

Political Review by Parliament to Government Regulations in Lieu of Laws that have Been Tested by the Constitutional Court

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ABSTRACT

Background. The principle of the rule of law is embraced by Indonesia, which declares itself as a state of law, the 1945 Constitution of the Republic of Indonesia authorizes the Constitutional Court to test laws against the basic law.

Method. This study is a normative study, with the approach of legislation and several cases. The type of data used is secondary data, with descriptive qualitative analysis.

Results. The results of the study state that the use of the authority to review Perpu by the Constitutional Court is a material change in the constitution, which can reduce or deprive the constitutional rights of the DPR in using political review, or can cause the Perpu to be determined by the DPR is not in accordance with the original, because it has been tested first by the Constitutional Court.

Conclusion. However, when the Constitutional Court, as the interpreter of the Constitution, declared its authority to test the constitutionality of Perpu, controversy arose: The Constitutional Court has deviated from the Constitution, and on the contrary, the Constitutional Court has been correct in interpreting the Constitution even though it has increased its authority.

KEYWORDS

Constitutional Court, Constitutional Rights, Testing Perpu

INTRODUCTION

Constitutional material that clearly regulates the issue of testing legislation, seen after the constitutional amendment in 2001 conducted by the MPR (Bai dkk., 2021). Article 24A paragraph (1) of the 1945 Constitution states that the Supreme Court has the authority to hear cases at the cassation level, to examine legislation under the law against the law and has other powers granted by law (Luo dkk., 2019). While Article 24C reads: The Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final to test laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide disputes over the results of general elections (Ackerman, 2019). Thus, according to the constitution, there are two state institutions authorized to review legislation, namely the Supreme Court and the

Citation: Abadi, H. M., Kathryn, M., Maharjan, M. (2024). Political Review by Parliament to Government Regulations in Lieu of Laws that have Been Tested by the Constitutional Court. *Rechtsnormen Journal of Law* 2(1), 102–113. <https://doi.org/10.55849/rjl.v2i1.555>

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Received: March 12, 2024

Accepted: March 15, 2024

Published: March 31, 2024



Constitutional Court (De Marneffe & Nivre, 2019). With the judicial power authorized to review legislation, there are only two types of legislation that cannot be reviewed by the judicial power (Zhu dkk., 2022), namely the Constitution and the MPR Decree.

The types and hierarchy of laws and regulations currently consist of the 1945 Constitution of the Republic of Indonesia; Decree of the People's Consultative Assembly; Law / Government Regulation in Lieu of Law; Government Regulation; Presidential Regulation; Provincial Regional Regulation and Regency / City Regional Regulation; (Article 7 Paragraph 1, Law Number 12 of 2011).

This study discusses one type of legislation called government regulations in lieu of laws, abbreviated as Perpu (Guo dkk., 2021). The existence of this Perpu in the discussion of testing legislation is not agreed upon by experts, whether this Perpu is included in laws and regulations that are subject to (not free) from the law of testing, or whether this Perpu is free or sterile from constitutionality testing whose authority is given to the Constitutional Court.

In its history, the Constitutional Court, which has been formed since 2003, this court is of the opinion that Perpu is a type of legislation that is subject to constitutionality testing, whose authority lies with the Constitutional Court. At least in Constitutional Court Decision No. 138/PUU-VII/2009 and Constitutional Court Decision No. 145/PUU-VII/2009 (Guo dkk., 2021), the court has given a decision stating that the petitioners do not have legal standing to file a petition and the subject matter of the petition is not considered (Gostin & Wiley, 2020). Meanwhile, in the Constitutional Court's decision when examining Perpu No. 2 of 2017 concerning Amendments to Law No. 17 of 2013 concerning Community Organizations (He dkk., 2020), the court was of the opinion that the object of the petition did not exist, because the Perpu in question had become non-existent as a result of having been accepted by the DPRRI to become a law.

Based on the description above, this paper will examine 2 problems (Ai dkk., 2020). First: what are the opinions of experts on the position of Perpu as one type of legislation and its relation to the constitutionality testing of a legislation Second: what are the implications of the use of the authority of the Constitutional Court on the constitutional provisions that provide political review authority to the DPR.

RESEARCH METHODOLOGY

The research conducted uses normative legal research or library research, which is conducted to obtain secondary data with research materials in the form of books, articles, research results, and laws and regulations, as well as expert opinions relating to the conception of the rule of law and the theory of hierarchical legislation. For library research, a document study tool is used. Specifically, the research is based on expert opinion regarding the hierarchy of laws and regulations, namely the opinion of Hans Kelsen, which was then further developed by his student Hans Nawiasky, while to deepen the Government Regulation in lieu of Law, with regard to its level with the Law, it is explored through a number of expert opinions. Next, the conception of the ideal rule of law, which can provide a fair guarantee of legal certainty, is analyzed. The next analysis is what are the implications of the authority of the Constitutional Court to examine a PERPU, towards the constitutional authority of the parliament. The data related to the writing of this study is analyzed descriptively qualitatively, namely by conducting an analysis which is basically returned to three aspects, namely classifying, comparing and connecting. The data that has been collected from library research is then analyzed qualitatively to answer the research problem in question.

