ISSN 2746-4563

The Constitutionality of the TAP MPR's Decisions in the Legislative Hierarchy

Brillian Gustama [a,1,*], Sholahuddin Al-Fatih [b,2]

[a] Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia.
[b] Faculty of Law, University of Muhammadiyah Malang, Malang, Indonesia.
[1] gustamabrilian@gmail.com*; [2] sholahuddin.alfath@gmail.com
* corresponding author

ARTICLE INFO

Keywords
TAP MPR
Hierarchy
Judicial Review
Legislation

ABSTRACT

This study aims to analyze the influence of TAP MPR in Indonesia. Placement of MPR Provisions in Law No. 12 of 2011 on the hierarchy of Legislation in Indonesia becomes one of the problematics that needs to be discussed, on the grounds of the position of MPR provisions that are under exactly the Constitution of 1945. This is based on the position of the MPR Decree itself which will automatically become a reference to the rules under it, in accordance with the theory of stairs put forward by Hans Kelsen. Although from the point of view of the position of MPR determination is still understandable if Hans Nawiasky theory is used as the basis. But in terms of testing itself of course this will raise a big question mark for all of us because in the Constitution of 1945 institutions or institutions that have the right to conduct a test of the Law is the Constitutional Court and the Supreme Court, but within its own scope the Provision of MPR is outside the juridical territory of the two Institutions themselves. Therefore, there needs to be a solution if at any time the MPR Decree is not in accordance with the basis of the 1945 Constitution so that there will be no defects in one of the legal sources of the State of Indonesia.

1. Introduction

In each country must be a hierarchy of legislation that moves the process of running a country. In Indonesia this is called hierarchies, in the large Dictionary of Bahasa Indonesia itself the hierarchy is interpreted as a level or level, so if we refer to it then the hierarchy can be explained as a component or structural which in the highest chart it will be a reference to the charts below.[1] In the category of Indonesian law itself there is already a hierarchy of laws and regulations governing the running process of a country where this has been regulated in Law No. 12 of 2011 article 7 (1), and in one component of the legal hierarchy there is one component that is still debated to date about the importance or not of this legal component is included in the hierarchy of Indonesian legislation, namely Tap MPR.

TAP MPR itself procedural is a legal product made by the Indonesian Consultative Assembly or we can brief as MPR. In the early days of self-independence in which Indonesia adhered to the principle of supremacy of the People's Consultative Assembly (MPR) which if we refer to the international realm, this kind of principle is similar to the system of parliamentary government which in its own parliament the position of the legislative body feels very powerful compared to

[1]Dendi Sutarto, 'Epistemologi Keilmuan Integratif-Interkonektif M. Amin Abdullah Dan Resolusi Konflik', *Jurnal Trias Politika*, 1.2 (2017), 2022 https://doi.org/10.33373/jtp.v1i2.1064

other institutions, but also we see the Indonesian nation that adheres to the system of presidential government, this kind of thing can not immediately we make a reference that Indonesia at that time had violated the system of government itself[2].

So, this kind of thing that happened in Indonesia at that time can be called as one variant (form) supremacy of parliament in the world because in article 1 (2) of the 1945 Constitution before the amendment itself explained " Sovereignty is in the hands of the people, and carried out entirely by the People's Consultative Assembly." Explicitly the sentence in the article means that the People's Consultative Assembly is a form of the contour body of people's sovereignty, so it is not surprising if the People's Consultative Assembly at that time was the highest Institution of the Government of Indonesia.[3]

In the process itself the People's Consultative Assembly which at that time was named the Provisional People's Consultative Assembly or MPRS due to the issuance of the presidential decree on July 5, 1959 first issued its legal product, TAP MPR in 1966 with decree number XX/MPRS/1966. The decree was issued to regulate the type and hierarchy of laws and regulations in Indonesia in appendix II (Main Mind IIA) TAP MPRS itself right under the 1945 Constitution[4]. In other words since the regulations governing TAP MPR were issued, its position since the past has been right under the 1945 Constitution and it is up to the latest Indonesia legislation namely Law No. 12 of 2011 but in its own journey TAP MPR was never in the structural hierarchy of Indonesian legislation precisely in law no. 10 of 2004, but in the absence of TAP MPR in the law then not so the existence of TAP MPR will not be recognized. However, this only lasted 8 years because in the latest law that applies until now the position of TAP MPR Back under the 1945 Constitution, of course this is a separate obstacle related to the testing of legal norms against TAP MPR and vice versa TAP MPR against the Constitution of the Republic of Indonesia 1945.

