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Review Aspects and Tools for Formal Review of Legislation under the Law by the Supreme Court

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ABSTRACT

This study examines the aspects of judicial review and its touchstone in the formal evaluation of regulations below the law by the Supreme Court, which has not been explicitly regulated. The judicial review of rules below the law is governed by Supreme Court Regulation No. 1 of 2011, which focuses solely on Material Review. This study employs a legal-normative method utilizing conceptual, statutory, historical, and comparative approaches. Theoretically, a formal review includes aspects of power and the procedure for regulation-forming. However, in the current Indonesian legal system, only the procedural aspect is regulated, while the power aspect remains unclear. Ideally, the regulation of the power-aspect review should be incorporated into the Supreme Court Law. Regarding touch-stone, Article 24A of the 1945 Constitution, Article 9 (2) of Law No. 12 of 2011, and Article 26 of Law No. 48 of 2009 designate laws as the touch-stone, whereas the Supreme Court Law and Supreme Court Regulation No. 1 of 2011 use higher-level regulations as the touch-stone. Ideally, only laws should be used as touchstones by the hierarchy of norms. The principles in Articles 5 and 6 of Law No. 12 of 2011 can also serve as the basis for reviewing power and procedural formation, offering greater flexibility and development through case law.

KEYWORDS

Formal Review;
Supreme Court;
Legislation;
Review Aspects;
Touch-stone

INTRODUCTION

The Indonesian constitutional system, as stipulated in the 1945 Constitution of the Republic of Indonesia *(UUD NRI 1945),* implicitly regulates the division of state power based on the principle of checks and balances.[1] This means that state power is not only held by one organ but is divided into several organs in a balanced manner,[2] And each organ can supervise each other's exercise of power according to its authority.[3] As one of the manifestations of the principle of checks and balances, in Article 24A, paragraph (1) of the 1945 Constitution, the Supreme Court has the authority to examine legislation under the law against the law. This provision is also regulated in Article 31 paragraph (2) of Law No. 5 of 2004 on the Amendment to Law No. 14 of 1985 on the Supreme Court, and Article 31A paragraph (7) of Law No. 3 of 2009 on the Second Amendment to Law No. 14 of 1985 on the Supreme Court (MA Law) as well as Article 9 paragraph (2) of Law No. 12 of 2011 on the Formation of Legislation.

In general, norm testing can be done in two ways, namely, material testing and formal testing.[4] The 1945 Constitution does not limit whether the examination of laws and regulations is carried out formally or materially so that both can be done.[5] In the current procedural law in the Supreme Court, it turns out that there has been a legal narrowing of the authority of the Supreme Court, namely through Supreme Court Regulation (PERMA) No. 1 of 2011 concerning the Right to Material Test. This Supreme Court Regulation regulates that the Supreme Court is authorized to conduct material testing of laws and regulations under the law. Meanwhile, Article 24A of the 1945 Constitution does not limit the authority of the Supreme Court to material testing only. Article 31 of the Supreme Court Law regulates that testing can be carried out regarding the formation of laws and regulations under the law that do not meet the applicable provisions, aka formal testing. Therefore, there are legal problems regarding the legal vacuum *(rechtsvacuum)* on the procedural law of formal testing of laws and regulations under the law against the law.

The first aspect of formal testing is the authority to form laws and regulations under the law. In theory, there are two authorities for the formation of laws and regulations *(wetgevingsbevoegdheden)*[6] or legislation, namely the authority of attribution of legislation *(attributie van wetgeving)* and the authority of delegation

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1 Hanif Fudin, "Aktualisasi Checks and Balances Lembaga Negara: Antara Majelis Permusyawaratan Rakyat dan Mahkamah Konstitusi" (2022) 19:1 J Konstitusi 202–224, online: <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1919>.

2 Galang Asmara et al, "Konsep Penguatan Fungsi Legislasi Dewan Perwakilan Rakyat Republik Indonesia Pasca Amandemen UUD NRI Tahun 1945" (2019) 4:2 J Kompil Huk 193–205, online: <https://jkh.unram.ac.id/index.php/jkh/article/view/28>.

3 Ryszard Piotrowski, "Separation of Powers, Checks and Balances, and the Limits of Popular Sovereignty: Rethinking the Polish Experience" (2019) 79 Stud Iurid 78–91, online: <https://studiaiuridica.pl/article/131887/en>.

4 Khofifah Setyaning, "Kewenangan Uji Materi Mahkamah Konstitusi" (2023) 2:3 Souvereignty J Demokr dan Ketahanan Nas 299–303, online: <https://journal.uns.ac.id/index.php/sovereignty/article/view/100>.

