of the Federal Constitutional Court to execute on orders of the state or federal government (Bund), or 1/3 of the members of the federal parliament (Bundestag) against any federal or state regulations that conflict with Grundgesetz (Grundgesetz, Art. 93 (1) (2)).

2. Judicial Review in Hungary

In Hungary, the activities of the Constitutional Court are centered on testing the constitutionality of laws and can cancel them, if the judge believes that the said law is contrary to the constitution (Article 30 (1): The Constitutional Court shall resolve the following matters in plenary session: c) ex post examination of the unconstitutionality of statues). Then in Hungary, an application to apply for a test can be filed by individuals individually, both those who are harmed or those who are not directly harmed by the birth of the law (Article XXVIII Right to Fair Trial). For example, through requests from parties who were not aggrieved, in 1990 the Constitutional Court abolished provisions governing capital punishment, as stated in the Hungarian criminal law system (5 Decision No. 23/1990 (X.31) AB).

As in the Hungarian Act of Constitutional Court in Chapter II "Procedures Falling within the Tasks and Competences of the Constitutional Court; Legal Consequences" that some of the tasks possessed by the Constitutional Court in Hungary include testing the suitability of basic law in the form of a preliminary review (*ex ante review*) prior to the recognition of the binding power of an international agreement by the President of the Republic or in the case of an international agreement being announced by a Government decision, reviewing the conformity of laws and regulations with the constitution, examining concrete cases by examining whether the legal regulations used as the basis for cases are contrary to the constitution, constitutional complaints, examining conflicts of norms regarding international agreements, ordering parliamentary referendums. Even the Hungarian Constitutional Court also examined with regard to Local Government Decrees, Normative Decrees and Regulations, and Decisions on the Uniform Application of Laws. So it can be seen that judicial review cases at the Hungarian Constitutional Court also use the one-stop model.

3. Judicial Review in United States of America

The United States, through the Supreme Court and the judiciary under it, has the authority to decide on a review case for a statutory product. The model in America shows that judicial review can be carried out by many courts, but all of them are in one-stop under the auspices of the American Supreme Court. Judicial reviews carried out by judicial institutions under the Supreme

Court can be compared to the courts above them (Soemantri, 1997).

Legal Reasoning Implementation of One-Stop Judicial Review at the Constitutional Court

1. Excessive Number of Cases in Supreme Court

The Constitutional Court as a judicial institution at the first and last level does not have an organizational structure as large as the Supreme Court which is the top of the justice system whose structure is vertically and horizontally stratified covering four judicial environments, namely the general court environment, the state administrative court environment, the religious court environment, and the military court environment. The Supreme Court has been burdened with extremely heavy duties and responsibilities, which are vulnerable and have the potential to cause piles of work and cases to go unresolved due to an overloaded workload. According to a report from the Registrar of the Supreme Court, Ridwan Mansyur, that the number of cases burdened by the Supreme Court for the first semester (January-June 2021) was 11,068 cases, consisting of 10,869 incoming cases and 199 remaining cases in 2020. Even though in the report the Supreme Court had exceeded the target for achieving the main performance indicator which was set at 70%, it was apparent that there were remaining cases in the previous year. Meanwhile, by looking at the large number of cases, giving the authority to review statutory regulations under the law against the law to the Constitutional Court will ease the burden on the Supreme Court (Kepaniteraan Mahkamah Agung RI, 2021).

In addition, when compared with the authority of the Constitutional Court, for example by looking at the other three powers of the Constitutional Court, namely in handling cases of dissolving political parties, disputes over state institutions, and resolving disputes over general election results, as well as one obligation of the Constitutional Court regarding the impeachment of the president, it can be seen The authority of the Constitutional Court is periodic and may not necessarily occur. Therefore, in order for the smoothness, effectiveness and continuity of the judiciary, one of the burdens of the Supreme Court, namely judicial review, was handed over to the Constitutional Court.

2. Guarantee Legal Certainty

Hans Kelsen explained that, the rule of law itself is nothing but the "command of the sovereign" the will of the ruling (Huda and Nazriyah, 2011). So that the law is valid if it is made by an institution or authority that has the authority to form it and is based on higher norms, where lower norms must be in accordance with higher ones, and higher norms become a reference for the norms below them (Munawaroh and Hidayati, 2015). So it is in line with what was expressed by Merkl that a legal norm always has two faces (*das Doppelte Rechtsantkizt*) (Huda and Nazriyah, 2011). The arrangement or hierarchy of the highest system of norms (basic norms) is basically the place where the norms below it depend, so that when the basic norms change, the system of norms below them will also be damaged (Munawaroh and Hidayati, 2015). Therefore, in ensuring that there is no conflict of norms, and realizing legal certainty, ideally the decision originates from one institution.

Some of the problems that have arisen so far are related to the interpretation of the legitimacy of a legal product which cannot be carried out integrally (Al-Fatih, 2018). Different interpretations may occur between the Supreme Court and the Constitutional Court, in which the Supreme Court has the authority to carry out judicial review, while the Constitutional Court has the authority to carry out material and formal examination of the truth and legitimacy of a norm (Permatasari, 2021). For example, what has happened is regarding differences in interpretation of Reconsideration (PK), namely through the Constitutional Court Decision Number 34/PUU-XI/2013, the Constitutional Court annulled Article 268 paragraph (3) of the Criminal Procedure

Code which stipulates that a PK can only be filed once. This means that through this decision the Court allowed PK to be filed more than once. Whereas the Supreme Court interprets PK differently through SEMA Number 7 of 2014, which explains that PK is only carried out a maximum of once. Another example is related to differences in interpretation and decisions issued by the MK and MA. Namely the Supreme Court Decision Number 15 P/HUM/2009 and the Supreme Court Decision Number 16 P/HUM/2009 concerning testing KPU Regulation No. 15/2009 against Law Number 10 of 2008 concerning the General Election of Members of the DPR, DPD and DPRD with the Constitutional Court Decision No. 110-111-112-113/PUUVII/2009 (Audha, 2021). In this case, the KPU does not want to carry out the Supreme Court's decision, even though the Supreme Court's decision is read out earlier than the Constitutional Court's decision.

