



The Concept Of Accelerating National Development Through Quality Legal Products

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ABSTRACT

Quality legal products are the most important requirement in the process of national development of the state of Indonesia as a means of development in various lines can be achieved. However, so far, the number of legal products tested by the Constitutional Court (MK) indicates that legal products made by the Legislature and the executive still cannot be said to be of quality. It is necessary to strengthen and synergize legal products with the Constitution or the 1945 Constitution (1945 Constitution). This, can be pursued through the judicial branch of power, namely by the mechanism of preventive review by the Constitutional Court. The term preventive review is basically a mechanism for testing the constitutionality of draft laws (RUU) in the Constitutional Court which will test the bill before it is passed and enacted. Thus, the Constitutional Court as the guardian of the Constitution provides a preventive contribution to every legal product of legislation that is made, so that it can be in line with the ideals of the Constitution and give birth to quality legal products. This study is a doctrinal research that uses primary legal materials and secondary legal materials. The method used is juridical-normative approach using legislation and conceptual. The results of this study at least provide a conclusion that there is an urgency to increase the authority of preventive review by the Constitutional Court. Where, if this mechanism is applied, the legal products made are expected to be in line with the ideals of the Constitution so as to give birth to quality legal products which can then support and accelerate the development process in the state of Indonesia is achieved.

INTRODUCTION

Speaking of national development, of course there are multi-aspects discussed, including legal development in Indonesia, it can be said, the law is a "rail" to achieve the goal (National Development) is good in terms of economic, educational, cultural, social, and so forth, because through law, all forms of activities in the country of Indonesia can be run. On the other hand, in the midst of a society that is

always developing dynamically due to the influence of digitalization which is characterized by a new era in the field of technology and communication and recent industrialization, quality legal products are urgent to be presented. It aims to be able to continue to answer the pressures and challenges ahead due to the restructuring of the human way of life in depth. Thus, the law should not be static as the expression Mochtar Kusuma Atmadja, about the

meaning and function of law for human civilization collectively undergoing the process of building. According to him, the law is not just a tool, a tool in the sense that it has the function of maintaining order in society and maintaining what has been achieved. However, law is a means, so the law is not static, but dynamic and in fact the law is not enough to have such a function, the law must be able to help the process of changing society.

For the state of Indonesia, a legal product can be said to be qualified if the legal product is in harmony with the Constitution or the 1945 Constitution which is the heart of the Republic of Indonesia (NRI). The Constitution, as we know, is a summary of the basic law that is used as a guide in the administration of the state. The Constitution can be written or unwritten.⁴ UUD 1945 as amended several times, namely in 1999, 2000, 2001 and 2002 is a series of formulation of the Basic Law of Indonesia in the future. The content includes basic-normative basis that serves as a means of control (tool of social and political control) against irregularities and irregularities in the dynamics of the times as well as a means of Community Renewal (tool of social and political reform) and means of engineering (tool of social and political engineering) towards the collective ideals of the nation.⁵ therefore, in order to achieve these goals, it must be accompanied by national development both in terms of Economy, Education, Culture, social, and so forth so that the welfare of the community can really be felt.

But lately, not a few legal products produced by legislative institutions or legislators are considered unconstitutional by the Constitutional Court, so it has the potential to hamper the development process in Indonesia because of its substandard footing. So far, legal products that are considered contrary to the NRI Constitution can be tested by the Constitutional Court as perpetrators of judicial power in terms of judicial administration that functions to enforce law and Justice. It is not uncommon for the Constitutional Court to declare a law (or several articles in the law) to be unconstitutional or contrary to the 1945 Constitution proposed by the applicants. Accordingly, the lower law must be grounded, sourced and must not contradict the higher law, this refers to Hans Kelsen's *stufenbau* theory.

