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SCHOOL OF POLITICAL AND PUBLIC
Bandar Lampung University, Indonesia

Icon-LBG 2016

**The Third International
Conference on Law,
Business and Governance**

PROCEEDINGS

Hosted by
Faculty of Law, Faculty of Economics and Faculty of Social Science
Bandar Lampung University (UBL)

Icon-LBG 2016

THE THIRD INTERNATIONAL CONFERENCE
ON LAW, BUSINESS AND GOVERNANCE 2016

20, 21 May 2016
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

Organized by:



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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the Third International Conference on Law, Business and Governance (3th Icon-LBG 2016) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 46 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Unika ATMA JAYA, Shinawatra University, Universitas Sebelas Maret, Universitas Timbul Nusantara, Universitas Pelita Harapan, Universitas Bandar Lampung, Universitas Lampung.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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ANALYSIS REJECT MEASURE IN TESTING NON CONSTITUTIONAL LAW ON THE CONSTITUTION NRI 1945

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Abstract

Research shows that there are the premise of allowing the use of non constitution of the deision of the court, namely. First the Constitution Court in examining the legislation required to explore the values of law and justice in the society based NRI Constitution of 1945, as the highest legal basis and the law as the elaboration of the Constitution NRI 1945. The use of the of the law concerning the establishment of laws and the order of the haose of representatives as the basis for the Court's decision in interpreted as the elaboration of the Constitution directly NRI 1945.

The second practice of the Constitutional Court in the previous decicionNumber 27/PUU/VII/2009, dated June 16. 2010 among other things sateted "... Along Act Rules agency products, and legislation governing formal procedural macanism or the flowing of a delegation of authority under the constitution, the laws and undanagn it can be used or considered as a measure or touchstone of the formal review.

Third, the use of any other law as the basis of legal caonsiderations rather to create legal certainty as specified in Article 28 D paragraph (1) Constitution NRI 1945.

Fourth, the prohibition of using any other law as the basis of legal consideretions is to reduce the authority of the court as an independent judicial to organize judicial administration to ubold the law and justice.

Terms non constitution as benchmarks, including : First, non constitution norm is a norm NRI delegates from the Constitution of 1945, two non-constitutional substance is a substnace or material that shold be regulated by law, As the third norm executor of the process of ofebtablishing laws.

1. INTRODUCTION

In the system of legal norms Indonesia, norm applicable law are in a system that is layered and step-by-step at a time in groups, where the norm of the stretcher force, sourced and based on the norms are bigger, and so forth until the basic norms of the country (stat fundamental norm) of the Republic of Indonesia, Pancasila.

Legislation bicerarchy above aims determinen the rank of each of the consequences if non legislation contrary, it is declared valid is a higher degree. Here applies the doctrine of *lexlegiinferiori* (law which rank higher, despite lower law degree.

The context is often inpreted as a principle or principles of constitutional law. (constitutionality of law). Childbirth judicial review on the basis of laws or constitutions and apply (judicial review).

Article 24 C of the Constitutional NRI 1945, the constitutional Court examine the laws on the constitutional Court as a legitimate interpreter of the constitution or the constitution or the constitution (the legitimate interpreter of the constitution). In practice face problems, namely :

The extent of the meaning of a conflict of norms, especially in the formal testing, it has been no clear limit on the use of benchmarks, for example the use of non-constitutional provisions.

Base of 1945, Constitution Act. Number 24 of 2003 Jo Law 8 of 2011 does not regulate non-constitutional provisions can be used as the basis of benchmarks to asses conflict of legal norms.

2. PROBLEM FORMULATION

- a. Why non-constitutional provisions can be used as a benchmark in testing the law against the constitution NRI 1945 at the Constitutional Court ?
- b. What are the conditions of non constitution can become a benchmark in testing on the Constitution Act 1945 NDRI?

3. RESEARCH AND ANALYSIS

- a. Terms benchmark in determining the conflict of legal Norms.
The authority of Constitutional Court can be found in Article 24 paragraph (2) Third Amendment to the Constitution NRI 1945 states “ The judicial power in done by a Supreme Court and judicial bodies underneath and by a Constitutional Court “ furthermore Article 24 C of paragraph (1) Third amendment Constitution NRI 1945 states “the Constitutional Court authority to bear at the first and last decision is final to test laws against the Constitution, to decide the dispute the authority of state institution whose authorities are granted by the Constitution, dissolution of political parties and to decide disputes concerning the results of the election”
- b. Standing Legal and Constitutional Losses
Understanding the legal status (legal standing) according Harjono is a situation where a person or a party is determined eligible and therefore has the right to request dispute settlement work in front of the Constitutional Court.
- c. Constitutional Court Decision Number 27 / PUU-VII/2009.
Issues of contention is the object of legal norms is that the formulation of law number 3 of 2009 had violated the principles in the formation of legislation, namely the principles of kinship and the principle openness importance principle, which is essentially in the formation of legislation from the planning, preparation, and discussions are transparent and open, so that society has greater opportunities the process of making legislation.
Consideration Judicial
Constitutional Court, include :
That the constitutional Court before the case a quo has never been disconnected file the petition for formal legislation examined thoroughly and completely :
That while the process of formations and practices that take place in the process.
That the process of establishing laws that are based on the House Rules and regulations of the habit Parliament considered contrary to the Constitution NRI 1945.
Decision
That the finding by the Constitutional Court, in the form of disability procedures in the process of establishing a law petitioned for by applicant, should be understood as a correction of the process of establishing laws that been in practican as in accordance which the Constitution NRI 1945.
That the findings of the Constitutional Court about the things that should be done in process establishment of laws to conform with the constitution NRI 1945, rently delivered by establishing laws quo, but materallyn legislation laws prior to this decision :
Hat despite the procedural defects in the formation of a quo, but materially the legislation does not pose legal issues :
That if the law quo is flawed procedural otherwise not have the power of law binding will result in a state that is not better because the legislation is modified, has been implemented and lead to legal consequences in the institutional system that is regulated by law a quo and relating to the various laws, including law number 48 of 2009 on judicial power, Act number 49 of 2009 on the second amendment of law number 2 of 1986 on the public courts, and institutions such as the relationship between the judicial Comission and supprime Court which has now run by law number 3 of 2009.
Decision
Non- Constitutional provisions in judicial practice, it covers some of the evidence :
Benchmark Article 205 Legislatif layout Regulation No 08/ Hoase of Representatif / 2005-2006.
Article 205 is a form of repretatin of the family principles in the formation of legislation procedural defects of family-related facts.
Benchmark Act No. 10 of 2004 primarily related to the disclosure contained in law No. 10 of 2004 The principle of openness is the benchmark in testing legislation quo, but the principle is ruled out by the Constitutional Court.
- d. Constitutional court ruling in tenting number 50A Article 8 of 2011.

