

LEMBAR
HASIL PENILAIAN SEJAWAT SEBIDANG ATAU *PEER REVIEW*
KARYA ILMIAH : JURNAL ILMIAH

Judul Karya Ilmiah : **"Binding Legal Force of Supreme Court Decision over General Election Commission"**

Jumlah Penulis : **2 orang**

Status Pengusul : **Penulis ke-2**

Identitas Jurnal Ilmiah : a. Nama Jurnal : **Law Reform,
(Terakreditasi SINTA 2)**
b. Nomor ISSN : **E.2580-9508, P.....**
c. Volume, nomor, bulan, tahun : **Volume : 16 No. 1 Tahun 2020,**
d. Penerbit : **FAKULTAS HUKUM UNDIP**
e. DOI artiket (jika ada) :
f. Alamat web Jurnal : <https://ejournal.undip.ac.id/index.php/lawreform/article/view/30305>
Alamat Artikel : <https://ejournal.undip.ac.id/index.php/lawreform/article/download/30305/17221>
g. Terindeks di Scimagojr/Thomson Reuter ISI knowledge atau di.....

Kategori Publikasi Jurnal Ilmiah : ☐ Jurnal Ilmiah Internasional /Internasiona bereputasi **
(beri ✓ pada kategori yang tepat) ☒ Jurnal Ilmiah Nasional Terakreditasi
☐ Jurnal Ilmiah Nasional / Nasioan terindeks di DOAJ, CABI,
COPERNICUS*

Hasil Penilaian *Peer Review* :

Komponen Yang Dinilai	Nilai Reviewer		Nilai Rata- Rata
	Reviewer I	Reviewer II	
a. Kelengkapan unsur isi jurnal (10%)	2,5	2	2,25
b. Ruang lingkup dan kedalaman pembahasan (30%)	7	7	7
c. Kecukupan dan kemutahiran data/informasi dan metodologi (30%)	7,5	7	7,25
d. Kelengkapan unsur dan kualitas penerbit (30%)	7,5	7	7,25
Total = (100%)	24,5	23	23,75
Nilai Pengusul = 40% x 23,75 = 9,5			

Reviewer 2

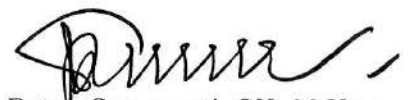


Prof. Dr. Yusriyadi, S.H., M.S.
NIP. 195508261981031002
Unit kerja : Fakultas Hukum Undip

Semarang,

Reviewer I

11 APR 2022



Prof. Dr. Retno Saraswati, SH., M.Hum
NIP 196711191993032002
Unit kerja : Fakultas Hukum Undip

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- ☐ Jurnal Ilmiah Nasional / Nasioan terindeks di DOAJ, CABI, COPERNICUS*

Hasil Penilaian Peer Review :

Komponen Yang Dinilai	Nilai Maksimal Jurnal Ilmiah			Nilai Yang Diperoleh
	Internasional/ Internasional bereputasi	Nasional Terakreditasi	Nasional	
a. Kelengkapan unsur isi Jurnal (10%)	☐	☒	☐	2,5
b. Ruang lingkup dan kedalaman pembahasan (30%)		7,5		7
c. Kecukupan dan kemutahiran data/informasi dan metodologi (30%)		7,5		7,5
d. Kelengkapan unsur dan kualitas penerbit (30%)		7,5		7,5
Total = (100%)		25		29,5
Nilai Pengusul = 40% x 24,5 = 9,8				

Catatan Penilaian Jurnal Oleh Reviewer :

- a. Kelengkapan unsur isi Jurnal : Kelengkapan unsur isi jurnal sudah lengkap secara ilmiah karena sudah memuat Title, abstract, introduction, Research Method, Result and Discussion, Conclusion dan References.
- b. Ruang lingkup dan kedalaman pembahasan : Ruang lingkup sudah sesuai yakni Hukum Tata Negara, sudah sesuai Jurnal dan bidang pengajaran. Pembahasan cukup komprehensif dan mendalam.
- c. Kecukupan dan kemutahiran data/informasi dan metodologi : Data cukup mutakhir dan metodologi cukup jelas dan sesuai.
- d. Kelengkapan unsur dan kualitas penerbit : Jurnal terakreditasi SINTA 2 dan kualitas bagus.

Semarang,

11 APR 2022

Reviewer 1



Prof. Dr. Retno Saraswati, SH., M.Hum
NIP. 196711191993032002
Unit kerja : Fakultas Hukum Undip

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Hasil Penilaian Peer Review :

Komponen Yang Dinilai	Nilai Maksimal Jurnal Ilmiah			Nilai Yang Diperoleh
	Internasional/ Internasional bereputasi	Nasional Terakreditasi	Nasional	
a. Kelengkapan unsur isi Jurnal (10%)	☐	☒	☐	2
b. Ruang lingkup dan kedalaman pembahasan (30%)		2,5		7,5
c. Kecukupan dan kemutakhiran data/informasi dan metodologi (30%)		7,5		7,5
d. Kelengkapan unsur dan kualitas penerbit (30%)		7,5		7
Total = (100%)		25		23
Nilai Pengusul = 40% x ... 23 = 92				

Catatan Penilaian Jurnal Oleh Reviewer :

- a. Kelengkapan unsur isi Jurnal : Ruang lingkup dan isi jurnal Terpenuhi.
- b. Ruang lingkup dan kedalaman pembahasan: Bidang hukum, sesuai basic ybs.
- c. Kecukupan dan kemutakhiran data/informasi dan metodologi : Data cukup dan mutakhir.
- d. Kelengkapan unsur dan kualitas penerbit : Terakreditasi Sinta 2, berkualitas.

Semarang,

Reviewer 2

11 APR 2022

Prof. Dr. Yusriyadi, SH.,M.S.
NIP. 195508261981031002
Unit kerja : Fakultas Hukum Undip



KEMENTERIAN RISET, TEKNOLOGI, DAN PENDIDIKAN TINGGI
**DIREKTORAT JENDERAL PENGUATAN RISET
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Jalan M.H. Thamrin No. 8, Jakarta 10340 – Gedung II BPPT, Lantai 20
Telepon (021) 316-9778. Faksimile (021) 310 1728, 310 2368

Laman: www.ristekdikti.go.id

Nomor : B/2493/E5/E5.2.1/2019
Lampiran : 1 (satu) berkas
Perihal : **Pemberitahuan Hasil Akreditasi Jurnal Ilmiah
Periode IV Tahun 2019**

Jakarta, 19 Agustus 2019

Kepada Yth.

