



ANALYSIS OF THE GAP BETWEEN THE PROCESS OF FORMING LEGISLATION AND THE DECISION PROCESS OF THE CONSTITUTIONAL COURT

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Abstract

This article explains the gap between what was decided in the legislative process and the decision given by the Constitutional Court. This type of research is qualitative research with a normative juridical approach. As well as descriptive analysis methods. The results of this research show that the gap between the legislative process and the decision of the Constitutional Court occurs at the stage of discussing the bill and its academic text which is carried out only by the DPR and the President and DPD, while in the Constitutional Court the most decisive stage is at the trial examination stage and the Judges Deliberation Meeting (RPH) which is the stage of deciding a case carried out by selected and selected judges who certainly have a better quality of understanding in understanding the 1945 Republic of Indonesia Constitution. It is important to maintain harmonization between the legislative process and the decisions of the Constitutional Court to maintain justice and order in society, then the proposal of this article is that the national legislative body should establish a Court like the Constitutional Court which consists of judges who are selected in the same manner as judges are elected in the Constitutional Court. These judges will later be tasked with providing plenary decisions on a legislative process.

Keywords: Gap; Legislation Process; Constitutional Court Decision

Abstrak

Tulisan ini menjelaskan kesenjangan antara apa yang diputuskan dalam proses Pembentukan Peraturan Perundang-undangan dan putusan yang diberikan oleh Mahkamah Konstitusi. Jenis penelitian ini adalah penelitian kualitatif dengan pendekatan Yuridis normatif. Serta metode analisis deskriptif. Hasil dari penelitian ini menunjukkan bahwa kesenjangan antara proses Pembentukan Peraturan Perundang-undangan dan putusan Mahkamah Konstitusi terjadi pada tahap pembahasan RUU beserta naskah akademiknya yang dilakukan hanya oleh DPR dan Presiden serta DPD, sementara di bagian MK tahapan yang paling menentukan adalah pada tahap pemeriksaan persidangan dan Rapat Permusyawaratan Hakim (RPH) yang merupakan tahapan memutuskan suatu perkara yang dilakukan oleh para hakim terseleksi dan terpilih yang pastinya memiliki kualitas pemahaman yang lebih mumpuni dalam memahami UUD RI 1945. Penting untuk memelihara harmonisasi antara proses Pembentukan Peraturan Perundang-undangan dan putusan Mahkamah Konstitusi untuk menjaga keadilan dan keteraturan dalam masyarakat, maka usulan tulisan ini adalah hendaknya badan legislator nasional membentuk Mahkamah semacam MK yang di dalamnya terdiri dari para hakim yang dipilih sebagaimana pemilihan hakim di MK. Para hakim tersebut nantinya bertugas memberikan putusan paripurna dari sebuah proses Pembentukan Peraturan Perundang-undangan.

Kata Kunci : Kesenjangan; Proses Legislasi; Putusan Mahkamah Konstitusi

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INTRODUCTION

The legislative process is an important part of the process of establishing a legal framework that regulates community behavior and maintains order. This process shows the desires of the community and how the legislative process runs in government institutions.

The "normal" procedure for forming laws and regulations in Indonesia starts from planning, drafting, discussing, ratifying or stipulating to enactment. During this process, legislative bodies often debate to reach agreement.

Even though this process goes through quite long stages because it is designed to facilitate representation and deliberation, the fact is that there is often a gap between what is decided in the legislative process and the interpretation given by the Constitutional Court.

Based on this reality, this article explains the legislative process and the Constitutional Court process in determining a decision. Then the research continued by analyzing the two processes by sorting out which parts of the process greatly influenced both the quality (whether it was in accordance with the 1945 Constitution) of a legal product and the Constitutional Court's decision. This is to explain the gaps that exist in the two processes.

Some similar research that the author found was the writing of Siti Qomariah et al, entitled "procedures for forming laws in Indonesia as a rule of law".¹This research only explains the stages of forming legislation.

Then the research entitled "Procedural Law of the Constitutional Court in Theory and Practice", written by Ahmad Fadlil Sumadi explains the stages of the Constitutional Court's decision².