Such a mechanism is known as judicial review, where the mechanism of testing new laws can be done if the product of legal regulations- the invitation has been approved by the state organ (executive), and has been published through the state gazette, but after the law takes effect at a

time considered contrary to the Constitution or the 1945 Constitution, where such a mechanism can be said to be a model of repressive testing and if the Constitutional Court then states the law is contrary to the 1945 Constitution it can be called unconstitutional repressive.⁶ on one side, such a mechanism at this time is still lacking because by only monitoring the legislation that has been in force, the fact will only slow down the development process itself because the procedure is so long.

Facing the challenges of globalization modern, reform and improvement of the legal system and the Constitution is absolutely realized, this is a prerequisite for building a constitutional democracy (constitutional state) in Indonesia.⁷ legal reform measures not only begin with reforming the legal substance (legal substance), such as improving the quality of legislation and regulations- other legal regulations, but also must be followed by the improvement of the institution of judicial power as a legal structure (legal structures).⁸ with the ongoing reform of the substance and structure of the law, which will continue to encourage development in various lines continues to run.

Currently, what is needed is an Legislative model, namely through the preventive review mechanism, where the new legislation (Bill) made by the Legislature and executive, will be reviewed in advance by the judiciary (MK) before it is ratified, so that the regulation is no longer much inequality to the existing constitution when it has been applied (enacted). Hopefully, the national development process in various aspects will no longer be disrupted.

This research paper aims to determine how the mechanism of preventive review by the Constitutional Court in contributing to the making of legislation in an effort to give birth to a quality legal product, and what impact it has on the national development process itself. Also, the author wants to answer the main problem about how much urgency the implementation of preventive review mechanism in Indonesia. The discussion of the issue will then be divided into two parts, first, the urgency of implementing the preventive review mechanism in the constitutional justice system (MK) and the analysis of the benefits of its application to national development. second, measuring the opportunities for the implementation of preventive review mechanisms in the Indonesian Constitutional system.

METHOD

Legal research requires accurate data obtained through legal approach procedures and field

approaches in order to produce research that can be justified. In achieving the purpose of the research mentioned above, it is necessary to use several research methods first, the approach method, the empirical juridical approach method is used and supported by normative juridical research. The approach in this way is carried out considering that in this study starting from the normative aspects governing banking institutions. Second, the types and sources of data used include primary and secondary data. Primary data is data received directly from the public, while secondary data is data obtained library materials.

RESULTS AND DISCUSSION

A. Implementation Of Preventive Review Mechanism

Along the way, reforms that run more or less Within 2 (two) decades, resulted in four changes to the 1945 Constitution that has brought new nuances in the Indonesian Constitutional system. The reform signal gives great hope for the creation of changes towards democratic, transparent, and highly accountable state administration, as well as the realization of good governance. Changes in the 1945 Constitution are needed to adjust to follow the development of community needs that are so dynamic, changes that apply in various sectors such as the cultural sector, politics, economics, education, law and so forth, by basing the Constitution as the highest law in which contains the values that apply in society. In addition, as a country that puts its sovereignty in the hands of the people and establishes itself as a legal state that breathes democracy, it means that the state of Indonesia is governed on the basis of applicable law, including the head of government must submit to the applicable law. Thus, the existence of law in Indonesia can also be referred to as a means of realizing the collective ideals of the nation as stated in the Preamble of the 1945 Constitution, at least there are four main points, namely, First, protecting the entire Indonesian nation and all Indonesian bloodshed, second, advancing the general welfare, third, educating the life of the nation, and fourth, participating in implementing world order based on independence, lasting peace and social justice.

Aristotle said that, the presence of the state because it has the purpose of organizing a good life for its citizens, of course, these goals are then formulated in the development goals as aspired to by the Constitution, the existence of law becomes a reference so as not to get out of the corridors of certainty. The embodiment of law as a means of

supporting national development can be felt by the Secretariat General of the people's Consultative Assembly of the Republic of Indonesia, Correctional Manual of the Constitution of the Republic of Indonesia in 1945 and the provisions of the people's Consultative Assembly of the Republic of Indonesia

10 Article 1 Paragraph (2) of the Constitution of the Unitary State of the Republic there are various kinds of regulations governing human order in that society. Here, measuring the legal products used as a means of supporting national development must be taken into account, seeing its very significant role. With the birth of quality legal products and in accordance with the Constitution does not rule out the order and order of society will continue to encourage the development process in various aspects can be achieved. In Indonesia, according to the form of law, it is divided into two types, namely unwritten law and written law.