RESULT AND DISCUSSION

The difference between a law and a government regulation in lieu of law is in terms of the forming institution and thus with regard to its formal aspects (Nieuwland & Van Melik, 2020). Whereas a law is formed and must be approved jointly between the House of Representatives and the President, a Perpu is formally a government regulation issued by the government (president) in the event of a compelling urgency, but the content or substance is the same as a law (Foulkes dkk., 2020). The content and substance of a Perpu can contain a new legal norm, declare the inapplicability/revocation of an existing legal norm, replace an existing legal norm with a new norm. However, the fate and journey of a Perpu is limited in time, namely until there is a decision from the DPRRI (Miao dkk., 2019). The decision that must be taken by the DPRRI is not specified, whether it is no later than 3 months or 12 months or more than that (Hassounah dkk., 2020). The Constitution only states that it must be done by the DPRRI during the next trial period (Chalamaiah dkk., 2019). The Constitution does not even mention what happens if the DPR does not make a decision during that session and it is only decided after the next session.

The decision of the DPR RI has two options, namely that the DPRRI accepts the Perpu and thus there is a change in status and formality, namely from the Perpu nomenclature to become a law (Kelly dkk., 2019). The second alternative is the rejection of the Perpu, thus the fate of the Perpu has been completed, and thus the Perpu must be revoked with due regard to the legal consequences that must be resolved.

Constitutionality Testing of Perpu by the Constitutional Court

Among academics, the discussion of the existence of the authority to test the constitutionality of a Perpu is not found in the same opinion, each of which has a different basis for thinking and argumentation. The diversity of opinions will be presented in this paper (Cohen dkk., 2019). Ni "matul Huda argues that the Constitution does not explicitly give the authority to review Perpu to the Constitutional Court, therefore the testing of Perpu by the court can be considered as a serious violation of the Constitution (Distefano dkk., 2019). If the Constitutional Court has such an opinion, it should be conveyed to the MPR so that the MPR amends the constitution and adds this authority to Article 24C (Ni'matul H, 2010: 90).

Jimly Asshiddiqie states that as long as the legal product is still Perpu, and has not yet become a law, then even though its position is equal to the law, the effort to control the law (norm control) against Perpu is still a matter for the DPR and has not become a matter for the Constitutional Court. However, the issue is whether the Constitutional Court must wait for the Perpu to become a law to be tested while the President's arbitrary actions have caused serious victims of injustice (Radoglou Grammatikis dkk., 2019). Therefore, Jimly argues that the Perpu, its official name is Government Regulation but its content (material) is a law, namely a law in the material sense (Cohen dkk., 2019). Thus, the Perpu can be tested for constitutionality by the Constitutional Court as it should (Jimly A., 2006: 87).

Another expert opinion that rejects the test of Perpu by the Constitutional Court is expressed by Ibnu Sina Chandranegara (Nazmi dkk., 2019). He stated that with the authority of the Constitutional Court to examine a Perpu, it means that it has changed the text of the constitution and resulted in constitutional chaos and the potential for disputes between the Constitutional Court and the DPR. For this reason, it is recommended that the MPR in the future make amendments governing the authority of the Constitutional Court to review laws and Perpu (Isoaho & Markard, 2020). In his book, Moh. Mahfud wrote that Perpu cannot be subjected to judicial review because Perpu as an emergency law can only be tested through political review or legislative review in the

DPR during the next session after the Perpu is issued. Giving the right to review a Perpu to a judicial institution is a violation of Article 22 Paragraph (2) and paragraph (3) of the 1945 Constitution (Mahfud MD, 2010: 119).

In one of his writings, Iskandar Muda actually argues that the existence of the authority of the Constitutional Court in testing the constitutionality of a Perpu must be appreciated because then the 1945 Constitution becomes a living constitution (Letsa, 2019). It would be unfortunate if the President stipulates Perpu but there is no state institution authorized to handle it. For Iskandar Muda, the constitutionality test of Perpu includes the realm of the Constitutional Court's authority in line with the philosophy of judicial activism (active understanding) (Iskandar Muda, 2013: 83).

Akil Muchtar stated that the Constitutional Court has a fairly open opportunity to examine government regulations in lieu of laws (Binder & Heupel, 2021). The Court should not be fixated with the provision that Perpu can only be tested through a political review by the DPRRI because the Court must be able to follow the development of constitutional law (Goodman, 2019). MK as the guardian of the constitution as well as the protector of citizens' constitutional rights should be able to test Perpu. Moreover, currently there is no state institution that can control the issuance of Perpu (<http://jakarta45.wordpress.com>. Accessed 2-1- 2019).

In an article, Riri Nazriyah stated that the constitution explicitly does not give the Constitutional Court the authority to review Perpu. Although the Constitutional Court does not intend to make changes to the constitution (Edenberg & Hannon, 2021), but by stating its authority to test Perpu, the Constitutional Court has added authority through its decision (Aedo, 2019). Changes to the constitution through Constitutional Court decisions are something that often happens, and this is referred to as judicial interpretation. Judicial interpretation can indeed function as a method of constitutional change in the sense of adding, reducing or improving the meaning of a constitutional text (Riri Nazriyah, 2010: 403).