5 Abdul Wahid, Fathul Hamdani & Ana Fauzia, *Pengujian Undang-Undang: Mengurai Konsep Judicial Review & Judicial Preview* (Bandung: Alfabeta, 2024).

6 Ni Luh Gede Astariyani & Bagus Hermanto, "Paradigma Keilmuan dalam Menyoal Eksistensi Peraturan Kebijakan dan Peraturan perundang-undangan: Tafsir Putusan Mahkamah Agung" (2019) 16:4 J Legis Indones 435–449.

of legislation *(delegatie van wetgeving)*.[7] Furthermore, in the second aspect of testing, the Supreme Court must also examine the procedures for the formation of laws and regulations under the law. The regulations regarding the procedures for the formation of laws and regulations under the law are regulated in Law No. 12/2011 on the Formation of Legislation and Presidential Regulation No. 87/2014 on the Implementation Regulations of Law No. 12/2011 on the Formation of Legislation. If some stages or procedures are skipped or carried out imperfectly, the Supreme Court can cancel the legislation because procedurally, it is a legally flawed legislation. However, it turns out that not all procedures for the formation of laws and regulations are regulated in Law No. 12/2011 or its amendments or implementing regulations. The question is, how is the examination of the procedural aspects of formation carried out if there are laws and regulations under the law that do not regulate the procedures for formation?

Another legal issue that will arise in the formal testing of laws and regulations under the law is the use of test tools/testing grounds (touchstones/*toetsingsgronden*). Article 24A paragraph (1) of the 1945 Constitution and Article 9 paragraph (2) of Law No. 12/2011 stipulate that the Supreme Court has the authority to examine laws and regulations under the law against the law, which means that the test tool used is the law, not other laws and regulations. However, Article 31 paragraph (2) of Law No. 5 of 2004 and Article 31A paragraph (7) of Law No. 3 of 2009 (Supreme Court Law) stipulate that the test tool for testing laws and regulations under the law is higher legislation. Thus, there has been disharmony of norms (conflict of norms) between the provisions in the 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2011, and the Supreme Court Law. Conflict of norms or disharmony occurs when what is stipulated by one norm as an obligation cannot be combined with what is stipulated by another norm as an obligation. Therefore, compliance or application of one norm necessarily or may involve a violation of the other norm.[8]

Based on the theory of legal preference, legal preference steps can be taken, namely higher legal provisions overriding lower legal provisions *(Lex Superiori Derogat Legi Inferior)*[9], and newer legal provisions override older legal provisions *(Lex Posteriori Derogat Legi Priori).*[10] So, the formal testing of laws and regulations under the law uses the statutory test according to the 1945 Constitution and Law No. 12/2011, not higher laws and regulations based on the Supreme Court Law. However, this will create new legal problems.

METHOD

This research uses a normative juridical method (doctrinal) with a prescriptive approach to provide legal recommendations. The approaches used include

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7 Yusri Munaf, *Hukum Administrasi Negara* (Pekanbaru: Marpoyan Tujuh, 2016).

8 Hans Kelsen, *Allgemeine der Normen* (Wien: Manz, 1979).

9 Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum" (2020) 16:3 J Legis Indones 305–325.

10 Lovika Augusta Purwaningtyas, Bayu Dwi Anggono & A'an Efendi, "Pendelegasian Wewenang Pembentukan Undang-Undang oleh Undang-Undang" (2023) 4:1 Interdiscip J Law, Soc Sci Humanit, online: <https://idj.jurnal.unej.ac.id/index.php/idj/article/view/31841>.

conceptual, statutory, comparative, and historical approaches. Data sources consist of primary legal materials (laws and regulations), secondary (literature), and tertiary (legal dictionaries). Data collection techniques were conducted through literature studies. Data analysis uses a qualitative method with in-depth interpretation of laws and regulations to understand and apply them appropriately. This method allows the research to identify patterns and normative solutions related to the legal issues discussed.

