NOMOI LAW REVIEW

VOLUME 4, ISSUE 1
MAY 2023

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.14946

THE EXISTENCE OF CONSTITUTIONAL COURT DECISIONS IN THE HIERARCHIES OF LEGISLATION IN INDONESIA

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ABSTRACT

The Constitutional Court is one of the state institutions in Indonesia that exists within the jurisdiction of the judiciary. The main background for the birth of the Constitutional Court in Indonesia is the result of a change from an authoritarian government system to a democratic one. The existence of the Constitutional Court is expected to provide significant restrictions on the formation of laws in Indonesia which are considered to be tools that are misused by certain oligarchs in fulfilling the interests of their groups. As was the conclusion of Mahfud MD's dissertation which said that basically politics determines law. The discussion in this chapter will examine the existence of the Constitutional Court's decision in terms of reviewing laws against the 1945 Constitution in the hierarchy of laws and regulations in Indonesia. Broadly speaking, the discussion will be divided into three sub-chapters, first , regarding the background of the birth of the Constitutional Court in Indonesia and the powers it has, second , the hierarchy of laws and regulations in Indonesia, third , the existence of the Constitutional Court's decision in reviewing laws against laws Basic 1945 in the hierarchy of laws and regulations in Indonesia. The main conclusion from the discussion of this sub-chapter is to emphasize that basically the decision of the Constitutional Court greatly influences the existence of a law that is being enacted, because the Constitutional Court can negate a law that is considered contrary to the 1945 Constitution. This fact can affect other legal products contained in the hierarchy of laws and regulations in Indonesia, especially those under the law and which have the same status as the law, namely government regulations in lieu of laws.

Keywords : Constitutional Court Decision, Hierarchy.

Journal History

Received : May 23, 2023;
Reviewed : May 26, 2023;
Accepted : May 30, 2023;
Published : May 30, 2023.

NOMOI LAW REVIEW
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MAY 2023
ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
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INTRODUCTION

In its development, the formation of laws and regulations has become a very central issue in the state administration of a country. This is because through the formation of these laws and regulations the direction and movement of the continuity of state administration is determined. As a man-made product of human thought, there are definitely no perfect laws. There are many weaknesses and deficiencies in laws made by humans, resulting in the need to make corrections to these legal products. In this discussion, the focus will be on statutory level legal products. The definition of law is normatively emphasized in Article 1 point (3) of Law Number 12 of 2011 concerning the Formation of Legislation (UU P3). In the article it is emphasized that what is meant by law is statutory regulations formed by the People's Representative Council (DPR) with the approval of the President. If the law is deemed to be contrary to the 1945 Constitution (1945 Constitution), the procedure that can be taken is to review the law against the 1945 Constitution to the Constitutional Court, or commonly known as a judicial *review* . However, in this paper, to specify that the review in question is a review carried out by the Constitutional Court, the author prefers to use the sentence *constitutional review* , this is because the use of the sentence *judicial review* is too broad so that its use is not appropriate to describe the review of laws against the 1945 Constitution. conducted by the Constitutional Court. As we know, the Supreme Court also has the authority to review statutory regulations under laws against laws which is also known as *judicial review* . The difference between the review of legal products conducted by the Constitutional Court and the Supreme Court will be examined in the next sub-chapter.

The Constitutional Court has an important role in making corrections to laws in Indonesia. The authority of the Constitutional Court is constitutionally affirmed in Article 24C of the 1945 Constitution. Based on the formulation of the article it is emphasized that the Constitutional Court has the authority to try at the first and final levels whose decisions are final in examining laws against the 1945 Constitution. This also made Jimly Asshiddiqie say that *constitutional review* is the authority of the Crown from the Constitutional Court.[1] In theory and practice, there are two forms of *constitutional review review* conducted by the Constitutional Court, namely formal review (*formele toetsingsrecht*) and material review (*meteriele toetsingsrecht*). [2]Formal testing is a test that is carried out in assessing the legitimacy of the procedures for forming statutory regulations that have been formed. Then, material testing assesses the conformity of the material content to a

[1] {Formatting Citation}

[2] Fatkhurohman (Last), Dian Aminudin, And Sirajuddin, *Memahami Keberadaan Mahkamah Konstitusi Di Indonesia* (Bandung: Pt Citra Aditya Bakti, 2004).