When considered from a number of opinions expressed above, it can be grouped that there are opinions that can be grouped as follows: First, stating that the authority to test the constitutionality of a Perpu must be a provision in the constitution, without explicit provisions in a constitution, it can be considered a deviation from the constitution (Reid, 2022). For this reason, it is suggested that a constitutional amendment be made in this regard (Ellenberger & Richardson, 2019). Second, the opinion that states that the Constitutional Court is authorized to test the constitutionality of a Perpu, because materially the Perpu is a law, and this authority is intended to avoid abuse of power by the President (Shatkin & Soemarwi, 2021). However, from the existing opinions, the author argues that there needs to be a further study or review of how to proceed if the Constitutional Court Decision has been issued, especially regarding procedures in the DPR.

b. MKRI Decision on the Authority to Test the Constitutionality of Perpu

In 2009, Indonesian President Susilo Bambang Yudhoyono issued Government Regulation in Lieu of Law No. 4/2009 on the Amendment to Law No. 30/2002 on the Corruption Eradication Commission, dated September 21, 2009 (Krzyżanowski, 2020). The content of the Perpu essentially authorized the President to appoint temporary members of the KPK in the event of a vacancy in the membership of the KPK leadership, resulting in less than three leaders (Fernández Pinto & Hicks, 2019). The issuance of this Perpu caused controversy and shook the legal system and joints and was considered contrary to the constitution and Law No. 10/2004 on the Formation of Legislation.

According to the Indonesian Advocates Association of the Guardians (PAIP) of the Constitution, who acted as petitioners for judicial review, considered that the Perpu was issued not

in accordance with the principles of legal certainty and the rules of the formation of laws and regulations and contrary to Article 28D paragraph (1) of the 1945 Constitution which harmed the constitutional rights of the petitioners.

In Constitutional Court Decision No. 138/PUU-VII/2009 on the Examination of Perpu No. 4/2009 on the Amendment to Law No. 3/2002 on the Corruption Eradication Commission (Pérez-Armendáriz, 2021), it was stated that a Perpu is actually a regulation whose material must be regulated in the form of a law, but due to the urgency of the situation, the Constitution gives the President the right to enact a Perpu and does not give that right to the DPR. Although this Perpu is the right of the President, it does not mean that it is without the requirements of objective circumstances when issuing it (Sözen, 2019). These circumstances must be: a) there is an urgent need to resolve legal problems quickly based on the law; b) the law needed does not yet exist so that there is a legal vacuum or the law exists but is inadequate; c) the legal vacuum cannot be resolved by making laws in the usual procedure because it will take a long time while the urgent situation needs certainty to be resolved (Constitutional Court Decision, 138/2009: 19).

Every Perpu, like a law, gives birth to a legal norm and as a new legal norm, it will give rise to: a) new legal status, b) new legal relations, and c) new legal consequences (Perrin & Bouisset, 2022). The legal norm is born since the Perpu is passed and the fate of the legal norm depends on the approval of the DPR to accept or reject the Perpu legal norm, however, before the DPR's opinion to reject or approve the Perpu, the legal norm is valid and applies as a law (Mastanduno, 2019). Because it can give rise to legal norms whose binding force is the same as the law, the norm contained in the Perpu can test whether it is materially contrary to the 1945 Constitution, before the rejection or approval by the DPR and after the DPR's approval because the Perpu has become a law (ibid, 2009: 21).

Of the 9 judges of the Constitutional Court, there was one judge who expressed a concurring opinion, namely M. Mahfud MD and one who expressed a dissenting opinion, namely Muhammad Alim.

At first, Mahfud MD argued that if the original intent, historical interpretation, grammatical interpretation, and legal logic are considered, the Perpu should not be the object of constitutionality testing by the Constitutional Court because the Constitution only gives the authority to test laws against the Constitution. It is true that from the point of content, the Perpu regulates the material of the law (Syfers dkk., 2022). This means that the content of the Perpu is actually a law made in a compelling urgency whose reason for issuance is the subjective reason of the President. Because it is made in a critical situation (Raphael dkk., 2019), the Constitution states that the Perpu must be approved by the DPR during the next session. Thus, a political review must be carried out first and only then is a judicial review carried out by the Constitutional Court. If there is a grant of authority to an institution to conduct a review of a Perpu, then it is interpreted as a deprivation of the rights and constitutional authority of the DPR given by the 1945 Constitution. The similarity of content level between Perpu and law cannot be used as an excuse for any institution to test Perpu, especially if the similarity is only because Perpu is interpreted as a law in the material sense.

