RATIO LEGIS RIGHTS MATERIAL TEST OF THE SUPREME COURT IN PERMA NUMBER 1 OF 2011

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Abstract

Judicial power is the last bastion in upholding the rule of law. The Supreme Court as one of the holders of judicial power in Indonesia is expressly specified in Article 24 A Paragraph (1) of the 1945 NRI Constitution has the authority to test the laws and regulations under the law. The authority of the Supreme Court is further regulated in Article 20 paragraph (2) letter (b) of Law No. 48 of 2009 concerning the Power of Justice; and Article 31 A of Law No. 3 of 2009 on The Second Amendment of Law No. 14 of 1985 concerning the Supreme Court; and in Article 9 paragraph (2) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (P3). Furthermore, to exercise its authority, the Supreme Court has enacted Supreme Court Regulation (PERMA) Number 1 of 2011 on Materil Test Rights. The Supreme Court's policy dictates that the trial is conducted behind closed doors with a limited time consideration of only 14 days while the case that goes to the Supreme Court is very much. In the development of the policy of carrying out the trial of material test rights behind closed doors drew criticism and rejection with arguments negating the sense of justice in the judicial environment. In this paper the authors try to look back at how PERMA Number 1 of 2011 was applied in a material test trial against the laws and regulations under the Act. The research method used in the discussion is to use the approach of norms, principles, theories, and concepts. In the end, the conclusion in this article is in order to realize justice, certainty and legal expediency and the independence and impartiality of judicial power in Indonesia as the last bastion of law enforcement, it is felt that changes are needed to PERMA No. 1 of 2011.

Keyword: ***supreme court, materil test rights, law enforcement***

INTRODUCTION

Judicial power is the power in a state system that organizes the judiciary to uphold the rule of law and justice. Therefore, the power of the judiciary as the last bastion of the rule of law, should be able to exercise its authority independently and independently in accordance with applicable law. One of the efforts to do that is to apply the principle of openness or transparency in the conference process.

(2) The Supreme Court (MA) is one of the holders of judicial power in Indonesia. One of the authority of the Supreme Court is to test the laws and regulations under the law as stipulated in Article 24 A paragraph (5) of the 1945 NRI Constitution. The provisions in the constitution are further spelled out in Article 20 paragraph letter (b) of Law No. 48 of 2009 concerning the Power of Justice; Article 9 paragraph (2) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (P3); and Law No. 14 of 1985 on MA as amended twice and the second amendment through Law No. 3 of 2009, precisely in Article 31 and Article 31 A. While the implementation of materil test authority by ma, further regulated in MA Regulation No. 1 of 2011 on Material Test Rights (PERMA No. 1 of 2011).

Based on PERMA No. 1 of 2011, the hearing of Materiil Test Rights (HUM) was conducted behind closed doors, namely not open to the public and not attended by the parties with consideration of the provisions of the PR trial deadline set at only 14 working days based on Article 31 A paragraph (4) of Law No. 3 of 2009 while that also considering that so many cases entered the MA. It is expected that with the implementation of the trial behind closed doors, it is expected that the PR trial process can be carried out in a simple, fast, light cost.

However, this MA policy drew a lot of criticism and rejection from the public because the closed trial process is certainly contrary to the sense of justice. The principle of audi et alteram partem which is one of the basic principles of the judiciary is not applied in the PROCESS of PR trials in the MA. Testing of Article 31 A paragraph (4) of Law No. 3 of 2009 has been conducted to the Constitutional Court (MK). However, The Constitutional Court Decision No. 85/PUU-XVI/2018 which re-cited Mk Decree No. 30/PUU-XIII/2015, rejected the objections raised regarding whether the PR trial was open or closed, considering it to be an open legal policy of the law-shaper and not a constitutionalization of norms.

Several solution offers were successfully summarized by the Supreme Court research team, namely as follows:1:

a. HUM testing in MA put together in MK;
b. establish specifically the HUM room in the MA with the trial process conducted openly with the extension of the trial period;
c. application of online systems and digitization in the PROCESS of HUM trial in MA;
d. HUM mechanism is carried out with PTUI and/or PT TUN.

Looking at the description above, then in this article, the author tries to analyze the questions posed to the author related to:

a. implementation of PERMA No. 1 of 2011 in the trial of testing laws and regulations under the law;
e. development of supreme court policies related to PR inspection mechanisms.

This article attempts to answer the above questions using the legislative approach, theoretical and concept approaches.

DISCUSSION

Good law in it always contains a sense of justice, the existence of legal certainty and in the end there are benefits that can be felt by the community. Justice, certainty, and legal expediency will be realized as long as the law is based on the legislative ratio of true and precise legal principles. Similarly, the arrangement of the process of trial rights of material test rights ma which is part of the judicial power in Indonesia.

The justice system in Indonesia is based on various principles as a legislative ratio of every article in the laws and regulations governing it. The process of hearing material test rights in the MA must certainly refer to the provisions that are sourced at the right and correct legislative ratio. One of the main foundations that should not be ruled out in the conference process is a simple, fast, and light-cost basis. This principle is also seen in PERMA No. 1 of 2011, clearly specified in article 5 paragraph (2) as the implementation of Article 31 A paragraph (4) of Law No. 3 of 2009, that the application for testing is carried out by the MA no later than 14 (fourteen) working days calculated from the date of receipt of the application. Given the provisions of the deadline for the PR trial and the large number of material test cases that entered the MA, then in the regulation of the MA stipulated that the PR trial process was conducted behind closed doors in the sense that it does not apply to the public.