1. Pimpinan Perguruan Tinggi
2. Kepala LL Dikti I s.d. XIV
3. Pengelola Jurnal Ilmiah
di seluruh Indonesia

Dengan hormat,

Sehubungan dengan hasil Akreditasi Jurnal Ilmiah Periode IV Tahun 2019 dan telah diterbitkannya Surat Keputusan Direktur Jenderal Penguatan Riset dan Pengembangan Kementerian Riset, Teknologi, dan Pendidikan Tinggi Nomor 23/E/KPT/2019, tanggal 8 Agustus 2019, dengan hormat bersama ini kami sampaikan hasil akreditasi sebagaimana terlampir. Adapun ketentuan penerbitan sertifikat akreditasi sebagai berikut:

1. Bagi usulan akreditasi baru maka sertifikat akreditasi akan diterbitkan dan diberikan kepada pengelola jurnal;
2. Bagi usulan akreditasi ulang yang hasil akreditasi naik peringkat maka sertifikat akreditasi akan diterbitkan dan diberikan kepada pengelola jurnal;
3. Bagi usulan akreditasi ulang yang hasil akreditasi peringkatnya tetap dan telah memiliki sertifikat yang masih berlaku masa akreditasi, maka sertifikat baru tidak akan diterbitkan, dan sertifikat sebelumnya dapat digunakan sampai berakhir masa berlakunya;
4. Bagi pengelola yang sudah terakreditasi dan namanya tercantum dalam SK sebelumnya serta belum memiliki sertifikat dapat meminta sertifikat terdahulu;
5. Penerbitan sertifikat dilakukan secara bertahap paling cepat 2 minggu setelah pengumuman ini dan dilakukan pemutakhiran data di laman <http://sinta2.ristekdikti.go.id/journals>, penyerahan sertifikat dilakukan secara bertahap, dan apabila mendesak dapat mengambil di Subdit Fasilitas Jurnal Ilmiah dengan konfirmasi kepada Sdr. Pandji di nomor telepon 087889098911 dan *whatsapp (wa)* 08985050111;
6. Bagi pengelola jurnal yang ingin naik peringkat bisa mengajukan usulan akreditasi ulang dengan mengajukan 1 nomor/*issue* terbaru melalui <https://arjuna.ristekdikti.go.id>.

Atas perhatian dan kerja sama yang baik, kami ucapkan terima kasih.

**plt.Direktur Pengelolaan Kekayaan
Intelektual**

ttd

Hotmatua Daulay
NIP 196610181986021001

Tembusan:
Direktur Jenderal Penguatan Riset dan Pengembangan



KEMENTERIAN RISET, TEKNOLOGI, DAN PENDIDIKAN TINGGI
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www.ristekdikti.go.id

SALINAN

KEPUTUSAN DIREKTUR JENDERAL PENGUATAN RISET DAN PENGEMBANGAN
KEMENTERIAN RISET, TEKNOLOGI, DAN PENDIDIKAN TINGGI
REPUBLIK INDONESIA

NOMOR 23/E/KPT/2019

TENTANG

PERINGKAT AKREDITASI JURNAL ILMIAH PERIODE IV
TAHUN 2019

DIREKTUR JENDERAL PENGUATAN RISET DAN PENGEMBANGAN
KEMENTERIAN RISET, TEKNOLOGI, DAN PENDIDIKAN TINGGI,

Menimbang : a. bahwa berdasarkan hasil akreditasi jurnal ilmiah yang ditetapkan oleh Tim Akreditasi Jurnal Ilmiah Kementerian Riset, Teknologi, dan Pendidikan Tinggi pada tanggal 1 April 2019 dan dalam rangka melaksanakan ketentuan Pasal 6 ayat (5) Peraturan Menteri Riset, Teknologi dan Pendidikan Tinggi Nomor 9 Tahun 2018 tentang Akreditasi Jurnal Ilmiah, perlu menetapkan Peringkat Akreditasi Jurnal Ilmiah Periode IV Tahun 2019;

b. bahwa berdasarkan pertimbangan sebagaimana dimaksud pada huruf a, perlu menetapkan Keputusan Direktur Jenderal Penguatan Riset dan Pengembangan Kementerian Riset, Teknologi, dan Pendidikan Tinggi tentang Peringkat Akreditasi Jurnal Ilmiah Periode IV Tahun 2019;

Mengingat : 1. Undang-Undang Nomor 12 Tahun 2012 tentang Pendidikan Tinggi (Lembaran Negara Republik Indonesia Tahun 2012 Nomor 158, tambahan Lembaran Negara Republik Indonesia Nomor 5336);

2. Peraturan Pemerintah Nomor 4 Tahun 2014 tentang Penyelenggaraan Pendidikan dan Pengelolaan Perguruan Tinggi (Lembaran Negara Republik Indonesia Tahun 2014, Nomor 16, tambahan Lembaran Negara Republik Indonesia Nomor 5500);

3. Peraturan Presiden Nomor 13 Tahun 2015 tentang Kementerian Riset, Teknologi, dan Pendidikan Tinggi (Lembaran Negara Republik Indonesia Tahun 2015 Nomor 14);

4. Keputusan Presiden Nomor 121/P Tahun 2014 tentang Pembentukan Kementerian dan Pengangkatan Menteri Kabinet Kerja Periode Tahun 2014-2019;

5. Keputusan Presiden Nomor 99/M Tahun 2015 tentang Pemberhentian dan Pengangkatan Dari dan Dalam Jabatan Pimpinan Tinggi Madya di Lingkungan Kementerian Riset, Teknologi, dan Pendidikan Tinggi;

6. Peraturan Menteri Keuangan Republik Indonesia Nomor 32/PMK.02/2018 tentang Standar Biaya Masukan Tahun Anggaran 2019;
7. Peraturan Menteri Riset, Teknologi dan Pendidikan Tinggi Nomor 15 Tahun 2015 tentang Organisasi dan Tata Kerja Kementerian Riset, Teknologi dan Pendidikan Tinggi sebagaimana telah diubah dengan Peraturan Menteri Riset, Teknologi dan Pendidikan Tinggi Nomor 23 Tahun 2019 tentang Perubahan Atas Peraturan Menteri Riset, Teknologi dan Pendidikan Tinggi Nomor 15 Tahun 2015 (Berita Negara Republik Indonesia Tahun 2019 Nomor 238);
8. Peraturan Menteri Riset, Teknologi dan Pendidikan Tinggi Nomor 9 Tahun 2018 tentang Akreditasi Jurnal Ilmiah (Berita Negara Republik Indonesia Tahun 2018 Nomor 428);
9. Keputusan Direktur Jenderal Penguatan Riset dan Pengembangan Nomor 19 Tahun 2018 tentang Pedoman Akreditasi Jurnal Ilmiah;

MEMUTUSKAN:

- Menetapkan : KEPUTUSAN DIREKTUR JENDERAL PENGUATAN RISET DAN PENGEMBANGAN KEMENTERIAN RISET, TEKNOLOGI, DAN PENDIDIKAN TINGGI TENTANG PERINGKAT AKREDITASI JURNAL ILMIAH PERIODE IV TAHUN 2019.
- KESATU : Menetapkan Peringkat Akreditasi Jurnal Ilmiah Periode IV Tahun 2019 sebagaimana tercantum dalam Lampiran yang merupakan bagian yang tidak terpisahkan dari Keputusan Direktur Jenderal ini.
- KEDUA : Akreditasi Jurnal Ilmiah sebagaimana dimaksud dalam Diktum KESATU berlaku selama 5 (lima) tahun mulai dari nomor penerbitan yang ditetapkan dalam lampiran keputusan ini.
- KETIGA : Akreditasi Jurnal Ilmiah sebagaimana dimaksud dalam Diktum KESATU dapat mengajukan kembali kenaikan peringkat setelah menerbitkan minimal 1 (satu) nomor penerbitan.
- KEEMPAT : Setiap jurnal ilmiah wajib mencantumkan masa berlaku akreditasi dengan menuliskan peringkat, tanggal penetapan dan tanggal akhir masa berlaku akreditasi.
- KELIMA : Apabila dikemudian hari ditemukan ketidaksesuaian dengan Pedoman Akreditasi Jurnal Ilmiah, maka status akreditasi jurnal ilmiah yang bersangkutan dapat dicabut atau diturunkan.

