

Disharmonization of Supreme Court Regulations in Material Judicial Rights



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ABSTRACT

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This study aims to analyze the problems with Supreme Court Regulation in Judicial Review resulting from inconsistencies in these rules, which impact the court's ability to enforce these regulations. This study is a normative legal analysis. The findings of this study indicate that the problem of discordant norms in judicial review is related to two factors, specifically discordant norms regarding the authority to examine formal matters. The discord of norms about the legal subject matter of the Petitioner for Review of Legislation under the Act results from differences in regulation of judicial review material aspect used as a criterion. This contradicts the original intent of the Constitution of the Republic of Indonesia.



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1. Introduction

The Supreme Court, in carrying out its constitutional authority to carry out the judicial review function, is given attributive authority to issue a Supreme Court Regulation (Perma). This is because the law only regulates and concisely regarding the authority of judicial review by the Supreme Court, so there is a shortage of provisions that further regulate the technical implementation of judicial review, or there is even a legal vacuum. Supreme Court regulations as an effort to expedite the process of exercising the authority of the Supreme Court in the field of judicial review.¹

The position of Perma is regulated in Article 79 of Law Number 14 of 1985 concerning the Supreme Court. The first paragraph of the explanation of Article 79 of Law Number 14 of 1985 concerning the Supreme Court explains that if in the

¹ Mardian Wibowo, I Nyoman Nurjaya, and Muchammad Ali Safaat, 'The Criticism on the Meaning of "Open Legal Policy" in Verdicts of Judicial Review at the Constitutional Court Mardian Wibowo', *Constitutional Review*, 3.2 (2018), 262 <https://doi.org/10.31078/consrev326>

course of the judiciary, there is a legal deficiency or vacuum in a matter, the Supreme Court has the authority to make regulations to fill the gap or vacancy.² There are two interesting things to observe from the provisions of Article 79 and its explanation. First, related to Perma's material limitations. This limitation can be seen from the purpose of forming the Supreme Court Law in giving the authority to form a Perma.³ Perma material is material that has not been regulated in the Act.

Second, the scope of regulation of the Perma is limited to the administration of justice related to procedural law. The Supreme Court legislator has also given signs so that the Perma material does not take material that should become law material. Third, the elucidation of Article 79 of Law Number 14 of 1985 concerning the Supreme Court in the second paragraph, among other things, states that regulations issued by the Supreme Court are distinguished from regulations formed by legislators. The Supreme Court also cannot interfere with and exceed the regulation of citizens' rights and obligations.⁴

Changes from Perma No. 1 of 2004 to Perma No. 1 of 2011 due to the provision of time limits for filing applications that need to be properly regulated in the Perma. The norms governing these deadlines should be regulated in law because they violate human rights. Changes from Perma No. 1 of 2004 to Perma No. 1 of 2011 due to the provision of time limits for filing applications that are not properly regulated in the Perma. The norms governing these deadlines should be regulated in law because they violate human rights.⁵ Disharmonization of laws and regulations means legal uncertainty in implementing these regulations. This is contrary to the principles of the rule of law materially and formally. Materially related to social disorder due to the existence of laws and regulations that do not guarantee legal uncertainty.⁶

² Ni'matul Huda, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), e07886 <https://doi.org/10.1016/j.heliyon.2021.e07886>

³ Abdul Kadir Jaelani and Muhammad Jihadul Hayat, 'The Proliferation of Regional Regulation Cancellation in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 121-38 <https://doi.org/10.53955/jhcls.v2i2.38>

⁴ Fatma Ulfatun Najicha and others, 'The Conceptualization of Environmental Administration Law in Environmental Pollution Control', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 87-99 <https://doi.org/10.53955/jhcls.v2i2.44>

⁵ Salahuddin Gaffar and others, 'The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia', *Heliyon*, 7.4 (2021), e06690 <https://doi.org/10.1016/j.heliyon.2021.e06690>

⁶ Ngesti Prasetyo and others, 'The Politics of Indonesias Decentralization Law Based on Regional Competency', *Brawijaya Law Journal*, 8.2 (2021), 159-84 <https://doi.org/10.21776/ub.blj.2021.008.02.01>

Perma has a central role in reviewing statutory regulations under the law. The role of Perma as a source of law and a complement to unclear statutory provisions. It should be able to provide certainty instead of causing ambiguity because the norms regulated in the law need to be in harmony with the norms regulated in the Perma norms. Further research is to explore whether Perma Number 1 of 2011 contains problems related to disharmony of norms. Is there any other normative material regulated and maintained in Perma Number 1 of 2011 that has other issues of disharmony of norms? What is the impact of the disharmony of norms in the Supreme Court Regulation Number 1 of 2011 concerning the Right to Judicial Review?

