

Research Article

Reconstruction Draft Testing Regulation Legislation in System Law National : Study Theoretical and Legal to Function Testing in Ensure Supremacy Constitution

Wicipto Setiadi ¹, Kaharuddin ², Evi Fitriani ^{3*}, Dimas Yanuarsyah ⁴

¹⁻⁴ Magister Hukum, Fakultas Hukum Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia; e-mail : fitrianievi@gmail.com

* Corresponding Author : Evi Fitriani

Abstract: This article discusses the urgency of reconstructing the concept and mechanism of reviewing legislation in the Indonesian national legal system. The main focus is on the dualism of authority between the Constitutional Court and the Supreme Court, weak public participation, and lack of transparency in the judicial review process. Using a normative approach based on Hans Kelsen's hierarchy of norms theory and Satjipto Rahardjo's progressive law, this study highlights the need for a testing system that is not only legal-formal but also substantive and fair. Findings indicate that the separation of authority without coordination leads to inefficiency, inconsistent decisions, and a crisis of legal legitimacy. A comparative study of systems in Germany, South Korea, and the United States serves as the basis for developing an ideal model of judicial review that is centralized, transparent, participatory, and responsive to constitutional values. This research recommends institutional reforms, the development of integrated procedural standards, the digitization of the judicial review system, and the establishment of a unit to oversee the implementation of decisions. As a result, judicial review can function optimally as a corrective tool against unconstitutional regulations and ensure the supremacy of the constitution in Indonesia's constitutional practice.

Keywords: judicial review; constitutional supremacy; dualism of authority; progressive law; regulatory reconstruction.

1. Background

A democratic state based on law requires legal certainty that is in line with justice and the supremacy of the constitution. In Indonesia, this principle is outlined in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The State of Indonesia is a state based on law." One manifestation of this principle is the existence of a mechanism for testing statutory regulations (judicial review) as a means to test the conformity between a legal norm and a higher legal norm. (Kaharuddin, Hukum Tata Negara: Dialektika, Problematika, dan Solusi, 2025, p. 213) This test is not only a tool to uphold the hierarchy of legal norms as in Hans Kelsen's theory of Stufenbau des Recht, but also functions as a constitutional fortress in protecting the rights of citizens from the threat of regulations that conflict with the constitution. (MD, 2010, p. 120)

However, in practice, the implementation of the function of testing laws and regulations in Indonesia still has various serious problems. (Asshiddiqie, 2006, p. 256) There is a dualism of authority between the Constitutional Court (MK), which has the authority to test laws against the 1945 Constitution (constitutional testing), and the Supreme Court (MA), which has the authority to test regulations below the law (legality testing). This separation is often not accompanied by clear institutional coordination and procedural standards. (Manan, 2004, p. 48) As a result, there is a blurring of the jurisdiction of the two institutions, coupled with minimal public involvement and low transparency in the testing process, especially in the Supreme Court. This opens up space for the application of legal norms that

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are not in line with the principles of constitutionalism. (Arsil, 2017, pp. 101–120)

One case that highlights the weak control over laws and regulations is the Constitutional Court Decision Number 91/PUU-XVIII/2020 concerning the Job Creation Law (Omnibus Law). The Court stated that the formation of the law was formally flawed because it did not meet the principles of openness and public participation as stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Although the Constitutional Court gave the lawmakers two years to improve legislative procedures, the fact is that the law was still enforced temporarily, which caused normative chaos and legal uncertainty. This decision shows that formal review does not have sufficient coercive power to stop the implementation of unconstitutional regulations from the start. (Kaharuddin, Karunia, Moechthar, & Katherina, 2025, pp. 1-22)

Another example comes from the Supreme Court's jurisdiction, namely in the Supreme Court Decision Number 41 P/HUM/2018, in which the Supreme Court annulled Permendikbud No. 23 of 2017 concerning School Days. Although this decision shows that the Supreme Court can carry out the function of testing legality, the decision-making is carried out behind closed doors without adequate legal arguments for public consumption. As a result, the Supreme Court's role in maintaining the legality of regulations under the law is seen as ineffective, and tends to be closed to public accountability and democratic legitimacy.

