

**THE POSITION AND IMPLICATIONS OF TESTING MPR/S
DECISIONS IN THE INDONESIAN STATE SYSTEM****Adhe Ismail Ananda****Universitas Sains Islam Al Mawaddah Warrahmah Kolaka****E-mail : adheismayl04@gmail.com**

ABSTRACT

The constitutional dynamics of Indonesia have undergone rapid development, marked by four amendments to the 1945 Constitution. These dynamics have affected the authority of state institutions, including the People's Consultative Assembly (MPR) and its legal products, namely MPR Decrees (TAP MPR/S), whose hierarchy in the legislative system has evolved. This study aims to analyze the position and implications of judicial review of MPR Decrees within Indonesia's constitutional system. A normative juridical research method is used by examining legal materials, legislation, and legal doctrines. The study finds that the status of MPR Decrees has changed significantly before and after the constitutional amendments. Before the amendments, MPR Decrees were positioned above laws but below the Constitution, whereas after the amendments, their status became uncertain due to the removal and subsequent reintroduction into the legal hierarchy. This uncertainty creates legal gaps in judicial review mechanisms, necessitating solutions such as constitutional review by the Constitutional Court, a fifth constitutional amendment, or a legislative review by the MPR itself.

Keywords: *MPR Decree, Judicial Review, Constitutional System.*

Journal History

Received	: March 17, 2025;
Reviewed	: May 23, 2025;
Accepted	: May 30, 2025;
Published	: May 31, 2025;.

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INTRODUCTION

The Constitution is the basic law that is the foundation of a country's constitutional system. As a country of law, Indonesia places the law as the main guideline in running the

government.¹ This provision is contained in Article 1 paragraph (3) of the 1945 Constitution which affirms that Indonesia is a country of law. The consequences of these provisions have implications for the form of implementation of state power that must be based on applicable law. In this context, one of the legal instruments that plays an important role is the Decree of the MPR (TAP MPR/S). The MPR/S TAP has a strategic function in regulating various aspects of the constitution, including political and government policies.

Along with the development of the Indonesian legal system, the MPR/S TAP has undergone various changes in its position. Before the amendment of the 1945 Constitution, the MPR/S TAP had a strong position in the hierarchy of laws and regulations. However, after the amendment, its existence became uncertain because it was not explicitly mentioned in the order of laws and regulations.² This raises polemics related to the status and implementation of the MPR/S TAP in the national legal system. Therefore, it is important to review the position of the MPR/S TAP in order to provide clear legal certainty.

In the era before the reform, the MPR/S TAP was considered a binding legal norm and had power above the law, but under the 1945 Constitution. This is because the MPR at that time was the highest institution of the state that had broad authority in determining the country's fundamental policies.³ However, after the amendment of the 1945 Constitution, there were significant changes to the structure of the Indonesian constitution, including the repositioning of the MPR which is now on a par with other state institutions. This has an impact on changes in the functions and authorities of the MPR, including in terms of the issuance of the MPR/S TAP.

The unclear status of the MPR/S TAP is further exacerbated by changes in regulations in the legal system. For example, in Law No. 10 of 2004 concerning the Formation of Laws and Regulations, the MPR/S TAP is no longer included in the hierarchy of laws and regulations. This creates legal uncertainty regarding the enforceability of the MPR/S TAP which is still recognized by the MPR TAP No. I/MPR/2003. As a result, there is a debate about whether the MPR/S TAP is still binding or not in Indonesia's legal system.⁴

This dynamic raises a big question regarding the testing mechanism of the TAP MPR/S. If previously the TAP MPR/S could be tested through a specific mechanism in the judicial

¹ Muhlashin, I. (2021). Negara Hukum, Demokrasi Dan Penegakan Hukum Di Indonesia. *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 8(1), 87-100.

² Nasef, M. I. (2019). MPR Di Persimpangan Jalan: Refleksi Paradigmatik Penguatan Kelembagaan MPR Pasca Amendemen UUD 1945. *Istinbath: Jurnal Hukum*, 16(2), 150-174.

³ Josviranto, M. (2020). Ketetapan Majelis Permusyawaratan Rakyat Dalam Sistem Peraturan Perundang-Undangan Indonesia. *Jurnal Ekonomi, Sosial & Humaniora*, 1(08), 119-129.

