POSITION OF CIRCULAR LETTER OF THE SUPREME COURT AS A FOLLOW-UP FROM THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 37/PUU-IX/2011

Suparto[1], Zulkifli[2]
Faculty of Law, Riau Islamic University, Pekanbaru, Indonesia
suparto@law.uir.ac.id, zulfilfi@law.uir.ac.id

Received 21 September 2022 • Revised 30 October 2022 • Accepted 28 November 2022

Abstract

Judicial review of Law Number 13 of 2003 concerning Manpower is carried out to the Constitutional Court (MK), one of the reasons is the implementation of Article 155 paragraph (2) has the potential to create legal uncertainty, because there are multiple interpretations related to the term "not yet determined". Constitutional Court Decision No. 37/PUU-IX/2011 granted the petitioners' request, and stated that the phrase "not yet determined" is interpreted as "not yet legally binding" as a result, the wages for the process during the suspension period must be paid until the decision is final and binding. As a follow-up to the Constitutional Court's decision, the Supreme Court (MA) issued a Supreme Court Circular (SEMA) Number 3 of 2015 and one of its contents is that employers pay processing fees for 6 (six) months. This has caused controversy because the content is different from the Constitutional Court's decision. Based on the research, the results show that the Supreme Court does have the authority to issue SEMA but it should only be for the internal judiciary and its contents are not regulatory. If it is regulatory, it should be in the form of PERMA. SEMA is not included in the scope of the Legislation as regulated in Law Number 12 of 2011 concerning the Establishment of Legislation. Regarding the norm of processing wages after the Constitutional Court's Decision Number 37/PUU-IX/2011, the Supreme Court should not need to issue SEMA Number 3 of 2015 regarding processing wages paid for 6 (six) months. The Supreme Court may also not reinterpret the process wages contained in Article 155 paragraph (2) of Law Number 13 of 2003 concerning Manpower which has been decided by the Court until it has permanent legal force. Because the position of the Constitutional Court's decision is equal to the law.

Keywords: Position; Supreme Court Circular; Constitutional Court Decision

INTRODUCTION

The Constitutional Court (MK) is a constitutional court that stands on the assumption of the supremacy of the constitution which is the highest law that underlies and animates every state activity and as a parameter to prevent the state from acting unconstitutionally. The establishment of the Constitutional Court proves that the State of Indonesia adheres to the notion of a free and independent judiciary, as well as an affirmation of the principle of a democratic rule of law.

The process of amendment to the 1945 Constitution of the Republic of Indonesia (UUD 1945) has had a significant impact on the restructuring of the judicial branch of power in Indonesia. This is marked by the presence of the Constitutional Court as one of the institutions of judicial power which is equal to the Supreme Court (MA). The Constitutional Court as a new state institution and exercising judicial power in Indonesia. It's just that in terms of authority, it is constructed differently from the authority of the Supreme Court. Referring to the provisions of Article 24C paragraphs (1) and (2) of the 1945 Constitution, the Constitutional Court has a number of authorities and obligations which include:

"The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final in order to examine the Act against the Constitution, to decide on disputes over the authority of State institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding the results of the general election."

The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Law.

The Constitutional Court was born as a State institution with the authority to conduct judicial review of the Law (UU) of the 1945 Constitution.

Judicial Review (the right to examine) is the authority of the judiciary to examine the validity and performance of legal products produced by the executive, legislative and judiciary before the constitution. Testing by judges on the products of the legislative branch of power and the executive branch of power is a consequence of the adoption of the principle of checks and balances . Therefore, the authority to conduct a Judicial Review is attached to the function of the judge as the subject, not to other officials. If the examination is not carried out by a judge, but by a parliamentary institution, then such a test cannot be called a " Judicial Review ", but a " Legislative Review ".

In the doctrine of Legal Studies introduces two models of Judicial Review , as follows:

Judicial Review in the field of court, is a re-examination by a supreme judicial institution of judicial decisions in the application of law by judges of lower courts, so that judges at the highest court can examine materially the application of the law. The Supreme Court has the authority of Judicial Review but is limited to only the authority to review the material on the laws and regulations under the Act.

Judicial Review in the field of Constitution, is a review and or examination by a state power agency to be able to cancel the decision of the law-making body (legislation) and or government agency (executive). Judicial review in this field in Indonesia is the competence of the Constitutional Court. The Constitutional Court's competence in the field of Judicial Review is aimed at examining the law against the Constitution (hereinafter abbreviated as UUD) both from a formal and material perspective, which is usually termed constitutionalism testing. The legal basis for the Constitutional Court's review of constitutionality is found in Article 24C of the 1945 Constitution and further regulated in Article 10 of Law Number 24 of 2003 concerning the Constitutional Court and its amendments to Law Number 8 of 2011. The Court's authority in conducting Judicial Review is limited to laws and regulations. in the sense of Wet which was born after the amendment of the 1945 Constitution, the previous Law was not within the authority of the Constitutional Court to conduct a Judicial Review , however, in empirical facts the Court has made breakthroughs on the grounds of upholding constitutionalism.