Based on this reality, the testing of laws and regulations in Indonesia needs to be reconstructed both conceptually and institutionally. Testing should not be viewed merely as a formal technical process in assessing the validity of a regulation, but rather as a substantive constitutional mechanism in guaranteeing democratic values, human rights protection, and social justice. (Asshiddiqie, 2006, pp. 124–130) This conceptual reconstruction demands an integrated, participatory, adaptive testing system to changing times, and in line with the principles of the rule of law and checks and balances. (MD, Politik Hukum di Indonesia, 2010, pp. 211–215)

By Because that 's important for study This For dig in a way more in draft testing regulation legislation from side theoretical And legal use ensure sustainability supremacy constitution in system law national with formulation problem How draft And mechanism testing regulation legislation in system law Indonesian national can reconstructed in a way theoretical And legal For ensure supremacy constitution as well as overcome problematic disharmony And dualism authority institution justice use fulfil objective from study This that is For analyze And formulate reconstruction draft testing regulation legislation in system law Indonesian nationally theoretical And juridical , use ensure supremacy constitution , strengthening effectiveness supervision normative to regulations , as well as overcome dualism authority between Court Constitution And Court Great in practice judicial review . (Nurjihad, 2020, pp. 667–684)

With thus approach this , it is expected can found the ideal test model , no only from aspect structure And procedure , but Also in a way philosophical And normative can strengthen function testing as tool corrective in formation democratic law And fair . Article This in a way special make an effort analyze existing weaknesses moment this , submit solution normative , as well as give recommendation to design redesign function testing in context development law responsive national .

2. Theoretical Study

The concept of testing legislation in the national legal system cannot be separated from the theoretical basis that serves as a basis for understanding the position and function of a norm in the legal order. Two important theories used as the basis for analysis in this study are the theory of the hierarchy of legal norms from Hans Kelsen and the progressive legal theory from Satjipto Rahardjo. Both offer complementary perspectives in viewing testing as an effort to maintain the supremacy of the constitution and fight for substantive justice in national life.

2.1. Theory of Legal Norm Hierarchy

Hans Kelsen in *Reine Rechtslehre* (Pure Legal Theory) stated that the legal system is formed in a hierarchical manner, where each norm derives its validity from a higher norm, and ultimately originates from the basic norm or *grundnorm*. (Kelsen, 1967, pp. 110-115) In the context of the national legal system, the *grundnorm* is manifested in the form of the state constitution (UUD NRI 1945), which is the highest measure in assessing the validity of the norms below it. (Asshiddiqie, Pengantar Ilmu Hukum Tata Negara, 2006, pp. 45–47)

The testing of laws and regulations, both by the Constitutional Court against the Law and by the Supreme Court against regulations below the Law, is the embodiment of this theory. (MD, Membangun Politik Hukum, Menegakkan Konstitusi, 2009, pp. 131–133) The goal is to ensure that there are no norms that conflict with higher norms. However, in practice, the dualism of authority between the Constitutional Court and the Supreme Court often causes ambiguity, especially when it is not accompanied by a mechanism for coordination or harmonization of decisions between judicial institutions.

Furthermore, Kelsen's theory emphasizes the importance of the consistency of the legal system as a logical whole. Disharmony between norms not only creates legal uncertainty, but also weakens the authority of the constitution as the highest source of legitimacy. Therefore, the theory of norm hierarchy provides a normative basis for reconstructing a testing system that is able to consistently uphold the principles of (Kelsen, 1967, p. 114) supremacy of law and constitutional supremacy.