KEENAM : Keputusan Direktur Jenderal ini mulai berlaku pada tanggal ditetapkan.

Ditetapkan di Jakarta
pada tanggal 8 Agustus 2019
DIREKTUR JENDERAL
PENGUATAN RISET DAN PENGEMBANGAN,

TTD.

MUHAMMAD DIMYATI
NIP 195912171984041001

Salinan sesuai dengan aslinya,
Direktorat Jenderal Penguatan Riset dan Pengembangan
Kementerian Riset, Teknologi, dan Pendidikan Tinggi
Kepala Bagian Hukum, Kerjasama dan Layanan Informasi,

TTD.

Syarip Hidayat
NIP 197306101997031004

SALINAN
LAMPIRAN
KEPUTUSAN DIREKTUR JENDERAL PENGUATAN
RISET DAN PENGEMBANGAN KEMENTERIAN
RISET, TEKNOLOGI, DAN PENDIDIKAN TINGGI
NOMOR 23/E/KPT/2019
TENTANG PERINGKAT AKREDITASI JURNAL
ILMIAH PERIODE IV TAHUN 2019

PERINGKAT AKREDITASI JURNAL ILMIAH PERIODE IV TAHUN 2019

Peringkat	No	Nama Jurnal	E-ISSN	Penerbit	Keterangan
2	1	Agriekonomika	24076260	Jurusan Agribisnis, Fakultas Pertanian, Universitas Trunojoyo Madura	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 8, Nomor 1 Tahun 2019
	2	Agromet	2655660X	PERHIMPI kolaborasi dengan Departemen Geofisika dan Meteorologi, IPB	Usulan baru mulai Volume 31 Nomor 2 Tahun 2017
	3	Al-Kauniyah: Jurnal Biologi	25026720	Fakultas Sains dan Teknologi Universitas Islam Negeri Syarif Hidayatullah Jakarta	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 11 Nomor 2 Tahun 2018
	4	Buletin Kebun Raya (<i>The Botanic Garden Bulletin</i>)	24601519	Pusat Konservasi Tumbuhan Kebun Raya - LIPI	Reakreditasi tetap di peringkat 2 mulai Volume 22 Nomor 1 Tahun 2019
	5	COUNS-EDU: <i>The International Journal of Counseling and Education</i>	25483498	Indonesian Counselor Association (IKI)	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 4, Nomor 1 Tahun 2019
	6	Fikrah: Jurnal Ilmu Aqidah dan Studi Keagamaan	24769649	Prodi Ilmu Aqidah dan Filsafat Islam Fakultas Ushuluddin IAIN Kudus	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 6 Nomor 2 Tahun 2018
	7	IJCSAM (<i>International Journal of Computing Science and Applied Mathematics</i>)	24775401	Jurusan Matematika FMIPA-Institut Teknologi Sepuluh Nopember	Reakreditasi naik peringkat dari peringkat 4 ke 2 mulai Volume 5 Nomor 1 Tahun 2019

18	Jurnal Kedokteran Brawijaya	23380772	Fakultas Kedokteran Universitas Brawijaya	Reakreditasi tetap di peringkat 2 mulai Volume 30 Nomor 3 Tahun 2019
19	Jurnal Konseling dan Pendidikan	23376880	<i>Indonesian Institute for Counseling, Education and Therapy (IICET)</i>	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 7 Nomor 1 Tahun 2019
20	Jurnal Teknologi Laboratorium	25800191	Poltekkes Kemenkes Yogyakarta	Reakreditasi naik peringkat dari peringkat 4 ke 2 mulai Volume 8 Nomor 1 Tahun 2019
21	JWP (Jurnal Wacana Politik)	25492969	FISIP Universitas Padjadjaran	Reakreditasi naik peringkat dari peringkat 4 ke 2 mulai Volume 3 Nomor 2 Tahun 2018
22	<i>Law Reform</i>	25808508	Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 15 Nomor 1 Tahun 2019
23	MNJ - Malang <i>Neurology Journal</i>	24425001	Program Studi Pendidikan Dokter Spesialis I Neurologi Fakultas Kedokteran - Universitas Brawijaya	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 5 Nomor 2 Tahun 2019
24	Persona: Jurnal Psikologi Indonesia	26155168	Fakultas Psikologi Universitas 17 Agustus 1945 Surabaya	Reakreditasi naik peringkat dari peringkat 4 ke 2 mulai Volume 8 Nomor 1 Tahun 2019
25	Psikis : Jurnal Psikologi Islami	25496468	Program Studi Psikologi Islam Fakultas Psikologi Universitas Islam Negeri Raden Fatah Palembang	Reakreditasi naik peringkat dari peringkat 3 ke 2 mulai Volume 5 Nomor 1 Tahun 2019
26	<i>The Indonesian Accounting Review</i>	2302822X	<i>Research Center and Community Services (PPPM) STIE Perbanas Surabaya</i>	Usulan baru mulai Volume 7 Nomor 1 Tahun 2017
27	<i>The Indonesian Journal of Accounting Research</i>	26551748	Ikatan Akuntan Indonesia-Kompartemen Akuntan Pendidik	Usulan baru mulai Volume 20 Nomor 2 Tahun 2017



Page 1 of 25 | Total Records : 241

Citation Statistics

Year	Citations
2009	0
2010	0
2011	0
2012	0
2013	0
2014	0
2015	0
2016	0
2017	0
2018	10
2019	150
2020	300
2021	450
2022	100

LAW REFORM

e-ISSN : 2580-8508
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LAW REFORM (p-ISSN:1858-4810, e-ISSN:2580-8508) is a peer-reviewed journal published since 2005. This journal is published by the Master of Law, Faculty of Law, Universitas Diponegoro, Semarang. LAW REFORM is published twice a year, in March and September. LAW REFORM publishes articles from research articles from scholars and experts around the world related to issues of national law reform with pure law or general law studies. **LAW REFORM** has been indexed in **DOAJ, GOOGLE SCHOLAR, GARUDA, SINTA-2, CROSSREF, DIMENSIONS, BASE.**

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Muhammad Isnaeni Puspito Adhi, Eko Soponyono

135-144

Citations ? | Language: EN | DOI: 10.14710/lr.v17i2.41736

Legal Liability of Minors as Perpetrators of Online Buying and Selling Fraud in Indonesia

PDF

Tantimin Tantimin

145-156

Citations ? | Language: EN | DOI: 10.14710/lr.v17i2.41738

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Diyan Shofie Harisnaeni, Irma Cahyaningtyas

157-167



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Faculty of Law, Universitas Diponegoro, Indonesia



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Table of Contents

Articles

Role of Trademark in Improving Legal and Competitive Awareness

Endang Purwaningsih

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30301

Published: 27 Mar 2020.

PDF

1-18

Patenting Deal in Indonesia, Article 20 of The Patent Law in The Political Perspective of International Trade Law

Mahoro Jean Claude Geofrey, Kholis Roisah

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30302

Published: 27 Mar 2020.