Theoretically, the testing of norms can be divided into two, firstly the testing of the law against the 1945 Constitution conducted by the Constitutional Court Institution based on article 24C paragraph (1) and the youthful testing of legislation under the Law against the law conducted by the Supreme Court in accordance with article 24A paragraph 1. However, the testing of TAP MPR is the problem, because there is no regulation that states the existence of an agency that can review the existing norms against TAP MPR. So, it is clear if we tip with theoretical studies both the Court and ma cannot do a review of the TAP MPR because their authority clumps are not there if we are based on what has been written in the 1945 Constitution [5]. After the amendment of the 1945 Constitution itself MPR does not have the authority to issue TAP MPR again, but of course this does not close the possibility of misappropriation of TAP MPR against the 1945 Constitution. If we know for ourselves, until now Indonesia still enforces eight TAP MPR. The eight TAP MPR are:

1. TAP MPRS No XXV/MPRS/1966 on the dissolution of the Communist Party of Indonesia, the declaration as a prohibited organization throughout the territory of the Republic of Indonesia for the Communist Party of Indonesia and the prohibition of any activities to disseminate or develop communist/Marxism-Leninism
2. TAP MPRS No. XXIX/MPRS/1966 on The Appointment of Ampera Heroes
3. TAP MPR No. XI/MPR/1998 on The Implementation of a Clean and Free State KKN (Corruption, Collusion, Nepotism)
4. TAP MPRS No XVI/MPR/1998 on Economic Politics in the Framework of Economic Democracy.
5. TAP MPR No. VI/MPR/2001 on Ethics of National Life
6. TAP MPR No. VII/MPR/2001 on Indonesia's Vision of the Future
7. TAP MPR No. VIII/MPR/2001 on Recommendations for Policy Direction of Eradication and Prevention of KKN (Corruption, Collusion, Nepotism)

[2] Sholahuddin Al-Fatih, 'Model Pengujian Peraturan Perundang-Undangan Satu Atap Melalui Mahkamah Konstitusi', *Jurnal Ilmiah Hukum LEGALITY*, 25.2 (2018), 247 https://doi.org/10.22219/jihl.v25i2.6005

[3] Khudzaifah Dimyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 https://doi.org/10.1016/j.heliyon.2021.e07865

[4] Session Presentation, 'Parcours, Financement, Accréditation : L'organisation Des Soins En MPR', *Annals of Physical and Rehabilitation Medicine*, 56 (2013), e263 https://doi.org/10.1016/j.rehab.2013.07.517

[5] Al-Fatih.

8. TAP MPR No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management

The eight TAP MPR mentioned to date have not been revoked and remain valid in the Indonesian government. Problematics present if the post- TAP MPR later this one of them there is a conflict with the 1945 Constitution, this kind of thing does not close the possibility can happen if we see for ourselves how the development of the law in each year, therefore we need to anticipate these kinds of possibilities. If we refer to the Decree of MPR No. 1/MPR/2003 on the Review of Materials and Legal Status of the Provisions of the People's Consultative Assembly Year (MPRS) and the Provision of MPR RI Year 1960 to Year 2002.

Examining what is written in the TAP MPR reveals that this provision implicitly seeks to provide legal confirmation of the TAP MPR, despite the fact that this legal product cannot be made or repealed following the amendment of the 1945 Constitution. Exactly because of this, the public will question why tap MPR was reinstated after the 1945 Constitution was amended to remove the authority of the MPR Institution to make or establish TAP MPR, and if there is an error in the eight TAP MPR institutions who are entitled to review the TAP MPR, despite the fact that the 1945 Constitution does not specify a single institution that can conduct a review of TAP MPR. Therefore, this paper will concentrate on the aforementioned two problem areas. Why is MPR regulation again included in one of the sources of Indonesian law based on Law No. 12 of 2011 and nstitutions entitled to review the MPR Decree in the event of any deviation from the 1945 Constitution.

