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Reflections on Supreme Court Decision Number 23 P/HUM/2024: The Escalation of Political Judicialization and Judicial Politicization in Norm Testing

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ABSTRACT

The lofty goal of realizing an independent judiciary to uphold law and justice is now facing a steep road because in the process, the judiciary is always vis a vis at the crossroads between law and politics. Currently, instead of bringing the issue of interference, the judiciary has become the party that intervenes in the rule-making power, and this has almost reached a culmination point. The latest crucial event is Supreme Court Decision No. 23/P/HUM/2024. The decision changes the meaning of the prerequisite norm of the age limit for Regional Head candidates, which is calculated from the determination of the candidate pair, to be calculated from the inauguration. Starting from the description above, this research aims to explore the meaning of the Supreme Court's activities in the concept of political judicialization and judicial politicization. The research method used is normative (legal) research, with statutory, case, historical, and conceptual approaches. The results of this study are, first, Supreme Court Decision No. 23 P/HUM/2024 shows weaknesses because the arguments given are not sufficient, and the Supreme Court also exceeds its authority by intervening in the legal policy authority of the KPU, this can be interpreted as political judicialization and judicial politicization. Second, the Problems of Supreme Court Decision No. 23 P/HUM/2024 are enough to reflect that there are still legal gaps that must be addressed. So that in the future, in the context of legal reform, it is necessary to integrate one-stop testing of laws and regulations in the Constitutional Court.

Keywords: Supreme Court, Judicial, Norms.

INTRODUCTION

The institutionalization of law enforcement through judges and judicial institutions is actually a system that has existed across time and has been going on for centuries. Referring to the opinion of Theodore F.W. Plucknett, the institutionalization of judges through judicial institutions in resolving conflicts has existed since the 12th century in a country with a common law system, England,

whose settlement pattern is independent and separate from the King and the Government (Arifin, 2020). In 1346, the independence of the judges was further confirmed by requiring the judges to take an oath to refuse bribes in any way, the full text of the oath being: they would in no way accept a gift or reward from any party in litigation before them or give advice to any man, great or small, in any action to which the King was a party himself (they would in no way accept a gift or reward from any party in litigation before them or give advice to any man, great or small, in any action to which the King himself was a party). (Ramadhan et al., 2022).

The formal implementation of the judiciary by the state has further accelerated the development of law enforcement in Indonesia to date, where the judiciary is an integral part of state institutions that function to carry out the duties and functions of state administration, one of which is to organize a free trial to uphold law and justice as part of the noble idea of the rule of law. Furthermore, the evolution of contemporary judicial power has reached a phase that places the judiciary to play a role as a balancing pendulum of checks and balances for other powers, a form of balance of power through the authority to test the validity of legal products produced by other branches of power (Ramadhan et al., 2022). In Indonesia, this is done diametrically within one judicial power, namely under the roof of the Constitutional Court (MK) and the roof of the Supreme Court (MA). The Constitutional Court is a judicial power that tests the constitutionality of laws against the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), while the Supreme Court tests legislations against laws.

In the family of norms testing at the Supreme Court, it is commonly referred to as the Right to Materil Test. Furthermore, the current Procedural Law of the Right of Materil Test by the Supreme Court is regulated in Supreme Court Regulation Number 1 Year 2011 on the Right of Materil Test (Perma No. 1/2011). In Article 1 paragraph (1) of the Regulation, the Right of Material Test is the right of the Supreme Court to assess the content material of laws and regulations under the Law, against higher level laws and regulations. A citizen as a petitioner may submit a petition to the Supreme Court, if his/her rights are violated by a norm under a law (Lailam, 2018). The status of the Applicant is embedded in order to be able to act individually or in groups of people. Furthermore, the Supreme Court will then examine the regulation petitioned for by the applicant with the limiting touchstone of the law. If in the judge's reasoning the regulation turns out to be contrary to the content material of a law, then the Supreme Court will grant the petition.

There are potential problems that can be faced in the implementation of the Right to Material Test by the Supreme Court, from the author's exploration there are at least several potential problems including: First, the difference in the scope of testing authority between the Supreme Court and the Constitutional Court leaves its own complexity, namely when the legislation does not directly conflict with the rules at its level but conflicts with higher rules, for example such as Government Regulations that do not conflict with the Law but directly conflict with the 1945 Constitution of the Republic of Indonesia, regardless of who has the authority over regulatory material that conflicts with higher regulatory material, in fact the Supreme Court does not have the authority to review regulations that

conflict with the 1945 Constitution of the Republic of Indonesia, because in this context the Constitutional Court has a role.