Constitutional Review is one of the products of the modern government system which is based on the idea of a rule of law and separation of powers, as well as protection of fundamental rights , which has two main tasks. First , maintaining the functioning of democratic processes in the interplay between the legislative, executive, and judicial institutions. In other words, the Constitutional Review serves to prevent the seizure of power by one branch of state power at the expense of other branches of state power. The second, which is no less important and closely related to the first function, is to protect the rights or private lives of citizens from arbitrariness carried out by one of the branches of state power.

The constitutional authority of the Constitutional Court to implement the principle of check and balance places all state institutions in an equal position so that there is a balance in the

administration of the state. The existence of the Constitutional Court is a real step to be able to monitor each other's performance between state institutions. Thus the system of checks and balances that apply in Indonesia provides room for the judiciary to correct if the legal products of the legislature and executive are unconstitutional. The role of the Constitutional Court is to always maintain the stability of the administration of government and also to prevent the superiority of an institution over other institutions because the principle of the rule of law is to uphold the sovereignty of the people, placing the law in its true position in accordance with the 1945 Constitution of the Republic of Indonesia.

Since the establishment of the Constitutional Court on August 16, 2003, there have been many requests for Judicial Review of the Law on the 1945 Constitution of the Republic of Indonesia by community groups, both individually and collectively, this indicates that the State in running the government upholds the principles of the rule of law.

Law Number 13 of 2003 concerning Manpower is one of the laws carried out by a Judicial Review to the Constitutional Court by community groups whose constitutional rights are guaranteed by the Constitution. The Judicial Review was submitted to the Constitutional Court by Drg.Ugan Gandar as applicant I, Ir.Eko Wahyu as applicant II and Ir.Antonius Rommel Ginting as applicant III. Based on a special power of attorney dated May 5, 2011 and dated May 12, 2011 the applicants gave power of attorney to, among others, Ecoline Situmorang, SH, Rianto Tambunan, Henry David Oliver Sitorus, SH, BP Beni Dikty Sinaga, SH, Ridwan Darmawan, SH, M.Taufiqul Mujib, SH, M. Zaimul Umam, SHMH, Janses E. Sihaloho, SH, M. Zaimul Umam, SHMH, Anton Febrianto, SH, Dhona El Furqon, S. Hi., and Priadi, SH, all Advocates/Assistant Advocates , at the Office of the Indonesian Human Rights Committee For Social Justice (IHCS).

The application for a Judicial Review regarding the process wages contained in Article 155 paragraph (2) of Law Number 13 of 2003 concerning Manpower was carried out to obtain legal certainty starting from an industrial relations case between a worker named Ir.Antonius Rommel Ginting (hereinafter abbreviated as ARG) and the company PT. Total Indonesia. This industrial relations dispute case began when ARG conducted a tender process for the procurement of UPS Rectifier/Charger . The company considered that ARG had made a serious mistake because it had leaked company secrets to one of the bidders so that the company thought that ARG had violated the collective labor agreement and for that mistake the company terminated the employment relationship (hereinafter abbreviated as layoffs) to ARG.

In carrying out its functions and authorities, the Constitutional Court conducts a Judicial Review Article 155 paragraph (2) of Law Number 13 of 2003 against the 1945 Constitution. Article 155 paragraph (2) which reads: " As long as the decision of the PPHI institution has not been determined, both employers and workers/labourers must continue to carry out all their obligations ". There is no explanation that gives further meaning to the provisions of Article 155 paragraph (2), both in the explanation of Law Number 13 of 2003 concerning Manpower and in its implementing regulations, thus creating ambiguity regarding interpretation.

In the decision of the Constitutional Court Number 37/PUU-IX/2011 the petition of the petitioners was granted, the phrase "not yet stipulated" in Article 155 Paragraph (2) of Law Number 13 of 2003 concerning Manpower is contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as not having permanent legal force and is not has binding legal force as long as it is not interpreted as yet has permanent legal force.

The Constitutional Court's decision Number 37/PUU-IX/2011 which states that the wages process in the suspension period must be paid until the decision has permanent legal force, so that this decision is felt to be burdensome for employers who will pay the wages for the process while the workers are not doing any work in the company and the decision The MK is considered unfair by entrepreneurs.

Over time, the Supreme Court then issued a Supreme Court Circular (SEMA) Number 3 of 2015 concerning the Implementation of the Formula for the Results of the 2015 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court. In the special civil section number “2” letter “f” states that after the decision of the Constitutional Court Number 37/PUU-IX/2011, dated September 19, 2011 regarding process fees, the contents of the decision order are to punish the entrepreneur to pay processing fees for 6 (six) months. The excess time in the IRC process as referred to in Law Number 2 of 2004 concerning PPHI is no longer the responsibility of the parties.