However, Moh. Mahfud MD also finally gave an opinion which in essence agreed to the Perpu being tested by the Constitutional Court on the grounds of constitutional interpretation, namely by stating the need for the use of sociological and teleological interpretations. The consideration is that a Perpu issued by the President is not always immediately discussed and decided in the DPR trial at the first opportunity. There is even a tendency for the DPR to stall for time, as if giving the President the opportunity to enact the Perpu until the objectives to be achieved by the President have been fulfilled. This happened in the case of Perpu No. 4/2009, which was

issued on September 22, 2009, while the closest session of the DPR after the issuance of the Perpu was October 1 to December 4, 2009. However, as has become history, during the first session, the DPR did not make any decision, either to accept or reject the regulation. For Mahfud, it was dangerous for the DPR to stall for time while the material of the Perpu contained things that were contrary to the constitution (ibid, 2009: 28). Another situation that must be taken into account is the existence of political forces in the DPR that deliberately boycott or obstruct the proceedings of the DPR, so that the DPR does not convene to accept or reject the Perpu. This force may or may not have a political relationship with the President. The most critical thing that must be taken into account is if the content of the Perpu contains a freeze that paralyzes existing state institutions. Therefore, in accordance with the principle of constitutional supremacy, which reads that there should not be a single second of legislation that has the potential to violate the constitution without being straightened out or tested through judicial testing, finally Moh. Mahfud agreed that the Constitutional Court had the authority to approve Perpu (ibid, 2009: 28).

Another judge, Muhammad Alim, expressed his opinion that the Constitutional Court is not authorized to conduct a constitutionality review of Perpu because the constitutional provision clearly states that the Constitutional Court is authorized to review laws. The will of the framers of the Constitution, namely the MPR, is that only laws can be tested by the Constitutional Court, not Perpu or TAP MPR. This can be shown by the MPR Decree No. III/MPR/2000 on the Source of Law and Order of Legislation which places Perpu under the law and the MPR's authority to review laws, which does not include Perpu. According to M. Alim, the Constitution intentionally does not mention the type of Perpu legislation as a regulation that can be tested by the Constitutional Court. This happened in the case of Perpu No. 2 Year 2002, which was only tested after the Perpu became a law. As is known, the law that was tested was Law No. 16 Year 2003 on the Stipulation of Perpu No. 2 Year 2002 on the Enactment of Perpu No. 1 Year 2002 on the Eradication of the Criminal Acts of Terrorism in the Bali Bombing Incident on October 12, 2002 into law. Furthermore, M. Alim concluded that Article 1 paragraph (2) of the 1945 Constitution determines that sovereignty is in the hands of the people and is exercised according to the Constitution. The authority granted by the sovereign must be exercised in accordance with the Constitution and must not deviate from the 1945 Constitution. The authority of the Constitutional Court as stated in Article 24C paragraph (1) of the 1945 Constitution, which is only limited to examining laws against the Constitution, if added by examining Perpu, means deviating from the Constitution.

Finally, Muhammad Alim argues that the Constitutional Court does not have the authority to hear requests to review Perpu. If the content of the Perpu is not the content that should be regulated in the law or outside the authority of the President or is clearly contrary to the Constitution, for example, the President issues a Perpu whose contents dissolve the DPR, then the Constitutional Court has the authority to hear Perpu testing because it is contrary to Article 7C of the 1945 Constitution, even though it has not received approval from the DPR. However, in the case of Perpu No. 4/2009, the content is still within the President's authority and does not contradict the 1945 Constitution, so M. Alim argues that the Constitutional Court is not authorized to hear the Perpu petition (ibid, 2009: 29).

With this opinion, Muhammad Alim actually has the opinion that the Constitutional Court is indeed authorized to test a Perpu. Determining whether a Perpu is against the constitution or not against the constitution is, of course, through a thorough and in-depth examination by the Constitutional Court. The Constitutional Court's decision consists of an inadmissible petition, a granted petition, and a rejected petition. In the event that the law under review is deemed not to be unconstitutional, the Court's decision states that the petition is rejected. Conversely, if the

Constitutional Court considers that the law is contrary to the constitution, then the Court states that the petition is granted. (Article 56 of Law No. 24 Year 2003)

c. Implications of Perpu Testing by MKRI on the Constitutional Rights of the DPR

In this section, the author will begin by expressing an opinion regarding the concurring opinion delivered by a constitutional judge above to answer how the fate of a Perpu after the Constitutional Court conducts a formal or material test and its relation to the constitutional right of the DPR to conduct a political review.

First, with regard to the phrase that judicial review of a Perpu is a "usurpation" of the DPR's constitutional rights and authorities granted by the 1945 Constitution. The DPR's constitutional right to a Perpu, which is said to be a political review, is limited to one of two options, namely approving the Perpu to be enacted and this results in a Perpu changing into a law. The second option is to reject the Perpu and therefore its enforceability stops at the moment of rejection, and therefore it must be revoked by the party that issued the Perpu. The DPR's reasons for accepting or approving a Perpu are political reasons or considerations and not at all considerations of whether the Perpu is constitutional or not.

The Constitutional Court has the authority to conduct formal and material review of laws and Perpu. The right to formal review includes, (a) testing the implementation of procedures or procedures for the formation of laws, both in discussions and in making decisions on drafts of laws into laws, (b) testing the form, format or structure of laws, (c) testing with regard to the authority of institutions that make decisions in the process of forming laws; and (d) testing other matters that are not included in material testing (Jimly A: 2005; 64).