PDF

19-31

Supervisory Role of The Financial Services Authority in Utilizing Equity Crowdfunding in Indonesia

Irawati Irawati

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30303

Published: 27 Mar 2020.

PDF

32-44

Issuance of a Search Warrant for Narcotics Crime in Indonesia

Sahuri Lasmadi

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30304

Published: 27 Mar 2020.

PDF

45-57

Binding Legal Force of Supreme Court Decision over General Election Commission

Madaskolay Viktoris Dahoklory, Fifiana Wisnaeni

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30305

Published: 27 Mar 2020.

PDF

58-69

Legal Discourse on Manpower During COVID-19 Outbreak

Richard Kennedy

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30306

Published: 27 Mar 2020.

PDF

70-86

Revealing The Relation between Global Capitalism and Television Industry

Aditya Yuli Sulistyawan, Eka Padmahantara Antonius

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30307

Published: 27 Mar 2020.

PDF

87-96

Design of General Election in Indonesia

Muhammad Syafei, Muhammad Rafi Darajati

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30308

Published: 27 Mar 2020.

PDF

97-111

Reformulating The Concept of State Principles Based on Ideological and Technocratic Strategic as A Sustainable Development Direction

Bagus Oktafian Abrianto, Farid Ibrahim, Xavier Nugraha

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30309

Published: 27 Mar 2020.

PDF

112-126

(Un)Blurred Concept of Sovereign Rights at Sea : Implementation Context

Arie Afriansyah, Dila Paruna, Rania Andiani

Citations ? | Language: EN | DOI: 10.14710/lr.v16i1.30310

Published: 27 Mar 2020.

PDF

127-148

Binding Legal Force of Supreme Court Decision over General Election Commission

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ABSTRACT

*Election Commission Regulation Number 26 Year 2018 established by the General Election Commission as a Follow-up to the Constitutional Court Decision Number 30 / PUU-XVI / 2018 which basically prohibits candidates for Regional Representative Council who are concurrently acting as administrators of political parties but the General Election Commission's rules are canceled by the Supreme Court based on its decision Number 65 / P / HUM / 2018. The purpose of this study is to analyze and find out whether the Supreme Court's Decision has binding legal force over the General Election Commission. The research method used is juridical-normative and qualitative analysis. The research results show that the Supreme Court Decision which nullifies legal norms in the General Election Commission Regulation still has binding legal force because in principle every judge's decision must be considered valid according to the law until there is equipment (*res judicata pro veritate habetur*), as well as the juridical decision of the Supreme Court immediately published in the State news, with the enactment of the Supreme Court's Decision it would naturally become the basis for the validity of the *a quo* Decision. The decision issued by the Supreme Court indirectly gave birth to a legal obligation for the General Election Commission, for that the General Election Commission must carry it out properly. Therefore, the Election Supervisory Body needs to oversee the election commission in carrying out the mandate of the decision.*

Keyword : Supreme Court's Decision; Judicial Review; The Election Commission Regulations.

ABSTRAK

Peraturan Komisi Pemilihan Umum Nomor 26 Tahun 2018 yang dibentuk oleh Komisi Pemilihan Umum sebagai Tindak Lanjut Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 yang pada pokoknya melarang calon anggota Dewan Perwakilan Daerah yang merangkap sebagai pengurus partai politik tetapi peraturan Komisi Pemilihan Umum tersebut dibatalkan oleh Mahkamah Agung berdasarkan putusannya Nomor 65/P/HUM/2018. Tujuan Penelitian ini adalah untuk menganalisis serta mengetahui apakah Putusan Mahkamah Agung memiliki kekuatan hukum mengikat terhadap Komisi Pemilihan Umum. Metode penelitian yang digunakan yaitu yuridis-normatif dan menganalisis secara kualitatif. Hasil Penelitian menunjukkan bahwa Putusan Mahkamah Agung yang membatalkan norma hukum dalam Peraturan Komisi Pemilihan Umum tetap memiliki kekuatan hukum mengikat karena setiap putusan hakim harus dianggap sah menurut hukum sampai ada pembatalan (*res judicata pro veritate habetur*), begitu pula secara yuridis putusan Mahkamah Agung langsung dimuat dalam berita Negara, dengan diundangkan Putusan Mahkamah Agung maka tentunya menjadi dasar legitimasi berlakunya Putusan *a quo*. Putusan yang dikeluarkan oleh Mahkamah Agung secara tidak langsung telah melahirkan kewajiban hukum bagi Komisi Pemilihan Umum untuk itu Komisi Pemilihan Umum wajib menjalankannya sebagaimana mestinya. Oleh karena itu, Badan Pengawas Pemilihan Umum perlu mengawasi komisi pemilihan umum dalam menjalankan amanah putusan tersebut.

Kata Kunci : Putusan Mahkamah Agung; Judicial Review; Peraturan Komisi Pemilihan Umum.

Reformulating The Concept of State Principles Based on Ideological and Technocratic Strategic as A Sustainable Development Direction

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ABSTRACT

National development planning model with its long-term time dimension in Indonesia is carried out with the National Long-Term Development Plan (RPJPN) which replaces the Planned Overall National Development (PNSB) and the General Outlines of the Principles of the State (GBHN). Based on the analysis of the data obtained, it can be seen that since 2004 the use of the RPJPN has turned out to cause fluctuating dynamics in the existing development outcomes. The occurred changes resulted in inconsistencies in the direction of development when there was a change of state development actors such as President, Governor, Regent/ Mayor, and other state institutions. The reason for this is that there is no permanent structure that can be used as a reference for a long-term development program that will be carried out by the managing state institutions, particularly the government. Based on this, the aim of this study was to create a form of reformulation of the principles of the state. This research was a normative research with a statutory, historical and conceptual approaches. To answer this problem, the idea of the state principles was born which departed from combining the advantages of PNSB, GBHN, and RPJPN which were then packaged into a new state principle system, with ideological principle and technocratic strategy.

Keywords: GBHN; State Principles; PNSB; RPJPN.

ABSTRAK

Model perencanaan pembangunan nasional yang berdimensi waktu jangka panjang di Indonesia, dilakukan dengan Rencana Pembangunan Jangka Panjang Nasional (RPJPN) yang menggantikan Pembangunan Nasional Semesta Berencana (PNSB) dan Garis-garis Besar Haluan Negara (GBHN). Berdasarkan analisis terhadap data yang diperoleh maka dapat diketahui bahwa sejak tahun 2004 penggunaan RPJPN ternyata menyebabkan terjadinya dinamika fluktuatif pada hasil pembangunan yang ada. Perubahan-perubahan yang terjadi mengakibatkan inkonsistensi arah pembangunan ketika terjadi pergantian aktor pembangunan negara yaitu Presiden, Gubernur, Bupati/Walikota maupun lembaga negara lainnya. Alasan yang menjadi penyebabnya adalah tidak adanya suatu struktur yang tetap dan yang dapat dijadikan rujukan program pembangunan jangka panjang yang akan dilakukan oleh aktor pengelola lembaga negara khususnya pemerintah. Berdasarkan hal tersebut penelitian ini bertujuan untuk menciptakan bentuk reformulasi dari haluan negara. Penelitian ini adalah penelitian normatif, dengan pendekatan peraturan perundang-undangan, historis dan konseptual. Untuk menjawab permasalahan tersebut, maka lahirlah gagasan haluan negara yang berangkat dari penggabungan kelebihan-kelebihan PNSB, GBHN, dan RPJPN yang kemudian dikemas menjadi suatu sistem haluan negara yang baru, dimana memiliki prinsip ideologis dan strategis teknokratis.