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higher norm. [3]Since the Constitutional Court was established in 2003, only once has the Constitutional Court granted a formal review, namely through Decision Number 91/PUU-XVIII/2020. [4]*The constitutional review* authority attached to the Constitutional Court positions this institution as having a strategic role in the existing laws in Indonesia. This is because the Constitutional Court through its decisions can negate the enactment of a law. This opinion is increasingly emphasized as contained in Article 10 of the P3 Law. In that article it is emphasized that follow-up on decisions issued by the Constitutional Court is one of the contents that must be regulated in the law.

Currently, the laws and regulations in Indonesia are regulated in Law Number 12 of 2011 concerning the Formation of Legislation. [5]In its development, there have been many dynamics contained in the hierarchy of laws and regulations in Indonesia. In his writings, Bayu Dwi Anggono emphasized that there are at least two rules that must be obeyed in the formation of laws and regulations. *First* , the basic order of laws and regulations, namely order related to the principles, types, hierarchies and content of a law.[6] *Second* , orderly formation of laws and regulations relating to planning, drafting, discussing, ratifying, or stipulating and enacting. [7]To ensure that these regulations have been complied with or not, submitting *a constitutional review* to the Constitutional Court is a way that can be taken by justice seekers. This paper will examine the existence of the Constitutional Court's decision in reviewing laws against the 1945 Constitution in the hierarchy of laws and regulations in Indonesia.

[3] Idul Rishan, "Konsep Pengujian Formil Undang-Undang Di Mahkamah Konstitusi," *Jurnal Konstitusi* 18, No. 1 (May 27, 2021): 001–021.

[4] Geofani Milthree Saragih, "Kajian Filosofis Terhadap Pemberlakuan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dari Perspektif Teori Jhon Austin Pasca Putusan Mahkamah Konstitusi Nomor 91/Puu/Xvii/2020," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, *No* . 4 (November 7, 2022): 28–41.

[5]In Its Development, It Has Undergone Several Changes, Namely Through Law Number 15 Of 2019 Concerning Amendments To Law Number 12 Of 2011 Concerning The Formation Of Legislation And Finally At The Time Of Writing Law Number 13 Of 2022 Concerning The Second Amendment To Law Number 12 Of 2011 Concerning Formation Of Legislation.

[6] Bayu Dwi Anggono, "Tertib Jenis, Hierarki, Dan Materi Muatan Peraturan Perundang-Undangan: Permasalahan Dan Solusinya," *Masalah-Masalah Hukum*," *Legal Issues* 47, No. 1 (January 30, 2018): 1.

[7] Ahmad Syarifuddin Natabaya, *Sistem Peraturan Perundang-Undangan Indonesia* (Jakarta: Secretariat General Of The Constitutional Court, 2006).

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METHOD

The method used in this research is normative juridical law research method. Normative juridical research that uses a statute approach by examining various legal rules.[8]

DISCUSSION

Constitutional Court and Its Powers

Discussing the history of the formation of the Constitutional Court cannot be separated from the history of state administration in Indonesia. History records that there have been deviations in the administration of state administration from the ideology of Pancasila and the 1945 Constitution. This situation has created an imbalance between state institutions, where the executive power has a very large role and influence. This can be seen from the excessive and absolute style of presidential power, such a situation is often referred to as *executive heavy* . During the ORBA era, the *executive weight* could be seen for several reasons as stated by Mahfud MD. *First* , the development of an executive heavy system that makes the president the determinant of the entire national political agenda. *Second* , it contains important articles that have multiple interpretations and the interpretation that must be considered correct is the government's unilateral interpretation. *Third* , attribution of too much authority to the legislature to regulate important matters by law without clear restrictions, even though the president was the holder of legislative power with the DPR, which at that time was only given the function of approving . *Fourth* , the original text of the 1945 Constitution trusts the spirit of the people more than a strong system. [9]Mahfud MD wrote, that based on the original draft of the 1945 Constitution, what is written in the 1945 Constitution will be meaningless if it is not accompanied by the spirit of the organizers, government will be good if the spirit of the organizers is also good. [10]So that the role of state administrators greatly influenced the meaning of each of the articles contained in the 1945 Constitution itself, even during the ORBA era, there was a very centralized power that was often carried out only to realize political interests. The poor governance that occurred during the New Order era created political instability which created a crisis for the Indonesian state.