2. Research Method

This research is normative legal research. Normative juridical research is a legal method of examining library or secondary materials.⁷ The data collection technique used was a literature review, namely collecting, identifying, clarifying and analyzing data to understand, record or quote the data.⁸ The data obtained were analyzed qualitatively and presented descriptively. Some of the data used in legal products are in the form of Supreme Court Regulation Number 1 of 2011 concerning the Right to Judicial Review, Law Number 48 of 2009 concerning Judicial Powers, the 1945 Constitution of the Republic of Indonesia. The legal material is then studied through various forms of analysis, both systematic analysis, historical analysis of legal products and normative analysis.

3. Results and Discussion

Problems Disharmonization of Supreme Court Regulations in Material Judicial Rights

The legal basis for the Supreme Court's authority in examining laws and regulations is regulated in Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 20 paragraph (2) letter b of Law Number 48 concerning Judicial Power, and Article 31 A of the Law about the Supreme Court. To carry out the attribution authority, the Supreme Court issued a Perma on the Right to Judicial Review to further regulate the authority of the Right to examine the Supreme Court and its procedural law.⁹ In exercising judicial review powers, the Supreme Court has issued four regulations relating to judicial review, namely Regulations No. 1 of 1993, Regulations No. 1 of 1999, Regulations No. 1 of 2004

⁷ Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>

⁸ Rian Saputra and others, 'REFORM REGULATION OF NOVUM IN CRIMINAL JUDGES IN AN EFFORT', *JILS (JOURNAL OF INDONESIAN LEGAL STUDIES)*, 6.2 (2021), 437–82 <https://doi.org/https://doi.org/10.15294/jils.v6i2.51371>

⁹ Alon Cohen, 'Independent Judicial Review: A Blessing in Disguise', *International Review of Law and Economics*, 37 (2014), 209–20 <https://doi.org/10.1016/j.irl.2013.10.006>

and the last one, namely Regulations No. 1 of 2011.¹⁰ The revocation of the Perma may involve terms/dictions used in judicial reviews, subjects and objects in judicial reviews, procedural law, registration mechanisms, and the grace period for requests for judicial review. Seeing the development of the Perma on the Right to Test Materials, which continues to be perfected but still has problems or technical deficiencies. The author hypothesises that Perma No. 1 of 2011 concerning the Right to Material Test, which is an improvement of Perma No. 1 of 2004, still has problems and shortcomings normatively. This can be seen from the indication that the amendment to the Perma is only carried out by revoking 1 Article. In this study, the author only focuses on the problem of disharmony of norms.

Disharmony of Norms Related to Formal Examination Authority

The phrase "testing the legislation under the law against the law" in the formulation of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia becomes important to explore its original intent. This is important because the article gives the Supreme Court the authority to conduct a judicial review. Article 24A paragraph (1) becomes the main touchstone to see whether the harmony of these norms is maintained in the follow-up arrangements (laws and regulations).¹¹ To be able to understand the original intent of a constitution, we need to carry out an interpretation of the constitution. Interpretation is a method for understanding the meaning of legal texts to be used in resolving cases or making decisions on things that are faced concretely. In short, the method is a way to understand the meaning contained in the article text of a statutory regulation. There are several methods of interpreting the constitution.¹² As quoted by Martitah, Bobbitt identifies six methods of interpreting the constitution: Textual Interpretation, Historical Interpretation, Doctrine Interpretation, Prudential Interpretation, Structural Interpretation, and Ethical Interpretation.¹³

Meanwhile, Vicki C. Jackson and Jamal Greene stated that interpreting the constitution consists of three main approaches. First, the positivist interpretation focuses on the history, namely the history of the law being made. Second, this

¹⁰ Michael D. Trood, Benjamin L. Spivak, and James R.P. Ogloff, 'A Systematic Review and Meta-Analysis of the Effects of Judicial Supervision on Recidivism and Well-Being Factors of Criminal Offenders', *Journal of Criminal Justice*, 74.October 2020 (2021), 101796 <https://doi.org/10.1016/j.jcrimjus.2021.101796>

¹¹ Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30 <https://doi.org/10.53955/jhcls.v2i1.23>

¹² Muhammad Ridwansyah and Asron Orsantinutsakul, 'The Strengthening of Guardian Institutions in Nanggroe Aceh During the Autonomy Era', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 55–65 <https://doi.org/10.53955/jhcls.v2i1.27>