After the issuance of SEMA Number 3 of 2015, the wages process returned to the same as before the issuance of the Constitutional Court Decision Number 37/PUU-IX/2011. So that the workers who are affected by the wages of this process experience legal uncertainty. On the one hand, the Constitutional Court decided that the process fee must be paid until it has permanent legal

force, but on the other hand the Supreme Court in its SEMA stated that the processing fee was only paid for 6 (six) months. So that these two legal provisions became a polemic by both parties, on the part of the employer stating that SEMA had fulfilled the element of justice for employers and on the other hand, the affected workers stated that the issuance of this SEMA created legal uncertainty and injustice. Formulation of the problem

RESEARCH METHOD

The formulation of the problem in this research is What is the position of SEMA Number 3 of 2015 which is a follow-up to the Decision of the Constitutional Court Number 37/PUU-IX/2011 on the review of Article 155 paragraph (2) of Law Number 13 of 2003 concerning Manpower?

RESULTS AND DISCUSSION

A. Position, Legal Basis and Scope of the Circular of the Court A gun

Initially, SEMA was formed based on the provisions of Article 12 paragraph (3) of Law No. 1 of 1950 concerning the Structure, Powers and Ways of the Indonesian Supreme Court Court which reads:

"The conduct (work) of these courts and the judges in those courts is closely monitored by the Supreme Court. In the interest of the ministry, the Supreme Court has the right to give warnings, warnings and instructions that are deemed necessary and useful to the courts and judges, either by separate letters or by circular [1]letters.

The power and authority in issuing SE MA is also regulated in Article 131 of Law Number 1 of 1950 which reads:

" *If there is a matter in court that is not regulated in the law, then the Supreme Court can determine for itself how the matter must be resolved* ."[2]

Starting from the provisions of Article 131 of Law Number 1 of 1950, the existence of SEMA since 1950 has a constitutional legal basis so that the contents and instructions outlined in it are binding to be obeyed and applied by judges in court. And at this time, the legal basis for the power and authority of the Supreme Court to issue SEMA is regulated in Law 14 of 1985 concerning Supreme Court Article 32 paragraph (4) as amended by Law Number 5 of 2004 and Law Number 3 of 2009 which reads:

" *The Supreme Court has the authority to give instructions, warnings, or warnings that are deemed necessary to the Court in all Judicial Environments* ." Continuously and continuously since 1950 until now the existence and publication of SEMA continues because it is supported by the Act.[3]

History records, since 1951 the Supreme Court has issued or issued SEMA known as SEMA Number 1 of 1951 dated January 20, 1951, regarding arrears in cases at the District Court containing warnings and orders:

a) Reprimand the District Courts and judges throughout Indonesia regarding *achterstand ,* namely case arrears because few have been resolved.
b) In this regard, the Supreme Court orders and demands that each judge at the District Court settle and decide cases of at least 60 criminal cases (*misdrijven*) every month.[4]

That is one of the historical facts of SEMA which was published in 1951. Since then, there have been 5 to 6 SEMAs on average each year.[5]

In Law Number 14 of 1985 concerning MA as amended by Law Number 5 of 2004 and Law Number 3 of 2009. Article 32 paragraph (4) of Law Number 14 of 1985 states that:

" *MA has the authority to give instructions, sincerely*
ran, or warnings deemed necessary to the Court in all Judicial Environments." And furthermore, Article 32 paragraph (5) also states that " *Supervision and authority as referred to in paragraph (1) to paragraph (4) must not reduce the freedom of judges in examining and deciding cases* ."

Giving instructions can be in the form of PERMA or SEMA because in Article 32 paragraph (4) it is not explained in detail in what form the instructions are given.

Based on this regulation, the Supreme Court in carrying out its function of upholding justice can make PERMA and SEMA. The purpose of making PERMA is to fill legal gaps and legal gaps. The legal basis for the power and authority to issue SEMA is regulated in Article 32 paragraph (4) of Law Number 14 of 1985. Because SEMA has legality, because its issuance by the Supreme Court is based on the provisions of the Act, therefore, the contents of SEMA are binding on judges

[1]See Law Number 1 Year 1950, Article 12 Paragraph (3)
[2]See Law Number 1 Year 1950, Article 131
[3]M. Yahya Harahap, *Powers of the Supreme Court …, Op.Cit.,* p .174-176
[4] *Ibid* , p.174.
[5] *Ibid* , p.174.

and courts, thus judges and the court must be submissive and obedient to apply it in carrying out the duties and functions of the judiciary. The binding power is basically the same as PERMA and with the provisions of other laws and regulations. Violation of the contents of SEMA by judges and lower courts can be used as a reason to cancel the decision by judges and higher courts. Or if the guidelines or instructions contained in SEMA are not obeyed by the judge or court, it can be used as a basis by interested parties to request legal protection from a higher court in the context of carrying out the supervisory function, so that the violation is corrected and straightened out in accordance with what is outlined by SEMA.[6]