Although there are specific rules regarding the formation of legislation as such provisions can be seen in Law No. 12 of 2011, which has explained the mechanism, level (hierarchy) and the foundations that must be considered in forming a legislation as outlined in the academic paper, however, supervision of the existence of laws that are only allocated to certain groups or political elites to the exclusion of the 1945 Constitution is considered important to be tested by a power that has the authority for it, as the purpose of improving the quality of legislation and adjusting to the ideals of the Constitution of the Republic of Indonesia not only in a repressive way but also in a preventive way.

The urgency of the implementation of the preventive review mechanism in the manufacture of legal products legislation thus becomes appropriate to be regulated further within the authority of the Constitutional Court by considering several aspects, the first, as a form of prevention of laws that are not qualified. The quality of legislation in Indonesia is often questioned when the Constitutional Court cancels some articles or even the entire torso of a law. The poor quality of the legislation is influenced by the strong political factors in the legislative process. This factor has an impact on the inconsistency of the law with the Constitution or disharmony of the law with other laws.¹⁷ this view is inseparable from the influence of transactional politics in the process of making laws and regulations. So that in the process of making laws and regulations are often infiltrated by the interests brought by each group that has that interest, which happens then the resulting legal product can not be

separated from the interests of the group alone.¹⁸ this shows that the law is not neutral and independent of politics, exactly as stated by Mahfud MD that, law is a political product.¹⁹ as a result, the purpose of the law, namely Justice, usefulness, and legal certainty as aspired to be termanipulative

So in practice, the legal products made by the Legislature are rejected by various groups including the people who own sovereignty, even when the legal products have not been ratified and enforced. What is very worried by the author is that when the legal product gets a lot of rejection, but by the Legislature is forced to be passed, here according to the author there are triall and error in the process. A legal product must reflect the interests and feelings of Justice of the people. Therefore, laws must be created by democratic mechanisms. The law should not be made for the benefit of certain groups or the interests of the ruler who will give birth to a totalitarian rule of law. The supreme law in a country is the legal product that best reflects the agreement of the entire people, that is, the Constitution. Thus the basic rule of State Administration that must be implemented is the Constitution. All other rules of law created through democratic mechanisms should not contradict the Constitution.

For the mechanism of this preventive review by Sofia Amaral-Garcia et al. received attention, he mentioned that, "We have been given the political importance of preventive constitutional review, these decisions are the ones in which we anticipate a higher degree of party politics". It is expected that the process of testing the bill through the preventive review mechanism, can minimize concerns about the above can occur, and this step can then seek the aspirations desired by the people can be maximized. This process is an early preventive measure (preventive measures) against the existence of hidden interests that are inserted through the legal products of legislation.

Secondly, as a form of protection of the human rights of citizens. One of the principles of the establishment of the Constitutional Court is to protect the inherent rights of citizens guaranteed by the Constitution or constitution 194 (constitutional rights).²² regarding the regulation and guarantee of recognition of human rights and the rights of citizens, can be seen in Article 27, Article 28 and Article 29 of the 1945 Constitution. In quantity Article 28 of the 1945 Constitution includes Article 28A to Article 28j, it has been very accommodating to recognize and guarantee the constitutional rights of citizens which are then further explained in the

Constitutional Court Act.²³ in the explanation, Article 51 paragraph (1) of the Constitutional Court Law explained that what is meant by constitutional rights is "... rights stipulated in the Constitution of the Republic of Indonesia of 1945".