2. Research Method

The purpose of the writing is to describe in detail what the regulation of MPR is in the hierarchy of legislation and what effect the position of MPR determination in the 1945 Constitution has. Based on the problem, the approach method used is normative juridical research in the form of problem approach through literature review and legislation that, if applicable, can strengthen what is written in this Journal. Several problem-solving approaches will be described in this academic paper, including the ones listed below, historical approach, statutory and conceptual approach. The theory used in this research is the theory of research in the study of the field of law, where the author uses several kinds of theories such as Trias Politika, Check and Balance that have been widely used in the world of international state regulation. The basic concept is the absence of an Institution that can have authority that exceeds its scope limit and, in each institution, there must be a synergy in order to create good communication between government agencies[6].

3. Results and Discussion

The reform era is a moment where the State of Indonesia can simplify everything that feels wrong during the new order period. Because in this new order era is very clear that the principle *of check and balance* is not visible at all. Therefore, in this era of reform is expected what is expected by our *founding fathers can* be run as much as possible. Reflecting on the era before the reform in which there is a highest institution based on article 1 (2) of the 1945 Constitution and article 3 (1) before the amendment, in the article it explains that MPR is a body that represents the sovereignty of the People of Indonesia and MPR is a body that sets the outlines of the direction of the state (GBHN).

Although, in the article is not explained in writing that the MPR is the highest body of the state but in the essence of both articles implied that MPR is the construction of the sovereignty of the people itself and is the body that governs the direction of the state which in this way means that the MPR is the highest body of the state at the time. This certainly violates the concept of the rule of separation of powers based on the concept of trias politika *and the principle of check and balance, but with the* return of the constitution to the path that should be in the era of reform, then on October 21, 1999 for the first time an amendment to the 1945 Constitution, this is just the opening gate to the changes that will be made to the 1945 Constitution until finally found the form of the

[6] Jefirstson Richset Riwukore and Fellyanus Habaora, 'Studi Keberadaan Tap Mpr Ri Dalam Konsep Negara Hukum Indonesia Pasca Pemberlakuan Undang-Undang Nomor 12 Tahun 2011', *Jurnal Abdimas Mandiri*, 3.1 (2019), 30–35 https://doi.org/10.36982/jam.v3i1.727

1945 Constitution which is materially in accordance with what Indonesia needs in the future and finally on August 1, 2002 held the fourth or last amendment until this journal was made against the 1945 Constitution that lasted until August 11, 2002 marked the beginning of the establishment of a new Indonesian constitution.

In one of the articles affected by the amendment is article 1 paragraph (2) which explains the sovereignty of the people is in the hands of the MPR replaced with a new explanation that reads "sovereignty is in the hands of the people and is carried out according to the Constitution." and article 3 paragraph (1) which previously reads" The People's Consultative Assembly establishes the Constitution and The Bow Outlines of there is a State Direction" then replaced "The People's Consultative Assembly is authorized to amend and establish the Constitution." Chapter 3 itself which initially contained only one explanation of the verse then carried out the addition to the current three verses in the chapter. With the new provisions of course end the position of MPR as the highest institution in Indonesia so that all institutions in Indonesia be it the legislature, executive, and judiciary have the same level, but of course this also causes a chain effect on the authority of the MPR itself, one of which is the removal of authority to regulate the outline of the state direction (GBHN)[7]. With this, MPR automatically cannot have authority which in this context is regulating (*regeling)* or can be called as TAP MPR this at the same time end the authority of MPR that has been going on since 1960 ago.

As mentioned earlier, that form of MPR Decree began to be known since 1960, namely since MPRS first convened and made decisions. This practice is running and continued by MPR. Because it has been running long enough and accepted as part of Indonesian constitutional practice, the form of MPR Decree be one of the Indonesian laws[8]. In its own level of regulation, it is explained that the strictness of MPR has power both in and out. Binding power into means the provision of MPR binding all members of the MPR with the intended that all members of the MPR comply with and apply what has been agreed in the order, while binding out means that this provision must be implemented by the whole nation due to its legal nature.

With all the authority given to MPR in the era before the reform, of course this raises a big question mark to some parties who are quite questioning about the existence of the MPR itself. If examined more deeply about the principles that have been disseminated by Montesquieu on trias politica about the separation of power delivered to the three Institutions, namely:

A. Legislative

Legislative institutions are institutions or bodies that are functionally tasked to create and formulate laws, policies, and regulations in a country. In Indonesia itself this institution consists of the House of Representatives (DPR), the House of Regional Representatives (DPD), and a combination of the House of Representatives and the House of Regional Representatives, namely the People's Consultative Assembly (MPR) this is because in Indonesia adheres to a bicameral system that is a system consisting of two rooms aimed at achieving good order and expected to achieve check and balance between state institutions, especially in legislative institutions.