Kata Kunci: GBHN; Haluan Negara; PNSB; RPJPN.

Issuance of a Search Warrant for Narcotics Crime in Indonesia

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ABSTRACT

Concerning narcotics crime in Indonesia in addition to the Police Investigator, the National Narcotics Agency (BNN) also has the authority to conduct investigations and investigations. Search is part of the investigation process, but is often constrained by a search warrant. The research method used is a normative legal research method. This method uses a statutory approach and a conceptual approach. This research puts forward secondary data in the form of binding legal material such as Law Number 35 of 2009 concerning Narcotics (Narcotics Law), books and other legal research journals. The results of this study indicate Article 81 of the Narcotics Law states that Police Investigators and BNN investigators are authorized to conduct investigations of the abuse and illicit trafficking of Narcotics and Narcotics Precursors. One of them is that an ordinary search or normal search can be carried out by the investigator after first obtaining permission from the head of the District Court, then searching under extraordinary and urgent circumstances, ie the investigator can search without first obtaining permission from the head of the local District Court, however after a search the investigator must immediately seek the approval of the head of the District Court.

Keywords: *Investigator; Search Warrant; Narcotics Crimes.*

ABSTRAK

Terhadap tindak pidana narkoba di Indonesia selain Penyidik Kepolisian, Badan Narkotika Nasional (BNN) juga memiliki kewenangan untuk melakukan penyelidikan dan penyidikan. Penggeledahan merupakan bagian daripada proses penyidikan, namun sering terkendala dengan adanya izin penggeledahan. Metode penelitian yang digunakan adalah metode penelitian hukum normatif. Metode ini menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Penelitian ini mengedepankan data sekunder berupa bahan hukum yang sifatnya mengikat seperti Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika (UU Narkotika), buku-buku serta jurnal penelitian hukum lainnya. Hasil penelitian ini menunjukkan Pasal 81 UU Narkotika menyatakan bahwa Penyidik Kepolisian dan penyidik BNN berwenang melakukan penyidikan terhadap penyalahgunaan dan peredaran gelap Narkotika serta Prekursor Narkotika. Salah satunya adalah upaya penggeledahan secara biasa atau dalam keadaan normal dapat dilakukan penyidik setelah lebih dulu mendapat izin dari ketua Pengadilan Negeri, kemudian penggeledahan dalam keadaan luar biasa dan mendesak, yaitu penyidik dapat melakukan penggeledahan tanpa lebih dulu mendapatkan izin dari ketua Pengadilan Negeri setempat, namun sesudah penggeledahan penyidik wajib segera meminta persetujuan ketua Pengadilan Negeri.

Kata Kunci: *Penyidik; Izin Penggeledahan; Tindak Pidana Narkotika.*

Binding Legal Force of Supreme Court Decision over General Election Commission

by Fifiana Wisnaeni

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Binding Legal Force of Supreme Court Decision over General Election Commission

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ABSTRACT

Election Commission Regulation Number 26 Year 2018 established by the General Election Commission as a Follow-up to the Constitutional Court Decision Number 30 / PUU-XVI / 2018 which basically prohibits candidates for Regional Representative Council who are concurrently acting as administrators of political parties but the General Election Commission's rules are canceled by the Supreme Court based on its decision Number 65 / P / HUM / 2018. The purpose of this study is to analyze and find out whether the Supreme Court's Decision has binding legal force over the General Election Commission. The research method used is juridical-normative and qualitative analysis. The research results show that the Supreme Court Decision which nullifies legal norms in the General Election Commission Regulation still has binding legal force because in principle every judge's decision must be considered valid according to the law until there is equipment (res judicata pro veritate habetur), as well as the juridical decision of the Supreme Court immediately published in the State news, with the enactment of the Supreme Court's Decision it would naturally become the basis for the validity of the a quo Decision. The decision issued by the Supreme Court indirectly gave birth to a legal obligation for the General Election Commission, for that the General Election Commission must carry it out properly. Therefore, the Election Supervisory Body needs to oversee the election commission in carrying out the mandate of the decision.

Keyword : Supreme Court's Decision; Judicial Review; The Election Commission Regulations.

ABSTRAK

Peraturan Komisi Pemilihan Umum Nomor 26 Tahun 2018 yang dibentuk oleh Komisi Pemilihan Umum sebagai Tindak Lanjut Putusan Mahkamah Konstitusi Nomor 30/PUU-XVI/2018 yang pada pokoknya melarang calon anggota Dewan Perwakilan Daerah yang merangkap sebagai pengurus partai politik tetapi peraturan Komisi Pemilihan Umum tersebut dibatalkan oleh Mahkamah Agung berdasarkan putusannya Nomor 65/P/HUM/2018. Tujuan Penelitian ini adalah untuk menganalisis serta mengetahui apakah Putusan Mahkamah Agung memiliki kekuatan hukum mengikat terhadap Komisi Pemilihan Umum. Metode penelitian yang digunakan yaitu yuridis-normatif dan menganalisis secara kualitatif. Hasil Penelitian menunjukkan bahwa Putusan Mahkamah Agung yang membatalkan norma hukum dalam Peraturan Komisi Pemilihan Umum tetap memiliki kekuatan hukum mengikat karena setiap putusan hakim harus dianggap sah menurut hukum sampai ada pembatalan (*res judicata pro veritate habetur*), begitu pula secara yuridis putusan Mahkamah Agung langsung dimuat dalam berita Negara, dengan diundangkan Putusan Mahkamah Agung maka tentunya menjadi dasar legitimasi berlakunya Putusan a quo. Putusan yang dikeluarkan oleh Mahkamah Agung secara tidak langsung telah melahirkan kewajiban hukum bagi Komisi Pemilihan Umum untuk itu Komisi Pemilihan Umum wajib menjalankannya sebagaimana mestinya. Oleh karena itu, Badan Pengawas Pemilihan Umum perlu mengawasi komisi pemilihan umum dalam menjalankan amanah putusan tersebut.

Kata Kunci : Putusan Mahkamah Agung; Judicial Review; Peraturan Komisi Pemilihan Umum.

A. INTRODUCTION

The existence of judicial power nowadays is associated with *Trias Politica*, a classical liberal theory of separation of powers among legislature, executive, and judiciary power into different branches of government. The purpose of power separation is to prevent government from practicing arbitrary government or abusing of executive power which may potentially lead to violation of rights of the people they rule. Historically, this theory was first proposed by John Locke in his book entitled *Second Treatise of Civil Government* (1960) which stated that

"the best way to avoid a perverted government was to provide constitutionally for separation of legislative and executive powers. Montesquieu in his Spirit of the Laws (1748), added the third powers come into being"(Martosoewignjo, 2014)

John Locke stated that there are three types of powers in a government which have to be divided into separated branches of government consisting of legislative power (making laws), executive power (executing laws), and federative (security and foreign affairs). The influence of Locke's theory concerning the separation of state power is not as much as the influence of Montesquieu (1689-1755), a French philosopher who, in 1748, published a book entitled *L'Esprit des Lois* (The spirit of the laws). Montesquieu, like John Locke, proposed the idea of power separation in a state into three types of powers consisting of legislative power (making laws), executive power (executing or enforcing laws), and judicial laws (adjudicating violations of laws) (Yulistiyowati, Endah & Mulyani, 2016).