If it is related to state administrative law, regulatory legal provisions should be in the form of regulations or PERMA, not SEMA. And if it is related to the position and form of regulations made by other state institutions, for example the regulations of the MPR, DPR, DPD, MA, MK, and BPK in the hierarchy of laws and regulations, it can be analyzed based on the hierarchy of the state institution that issued it.[7] Jimly Asshidiqie stated that state institutions based on their hierarchy can be based on two criteria that can be used, namely the criteria for the hierarchy of normative sources that determine their authority and the quality of their functions that are primary or supporting in the state power system, so that there are state institutions that are primary or primary (*main). state organ*) and is secondary or supporting (*auxiliary state organ*). Furthermore, Jimly Asshidiqie gave the concept that the main state institutions are the first layer which can also be referred to as high state institutions, including: 1) the President and the Vice President; 2) DPR; 3) DPD; 4) MPR; 5) MK; 6) MA ; 7) CPC. [8]Based on the hierarchy of these main state institutions, in fact the regulations of these state institutions can also be equated with the presidential regulation based on the principles of separation of powers and *checks and balances* , which is what aligns the seven state institutions.[9]

Furthermore, Jimly Asshiddiqie grouped the circulars into a group of special laws and regulations because of the specificity of their binding material, which only applies internally. Although it applies internally, sometimes an internal regulation has external binding power. As is the case, PERMA and the Constitutional Court Regulations bind legal subjects outside the Supreme Court and the Constitutional Court. The normative specificities of a regulation can occur for several reasons, namely: (1) specificity due to the legal subject it regulates, (2) specificity due to the locality of the area in which it applies, or (3) specificity due to the internal nature of its legally binding power. These three kinds of reasons can lead to exceptions to the general criteria for good laws and regulations.[10]

According to M. Solly Lubis, what is meant by state regulations (*staatsregelings*) are written regulations issued by official agencies, both in terms of institutions and in terms of certain officials. The regulations in question include Laws, PERPUs, Government Regulations, Presidential Regulations, Ministerial Regulations, Regional Regulations, Instructions, Circulars, Announcements, Decrees, and others.[11]

According to I Gde Pantja Astawa, what is called a state regulation (*staatsregelings*) or a decision in a broad sense (*besluiten*). Decisions in a broad sense (*besluiten*) can be divided into 3 (three) groups, namely: first, *Wettelijk regeling* (laws and regulations), such as the Constitution, UU, PERPU, government regulations, presidential regulations, ministerial regulations, regional regulations, and others. other. Second, *Beleidsregels* (policy regulations), such as instructions, circulars, announcements and others and third, *Beschikking* (stipulations), such as decrees and others.

The scope of the SEMA is explained in the Decree of the Supreme Court of the Republic of Indonesia Number 271/KMA/SK/X/2013 concerning Guidelines for Formulating the Policy of the Supreme Court of the Republic of Indonesia which states the meaning of the circular as follows:

" *The Supreme Court Circular is a circular form of the Supreme Court leadership to all levels of the judiciary which contains guidance in the administration of justice, which is more administrative*

---

[6] *Ibid* , p. 175-176.

[7]Firma Zaka Aditya, and M. Reza Winata, Reconstruction of the Hierarchy of Legislation in Indonesia , Center for Research and Case Studies, and Library Management of the Constitutional Court of the Republic of Indonesia, *Journal of the State of Law* , Vol. 9, No. 1, June 2018, p. 94.

[8]Jimly Asshidiqie, *Development and Consolidation of Post-Reform State Institutions* , as quoted by Firma Zaka Aditya, and M. Reza Winata, " Reconstruction of the Hierarchy of Legislation in Indonesia" , Center for Research and Case Studies, and Library Management of the Constitutional Court of the Republic of Indonesia Indonesia, *Journal of the State of Law,* Vol. 9, No. 1, June 2018, p. 94.

[9]Zaka Aditya Firm, and M. Reza Winata, Hierarchy Reconstruction…. *Op.Cit,* p. 95.

[10]Jimly Asshiddiqie, *Regarding the Law* , Jakarta: Rajawali Pers, 2017, p. 17-19.

[11]Arif Christiono Soebroto, *Legal Position Regulation/Policy Under Regulation of the Minister of National Development Planning/Head of Bappenas* , http://jdih.bappenas.go.id/data/file/WORKSHOP_Peraturan_policy_di_Kementerian_PPN_bappenas.pdf . Accessed on June 23, 2020 at 13:00.

in nature and also contains notifications about certain matters that are considered important and urgent ."[12]

This means that in addition to containing guidance for the implementation of the case process for judges, it also contains administration and also matters that are important and urgent for legal certainty in a case if there are legal deficiencies and vacancies.