B. Executive

An executive institution is an Institution or body that is functionally tasked to carry out policies, laws, and regulations created by the Institution or legislative body. The body consists of presidents, vice presidents, and ministers.

C. Judiciary

A judicial institution is an institution or body that is functionally tasked to supervise, supervise, and monitor the process of law implementation, and supervision of legal implementation in a country[9]. The body consists of the Constitutional Court (MK), the Supreme Court (MA), and the Judicial Commission (KY).

---

[7] Wilma Silalahi, 'Penataan Regulasi Berkualitas Dalam Rangka Terjaminnya Supremasi Hukum', *Jurnal Hukum Progresif*, 8.1 (2020), 56–66 https://doi.org/10.14710/hp.8.1.56-66

[8] Hernadi Affandi, 'Prospek Kewenangan MPR Dalam Menetapkan Kembali Ketetapan MPR Yang Bersifat Mengatur', *Jurnal Hukum Positum*, 1.1 (2016), 39–50 https://doi.org/10.35706/positum.v1i1.526

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

Based on what is described above, we can conclude that the happiness of power in the Indonesian government system implicitly applies the concept of trias politica. But here is confusing When the era before the reform of the People's Consultative Assembly (MPR) has too much authority for one legislative institution that of course this will affect check and balance not only in legislative institutions but all Indonesian institutions will not only be affected.

Check and Balance in State Regulation Before Amendment

The principle of check and balance is the principle of state regulation that requires the three Institutions or legislative, executive, and judicial powers can control each other and have an equal position[10]. Such application aims to avoid abuse of authority from state organizers or individuals occupying government positions. Technically, check and balances in a democracy is a natural thing with the aim to avoid abuse of power of an institution or power that is only concentrated in certain institutions or individuals.[11] According to Mahfud MD, one of the weaknesses of the 1945 Constitution before the amendment is the absence of a checks and balances mechanism. This can be proven by the overly prominent role of the president at that time, with his various prerogatives. But I personally think the MPR Institution can also be categorized as an Institution that does not meet the principles contained in the principle of check and balance, it is because in the making of MPRS decree No.XX/MPRS/1966 on Memorandum DPR-GR concerning the Source of Law Order of the Republic of Indonesia and the Order of Legislation of the Republic of Indonesia.

They put the provision of MPRS right under the 1945 Constitution especially if we look at the rules of check and balance in order to create a condition in which all Institutions can coordinate with each other with the aim of not committing abuse of power. But placing the provision of MPRS right under the 1945 Constitution can also be said as abuse of power at that time, this is because in the 1945 Constitution the role of the Judiciary institutions was all taken over by the Supreme Court, this certainly shows clearly that the role of the supervisory or judicial institutions at that time was very minimal to create a fair state environment.

Especially considering that at that time the legislative position is higher than the other two institutions, certainly makes the principle of check and balance and triac politica not present at all in the Indonesian constitutional environment[12]. Of course, this makes Indonesia a country that adheres to the parliamentary system of government because of the role of legislative institutions that are very felt at that time especially by bestowing the presidential election process to the MPR in the absence of a democratic process which will further degrade the level of people's trust in their own government. The system that according to the government at that time was a presidential system precisely on some of its own mechanisms like the parliamentary system of government, one of which was the placement of MPRS provisions itself.

MPR Provision

Hans Kelsen argues that legal norms are tiered and multi-layered in an order hierarchy, where a lower norm applies, sourced, and based on higher norms, higher norms apply, sourced, and based on higher norms, so onwards to a norm that cannot be traced further and is hypothetical and fictitious, namely the basic norm (grundnorm)[13]. Basic norms themselves are the highest norms, because norm aini is formed from the results of culture and norms that are ingrained in society and then established by the surrounding community as the foundation of norms that will apply in the future to the life of their society[14].