2.2 Progressive Legal Theory

As a critique of formalistic legalism and legal positivism, Satjipto Rahardjo introduced a progressive legal theory that views law as a tool for liberation and social engineering. (Rahardjo, 2009, pp. 17–22) In his approach, law should not only be fixated on normative texts, but should be responsive to the values of justice, the needs of society, and the development of the times. (Rahardjo, Ilmu Hukum, 2006, pp. 112–115)

In the context of testing legislation, the progressive legal approach requires that the testing function not only be a formal tool to assess the procedure for forming a regulation, but also as a substantive mechanism to guarantee the values of constitutional justice. (Nurjihad A. , 2022) This means that judges or testing institutions are expected not only to assess procedural aspects, but also to consider the social impact and protection of citizens' rights in determining the constitutionality of a regulation.

The implementation of this progressive approach is very important amidst weak public participation, low transparency, and inconsistencies between legal products and social realities. For example, although the Constitutional Court in Decision No. 91/PUU-XVIII/2020 stated that the Job Creation Law was formally flawed, the law was still enforced temporarily, which shows the limitations of the coercive power of the decision. In this context, progressive law offers an alternative approach that is fairer and more solution-oriented, by placing social justice and public welfare as the main values in the judicial review process. (Nurjihad A. , 2022)

These two theories have a hierarchy of norms and progressive law that complement each other in providing a solid conceptual framework for the reconstruction of the legal regulation testing system in Indonesia. The theory of the hierarchy of norms provides certainty and structural legitimacy to legal norms, while progressive law provides meaning and value of justice in its application. Through the combination of the two, a national legal system can be built that is not only normatively orderly, but also responsive and substantively just.

3. Proposed Method

This study uses a normative legal research method (legal research), which is an approach that relies on the study of applicable legal norms. The main focus of this study is to analyze and reconstruct the concept and mechanism of testing legislation in the Indonesian national legal system from a theoretical and legal perspective. The approaches used in this study include:

3.1. Statute Approach

This study examines relevant laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning the Formation of Legislation, the Constitutional Court Law, and the Supreme Court Law. The aim is to identify the legal basis for the review and analyze the applicable authorities and procedures. (Marzuki, 2011, p. 93)

3.2 Conceptual Approach

This research refers to legal concepts from experts such as Hans Kelsen and Satjipto Rahardjo. The theory of norm hierarchy and progressive law is used as an analytical tool for institutional and regulatory testing practices. (Kelsen, General Theory of Law and State, 1945, p. 110)

3.3 Case Approach

This study analyzes relevant court decisions, such as Constitutional Court Decision Number 91/PUU-XVIII/2020 and Supreme Court Decision Number 41 P/HUM/2018, to evaluate the application of judicial review of laws and regulations in the field.

3.4 Historical and Comparative Approach

In studying the reconstruction of regulatory testing, a historical approach is used to trace the development of testing from the beginning of the reform until now, while a comparative approach is used to compare the testing system in Indonesia with other countries that implement effective judicial review mechanisms, such as Germany or the United States.

The data sources used are secondary data, consisting of primary legal materials (statutory regulations and court decisions), secondary legal materials (legal literature, scientific journals, and legal books), and tertiary legal materials (legal dictionaries and legal encyclopedias). The data were analyzed qualitatively-descriptively, with an emphasis on argumentative and interpretative analysis of the legal norms studied.

4. RESULTS AND DISCUSSION

4.1 Dualism of Judicial Review Authority: Between Ineffectiveness and Legal Ambiguity

The legal system in Indonesia recognizes two forms of testing of laws and regulations, namely constitutional review by the Constitutional Court (MK), and legality review by the Supreme Court (MA). This dualism is legally based on Article 24A and Article 24C of the 1945 Constitution of the Republic of Indonesia. (Indonesia, 1945, p. Pasal 24A dan 24C) In a normative context, this distinction is considered valid and complementary. (Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, 2006, pp. 147–149) However, in the practice of state administration and law enforcement, the existence of these two institutions with relatively close authority often causes serious problems, both conceptually and operationally. (Ibrahim, 2015, pp. 82–84)