⁴ Eka NAM Sihombing. (2024). Ketetapan Majelis Permusyawaratan Rakyat Dan Pencabutannya. *Proceeding APHTN-HAN*, 2(1), 23-50.

system, there is currently no mechanism that explicitly regulates the testing. This creates a legal loophole that has the potential to create uncertainty in the implementation of the rules that have been established through the TAP MPR/S. Thus, serious efforts are needed to design a testing mechanism that can ensure that the TAP MPR/S remains within a clear legal corridor.

In the principle of the rule of law, legal certainty is an aspect that cannot be ignored.⁵ The unclear status of the TAP MPR/S poses a dilemma for the Indonesian legal system, as it can create a legal vacuum in the implementation of policies based on the TAP MPR/S. Therefore, it is very important to formulate a testing mechanism that can ensure legal certainty and the enforceability of the TAP MPR/S in the constitutional system.

This study seeks to analyze in depth the position of the MPR/S TAP in the Indonesian legal system. By understanding how the status of the MPR/S TAP changes from time to time, it is hoped that solutions can be found that can overcome the problems that arise due to the unclear status. This study will also explore various options for testing mechanisms that can be applied so that the MPR/S TAP has clear legal certainty.

Thus, this research is expected to contribute to the development of Indonesian constitutional law. A comprehensive understanding of the position and implications of the MPR/S TAP in the constitutional system will be a strong foundation for drafting clearer and more structured regulations, so as not to cause legal problems in the future.

METHOD

This study uses a normative juridical method with a legislative approach that focuses on literature study and analysis of relevant laws and regulations, legal doctrines, and court decisions. The data used in this study consisted of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations and court decisions, while secondary legal materials are in the form of journals, books, and scientific articles that discuss the concept of the state of law and the position of the MPR/S TAP in the constitutional system. Data analysis was carried out using a descriptive-analytical method, where the results of the research were studied based on applicable legal principles to understand the dynamics of changes in the status of TAP MPR/S. Thus, this research can provide academic contributions and recommendations that can be used in the development of constitutional law in Indonesia.

⁵ Dobi Yuliansa, et al. (2024). Implementasi Prinsip Negara Hukum dalam Meningkatkan Good Governance di Indonesia. *Hutanasyah: Jurnal Hukum Tata Negara*, 3(1), 39-60.

DISCUSSION

The Position of the MPR/S TAP in the Indonesian Constitutional System

The Decree of the People's Consultative Assembly (TAP MPR) is a legal product that has a strategic role in the Indonesian constitutional system. Before the amendment of the 1945 Constitution, the MPR TAP had a strong position in the hierarchy of laws and regulations, namely under the 1945 Constitution but above the law.⁶ This is due to the position of the MPR as the highest state institution that has the authority to set the outline of the state direction and national policies.⁷ The MPR's TAP at that time had legal force that bound all state institutions, including the president, the House of Representatives, and the judiciary. Thus, the MPR TAP is an important part of the implementation of government and national development.

After the constitutional reform, there was a fundamental change in the role and position of the MPR in the Indonesian government system. The amendment to the 1945 Constitution changed the constitutional system by affirming that Indonesia adheres to the principle of a stricter separation of powers between the executive, legislative, and judiciary.⁸ This change has an impact on the position of the MPR's TAP which is no longer considered the highest legal norm after the constitution. In these changes, the MPR is no longer the highest institution of the state, but is equal to other state institutions such as the House of Representatives, the President, and the Constitutional Court.⁹ This caused the TAP MPR to lose its binding legal force as before, thus causing a debate about its status in the national legal system.

The absurdity of the position of the MPR's TAP is even more evident when Law No. 10 of 2004 concerning the Formation of Laws and Regulations does not include the MPR's TAP in the hierarchy of laws and regulations. This law only recognizes the 1945 Constitution, laws, government regulations in lieu of laws, government regulations, presidential regulations, and regional regulations as part of the national legal system. With the non-inclusion of the MPR TAP in the hierarchy of laws and regulations, a big question arises

⁶ Syuhada, O. (2020). Rekonstruksi Positivisme Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia. *Journal Presumption of Law*, 2(2), 1-23.