One of the reasons for the emergence of these provisions in the Constitution is related to the characteristics of the rule of law (rechstaat/ rule of law), namely the guarantee of human rights. Human rights is the most important element and must be contained in the administration of the rule of law. In accordance with the sequence of legislation as described in Article 7 Paragraph (1) of Law No. 12 of 2011 concerning the establishment of legislation, has a meaning, human rights regulated in the 1945 Constitution as the first source of law. Every legal regulation has legal force or power to apply according to its hierarchy or level of authority, so that every legal regulation that applies is always sourced from higher-level legal regulations. This also means that any applicable legal regulations must not conflict with higher legal regulations or it can be said that the content material regulated by law contains matters that further regulate the provisions of the 1945 Constitution, which include human rights.

It should be emphasized here, all forms of legal products at all levels are prohibited from violating human rights as guaranteed by the 1945 Constitution. This is where the Constitutional Court functions so that the fundamental rights of citizens are not necessarily violated or abused through the law or even by the ruler. The Constitutional Court can cancel a law (in this context the law) that is contrary to the Constitution, including the aspect of human rights. But the main problem is, limited to the law that has been legally that can be canceled by the Constitutional Court, then what about the bill that is indicated to threaten the constitutional rights of citizens?. Although the bill in an sich does not yet have binding legal force, what needs to be underlined is, do not let the legal products of legislation that are made are only used as "experimental material". I mean, when there is a bill that is indicated to violate the constitutional rights of citizens, then the law is passed, then the functions of the Constitutional Court can be carried out. Well, the problem is what the author calls a triall and error in the process.

The idea of preventive review Mechanism into the realm of Constitutional Court is part of the efforts to protect the rights of citizens protected by the Constitution (UUD 1945). At least this mechanism can minimize the emergence of legal products

legislation that is not in accordance with the norms of the Constitution as a guarantor of constitutional rights of citizens, because the constitutionality of a bill will be reviewed in advance by the Constitutional Court as the guardian of the constitution (The guardian of the constitution).

Third, provide legal certainty. In the formation of legislation, one of the contents that must be considered and internalized in formulating a norm is to reflect the principle of legal certainty. This principle aims to avoid overlapping the existing laws under it, and avoid disharmony and multi-interpretation of the Constitution. As Satjipto Rahardjo said "sicherheit des Rechts selbst" (certainty about the law itself). four things that he thought were related to the meaning of legal certainty. First, that the law is positive, that is to say that it is legislation (gesetzliches Recht). Second, that the law is based on facts (Tatsachen), not a formulation of the judgment that will later be made by the judge, such as "good will", "decency". Third, that the fact must be formulated in a clear way so as to avoid errors in meaning, in addition to also easy to run. Fourth, the positive law cannot be changed frequently.

So that such legal products will provide legal harmonization that supports each other. This legal certainty can be further realized if there is a pre-view process (read: Preventive review) before being implemented, because the review is a legal norm below the legal norm above it (the constitution), meaning that this test is an initial constitutional test that is expected, the law that is made is not only the law that is "in the air" because it is not yet clear its constitutional status. Although all this time in making a legal product, legislation must include academic texts, which contain three elements, namely philosophical, juridical and sociological, but not infrequently the products produced are far from the expectations of the Constitution. For this reason, the pre-view process through this preventive review mechanism is in order to provide legal certainty, so that legal products of legislation are not easily changed or canceled in the future because they are considered unconstitutional.

Fourth, reduce the number of legal products legislation tested. Many of our legislative products contain hidden agendas from certain parties and groups. So that it triggers friction and conflict between elements of the nation and cause noise in various fields. The pile of laws and regulations that were canceled through judicial review by the Constitutional Court, as well as thousands of local regulations canceled by the Ministry of home affairs,

became a clear example of what was said above.²⁸ it can also be interpreted that, in the quality of legal products legislation that has been made by law - forming institutions should be questioned. In fact, so far, existing legal products often contradict legal regularities.

Further discussion of the above issues if understood more carefully, with many laws and regulations being canceled, will affect the public's assessment of the law-making institutions, the stigma that arises then the law - making institutions will be judged "incapable" in making quality laws. If this preventive review mechanism is applied, then it then gives 2 meanings, first, reducing the bad impression and maintaining the integrity of law-forming institutions so as not to be considered giving birth to perfunctory products. Second, at least through the preventive review mechanism, it can minimize many laws and regulations that are tested further constitutionally by the Constitutional Court, because before being passed and enacted a bill is screened and tested for constitutional quality. So that in the future, the legal products of legislation are no longer piled up on the workbench of the Constitutional Court, and the most important of it all is, if the quality of the legal products of legislation is good, then at least the initial steps of the national development process will not be disrupted.