---

[10] Attaullah Shah and others, 'Judicial Efficiency and Capital Structure: An International Study', *Journal of Corporate Finance*, 44 (2017), 255–74 https://doi.org/10.1016/j.jcorpfin.2017.03.012

[11] Luthfi Widagdo Eddyono, 'Independence of the Indonesian Constitutional Court in Norms and Practices', *Constitutional Review*, 3.1 (2017), 71 https://doi.org/10.31078/consrev314

[12] I Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, and Abdul Kadir Jaelani, 'Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia', *Bestuur*, 7.2 (2020), 36 https://doi.org/10.20961/bestuur.v7i1.42700

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

[14] Jeovan Assis Silva and Tomas Aquino Guimaraes, 'Factors Affecting Judicial Review of Regulatory Appeals', *Utilities Policy*, 72.August (2021), 101284 https://doi.org/10.1016/j.jup.2021.101284

Hans Kelsen's theory was later developed by Hans Nawiasky in his theory called *die lehre vom dem stufenaufbau der rechtsordnung or die stufenordnung der rechtsnormen*. Hans Nawiasky's own legal norms in a country are always tiered, as follows: The fundamental norms of the state *(staatsfundamentalnorm);* Basic rules of state/state rules (*staatsgrundgesetz*); Law (formal) (*formellegesetz*); and implementing regulations and autonomous regulations *(veordnung and autonomie satzung).*

According to Nawiasky himself the content of the fundamental norm *(staatsfundamentalnorm) is* a basic norm for the establishment of the constitution of a country where in Indonesia itself this is realized by the Constitution of 1945. Then under the fundamental norms of the *state (staatsfundamentalnorm)* there are basic rules of state/state rules (*staatsgrundgesetz*) that are poured into the torte of the Constitution. Below it again is); The (formal) law *(formellegesetz)* is then set forth as regulations which in this case aim to expand the material content of the Constitution[15]. The lowest norms are implementing regulations and autonomous regulations (*veordnung and autonomie satzung)* in Indonesia itself these two regulations are Government Regulations and Regional Regulations.

Based on the theory stated by Hans Nawjasky, the position of TAP MPR here is the basic rules of the state/the basic rules of the state (*staatsgrundgesetz)* while making this provision clings to the fundamental norms of the state *(staatsfundamentalnorm)* in this case the Constitution of 1945. With begin, TAP MPR is the regulator of the main points of mind that in the Constitution of 1945. The establishment of Law No. 10 of 2004 for the first time in a series of hierarchical positions of Indonesian laws and regulations of MPR regulation is disabled and replaced by law. Of course, this caused a lot of confusion to tap MPRbecause it is no longer considered as one of the existing laws and regulations in Indonesia, this is coupled with the still validity of TAP MPR at that time that important matters become unclear about its legal status.

However, article 7 of Law No. 10 of 2004 states that "The type of legislation other than as referred to in Paragraph (1) is recognized for its existence and has binding legal force as long as it is instructed by higher laws" , and is explained again in the explanation of Article 7 paragraph (4) which states "Types of Laws and Regulations other than in this provision, among others, regulations issued by the People's Consultative Assembly and the House of Representatives, the House of Regional Representatives, the Supreme Court, the Constitutional Court, the Audit Board, Bank Indonesia, Ministers, Heads of Agencies, Institutions, or Commissions of the same level formed by law or government at the behest of the law, the Provincial People's Representative Council, governors, the District/City People's Representative Council, regents/mayors, village heads or the equivalent.

Based on the results of the above review and the authority of the MPR after the amendment to the 1945 Constitution, the MPR is no longer authorized to establish provisions that are governing and for this reason also TAP MPR is excluded from the hierarchy of Indonesian laws and regulations in the provisions of Law No.10 of 2004. Although it has been explained in article 7 paragraph (4) of Law No.10 of 2004 on the still recognized existence of TAP MPR but, this still raises the issue of unclear legal status of TAP MPR. The vagueness of the position that implies the previous MPR provisions was then answered by the establishment of Law No.12 of 2011 on the Establishment of Legislation. With the enactment of this new law, clearly Law No. 10 of 2004 does not apply Again. In the previous law that did not put the TAP MPR as one of the sources of Indonesian law, in Law No. 12 of 2011 in Article 7 paragraph (1) which states.