Judicial institutions in Indonesia are the realization of judicial power that is the independence of judiciary as mandated by the constitution to enforce the constitution and other laws. The independence of judiciary conveys meaning that the role of judge along with other judicial administrators must be free from other parties involvement, either executive, legislative or other extra judicial powers such as NGO (Non-Governmental Organization) (Prang, 2011). The power of judge is embodied by a Supreme Court and judicial bodies under it, as the administrators of justice, Supreme Court is given authority to adjudicate on cassation level, **to review legislation under the laws against the laws**, and to conduct other authority given by the law. (Simamora, 2013).

In relation to the type and hierarchy of Laws as determined by Article 7 Law Number 12 Year 2011, Article 8 section) 1 adds that

"Other kinds of Rules than as intended in Article 7 paragraph (1) covers the regulations stipulated by Institutions or Commissions equivalent, which is formulated according to the laws by the government under the order of the law."

Thus, institutional or commission regulations meant in Law P3 may cover regulations determined by institutions such as Corruption Eradication Commission (KPK), Indonesian Broadcasting Commission (KPI), The Commission for Business Competition (KPPU), and General Elections Commission because P3 Law does not determine the limit to what Institutions or Commission has authority to make regulation. For this reason, If KPU stipulates

KPU Regulations (PKPU), these Regulations are considered valid under the law as one of laws, and they definitely have binding power over all people.

¹ In context of the formulation of Regulation of General Elections Commission (PKPU), substantially, KPU Regulation Number 26 Year 2018 concerning The Second Amendment of General Elections Commission Regulation Number 14 Year 2018 concerning Individual Candidacy of Participants of General Election of Regional Representatives Council is principally established or determined by General Elections Commission (KPU) under Constitutional Court Number 30/PUU-XVI/2018. In essence, Constitutional Court's Decision prohibits candidate of Regional Representative Council to be a political party official either in central or regional level when participating for the elections. Therefore, KPU directly follows up by issuing KPU Regulation Number 26 year 2018 which contains "Constitutional Court's Decision Number 30/PUU-XVI/2018. This is supported by Article 60A KPU Regulation Number 26 Year 2018 stipulating that one of the requirements which must be fulfilled in order to be a Regional Representative Council Member is that the candidate is not in a position as a political party official in central, provincial, and municipal/ city level (see Constitutional Court's Decision No 30/PUU-XVI/2018)". However, in the progress, KPU Regulation was pleaded to have judicial review by the Supreme Court over Law Number 12 Year 2011 concerning ¹ Legislations Drafting Process, thus generating ¹ Supreme Court's Decision Number

³ ² 65/P/HUM/2018 that essentially mentions that Supreme Court states that Article 60A KPU Regulation Number 26 Year 2018 contravenes Article 5 Law Number 12 Year 2011 and does not have binding legal force.

⁸ Based on the background of the problem aforementioned, the author is interested in examining whether ¹ Supreme Court's Decision Number 65/P/HUM/2018 has binding legal force over General Elections Commission.

Theoretically, a legal state or state of law can be separated between Continental Europe State of law and Anglo Saxon State of law. The concept of legal state in Continental Europe was developed by thinkers such as ⁴ Immanuel Kant, Paul Laband, Julius Stahl, and others using German term *rechtsstaat*. Meanwhile, in American Anglo tradition the concept of legal state was developed by pioneer A.V. Dicey with the term The Rule of Law. According to "Julius Stahl, the concept of legal state called *rechtsstaat* is : (a). Protection of Human Right; (b). Power division based on *trias politica* in order to guarantee the implementation of human rights; (c). Government based on laws; (d). Administration Trial is in dispute (Siallagan, 2016)". Still according to ⁴ A. V. Dicey, the characteristics of legal state called The Rule of Law are : (a). *Supremacy of law*; (b). *Equality before the law*; (c). The guarantee of the implementation of human rights by the law and Court's decisions. In addition, Jimly Asshiddiqie divided the principles of legal state into the following 12 parts : "(a). Supremacy of law; (b) Equality before the law; (c).

The principle of Legality; (d). Restriction of power; (e). Independent executive organs ; (f). Free and fair trial; (g). State Administrative Court; (h). Peradilan Tata Negara; (i). Protection of Human Rights; (j). Democratic; (k). Functioning as an instrument to realize the goal of a state (*welfare rechtsstaat*); (l). Social transparency and control (Muntoha, 2009)".

Furthermore, in the study of legislation, there is a theory of hierarchy (*stufenbau theory*) stated by Hans Kelsen. This theory states that legal norms which have lower hierarchy must not contradict legal norms which have higher hierarchy, and legal norms with higher hierarchy must not contradict norms which become the foundation of the enactment of other laws (Aditya, & Winata, 2018). According to "Bagir Manan citing opinion of P.J.P Tak in his book entitled *Rechtsvorming in Netherland* described the definition of legislations in material sense of meaning which in essence means: (a). Legislations are written decisions contained legal rules to regulate citizens behaviors; (b). Legislations are stipulated by officials or official environment (body, organ) which have authority to make rules which are valid and binding the public; (c). Legislations binding the public are not meant to have to bind every individual. Binding public only means that legislations do not apply for concrete events or certain individual". (Aditya, & Winata (2018)

⁶ Supreme Court's Decision Number 65/P/HUM/2018 which nullified Article 60A Section (1) KPU Regulation No 26 Year 2018 is supposed to be a decision which is legally binding over General

Elections Commission or KPU because Supreme Court's Decision directly became a law in state news (Article 31A Section (8) Law No 3 Year 2009). However, as a matter of fact, after Supreme Court's Decision had become Law in State News, General Elections Commission still did not obey the Decision.

This study is a novel research because it was based on latest issue in 2019. One of the issues is different opinion between ¹ Supreme Court's Decision and Constitution Court's Decision concerning the candidacy requirements of Regional Representative Council member General election. However, this study will focus on the examination of binding legal force of Supreme Court's Decision over General Elections Commission or KPU. Therefore, there is difference with some previous studies, such as study by Ahmad Mulyatno discussing Problems of Judicial Review in Supreme Court and Constitution Court (Mulyanto, 2013). Moreover, a study by Andryan discusses the Implication of The Decision of the right to Judicial Review in Supreme Court on ⁵ The Legality of The Head of Regional Representative Council Republic of Indonesia (Andryan, 2018). In addition, a study by Riki Yuniagara, Eddy Purnama, and M. Saleh Sjafei concerning " Binding Legal Force of SEMA No. 7 Year 2014 concerning The Application of Review of Court Decision in Criminal Case (Yuniagara, Purnama, & Sjafei, 2017). Meanwhile, an international journal by Ole W Pedersen discusses "A study of Administrative Environmental Decision-Making before the Courts (Pedersen, 2019)" and a study by Benjamin Salas Kantor and Maria Elisa

Zavala Achurra discusses *"The Principle of res judicata before the International Court of Justice: in the Midst of Comradeship and Divorce Between International Tribunals"* (Kantor, & Achurra, 2019).

