

## CHAPTER EXPLANATION OF ARTICLES IN THE LAW AS OBJECTS OF MATERIAL TESTING IN THE CONSTITUTIONAL COURT

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In the formation of legislation is often the resulting product of legislation multi-interpretive, not reflecting the will of the people and unconstitutional. So often stakeholders apply for judicial review in the institution of judicial power. Judicial review can be interpreted as a concept to test regulations implemented by the judicial institution (MK). [1] Amendments to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution) became the basis for the momentum for the regulation of judicial review authority by each judicial power institution. Starting in the United States in the Madison versus Marbury case, Indonesia implemented the concept as outlined in the third amendment to the 1945 NRI Constitution, which was to establish the Constitutional Court in 2003. So there is a division of authority, namely the Supreme Court has the authority to test laws and regulations under the law against the law, while Indonesian citizens whose constitutional rights/authorities are harmed by the enactment of the Law can submit a judicial review to the Constitutional Court.[2]

In the concept of legislative product testing, the right to test is divided into two forms, namely the right to formal test and the right to test materials. The right of formal testing (*formele toetsufsrecht*) sees the validity of the procedure for the formation of the draft law. Then secondly, the right to test the material (*materiele toetsingsrecht*), seeing the conformity of the material content of the statute to higher norms.[3] So that it can be concluded that the Material Test is a test of the formulation of texts, articles, paragraphs, contents in the Law, while the Formal Test is a test of the process of formation, authority, procedure, institutions and methods in the formation of laws. Of the two testing concepts in practice in Indonesia, the Constitutional Court more often tests material. In the Directory of Decisions of the Constitutional Court, many accept and adjudicate cases of Material Test applications for phrases and/or sounds of paragraphs/articles in the Law that are detrimental to their constitutional rights/authorities, including the explanation of articles often ignored by the framers of the Law so that the sound of the norm is not in accordance with the purpose and purpose of the norm, namely causing conflict and blurring. No wonder that citizens who are violated their constitutional rights test the explanation of the law to the Constitutional Court. Thus the question arises whether the explanation of the article in the Act can be the object of material testing in the Constitutional Court and What is the legal effect on the applicability of the Law if the explanation of the article can be the object of material testing in the Constitutional Court?

**The explanation of the provisions in the Act can be the object of material testing in the Constitutional Court.**

As a state institution, the authority of the Constitutional Court and its duties are regulated in legislation. Based on Article 24C paragraph (1) of the 1945 NRI Constitution, the duties of the Constitutional Court as well as the authority of the Constitutional Court, among others, are to test the Law against the 1945 Constitution, to decide disputes over the authority of state institutions under the 1945 Constitution, the dissolution of political parties, and disputes over election results. One of the objects of the right to material test of the Constitutional Court is the Law. The establishment of the Law is established by the House of Representatives by mutual consent with the President. The Framework of the Laws and Regulations is incorporated:

- a. Title
- b. Preamble
- c. Torso
- d. Final words
- e. Explanation
- f. Appendix.

In number 174 Appendix II of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, it is explained that explanations must be contained in laws, provincial regulations and regency/city regulations, while laws and regulations under other laws can be explained whenever necessary. The explanation in a law as well as other legislative products contain a function, namely as an official interpretation of the formation of laws and regulations on certain norms in the torso. Explanation as a means of clarifying the norm in the torso that should not result in the occurrence of vagueness of the norm in question. the explanation contains only a description of a foreign word, phrase, sentence or equivalent of a foreign word/term in the norm that may be accompanied by an example. The explanatory text is prepared together with the preparation of the draft laws and regulations. The prohibition in drafting an explanation of the article of the Law is as follows:

- a. contrary to the subject matter set in the torso.
- b. expand, narrow or increase the norms that are in the torso
- c. repetition of the subject matter arranged in the torso;
- d. repeat the description of a word, term, phrase, or sense in the general provisions; and/or
- e. contains the delegation formulation

Various constitutional court decisions are the embodiment of the State of Law that adheres to Constitutional Democracy, in which lies the protection of the constitutional rights of citizens.[4] There are several Decisions of the Constitutional Court that can be used as jurisprudence for the position of explanation of articles of law as the object of metiil testing in the Constitutional Court, namely:

### **1. Constitutional Court Decision No. 005/ PUU-III/2005**

The case of the Constitutional Court is related to the application for testing the Explanation of Article 59 paragraph (1) of Law Number 32 of 2004 concerning Regional

Government. The explanation of Article 59 paragraph (1) omits the sentence "15% (fifteen percent) of the accumulated valid votes in the DPRD elections in the area concerned", while in Article 59 paragraph (1) Political parties or combinations of political parties this provision is a political party or a combination of political parties that have seats in the DPRD and 15% (fifteen percent) of the accumulated valid votes in the DPRD election of the region concerned. There is a contradictory between the torso and the explanation so that the Explanation of Article 59 paragraph (1) contains a new regulation that should be placed in the torso and not in the explanation. The clarification of Article 59 paragraph (1) is contrary to the democratic election of regional heads as referred to in Article 18 paragraph (4) of the 1945 NRI Constitution to participate in being elected to the regions.