[8] Eka Nam Sihombing, Cynthia Hadita , *Penelitian Hukum* (Malang: Setara Press, 2022).

[9] Moh. Mahfud Md, *Konstitusi Dan Hukum Dalam Kontroversi Isu* (Jakarta: Pt Rajagrafindo Persada, 2012).

[10] Ibid.

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As is generally the case in developing countries, at that time there was an extra-constitutional change, or often referred to as reform. [11]In general, the background for extra-constitutional changes is because their rulers tend to maintain their position as rulers in any way, even in ways that are unconstitutional or openly. [12]This was also shown by the Soeharto regime during the ORBA period. The beginning of entering the era of reform in Indonesia began on the day when Soeharto resigned as President, namely on May 21, 1998. However, in its development, the determination to eradicate all forms of abuse in accordance with the demands of reform such as corruption, collusion, nepotism and abuse of power has not been followed by concrete steps and seriousness from the government and law enforcement officials. The interference from the authorities in the judicial process is still very large. This situation creates distrust of the people towards law enforcement. Enforcement of human rights and efforts to realize democracy in Indonesia at that time stagnated. There were still many other problems that existed in the Indonesian constitution at that time. This situation prompted major changes to the Indonesian state constitution, namely the 1945 Constitution, to create a better state administration. It is recorded that there have been four amendments to the 1945 Constitution, namely the first amendment in 1999, the second amendment in 2000, the third amendment in 2001 and finally the fourth amendment in 2002.[13]
The MK itself was formed through the third amendment in 2001. The history of the birth of the MK in Indonesia was clearly inspired by other countries. Even so, it does not mean that it is received as a whole (*reception in complexu*). [14]Regarding the constitutional formation of the Constitutional Court, it is emphasized in Article 24 Paragraph (2) of the 1945 Constitution (the third amendment), that judicial power is exercised by a Supreme Court and judicial bodies under it within the general court environment, religious court environment, military court environment, environmental state administrative courts and a Constitutional Court. Thus, as emphasized in the article, the judicial power in Indonesia adheres to a bifurcation system, namely the judicial power is divided into two branches, namely the Supreme Court (MA) and the Constitutional Court (MK). Regarding the constitutional authority of the Constitutional Court, it is confirmed in Article 24C

[11] Lodewijk Gutom, *Eksistensi Mahkamah Konstitusi Dalam Struktur Ketatanegaraan Di Indonesia* (Bandung: Cv. Utomo, 2007).

[12] Ibid.

[13]In The Debate, Some Said That The Amendment Actually Only Happened Once In Four Series As Stated By Mahfud Md In His Book Entitled *"Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi"* Which Was Published By Rajagrafindo Persada In 2011.

[14] Fatkhurohman (Last), Dian Aminudin, And Sirajuddin, *Memahami Keberadaan Mahkamah Konstitusi Di Indonesia*..

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paragraph (1) of the 1945 Constitution. The powers of the Constitutional Court are as follows:

1. Testing laws against the Constitution

   The Constitutional Court's decision in reviewing laws against the Constitution has a constitutive nature, meaning that the Constitutional Court's decision contains the meaning of abolishing the old law and at the same time forming a new legal situation. [15]The authority of the Constitutional Court in terms of reviewing laws against the Constitution by several experts on Constitutional Law in Indonesia is referred to as "the authority of the crown". The author agrees with this statement, bearing in mind that the main background for the birth of the Constitutional Court was to establish a judicial power institution that has the authority to review laws against the Constitution. Thus, the main idea for the birth of the Constitutional Court was due to the importance of granting *constitutional review authority* to a judicial power that is free and independent from other state institutions. Within the authority to review laws against the Constitution, the object of justice is the law, to prove whether the law is contrary to the Constitution or not. Testing laws against the Constitution can be carried out materially (*material toetsing*) and formally (*formele toetsing*). Formal review is a test related to the process or method of enacting a law which the applicant considers does not comply with the provisions based on the law. [16]Thus, the formal review will carry out tests on the basis of authority in the formation of laws and procedures that must be followed from the drafting stage to the announcement in the State Gazette which must comply with the provisions that apply to it. [17]At the law level, arrangements regarding formal review are regulated in Article 51A paragraphs (3) and (4) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. The definition *that can be developed in* the framework of understanding the conception of formal testing is very complex. (*appropriate institution*) and according to appropriate procedures (*appropriate procedure*). [18]Examining whether the law-making process is appropriate or not is the essence of formal testing.