Secondly, the exercise of norm testing power by the Supreme Court and the Constitutional Court does have different objects, so that at first glance it seems that there is no relationship between the two institutions. However, it must be realized in depth, that the testing power of the two institutions is in the same level of norms as this cannot be separated from Hans Kelsen's big idea about the hierarchy of norms (stufen theory), thus a judicial institution is needed to test the validity of norms if there is a conflict in the level of norms. Indonesia also annexed Kelsen's idea which is reflected in the Law on the Formation of laws and regulations. Third, the Supreme Court's examination of laws and regulations under the law is closed, which is different from the Constitutional Court through a plenary session open to the public. This certainly indicates that the public cannot witness the series of dialectics that occur during the process of examining the petition for judicial review at the Supreme Court, and certainly cannot reduce the discourse of public concern, if the process of examining judicial review at the Supreme Court may be colored by political bargaining. It must be realized that the Supreme Court's decision products are not only binding on inter partes (the parties), but more than that, namely binding to the public as the legal products tested by the Supreme Court are generally binding regulations (regeling).

Interestingly, ahead of the 2024 Regional Head Elections (Pilkada), one of these problems actually occurred. One of them, which is currently in the public discourse and sharp spotlight, is Supreme Court Decision No. 23 P / HUM / 2024 related to changes in the provisions for calculating the age limit of candidates for Regional Heads. (Saptohutomo, 2024). The birth of the a quo decision began with the submission of an application by the Petitioner Ahmad Ridha Sabana from a political party (Garda Republik Indonesia Party). The applicant objected to the provisions of the regional head requirements in Article 4 paragraph (1) letter d of General Election Commission Regulation No. 9 of 2020 concerning the Fourth Amendment to PKPU No. 3 of 2017 concerning Candidacy for the Election of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors (PKPU No. 9/2020) which reads in full:

Article 4 paragraph (1) Letter d:

(1) "*Indonesian citizens may become candidates for Governor and Deputy Governor, Regent and Deputy Regent, or Mayor and Deputy Mayor by fulfilling the following requirements:*
   d. *At least 30 (thirty) years of age for Candidates for Governor and Deputy Governor and 25 (twenty-five) years of age for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the determination of the Candidate Pair*".

The Applicant considers that the provision of the phrase 'Calculated since the determination of the Candidate Pair' above results in the Applicant experiencing actual and potential losses such as being hampered / unable to carry a Regional Head Candidate pair because the candidate to be carried by the Applicant is hampered by the age requirement calculated from the determination of the Candidate Pair due to not reaching the age of 30 (thirty) years due to being too early calculated from the determination of the Candidate Pair. On the basis of

the petition, the Supreme Court in one of its decisions No. 23 P/HUM/2024 stated that the provisions of Article 4 paragraph (1) letter d of PKPU No. 9/2020 are contrary to Law No. 10 of 2016 concerning Regional Head Elections (Pilkada Law) and then gave a new meaning (changed the wording of the norm) of Article 4 paragraph (1) letter d to: "At least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the inauguration of the elected Candidate pair".

Decisions resulting from judicial review by the Supreme Court are actually a natural thing to happen, as have previous decisions. However, what distinguishes the Supreme Court's decision this time is that the decision taken is very closely associated with the public with political colors and interests in it. Moreover, the Supreme Court's decision regarding the change in the age limit for candidates for Regional Heads seems to re-open the public memory space that has not yet escaped from the last General Election (Pemilu) process, which was accompanied by a hot situation of domestic politics and a break in social cohesion due to the emergence of Constitutional Court Decision No. 90/PUU-XXI/2023 which changed the meaning of the age limit provisions for Presidential Candidates and Vice Presidential Candidates which were also closely related to dynastic politics. The presence of Supreme Court Decision No. 23 P/HUM/2024 seems to be a replication of the Constitutional Court Decision a quo.

Thus, the phenomenon that the author has described above quite clearly shows the diversified nature of the holders of legislative power. According to the author, PKPU No. 9/2020 has actually been based on the Pilkada Law, meaning that all PKPU provisions formed by the election organizer, in this case the KPU, are indeed mandatory/derivation of the Pilkada Law as stipulated in Article 7 paragraph (2) letter e which expressly (expressis verbis) also confirms the age limit of Regional Head Candidates and the Pilkada Law is formed by the holders of legislative power (DPR and President). The Supreme Court's action shows the overlapping activities of judicial power in policy making/legal policy, not just handling disputes. The judicial power now instead of bringing the issue of being intervened, on the contrary, the judicial power becomes the party that intervenes in the law-making power. According to John Ferejohn, this phenomenon is known as the judicialization of politics, which is a major shift in the legislative function from parliament to the judiciary. (Perdana & Imam, 2023).

This phenomenon, known as political judicialization, is considered to affect the balance of power between state institutions and has the potential to create tensions between political and judicial power. In the context of the increasingly dynamic relationship between law and politics, political judicialization has become a trend that has the side effect of eroding the boundaries between legislative, executive and judicial functions. On this basis, this research needs to be carried out because the author wants to reflect in depth to discuss the problematic Supreme Court Decision No. 23 P/HUM/2024 related to the material test of PKPU No. 9/2020 norms and will be analyzed in relation to political judicialization in the form of political intervention in the judicial system, political influence in testing legal products, and the author needs to provide recommendations for the design

of norm testing by the ideal judicial institution in the future through theoretical optical analysis.