Further Research on "The Process of Forming Laws According to Law no. 12 of 2011 concerning the Formation of Legislative Regulations" written by Dermina Dalimunthe³, This article explains the stages of forming legislation as regulated in Law no. 12 of 2011.

¹ Siti Qomariah dkk, berjudul "prosedur pembentukan undang-undang di indonesia sebagai negara hukum , *Siyasah: Jurnal Hukum Tata Negara*, volume 6, edisi I (Juli 2023).

² Ahmad Fadlil Sumadi , "Hukum Acara Mahkamah Konstitusi Dalam Teori dan Praktik", *Jurnal Konstitusi*, Volume 8, Nomor 6, (Desember 2011).

³ Dermina Dalimunthe, "Proses Pembentukan Undang-Undang Menurut UU No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan", *Jurnal Al-Maqasid*. Volume 4 Nomor 2 Edisi (Juli-Desember 2018).

This type of research is qualitative research with a normative descriptive approach. The data obtained consists of primary data sourced from laws governing this issue and secondary data sourced from books and research journals, as well as related writings.

RESULTS AND DISCUSSION

Process of Forming Legislative Regulations

Laws are Legislative Regulations established by the House of Representatives with the joint approval of the President.⁴

The definition of the Formation of Legislative Regulations is the creation of Legislative Regulations, which consists of the stages of planning, drafting, discussing, ratifying or determining, and promulgating.⁵

Before the formation of Law no. 10 Yr. 2004 concerning the Formation of Legislative Regulations, more precisely until October 1998, the procedures for the Formation of Laws from the Government, were initially guided by Presidential Instruction No. 15 Yr. 1970 concerning Procedures for Preparing Draft Laws and Draft Government Regulations, while the procedures for preparing the DPR Initiative Proposed Draft Law and Discussion of the two Draft Laws are regulated by the Rules of Procedure of the Indonesian House of Representatives. On June 22 2004 after the promulgation of Law No.10 Th. 2004 concerning the Formation of Legislative Regulations, then based on Article 58 of the Law it is stated that from November 1 2004 everything regarding the Formation of Legislative Regulations is bound by that Law.

The enactment of Law No.10 Th. 2004 concerning the Formation of Legislative Regulations which was then replaced by Law no. 12 Yrs. 2011 concerning the Formation of Legislative Regulations which was ratified and promulgated on August 12 2011. So at that time the Formation of Legislative Regulations was bound by this Law.⁶

The process of formulating laws and regulations in Indonesia aims to ensure that the various interests of society are represented. Legislative committees discuss each regulatory proposal in detail, hold public hearings with experts and involve the public in forms of public participation.

In general, the process of forming a law consists of four stages: planning and drafting, discussion, ratification, and promulgation. The details are explained as follows:

Stages of Legislative Planning

⁴ Pasal 1 ayat 3 UU No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan

⁵ Pasal 1 ayat 1 UU Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan, dan Peraturan Presiden Republik Indonesia Nomor 87 Tahun 2014 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan

⁶ Maria Farida Indrati S, "Ilmu Perundang-Undangan", Yogyakarta: PT. Kanisius, 2020. 26-27

Planning is the stage where the DPR and the President (as well as the DPD regarding a particular bill) prepare a list of bills that will be drafted in the future. This process is generally known as the preparation of the National Legislation Program (Prolegnas). The results of the discussion are then outlined in a DPR Decree.⁷

There are two types of Prolegnas, namely those prepared for a period of 5 years (Medium Term Prolegnas/Proleg JM) and annual (Annual Priority Prolegnas/Proleg PT). Before a bill can be included in the annual Prolegnas, the DPR and/the Government must first prepare the Academic Text and Bill. However, Prolegnas is not the only reference in planning the formation of laws. It is possible to discuss bills that are not included in the National Legislation Program, because certain circumstances arise that need to be responded to immediately.⁸ for example:

1. Overcoming extraordinary circumstances, conflict situations or natural disasters
2. Other certain circumstances that ensure the existence of national urgency for a bill that can be jointly approved by the DPR apparatus which specifically handles the field of legislation and the minister who handles government affairs in the legal field.⁹

The next stage is the discussion of each proposal in a joint forum between the Government, DPR and DPD. It is at this stage that all input is selected and then, after mutual agreement, is determined by the DPR through a DPR Decree.