[15] Maruarar Siahaan, *"Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi Dan Mahkamah Agung," Jurnal Konstitusi* 17, No. 4 (January 25, 2021): 729–752.

[16] Marwan Mas, *Hukum Acara Mahkamah Konstitusi* (Bogor: Ghalia Indonesia, 2017).

[17] Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sinar Graphic, 2015).

[18] Tanto Lailam, "Analisis Praktik Pengujian Formil Undang-Undang Terhadap Undang-Undang Dasar 1945," *Jurnal Pranata Hukum* 6, No. 2 (2011).

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Formal testing can be said to be very difficult for the Constitutional Court to do. This can be seen from the fact that, until the time of this writing, only one formal examination was received at the Constitutional Court, as of the Constitutional Court's establishment in 2003. The growing assumption is that the failure of the formal examination so far has been due to the procedure for forming laws. does not have a clear coordinate point in the 1945 Constitution. The Constitutional Court decision Number 91/PUU-XVII/2020 is clearly a monumental decision, because this decision has proven that formal review in the Constitutional Court is not a necessity and indirectly giving notice to legislators to be more careful in forming a law, this is because if the formal review is accepted (in full), then the entire contents of the law will be null and void. Material review is a review of laws against the 1945 Constitution relating to material content of paragraphs, articles and/or parts of laws deemed by the applicant to be contrary to the 1945 Constitution. Thus, the focus point of material review is on certain [19]articles or paragraphs which, if accepted will cancel the part, article, paragraph or phrase that is being tested to the Constitutional Court. In the material review, as said by Maruarar Siahaan, that in the material review being tested may only be certain parts, paragraphs, articles which are deemed to be contrary to the constitution and therefore are requested not to have legally binding force only in so far as they concern parts, paragraphs, and articles certain laws in question.[20]

2. Deciding disputes over the authority of state institutions whose powers are granted by the Constitution

   One of the most important powers possessed by the Constitutional Court is deciding disputes over the authority of state institutions. After the amendments to the 1945 Constitution were made, many changes occurred in the Indonesian constitution. One of the changes in question is in the aspect of state institutions. [21]Regarding the trial of disputes over the authority of state institutions, there are two important things that must be known. First, that the subject in dispute must be a state institution whose authority is directly granted by the 1945 Constitution. Second, that the object in dispute is the exercise of the authority granted by the 1945 Constitution. In the Decision of the Constitutional Court Number 04/SKLN-III/2006, it is stated that even though a state institution has been stipulated by the 1945 Constitution, if the authority in dispute is not the authority granted directly

[19] Bro, *Hukum Acara Mahkamah Konstitusi.*

[20] Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia.*

[21] King Faisal Sulaiman, *Politik Hukum Kekuasaan Kehakiman Indonesia* (Yogyakarta: Uii Press, 2017).

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by the 1945 Constitution, such disputes do not include the authority of the Constitutional Court to examine , tried and decided it. According to the former Judge of the Constitutional Court, Abdul Mukthie Fadjar in his book, that state institutions regarding the regulation of their authority are not only regulated in the 1945 Constitution, but also contained in the law. [22]State institutions whose authorities are regulated in the 1945 Constitution are the MPR, President, DPR, DPD, MA, BPK, Regional Government, KPU, KY, MK, Central Bank, TNI and POLRI (13 state institutions), especially regarding the Central Bank, further regulation regarding their authority in the law. If interpreted in a moderate manner, only the MPR, the President, the DPR, the DPD, the BPK, the Supreme Court and the Constitutional Court are referred to as state institutions that have constitutional authority, so that those that can be made the subject of dispute after deducting the Supreme Court and the Constitutional Court are the MPR, the President, the DPR, the DPD and the BPK . [23]Initially, based on Article 65 of the Constitutional Court Law, it was stated that the Supreme Court was excluded from being a party to disputes over the authority of state institutions. However, the existence of Article 65 of the Constitutional Court Law creates legal inconsistency, because in Article 61 paragraph (1) of Article 65 of the Constitutional Court Law it is stated that the petitioner in the case of a dispute over the authority of a state institution is a state institution whose authority is granted by the Constitution. It is clear that the Supreme Court is also a state institution whose authority is directly granted by the Constitution. Along with its development, the provisions of Article 65 of Law Number 24 of 2003 concerning the Constitutional Court have been revoked through Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, so that the Supreme Court can become a disputing state institution.