Ambiguity arises when the legislation being tested is in a gray area, such as government regulations, presidential regulations, or implementing regulations of laws that contain new substantive norms. For example, in testing Government Regulations in Lieu of Law (Perppu) or Presidential Regulations, questions often arise as to whether the authority lies with the Constitutional Court or the Supreme Court. This ambiguity has been repeatedly criticized by academics and legal practitioners for opening up loopholes for inconsistency, forum shopping, and violations of the principle of legal certainty. (Siregar, 2020, pp. 769–786)

One important precedent that illustrates this complexity is the Constitutional Court Decision No. 93/PUU-X/2012, which rejected the petition for judicial review of the Presidential Regulation (Perpres) on the National Counterterrorism Agency (BNPT) on the grounds that the object of the review was not a law. In fact, in substance, the regulation has direct implications for the protection of human rights and law enforcement mechanisms. This shows that a formalistic approach in determining the types of norms that can be tested is actually counterproductive to the constitutional protection of citizens.

On the other hand, the Supreme Court in several of its decisions does not have a public reading mechanism and adequate constitutional argumentation. A concrete example is the Supreme Court Decision No. 41 P/HUM/2018, which annulled Permendikbud No. 23 of 2017 concerning School Days. Although the decision is legally valid, there was no reading of the substance in an open trial and no systematic publication of legal considerations. This is an indicator of the weak accountability and legitimacy of the judicial review process at the Supreme Court compared to the Constitutional Court which opened the entire examination process in a participatory and transparent manner. (Isra, 2010, pp. 119–122)

Furthermore, this dualism of authority has caused confusion in the interpretation of the legal standing of the applicant, the object of the case, and the type of decision that is final and binding. In the Constitutional Court, legal standing has been limited normatively in Article 51 of Law No. 24 of 2003 (Indonesia, *Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*, 2003, p. Pasal 51), while the Supreme Court does not explicitly stipulate these limitations, thus causing disparity and uncertainty. As a result, parties who feel disadvantaged by the regulations have structural and procedural obstacles in accessing justice equally.

Theoretically, this dualism contradicts the principle of unity of interpretation as put forward by Ronald Dworkin, which emphasizes the importance of consistency and coherence

in legal interpretation in order to ensure the unity of meaning in the legal system. Dualism of authority without coordination between the two judicial institutions causes the Indonesian legal system to lose one highest interpretive authority over legal norms, which should be the main pillar in a state of law that upholds the supremacy of the constitution. (Asshiddiqie, *Pengujian Undang-Undang: Beberapa Catatan Kritis terhadap Dualisme Kewenangan di Indonesia*, 2006, pp. 4–6)

In a comparative context, countries such as Germany, South Africa, and South Korea have abandoned this dualistic model. They entrust all forms of judicial review to a single constitutional institution to ensure the effectiveness and coherence of constitutional interpretation. In Germany, for example, the *Bundesverfassungsgericht* is the only institution that decides on norm testing, both formally and materially, so that there is no duplication or overlapping of authority.

Therefore, the dualism of testing in Indonesia not only presents administrative ineffectiveness, but also creates systemic problems that weaken the principles of legal certainty, equality before the law, and access to justice. (Tamanaha, 2004, pp. 91–96) Concrete steps are needed to build coordination between institutions, clarify the objects of testing, and develop a new, more synergistic legal framework so that testing of laws and regulations can function as a true constitutional fortress.

4.2 Substantial Aspects in Testing Functions: From Legalism to Progressivism

In the context of testing legislation, the shift in approach from legalism to progressivism is a paradigmatic transformation that is very necessary to answer the challenges of legal inequality that originate from the dominance of the normative-formalistic approach. The legalistic approach that has so far dominantly emphasized procedural validity in the formation of regulations, such as the accuracy of legislative stages, the fulfillment of forms and systematics, and the hierarchy of norms, tends to ignore the substantive impact of the enactment of a regulation on people's lives. (Kaharuddin & Haq, 2024, p. 68)