Every petition for judicial review of a law submitted to the Constitutional Court in its petition must clearly outline that the formation of the law does not fulfill the provisions based on the 1945 Constitution of the Republic of Indonesia and / or the content material in paragraphs, articles and / or parts of the law is considered contrary to the 1945 Constitution of the Republic of Indonesia. (Article 53 paragraph (3) of Law No. 24 of 2003 concerning the Constitutional Court)

The Constitutional Court's decision in formal testing, if the petition is granted, will result in the law or Perpu being tested, the formality of which is considered contrary to the constitution, and therefore declared to have no binding legal force (Bahtiar: 2015: 177). This can be seen in Constitutional Court Decision No. 18/PUU-I/2003 on Law No. 45/1999 on the Establishment of Central Irian Jaya Province, West Irian Jaya Province, Paniai Regency, Mimika Regency, Puncak Jaya Regency, and Sorong City. The Constitutional Court's decision stated that Law No. 45 Year 1999, its formality (i.e. the enactment of this law) was contrary to the constitution and therefore declared to have no binding legal force. (Hadi Setia T, 2007: 223)

In the event that the use of the Constitutional Court's authority over Perpu is to test its formality, and results in a decision stating that the formality of the Perpu in question is contrary to the constitution and is declared not to have binding legal force, then the statement of Constitutional Court Judge Moh. Mahfud MD who stated that the Constitutional Court had taken away the constitutional rights of the DPR, is correct. This is because the DPR can no longer exercise its constitutional rights, because the Perpu in question no longer exists.

It is different if the Constitutional Court materially tests the Perpu. The applicant's request to test a law or in this case a Perpu, always requests testing for paragraphs, articles and / or parts of the law considered contrary to the 1945 Constitution of the Republic of Indonesia, and in many cases only requests interpretation from the Constitutional Court. For example, the Constitutional Court Decision No. 30 / PUU-XVI / 2018 on July 23, 2018 which interprets Article 182 letter (m) regarding the requirements to become a member of DPD RI where the Court interprets that holding

a position in a political party, including positions that are prohibited to be concurrent with the position of DPD member (willing not to concurrently hold positions as other state officials, directors, commissioners, supervisory boards and employees at state-owned enterprises and / or regionally-owned enterprises and other bodies whose budgets come from state finances). The Constitutional Court's decision has then been followed up by the KPU by issuing the General Election Commission Regulation (PKPU) Number 26 Year 2018 on the Nomination of DPD Members.

A Perpu that has gone through material testing by the Constitutional Court is still a Perpu (which has been constitutionalized by the Constitutional Court) and thus the DPR still has the constitutional right to conduct a political review, approve or reject the Perpu. Thus, the term deprivation of constitutional rights is not appropriate. Such a Perpu, if accepted by the DPR, will become a law whose content is not the same as the original Perpu, but has been adjusted to the provisions as decided by the Constitutional Court.

In the event that the Constitutional Court uses its authority to formally or materially review a Perpu, it can be stated that judicial review precedes political review. If the judicial review involves a formal test and the Constitutional Court decides that the Perpu is unconstitutional, then the Constitutional Court's decision annuls the DPR's constitutional right to conduct a political review. However, if the Constitutional Court's decision concerns the material test of a Perpu, then if the Constitutional Court's decision only states that one or several paragraphs, articles or parts of the Perpu are contrary to the Constitution, then the DPR can still exercise its constitutional right to conduct a political review of the Perpu (which is no longer in accordance with the original). The law as a result of the DPR's acceptance of the Perpu (which is no longer original, due to the Constitutional Court Decision) remains open to judicial review. The same applies to other laws. For example, Law No. 32/2004 on Regional Government has been subjected to judicial review 24 times, Law No. 10/2008 on General Elections for members of the DPR, DPD, and DPRD has been subjected to judicial review 24 times, Law No. 12/2008 on the Second Amendment to Law No. 32/2004 on Regional Government 11 times, Law No. 30/2002 on the Corruption Eradication Commission 11 times, Law No. 8/20081 on the Criminal Procedure Code 10 times (Husnu A, 2017: 18 and Wira A.H, 2017: 569). Even a law that is not yet 2 years old, namely Election Law No. 7 of 2017, has been tested 21 times. (Anwar Usman, 2019: 5). In the first 5-year period of the Constitutional Court, 2003 - 2008, the number of laws tested reached 69 laws (Bambang Sutiyoso, 2008: 364). The frequency of a law being tested by the Constitutional Court is related to the quality of the law itself, and also because after all a law is the result of a compromise between interested political forces either in parliament or outside it. (Mirza Satria Buana, 2009: 243)

Table 1: The Constitutional Court's Authority to Examine Perpu and the Constitutional Rights of the DPR

No.	Test Rights	Contents of MKRI Decision	Use of Parliament's Constitutional Rights
1.	Formal Test	In the event that the Constitutional Court Decision states that the formality of the Perpu is in accordance with the constitution	The DPR must still exercise its constitutional right to accept the Perpu or reject it.
		In the event that the Constitutional Court Decision states that the formality of the Perpu is contrary	The DPR's constitutional right to the Perpu is lost because the Perpu has been declared unconstitutional and

		to the constitution	has no legal force.
2.	Material Test	In the event that the Constitutional Court's decision states that the paragraphs of the Perpu requested are not contrary to the constitution	The DPR still has to exercise its constitutional right (political review) over the Perpu (which is still original)
		In the event that the Constitutional Court's decision states that the paragraphs of the Perpu requested are contrary to the constitution and have no binding legal force.	The DPR still has to exercise its constitutional right (political review) over the Perpu (which has been subjected to judicial review by the Constitutional Court). The material of the Perpu is not what it was originally.