¹³ Nurfaika Ishak and Romalina Ranaivo Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <https://doi.org/10.53955/jhcls.v2i1.24>

purposive interpretation approach emphasizes the purpose of the constitution that was made. Third, multi-valenced, this approach draws on genuine understanding, purpose, structure, history, values, and consequences to arrive at constitutional decisions.¹⁴

The historical background for the formation of Article 24A, which can be seen in the debate on amendments to the 1945 Constitution of the Republic of Indonesia, shows that there is a desire to give authority to the Supreme Court to review statutory regulations both formally and materially. This is in line with the opinion expressed by Zain Badjeber (from the PPP faction), namely:¹⁵

"[...Later on, this is not the case, so in the next paragraph [paragraph (2)] we propose: "An MPR Decree shall determine the composition, position, powers and membership of the Supreme Court." The next article [paragraph (3)]: "The Supreme Court has the authority to review statutory regulations under MPR decrees." So it means downward law, judicial review rights and formal review rights known as judicial review...]".

A similar opinion was also expressed by Hamdan Zoelva (from the UN Faction), namely:¹⁶

"[...First, the Supreme Court, as a judicial institution in a modern democratic country must be regulated explicitly and in more detail in the Constitution and regulations regarding the President and other State High Institutions. Therefore, we are of the opinion that the composition and position of the Supreme Court is strictly regulated in the Constitution, including the authority given to it regarding the right to material and formal examination of the legal products of the Act and below. This authority's arrangement is felt necessary to foster checks and balances between various State High Institution...]."

From the discussion above, it can be concluded that what is intended or desired (original intent) by the makers of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia concerning the authority to review legislation under the law is to examine both materially and formally. To find out the purpose of testing as intended by Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the author uses the theory put forward by Sri Soemantri, who suggests that both in the literature and practice, it is known that there are two kinds of right to examine, namely the right to formal examination (formele toetsingsrecht) and the right to test. material (materialele toetsingsrecht).¹⁷ The right to formally examine is the authority to assess whether a

¹⁴ Sulistya Evingrum and Vasco Fronzoni, 'The Model of Coaching Narcotics Prisoners in the Correctional Penitentiary', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 78–86 <https://doi.org/10.53955/jhcls.v2i2.26>

¹⁵ Wibowo, Nurjaya, and Safaat.

¹⁶ Adiguna Bagas Waskito Aji and others, 'Social Justice on Environmental Law Enforcement in Indonesia: The Contemporary and Controversial Cases', *The Indonesian Journal of International Clinical Legal Education*, 2.1 (2020), 57–72 <https://doi.org/10.15294/ijicle.v2i1.37324>

¹⁷ Adriaan Bedner, 'Consequences of Decentralization: Environmental Impact Assessment and Water Pollution Control in Indonesia', *Law and Policy*, 32.1 (2010), 38–60 <https://doi.org/10.1111/j.1467-9930.2009.00313.x>

legislative product such as a law, for example, is incarnated through procedures as determined/regulated in laws and regulations or not. The right to examine material is an authority to investigate and then assess whether a statutory regulation contains or contradicts a higher level regulation and whether a certain authority (*verordenende macht*) has the right to issue a certain regulation (*der door haar vastgestelde regeling te geven*).¹⁸

The phrases in Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia can then be interpreted grammatically and using the theory from Sri Soemantri above. Because Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia does not mention whether the test is a formal or material test, what can be interpreted as the intended test is general testing, namely formal and material testing.¹⁹ The norms in Article 24 A paragraph (1) of the 1945 Constitution are spelt out again in Article 20 of Law Number 48 of 2009 concerning Judicial Powers, which are also regulated in Article 31 of Law Number 5 of 2004 concerning the Supreme Court and Article 31 A of the Law - Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.²⁰

By using a grammatical interpretation approach to the normative provisions of the law above, it can be judged that both the law on judicial power and the law on the supreme court of authority use the phrase "Examine the legislation under the law against the law" in harmony with the normative provisions of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Referring to other provisions further in the law of the Supreme Court, namely Article 31 paragraph (2) and Article 31A paragraph (3) letter b, it can be interpreted that implicitly what is meant is "To examine the statutory regulations under the law against the law. law" is a formal or material test. It can be seen in the phrase "the reason is contrary to the higher legislation or its formation does not meet the applicable provisions".²¹

The phrase "Contrary to higher laws and regulations" can be interpreted based on Sri Soemantri's right-to-test theory, which is a material test. While the phrase "the establishment does not meet the applicable provisions" means formal testing. It is also emphasized where there is a requirement to submit an application related to the content of the regulations contrary to higher regulations (material

¹⁸ Lego Karjoko and others, 'Indonesia's Sustainable Development Goals Resolving Waste Problem: Informal to Formal Policy', *International Journal of Sustainable Development and Planning*, 17.2 (2022), 649–58 <https://doi.org/10.18280/ijstdp.170230>