In the framework of legal positivism, the validity of a norm is measured by its conformity to a higher norm. (Kelsen, *Pure Theory of Law*, 1967, pp. 199–204) Therefore, the testing conducted by the Constitutional Court and the Supreme Court is generally focused solely on procedural and hierarchical aspects. (Asshiddiqie, *Penguatan Fungsi Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia*, 2006, pp. 78–80) This approach is important to ensure legal order, but is not sufficient to answer substantive questions of social justice, humanity, and constitutional protection. (Friedman, 1975, pp. 15–20) The weaknesses of this approach can be seen, for example, when a regulation is procedurally valid but in substance actually harms vulnerable groups, damages the environment, or violates the principle of non-discrimination. (Susanti, 2011, pp. 735–750)

As an alternative, the legal progressivism approach developed by Satjipto Rahardjo offers a new framework in viewing law as a tool of social engineering. Law should not stop at text, but must live in its social context, and have a bias towards the values of justice, civilization, and the interests of the people. (Rahardjo, *Hukum Progresif: Hukum yang Membebaskan*, 2009, pp. 4–7) This approach views that regulatory testing is not only an instrument for correcting normative errors, but also as an advocacy mechanism for groups that structurally experience injustice or marginalization in the regulatory-making process.

In practice, the substantive approach in testing should include parameters such as: (1) whether the regulation effectively protects the constitutional rights of citizens; (2) to what extent the regulation takes into account the values of social justice and equality; (3) whether the regulation is discriminatory against certain groups; and (4) to what extent public participation is accommodated in its formation. This means that the substance of the norm becomes a crucial point in testing, not just its legal format.

For example, in the Constitutional Court Decision No. 135/PUU-XIII/2015 on the judicial review of Article 57 paragraph (3) of Law No. 8 of 2015 on Regional Head Elections, the Court not only considered the procedural aspects, but also assessed the substance of the norms that have the potential to discriminate against the political rights of people with intellectual disabilities. In the decision, the Court emphasized that the regulation of voting rights must not discriminate against certain groups without an objective and proportional basis. This approach shows that the Court is starting to shift the orientation of the review from legalism to legal progressivism.

Similar things can be seen in the testing of economic policies such as in the Constitutional Court Decision No. 13/PUU-XVI/2018 concerning the elimination of the

obligation to divest shares for foreign mining permit holders. The Court considered that the regulation had the potential to harm national economic sovereignty, and that protection of natural resources must be oriented towards the prosperity of the people as stipulated in Article 33 of the 1945 Constitution. This shows that substantive testing also considers the constitutional values of the people's economy, not merely procedural.

The shift towards a progressive approach to regulatory review also opens up the possibility for courts to develop principles of constitutional morality, namely unwritten constitutional norms that have moral and social legitimacy, such as restorative justice, protection of future generations, and sustainable ecology. This will broaden the scope of judicial review as an instrument of control over regulations that damage public ethics and social order.

Furthermore, progressive reconstruction of testing will encourage constitutional judges to be more active and reflective in interpreting legal norms. Judges are no longer merely “mouthpieces of the law,” but act as guardians of the constitution and defenders of the constitutional interests of the people. In this context, the assessment of constitutional harm, not just procedural defect, becomes very important in assessing the validity of a legal norm.

Thus, the reconstruction of the testing of laws and regulations from a substantive aspect requires a change in the thinking paradigm of law enforcers, a change in the judge training system, and an update to the legal framework that supports the implementation of substantive justice in the judicial review system in Indonesia.