The statement of Moh. Mahfud MD who took the position that it is very reasonable for the Constitutional Court to have the authority to examine Perpu on the basis of a legal adage stating that there should not be a single second of legislation that has the potential to violate the constitution without being straightened out or tested through judicial review, has been proven by the Constitutional Court itself. Regarding Article 50 of Law No. 24 of 2003 concerning the Constitutional Court, which reads that laws that can be petitioned for review are laws enacted after the amendment of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court stated that the Constitutional Court is authorized to examine all laws, including those that existed before this constitutional change. This decision of the Constitutional Court is very appropriate. It is very unfair and inappropriate that there are two types of laws, one originating from the time of Indonesia's independence, part of which originated from Dutch colonial law (Bagir Manan, 2014: 33) until the time of the constitutional amendment, cannot be tested by the Constitutional Court. While the second type of law is the law issued after the constitutional amendment, which is allowed to be tested by the Constitutional Court. In other words, before the constitutional amendment, laws were left unchallenged even if they were considered contrary to the constitution, while in the second category, laws after the constitutional amendment were prohibited from contradicting the constitution (Bambang Sutiyoso, 2006: 57).

Differences in Constitutional Court Authority between Law No. 24/2003 and Constitutional Court Decisions

No.	Material	Law No. 24 Year 2003	Constitutional Court Decision
1.	Enactment of the Law	Only laws after the first amendment, 1999	Applies to all laws, not limited to laws after the first amendment in 1999
2.	Reason	The Constitutional Court's authority cannot be applied retroactively,	In a state of law, it is contrary to constitutional principles if there are two types of laws: (1) those that are free from constitutionality review and (2) those that are subject to constitutionality review.
			Past laws, including those from the Dutch colonial period, the authoritarian regimes of both the old and new orders
			Principle: There should not be a single second of legislation that potentially violates the constitution without being

			rectified or tested through judicial review.
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In several cases of Perpu review, there are two categories of Constitutional Court decisions: first, decisions stating that the applicant does not have legal standing to file a petition and the subject matter of the petition is not examined so that the decision is not accepted (Constitutional Court Decision, 2009: 17). Second, the decision is not accepted because the object of the petition no longer exists even though the examination has begun with the examination of the subject matter of the petition. This happened because when the examination of the subject matter took place, the DPR had already approved the Perpu proposed by the President, so that the Perpu had become a law.

When the Constitutional Court decided that the examination of Perpu is the authority of the Constitutional Court, it used the reason, among others, that Perpu is a type of legislation that is subject to constitutionality testing whose authority is in the Constitutional Court. At least in Constitutional Court Decision No. 138/PUU-VII/2009 and Constitutional Court Decision No. 145/PUU-VII/2009, the court has given a decision stating that the petitioners do not have legal standing to file a petition and the subject matter of the petition is not considered. Meanwhile, in the Constitutional Court's decision when examining Perpu No. 2 of 2017 concerning Amendments to Law No. 17 of 2013 concerning Community Organizations, the court was of the opinion that the object of the petition did not exist, because the Perpu in question had become non-existent as a result of having been accepted by the DPRRI and thus the Perpu was turned into a law (Husnu A, 2017: 5). The Constitutional Court's decision above, which states that the object of the petition becomes non-existent, so the petition is not accepted, in my opinion, is not quite right. Moreover, by stating that if the applicant still wants to apply for a review of the law, a new application must be made. This is because the main reason the Constitutional Court stated that it has the authority to review a Perpu is because a Perpu is materially a law, but formally it is a Government Regulation. Another reason is that the court is of the opinion that there should not be a single regulation that is left without the opportunity to test its constitutionality. Based on this, it is more appropriate for the Constitutional Court to argue that with the acceptance of the Perpu by the DPR and thus the Perpu has turned into a law, the applicant is welcome to continue or not continue testing the regulation in question. Formal testing of the Perpu cannot be continued, but material testing of the content of the regulation (which has turned into a law) can still be continued.

CONCLUSION

From the description above, it can be concluded that the Constitutional Court has interpreted the text of the constitution, to always revive the constitution, which then results in the addition or change of the constitutional text. In the text of the constitution it is clearly formulated that the Constitutional Court is authorized to examine laws against the basic law, but with its interpretation, as a guardian of the constitution and as an interpreter of the constitution, the authority of the Constitutional Court has been added, which is also authorized to examine Government Regulations in Lieu of Law (Perpu). The constitution states that a Perpu must be submitted to the DPR for political review, in the form of acceptance of the Perpu or rejection of the Perpu.