⁷ Bambang Sadono & Lintang Ratri Rahmijati. (2020). Reformulasi Garis-Garis Besar Haluan Negara (GBHN) dan Amandemen Ulang Undang-Undang Dasar. *Masalah-Masalah Hukum*, 49(2), 213-221.

⁸ Khirul Umam, et al. (2023). Rekonstruksi prinsip checks and balances antar lembaga negara berdasarkan Pancasila. *JATISWARA*, 38(2), 185-197.

⁹ Nisrina Irbah Sati. (2020). Ketetapan MPR dalam Tata Urutan Peraturan Perundang-Undangan di Indonesia. *Jurnal Hukum & Pembangunan*, 49(4), 834-846.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i1.23797>

regarding its validity status, especially for the MPR TAP which is still considered valid according to the MPR TAP No. I/MPR/2003.¹⁰

In further developments, the government and the DPR realized that there were still a number of MPR Decrees that still had an important role in national law and realized that Law No. 10 of 2004 had several shortcomings such as:¹¹

1. The material in Law No. 10 of 2004 caused a lot of confusion or multiple interpretations so that it did not provide legal certainty;
2. The technique of writing the formulation was often inconsistent;
3. There was new material that needed to be regulated in accordance with developments or legal needs in the formation of laws and regulations; and
4. The description of the material was in accordance with that regulated in each chapter in accordance with the systematics.

Therefore, through Law No. 12 of 2011 concerning the Formation of Laws and Regulations, the MPR Decree was again included in the hierarchy of laws and regulations. However, its position is still not as strong as before the amendment to the 1945 Constitution. The MPR Decree is only recognized as part of the legislation with a limited scope, namely only applicable to provisions that are still declared valid by MPR Decree Number I/MPR/2003. Thus, not all MPR Decrees that existed in the past have binding legal force in the current Indonesian legal system.

One of the problems that arises as a result of this change is how the mechanism for implementing the MPR TAP in legal practice. In the new legal system, the MPR TAP no longer has an explicit mechanism to be executed directly by the executive and legislative institutions. This makes some of the provisions that are still in force difficult to implement because they do not have clear legal instruments to ensure their implementation. Prof. Jimly Asshdiqi proposed that the MPR TAP should be converted into law in order to have stronger legal certainty in the Indonesian legal system.¹²

As part of the legal system, the MPR TAP still has an important role, especially in providing guidelines for the administration of the state. Several MPR TAPs that are still in force, such as the MPR TAP on legal sources and the order of laws and regulations, remain a reference in the preparation of national regulations. However, weaknesses in the implementation and testing mechanism of the MPR's TAP are a challenge in itself. This

¹⁰ Setiawan, O. T. (2023). Perspektif dan Langkah Politik Penyelesaian Ketetapan Majelis Permusyawaratan Rakyat dalam Sistem Ketatanegaraan Indonesia. *Jurnal Mengkaji Indonesia*, 2(1), 167-194.

¹¹ Riri Nazriyah, MPR RI Kajian terhadap Produk Hukum dan Prospek di Masa Depan (Yogyakarta: FH UII Press, 2007), 69.

¹² Muhammad Fadli Efendi. (2022). Rekonstruksi Hukum Kewenangan Pengujian TAP MPR terhadap Undang-undang Dasar oleh Mahkamah Konstitusi. *Jurnal Hukum Magnum Opus*, 5(1), 13-28.

creates legal uncertainty and opens up opportunities for a variety of different interpretations regarding its applicability.

In the context of constitutional law, a clear hierarchy of laws and regulations is one of the important factors in creating legal certainty.¹³ The existence of the MPR's TAP in an ambiguous position poses a risk to the stability of national law. Therefore, it is important that the TAP MPR that is still valid is given a clearer legal status through the revision of the law on the formation of laws and regulations. Thus, the MPR's TAP that is still relevant can still be recognized and have a more effective implementation mechanism.