Thus, the purpose of publishing SEMA apart from filling legal voids and legal deficiencies, SEMA also aims for legal certainty and becomes a guide for judges and the judiciary in making a judge's decision. The SEMA is used in each Chamber System in the judiciary under the Supreme Court.

One of the problems faced by the Supreme Court and the judicial bodies under it is legal certainty and the quality and consistency of decisions. The main factors causing these problems, among others, are the high number of cases that go to the Supreme Court, making it difficult for the Supreme Court to map legal issues and monitor the consistency of decisions.[13]

In order to be able to carry out these powers and authorities as well as possible, the Supreme Court carries out the following matters:[14]

a) The supervisory authority includes: (1) the conduct of the judiciary; (2) the work of the courts and the conduct of judges in all courts; (3) supervision carried out on legal advisers and notaries as far as the judiciary is concerned; (4) giving the necessary warnings, reprimands, and instructions.
b) Request information and considerations from the courts in all courts, the Attorney General and other officials who are entrusted with the task of prosecuting criminal cases.
c) Making regulations as a complement to fill in deficiencies or legal voids needed for the smooth running of the judiciary.
d) Regulate its own administration both regarding general administration and administration of justice.

According to Soebakti, the Supreme Court has a bit of legislative power which is considered a delegation of power from the legislators.[15]

B. Circular Letter of the Supreme Court According to Law Number 12 Year 2011

SEMA's position in the hierarchy of laws and regulations in accordance with Law Number 12 of 2011 concerning the Establishment of Legislation, SEMA can be categorized as a form of legislation made based on the authority of an institution. [16]Article 7 and Article 8 reads:

Article 7:

1. Types and hierarchy of laws and regulations consist of:
   a) UU NRI 1945;
   b) MPR Decree;
   c) UU/PERPU;
   d) Government regulations;
   e) Presidential decree;
   f) Provincial Regulations; and
   g) Regency/City Regional Regulations.
2. The legal force of the Legislation is in accordance with the hierarchy as referred to in paragraph (1).

Article 8 :

1. Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the MPR, DPR, DPD, MA, MK, BPK, Judicial Commission, Bank Indonesia, Minister, agency, institution, or commission of the same level established with the Law or the Government on the orders of the Act, the Provincial DPRD, the Governor, the Regency/City DPRD, the Regent/Mayor, the Village Head or the equivalent.

[12]See Decree of the Supreme Court of the Republic of Indonesia Number 271/KMA/SK/X/2013, p.10.

[13]Supreme Court of the Republic of Indonesia, *Blueprint for Judicial Reform 2010-2035* , Jakarta, 2010, p. 8, see also Supreme Court Circular Number 3 of 2015 concerning the Implementation of the Formula for the Results of the Plenary Meeting of the Supreme Court Chamber of 2015 as Guidelines for the Implementation of Duties for the Judiciary , p. 1.

[14]See the Elucidation of Law Number 14 of 1985 concerning the Supreme Court.

[15]Sirajuddin Sailellah, *The Ideals of Pancasila Law Against the Supervision of Indonesian Judges* , Jakarta: Focus Grahamedia, 2015, p. 118.

[16]https ://www. Hukumonline.com/klinik/detail/ulasan/lt5da3d5db300a9/kejangan-sema-terhadap-an-undang/ accessed on March 22, 2021 at 13.30.

2. The statutory regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by a higher statutory regulation or are formed based on authority .

SEMA can be used by the Supreme Court to ask for information and provide instructions to the court in all judicial circles below it. SEMA became a policy to carry out the supervisory function of the Supreme Court by looking at the development of the judiciary. SEMA itself is located under the Act, not equal to or higher than the Law. SEMA only binds to the judiciary.[17]

Regarding the authority in the formation of a Legislation carried out by State institutions, it has been determined by Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Formation of Legislation, Article 1 states that

" *Legislation is a written regulation that contains legally binding norms in general and is established or determined by a State institution or authorized official through the procedures stipulated in the Legislation* ."[18]

When it comes to institutions, the Supreme Court is one of the state institutions in the judicial field together with the Constitutional Court. According to the author, if it is related to Article 8 of Law No. 12 of 2011, then SEMA is not included in the system of laws and regulations. Included in the hierarchy of laws and regulations is PERMA whose formation is based on its authority . All regulations made by the Supreme Court are the authority given by law to the Supreme Court in issuing laws and regulations for guidance in the implementation and administration of justice under the Supreme Court.