4.3 The Urgency of Transparency and Participation in the Testing Process

Transparency and public participation are two fundamental principles in the implementation of a democratic rule of law. (Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, 2006, pp. 143–145) In the context of testing laws and regulations, these two principles play a central role as a means to ensure accountability, legitimacy, and the quality of the substance of the judicial review decision. (Isra, 2010, pp. 178–181) Unfortunately, in institutional practice in Indonesia, especially in the Supreme Court in the realm of judicial review of regulations under the law, these principles have not been implemented optimally. (Safrin, 2019, pp. 143–165)

The Constitutional Court of Indonesia has shown progress in terms of transparency by opening public access to the trial process, decisions, and accepting input from third parties through the *amicus curiae* mechanism. (Hosen, 2007, pp. 120–123) However, similar practices have not been fully implemented in the Supreme Court. The judicial review process at the Supreme Court is often carried out without open trials, without notification to the public or stakeholders, and copies of decisions are not published systematically and easily accessible. This lack of public participation creates an exclusive space in the legal assessment process that should be open and deliberative. (Susanti, *Format Kelembagaan Pengujian Peraturan di Bawah Undang-Undang*, 2007, pp. 23–27)

The impact of minimal transparency and public participation in the testing process is the weakening of social legitimacy towards court decisions. When the decision-making process is closed and only involves limited parties, public trust in the legal system is eroded. In the long term, this has the potential to reduce the effectiveness of testing as a tool of constitutional control over legislative products or government policies.

Normatively, the principle of openness and public participation in the public decision-making process has been recognized in various legal instruments, both nationally and internationally. In the national context, Article 96 of Law No. 12 of 2011 concerning the Formation of Legislation requires public participation in the legislative process, which a contrario should also be applied in the testing process which is part of legislative oversight. Meanwhile, from an international perspective, the Aarhus Convention (1998) adopted by many European countries, emphasizes that every citizen has the right to participate in the decision-making process that has legal impacts, including in the form of judicial review of public regulations.

Several countries have institutionalized transparency and public participation in the review mechanism. In South Africa, for example, the Constitutional Court explicitly encourages public involvement through public discussion forums and publication of trial documents. In Canada, legal reviews in the Supreme Court are conducted in open sessions and have video recordings and transcripts available for public access. Even civil society or universities are given space to present legal arguments as third parties. This system forms a legal deliberation process that is not only elitist, but participatory and inclusive.

This participatory model shows that public involvement in the judicial review process is not merely a procedural addition, but a democratic right and an integral element of the system of checks and balances. (Muladi, 2005, pp. 203–206) Involving civil society, academics, legal professional organizations, and the mass media in the judicial review process will enrich the legal perspectives considered by judges, and ensure that the resulting decisions reflect the values of social justice and the real needs of society.

4.4 Comparison with Testing Systems in Other Countries: Learning from the Centralized Model

In order to reconstruct the concept of judicial review in Indonesia, a comparative analysis of judicial review practices in other countries is very important. Countries with advanced legal systems tend to apply a centralized model in judicial review, where the authority to review is focused on one constitutional judicial institution that has single, clear, and final authority. This model has proven to be more effective in maintaining the consistency of legal norms, strengthening the supremacy of the constitution, and preventing conflicts between court institutions.

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- **Germany: Centralized System Based on Constitutional Legitimacy**

The legal review system in Germany is centered on the Bundesverfassungsgericht (Federal Constitutional Court) which has the sole authority to conduct constitutional review of laws and regulations, whether originating from the central legislature or the states (Länder). In this system, there is no dualism of reviewing institutions as occurs in Indonesia. The Bundesverfassungsgericht not only conducts normative reviews of laws, but also oversees the process of law formation, including public involvement and protection of human rights.

The decisions of the German Constitutional Court are final and binding on all state institutions, including the Bundestag and the Bundesrat. This shows institutional respect for the supremacy of the constitution. In addition, the judicial review process at the Court is very open to public participation through the constitutional complaint procedure (Verfassungsbeschwerde), which allows individuals to file complaints if their constitutional rights are violated.

This German model shows that the effectiveness of judicial review is largely determined by the clarity of authority, institutional independence, and procedural openness. If adopted contextually, this model can be a reference for Indonesia in building a solid and non-overlapping testing system.