One of the solutions that can be applied is to provide a judicial review mechanism for the MPR TAP that is still in force by the Constitutional Court.¹⁴ With this mechanism, the Constitutional Court can test whether the MPR TAP that is still in force is still in line with the principles in the 1945 Constitution. This can ensure that the MPR TAP does not become a legal instrument that is contrary to the development of the modern legal system and democratic values. In addition, judicial review can also provide legal certainty for stakeholders in understanding and implementing the MPR TAP in government practices.

Based on the various considerations above, it can be concluded that the position of the MPR TAP in the Indonesian constitutional system has undergone significant changes after the amendment of the 1945 Constitution. Although it is still recognized in the hierarchy of laws and regulations, its status is no longer as strong as before. Therefore, efforts are needed to clarify the implementation and testing mechanism of the MPR's TAP so that it can function effectively in the national legal system. Thus, the MPR's TAP can remain part of the legal instrument that provides benefits for the development of law and governance in Indonesia.

Implications of TAP MPR/S Testing

The change in the status of the MPR/S TAP in the Indonesian legal system has significant implications in the mechanism for testing legal norms. When the MPR/S TAP is still recognized as part of the hierarchy of laws and regulations, its testing mechanism becomes a big question. The absence of explicit provisions regarding the institution authorized to test the MPR/S TAP results in legal uncertainty. The Constitutional Court as an institution tasked with conducting constitutional review of laws, does not have the authority to directly examine the MPR/S TAP. This creates a legal vacuum in the system of testing norms that are higher than the law but are not equivalent to the 1945 Constitution.¹⁵

¹³ Keysha Nashwa Aulia, et al. (2024). Kepastian Hukum dan Keadilan Hukum Dalam Pandangan Ilmu Komunikasi. *Journal Sains Student Research*, 2(1), 713-724.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

The absence of a TAP MPR/S testing mechanism has an impact on various aspects of the national legal system. One of the main impacts is the lack of legal certainty for the public and policymakers.¹⁶ In an ideal legal system, all laws and regulations must be testable to ensure their conformity with the principles of the rule of law. However, without a clear testing mechanism, the MPR/S TAP remains a norm whose validity cannot be tested, although in practice it is still used as a legal basis in some state policies. As a result, many parties question whether the MPR/S TAP still has binding legal force or only functions as a normative guideline.

One of the alternative solutions proposed in the academic discourse is to give the Constitutional Court the authority to conduct a constitutional review of the TAP MPR/S. In the modern legal system, all legal products that affect people's lives must be able to be tested through a legitimate legal mechanism.¹⁷ Jika TAP MPR/S tidak dapat diuji oleh MK, maka diperlukan amandemen UUD 1945 yang secara eksplisit memberikan kewenangan kepada MK untuk menguji produk hukum tersebut. Amandemen ini akan mengisi kekosongan hukum dan memastikan bahwa tidak ada norma hukum yang berada dalam wilayah abu-abu tanpa mekanisme pengujian yang jelas.

In addition to constitutional review, the option of legislative review by the MPR is also a solution that can be considered. In this scheme, the MPR is given the authority to review the MPR/S TAP that is still in force and determine its legal status more explicitly.¹⁸ Thus, the MPR can play a role in ensuring that the MPR/S TAP that is contrary to the development of law and democracy can be revoked or corrected. This legislative review will clarify the position of the MPR/S TAP and avoid legal uncertainty that can have a negative impact on the national legislative system.

However, legislative review also has its own challenges. One of the main challenges is how to ensure that the legislative review process is carried out objectively and is not influenced by specific political interests.¹⁹ The MPR as a political institution is often influenced by developing political dynamics, so the decisions taken can be subjective. Therefore, a strict monitoring mechanism is needed to ensure that *the legislative review* of the MPR/S TAP is carried out based on fair and transparent legal principles.

¹⁶ Ni'matul Huda & R. Nazriyah, *Teori Dan Pengujian Peraturan Perundang-Undangan*, (Bandung: Hikam Media Utama, 2019), hlm. 33.

¹⁷ Ismail Hasani, *Pengujian Konstitusionalitas PERDA*, (Jakarta: Kepustakaan Populer Gramedia, 2020), hlm. 429

¹⁸ Arif Awangga, *Teknik Perancangan Perundang-Undangan*, (Bandung: CV Cendekia Press, 2020), hlm. 49.