C. Supreme Court Circular Number 3 of 2015

Basically, the purpose of implementing the chamber system in the Supreme Court is to maintain legal unity, reduce disparity in decisions, facilitate oversight of decisions, increase productivity in case examination and develop the expertise and expertise of judges in adjudicating cases.[19]

In SEMA Number 3 of 2015 it is stated that the application of the chamber system in the Supreme Court of the Republic of Indonesia, one of which aims to maintain the application of law and consistency of decisions. The plenary meeting of the chamber is one of the instruments to achieve this goal. The Supreme Court regularly held Plenary Meetings in 2012, 2013 and 2014. Then for 2015, the Supreme Court discussed Plenary Meetings with the following formula:[20]

a) Plenary formulation of the civil chamber;
b) The formulation of the plenary session of the criminal chamber;
c) The formulation of the plenary session of the religious chamber;
d) Formulation of the plenary chamber of the military; and
e) Plenary formulation of the state administration chamber.

One of the products of the 2015 MA plenary meeting was the publication of SEMA Number 3 of 2015 which stipulates that:

a) Make the formulation of the results of the plenary meeting of the chambers in 2012, 2013, 2014 and 2015 as an inseparable unit and all legal formulations are applied as guidelines in handling cases in the Supreme Court and the courts of first instance and appeal as long as the substance of the formulation relates to judicial authority. first instance and appeal;
b) The legal formulations of the results of the 2012 plenary chambers, in 2013 and 2014 which were expressly stated as revised or substantially contradicted the formulations of the results of the 2015 plenary chambers, were declared invalid.

One of the functions of the Supreme Court is as an cassation institution. Therefore, the Supreme Court Justice as the party who plays a central role in the implementation of this cassation function must be aware of the main function of the Supreme Court by avoiding various forms of inconsistency, especially inconsistencies in decisions that will disrupt the objectives to be achieved by the cassation institution to maintain legal unity. The inconsistency of the Supreme Court's decision will result in legal uncertainty, because the Supreme Court does not have a guide in interpreting and resolving certain legal issues. In such conditions, justice seekers will feel they have the opportunity to get a decision that is in accordance with their preferences and expectations so that they will continue to try and try all available legal remedies, and in turn will increase the number of cases that go to the

[17]*Ibid.*

[18]See Article 1 of Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Formation of Legislation..

[19]Supreme Court of the Republic of Indonesia, *Blueprint,…. Op. Cit.,* p *28.*

[20]See SEMA Number 3 of 2015 concerning the Implementation of the Formulas of the Results of the Plenary Meeting of the Supreme Court Chamber of 2015 as Guidelines for the Implementation of Duties for the Judiciary , p. 1-2.

Supreme Court. The Supreme Court Justices must ensure that the opinions given to each case they handle are directed at maintaining the unity of the application of the law nationally in order to increase certainty and justice for the people, because the basic essence of the application of the chamber system is how the Supreme Court can carry out the function of maintaining the unity of the application of the law. [21]Thus, the chamber system meeting in the Supreme Court is one of the forums for the issuance of SEMA, the SEMA issued by the Supreme Court is one of the instruments to achieve legal certainty and consistency in all decisions from the lowest court to the cassation level.

Regarding the issuance of SEMA Number 15 of 2015 the special civil section number "2" letter "f" which states that " after the decision of the Constitutional Court Number 37/PUU-IX/2011, dated September 19, 2011 regarding process wages, the contents of the decision are punishing employers to pay wages. process for 6 (six) months. The excess time in the PHI process as referred to in Law Number 2 of 2004 concerning PPHI is no longer the responsibility of the parties . The Supreme Court in issuing and determining the amount of processing wages so that SEMA Number 3 of 2015 stipulates only to pay for 6 (six) months is not explained in detail in the SEMA. According to the author, one of the rules that is used as a reference for the Supreme Court in setting wages for the 6 (six) month process is Kepmenaker No. Kep-150/Men/2000 concerning Settlement of Layoffs, Severance Pay, Determination of Severance Pay, Service Period Rewards and Compensation in the Company. In Article 16 paragraph (3) it is stated that "the provision of wages during the suspension as referred to in paragraph (1) is a maximum of 6 (six) months". Prior to the issuance of SEMA Number 3 of 2015, several Supreme Court decisions underlie PPHI's decision regarding the amount of payment of processing wages using the Decree of the Minister of Manpower of the Republic of Indonesia No. Kep-150/Men/2000. The Supreme Court's decisions include:

Table 1. : Decision of the Supreme Court that underlies the Decree of the Minister of Manpower of the Republic of Indonesia Number
Kep-150/Men/2000 in determining the amount of processing wages.

No	Supreme Court Decision	Amar Decision Wages Process	Legal Basis of Process Wage Determination
1	Decision No. 399 K/Pdt.Sus-PHI/2013 dated 20 June 2014	6 (six) months	Law Number 2 Year 2004 Article 100 and Kepmenaker Number 150 Year 2000 Article 16
2	Decision No. 595 K/Pdt.Sus-PHI/2015 dated November 2, 2015	6 (six) months	Law Number 2 of 2004 Article 100 and Kepmenaker Number 150 of 2000 Article 16.