The existence of Article 55 of Law Number 24 of 2003 jo. Law Number 7 of 2020 concerning the Constitutional Court which mandates that the review of laws and regulations under the law which is being carried out by the Supreme Court must be stopped when the law which is the basis for reviewing the regulation is in the process of being reviewed by the Constitutional Court until there is a decision by the Constitutional Court, certainly not enough in anticipating legal issues that arise from the authority to review laws and regulations between the Supreme Court and the Constitutional Court. Because what if there is a substantive conflict between the Supreme Court and the Constitutional Court decisions as mentioned earlier. This is related to the issue of legal certainty, namely which decision is valid. Even though both the Supreme Court's decision and the Constitutional Court's decision are legally valid. Of course, in practice it would not be possible to carry out two different decisions from two different institutions. Thus, the next problem arose, namely the issue concerning institutional authority. If the Supreme Court's decision is ultimately ignored because it contradicts the Constitutional Court's decision, then what is the measure of legal certainty to provide guarantees for citizens who feel their rights have been harmed.

3. Emphasize the Constitutional Court as the Court of Law and the Supreme Court as the Court of Justice

The application of one-stop for filing a judicial review at the Constitutional Court is an attempt to emphasize that the Constitutional Court is a court of law, and the Supreme Court is a court of justice, because judicial review belongs to the domain of the court of law, not the court of justice (Huda, 2012). The Supreme Court as a court of justice adjudicates injustice from legal subjects to achieve justice, while the Constitutional Court as a court of law adjudicates the validity of legal norms to achieve justice itself. Meanwhile, judicial review does not try individuals, institutions, organizations, and legal subjects, but judges the legal system (legislation) in order to achieve justice.

Supreme Court is described as the peak of the judiciary relating to demands for the struggle for justice for individuals or other legal subjects, while the Constitutional Court does not deal with individuals, but with the wider public interest. Cases tried at the Constitutional Court generally concern matters of state institutions or political institutions that concern broad public interests or relate to testing of legal norms that are general and abstract in nature, not the business of individuals or case by case of injustice either individually and concretely. For those that are concrete and individual in nature, generally only those relating to the case of "impeachment" against the President/Vice President.

Meanwhile, according to Mahfud MD, ideally, judicial power which culminates in two state institutions, namely the Supreme Court and the Constitutional Court, needs to strictly separate authority between handling conventional conflicts and handling conflicts between statutory regulations. The Supreme

Court should focus on handling conventional justice (between persons and/or institutions), while the Constitutional Court handles justice relating to conflicts of laws and regulations (MD, 2010).

Design of One-Stop Judicial Review Arrangement at the Constitutional Court

One-door judicial review arrangements at the Constitutional Court can of course be started by proposing an amendment to Article 24 A paragraph (1) in conjunction with Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The hope is that this can become an alternative in the idea of the fifth amendment to the 1945 Constitution of the Republic of Indonesia. Of course in the proposal The amendment is only related to the authority to review statutory regulations, so that it does not offend other authorities in the two articles (Audha, 2021).

Proposed amendments to Article 24 A paragraph (1) in conjunction with Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia can be seen in the following table:

Article	*Status Quo*	Proposed Changes
Article 24A paragraph (1)	The Supreme Court has the authority to adjudicate at the cassation level, examine statutory regulations under the law against the law, and has other powers granted by law.	The Supreme Court has the authority to adjudicate at the cassation level and has other powers granted by law.
Article 24 C paragraph (1)	The Constitutional Court has the authority to try at the first and last levels whose decisions are final to review laws against the Constitution....	The Constitutional Court has the authority to adjudicate at the first and final levels whose decision is final to review laws under the Constitution against the Constitution and/or laws that have a higher hierarchy ....

Regarding the proposed amendment to Article 24 C paragraph (1), regarding sentence fragments *"...review laws under the Constitution against the Constitution and/or laws that have a higher hierarchy...",* means that the judicial review conducted by the Constitutional Court is adjusted to the construction of the prevailing Indonesian legal system, which consistently almost always uses the term "hierarchy" when talking about the order of laws. Furthermore, regarding the phrase "*and/or*" it means that the 1945 Constitution of the Republic of Indonesia and laws that have a higher hierarchy can be used by the Constitutional Court as a touchstone, both in terms of choice and cumulative meaning (Audha, 2021).

CONCLUSION AND RECOMMENDATIONS

The authority to examine the legitimacy of the rule of law in Indonesia is held by the Constitutional Court and the Supreme Court. The existence of the Constitutional Court institution is a new breath and spirit, that the ideals of law (rechtsidee) and the ideals of the state (staatsidee) must be maintained. The Supreme Court does not only have a judicial function, but also has other functions, one of which is a supervisory function. Meanwhile the Constitutional Court only has a function solely as a spearhead to examine materially the legal rules of the Act. Therefore the idea of making arrangements for judicial power by giving the authority to judicial review of laws and regulations under the Law against the Law is the right thing.

As for the recommendation from the author to further maximize the results of this idea, it is necessary to carry out further research, especially with regard to the 5th Amendment of the 1945 Constitution of the Republic of Indonesia which relates to the duties and powers of the Constitutional Court

and the Supreme Court.

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