¹⁹ Shazny Ramlan, 'Religious Law for the Environment: Comparative Islamic Environmental Law in Singapore, Malaysia, and Indonesia', *SSRN Electronic Journal*, 15, 2019 <https://doi.org/10.2139/ssrn.3405923>

²⁰ Junaedi Junaedi, 'Efforts to Prevent Bureaucratic Corruption Based on the Piercing Principles of the Governance Veil in Realizing Good Governance and Clean Governance in Indonesia', *Journal La Sociale*, 1.2 (2020), 10–16 <https://doi.org/10.37899/journal-la-sociale.v1i2.87>

²¹ Michael S. Barr and Geoffrey P. Miller, 'Global Administrative Law: The View from Basel', *European Journal of International Law*, 17.1 (2006), 15–46 <https://doi.org/10.1093/ejil/chi167>

requirements) and regulations whose formation does not meet the applicable provisions (formal requirements).²² The normative standards mentioned above show that the Supreme Court has the authority to declare invalid laws and regulations under laws that are contrary to higher laws and regulations or their formation does not meet the applicable provisions. Based on this, the requirements for reviewing statutory regulations under the law used by the Supreme Court consist of material and formal requirements.²³

The next problem is whether the Perma issued by the Supreme Court also aligns with the Constitution and the law. To answer this, the writer analyzes grammatically the norms in Article 1 paragraph (1) of the Supreme Court Regulation Number 1 of 2011, which reads: "The right of judicial review is the right of the Supreme Court to assess the material content of laws and regulations under the law, against the legislation at the level of legislation higher". The problem that arises from this norm is that Perma Number 1 of 2011 provides a different meaning from the provisions stipulated in the Constitution and the law. This is seen explicitly in the phrase "assessing the material content of legislation under the law, against higher level legislation", which is interpreted as only material testing.²⁴

Article 1 paragraph (1) Perma Number 1 of 2011 provides a narrower understanding by giving the phrase "assess the material", which is interpreted to override the authority to examine formally. While implicitly, it can be seen that Article 31A paragraph (3) letter b of the Supreme Court Law also states the reasons for the application regarding the formation of statutory regulations not fulfilling the applicable provisions (formal requirements). Norms relating to the limits of judicial review authority can also be seen in Article 1 paragraph (3) of Perma Number 1 of 2011, which states that an objection is based on reasons for conflicting a statutory regulation with a higher level statutory regulation. The article also needs to provide an understanding of formal testing requests.²⁵ Perma Number 1 of 2011 does not include the definition of formal testing as contained in the law. The Perma rules out or annuls the formal requirements as one of the normative standards in examining statutory regulations. Concretely, the Supreme Court, in carrying out a judicial review of statutory regulations, which is used as a touchstone, is only the material aspect, namely whether a statutory regulation being tested contradicts or not with higher statutory regulations.

²² Daniel K. Tarullo, 'Bank Supervision and Administrative Law', *Columbia Business Law Review*, 2022.1 (2022) <https://doi.org/10.52214/cblr.v2022i1.9983>

²³ Dadang Hartanto and others, 'Perceived Effectiveness of E-Governance as an Underlying Mechanism between Good Governance and Public Trust: A Case of Indonesia', *Digital Policy, Regulation and Governance*, 23.6 (2021), 598–616 <https://doi.org/10.1108/DPRG-03-2021-0046>

²⁴ Pan Mohamad Faiz, 'Perlindungan Terhadap Lingkungan Dalam Perspektif Konstitusi Environmental Protection in Constitutional Perspective', *Jurnal Konstitusi*, 13.4 (2016), 766–87 <https://doi.org/https://doi.org/10.31078/jk1344>

²⁵ Svetlana Avdasheva, Svetlana Golovanova, and Yannis Katsoulacos, 'The Role of Judicial Review in Developing Evidentiary Standards: The Example of Market Analysis in Russian Competition Law Enforcement', *International Review of Law and Economics*, 58 (2019), 101–14 <https://doi.org/10.1016/j.irle.2019.03.003>

The provisions of Article 1 paragraph (1) and Article 1 paragraph (3) are contained in the Chapter of General Provisions. In contrast, general provisions in a statutory regulation are intended to limit the understanding or interpretation of a matter to be regulated. With an understanding of the "Right for Material Testing" in Perma Number 1 of 2011, this is a limitation of the scope or scope of what is meant as a Material Testing Right. This definition is binding and relates to other norms regulated in the Perma. Norms (Articles) contain an understanding that is Limitative and cannot be distorted, reduced, and may not have multiple meanings. In short, the general provisions in a statutory regulation are made to anticipate the expansion of the meaning of a norm, differences in meaning, conflicting norms, or unclear norms that will be regulated further. Differences and even ambiguity (bias) in the meaning of a norm that will be regulated in laws and regulations with other laws and regulations will lead to norm disharmony.²⁶