Stages of Preparing a Draft Law

The Bill Preparation Stage is the preparation stage before a Bill is discussed jointly between the DPR and the Government. This stage consists of:

1. Making academic manuscripts. Based on Law no. 12 of 2011 concerning the Formation of Legislative Regulations Article 43 paragraph 3. Academic Manuscripts are manuscripts resulting from research or legal studies and other research results on a particular problem that can be justified scientifically regarding the arrangement of the problem in a draft regulation as a solution to problems and needs community law.¹⁰
2. Preparation of draft laws. Drafting a bill is drafting regulations article by article by following the provisions in Attachment II to Law 12/2011.
3. Next is harmonization, rounding out and strengthening the conception. Harmonization, Rounding and Consolidation of Concepts is a stage for: 1). Ensure that the Draft Bill is in line with: a. Pancasila, the 1945 Constitution of the Republic of Indonesia, and other laws b. Techniques for preparing legislative regulations 2).

⁷ UU No. 12 Tahun 2011 Pasal 22 ayat 2

⁸ UU No. 12 Tahun 2011 Pasal 23 ayat 2 dan 3.

⁹ UU No. 12 Tahun 2011 Pasal 23 ayat 2.

¹⁰ UU No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan Pasal 43 ayat 3

Produce agreement on the substance regulated in the bill. The harmonization, rounding and consolidation of the draft bill originating from the President is coordinated by the minister who handles government affairs in the legal sector¹¹.

Draft Law Discussion Stage

Discussion of bill material between the DPR and the President (also with the DPD, specifically for certain topics) through 2 levels of discussion. Level 1 is discussions at commission meetings, joint commission meetings, legislative body meetings, budget body meetings or special committee meetings. Level 2 is discussions in plenary meetings. The previous arrangement was that DPD was only "allowed" to participate in level 1 discussions, then DPD participated in level 2 discussions.¹² However, the DPD's role does not extend to providing approval for a bill. Joint approval of a bill remains the authority of the President and the DPR. not participate in the granting of final approval which is usually carried out at the DPR plenary meeting for Level II discussions. This means that the DPD can participate in discussing and giving opinions during the DPR plenary meeting which discusses bills at Level II, but does not have the right to give approval to the bill in question. Approval of the bill to become law is related to the provisions of Article 20 paragraph (2) of the 1945 Constitution which confirms that only the DPR and the President have the right to give approval to all bills. This authority of the DPD is in line with the initial wishes during discussions on the formation of the DPD in the Third Amendment to the 1945 Constitution which took place from 2000 to 2001. Initially, there was a proposal that the DPD's authority included giving approval to the Bill to become a Law, but this proposal was rejected .

During the discussion, there was "mutual criticism" of a bill. The DPR provides an explanation and the president expresses his views if the bill originates from the DPR, the DPR provides an explanation and the president and the DPD express their views. If the bill relating to the DPD's authority originates from the DPR, the President provides an explanation and the factions provide their views, if the bill originates from the President, the President provides an explanation as well as factions and the DPD expressed their views if the bill relating to the DPD's authority came from the President.¹³

Law Ratification Stage

Based on Law Number 12 of 2011 Article 72 Submission of a Bill that has been jointly approved by the DPR and the President is carried out no later than 7 (seven) days from the date of joint approval. After receiving the bill that has been approved by the DPR and the President, the State Secretariat will put it in a presidential paper and finally send it to the President to be ratified into law.