¹⁹ Anggraini, R. M. (2020). Kedudukan Keteapan MPR Pasca Amandemen Konstitusi. *At-Tasyri': Jurnal Hukum Islam dan Ekonomi Syariah*, 1(02), 17-22.

Another implication of the absence of the MPR/S TAP testing mechanism is the potential for overlapping laws and regulations.²⁰ In practice, some MPR/S TAPs are still used as the basis for the formulation of state policies, even though their legal status is unclear. This can lead to inconsistencies in the implementation of the law, especially when there is a new law that is contrary to the TAP MPR/S which is still recognized. Without a clear testing mechanism, these kinds of legal conflicts can continue to occur and cause confusion among law enforcement and the public.

The unclear status of the MPR/S TAP also has the potential to weaken the principle of the rule of law. In a state of law, all legal norms must be subject to applicable constitutional principles. However, if there are norms that cannot be tested or corrected, then the principle of the rule of law becomes weak.²¹ Therefore, it is important to ensure that all legal norms, including the TAP MPR/S, can be tested in accordance with the applicable legal mechanisms so as not to create inequalities in the national legal system.

From an academic perspective, the discourse on the MPR/S TAP testing mechanism is still a growing topic. Some opinions state that the best solution is to remove the MPR/S TAP from the hierarchy of laws and regulations and replace it with laws and regulations that are in accordance with the applicable legal system.²² This approach is considered more realistic considering that the MPR/S TAP is a legal product derived from the old political system that has undergone significant changes after the reform.

However, this approach also requires further study, especially in terms of its legal implications for policies that still use the MPR/S TAP as a legal basis. If the MPR/S TAP is abolished without a clear legal transition, there could be greater legal uncertainty. Therefore, a mature legal strategy is needed so that the abolition of the MPR/S TAP does not disrupt the stability of law and government in Indonesia.

Overall, the debate over the implications of testing the MPR/S TAP suggests that there is an urgent need to reform Indonesia's legal system to better align with the principles of the modern legal state. Whether through constitutional review by the Constitutional Court, legislative review by the MPR, or the removal of the MPR/S TAP from the legal hierarchy, the solution taken must be based on the principles of legal certainty, justice, and democracy. Thus, the Indonesian legal system can be more transparent and responsive to legal developments and the needs of the community.

²⁰ Beckham Jufian Podung. (2022). Kedudukan Ketetapan Mpr Dalam Sistem Perundang-Undangan Di Indonesia. *Lex Administratum*, 10(1).

²¹ Safi, *Sejarah dan Kedudukan pengaturan Judicial Review di Indonesia: Kajian Historis dan Politik Hukum*, (Surabaya: Scopindo Media Pustaka, 2022), hlm. 44.

²² Marjuki, A. (2019). Kedudukan TAP MPR Dalam Tata Urut Peraturan Perundang-Undangan Di Era Reformasi. *Al Qisthas: Jurnal Hukum dan Politik Ketatanegaraan*, 7(2), 147-164.

CONCLUSION

Based on the discussion above, it can be concluded that the position of the MPR/S TAP in the Indonesian legal system is unclear due to changes in the constitutional structure after the amendment of the 1945 Constitution. Before the amendment, the MPR/S TAP had a higher status than the law but under the constitution. However, after the amendment, its status became unclear due to the absence of explicit arrangements in the hierarchy of laws and regulations. This uncertainty has serious implications for the testing mechanism of the TAP MPR/S, considering that no institution has been clearly given the authority to test its validity. This causes difficulties in the application of the law and has the potential to weaken the principle of legal certainty in the national legislative system.

To overcome this problem, comprehensive legal reform is needed through several alternative solutions. One of the main solutions is to give the Constitutional Court the authority to conduct a constitutional review of the TAP MPR/S. In addition, the option of legislative review by the MPR can be considered to review the enactment of the TAP MPR/S more systematically. Another alternative is to remove the MPR/S TAP from the hierarchy of laws and regulations and replace it with regulations that are more in line with modern legal developments. By implementing one or a combination of these solutions, it is hoped that the Indonesian legal system can be more transparent, accountable, and in line with the principles of the rule of law that uphold legal certainty and justice for the community.

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ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: <https://doi.org/10.30596/nomoi.v6i1.23797>

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ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

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