Of course, it should always be remembered that the ratio of the trial process is certainly not enough to just stick to the simple, fast, and light cost principle. There are some important and very basic

principles that should not be missed especially considering that the materially tested object is a policy that concerns the public interest. Some of the main principles and fundamentals according to the author's minimum should be contained in the setting of the ma material test rights conference process are not simple, fast, and light cost principles. The most basic and most appropriate principles to be the legislative ratio of the MA policy related to the PR conference process are none other than the principle of fairness, certainty, and usefulness which can both be applied if in its implementation is also implemented the principle of transparency through the application of the principle of audi et alteram partem in the HUM conference process.

Looking at the articles contained in PERMA No. 1 of 2011, the principles mentioned above have not been reflected in every article. PERMA No. 1 of 2011 is one form of regeling policy intended to fill legal gaps and/or make legal breakthroughs.2 As a policy that regulates substantial matters of the public interest, public participation is of course required. Public participation here is important as a means for the application of the principle of supervision of the course of the trial, especially in this case the PR trial process by MA.3 Public supervision is needed to measure accountability in the PR trial process. In the end, the principle of transparency and the principle of accountability by involving community participation, then the independence and impartiality of judges can be maintained.

The principle of openness in the court process can be reflected in the provisions governing the PR proceedings if the principle of audi et alteram partem is implemented by giving the parties both the applicant and the respondent to attend in person and the proceedings are opened to the public. This considers the characteristics of testing laws and regulations which are the authority of the MA which of course is different from the authority of the MA to handle other matters. PERMA No.1 of 2011 is thus contrary to Law No. 48 of 2009 which mandates a trial open to the public so that this MA policy cannot meet the sense of justice of the parties and of course it is difficult to meet legal certainty and its usefulness.

Further discussing some possible developments to the PR trial mechanism as offered in this forum, the author agreed with the offer of solutions to overcome existing problems by forming a HUM room that implements an open trial process. However, the author disagrees if the proceedings

In this HUM room will still be limited in time. According to the author of this HUM trial process, as stated above is the trial process that handles cases of testing laws under the law which is certainly not the same as other cases submitted to the Supreme Court where the MA acts like the COURT performs its function as a court of law that adjudicates written law as quoted again in Mk Decree No.85 / PUU-XVI / 2018.[4]

While the offer of another solution: testing the regulations under the law put together in mk is not the right solution. In addition to adding to the burden of the Constitutional Court, this solution is also unconstitutional because it is contrary to the provisions in the constitution. The 1945 NRI Constitution has regulated well and firmly and clearly the authority to test materil between ma and mk. If it remains this way that will be taken for the development of MA policy in the future, then this must be passed with complicated procedures and actually incurs a large cost because it must make changes to the Supreme Court Act and the Judicial Powers Act and the Constitutional Court Act can even be up to the idea of changing the 1945 NRI Constitution.

Then the idea to share the authority with PT TUN (judex factie) for the next after a complete examination with the trial process open to the public, then forwarded to the Supreme Court to be decided and pronounced open to the public online (judex juris) using the analogy of pt tun examination as it is the examination of PK Criminal Case, impressed as forced. The policy that is being thought of is a patchwork policy. If this policy taken certainly requires readiness that is not simple, considering the competence of PT TUN judges for testing laws and regulations under the law which of course differs from his competence as a judge in court of justice trials. The same consideration for HUM examination of regulations villages, district or city local regulations as well as provincial regulations or governor's regulations.

In addition, efforts to digitize or implement the pr trial process online (virtual court)5, one of which is by conducting a video conference, is not the answer to existing problems. Things like this certainly can not be ascertained the process of PR trial in MA online can meet the sense of justice of the parties. Of course, the principle of transparency by involving the parties is not enough just to mean the PR trial system conducted online although in the future the online system in the trial will be one possibility to be applied especially to certain situations in the industrial era 4.0. and or in urgent situations.

Looking at the various solution offers above to answer the problems arising in the PR trial process based on PERMA No. 1 of 2011, the author argues that the offer of the above solutions seems to be based solely on formal technical thinking that does not yet seem to reflect the legal principles that must exist as the fundamental basis of the arrangement of speech in the HUM trial process at the MA.

The process of HUM trial in MA must be carried out openly both for the parties and the general public in order to fulfill the principle of audi et alteram partem. However, the process of PUBLIC trial in the MA is not only a matter of openness in a simple sense but the application of this principle of openness is intended so that there is public participation as a supervisor of the course of the trial considering that the object tested is a law under a law that is public, which applies to the wider community regarding the public interest. The application of open principles in regulations should not be interpreted as ordinary technical formal problems, but this is a formal legal aspect which of course the articles governing must satisfy a sense of justice, guarantee legal certainty and legal expediency. Openness here should be interpreted as openness to realize truly fair law enforcement

CONCLUSION

1. PERMA Policy No. 1 of 2011 has not reflected the principle of audi et alteram partem, the principle of transparency, the principle of accountability as a ratio of the legislature so that the PR trial process in the MA becomes difficult to be expected to meet the sense of justice of the parties and the community as well as legal certainty and the benefits of law enforcement;
2. The solutions offered to improve the mechanism of THE PR trial in the MA to be open, only formal technical that has not been seen ideas that consider the ratio of the principles of law enforcement in the field of justice (event law) even some solutions seem patchy.
3. However, the author agrees with the idea of forming a special HUM room as long as there is no time limit considering that the PR trial in this MA is substantially a case filed to meet the sense of public justice of course every provision of the article in it must be based on the correct legislative ratio and relevant to the purpose of the hum trial mechanism in the MA.

SUGGESTION

Making changes to PERMA No. 1 of 2011 on Materil Test Rights by regulating the implementation of PR trials that directly involve the parties and are open to public participation so that independent judicial power and impartiality are maintained.

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