Based on the provisions contained in the article above raises the implications for the existence of the re-existence of the MPR Regulation to be one of the sources of material law based on that affirmed by Mahfud MD, "that as a legal source, TAP MPR can be used as a source of material hokum (legal making materials), but not a formal legal source (legislation)." In this way TAP MPR Back to be one of the references related to the making of legislation under it. The institutions that

[15]Larry Cordell and Lauren Lambie-Hanson, 'A Cost-Benefit Analysis of Judicial Foreclosure Delay and a Preliminary Look at New Mortgage Servicing Rules', *Journal of Economics and Business*, 84 (2016), 30–49 https://doi.org/10.1016/j.jeconbus.2015.08.002

handle the Law in this case the DPR, President, MA and The Court should really pay attention to the TAP MPR that is still valid.[16]

The reassessment of TAP MPR under the Constitution of 1945 shows that the relationship between the two norms is delivered by these two legal sources in accordance with the napa in Hans Nawiasky's theory namely: *die lehre vom dem stufenaufbau der rechtsordnung* or *die stufenordnung der rechtsnormen.* In terms of its own function TAP MPR has the function of regulating further related to what if not regulated in the Constitution of 1945 which only regulates the main things and indeed required further elaboration related to the rules contained in it. However, some sources also said that the return of tap MPR in the hierarchy of legislation is only a form of affirmation that the product made by MPR is still valid and recognized legally. The re-placement of TAP MPR in Law No. 12 of 2011 raises a problem that used to exist, namely about who will conduct the assessment if there is a mistake with the current MPR Decree. The authority of ma and MK given by the Constitution of 1945 can only test the Law on the 1945 Constitution (MK) and conduct regulations under the Law on Law (MA). Of course, if we look at theoretical studies these two instances cannot *conduct judicial review of* TAP MPR, thus Law No. 12 of 2011 does not necessarily become final from our legal sources until now.

Judicial Review of MPR Regulation

The re-placement of MPRS provisions and provisions of MPR RI as one type of legislation in the hierarchy of legislation stipulated in Article 7 paragraph (1) letter b, Law No. 12 of 2011 on the Establishment of Legislation is based on the thinking of the weaknesses contained in Law No. 10 of 2004 on the Establishment of Legislation. One of the improvements is the addition of MPR/S provisions as one type of legislation placed after the 1945 NRI Constitution. The provision of MPRS/MPR which is declared still valid in accordance with MPR decree Number I/MPR/2003 and in accordance with Law No. 12 of 2011. Various opinions of constitutional law experts who discuss the Decree of the People's Consultative Assembly can be tested to the Constitutional Court, because the Constitutional Court is more authorized to test the MPR Decree, according to researchers of course this would be contrary to the Constitution of 1945. But theoretically, such a thing becomes a debate because the authority given by the Constitution of 1945 the authority of the Constitutional Court does not reach the realm of TAP MPR. Therefore, there are also many who doubt the authority of the Supreme Court of the Constitution to test the TAP MPR based on the position of the hierarchy of legislation[17].

The position of TAP MPR in Law No. 12 of 2011 certainly issued an issue in the testing of norms among other laws and regulations. This happens because it is feared that there will be a conflict between the TAP MPR and the 1945 Constitution, and what if the legislation under the TAP MPR is contrary to the TAP MPR itself. When we refer to the judiciary, the authority to conduct material testing is the Constitutional Court. However, again this is again in question when we look at the authority written in the 1945 Constitution against the Constitutional Court. If we look at TAP MPR No. I/MPR/2003 precisely in Article 4 because in the article TAP MPR equates its position with the Law that is required to be made as a substitute for the norms stipulated in the previous TAP MPR. Based on Article 4, the Constitutional Court should be able to conduct testing of TAP MPR. However, if we look at what is mentioned in Article 2 of TAP MPR No. I/MPR/2003, then the Constitutional Court is not authorized to conduct testing of TAP MPR as stated in the provisions in Article 2 does not require changes or revocation through the Law as contained in Article 4.