## **2. Constitutional Court Decision No. 34/PUU-VII/2010**

The application for an explanatory examination of Article 114 of the Health Law which states "What is meant by "health warning" in this provision is a clear and legible writing and can be accompanied by pictures or other forms". The explanation of Article 114 is contrary to Article 199 which states that any person who deliberately produces cigarettes to the Republic of Indonesia by not including a Health warning in the form of an image is sentenced to prison", the word can mean an alternative so that the word verdict can have no binding legal force so that it is removed.

## **3. Constitutional Court Decision No 39/PUU-XIV/2016**

Explanatory Testing of Article 4A paragraph 2 letter b of Law 42 of 2009 concerning the Third Amendment to Law No. 8 of 1983 concerning VAT on Goods and Sales Tax on Luxury Goods. Which in the judgment granted the application in part, Declared the Explanation of Article 4A paragraph (2) point b conditionally and has no binding legal force or is interpreted as limitative.

From several examples of the Constitutional Court Decision above, it can be concluded that the Explanation of the Article can be the object of material testing in the Constitutional Court. With the following arguments :

1. Based on Annex II of Law Number 12 of 2011 establishment of laws and regulations, article explanation is a systematic framework that must exist in making laws so that they become a unit.
2. There are provisions and conditions in making the Explanation of the Article, namely not contradicting the subject matter regulated in the torso, not expanding, narrowing or adding to the understanding of the norms in the torso, not repeating the subject matter regulated in the torso, not repeating words, terms, phrases, or understandings in general provisions or not containing delegated formulations. To the extent that the terms of explanation of the article are ignored by the framers of the Act, it is necessary to conduct a material test.
3. The position of the explanation of the article is to explain the material contained in the article, so that with this explanation the purpose and purpose

of the legal norm becomes clear and clear and is not interpreted other than what is meant by the framer of the law.

### **The legal effect of the applicability of the Act if the explanation of the article can be the object of material testing in the Constitutional Court**

Regarding the authority of the Constitutional Court in terms of adjudicating its decisions is final in the first and final instances, to test the law against the 1945 NRI Constitution. [5] Therefore, the Constitutional Court's decision on the application for a material test of the explanation of the article of the law is of course also final and binding to give birth to a number of legal consequences in its application. The Constitutional Court's decision with its final nature embodies legal certainty so that there is no longer access for the parties to pursue other legal remedies. So that the legal consequences of the explanation of the article as an object that is materially tested will end a legal dispute and maintain the principle of checks and balances. The final and binding decision of the Constitutional Court must also be accompanied by a judicial order directed at individuals or state institutions. In this way every decision of the Constitutional Court after the reading of the judgment can be consistently enforced and responsibly.[6] This is done so that the framers of the law take immediate steps. After the final decision, the Constitutional Court may ask the House of Representatives and the government to revise legal products that have been declared unconstitutional, and such revisions must remain under control.

## **CONCLUSION**

1. The explanation of the Article can be the object of material testing in the Constitutional Court because the Explanation of the Article is a systematic framework that must exist in the making of the Law so that it becomes a single entity, as long as the conditions for making the explanation of the article are ignored by the framers of the Law and the position of the explanation of the article is to explain the material contained in the article, so that with this explanation the purpose and purpose of the legal norm becomes clear.
2. The decision of the Constitutional Court on the application for a material test of the explanation of the article of the law is final and binding whose legal consequence is to realize legal certainty so that there is no longer access for the parties to pursue other legal remedies.

## **BIBLIOGRAPHY**

- [1] M. Ali Hofi, "JUDICIAL REVIEW SATU ATAP DI MAHKAMAH KONSTITUSI SEBAGAI REFLEKSI TERHADAP PROBLEMATIKA DAN TANTANGAN KEKUASAAN KEHAKIMAN DI INDONESIA," *HUKMY J. Huk.*, vol. 1, no. 2, 2021, doi: 10.35316/hukmy.2021.v1i2.221-234.
- [2] Y. Iristian, "Karakteristik dan Uji Konstitusionalitas Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia," 17 Agustus 1945 Surabaya, 2018. [Daring]. Tersedia pada:

- http://repository.untag-sby.ac.id/id/eprint/9197
- [3] M. M. Ali, "Konstitutionalitas dan Legalitas Norma dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945," *J. Konstitusi*, vol. 12, no. 1, 2016, doi: 10.31078/jk12110.
- [4] A. J. ALBAR, "KEWENANGAN MAHKAMAH KONSTITUSI DALAM MENGUJI PERATURAN PEMERINTAH PENGGANTI UNDANG-UNDANG," 17 Agustus 1945 Surabaya, 2015. [Daring]. Tersedia pada: <http://repository.untag-sby.ac.id/id/eprint/1588%0A>
- [5] A. PRIYONO, "ANALISIS HUKUM TERHADAP JUDICIAL REVIEW PASAL 268 AYAT 3 KUHAP DITINJAU DARI UNDANG-UNDANG DASAR 1945," 17 Agustus 1945 Surabaya, 2013. [Daring]. Tersedia pada: <http://repository.untag-sby.ac.id/id/eprint/409%0A>
- [6] Berly Geral Tapahing, "AKIBAT HUKUM PUTUSAN MAHKAMAH KONSTITUSI TERKAIT PENGUJIAN UNDANG-UNDANG TERHADAP UNDANG-UNDANG DASAR DALAM SISTEM PEMBENTUKAN PERATURAN PERUNDANG-UNDANGAN," *Lex Adm.*, vol. VI, no. No 1, hal. 19, 2018, [Daring]. Tersedia pada: <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/20328/19933>