Ratification of the bill that has been jointly agreed upon is carried out by adding a signature within a period of no later than 30 (thirty) days after the bill is approved by the DPR and the President. After the President ratifies the Bill which has been approved jointly

¹¹ Pasal 51 Peraturan Presiden No. 87 Th. 2014

¹² Putusan Mahkamah Konstitusi No.92/PUU-X/2012

¹³ UU No. 12 Tahun 2011 Pasal 68 ayat 2

with the DPR, the Law is then promulgated by the Minister so that the Law can come into force and have general binding legal force. In the event that the bill is not signed by the President within 30 (thirty) days after the bill is jointly approved by the DPR and the President, then the bill is valid and becomes law, and must be promulgated, in accordance with the provisions of Article 73 paragraph (3) of the Law. -Law no. 12 of 2011, and Article 20 paragraph (5) of the 1945 NRI Constitution.¹⁴

Constitutional Court Decision Process

The source of procedural law for the Constitutional Court is Law no. 24 of 2003 concerning the Constitutional Court, Constitutional Court Regulations (PMK), Jurisprudence of the Indonesian Constitutional Court, Civil Procedure Law, Indonesian Criminal Procedure Law, Scholars' Opinions (Doctrine), Procedural Law and Jurisprudence of Constitutional Courts of Other Countries.¹⁵

In Law Number 24 of 2003 concerning the Constitutional Court, Evidence is regulated in the Fourth Part in Article 36 to Article 38, Preliminary Examination is regulated in the Fifth Part of Article 39, Trial Examination is regulated in the Sixth Part of Article 40 to Article 44, while the RPH and Verdict Pronunciation are regulated in Part Seven concerning Decisions from Article 45 to Article 49. In PMK Number 06/PMK/2005 concerning Guidelines for Proceedings in Cases Review of the Law, regarding the trial process and evidence is regulated in chapter V concerning Examination, where the examination consists of a Preliminary Examination (Article 10 and Article 11) and a Trial Examination (Article 12 - Article 17). Evidence is regulated in Part Three in Articles 18 to Article 28. Judges' Deliberative Meetings are regulated in Chapter VI concerning Judges' Deliberative Meetings in Articles 29 and Article 30, while Decisions are regulated in Chapter VII concerning Decisions from Articles 31 to Article 43.¹⁶

In administering justice, the Constitutional Court uses general procedural law and special procedural law. The procedural law used by the Constitutional Court is based on Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), Regulations Constitutional Court, and in practice, namely the MK decision.

¹⁴ Pasal 73 ayat (3) Undang-Undang No. 12 Tahun 2011, dan Pasal 20 ayat (5) UUD NRI Tahun 1945

¹⁵ Pipin Syarifin dan Dedah Jubaedah, "Ilmu Perundang-undangan", Bandung: Pustaka Setia, 2017. 269-270

¹⁶ Tim Penyusun Hukum Acara Mahkamah Konstitusi, Hukum Acara Mahkamah Konstitusi, Buku ini disusun sebagai salah satu rujukan pengajaran Hukum Acara Mahkamah Konstitusi, Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi 2010: 124.

As explained above, the Constitutional Court's procedural law is divided into two parts, namely general and special procedural law. General procedural law provisions regulate provisions of a general nature, namely provisions regarding trials, application requirements, and decision matters. The provisions in the case of trials at the Constitutional Court for example, the Constitutional Court examines, adjudicates and decides in a plenary session which is attended by all judges consisting of 9 (nine) people, only in "extraordinary" circumstances, then the plenary session is attended by at least 7 (seven) Constitutional Justices.¹⁷

Extraordinary circumstances mean death or physical/mental disturbance so that he is unable to carry out his obligations as a judge. The chairman of the plenary session is the Chief Justice of the Constitutional Court. In the event that the Chair is absent, the session is chaired by the Deputy Chair, and when the Chair and Deputy Chair are unable to chair the session, the chair of the session is elected from and by the MK Members. The examination can be carried out by a panel of judges formed by the Constitutional Court, consisting of at least 3 (three) judges. The results of the panel examination are submitted to the plenary session for decision making and for follow-up examinations.¹⁸

The plenary session for the panel's report on case discussion and decision making is called the Judges' Deliberation Meeting (RPH) which is closed to the public. In contrast to examinations, whether carried out by the plenary or panel, they are held in sessions open to the public. After the RPH makes a decision in a closed session, the decision is then pronounced in a plenary session open to the public which is attended by at least 7 (seven) judges. This provision for pronouncing the decision in a trial open to the public is a legal and binding requirement for the decision.¹⁹