The relevance of a good legal product affects national development is if the legal product is in accordance with the Constitution or the 1945 Constitution, which is the direction and foothold of development in Indonesia. On the contrary, of course, bad legal products will hamper the development process itself, can be seen in the country of Indonesia which is still limping. Related to the question, What are the benefits of implementing the preventive review mechanism on development in Indonesia can be illustrated with an example analysis. This paper, will give an example of how the product of law that is not good, influence / inhibit the development process of the country by referring to the analysis conducted by Hikmahanto Juwana, departing from the phrase "controlled by the state" in the 1945 Constitution, it is explained that the state has the right to control, the branches of production that are important for the state and control the lives of many people are controlled by the state, as well as the water and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people. If further explored, interpretation controlled by the state is interpreted differently in

some laws, for example in the oil and gas Law (oil and gas) and the mineral and coal law (minerba). According to hikmahanto J, tafsir is controlled by" the state only "following the"ruling regime". So in some laws intended only beneficial to certain circles.

Description above, it can be seen that, interpretation of the term in the Constitution can be said only in the name of the interests of certain groups that have an impact on marginalizing the welfare of the people, whereas the law made must certainly reflect the interests and welfare of the community, not for a group of people or certain circles. For this reason, testing the bill is important, through preventive review, it can at least filter bills that are indicated not in accordance with the needs of the state and conflict with the Constitution. In the future, the legal products made are not arbitrarily enforceable, but do reflect the needs of the people represented by the state.

B. Opportunities For The Implementation Of Mechanisms

Departing from the hypothesis as described above, further implementing the preventive review mechanism within the authority of the Constitutional Court is urgent for now, where the preventive review model is basically a mechanism that can be found in the world of Constitutional Court. Globally, this preventive review mechanism has been widely applied in various countries including Austria, Hungary, South Africa, Belgium and France. The birth of constitutional justice in European countries was established in several post-authoritarian countries, while the preventive review mechanism was first applied by France and Belgium. As Lech Garlicki said, "France and Belgium present the only examples of constitutional jurisdictions that were not established as one of an array of democratization devices. The Conseil Constitution emerged in the rather particular context of the beginnings of the Fifth Republic and primarily undertakes preventive review; the Cour d'arbitrage emerged from the equally distinctive process of Belgian regionalization."This means that such a mechanism has an opportunity to be applied in the Indonesian Constitutional system. In relation to which body will apply the preventive review mechanism, if it can be modeled on other countries that have previously applied it in the constitutional system by giving this authority to constitutional courts such as in Austria, or forming a separate body outside the existing Constitutional Court.

As a comparison, there are several writings that encourage this preventive review mechanism to be feasible to be applied in the Indonesian

Constitutional system, that is, this mechanism has proven successful in "stealing attention" by academics on the basis of the desire to strengthen a good state administration system and the desire to give birth to quality legal products, of course with their respective points of view, including the author. Article written by Muhammad Reza Maulana, with the title "efforts to create quality constitutional legal products through preventive Review Model". In the article, the recommendation given by the author that the authority of the preventive review mechanism is still given by the Constitutional Court with the proper flow in the process of making and discussing the formation of the law, but added One More Flow before getting approval by the President. "...The flow of a law as mentioned above³⁶, may be added to the section, after the draft law is then approved to be determined and discussed in the plenary meeting, then the discussion is then agreed either through deliberation or voting, and before then the DPR submits the results of the discussion that has been agreed upon by the DPR to the president to- the law is declared completed, then the DPR before submitting the results of the discussion to the president for signature, submit the results of the discussion to the Constitutional Court for review and given a legal decision against it...".³⁷ according to him, such a mechanism is similar to the model of impeachment of the president and vice president.