Discussion on the norms governing the authority to examine the formal review by comparing the norms in Perma Number 1 of 2011 concerning the Right to Material Examination with the provisions of Article 24A of the 1945 Constitution of the Republic of Indonesia, Article 20 of the Law on Judicial Power, Article 31 and Article 31A of the Law on the Supreme Court there is a clear non-conformity. This is because the use of the term "Right for Material Testing" as the title of the Perma and Norms Article 1, paragraph (1) and paragraph (3) has reduced or narrowed the meaning of the examination of laws and regulations. Because the term "material test" has a narrower meaning than the examination of the laws and regulations as referred to in the regulation that forms the basis for the issuance of the Perma.²⁷

Disharmony of Norms Regarding the Subject of the Petitioner for Examination of the Legislation under the Act

Arrangements regarding legal subjects who may become applicants for review of statutory regulations under laws are not regulated in the Constitution but instead are regulated by in-laws. This arrangement, in a limited way, shows that an application for judicial review at the Supreme Court can only be made by a party who considers that their rights have been impaired by the enactment of laws and regulations under the law, namely: (a) individual Indonesian citizens; (b) customary law community units as long as they are still alive and following community developments and the principles of the Unitary State of the Republic of Indonesia regulated in law; or (c) public legal entity or private legal entity.²⁸

In the elucidation of Article 31 A paragraph (2) letter (a) of Law Number 3 of 2009 regarding the second amendment to Law Number 14 of 1985 concerning the

²⁶ Trood, Spivak, and Ogloff.

²⁷ Giovanni De Gregorio, 'Digital Constitutionalism in Europe Reframing Rights and Powers in the Algorithmic Society', *Gastronomía Ecuatoriana y Turismo Local.*, 1.69 (1967), 5–24. <https://doi.org/10.1016/j.irle.2019.03.003>

²⁸ Jaelani and Hayat.

Supreme Court, it is stated that for the provisions of an individual Indonesian citizen applicant is an individual or group of people who have the same interests. From this article, it can be understood that the applicant's subject who can apply can be a person or group of people. Perma Number 1 of 2011 concerning the Right to Judicial Review also regulates norms related to legal subjects who can become applicants for review of statutory regulations under the law, namely in Article 1 paragraph (4) namely: "An objection applicant is a community group or individual submitting an application object to the Supreme Court on the enactment of a lower level statutory regulation than a law".²⁹

Article 1 paragraph (4) Perma Number 1 of 2011 states two legal subjects who can become objectors, namely community groups or individuals. By associating the function of understanding a statutory regulation with the article's sound, it can be concluded that the Perma has limited the scope of legal subjects who can become petitioners for objections. The Norm Provisions of Article 1 paragraph (4) of Perma Number 1 of 2011 are limitative, so they cannot deviate. From the two norms, it is clear that there are differences in legal subjects who can become applicants for judicial review under the law. These differences lead to an inconsistency of norms between the Perma and the Law. This is because the two norms, when interpreted with grammatical interpretations, have a limiting nature that differs from one another. To dig deeper into this issue, the author tries to take a historical, juridical approach to the causes of the inconsistency of the two norms.

The provisions of Article 1 number 4 Perma Number 1 of 2011 are the same as Perma Number 1 of 2004. Perma 1 of 2004 was formed based on Law Number 5 of 2004. Law Number 5 of 2004 has not specifically regulated who may become a Legal Subject of the applicant for review of statutory regulations under the law. Subsequently, Law Number 5 of 2004 was amended by Law Number 3 of 2009. In this change, the norm of Article 31 A emerged, which regulates which parties can become applicants for judicial review under the law. However, these changes were not accommodated by Perma No. 1 of 2011.

Law Number 3 of 2009 concerning the Supreme Court, which regulates legal subjects who have the right to submit requests for review of statutory regulations under the law, has been issued since January 2009, while Perma Number 1 of 2011 was issued on May 30 2011. Within this timeframe, changes to Perma No. 1 of 2011 do not accommodate the provisions of Article 31 A paragraph (2) while retaining the substance of the norm of Perma No. 1 of 2004, which is no longer relevant to Law No. 3 of 2009 because it has been regulated subject to applicants who have legal standing.³⁰

The nature of the norms of Article 1 paragraph (4) Perma Number 1 of 2004 contains an imitative definition, while Article 31A paragraph (2) of Law Number 3 of 2009 gives rights to legal subjects different from those regulated in the Perma. The existence of Article 1 paragraph (4) Perma Number 1 of 2011 creates differences and inconsistencies in norms. This inconsistency is because the two

²⁹ Fatma Ulfatun Najicha and others.