1. Submission of Application

The application submitted must meet the following conditions:

- a. Written in Indonesian;
- b. Signed by the applicant himself or his proxy;
- c. In 12 (twelve) copies;
- d. Contain a clear description of the application:
- e. Legal review of the 1945 Constitution;
- f. Dispute over the authority of state institutions whose authority is granted by the 1945 Constitution;
- g. Dissolution of political parties;

¹⁷ Indonesia, Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah dengan Undang-Undang Nomor 8 Tahun 2001 tentang Perubahan atas Undang- Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, Pasal 28 ayat (1).

¹⁸ *Ibid.*, Pasal 28 ayat (4)

¹⁹ *Ibid.*, Pasal 28 ayat (6).

- h. Disputes regarding the results of general elections, or
- i. The DPR's opinion is that the President and/or Vice President are suspected of having committed a violation of the law or disgraceful acts, and/or no longer fulfill the requirements as President and/or Vice President as intended in the 1945 Constitution.
- j. Systematic description;
 - 1) the name and address of the applicant or his/her proxy (identity and position of the party);
 - 2) the basics of the application (posita), including those related to;
 - a) authority;
 - b) legal standing;
 - c) main case;
 - 3) the matter requested to be decided (petitum) in accordance with the provisions in each application;
- k. Attached supporting evidence.

2. Registration and Session Scheduling

The application submitted must meet the requirements as outlined above. For this reason, the clerk checks the administrative completeness of the application. The results of the examination are notified to the applicant. In the event that the application is incomplete, the applicant is given the opportunity to complete it within a deadline of 7 (seven) working days. If the application is complete, it is immediately recorded in the Constitutional Case Registration Book (BRPK) and the applicant is given a Case Registration Deed. The BRPK contains notes regarding administrative completeness, case number, date of receipt of files, name of applicant and subject matter of the case.

After the application is recorded in the BPRK, within 14 (fourteen) working days, the first hearing date must be set. This first hearing can be conducted by a panel or plenary of judges. For this reason, the decision on the date of the hearing is notified to the parties through the Summons Officer and the public is notified by posting a copy of the notification on the MK Notice Board.

Before or during the examination, the applicant can withdraw their application. For this reason, the Chief Justice of the Constitutional Court will issue a Decree on Withdrawal. The legal consequence of this withdrawal is that the applicant can no longer submit the application in question.²⁰

²⁰ Pasal 35 ayat (1) dan ayat (2) UU MK.

Trial Process

Based on the trial material, Law Number 24 of 2003 concerning the Constitutional Court stipulates that the Constitutional Court trial consists of a Preliminary Examination, Trial Examination, and Pronunciation of the Decision.

Meanwhile, in PMK Number 06/PMK/2005 concerning Procedure Guidelines in Law Review Cases, Constitutional Court trials are divided into 4 types of hearings, namely Preliminary Examination, Trial Examination, Judge Deliberative Meeting (RPH), and Pronouncement of Decision. In Law Number 24 of 2003 concerning the Constitutional Court, RPH is regulated in Part Seven concerning Decisions.²¹

Judging from the trial material related to the process of a case, the Constitutional Court trial can be divided into 4 (four), namely Preliminary Examination, Trial Examination, Judge Deliberation Meeting (RPH), and Pronunciation of the Decision.²²

1. Preliminary Inspection

The first hearing must be set within 14 (fourteen) days after the application is recorded in the register book as regulated in Article 34 of the Constitutional Court Law. This first trial is a trial for a preliminary examination. The Preliminary Examination is carried out by a Panel of Judges consisting of at least three Judges. Or a plenary session attended by at least 7 (seven) Constitutional Justices which is open to the public. This trial is a trial before examining the main case. In this first hearing, the Constitutional Court conducted an examination of the completeness and clarity of the petition material which included: the authority of the Constitutional Court, the legal standing of the Petitioner, and the subject matter of the petition.²³ If during this examination it turns out that the application material is incomplete and/or unclear, then it is the Constitutional Court's obligation to provide advice to the applicant to complete and/or correct it. For this reason, the applicant is given a maximum of 14 (fourteen) days.²⁴

The Panel of Judges who have carried out the Preliminary Examination reports the results of the examination and provides recommendations to the Judges' Deliberation Plenary Meeting for the next process. The report also includes proposals for combining trial examinations of several cases in the event that they have the same subject matter of the petition, are related to the material of the petition, or consider the Petitioner's

²¹ *Ibid.*, Tim Penyusun Hukum Acara Mahkamah Konstitusi....