METHODS

The method used in this research is normative legal research method. Normative legal research is research conducted by examining legislation / positive law using library materials or secondary data. The method of approach used in this research is a statutory approach, historical approach, concept approach, and case approach, especially court decisions. The main / primary legal material used is legislation. To assist the research, secondary legal materials are also used which consist of literature such as books, research reports, journals, and the like which are supportive in nature. (Marzuki, 2017).

Primary legal materials consisting of laws and regulations ranging from norms in the constitution to laws concerning the provisions on the right of judicial review of the Supreme Court against laws and regulations under the law, the Plikada Law and PKPU No. 9/2020. In addition, of course the Supreme Court's decision on judicial review is also used as evidence of problems and entry points to provide recommendations / prospective discourse on the ideal norm testing purification arrangements in the future by the judiciary.

DISCUSSION AND RESULT

Problematics of Supreme Court Decision Number 23 P/HUM/2024

1. Identification of Judges' Considerations (Ratio Decidendi)

In this sub-discussion, the author will trace the judge's argumentation as reflected in the ratio decidendi of Decision No. 23 P/HUM/2024. The analysis in this section is important because it requires an in-depth reading of the background of the judge's consideration, as well as the hopes and objectives to be realized so as to grant the applicant's request for material test objection. That every Judge's Decision exudes a consideration of high philosophical value, concretely characterized by the character of the Decision that is divine, humane, maintains unity, benevolent, and social justice for all Indonesian people. Philosophy must enter to help the Judge's mind compile the consideration of his decision, so that the Judge's Decision contains the values of justice. (Hutajulu, 2015). A good judge's decision must contain 3 (three) main considerations including considerations of philosophical justice, considerations of sociological justice, and considerations of juridical justice.

The next discussion, the author will identify and analyze the considerations of the Supreme Court Judges which contain arguments that support their Decision No. 23 P/HUM/2024. In summary, based on philosophical, sociological and juridical considerations, the Supreme Court argues as follows:

[Menimbang]:

"Bahwa oleh karena secara filosofis semangat konstitusi sebagaimana tercermin dalam Pasal 6 ayat (2) Undang-Undang Dasar 1945 memberi titik tekan terpenting pada organ negara dan pejabat yang menduduki jabatan itu, maka makna sejati dari usia minimum bagi jabatanjabatan dalam sistem hukum tata negara Republik Indonesia haruslah dimaknai usia ketika yang bersangkutan dilantik dan diberi wewenang oleh

negara untuk melakukan suatu tindakan pemerintahan dan melekat semua hak dan kewajibannya sebagai organ negara maupun sebagai pejabat pemerintahan atau penyelenggara negara".

[Menimbang]:

"*Bahwa Pasal 7 ayat (2) huruf e UU Pilkada tidak tegas menjelaskan kapan usia calon kepala daerah itu dihitung. Sementara, pemilihan kepala daerah terdapat banyak tahapan, sehingga membuka ruang penafsiran dalam memberi makna pasti kapan usia tersebut harus dipenuhi".*

[Menimbang]:

"*Bahwa selanjutnya, apabila saat dipenuhinya usia Calon Kepala Daerah dibatasi hanya pada saat penetapan pasangan calon oleh Termohon, maka terdapat potensi kerugian dan diskriminasi bagi warga negara atau partai politik yang tidak dapat mencalonkan diri atau mengusung calon kepala daerah yang baru akan mencapai usia 30 tahun bagi Gubernur/Wakil Gubernur dan 25 Tahun bagi Bupati/Wakil Bupati dan Walikota/Wakil Walikota pada saat telah melewati tahapan penetapan pasangan calon".*

[Menimbang]:

"Bahwa penerapan open legal policy oleh KPU dalam memberi tafsir terhadap kapan usia calon kepala daerah, terbukti telah melahirkan makna dan tafsir yang berbeda satu dengan lainnya, dan tidak tertutup kemungkinan akan kembali terjadi perubahan makna dan tafsir terhadap hal tersebut di masa mendatang. Terlebih, dalam Pasal 54 UU Pilkada diatur perihal penggantian pasangan calon oleh partai politik jika salah satu pasangan calon meninggal dunia. Lantas, apakah calon pengganti itu harus diterbitkan kembali penetapan pasangan calon atau tidak, dan apakah penghitungan usia calon kepala daerah dihitung sejak penetapan pasangan calon pengganti? Keadan ini berpotensi menyebabkan adanya ketidakpastian hukum jika usia calon ditetapkan pada tahapan penetapan pasangan calon".