³⁰ Ishak and Mikea Manitra.

norms are limitations in nature (provide boundaries) but have different substances from one another and are not directly related. The author considers this condition a symptom of the Supreme Court's carelessness in issuing Perma No. 1 of 2011 because it was not carried out with good juridical considerations. It can be judged that Perma No. 1 of 2011 only made a small improvement to Perma No. 1 of 2004 without taking into account the provisions of the law that had been changed.

Based on Article 31A paragraph (1) junto Article 81 C Law Number 3 of 2009, which states that implementing regulations of laws and regulations must have been enacted no later than 6 (six) months after this Law was promulgated. This provision emphasizes the necessity for the Supreme Court to immediately conduct a review regarding the existence of Perma No. 1 of 2004 concerning the Right to Judicial Review as one of the implementing legal instruments whose substance has changed in Law No. 3 of 2009.³¹ In this case, Perma Number 1 of 2004, a review of the implementing regulations is only carried out on provisions related to the grace period. Meanwhile, the substance of the other Perma materials was not changed. The Supreme Court only issued a Perma in 2011 without paying attention to the material regulated in Law Number 2009 concerning legal subjects who can submit a review of statutory regulations under the law.

The Impact of Norm Disharmony in Regulation of Supreme Court Number 1 of 2011 on Legal Certainty

A system is an orderly arrangement or order consisting of parts related to each other, arranged according to a plan or pattern, the result of thought to achieve a goal. In a good system, there should be no duplication or overlap between the parts of the system. A system always consists of several elements or components that are interrelated and influenced, bound by one or several certain principles. Theoretically, laws and regulations are a system that does not want and does not justify conflicts between the elements or parts. Laws and regulations are interrelated and are part of a system, namely the national legal system. Harmonized and integrated laws and regulations are indispensable for creating order and guaranteeing legal certainty and protection.³²

The system for reviewing statutory regulations is a mechanism established to maintain the system of norms applicable in the country so that they do not conflict with each other between the elements or parts of the statutory regulations. Judicial review to maintain harmonious and integrated laws and regulations. The consistency of a statutory and legal arrangement will greatly affect legal certainty. Legal certainty as one of the goals of law can be said as part of efforts to achieve justice. Every material legislation must have a guarantee of legal certainty. Legal certainty refers to the fact that the material contained in the regulation must contain clarity, not cause multiple interpretations, not create contradictions, and

³¹ Leyla D. Karakas, 'Political Rents under Alternative Forms of Judicial Review', *International Review of Law and Economics*, 52 (2017), 86–96 <https://doi.org/10.1016/j.irle.2017.08.004>

³² Avdasheva, Golovanova, and Katsoulacos.

be enforceable and capable of guaranteeing every citizen's rights and obligations. People do not know what to do without legal certainty, and finally, there is unrest in society.³³

Perma, as a rule, should be able to create and achieve the goal of providing legal certainty. Legal certainty can be assessed from the Perma material, which must contain clarity, not cause multiple interpretations, not cause contradictions, and can be implemented. The problem of disharmony of norms contained in Perma Number 1 of 2011, both related to the authority to examine formally and the applicant's subject for review of statutory regulations under the law, has an impact on legal certainty.³⁴ To find out this impact, the writer needs to explain the conditions of the two problems of norm disharmony by relating them to real conditions (practice), which can be seen in the decisions of the Supreme Court.

First, the issue of disharmony related to the authority to examine formally arises because of the choice of the terminology "Right of judicial review" in the title and norms of Article 1 paragraph (1) juncto Article 1 paragraph (3) Perma Number 1 of 2011 does not describe or regulate the authority to examine formally. by the Supreme Court. These conditions lead to the interpretation that the Supreme Court only conducts material examinations.³⁵ By the norms in the original intent of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia and strengthened by Article 31, Article 31A paragraph (3) of the Supreme Court Law, it can be interpreted that the Supreme Court also has the authority to conduct formal examinations. Even in practice, the Supreme Court has entered into a formal review, namely the Supreme Court Decision Number 15 P/HUM/2009, which declared Article 22 Letter c and Article 23 paragraph (1) and paragraph (3) KPU Regulation No 15/2009 invalid. With the phrase "the formation is contrary to" in the second ruling, it can be said that the Supreme Court has entered the formal examination realm.³⁶