Source: Data processed by the author

If it is observed from the data above, it can be interpreted that the Supreme Court in determining the amount of processing wages for 6 (six) months uses Article 16 paragraph (3) of the Minister of Manpower Decree Number Kep-150/Men/2000. Because the Supreme Court's decision No.399 K/Pdt.Sus-PHI/2013 dated June 20, 2014 and Decision No.595 K/Pdt.Sus-PHI/2015 dated November 2, 2015 are jurisprudence for the Supreme Court, according to the author, the Minister of Manpower Decree No. 150/Men/2000 is the reason for the Supreme Court to determine the 6 (six) month process wages in the SEMA Number 3 of 2015 it. Apart from the 3 (three) decisions above, below are some decisions that determine the 6 (six) month processing fee, namely:

a) Decision Number 24K/PHI/2007 dated 27 March 2007;
b) Decision Number 25K/PHI/2007 dated 27 March 2007;
c) Decision Number 476K/Pdt.Sus/2008 dated 27 August 2008;
d) Decision Number 454K/Pdt.Sus.PHI/2012 dated October 25, 2002;
e) Decision Number 465K/PDT.Sus/2012 dated August 3, 2012;
f) Decision Number 399K/Pdt.Sus-PHI/2013 dated June 20, 2014;
g) Decision Number 595K/Pdt.Sus-PHI/2015 dated November 2, 2015.

[21]Message from the Chief Justice of the Supreme Court of the Republic of Indonesia, Prof. DR. HM Hatta Ali, officially opened the Plenary Meeting of the Supreme Court of the Republic of Indonesia on Sunday, November 3, 2019 at the Intercontinental Dago Pakar Hotel, Bandung. This event was attended by all Chamber Chairs, Supreme Court Justices, Ad Hoc Judges, Echelon I and II Officials, Case Panmud, Chamber Panmud, Judicial Judges within the Supreme Court of the Republic of Indonesia. Source : http://www.biskom.web.id/2019/11/04/rapat-pleno-kamar-ma-2019-hatta-ali-jaga-konsisten-dalam-penerapan-Hukum.bwi accessed on April 6, 2021 16:00 hours.

According to the author, SEMA Number 3 of 2015 special civil section number "2" letter "f" has exceeded the authority of the MA. Initially, the issuance of SEMA only functioned for the internal supervision of the Supreme Court. However, in SEMA Number 3 of 2015 it is clear that " after the decision of the Constitutional Court No. 37/PUU-IX/2011, dated September 19, 2011 regarding process fees, the contents of the decision are punishing employers to pay processing fees for 6 (six) months. The excess time in the PHI process as referred to in Law Number 2 of 2004 concerning PPHI is no longer the responsibility of the parties . If traced from the sound of this SEMA, the Supreme Court has overstepped the decision of the Constitutional Court Number 37/PUU-IX/2011 which stipulates that the process fee has permanent legal force. While SEMA Number 3 of 2015 the special civil section number "2" letter "f" states that the processing fee is only 6 (six) months. So this SEMA has overstepped and did not comply with the Constitutional Court's decision which is equivalent to the law. Supposedly, the Supreme Court does not need to issue SEMA No. 3 of 2015 regarding the process of wages being paid 6 (six) months because it can cause conflict in the community so that it creates legal uncertainty.

CONCLUSION

The Supreme Court does have the authority to issue SEMA but it should only be for the internal judiciary and its contents are not regulatory. If it is regulatory, it should be in the form of PERMA. SEMA is not included in the scope of the Legislation as regulated in Law Number 12 of 2011 concerning the Establishment of Legislation. Regarding the norm of processing wages after the Constitutional Court's Decision Number 37/PUU-IX/2011, the Supreme Court should not need to issue SEMA Number 3 of 2015 regarding processing wages paid for 6 (six) months. The Supreme Court may not reinterpret the process wages contained in Article 155 paragraph (2) of Law Number 13 of 2003 concerning Manpower which has been decided by the Court until it has permanent legal force. Because the position of the Constitutional Court's decision is equal to the law.

REFERENCES

Book

Asshiddiqie, Jimly, *Regarding the Law* , Rajawali Press, Jakarta: Rajawali Press, 2017.

_____, *Introduction to Constitutional Law* , Jakarta : Rajawali Pers, 2019.

Aziz, Asmaeny Aziz & Izlindawati, *Constitutional Complaint & Constitutional Question in the State of Law* , Jakarta: Kencana, 2018.

Harahap, M. Yahya, *Powers of the Supreme Court for Examination of Cassation and Review of Civil Cases* , Jakarta: Sinar Graphic, 2009.

Mahfud MD, Moh., *Building Legal Politics, Upholding the Constitution* , Jakarta: Rajawali Pers, 2017.

Palguna, I. Gede Dewa, *Constitutional Court Rationale, Authority, and Comparison with Other Countries* , Jakarta: KonPress, 2018.

Sailellah, Sirajuddin *, The Ideals of Pancasila Law Against the Supervision of Indonesian Judges* , Jakarta: Focus Grahamedia, 2015.