B. RESEARCH METHOD

Method used in this research was juridical normative with statute approach and conceptual approach in order to analyze binding legal force of Supreme Court's Decision in judicial review of KPU Regulation Number 26 Year 2018 qualitatively

C. RESULT AND DISCUSSION

1. The Urgency of General Elections Commission Regulation (PKPU) Number 26 Year 2018

General Elections Commission is an independent permanent state institution. In constitutional system, KPU serves to help realize The five Principles (Pancasila) based democracy. Thus, it is no surprise if KPU is present not only in central level, but also in regional level. KPU has many branches in each region. It is one of state institutions mandated by the Constitution to organize general election (Article 22E Section (5) The Constitution of the Republic of Indonesia). As an election organizer, Law No 7 year 2017 concerning General elections has given KPU authority to draft and stipulate General Elections Commission Regulation in order to organize the implementation of general election (Article 75 Section (1) Law & Year 2017). Therefore, General Elections Commission Regulation (PKPU) is admitted as one type of legislations according to

Article 8 Section (1) Law no 12 Year 2011 concerning legislation drafting stating that *"Other kinds of Rules than as intended in Article 7 paragraph (1) covers the regulations stipulated by the People's Consultative Agency, House of Representatives, Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board, the Judicial Commission, Bank of Indonesia, the Minister, agency, institution, or same level commission established by Law or Government on the instruction of Law, Provincial Regional House of Representatives, Governor, Regency/Municipality Regional House of Representatives, Regent/Municipal Government, the Village Head or the equivalent."* Thus, by following the logic of P3 Law, it is clear that legislation also covers **Commission Regulations**, in this case written General Elections Commission Regulation (PKPU). PKPU contains legal norms and at the same time has binding force in public scale.

Zainal Arifin Hoesein explained in his research entitled "The Formulation of Law in Perspective of Law Reformation" that legislation itself has two main functions consisting of internal and external function. Moreover, he also explained that internal function serves as; (a) creation of law; (b) reformation of law; (c) pluralism integration of legal system; (d) legal certainty. Meanwhile, external function serves as; (a) function of change; (b) function of stability; and (c) function of ease (Hoesein, 2012)

Judicially, the drafting of legislations must take into account the principles of legislation drafting itself.

Some of the principles state that legislation drafting must have clarity of goal, proper drafting institutions, versatility, and expedience as well as compatibility to legislation types, content of material, and hierarchy. More specifically, according to the principle of *Lex Superiori Derogate Legi Inferiori* which means legislation in lower hierarchy must not contravene legislation in higher hierarchy. Therefore, the drafting of PKPU or KPU Regulation No 26 year 2018 must not contravene the Law of Election, P3 Law, and other laws because hierarchically they have higher position. One of the urgencies or emergency to make ²KPU Regulation Number 26 Year 2018 concerning ²Second Amendment of KPU Regulation Number 14 year 2018 concerning Candidacy, independent candidacy, Participants of the general election of Regional Representative Council Members is due to Constitution ²Court's Decision Number 30/PUU-XVI/2018, which basically is contained in pages 49-51 a *quo* Decision. This decision gives KPU legal obligation to prohibit the candidates of Members of Regional Representative Council who is during the candidacy also serving as political party officials either in central level or regional level. This Decision had given KPU legal obligation so that the Constitution Court's Decision was followed up and covered in KPU Regulation No 26 Year 2018. This can be seen clearly in the provision of Article 60A section (1) stating that "the fulfillment of the requirement of Regional Representative Council Members as intended in Article 60 Section (1) letter P includes not in a position as political party officials in

central, provincial, and municipal level. Section (2) states that prospective candidates of Regional Representative Council Members as intended in Section (1) have to resign from his/her position as political party officials before the period of member candidacy of Regional Representative Council. This KPU Regulation ever sparked a debate either in political or juridical domain. As a result, a *quo* Regulation was proposed for judicial review to Supreme Court by some parties who felt defeated as caused by the enactment of a *quo* regulation.

2. Judicial Review (KPU Regulation No 26 Year 2018) by The Supreme Court

Ni'matul Huda and R. Nazriyah distinguished between the term Judicial Review and Constitutional Review. Constitutional Review is a process of legislation review using the Constitution (The 1945 Constitution) as review guidance to assess laws or other legislations. Meanwhile, Judicial Review has quite wide definition because it covers all process of legislations review. It is not only limited to constitutions, but also covers the legality of the legislations under the law against the law (Umam, 2016). The term of judicial review means that court institutions has authority to nullify every single government action which contravenes the constitution or legislation (Mulyatno, 2013). According to ⁵Supreme Court Regulation (PERMA) Number 1 year 2011 concerning ⁵The Right of Judicial Review, it is the right owned by Supreme Court to assess the material content of a legislation under the laws against higher laws. This is because the object of the

Right of Judicial Review is legislation which is defined as a written rule which publicly binds under the laws.

The review of legislations in Indonesia Constitution was first adopted by The Republic of Indonesia in 1970 through the ratification of Law No 14 Year 1970 concerning keys of judgment power. This legislation substantially gives authority to Supreme Court to assess and at the same time review the legislations under the law against the laws. Then, the concept of judicial review was reaffirmed in the Constitution after the Amendment of the 1945 Constitution, in the third Amendment exactly. The mechanism of judicial review is a process to solve a norm conflict or overlapping of legislations through constitutional instrument. Judicial review of legislations is a vertically normative control of products of law or laws passed in order to maintain a consistency and normative harmonization vertically in a democratic state law (Hoesin, 2009). As a state which follows European Continental Law State, the government must base its conduct on the principle of legality.

The legality of government action is based in state Constitution. Therefore, constitution has regulated that Supreme Court is a state institution which is given constitutional authority to conduct judicial review, as stipulated in the provision of Article 24A 1945 Constitutions stating that:

"Supreme Court has authority to adjudicate in cassation level, conduct judicial review of the legislations under the law against the law, and to implement other authority given by the law."

¹Therefore, judicial review of legislation under the law is the authority of Supreme Court. It is the task of Supreme Court to review and determine whether a regulation or legislation is valid or not or to nullify legislations with lower level than law if there is provisions against the laws or higher level laws (Putra, 2013). In context of judicial review of legislation, there are some Supreme Court's Decisions concerning the case of judicial review which interpretation is not found in the Constitutions during. This decision can be seen in some decisions such as in PUTUSAN No. 54/P/HUM/2010. PUTUSAN No. 09/P/HUM/2004, PUTUSAN No. 4/P/HUM/2013, and PUTUSAN No. 42/P/HUM/2012. The decision mentioned the last is the decision of a plea of judicial review of Presidential Decree ⁵of The Republic of Indonesia Number 3 Year 1997 concerning The Supervision and Control of Alcoholic Beverages over Law No. 36 Year 2009 concerning ⁸Health, Law No. 8 Year 1999 concerning Consumer Protection, and Law No. 7 year 1996 concerning food. This decision can be said as a decision which is rich of legal argumentation compared to other decisions. However, if we examine carefully, there is no constitutional consideration in the Decision. Although the Supreme Court cannot make The Constitutions or The 1945 Constitutions as a guiding stone, perspective of constitution needs to be addressed in its legal consideration in order to maintain the harmonization among the hierarchy of the legislations (Junaenah, 2016). This is different from ¹Supreme Court's Decision Number