[Menimbang]:

"Bahwa adressat Undang-Undang Nomor 10 Tahun 2016 tidak hanya ditujukan kepada Termohon selaku penyelenggara pemilihan, melainkan juga ditujukan kepada seluruh warga negara yang berhak mencalonkan atau dicalonkan, maupun partai politik yang diberi hak untuk mengusung calon kepala daerah. Membatasi usia pencalonan 30 tahun bagi Gubernur/Wakil Gubernur, dan usia pencalonan 25 Tahun bagi Bupati/Wakil Bupati dan Walikota/Wakil Walikota sejak penetapan pasangan calon oleh Termohon, hanya akan menggambarkan pelaksanaan UU Pilkada dari sisi Termohon selaku penyelenggara pemilihan, namun tidak menggambarkan keseluruhan original intent yang terkandung dalam UU Pilkada, bahkan memangkas original intent Undang-Undang tersebut, terutama dalam mengakomodir kesempatan anak-anak muda untuk ikut serta membangun bangsa dan negara".

Based on the above considerations, the Supreme Court then decided to change the meaning of Article 4 paragraph (1) letter d to: "At least 30 (thirty) years old for Candidates for Governor and Deputy Governor and 25 (twenty-five) years old for Candidates for Regent and Deputy Regent or Candidates for Mayor and Deputy Mayor as of the inauguration of the elected Candidate pair.

2. Anomalies in Judges' Considerations in Decision Number 23 P/HUM/2024

The above has elaborated on the various arguments of the Supreme Court judges in considering the decision on the judicial review of PKPU No.

9/2020 regarding the determination of the age limit for candidates for Regional Heads. Against this, a follow-up question arises, namely whether what is considered in the Supreme Court Decision a quo is in accordance with the principles that should be (das sollen)? To answer this, in this section the author would like to elaborate on several crucial issues in the decision a quo, among others:

a. Beyond Authority, the Supreme Court in its legal reasoning "Philosophically, the spirit of the constitution as stipulated in Article 6 paragraph (2) of the 1945 Constitution gives the most important emphasis on state organs and officials who occupy positions, where the true meaning of the minimum age for positions in the system of constitutional law must be interpreted when the person concerned is inaugurated and authorized by the state to carry out government actions and attached to all rights and obligations as a state organ or government official or state administrator". In this position, the author considers that the Supreme Court 'jumped the fence' because it entered into the argumentation of interpreting the original intent of the 1945 Constitution of the Republic of Indonesia, which is clearly not the constitutional mandate of the Supreme Court's authority (because the Supreme Court is only given the limitation of examining regulations whose position is below the law with the test stone of the law). Meanwhile, the only one who can conduct a constitutional interpretation of the original intent of the 1945 Constitution of the Republic of Indonesia is the Constitutional Court, which is given the authority to review laws with the touchstone of the 1945 Constitution of the Republic of Indonesia.
b. Declare PKPU No. 9/2020 Contrary to the Pilkada Law. Verba ita sint intelligenda, ut res magis valeat quam pereat. This adage, which was born since ancient Roman times, implies that words must be understood as such, so that their meaning is preserved and not destroyed. (Kusumohamidjojo, 2016). This adage mandates the affirmation of an intention or even a moral to avoid the use of, or arbitrary understanding of, texts. The adage also signals us not to read the rule of law partially, but to read it holistically. If this reading is done, there will be no smuggling/twisting of rules, and legal and institutional order will certainly be achieved. But reality says otherwise, through the author's analysis, the Supreme Court does not have a holistic perspective in assessing the provisions of Article 4 paragraph (1) PKPU No. 9/2020. This statement can be proven because PKPU a quo clearly refers to the provisions of Article 7 paragraph (2) of the Pilkada Law, which regulates the requirements for candidates, including a minimum age of 30 years for candidates for Governor and Deputy Governor and 25 years for candidates for Regent and Deputy Regent, as well as candidates for Mayor and Deputy Mayor. On the other hand, Supreme Court judges do not realize that Pilkada is carried out in a series of interrelated stages. The status as a candidate is not just carried during the inauguration stage, but the status of the candidate is (already) attached since the KPU determines a person as a permanent candidate. That is because the Pilkada Law recognizes the terminology of prospective candidates and candidates. KPU as a regulator in the implementation of Pilkada, is authorized to regulate

the technical implementation of the Pilkada stages. The provisions tested in this case by the Supreme Court are the realm of legal policy.

c. Changing the meaning of Article 4 paragraph (1) letter d PKPU No. 9/2020. The Supreme Court's stance in its decision No. 23 P/HUM/2024, which changed the substance of Article 4 paragraph (1) letter d PKPU a quo on the phrase 'as of the inauguration of the elected candidate pair', is actually a denial of the provisions of its own procedural law. Referring to the provisions of Article 8 paragraph (2) (Perma No. 1/2011), namely: "in the event that 90 (ninety) days after the Supreme Court's decision is sent to the State Administrative Body or Official who issued the Legislation, it turns out that the Official concerned does not carry out his obligations, by law the Legislation concerned has no legal force". The provisions of this Perma article indicate that if the application for the right to object to judicial review is granted by the Supreme Court, then the implementation of the decision uses the principle of contrarius actus. The principle of contrarius actus is a principle that states that the State Administrative Body or Official that issued/issued the rule/decision is automatically authorized to cancel it. This means that the Supreme Court does not directly state that the tested legal product is contradictory, but rather leaves it to the relevant body to annul its own legal product by referring to the Supreme Court Decision (Imam, 2019). If within 90 (ninety) days, the body does not follow up, then by law it can only be said to be canceled. More simply, the essence of the above description is that the Supreme Court is not allowed to change/add/reparate the norm being tested. This means that the Supreme Court only needs to state whether it is contradictory or not, which is then followed up by changes to the rules by the recipient of the decision.