The constitutionality of Article 50A of 2011

Law number 8 of 2011 Article 50A which reads “the Constitutional Court in examining the law against the Constitution NRI 1945 does not use any other law as the basis of legal considerations “ Act of in this study matched by non constitution

Reasons judicial considerations in determining Article quo contrary to the Constitution of 1945 is the principle of constitutionalism, that understands constitutional rule of law and democracy is the principle that puts the constitution or constitutional as the biggest law in the state. To ensure the enforcement and implementation of the constitution then it should be of society, nation and state.

Decision

- Article 24 Paragraph (2) Constitution NRI 1945 authorities the Constitutional Court as one of institutions of judicial power that function guarding the constitution of the constitution (the guardian of the constitution) and arena function that if constitutional Court is the interpreter of the highest Constitution (the ultimate interpreter of the constitution).-
 - The Author's view, that in practice the constitutional court related to the testing material MK never use non constitution as a basis, but the requests particular, the Court must look at the entire found there was a disagreement with one another, so that if the Court find the conflict with other laws, it means that contrary to the legal certainty guaranteed by the Constitution NRI 1945.
- e. Use of non- constitutional argument as Benchmark
- MK. in examining the legislation required to explore the values of law and sense of justice in a society based NRI Constitution of 1945, as highest legal basis and the law as the elaboration of the constitution NRI 1945. The use of the law concerning the establishment of law and order Parliament as the basis of the Court's decision is interpreted as the elaboration of the 1945 Constitution NRI directly .
 - The practice of the Court in the previous decision number 27/PUU/VII/2009, dated June 6, 2010, among others, stated “..... All legislation governing formal mechanism or the flow of the delegation of authority under the constitution, the laws and regulations, can be used or considered as benchmark measure or touchstone of the formal review”.on
 - The use of any other law as the basis of legal considerations rather to create legal certainty as specified in Article 28 D paragraph 1) Constitution NRI 1945.

Ban on using any other law as the basis of legal consideration is to reduce the authority of the Court as an independent judicial power to organize judicial administration to uphold the law and justice, and if a quo article, the duties and functions of the court in implementing the authority granted by the Constitution NRI 1945.

In view A Jimly Ashidieqiu, to understand the legal issues constitution was not limited to the constitution, but what is stipulated in the law as a normative elaboration derived Further, he said that the measuring instrument constitutionality of a law, namely (1) the text of the Constitution text, such as treaties, and MPR decree decision, invite certain laws, disciplinary rules, etc; (3) The values of the constitution that live in the practice of state administration has been regarded as an integral part (4) The values of live of cognitive awareness of the people and the fact the behavior of the political and legal residents of countries that are considered as a habit and necessity are ideal in a a fair society, nation and state.

- f. Conditions of non constitution as a tool to measure.

The point is that non constitutional provision can be used as a benchmark for formal testing and is limited to formal review, while in the filing material, however, non-constitutional provisions mentioned above is not automatically / instantly can become a benchmark in the formal review of a law against NRI 1945 Constitution, in the sense that there must be special conditions.

Include :

- Norma delegates of the Constitution of 1945 NRI “ benchmarking non constitution born of further provisions regarding the procedure for the establishment of laws governed by the law “ is clearly authority formation of laws.
- Limitation of the substance or the material every ordinance legislation. In view Maria Farida that the various types of legislation in Republic of Indonesia in a khirarkis arrangements also caused the differences in function and substance of the various types of statutory laws and regulation.
- As a norm executor of the process of establishing laws are regulations President number 68 Year 2005 regarding the procedure for preparing the draft government regulation in lieu of

Act, regulation and draft regulation President and the rule of order of the House number 8/Legislatif RI/2005/2006. Given tested in a formal review is a affect, then the facts forming constitution can only be found in that provision..

4. CONCLUSION

Conclusion

The rationale for the permissibility of the use of non constitution in the decision, which is not explore the values of law and justice in the society by Constitution NRI 1945 as the legal basis of highest, the jurisprudence of the Constitutional Court, in order to create legal certainty as specified in Article 25 D paragraph (1) Constitution NRI 1945, and the ban on using other legislation as the basis for consideration of the law is no reduce the authority of the Court as an independent judicial power to organize judicial administration to uphold law and justice, and if a quo article is applied it will limit the duties and function of the Court in implementing the authority granted by the Constitution NRI 1945.

Terms non constitution as a benchmark in determining the conflict of legal norm. Both substances non constitutional norm delegates matters that must be regulated by law, the third as the executor of the process of establishing norm Constitution.

Suggestion

A need to clarify the use of non-constitution as a benchmark in testing legislation including the criteria and limitation in the regulation of the Constitutional Court.

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