²² Siahaan, Maruarar. 2005. *Hukum Acara Mahkamah Konstitusi Republik Indonesia*. Jakarta: Konstitusi Press. <https://heylaw.id/blog/bedah-materi-pkpa-jenis-dan-sifat-persidangan-di-mahkamah-konstitusi>. dilihat pada tgl 19 Januari 2025

²³ Lihat *Ibid.*, ps. 11 ayat (1)

²⁴ *Ibid.*, Pasal 39 ayat (1) dan ayat (2).

request. 309 Examinations for combining cases can be carried out after obtaining a Decree from the Chairman of the Constitutional Court.²⁵

1. Trial Examination

Trial examinations are carried out in plenary sessions which are open to the public,²⁶ and in certain circumstances decided by the RPH, the trial examination can be carried out by a Panel of Judges.²⁷ Only Judges' Deliberation Meetings (RPH) are held in closed sessions. Because the open trial can be attended by anyone, while the examination of the case requires a high degree of precision and calm, everyone who attends the trial is obliged to comply with the court's rules and regulations. Based on the authority granted by law, the Constitutional Court has issued Constitutional Court Regulations (PMK) concerning trial procedures, namely PMK Number 03/PMK/2003. Therefore, anyone who violates the rules of this trial is categorized as an insult to the Constitutional Court (*Contempt of Court*).

The trial examination is carried out by 9 (nine) constitutional judges or at least 7 (seven) constitutional judges led by the Chief Justice of the Constitutional Court.²⁸

The trial examination includes: 1. examination of the main petition; 2. examination of written evidence²⁹; 3. listen to statements from the President/Government; 4. listen to statements from the DPR and/or DPD; 5. listen to witness statements; 6. listen to expert testimony; 7. listen to statements from Relevant Parties; 8. examination of a series of data, information, actions, circumstances, and/or 9. events that correspond to other pieces of evidence that can be used as clues; 10. examination of other evidence in the form of information spoken, sent, received or stored electronically with optical devices or similar.³⁰

The parties to the case, witnesses and experts provide the necessary information. Likewise, state institutions related to the application. For the purposes of this examination, the Constitutional Court is obliged to summon the parties, witnesses and experts and the state institutions in question. The judge can also request written information from the state institution in question, and if written information has been

²⁵ Lihat Ibid., ps. 11 ayat (7)

²⁶ Lihat Ibid., ps. 12 ayat (1).

²⁷ Lihat Ibid., ps. 12 ayat (2)

²⁸ Pasal 33 ayat 1

²⁹ Dalam Pasal 20 PMK Nomor 06/PMK/2005 tentang Pedoman Beracara dalam Perkara Pengujian Undang-Undang, diatur tentang pemeriksaan alat bukti surat atau tulisan sebagai berikut:

(1) Pemeriksaan alat bukti surat atau tulisan dimulai dengan menanyakan cara perolehannya yang dapat dipertanggungjawabkan secara hukum.

(2) Pemeriksaan alat bukti surat atau tulisan yang berupa fotokopi meliputi:

a. materai;

b. legalisasi dan/atau pencocokan dengan surat aslinya.”

³⁰ Lihat Ibid., ps. 13 ayat (1)

requested, the state institution is obliged to fulfill it within a period of no later than 7 (seven) working days from the time the request is received.

The litigants present at the trial may be accompanied or represented by their attorneys based on a special power of attorney. In fact, they can also be accompanied by someone other than their attorney, only if they are accompanied by someone other than their attorney, the applicant must make a statement which is submitted to the Constitutional Justice at the hearing.