Therefore, it is accurate to say that the Supreme Court's decision is not in the position it should be. The various considerations that are not "steady" show that the Supreme Court Decision a quo is full of political considerations, not populist ones.

Historical Traces of the Supreme Court's Material Test Authority

In this section, the author will introduce the history of the reasons for granting the Supreme Court the authority to review laws and regulations under the Law against the Law. In the historical record of the state administration, the idea of testing by the Supreme Court is actually an ideal idea that was proposed by Yamin in the BPUPKI session who proposed that the Supreme Court should be authorized to 'compare laws' which means nothing else but the authority of judicial review. However, this idea was rejected by Soepomo. Soepomo explicitly gave a rebuttal to Yamin's proposal. According to Soepomo, such a system order did exist, but according to him, the Draft Constitution did not use a system that fundamentally separated the three state institutions, both legislative, executive and judicial. This indicated that the activities of the judicial power would not control the power of the Constitution. (Sunarto, 2016). Furthermore, Soepomo said that in practice, if there was a dispute over whether or not a law contradicted the Constitution, then this was not a juridical problem, but rather a political problem,

so the system was not good for the Indonesian state to be formed. Moreover, according to Soepomo, Indonesian jurists also had no experience in such matters.

Testing of laws and regulations under the Act against the Act (material test rights) is a testing process to validate the content material in legal products under the Act, whether it is harmonious with the content material of the Act or not. This process is necessary to avoid the existence of new policies / regulations that go out of the rails of the provisions of the Act which then harm the community and do not get approval from officials who are equipped with legitimacy by the people, as well as a form of checks and balances. On the other hand, there are quite a number of laws that are actually castrated by the laws and regulations below them. This happens because regulators do not pay attention to the hierarchy and procedures for preparing laws and regulations. (Prodjodikoro, 1974).

The testing model above is what Yamin hoped for, although at that time the visionary idea was countered. Although Yamin's proposal was not included in the authentic text of the 1945 Constitution of the Republic of Indonesia, in the end the basic idea of judicial review/toetsingsrecht of legal products was subsequently included in the authority of the Supreme Court to examine legislation under the Act against the Act, even this had existed before the amendment of the 1945 Constitution of the Republic of Indonesia, as in the course of its history, the regulation of the right of judicial review by the Supreme Court, began to exist since 1970, namely in Law No. 14 of 1970 concerning Basic Provisions of Judicial Power. (Simanjuntak, 2018). However, this leads to an important question, namely, what is the historical background of the emergence of the right to judicial review of legal products in the Law, which in the debates of the BPUPKI meetings, the idea of testing was rejected and not included in the Original 1945 Constitution? To answer that, it is necessary to dissect the substance of MPR Decree No. XIX/MPRS/1966 concerning the Review of State Legislative Products outside of MPRS Products that are Not in Accordance with the 1945 Constitution of the Republic of Indonesia.

The MPR Decree was a product of the early days of President Soeharto's New Order. Through this MPR Decree, it can be said that it laid the seeds for the idea of the right to judicial review of all legal products. The review was carried out on all legal products outside the legislature that were contrary to the 1945 Constitution. However, the review was not carried out by the Supreme Court, but was assigned to the Government and DPR GR (Gotong Royong). It was in this MPR Decree that the concept of judicial review was first adopted into the Indonesian legal system. TAP MPR No. XIX/MPRS/1966 then received special attention at that time from the Supreme Court, so the Supreme Court made Circular Letter No. 4 of 1996. In point 3 of the Circular Letter, with due regard to MPR Decree No. XIX/MPRS/1966, the Supreme Court reaffirmed that Law No. 19/1964 on the Basic Provisions of Judicial Power and Law No. 13/1965 on Courts within the General Courts and the Supreme Court, contradict each other and deviate from the purity of the 1945 Constitution of the Republic of Indonesia.

Based on the description above, in the author's opinion, TAP MPR No. XIX/ MPRS/1966 was used as a momentum for the Supreme Court to review the legal basis of the Supreme Court. The presence of the MPR Decree and Circular Letter can also be said to be the embryo of the birth of the right of judicial review by the Supreme Court against legislation under the Act against the Act. However,

the amendment of the 1945 Constitution of the Republic of Indonesia, which was predicted to make significant changes to the constitutional system, in fact did not have a significant effect on the right of judicial review by the Supreme Court. The novelty in the post-amendment 1945 Constitution of the Republic of Indonesia is only the affirmation of the authority of judicial review, which previously existed in law, into the norms of Article 24A paragraph (1) of the Amended 1945 Constitution of the Republic of Indonesia, namely: "The Supreme Court has the authority to hear cases at the cassation level, to examine laws and regulations under the law against the law, and has other powers granted by law".