3. Decide the dissolution of political parties

   Political parties are the pillars of representative democracy, [24]This means that political parties have a very important role for a country that asserts itself as a democratic country, namely as the infrastructure and epicenter of the democratic process. Joining or forming a political party is part of the freedom of association which has been guaranteed in Article 28 of the 1945

[22] Abdul Mukhtie Fadjar, *Hukum Konstitusi Dan Mahkamah Konstitusi (* (Jakarta: Secretariat General And Registrar Office Of The Indonesian Constitutional Court, 2006).

[23] Ni'matul Huda, *Sengketa Kewenangan Lembaga Negara (Dalam Teori Dan Praktik Di Mahkamah Konstitusi),* (Yogyakarta: Uii Press, 2016).

[24] Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta: Pt. Bhuana Ilmu Komputer, 2007).

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Constitution before the amendment, after the amendment the provisions are still maintained with an expansion of meaning. [25]The Constitutional Court's authority regarding the dissolution of political parties at the statutory level is regulated in Part Ten of the Constitutional Court Law. In Article 68 of the Constitutional Court Law, it is emphasized that the government can be the applicant. In this case, because the government is led by the President, the government department representing the government to apply for the dissolution of a political party must be appointed by the President or based on a power of attorney. [26]In the application for the dissolution of a political party, the applicant must clearly designate the political party that will be applied for to be dissolved. The reason for the application that must be published based on the provisions of Article 68 paragraph (2) of the Constitutional Court Law is that it must describe that the ideology, principles, goals, programs and activities of the political party concerned are considered contrary to the 1945 Constitution. The main requirement for the establishment of a political party in Indonesia is that it must be based on Pancasila and the 1945 Constitution. This can be seen from the provisions of Article 1 paragraph (1) of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties which defines a political party as an organization that is national in nature which basically emphasizes that political parties must be based on Pancasila and the 1945 Constitution. Historically, the main requirement for the establishment of a political party must be based on Pancasila and the 1945 Constitution is very long. The first time regarding the affirmation that Pancasila is the single ideological foundation in the establishment of political parties was in MPR Decree Number II/MPR/1983 and Law Number 3 of 1985 concerning Amendments to Law Number 3 of 1975 concerning Political Parties and Working Groups . Until this reform era, the main conditions for the establishment of political parties were still maintained. [27]In fact, it has been clear that the ideology (teaching or understanding) that is most opposed in terms of the establishment of a political party in Indonesia can be seen in Law Number 27 of 1999 concerning Amendments to the Criminal Code relating to Crimes against State Security which this is the most important reason for the dissolution of

[25] Putu Eva Ditayani Antari, *"Kewenangan Pembubaran Partai Politik Oleh Mahkamah Konstitusi Ditinjau Dari Perspektif Hak Asasi Manusia (Ham),"* Jurnal Magister Hukum Udayana 7, No. 3 (2014).

[26] Siahaan, Hukum Acara Mahkamah Konstitusi Republik Indonesia.

[27] Putra Perdana Ahmad Syaifulloh, "Kewajiban Partai Politik Berideologi Pancasila Ditinjau Dari Prinsip-Prinsip Negara Hukum Indonesia," Jurnal Pandecta 11, No. 2 (2016).

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political parties according to the Criminal Procedure Code. [28]According to Jimly Asshidiqie, that there is a legal vacuum in terms of the authority to dissolve political parties by the MK. [29]What Jimly Asshiddiqie meant was that there was a political party that was disbanded by the Government without following the procedure referred to in Law Number 24 of 2003 Concerning the Constitutional Court, what path could the related political party take? Until now, there are no legal provisions that can be used by political parties in such circumstances. Until the time this research was made, deciding on the dissolution of political parties was the only authority that the Constitutional Court had never exercised. This is widely suspected because of the limitations of the applicant contained in Article 68 of Law Number 24 of 2003 concerning the Constitutional Court.