Another request for formal examination can be seen in Decision Number 54P/Hum/2013. In this decision, the Supreme Court granted the petitioner's request to review it materially, but the Supreme Court did not conduct a formal review. In fact, on this consideration, the Supreme Court did not give any reason for not conducting a formal trial. This gives rise to confusion about implementing the norm of authority to formally examine because the panel of judges accepts the application containing the argument for a formal examination. However, the panel

³³ William Dubinsky, Daniel A. Farber, and Philip P. Frickey, *Law and Public Choice: A Critical Introduction*, *Michigan Law Review*, 1992, XC <https://doi.org/10.2307/1289429>

³⁴ Chris Marsden, Trisha Meyer, and Ian Brown, 'Platform Values and Democratic Elections: How Can the Law Regulate Digital Disinformation?', *Computer Law and Security Review*, 36 (2020), 105373 <https://doi.org/10.1016/j.clsr.2019.105373>

³⁵ Giovanni De Gregorio, 'Democratising Online Content Moderation: A Constitutional Framework', *Computer Law and Security Review*, 36 (2020), 105374 <https://doi.org/10.1016/j.clsr.2019.105374>

³⁶ Peter Alexander Earls Davis, 'Decrypting Australia's "Anti-Encryption" Legislation: The Meaning and Effect of the "Systemic Weakness" Limitation', *Computer Law and Security Review*, 44.September 2018 (2022), 105659 <https://doi.org/10.1016/j.clsr.2022.105659>

of judges also does not conduct the examination or give further consideration regarding the argument for the applicant's request for a formal examination.³⁷

The author considers that if it is deemed that the Supreme Court is not authorized to examine formally by Article 1 paragraph (1) of the Supreme Court Regulation Number 1 of 2011, then the panel of judges must still mention the considerations and order to reject the formal examination because it is not authorized. Moreover, if the panel of judges has received the request for a formal review by Article 24A paragraph (1) of the NRI Constitution and Article 31, Article 31A paragraph (3) of the Supreme Court Law, the panel of judges must consider whether the application has legal grounds to be granted or instead rejected. The existence of a request for a formal review that is received by the Supreme Court (even though it is not considered or decided) does not necessarily become a such argument that the Supreme Court has exercised its authority in the formal examination as stipulated in Article 24 A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 31, Article 31 A paragraph (3) of the Supreme Court Law.³⁸

Second, furthermore, the cause of the disharmony of norms related to legal subjects who can become Petitioners for testing legislation under the law is due to differences in the limits (qualifications) of applicants as regulated in Article 1 paragraph (4) of Perma Number 1 of 2011 with Article 31 A paragraph (2) letter an of Law Number 3 of 2009. The problem of disharmony of norms is seen from the Perma, which only mentions community groups or individuals who can be applicants for objections. In contrast, the law mentions Indonesian citizens, indigenous peoples, and public and private legal entities. Resulting in legal uncertainty for parties who wish to test the legislation under the law.³⁹

To assess whether the author's hypothesis that the disharmony of norms related to legal subjects results in legal uncertainty. The author has examined several Supreme Court decisions to assess the extent to which the norms of Article 1 paragraph (4) of the Supreme Court Number 1 of 2011 can provide legal certainty. From this research, it can be concluded that the norms of Article 1 paragraph (4) of Perma Number 1 of 2011 cannot be applied to determine the qualifications of certain legal subjects who meet formal qualifications. Especially regarding legal subjects outside the Perma, which are regulated by law, in the example above private legal entities. In the example of the decision above, there is a decision stating that it has fulfilled the formal requirements of Article 1 paragraph (4) of the

³⁷ Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <https://doi.org/10.53955/jhcls.v2i1.31>

³⁸ Andry Harijanto, Siti Hatikasari, and Juliet Musabula, 'The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice Elimination of Violence Against Women . 2 Indonesia Has Ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Conve', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 100–112 <https://doi.org/10.53955/jhcls.v2i2.33>

³⁹ Wibowo, Nurjaya, and Safaat.