Tracking the Escalation of Political Judicialization and Judicial Politicization in Decision Number 23 P/HUM/2024

The judicial escalation of politics is an increase in judicial intervention into the legislative power of parliament. This seems inevitable. Motives for judicialization of politics appear to occur in order to control legislative power. This relationship can still be categorized as critical and constructive, but the potential for this relationship to turn into a collaborative and even conspiratorial relationship remains a possible threat. One concern is political intervention in judicial decisions. The more possibilities for judicial institutions to participate in shaping regulations, it is like opening up opportunities to move parliamentary debates in the courts. As a result, every political force feels the need to have their influence in the courts. The court seems to turn into a political institution because every political force has its "representative" and every judge seems to have his or her own "constituency". The above may seem like satire, but such a reality does exist in the judiciary, even in the United States, which has a long history of discourse on political intervention into the judiciary. (Ferejohn, 2002).

The United States constitutional formulation scheme through the incorporation of the concepts of separation of powers and checks and balances, although it looks simple, is actually always considered unsatisfactory and leaves unanswered problems. The formulation requires that each power must have the opportunity to be checked by other institutions, including the supreme court as the executor of judicial power. In order to ensure the independence of the judicial power, checks on the judicial power are not specifically applied to the products of this branch of power in the form of court decisions. (Hirschl, 2008).

As stated in the previous section, the problematic Supreme Court Decision No. 23 P / HUM / 2024 related to the Materil test of the norms of Article 4 paragraph (1) PKPU No. 9/2020, as is well known, the Decision a quo changes the rules for calculating the age of candidates for Regional Heads from what was originally calculated from the determination of candidates, changing to the rules for the age of candidates for Regional Heads calculated when the candidate is inaugurated as the definitive regional head, not since the determination of the candidate pair. The political process in the 2024 Presidential Election contestation, which was also colored by the intervention of the judicial power of the Constitutional Court, which changed the age limit norms for presidential and vice presidential candidates, has not yet been completed. Now the Supreme Court Decision a quo reappears with the same "breath", namely changing the legal status of the age limit regulations for election contestants (Regional Head Candidates),

which PKPU is clearly based on the Pilkada Law. Therefore, according to the author, it is natural that the public highlights this movement as a presumption that the Supreme Court Decision a quo has a political motive to accommodate certain parties to advance in the 2024 Pilkada after reading that there is the same pattern as Constitutional Court Decision No. 90.

Based on the discussion of the anomalous points that the author has previously described in Supreme Court Decision No. 23 P/HUM/2024, the author can say that the crucial point concerns the independence of Supreme Court judges to be free from various political pressures that certainly influence the institution's decisions. In further analysis, if we look at the actions of the courts in intervening in the legislative power, we need to know that the character of the law-making process and the legislative body as the formulator is very different from the character of the judicial power institution that has the right to test legislative products or judicialize politics.

The Bangalore Principles of Judicial Conduct mention 6 (six) principles that must be possessed by the judicial power, namely independence, impartiality, integrity, propriety, equality, competence and diligence. The six principles of judicial power above appear to be very different and even to some extent contradictory to the character of the legislature. Independence, impartiality, equality, competence and diligence are very different in character from parliament.

In the norm review process, judges have no obligation to satisfy constituents or proposing institutions. Judges should not even be subject to pressure and influence from either the press or the public (trial by the press, trial by the mass) in making decisions. Political interests, which are the basis of interaction between members of representative institutions, in the judicial power are things that must be kept out of the consideration of decision making. (Borman, 2017). Competence and diligence also make a difference. The character of expertise, which is not naturally possessed by representative institutions, must be strongly held by the judicial power. (Arsil, 2009). All decisions must be made based on strong and convincing arguments. Judicial power, especially in norm testing, must contain a strong ratio decidendi so that the verdict can be understood by all interested parties.

Reflecting back on the problematic Supreme Court Decision No. 23 P/HUM/2024 that carried out judicial activism 'changing the norm', the author can draw on the theoretical view of the separation of powers according to Mark Tushnet, a Havard Law School Jurist, who has the idea that the limit to avoid the birth of a disproportionate escalation of political judicialization with Weak-Form Judicial Review which is characterized by not final and absolute court decisions regarding public policy. This idea allows the legislature to review and if necessary, set aside the judgment. The system is designed to respect the balance of power between the judiciary and the legislature, reduce the risk of court domination in politics, and promote dialogue between branches of government. It ensures that public policy can still reflect the will of the people through democratic mechanisms.(Tushnet, 2009).