As a result of the interpretation of the Constitutional Court, it can result in the implementation of political review by the DPR being completely erased in the event that the Constitutional Court grants the petition in the framework of a formal test. Meanwhile, in the case of a material test, in the event that the Constitutional Court grants a paragraph, or an article, the political review that is the

right of the DPR, is no longer on the original Perpu but has changed into a political review of the Perpu that has been materially tested by the Constitutional Court.

AUTHORS' CONTRIBUTION

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REFERENCES

- Ackerman, L. (2019). Syntactic and cognitive issues in investigating gendered coreference. *Glossa: a journal of general linguistics*, 4(1). <https://doi.org/10.5334/gjgl.721>
- Aedo, A. (2019). Politics of Presence at the Urban Margins. Emplacement as a Performative Force Among Migrant-Settlers in Chile. *Anthropological Forum*, 29(1), 12–29. <https://doi.org/10.1080/00664677.2019.1585752>
- Ai, H., Hu, S., Li, K., & Shao, S. (2020). Environmental regulation, total factor productivity, and enterprise duration: Evidence from China. *Business Strategy and the Environment*, 29(6), 2284–2296. <https://doi.org/10.1002/bse.2502>
- Bai, X., Liu, P., & Zhang, Y. (2021). Investigating Typed Syntactic Dependencies for Targeted Sentiment Classification Using Graph Attention Neural Network. *IEEE/ACM Transactions on Audio, Speech, and Language Processing*, 29, 503–514. <https://doi.org/10.1109/TASLP.2020.3042009>
- Binder, M., & Heupel, M. (2021). The Politics of Legitimation in International Organizations. *Journal of Global Security Studies*, 6(3), ogaa033. <https://doi.org/10.1093/jogss/ogaa033>
- Chalamaiah, M., Keskin Ulug, S., Hong, H., & Wu, J. (2019). Regulatory requirements of bioactive peptides (protein hydrolysates) from food proteins. *Journal of Functional Foods*, 58, 123–129. <https://doi.org/10.1016/j.jff.2019.04.050>
- Cohen, P. J., Allison, E. H., Andrew, N. L., Cinner, J., Evans, L. S., Fabinyi, M., Garces, L. R., Hall, S. J., Hicks, C. C., Hughes, T. P., Jentoft, S., Mills, D. J., Masu, R., Mbaru, E. K., & Ratner, B. D. (2019). Securing a Just Space for Small-Scale Fisheries in the Blue Economy. *Frontiers in Marine Science*, 6, 171. <https://doi.org/10.3389/fmars.2019.00171>
- De Marneffe, M.-C., & Nivre, J. (2019). Dependency Grammar. *Annual Review of Linguistics*, 5(1), 197–218. <https://doi.org/10.1146/annurev-linguistics-011718-011842>
- Distefano, D., Fährndrich, M., Logozzo, F., & O'Hearn, P. W. (2019). Scaling static analyses at Facebook. *Communications of the ACM*, 62(8), 62–70. <https://doi.org/10.1145/3338112>
- Edenberg, E., & Hannon, M. (Ed.). (2021). *Political Epistemology* (1 ed.). Oxford University Press. <https://doi.org/10.1093/oso/9780192893338.001.0001>
- Ellenberger, K., & Richardson, L.-J. (2019). Reflecting on evaluation in public archaeology. *AP: Online Journal in Public Archaeology*, 8(1), 65. <https://doi.org/10.23914/ap.v8i1.141>
- Fernández Pinto, M., & Hicks, D. J. (2019). Legitimizing Values in Regulatory Science. *Environmental Health Perspectives*, 127(3), 035001. <https://doi.org/10.1289/EHP3317>
- Foulkes, R., Man, E., Thind, J., Yeung, S., Joy, A., & Hoskins, C. (2020). The regulation of nanomaterials and nanomedicines for clinical application: Current and future perspectives. *Biomaterials Science*, 8(17), 4653–4664. <https://doi.org/10.1039/D0BM00558D>
- Goodman, S. W. (2019). Liberal Democracy, National Identity Boundaries, and Populist Entry Points. *Critical Review*, 31(3–4), 377–388. <https://doi.org/10.1080/08913811.2019.1647679>
- Gostin, L. O., & Wiley, L. F. (2020). Governmental Public Health Powers During the COVID-19 Pandemic: Stay-at-home Orders, Business Closures, and Travel Restrictions. *JAMA*, 323(21), 2137. <https://doi.org/10.1001/jama.2020.5460>
- Guo, Q., Qiu, X., Xue, X., & Zhang, Z. (2021). Syntax-guided text generation via graph neural network. *Science China Information Sciences*, 64(5), 152102. <https://doi.org/10.1007/s11432-019-2740-1>