Supreme Court Regulation Number 1 of 2011. However, the norms in the Perma do not regulate private legal entities at all.⁴⁰

On another consideration, the Supreme Court also uses conjunctions or phrases, the words "and" / "further" or "juncto", but these two phrases are not appropriate to use because the norm of Article 1 paragraph (4) of the Supreme Court Regulation Number 1 of 2011 is not a continuation of provisions governing private legal entities or the compilation of requirements to determine the legal standing of a private legal entity. The difference again occurs in the Supreme Court's Decision which does not consider the provisions of Article 1 paragraph (4) of Perma Number 1 of 2011 for applicants in the form of private legal entities. This condition can be interpreted that the provisions of Article 1 paragraph (4) of Perma Number 1 of 2011 can be overridden by the Panel of Judges in assessing the legal standing of private legal entities.⁴¹

Specifically regarding decisions where the applicant's subject is an individual, the norms of Article 1 paragraph (4) of the Supreme Court Regulation Number 01 of 2011 and Article 31 A paragraph (2) of Law Number 3 of 2009 can be considered or applied simultaneously. This is because, in essence, the substance of the norm is the same. However, the question arises of what happens to duplication of norms. If it is said as an affirmation, why is Article 1 paragraph (4) of the Supreme Court Regulation Number 1 of 2011 different from Article 31 A paragraph (2) of Law Number 3 of 2009?.

In the two discussions above, there are similarities between disharmony of authority to examine formally and disharmony related to legal subjects. Namely the sound of different norms, interpretations and implementations related to the norms of Perma No. 1 of 2011. A statutory regulation must be easy to understand and not have multiple interpretations because only some understand the legal provisions or can interpret a legal regulation. General and abstract formulations of laws are often vulnerable to different interpretations by interested legal subjects. Even though clarity of purpose and clarity of formulation are the principles for the Formation of Legislation, in reality, few laws have vague objectives and ambiguous formulations. This opens up opportunities for multiple interpretations, which complicates its implementation.⁴²

Applying the law must not lead to errors or differences in interpretation. Based on the concept of legal certainty, the law or regulation is enforced as desired by the sound of the regulation law. The problem of norm disharmony that occurs due to differences in the sound of norms, interpretation and implementation will impact the objectives of legal certainty. Legal certainty can only be realized if there are no conflicting regulations, and there must be conformity between regulations and daily implementation. Perma Number 1 of 2011, which is different from the

⁴⁰ Saldi Isra and Hilaire Tegnan, 'Legal Syncretism or the Theory of Unity in Diversity as an Alternative to Legal Pluralism in Indonesia', *International Journal of Law and Management*, 63.6 (2021), 553–68 <https://doi.org/10.1108/IJLMA-04-2018-0082>

⁴¹ Siboy and others.

⁴² Fatma Ulfatun Najicha and others.

norms of the Constitution and the Supreme Court Law, is unlikely to be able to create legal certainty in its implementation.

Law without the value of legal certainty will lose meaning. This can be seen in the problem of Article 1, paragraph (4) of Perma Number 1 of 2011, which almost lost its function. The norm of Article 1 paragraph (4) of Perma Number 1 of 2011 is no longer relevant because it is the substance of the norm of Perma Number 1 of 2004, which has not been changed. While the law has been regulated more completely so that when it is applied to legal considerations the decision of Article 1 paragraph (4) Perma Number 1 of 2011 only tries to make connections. The norms in the Perma cannot be understood easily, and there are even multiple interpretations, creating legal uncertainty. The legal uncertainty is due to the failure of the Perma to provide clarity regarding the authority of the Supreme Court in conducting the formal review or indicating which legal subjects can review statutory regulations under the law.⁴³ A judicial review testing system whose main purpose is to provide legal certainty and maintain harmonization of norms. Simply put, judicial review requires harmony between norms, but the Perma, as one of the regulations governing judicial review, contains the problem of disharmony of norms. Legal certainty, the main principle and goal to be achieved in implementing the judicial review system, must be reflected in the judicial review regulation itself (Perma).

4. Conclusion

The problem of normative disharmony in Perma Number 1 of 2011 concerning the right to judicial review is related to two things. First, disharmony of norms related to the authority to examine formally. This disharmony of norms is because Perma Number 1 of 2011 does not include or regulate formal testing. In the Perma that is used as a touchstone is only the material aspect, namely whether a statutory regulation being tested contradicts or not with a higher statutory regulation. This is inconsistent with the original intent of Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 20 of Law Number 48 of 2009 concerning Judicial Powers, Article 31 of Law Number 5 of 2004 and Article 31 A of Law Number 3 of 2009 Second, the disharmony of norms related to the legal subject matter of the Petitioner for Review of Legislation under the Law, this occurs due to differences between Article 1 paragraph (4) of Perma Number 1 of 2011 with origin 31 A paragraph (2) of Law Number 3 of 2011. 2009. The two norms are limitative, but both are not related to one another. The cause of this problem is because Perma Number 1 of 2011 does not accommodate changes to the law on the supreme court

⁴³Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, 'Omnibus Law in Indonesia: A Comparison to the United States and Ireland', *Lentera Hukum*, 7.3 (2020), 319–36 <https://doi.org/10.19184/ejhl.v7i3.19895>

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