The values that are unique to each branch of power should be preserved. In the United States, there is a political question doctrine that sets limits on judicial

intervention on issues of a political nature. This doctrine is rooted in a commitment to the principle of separation of powers underlying the American constitution, which explicitly divides the functions of government into three branches: executive, legislative and judicial. The doctrine guides courts to refrain from hearing cases whose issues are deemed by the constitution to be more appropriately addressed by the legislative or executive branches, rather than the judiciary. (Fallon Jr, 2013). Of course, in the discourse of this view, it is necessary to control or limit the judicial institutions, especially such as the Constitutional Court and the Supreme Court to form norms, this concept was later expressed by Bagir Manan as self-restraint. The need for self-control (self-restraint), because the authority to test norms always intersects with politics. (Manan & Harijanti, 2017).

There are also other views such as Ronald Dworkin, who asserts that Judges should not make laws for two reasons, First, Judges are not elected by the people, because only bodies that are actually elected by the people directly are authorized to make laws. Second, allowing Judges to make law when adjudicating, is a violation of the prohibition of applying the law retroactively, meaning that Judges decide according to the law created after a legal event occurs. Therefore, in order to maintain the khittah of the judiciary as a tester of the validity of norms (only stating contradictory or not contradictory) and to no longer issue controversial decisions, it is necessary to limit judicial power.

To end the discussion of this section, the author would like to refresh the memory of a person named John Locke. In the works of John Locke, it appears that he was the one who consistently offered the idea of limiting power in the state to avoid abuse and arbitrariness of the ruler. (Azhary, 2015). When talking about the conception of popular sovereignty, John Locke's idea initially appears similar to Thomas Hobbes' idea by describing humans initially in a natural state and then in a state through a collective agreement. (Effendi, 2020). However, Locke differed from Hobbes because he did not want absolute power. Based on this view, the essence of power is a necessity to be limited.

Ideas for Structuring an Integrative Testing System to Realize Purification of the Bifurcation System of Judicial Power

Law is a mode of giving particular sense to particular things in particular places/ things that happen, that fail to, things that might). Borrowing the opinion of Benjamin Nathan Cardozo quoted by Achmad Ali, is enough to reflect us, that in fact the law always gives its role to a certain thing according to the conditions of an event that must be protected by law. Even the position of law as the ideals and expectations of the entire community must be able to solve all the affairs and needs of the community, and it is actually the law that is the guiding star in the administration of the state in accordance with the principle of "the Rule of Law, and not of Man". (Achmad, 2009).

One of the pillars of legal protection is the existence of judicial institutions. The role of the Court as an institution determining justice in addition to having to consider the axiology of the usefulness of the results of a decision as said by Holmes that The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law, also the substance of the decision as a foundation and law that must be implemented, both decisions issued by the

Constitutional Court as the Court of Law and the Supreme Court as the Court of Justice. (Huda, 2007). However, it cannot be denied that there are still doubts among legal experts in terms of the Supreme Court's institutionalization in examining legislation under the Law against the Law.

On the basis of these doubts, the idea of integrating judicial review of laws and regulations in the Constitutional Court has emerged, which stems from the theoretical assumption that laws and regulations are political products made on the basis of the political consensus of the makers, which does not rule out the possibility that there are a number of conspiracies of interests hidden by the makers to benefit themselves and certain groups. Therefore, the idea of placing the Constitutional Court as a court to decide cases that intersect with politics is because it is certain that Constitutional Court judges are better able to dive into and understand the differences in political interests in laws and regulations between the makers. Because one of the requirements to become a Constitutional Court judge is to be a statesman).

At least there are several other fundamental things that need to be elaborated, namely the presence of dualism of testing in the Constitutional Court and the Supreme Court presents a polemic even though the objects tested are different and not equal, this is not only a technical problem that must be corrected but also a potential polemic that will occur. In our legal system, we practice a tiered legal theory (stufenbau theory), meaning that the principle of lex superior derogat lex inferior applies, where lower regulations cannot contradict the regulations above them. This means that it is clear that a regulation must be in one frequency with the regulations above it. However, with the existing reality that there are two institutional roofs in the examination of laws, of course there will be many differences, both the mechanism and the legal paradigm of the judges. (Syahuri, 2014).

Furthermore, Jimly Ashidiqqie also commented that the division of tasks in the field of regulatory testing of laws and regulations between the Supreme Court and the Constitutional Court is not ideal at all, because it can lead to differences or conflicting decisions between the Constitutional Court and the Supreme Court. (Asshiddiqie, 2021). This is evidenced, according to the author, by the presence of Supreme Court Decision No. 23 P/HUM/2024, where the Supreme Court, in its consideration, entered the area of original intent of the 1945 Constitution. The polemics over the testing of laws and regulations are based on the existence of two institutions (MA and MK) in testing laws and regulations, which will cause problems due to the lack of firmness and integration of the vision and conception of law that will be built within the framework of legal reform in Indonesia. The direction of legal politics, as well as the objectives to be achieved, in the integration of the testing system that the author puts forward, are:

1. Creating consistency in legislation, from the highest degree to the lowest degree. When consistency is realized, it can be interpreted as the realization of legal harmonization, so that it is not confusing in its implementation.
2. Actualizing the spirit of the constitution in all laws and regulations. The Indonesian Constitution is not a semantic constitution, which is only a mere decoration. The constitution must live and grow in all lines of regulation. This is realized when there is integration of testing.