Sulaiman, King Faisal, *Constitutional Theory and Law* , Bandung: Nusamedia, 2017.

Journals and Reports

Aditya, Firma Zaka and Winata, M. Reza, *Reconstruction of the Hierarchy of Legislation in Indonesia,* Center for Research and Case Studies, and Library Management of the Constitutional Court of the Republic of Indonesia, *Journal of the State of Law,* Vol. 9, No. 1, June 2018.

Palguna, I Dewa Gede, Constitutional Question: Background and Practice in Other Countries and Possible Applications in Indonesia , *IusQuia Journal IusTum,* Vol. 17, No. 1, January 2010.

Samsul, Inosentius and team, *Final Report on Legal Studies on Constitutional Court Decisions,* Jakarta: National Legal Development Agency, Ministry of Law and Human Rights, Republic of Indonesia, 2009.

Faqih, Mariyadi , Philosophical Values of Final and Binding Constitutional Court Decisions , *Journal of the Constitution* , Vol.7, No. 3, 2010.

Husna, Nelly Mulia Faisal A. Rani, & Syarifuddin Hasyim, *Regulatory Authority of the Supreme Court (Juridical Study of Supreme Court Regulation Number 4 of 2016 Concerning the Prohibition of Reviewing Pretrial Decisions* , *Syiah Kuala Law Journal* , Vo. 1, No. 1, April 2017.

Qamar, Nurul, Judicial Review Authority of the Constitutional Court, Faculty of Law, Indonesian Muslim University, *Journal of the Constitution* , Vol. I, No. 1, November 2012.

Kapitan , Rian Van Frits, *The Binding Power of the Constitutional Court's Constitutional Review Decision Against the Supreme Court* , Kupang: Nusa Cendana University Postgraduate Program, 2010.
Widayati, *The Problem of Non-compliance with the Decision of the Constitutional Court on Judicial Review* , Faculty of Law, Sultan Agung Islamic University (Unissula) Semarang, *Journal of Legal Reform* , Vol. IV, No.1, January - April 2017.
Vidya Prahassacitta, *The Meaning of Process Wages According to the Constitutional Court Compared to Several Supreme Court Decisions* , *Judicial Journal,* Vol.6, No.3, December 2013.

Legislation

1945 Constitution of the Republic of Indonesia.
Law Number 15 of 1985 concerning the Supreme Court
Law Number 5 of 2004 concerning Amendments to Law Number 5 of 1985 concerning the Supreme Court.
Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.
Law Number 13 of 2003 concerning Manpower.
Law Number 24 of 2003 concerning the Constitutional Court.
Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court.
Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.
Law Number 12 of 2011 concerning the Establishment of Legislation.
Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation.
Constitutional Court Decision Number 37/PUU-IX/2011 Against the Review of Law Number 13 of 2003 concerning Manpower
Presidential Regulation Number 87 of 2014 concerning Implementing Regulations of Law Number 12 of 2011 concerning the Establishment of Legislation.
Circular Letter of the Supreme Court Number 3 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2015 as a Guide to the Implementation of Duties for the Court.
Decree of the Supreme Court of the Republic of Indonesia Number 271/KMA/SK/X/2013 concerning Guidelines for Formulating Supreme Court Policy of the Republic of Indonesia
Supreme Court of the Republic of Indonesia, *Blueprint for Judicial Reform 2010-2035* , Jakarta, 2010.
Decree of the Minister of Manpower of the Republic of Indonesia Number Kep-150 Men/2000 concerning Settlement of Termination of Employment and Determination of Severance Pay, Service Period Rewards and Compensation in the Company.
Circular Letter of the Minister of Manpower Number: SE-907/MEN/PHI-PPHI/X/2004.

Internet

Arif Christiono Soebroto, *Legal Position Regulation/Policy Under Regulation of the Minister of National Development Planning/Head of Bappenas* , http://jdih.bappenas.go.id/data/file/WORKSHOP_Peraturan_policy_di_Kementerian_PPN_bappenas.pdf . Accessed June 23, 2020
M. Hatta Ali, Speech for the Plenary Meeting of the Supreme Court of the Republic of Indonesia on November 3, 2020, Bandung, Hotel Intercontinental Dago Pakar. Source: *http://www.biskom.web.id/2019/11/04/rapat-pleno- Kamar-ma-2019-hatta-ali-jaga-consistency-in-applicability-of-law.bwi* .
Willy Farianto, *Wages Legal Problems Process After the Decision of the Constitutional Court* i , *https://www.fardalaw.com/id/2018/11/04/problem- Hukum-upah-proses-pasca-ujungan-mk/* , accessed on November 15 2020.
https ://www. Hukumonline.com/klinik/detail/ulasan/lt5da3d5db300a9/kejangan-sema-terhadap-an-undang-undang/ . accessed on March 22, 2021