In the process itself TAP MPR has been made a judicial review application *several* times to the Constitutional Court but the petitioners' application is considered non-existent/lost which of course this causes confusion on the part of the Constitutional Court. The first example is the decision

[16]Nisrina Irbah Sati, 'Ketetapan Mpr Dalam Tata Urutan Peraturan Perundang-Undangan Di Indonesia', *Jurnal Hukum & Pembangunan*, 49.4 (2020), 834 https://doi.org/10.21143/jhp.vol49.no4.2343

[17]Andrea Pozas Loyo, 'What Is "Constitutional Efficacy"?: Conceptual Obstacles for Research on the Effects of Constitutions', *Mexican Law Review*, 9.1 (2016), 23–44 https://doi.org/10.1016/j.mexlaw.2016.09.002

related to No. 86/PUU-XI/2013 concerning The Testing of Law No. 12 of 2011 on the Establishment of Legislation, where the proposed article 7 paragraph (1) letter b is placed TAP MPR in the hierarchy of legislation and no state institution is authorized to test it so as not to cause uncertainty of testing against the TAP MPR itself, the Constitutional Court did not accept the application submitted by Viktor's brother and friends.

And the second example related to the testing of MPR Decree No.1/MPR/2013 on Review of Materials and Legal Status of TAP MPR from 1960 to 2002 against the Constitution of 1945, with the material tested article 6 paragraph (30) Tap MPRS Testing No. XXXIII/MPRS/1967 concerning the revocation of the power of government from President Soekarno the Constitutional Court adjudicated and did not accept the Application submitted by Murnanda Utama and friends from Maharya Pati foundation, because the applicant's application was considered vague and Testing on Tap MPR Number I/MPR/2003 on The Review of Materials and Legal Status of Tap MPR Year 1960 to 2002 against the Basic Law of NRI 1945, with the material tested Article 6 number (30) Testing Tap MPRS No. XXXIII/MPRS/1967 on the revocation of the power of government from president Soekarno. And this is the second time that the Constitutional Court has made the same decision regarding the phased testing of MPR regulation.

Reflecting on what has been discussed above about how the obstacles faced by the Constitutional Court if it will conduct testing of TAP MPR. There is one other way related to the testing of TAP MPR called legislative review. Legislative review itself is an effort to legislative institutions or other institutions that have the authority of legislation to change a law[18]. By way of legislative review itself can be said to be the safest path that can be taken if it wants a review process against TAP MPR, due to the absence of institutions that are bound by the limits of testing authority such as in the case of the Constitutional Court and the Supreme Court which is limited by the 1945 Constitution. But the consequence if done legislative review is a very slow procedure when we compare with judicial review then based on this reason legislative review can be said to be the last option assembled with the road-testing legislation[19].

4. Conclusion

It can be determined from the above-mentioned exposure that includes the inclusion of MPR firmness in Law No. 12 of 2011 is an effort made by the government aimed at ensuring the certainty or clarity of the law on MPR provisions that are still valid in Indonesia.Efforts to test the Provision of MPR (*judicial review)* if there is a mistake or deviation to the Constitution of 1945, can be done *through a legislative review which* is an effort of legislative institutions that have the authority of legislation to review the legislation they have made. This effort makes far more sense than submitting it to the Constitutional Court.

References

Affandi, Hernadi, 'Prospek Kewenangan MPR Dalam Menetapkan Kembali Ketetapan MPR Yang Bersifat Mengatur', *Jurnal Hukum Positum*, 1.1 (2016), 39–50 https://doi.org/10.35706/positum.v1i1.526

Al-Fatih, Sholahuddin, 'Model Pengujian Peraturan Perundang-Undangan Satu Atap Melalui Mahkamah Konstitusi', *Jurnal Ilmiah Hukum LEGALITY*, 25.2 (2018), 247 https://doi.org/10.22219/jihl.v25i2.6005

[18]Matthieu Chemin, 'Can Judiciaries Constrain Executive Power? Evidence from Judicial Reforms', *Journal of Public Economics*, 199 (2021), 104428 https://doi.org/10.1016/j.jpubeco.2021.104428

[19]Farihan Aulia and Sholahuddin Al-Fatih, 'Perbandingan Sistem Hukum Common Law, Civil Law Dan Islamic Law Dalam Perspektif Sejarah Dan Karakteristik Berpikir ', *Legality : Jurnal Ilmiah Hukum*, 25.1 (2017), 98–113. https://doi.org/10.21143/jhp.vol49.no4.2343

Aulia, Farihan, and Sholahuddin Al-Fatih, 'Perbandingan Sistem Hukum Common Law, Civil Law Dan Islamic Law Dalam Perspektif Sejarah Dan Karakteristik Berpikir ', *Legality : Jurnal Ilmiah Hukum*, 25.1 (2017), 98–113 https://doi.org/10.21143/jhp.vol49.no4.2343