3. Make it easy for people to access justice, when their rights are taken away by a rule of law. This access is through judicial review at the Constitutional Court, because the Constitutional Court judges are the guardians and interpreters of the formulation of human rights in the constitution.
4. Reducing the case load on the Supreme Court, considering that the Constitutional Court is the highest court.
5. When referring to Perma No. 1/2011, concerning the Right to Material Test, there are many problems in its procedural law, especially in public accountability and execution of decisions. Therefore, the existence of one-stop testing will open up space for public accountability, as well as improvements in the procedural law, especially in the execution of decisions.
6. Improving the system of local regulation review, considering that the Government is no longer authorized to cancel local regulations. In this case, the Constitutional Court can conduct a review of local regulations, and interpret the content material of local regulations, which is seen through the intent and will in the Constitution relating to Regional Autonomy.

Of course, based on the above objectives, in the future the possibility of integrating the entire regulatory testing system under the authority of the Constitutional Court must be considered. So that it is appropriate to unite the Constitutional Review in the Constitutional Court with reforms to the process of Legislative Review. So to conclude this discussion, the author recommends the following formulation of changes in the authority of the Constitutional Court in the future testing system (Ius Constituendum):

Tabel. 1: Future Design of Integrative Testing by MK

Amendments to the 1945 Constitution and Laws related to the Authority of the Constitutional Court	
Provisions Before Amendment	**Proposed Future Changes**
1. Deciding on the Examination of Laws against the Constitution 2. Deciding disputes over the authority of state institutions whose authority is granted by the Constitution 3. Deciding the dissolution of a political party 4. Deciding disputes over election results 5. Must give a decision on the opinion of the DPR regarding alleged violations by the President and / or Vice President according to the Constitution.	1. Deciding on the testing of laws and regulations under the law against the Constitution. 2. Ruling on disputes over the authority of state institutions whose authority is granted by the Constitution. 3. Ruling on the dissolution of a political party 4. Deciding disputes over election results 5. Must give a decision on the opinion of the DPR regarding alleged violations by the President and / or Vice President according to the Constitution.

The unification of the roof of testing of laws and regulations is certainly important to purify the testing model to strengthen the supremacy of the constitution in the Constitutional Court and design the Supreme Court to become a general court (court of justice) to apply laws and regulations in concrete law in order to realize legal justice. Amendments can be made by expanding the authority of the Constitutional Court, in Article 24C paragraph (1) of the 1945 Constitution and the Constitutional Court Law as a related regulation, to regulate not only testing laws, but all laws and regulations (positive law) in Indonesia. Then, remove the authority of the Supreme Court to test laws and regulations against the law. This can certainly be done by fostering the political will of the authorities to amend the Constitution. This is of course, as an effort to create a better constitutional climate, and avoid legal loopholes and defiance of the spirit of the constitution.

CONCLUSION

The birth of Supreme Court Decision No. 23 P / HUM / 2024 which invalidates the norms of Article 4 paragraph (1) PKPU No. 9/2020, clearly has a significant impact on the process of organizing the 2024 Pilkada. Not yet over the political iddah period of the General Election which was also colored by the political process of interest in Constitutional Court Decision No. 90, the public was again stunned by this Supreme Court Decision No. 23 P / HUM / 2024 which changed the meaning of the regulation of Article 4 paragraph (1) PKPU No. 9/2020 related to the calculation of the age limit of candidates for Regional Heads is after the inauguration. Departing from the results of the author's research that has been described, the a quo decision raises problems, among which are legal considerations that are very inadequate and even exceed authority, because the Supreme Court is offside in interpreting the constitution. In addition, the author also considers that there is a high possibility of political intervention in the decision. This can be referred to as political judicialization and judicial politicization, including Supreme Court judges who change the norms (Judicial Activism) by intervening in the authority of the KPU, showing a denial of the noble idea of limiting power by law.

The problems with Supreme Court Decision No. 23 P/HUM/2024 are enough to reflect that there is still a legal gap that must be addressed, namely the judicial review path which is divided into two carried out by the Supreme Court and the Constitutional Court (bifurcation) of the judiciary, which is clearly not ideal. So that in the future, in the context of legal reform, it is necessary to integrate the testing of laws and regulations carried out by only one judicial power, namely the Constitutional Court. This is based on the assumption that every legal product is the result of political bargaining, which often has a hidden agenda by its maker. The

Constitutional Court is present as an examiner who balances it, so that it can control and restore it in accordance with the will of the constitution. A goal-oriented study of legal politics, this integration is able to create harmonization and legal certainty that breathes the constitution, so as to avoid confusion in the implementation of each legal product.

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