1. Judges Deliberation Meeting (RPH)

RPH is a type of plenary session, which is different from other types of hearings, namely that it is closed. The RPH will discuss cases in a confidential manner and will only be attended by constitutional judges, clerks and substitute clerks. In this RPH, the development of a case, decisions and provisions related to a case are discussed.³¹

The quorum for the RPH to make a decision is at least 7 (seven) Constitutional Justices, assisted by the Registrar, and other sworn officers, while the RPH which is not carried out in order to make a decision is not bound by the quorum provisions of at least 7 (seven) Constitutional Justices.³²

The RPH hears, discusses, and/or makes decisions regarding:³³ 1. panel report on preliminary examination; 2. panel report on the trial examination; 3. panel recommendations regarding follow-up to the results of the application examination, can be in the form of: a. discussion regarding the draft decision that will be taken regarding the authority of the Court and the legal standing of the Petitioner; b. whether a follow-up examination is necessary or whether a decision can be taken immediately; c. The implementation of follow-up examinations is carried out by the plenary or panel. 4. legal opinions of Constitutional Justices; 5. results of examination of plenary trials and legal opinions of Constitutional Justices; 6. Constitutional Judge who drafts the decision; 7. draft final decision; 8. appointment of a Constitutional Judge who will serve as the final reader of the draft decision; 9. division of tasks for reading decisions in the plenary session. In order to make a decision, every Constitutional Justice is obliged to submit written considerations or opinions on the petition.³⁴

2. Pronunciation of Decision

³¹ Siahaan, Maruarar. 2005. *Hukum Acara Mahkamah Konstitusi Republik Indonesia*. Jakarta: *Konstitusi Press*. <https://heylaw.id/blog/bedah-materi-pkpa-jenis-dan-sifat-persidangan-di-mahkamah-konstitusi>. dilihat pada tgl 19 Januari 2025

³² Lihat *Ibid.*, ps. 29 ayat (4) dan ayat (5).

³³ Lihat *Ibid.*, ps. 30 ayat (1) dan ayat (2).

³⁴ Republik Indonesia, Undang-Undang tentang Mahkamah Konstitusi, op cit., Ps. 45 ayat (5) jo Republik Indonesia, Peraturan Mahkamah Konstitusi tentang Pedoman Beracara dalam Perkara Pengujian UndangUndang,...op cit., ps. 32 ayat (1)

The legal basis for decisions on constitutional cases is the 1945 Constitution as the written constitution of the Republic of Indonesia. The decision to grant must be based on at least 2 (two) valid pieces of evidence and the judge's belief that the request meets the constitutional reasons and requirements as intended in the constitution. By

Therefore, the decision must contain the facts revealed and legally proven at trial and the legal considerations on which it is based.

Decision making is carried out by deliberation to reach consensus in the RPH through a closed plenary session. The provisions regarding the chairman of the plenary session as mentioned above apply *mutatis mutandis* in this RPH. In this way, there will be no abstention votes in the decision-making meeting.

In the event that a decision cannot be reached through deliberation to reach a consensus, the deliberation is postponed until the next plenary session. In these deliberations, efforts are made to reach a consensus. However, if it turns out that consensus cannot be reached, then the decision is taken by majority vote. Decision making with a majority of votes may fail because the number of votes is the same. If so, then the final vote of the chairman of the plenary session of judges determines. In making decisions in this way, different judges' opinions are included in the decision. The verdict can be pronounced on the same day or postponed to another day. The day of the decision is notified to the parties.

The decision that has been taken in the RPH is edited and edited before being signed by the judge who examines, adjudicates and decides, and the clerk who accompanies the judge, then a schedule for pronouncement of the decision is determined after the day, date and time are determined by the parties. called. The decision was pronounced in a plenary session open to the public. Since that pronouncement, the Constitutional Court's decision as the first and final instance court decision has permanent and final legal force. This means that there is no further legal action against this decision and it must be implemented.³⁵

The Constitutional Court handed down a decision for the sake of justice based on belief in the Almighty God. Like other court decisions, the Constitutional Court's decision must contain the following:

- a. the head of the verdict reads: "For the sake of justice based on belief in the Almighty God";
- b. party identity;

³⁵ *Ibid.*, Pasal 46a dan 47.