- **South Korea: The Progressive Role of the Constitutional Court in Regulatory Reform**

South Korea also adopts a centralized testing system through the Constitutional Court of Korea. This institution has exclusive authority to test the constitutionality of laws and handle constitutional complaints from citizens. Throughout its history, this court has been a driving force for progressive regulatory reform, including on issues of human rights, religious freedom, and the right to work.

One of the prominent features of the South Korean system is the transparency of trials and public engagement. Courts routinely publish trial schedules, solicit civil society input, and encourage academics to submit amicus curiae briefs. This strengthens social legitimacy and public trust in the justice system.

In terms of structure, the Korean constitutional court consists of nine judges with diverse legal backgrounds, who are appointed proportionally by the President, the Supreme Court, and the National Assembly. This composition provides a balance of power and strengthens the principle of checks and balances that is the basis of the democratic system.

- United States: Jurisprudence as a Pillar of Judicial Review

The United States is known as the pioneer of the concept of judicial review through the landmark decision of *Marbury v. Madison* (1803) which was affirmed by the US Supreme Court. Although the US Constitution does not explicitly regulate judicial review, this doctrine has developed strongly in judicial practice and has become a major pillar in upholding the constitutionality of public policies.

The power of judicial review in the US lies in the principle of precedent or *stare decisis*, which makes jurisprudence a binding source of law. This encourages consistency in the application of the law and makes the Supreme Court the final guardian of the constitution.

In addition, the openness of the process and the influence of public opinion are integral to the US legal system. The Supreme Court actively solicits legal opinions, holds open hearings, and publishes detailed majority and dissenting opinions. This process reflects the spirit of public deliberation in interpreting the Constitution and upholding the principle of constitutional supremacy.

- Lessons for Indonesia: Towards Harmonization and Systemic Design

This comparative study teaches that effective testing requires institutional consistency, procedural transparency, and a focus on constitutional justice. Indonesia, with its dualism between the Constitutional Court and the Supreme Court, faces challenges in the form of inconsistent decisions, blurred boundaries of authority, and weak public participation.

For this reason, the following steps are very important: a) Institutional simplification by encouraging integration or clear redefinition of judicial review authority, either through amendments to the Constitution or revisions to the law on judicial institutions. b) Increasing public participation in the judicial review process, either through the *amicus curiae* mechanism, judicial hearings, or the constitutional complaint system from citizens. c) Strengthening constitutional law education for judges, academics, and civil society so that awareness of the importance of constitutional supremacy can increase as a whole.

4.5 Reconstruction of Testing: Redesign of Institutional System and Legal Substance

- Reformulation of Institutional Systems: Coordination or Integration?

Institutional reformulation can be carried out through two main approaches, namely the coordinative model or the integrative model. In the coordinative approach, the Constitutional Court and the Supreme Court maintain their respective authorities but are required to build substantive coordination mechanisms in the form of: (1) the establishment of a judicial coordination forum; (2) harmonization of legal testing guidelines; and (3) a jurisprudential cross-reference system.

Meanwhile, the integrative approach encourages the unification of testing institutions into one judicial institution, namely the Constitutional Court as the center for testing the constitutionality and legality of all types of regulations. This approach requires constitutional reform, but promises efficiency, consistency of decisions, and stronger institutional legitimacy. The choice between these two models must take into account the existing legal structure, institutional capacity, and aspirations for democratic legal reform.

- Strengthening the Principles of Testing: Substantive Justice and Participatory Democracy

In the redesign of the testing function, the principle of substantive justice must be the main basis. Testing should not stop at normative technical aspects such as the appropriateness of the form and procedure for forming regulations, but must include an evaluation of the substance of the regulation in ensuring human rights protection, equal access, environmental sustainability, and economic justice.

In addition, the principle of participatory democracy must be internalized into the testing mechanism. This can be done through: a) Provision of *amicus curiae* space from academics, civil society, and professional organizations. b) Openness of online and offline trials, and c) Obligation to publish academic papers and decisions transparently. By implementing these principles, testing will become an arena for public deliberation that involves not only judges, but also the community as the owners of legal sovereignty.