4. Deciding disputes about election results

   Regarding the authority of the Constitutional Court in terms of authority over general election results disputes is regulated in Part Eleven of Law Number 24 of 2003 concerning the Constitutional Court and several articles have been amended in Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Court Constitution. Based on Article 74 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, those who can become petitioners in a dispute over the general election results are individual Indonesian citizens, pairs of presidential and vice-presidential candidates participating in elections and political parties participating in elections. An application can only be filed against the determination of the results of the general election conducted by the KPU which in this case affects the election of candidates for members of the DPD, pairs of candidates for President and Vice President participating in the election for President and Vice President and political parties participating in the election. However, in its development the regional head election regime (Pilkada) is also included in the election regime. The expansion of the Pilkada regime into general elections began with the promulgation of Law Number 12 of 2008 concerning amendments to Law Number 32 of 2004 concerning Regional Government. In this law there is a provision in Article 236C which states that regional election disputes have been transferred from the Supreme Court to the Constitutional

[28] The Ideology In Question Is The Ideology Of Communism, Marxism And Leninism.

[29] Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*.

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Court. [30]Then, it is also a consequence of Law Number 22 of 2007 concerning the Implementation of General Elections which places Pilkada into the Election regime. [31]After the enactment of this law, the terms General Election of Regional Heads and Representatives to the Regions also appeared. [32]The Constitutional Court itself has also emphasized that the Pilkada regime is part of its authority through Constitutional Court Decision Number 072-073/PUU-II/2004 (regarding the review of Law Number 2004 concerning Regional Government, can be read on page 11). However, in its development, the Constitutional Court had stated that regional election disputes were not the authority of the Constitutional Court, through the Constitutional Court Decision Number 97/PUU-XI/2013. However, currently the authority to decide regional election disputes is a permanent authority that belongs to the MK through Constitutional Court Decision Number 85/PUU-XX/2022.[33]

After this authority, the Constitutional Court has the obligation as emphasized in Article 24C paragraph (2) of the 1945 Constitution, namely that the Constitutional Court is obliged to render a decision on the opinion of the DPR regarding alleged violations by the president and/or vice president according to the Constitution. However, there is a view that basically the authorities and obligations possessed by the Constitutional Court are the same. One of them is Constitutional Justice Saldi Isra, who said in a webinar that there is no fundamental difference between the powers and obligations of the Constitutional Court. [34]In its history, there is an authority that has never been exercised by the Constitutional Court because no one has conveyed it to the Constitutional Court, namely the authority in dissolving political parties. Then, the obligations owned by the Constitutional Court have also not been used since the Constitutional Court was formed. The mechanism of the PMK's are made in the constitutional court.

[30] Joko Widarto, *"Konstitusionalitas Kewenangan Mahkamah Konstitusi Dalam Menyelesaikan Sengketa Pemilihan Umum Kepala Daerah,"* Lex Jurnalica 11, No. 2 (2014).

[31] A. Abid Ulil Albab Af, "Problem Kewenangan Mahkamah Konstitusi Memutus Perselisihan Hasil Pilkada," Jurnal Hukum Dan Pembangunan 48, No. 3 (2018).

[32] Rosidi And Ahmad, "Kewenangan Mahkamah Konstitusi Menyelesaikan Sengketa Pemilihan Umum Kepala Daerah Dan Wakil Kepala Daerah," *Jurnal Ilmiah Rinjani* 6, No. 2 (2018).

[33] Geofani Milthree Saragih, "Kewenangan Penyelesaian Sengketa Pemilihan Kepala Daerah Pasca Putusan Mahkamah Konstitusi Nomor 85/Puu-Xx/2022," *Jurnal Hukum Caraka Justitia* 2, No. 2 (2022).

[34]The Webinar Was Conducted By The Faculty Of Sharia And Law, Sunan Kali Jangga University, Yogyakarta In Collaboration With The Indonesian Constitutional Court, On October 2, 2021 (Held In A Hybrid Manner).