- c. application summary;
- d. consideration of the facts revealed in the trial;
- e. legal considerations that form the basis of the decision;
- f. the verdict, and
- g. day, date of decision, name of constitutional judge, and clerk.

A copy of the decision that has been pronounced in a trial open to the public and therefore has permanent legal force must then be delivered to the parties no later than 7 (seven) working days after the decision was pronounced.

The Gap Between the Process of Forming Legislative Regulations and Constitutional Court Decisions

The gap between the process of forming statutory regulations and the decision of the Constitutional Court occurred at the discussion stage of the bill and its academic text. This stage is the most determining stage in the formation of legislation, whether a bill is approved as law or not. However, unfortunately discussions occur only between the DPR and the President (also with the DPD, specifically for certain topics) and through 2 levels of discussion. Level 1 is discussions at commission meetings, joint commission meetings, legislative body meetings, budget body meetings or special committee meetings. Level 2 is discussions in plenary meetings.

Meanwhile, the most decisive stage in the process of the Constitutional Court's decision is at the trial examination stage and the Judges' Deliberation Meeting (RPH). where in the trial examination the Constitutional Judge examines the main points of the petition along with the evidence presented in the trial. The parties to the case, witnesses and experts provide the necessary information. For the purposes of this examination, the Constitutional Court is obliged to summon the parties, witnesses and experts and state institutions. Furthermore, the RPH is a type of closed plenary session. followed by at least 7 (seven) constitutional judges, assisted by the Registrar, and other sworn officers.

So it is very natural if there are differences in understanding and interpretation of a statutory regulation. Because those who agree and decide are of different quality. In the legislator section there are only the DPR and the President and the DPD, while in the Constitutional Court section there are selected and elected judges who certainly have a better understanding of the 1945 Constitution of the Republic of Indonesia.

The gap between the process of forming statutory regulations and the decision of the Constitutional Court can also occur due to several factors:

1. Limitations of Participatory Aspects: Even though the legislative process involves many parties, not all voices in society have the same opportunity to be heard. Often, stronger voices dominate, resulting in bias in the decision-making process.

2. **Legal Interpretation:** The Constitutional Court may interpret a law in a different way from the legislator's original intent. This mismatch can cause a crisis of confidence in both the legislative and judicial institutions.
3. **Norm Adaptation:** Society and situations often evolve faster than legislators' ability to adapt. When the Constitutional Court responds to these changes, it could result in existing regulations becoming irrelevant or even contrary to current societal values.

It is important to maintain harmonization between the process of forming laws and regulations and the decisions of the Constitutional Court to maintain justice and order in society, so the proposal of this paper is that the national legislative body should form a Court like the Constitutional Court which consists of judges who are selected as judges are elected in the Constitutional Court. . These judges will later be tasked with providing plenary decisions on a legislative process.

Conclusion

In general, the process of forming a law is divided into 5 (five) stages, namely planning, drafting, discussing, ratifying and promulgating. Meanwhile, the Constitutional Court in PMK Number 06/PMK/2005 concerning Procedural Guidelines in Law Review Cases, Constitutional Court trials are divided into 4 types of hearings, namely Preliminary Examination, Trial Examination, Judge Deliberative Meeting (RPH), and Pronouncement of Decision.

The gap between the process of forming statutory regulations and the Constitutional Court's decision occurs at the bill discussion stage and the trial examination and Judges' Deliberation Meeting (RPH) stages in the MK's decision. Where there is a difference in quality between legislators and judges at the Constitutional Court.

It is important to maintain harmonization between the process of forming laws and regulations and the decisions of the Constitutional Court. To maintain justice and order in society, the national legislative body should form a Court like the Constitutional Court which consists of judges who are selected in the same manner as judges are elected at the Constitutional Court. These judges will later be tasked with providing plenary decisions on a legislative process.

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