⁶65/P/HUM/2018 concerning Judicial Review of General Elections Commission Regulation (PKPU) Number 26 year 2018. This decision has a very clear basis of legal argumentation stating that Supreme Court sees that the constitutionality of Article 60A PKPU No. 26 Year 2018 is contradictory to Article 5 Law No. 12 year 2011 concerning Legislation Drafting which is about the principle of institution authority or authorized agencies which can make laws. Supreme Court argues that Decision of Constitution Court Number 30/PUU-XIV/2018 should not be followed up by KPU. What is the reason? Because to follow up a Constitution Court's Decision is the obligation of People's Representative Council and Government as mandated by Article 10 Section (2) Law No. 12 Year 2011. The follow up of Constitution Court's Decision through the mechanism of drafting or amending the laws or by issuing Government Regulation in Lieu of Law aiming to cover the content material of Constitution Court's Decision (Lumbuun, 2009). Therefore, the provision of Article 60A initially containing the prohibition for the candidate of Regional Representative Council members to concurrently hold position as political party officials is nullified by the Supreme Court so that it no longer has binding legal force. Judicially, if a legal norm in legislation has been nullified by a court institution (in this case the Supreme Court), the legislation no longer has binding legal force for every single individual of its citizen to obey it.

3. Binding Legal Force of Supreme Court's Decision

A judge can only pass a decision in a trial if the judge has comprehended the real problem of the case. When a decision is passed, it means that the examination of the case is complete. Then, judge reaches a verdict of decision. According to Sudikno Mertokusumo, Supreme Court's Decision is a statement passed by a judge as a state official who is given authority to do so, uttered by a judge in a trial and aiming to solve a case or dispute between the parties involved (Sulardi, 2015). Each decision must be uttered in a trial open for public, if not, then the decision will not have binding legal force. This is basically in accordance with the Principle of Justice which applied universally, which is "an open trial for public". The principle of open trial for public aims to give people a role to be able to control the implementation of clean, honest, and fair trial.

⁶In regard to Supreme Court Judge's Decision Number 65/P/HUM/2018, judicially, ²the Decision remains valid and has binding legal force because it is announced in a trial open for public (on Saturday 10th November 2018). However, what is interesting is that it obeys Supreme Court's Decision Number 65/P/HUM/2018 either the legal consideration, judicial verdict, or legal consequence arising from the decision. As a matter of fact, theoretically this decision can be categorized as a monumental decision because the decision contains three traits of judge's verdict or decision, *declaratoir*, *constitutief*, and *condemnatoir*. How so? First of all, the decision contains the sense of *declaratoir* meaning because a quo decision states that KPU Regulation contravenes

Article 5 Law P3. This means that the judge stated that this what the law is supposed to be, and KPU has to obey it. Second of all, the decision contains the sense of *constitutief* because this decision nullifies or cancels legal norm listed in KPU Regulation No. 26 Year 2018. One of the legal norms nullified is legal norm stated in Article 60A stipulating that candidate of Regional Representative Council Member must not concurrently serve as political party officials. Third of all, the decision contains the sense of *condemnatoir* because it punished the petitionee (in this case KPU) to implement PKPU in 2019 general election and returned some names of Regional Representation Council candidates into the fixed candidates list (DCT, Daftar Calon Tetap). Therefore, a quo decision is legally binding over KPU.

The question remains is what is meant by a decision legally binding. In the author's opinion, a decision legally binding is Judge's Decision which according to the provisions of law binds the parties involved and cannot be challenged. This means that there is no other legal effort to nullify the decision. The binding trait of a decision leads to legal consequence for the associated parties. This means that one party will have a right and the other party will have an obligation. Therefore, both parties must mutually obey and follow the decision.

The substance of judge's decision must contain points regulated in Article 50 Law No. 48 Year 2009 concerning the Power of Judgment i.e.:

"Court judgment must contain not only the reason and basis of a decision, but also certain articles from

related legislation or unwritten sources of law as the basis to pass a judgment"

The substance of ²Supreme Court's Decision No. 65/P/HUM/2018 has fulfilled the elements of a decision as determined by the Law of Judgment. Therefore, Judge's Decision No. 65/P/HUM/2018 must be considered valid until there is nullification (Res Judicata Pro Veritate Habetur). Thus, ⁶Supreme Court's Decision Number 65/P/HUM/2018 nullified the provision of Article 60A KPU Regulation No. 26 Year 2018 because it is considered contradictory to Article 5 Law No. 12 Year 2011. KPU must consider this is the valid decision until there is nullification. This is a form of KPU's respect to independent justice institution.

Although legal norm in KPU Regulation is sourced from Constitution Court's Decision No.30/PUU-XVI/2018, it is important to note that every judge has his own freedom to decide a case so that any court is not bound to other judges' decision. Even more, Supreme Court's Decision which nullifies a legal norm in legislation under the law must be passed in state news or regional news (Article 31A section (8) law No 3 Year 2009) for legal certainty and legal expedience. Since Supreme Court's Decision is passed in state news or regional news, it means that automatically it has fixed legal force and there is no legal effort that General Elections Commission can make in order to nullify the decision (Hoessein, 2012). Supreme Court's Decision which has fixed legal force means that it binds General Elections Commission legally because the decision

has given General Elections Commission obligation not to issue a regulation or Decision which restricts citizens' constitutional right to participate in general election. Theoretically, when legislation is published in state news, all of the citizens are considered noticing the legislation and therefore, they are obligated to obey it. The ignorance of a regulation which has been published cannot be a reason of justification and an excuse (The theory of Law Fiction) (Mas, 2016). The purpose of publishing Supreme Court's Decision in State News is to inform the people that there is amendment or nullification of a norm in legislation under the law. Therefore, when Supreme Court's Decision is *inkracht*, in order to secure legal certainty, General Elections Commission and associated citizens are obligated to obey the decision. (Ardian, Akib., & Budiyo, 2016).

D. CONCLUSION

KPU Regulation No 26 Year 2018 was stipulated due to Constitutional Court's Decision, however then, it was nullified by the ¹Supreme Court based on Decision Number 65/P/HUM/2018 because it was considered contradicting to the principles of proper legislation drafting. Theoretically, Judiciary power is independent in deciding a case and is not bound to any judge's decisions. Thus, legal norms in KPU Regulation nullified by the Supreme Court must be considered valid according to the law. It means that the decision is automatically and directly binding KPU. Moreover, Supreme Court's Decision in case of judicial review under law is final as a result this

closes the path for KPU to take other legal actions. Each Supreme Court's Decision mentioned in a trial open for public, immediately ordered to be published in state news so that by doing this, Supreme Court's Decision becomes basic foundation of "binding legal force" over general elections commission to obey the decision because Supreme Court's Decision also contains certain legal obligation to general elections commission or KPU. Therefore, in terms of implementation, Election Supervisory Agency (BAWASLU) is required to supervise General Elections Commission (KPU) in implementing the constitution mandate as conveyed in ¹Supreme Court's Decision Number 65/P/HUM/2018.

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PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10

PAGE 11

PAGE 12