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Hierarchy of Laws and Regulations in Indonesia

Historically, there have been many changes in both theoretical and practical aspects of the formation of laws and regulations in Indonesia, especially during the transition from the New Order (ORBA) to the Reform Order. It can be said that the formation of laws and regulations during the ORBA period tended to be closed and minimal public participation, even legal products at that time, especially laws, were seen as a tool for the government in carrying out its regime. [35]One of the important things that must be emphasized in the formation of laws and regulations in Indonesia is that Pancasila is the main basic foundation in the formation of laws and regulations in Indonesia. [36]This is also confirmed in Article 2 of UU P3. So in this case, every existing law and regulation in Indonesia must comply with the 1945 Constitution as the highest legal basis and Pancasila as the ideological foundation of the nation and state. Based on Article 7 of Law P3, the current hierarchical order of laws and regulations in Indonesia is as follows:

1. The 1945 Constitution;
2. Representative Deliberative Assembly Decree;
3. Laws/Government Regulations in Lieu of Laws;
4. Government regulations;
5. Presidential decree;
6. Provincial Regulation;
7. District/City Regional Regulations.

From the hierarchy of laws and regulations above, it can be concluded that there are two legal products that have a higher position than laws, namely the 1945 Constitution and the TAP MPR. From the hierarchy of laws and regulations emphasized in Article 7 paragraph (1) of UU P3, it can be understood that the highest normative basis for establishing laws and regulations in Indonesia is the 1945 Constitution. Thus, all existing laws and regulations Indonesia must be based on the 1945 Constitution normatively. [37]However, as previously emphasized, that Pancasila is the source of all legal sources in Indonesia, therefore the formation of laws must also be in accordance with the values contained in Pancasila. Pancasila has been confirmed as the source of all sources of law in Indonesia on August 18, 1945 as emphasized in the Preamble to the 1945 Constitution which emphasized Pancasila as the source of all sources of Indonesian state law.

[35] Bivitri Susanti, "Menyoal Jenis Dan Hierarki Peraturan Perundang-Undangan Di Indonesia" 1, No. 2 (2017).

[36] Jawahir Thontowi, *Pancasila Dalam Perspektif Hukum (Pandangan Terhadap Ancaman "The Lost Generation")*, (Yogyakarta: Uii Press, 2016).

[37] Geofani Milthree Saragih, *"Pancasila Sebagai Landasan Filosofis Pembentukan Peraturan Perundang-Undangan Di Indonesia,"* Jupank (Jurnal Pancasila Dan Kewarganegaraan) 2, No. 12 (2022).

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ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663
DOI: 10.30596/nomoi.v%vi%i.14946

Decision of the Constitutional Court in the Hierarchy of Laws and Regulations in Indonesia

Previously, the Constitutional Court had discussed the authorities, one of which was *the constitutional review* , which was then continued by discussing the hierarchy of laws and regulations in Indonesia. As we know, legal products that can be *constitutionally reviewed* by the Constitutional Court are laws and government regulations in lieu of laws. [38]To find out about the existence of the Constitutional Court's decision in the hierarchy of laws and regulations in Indonesia, we will examine it through the arrangements and affirmations of the Constitutional Court in UU P3. In Article 9 paragraph (1) of UU P3 it is stated that if a law is alleged to be contrary to the 1945 Constitution, the Constitutional Court can review it. This article emphasizes that every article, paragraph, part or even the entire law deemed contrary to the 1945 Constitution can be reviewed by the Constitutional Court, in this case the Constitutional Court is positioned as a *negative legislature* . However, in its development, the Constitutional Court has directed and even several opportunities have shifted towards *positive legislation* because in several decisions it has ordered legislators to act accordingly, for example, such as revising a law. As is known that the Constitutional Court's decision is final and binding, there are no other legal remedies that can be taken. But in practice, even though normatively the Constitutional Court's decision is confirmed to be final, the Constitutional Court's decision does not necessarily have *legal efficacy* or *be executable* . [39]It can be said that in practice, several decisions of the Constitutional Court were not followed up. Several formulations and ideas so that the Constitutional Court's decision is really followed up, especially by *the adresat of* the decision, can be read in the thesis written by the author with the title "Juridical Review Concerning the Follow-up of Constitutional Court Decisions by State Institutions in Indonesia". However, basically we have come to a conclusion that the Constitutional Court is the only judicial power institution that can review the constitutionality of laws against the 1945 Constitution, even against the ideology of Pancasila. Because of that, MK by the author is also referred to as " *the guardian of ideology* ".