Chemin, Matthieu, 'Can Judiciaries Constrain Executive Power? Evidence from Judicial Reforms', *Journal of Public Economics*, 199 (2021), 104428 https://doi.org/10.1016/j.jpubeco.2021.104428

Christiani, Theresia Anita, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016), 201–7 https://doi.org/10.1016/j.sbspro.2016.05.006

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

Cordell, Larry, and Lauren Lambie-Hanson, 'A Cost-Benefit Analysis of Judicial Foreclosure Delay and a Preliminary Look at New Mortgage Servicing Rules', *Journal of Economics and Business*, 84 (2016), 30–49 https://doi.org/10.1016/j.jeconbus.2015.08.002

Dimyati, Khudzaifah, Haedar Nashir, Elviandri Elviandri, Absori Absori, Kelik Wardiono, and Arief Budiono, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 https://doi.org/10.1016/j.heliyon.2021.e07865

Eddyono, Luthfi Widagdo, 'Independence of the Indonesian Constitutional Court in Norms and Practices', *Constitutional Review*, 3.1 (2017), 71 https://doi.org/10.31078/consrev314

Handayani, I Gusti Ayu Ketut Rachmi, Lego Karjoko, and Abdul Kadir Jaelani, 'Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia', *Bestuur*, 7.2 (2020), 36 https://doi.org/10.20961/bestuur.v7i1.42700

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

Mahardika, Ahmad Gelora, 'Politik Hukum Hierarki TAP MPR Melalui Amandemen Undang-Undang Dasar 1945', *Jurnal Legislasi Indonesia*, 16.3 (2019), 344–52 https://doi.org/10.54629/jli.v16i3.512

Pozas Loyo, Andrea, 'What Is "Constitutional Efficacy"?: Conceptual Obstacles for Research on the Effects of Constitutions', *Mexican Law Review*, 9.1 (2016), 23–44 https://doi.org/10.1016/j.mexlaw.2016.09.002

Pratiwi, Lintang Galih, 'Kewenangan Uji Material (Judicial Review) Terhadap Ketetapan Majelis Permusyawaratan Rakyat Oleh Mahkamah Konstitusi', *SASI*, 26.4 (2020) https://doi.org/10.47268/sasi.v26i4.268

Presentation, Session, 'Parcours, Financement, Accréditation : L'organisation Des Soins En MPR', *Annals of Physical and Rehabilitation Medicine*, 56 (2013), e263 https://doi.org/10.1016/j.rehab.2013.07.517

Riwukore, Jefirstson Richset, and Fellyanus Habaora, 'Studi Keberadaan Tap Mpr Ri Dalam Konsep Negara Hukum Indonesia Pasca Pemberlakuan Undang-Undang Nomor 12 Tahun 2011', *Jurnal Abdimas Mandiri*, 3.1 (2019), 30–35 https://doi.org/10.36982/jam.v3i1.727

Sati, Nisrina Irbah, 'Ketetapan Mpr Dalam Tata Urutan Peraturan Perundang-Undangan Di Indonesia', *Jurnal Hukum & Pembangunan*, 49.4 (2020), 834 https://doi.org/10.21143/jhp.vol49.no4.2343

Shah, Attaullah, Hamid Ali Shah, Jason M. Smith, and Giuseppe (Joe) Labianca, 'Judicial Efficiency and Capital Structure: An International Study', *Journal of Corporate Finance*, 44

(2017), 255–74 https://doi.org/10.1016/j.jcorpfin.2017.03.012

Silalahi, Wilma, 'Penataan Regulasi Berkualitas Dalam Rangka Terjaminnya Supremasi Hukum', *Jurnal Hukum Progresif*, 8.1 (2020), 56–66 https://doi.org/10.14710/hp.8.1.56-66

Silva, Jeovan Assis, and Tomas Aquino Guimaraes, 'Factors Affecting Judicial Review of Regulatory Appeals', *Utilities Policy*, 72.August (2021), 101284 https://doi.org/10.1016/j.jup.2021.101284

Sutarto, Dendi, 'Epistemologi Keilmuan Integratif-Interkonektif M. Amin Abdullah Dan Resolusi Konflik', *Jurnal Trias Politika*, 1.2 (2017), 2022 https://doi.org/10.33373/jtp.v1i2.1064