- Hassounah, M., Raheel, H., & Alhefzi, M. (2020). Digital Response During the COVID-19 Pandemic in Saudi Arabia. *Journal of Medical Internet Research*, 22(9), e19338. <https://doi.org/10.2196/19338>
- He, G., Wang, S., & Zhang, B. (2020). Watering Down Environmental Regulation in China*. *The Quarterly Journal of Economics*, 135(4), 2135–2185. <https://doi.org/10.1093/qje/qjaa024>
- Kelly, B., Vandevijvere, S., Ng, S., Adams, J., Allemandi, L., Bahena-Espina, L., Barquera, S., Boyland, E., Calleja, P., Carmona-Garcés, I. C., Castronuovo, L., Cauchi, D., Correa, T., Corvalán, C., Cosenza-Quintana, E. L., Fernández-Escobar, C., González-Zapata, L. I., Halford, J., Jaichuen, N., ... Swinburn, B. (2019). Global benchmarking of children's exposure to television advertising of unhealthy foods and beverages across 22 countries. *Obesity Reviews*, 20(S2), 116–128. <https://doi.org/10.1111/obr.12840>
- Krzyżanowski, M. (2020). Discursive shifts and the normalisation of racism: Imaginaries of immigration, moral panics and the discourse of contemporary right-wing populism. *Social Semiotics*, 30(4), 503–527. <https://doi.org/10.1080/10350330.2020.1766199>
- Letsa, N. W. (2019). The political geography of electoral autocracies: The influence of party strongholds on political beliefs in Africa. *Electoral Studies*, 60, 102047. <https://doi.org/10.1016/j.electstud.2019.05.001>
- Luo, H., Li, T., Liu, B., Wang, B., & Unger, H. (2019). Improving Aspect Term Extraction With Bidirectional Dependency Tree Representation. *IEEE/ACM Transactions on Audio, Speech, and Language Processing*, 27(7), 1201–1212. <https://doi.org/10.1109/TASLP.2019.2913094>
- Mastanduno, M. (2019). Partner Politics: Russia, China, and the Challenge of Extending US Hegemony after the Cold War. *Security Studies*, 28(3), 479–504. <https://doi.org/10.1080/09636412.2019.1604984>
- Miao, Z., Baležentis, T., Tian, Z., Shao, S., Geng, Y., & Wu, R. (2019). Environmental Performance and Regulation Effect of China's Atmospheric Pollutant Emissions: Evidence from “Three Regions and Ten Urban Agglomerations.” *Environmental and Resource Economics*, 74(1), 211–242. <https://doi.org/10.1007/s10640-018-00315-6>
- Nazmi, A., Martinez, S., Byrd, A., Robinson, D., Bianco, S., Maguire, J., Crutchfield, R. M., Condrón, K., & Ritchie, L. (2019). A systematic review of food insecurity among US students in higher education. *Journal of Hunger & Environmental Nutrition*, 14(5), 725–740. <https://doi.org/10.1080/19320248.2018.1484316>
- Nieuwland, S., & Van Melik, R. (2020). Regulating Airbnb: How cities deal with perceived negative externalities of short-term rentals. *Current Issues in Tourism*, 23(7), 811–825. <https://doi.org/10.1080/13683500.2018.1504899>
- Pérez-Armendáriz, C. (2021). Migrant transnationalism in violent democracies. *Journal of Ethnic and Migration Studies*, 47(6), 1327–1348. <https://doi.org/10.1080/1369183X.2019.1623275>
- Perrin, J.-A., & Bouisset, C. (2022). Emerging local public action in renewable energy production. Discussion of the territorial dimension of the energy transition based on the cases of four intermunicipal cooperation entities in France. *Energy Policy*, 168, 113143. <https://doi.org/10.1016/j.enpol.2022.113143>
- Radoglou Grammatikis, P. I., Sarigiannidis, P. G., & Moscholios, I. D. (2019). Securing the Internet of Things: Challenges, threats and solutions. *Internet of Things*, 5, 41–70. <https://doi.org/10.1016/j.iot.2018.11.003>
- Raphael, D., Komakech, M., Bryant, T., & Torrence, R. (2019). Governmental Illegitimacy and Incompetency in Canada and Other Liberal Nations: Implications for Health. *International Journal of Health Services*, 49(1), 17–36. <https://doi.org/10.1177/0020731418795136>
- Reid, A. (2022). How can political liberalism respond to contemporary populism? *European Journal of Political Theory*, 21(2), 299–320. <https://doi.org/10.1177/1474885120911305>
- Shatkin, G., & Soemarwi, V. (2021). Risk and the Dialectic of State Informality: Property Rights in Flood Prone Jakarta. *Annals of the American Association of Geographers*, 111(4), 1183–1199. <https://doi.org/10.1080/24694452.2020.1799744>

- Sözen, Y. (2019). Competition in a Populist Authoritarian Regime: The June 2018 Dual Elections in Turkey. *South European Society and Politics*, 24(3), 287–315. <https://doi.org/10.1080/13608746.2019.1688515>
- Syfers, L., Gaffney, A. M., Rast, D. E., & Estrada, D. A. (2022). Communicating group norms through election results. *British Journal of Social Psychology*, 61(1), 300–321. <https://doi.org/10.1111/bjso.12481>
- Zhu, P., Cheng, D., Yang, F., Luo, Y., Huang, D., Qian, W., & Zhou, A. (2022). Improving Chinese Named Entity Recognition by Large-Scale Syntactic Dependency Graph. *IEEE/ACM Transactions on Audio, Speech, and Language Processing*, 30, 979–991. <https://doi.org/10.1109/TASLP.2022.3153261>

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