Then, in Article 10 paragraph (1) UU P3 it is emphasized that there are several deadly materials that must be regulated by law, namely as follows:

1. Further arrangements regarding the provisions of the 1945 Constitution of the Republic of Indonesia;

[38]Based On The Constitutional Court Decision Number 138/Puu-Vii/2009, The Constitutional Court Has The Authority To Review Government Regulations In Lieu Of Laws.

[39] Mohammad Fajrul, *Pertumbuhan Dan Model Konstitusi Serta Perubahan Uud 1945 Oleh Presiden, Dpr Dan Mahkamah Konstitusi* (Yogyakarta: Gadjah Mada University Press, 2014).

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2. Order a law to be regulated by law;
3. Ratification of certain international agreements;
4. Follow up on the decision of the Constitutional Court;
5. Fulfillment of legal needs in society.

Thus UU P3 emphasizes that one of the contents that can be regulated in a law is the follow-up to the Constitutional Court's decision. Furthermore, Article 10 paragraph (2) of UU P3 emphasizes that the follow-up to the Constitutional Court's decision is carried out by the DPR or the President. Because basically, what becomes *the address of* a decision in reviewing a law against the 1945 Constitution is a *positive legislature* if action is needed to follow up on the constitutional mandate embedded by the MK in its decision. Then, in Article 23 of the P3 Law it is stated what is an open cumulative list consisting of:

1. Ratification of certain international agreements;
2. Due to the decision of the Constitutional Court;
3. State budget;
4. Formation, division and merger of Provinces and/or Regencies/Cities;
5. Stipulation/revocation of Government Regulation in Lieu of Law

The provisions of this article emphasize that the Constitutional Court's decision is included in the open cumulative Prolegnas list, [40]where the Constitutional Court's decision is one of the most important and has an urgency to be immediately included in an amendment to a law. Arrived at a conclusion, that the Constitutional Court's decision has an influence on the hierarchy of laws and regulations in Indonesia. This is because the Constitutional Court through reviewing laws against the 1945 Constitution can negate a law or even give a mandate to the *positive legislature* as *address of* related decisions to follow up on its decisions in the form of amending a law in accordance with the considerations contained in its decision. By changing a law, of course it has a direct effect on legal products whose position is lower than the law where the review can be carried out by the Supreme Court if deemed contrary to the law. [41]Thus, the existence of the Constitutional Court's decision in the hierarchy of laws and regulations in Indonesia can be identified through its influence in examining a law against the 1945 Constitution. The influence of the Constitutional Court's decision on a law will of course have implications for other legal products both vertically (downwards) or horizontally (equivalent law).

[40]An Open Cumulative Is A List Of Specific Bills That Can Be Submitted Based On Need (Read Article 27 Of Dpr Ri Regulation Number 2 Of 2016 Concerning Procedures For Compiling National Legislation Programs).

[41]Constitutionally, This Authority Is Confirmed In Article 24a Paragraph (1) Of The 1945 Constitution.

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CONCLUSION

The Constitutional Court is a judicial power institution that was formed during the reformation period, to be precise in the third amendment to the 1945 Constitution in 2001. The main reason for the formation of the Constitutional Court was to limit state administration by other branches of power, particularly in this case in the field of legislation. That is, the authority of the Constitutional Court in reviewing laws against the 1945 Constitution positions it as a *negative legislature* , while the DPR and the president as *positive legislature* . Thus, there is supervision of the implementation of legislation in Indonesia which is clearly very full of political intervention. The influence of the Constitutional Court through its decisions in reviewing laws against the 1945 Constitution confirms its existence in the hierarchy of laws and regulations in Indonesia indirectly. This is because through its decisions, the Constitutional Court can affect the continuity of the enactment of a law whose position is vertically under the law or horizontally has the same position as the law. Then, such an important influence also positions the Constitutional Court as *the guardian of ideology* , because in addition to reviewing laws against the 1945 Constitution, the Court can also review laws against the ideology of the nation and state, namely Pancasila (although not strictly). This is because, the values contained in the ideology of Pancasila are also contained in the fourth paragraph of the opening of the 1945 Constitution.

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