No less interesting research related to this issue, studied by Manunggal K. Wardaya, with the title"Constitutional Preview as an effort to create efficient and fair legislation". The recommendation given by the author, if the constitutional preview mechanism (read: Preventive review) is adopted in the Indonesian Constitutional system is to form a new institution by adopting existing practices in the French state. "...A constitutional council or commission is established to exercise this authority. It is this council or commission that will have the constitutional authority to make an assessment of the content of a bill. This council or commission will have special authority to assess or test the constitutionality of a bill..".

It would be very broad contribution of thought given by the researchers above. At least managed to give an idea of what if one day, this preventive review mechanism will be applied in Indonesia. The author in this case also has a concept that is not much different to encourage this mechanism to remain adopted in the Indonesian Constitutional system. as an effort to contribute progressive thinking. The author encourages that the preventive review mechanism is regulated in the authority of

the Constitutional Court by providing an extension of its authority, which originally had 4 authorities and 1 obligation, if this mechanism is applied then 1 of these authorities must be accommodated in the Constitution. However, the current problem is, the lack of the number of judges in the Constitutional Court which only consists of 9 judges will certainly make this institution become overwhelmed. The most likely effort is to create a room/forum of its own but still menginduk on MK. Which will be filled by constitutional judges who specifically oversee this practice, so as not to interfere with constitutional judges who are in charge of serving 4 authorities and 1 basic obligation. It can also be added by presenting academics in various fields to hear opinions and statements. It is this room that will be in charge of the assessment of the material content of a draft law.

In terms of assessment/ testing results (or whatever later term is used) this bill may refer to a unified analysis of K. Wardaya, can be like a binding constitutional court decision, or it can be like a recommendation. If it is binding, logically the DPR and the president as state institutions authorized to restrict legislation are obliged to comply with this assessment/ testing decision and are obliged to re-discuss the bill concerned with all its consequences. If so, the necessity to make the decision of this body binding has the potential to make it superior to the forming and discussing body of the law, namely the DPR and the president who are democratically elected by the people.⁴⁰ Furthermore, if this is a concern, it may be determined later that the decision of this body is a non-binding recommendation. The DPR and the president will get recommendations regarding clauses and sections in a bill that are considered potentially violating the Constitution. The implementation is up to the DPR and the president whether to implement the recommendations or not.⁴¹ regardless of whether the lawmakers do not comply with the contents of the recommendation, at least it can be a guideline for the public to know the substance of the material of a bill in question if it is applied later and can be a handle to submit a judicial review to the Constitutional Court, if indeed the law in question is not as expected.

Given the urgency of the presence of legal products quality and quality is very urgent, this mechanism should be applied in Indonesia. About the practical concept of some of the proposals that have been mentioned above at least provide a view for the MPR, to discuss further.

CONCLUSION

Efforts to realize the improvement of national development can be done through improving the quality of legal products legislation. This can be initiated through the addition of new powers to the Constitutional Court to conduct preventive review on each draft law before the draft law is passed or enacted. In addition, there is the urgency of adding the authority of preventive review within the authority of the Constitutional Court, there are at least four aspects of consideration, first, as a form of prevention of unqualified legislation. Secondly, as a form of protection of the constitutional rights of citizens. Third, provide legal certainty. Fourth, reduce the number of legal products legislation tested. This model of preventive riview testing is considered important to be applied in Indonesia as a preventive effort of bad legislation that will enable the process of development in Indonesia in all aspects. This mechanism can be applied in the constitutional justice system in Indonesia by adding new powers, or a separate forum can be created in the Constitutional Court chamber with another composition of constitutional judges with constitutional judges handling 4 (four) powers and 1 (one) principal obligation. This means that the addition of constitutional judge personnel is devoted to handling the practice of preventive review, in terms of the results of the bill assessment later, it can be like a Constitutional Court decision that has a binding nature (binding), or only recommendative, meaning that the decision will be implemented or not the results of the bill assessment through this preventive riview mechanism, it is up to the law-making institutions, namely the DPR and the President.

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