- **Standardization of Procedures and Arrangement of Technical Regulations**

Reconstruction of the test must also touch on procedural and technical aspects. Currently, there is no standard regarding formal and material criteria in testing, both in the Constitutional Court and the Supreme Court. As a result, disparities in legal considerations and inconsistencies in the rationalization of decisions often occur.

Therefore, there needs to be technical regulations in the form of: a) Testing guidelines that cover aspects of formal validity, clarity of norms, social impacts, and constitutional principles; b) Constitutional risk index to measure potential violations of the basic values of the 1945 Constitution; and c) Impact assessment model before and after the regulation is tested. This regulatory reform can be initiated through revisions to Law No. 24 of 2003 concerning the Constitutional Court, Law No. 14 of 1985 concerning the Supreme Court, and Law No. 12 of 2011 concerning the Formation of Legislation.

- **Digitization of Constitutional Testing System and Database**

In the context of legal modernization, strengthening the testing system also requires maximum utilization of information technology. Indonesia can build the National Constitutional Review Database as an integrated digital system that contains all decisions of the Constitutional Court and Supreme Court, accompanied by comparative analysis, implementation status, and the relationship between decisions. This system will increase accountability, facilitate public and academic access, and accelerate the learning of jurisprudence in the legal environment.

This digitalization can also be applied in: a) Online registration of testing applications; b) Automatic public notification system for ongoing testing; and c) Online forums to receive public input in real-time. This digital transformation supports the principles of openness, time efficiency, and responsiveness of legal institutions to the increasingly complex dynamics of society.

- **Evaluation and Supervision of the Implementation of the Judicial Review Decision**

An aspect that is often overlooked is the follow-up to the judicial review decision. In many cases, especially those that are formal, the government or the DPR does not immediately implement the Constitutional Court's decision. As a result, norms that have been declared unconstitutional remain in effect and create legal uncertainty.

Therefore, the redesign must include the establishment of a constitutional enforcement unit (IUP), which works across sectors and involves civil society elements. This unit is tasked with: a) Ensuring legislative or administrative follow-up to IUP decisions; b) Providing regular reports to the public; and c) Being a reference for other institutions for the harmonization of national legal policies.

5. Conclusion And Suggestions

5.1 Conclusion

The judicial review of laws and regulations is a fundamental instrument in ensuring the supremacy of the constitution and responding to the complex dynamics of state administration. However, in the practice of the Indonesian legal system, this review still faces serious problems that stem from the dualism of authority between the Constitutional Court and the Supreme Court, weak transparency, and low public participation. These problems indicate the need for reconstruction of the concept and mechanism of the review that is not only based on formalistic proceduralism, but also oriented towards the substance of constitutional justice as proposed by progressive legal theory.

The reconstruction needs to include the improvement of the institutional system, strengthening the principles of substantive justice and participatory democracy, and the preparation of comprehensive procedural standards. Lessons from practices in other countries such as Germany, South Korea, and the United States show that an integrated, open, and accountable testing model can strengthen legal legitimacy and public trust. Thus, the reconstruction of legal testing must be directed at creating a system that is capable of becoming a constitutional fortress philosophically, normatively, and operationally.

5.2 Suggestion

To realize an effective regulatory review system and guarantee the supremacy of the constitution, institutional reform is needed by simplifying the authority of review into one centralized institution to avoid dualism and jurisdictional conflicts between judicial

institutions. In addition, the review function must be expanded not only to formal aspects, but also to include the substance of justice, protection of human rights, and environmental sustainability. Transparency and public participation must also be strengthened, especially in the Supreme Court, by opening public access to the review process and results and providing space for civil society involvement. To support the effectiveness of the system, clear and comprehensive standard procedures are needed, including the use of technology through digitization of decision data and an implementation tracking system. Finally, a monitoring unit for the implementation of review decisions needs to be formed to ensure that each decision is actually implemented by the executive and legislative institutions in a timely and accountable manner.

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