RESULT & DISCUSSION

I. Concept and Regulation of the Authority to Form Legislation under the Law

Laws and regulations are products of legislation.[11] Legislation or *wetgeving* in Dutch literature is the process of forming state regulations from the highest to the lowest, and also the process of forming them.[12] In theory, there are two authorities for the formation of laws or legislation, namely the authority of attribution of legislation (*attributie van wetgevende* or *attributie van regelgevende*)[13] and statutory delegation authority *(delegatie van wetgevende* or *delegatie van regelgevende)*.[14] In the first authority, namely statutory attribution, the legislator creates new authority and gives it directly to other institutions. The second authority is the delegation authority, which is the authority derived from the law or other higher laws and regulations to the lower laws and regulations to regulate matters that have not been regulated in the law or other higher laws and regulations.[15]

1. Concept of Test of Authority to Form Legislation under the Law

In the context of Attribution of Legislation or original legislation, the authority is established directly in conjunction with the body that holds legislative power, such as the state parliament.[16] On the other hand, delegated regulations arise when the legislature delegates its authority to other institutions, such as Ministries or policy-forming institutions, to make more specific laws and regulations in a particular matter.[17] For example, in Article 5, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the President is given the authority by attribution to form government regulations to implement the law as appropriate,[18] But usually, a law will delegate to a government regulation the

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11 Bryan A Garner, *Black's Law Dictionary*, 8th ed (USA: Thomson West Publishing Co., 2004).

12 S J Fockema Andrea, *Rechtsgeleerd Handwoordenboek* (Groningen/Batavia: J.B. Wolter, 1948).

13 Maria Farida Indrati Soeprapto, *Ilmu Perundang-undangan Proses dan Teknik Pembentukannya* (Yogyakarta: Kanisius, 2007).

14 WJM Voermans, "Delegatie van regelgevende bevoegdheid: de Aanwijzingen voorbij" (2001) 2 Regelmaat 65–73, online: <https://hdl.handle.net/1887/3695>.

15 Ridwan, "Eksistensi dan Urgensi Peraturan Menteri dalam Penyelenggaraan Pemerintahan Sistem Presidensial" (2021) 18:4 J Konstitusi 828–845, online: <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1845>.

16 Bagir Manan, *Teori dan Politik Konstitusi* (Jakarta: Direktorat Jendral Pendidikan Tinggi Departemen Pendidikan Nasional, 2012).

17 Tarwin Idris, "Status Hukum Pemberlakuan Peraturan Pelaksana Undang-Undang Setelah di Batalkannya Undang-Undang oleh Mahkamah Konstitusi" (2020) 3:5 J Lex Renaiss 607–625.

18 Gary Slapper & David Kelly, *The English Legal System*, 6th ed (London: Cavendish Publishing Limited, 2003).

implementation of the norms in the law. Usually, the norm will read: "further arrangements regarding .... shall be regulated by government regulation". So the position of government regulations is delegated legislation, not original legislation.

The concept of statutory attribution is closely related to the division of powers, which divides state power into legislative, executive, and judicial powers. A clear division of which institutions have legislative authority prevents excessive concentration of power in one branch of power. This separation of powers ensures checks and balances, reduces the risk of authoritarian rule, and improves the quality of democracy.[19] Each branch of power must move or act by the authority that has been given to create transparent and good governance.[20]

Legislative delegation is the authority of officials or bodies granted the delegation of legislative power to form laws and regulations, with a delegation mechanism from higher regulations to lower regulations or other equivalent laws and regulations. This authority is granted through a law that regulates certain bodies or officials to form implementing legislation from the law. This can also be said to be a backward attitude *(terugtred)* of the legislator by submitting part of the affairs to lower regulations or other equivalent laws and regulations.[21] Legislative delegation can take several forms, for example, government regulations, Presidential regulations, ministerial regulations, agency regulations, Regional Head regulations or regional regulations, or even village regulations and Village Head regulations. Conceptually based on the theory of Hans Nawiasky, both implementing regulations *(verordnung satzung)* and autonomous regulations *(autonome satzung)* are directly under the law *(formelle gesetz)* so that the legislator can delegate directly to officials or other bodies to form implementing regulations.[22]

2. Test Arrangements for the Authority to Form Legislation under the Law

The 1945 Constitution, Law No. 12/2011, Law No. 48/2009, and the Supreme Court Law do not regulate the examination of the authority to form laws and regulations under the law. Even Articles 31 and 31A of the Supreme Court Law only regulate the examination of the procedure for the formation of laws and regulations and the material of laws and regulations under the law. So, normatively, there is no testing of the authority to form laws and regulations in the formal test of laws and regulations under the law.

In Indonesian positive law, it is assumed that all state institutions or authorized officials have the authority to regulate so that they are also authorized

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19 Khrystyna Zabavs'ka & Yaryna Zavada, "The checks and balances system – the evolution of public governance in a historical and theoretical context" (2023) 24:1 J Echa Przesz 107–119, online: <https://www.ceeol.com/search/article-detail?id=1171013>.

20 Arwanto & Wike Anggraini, "Good Governance, International Organization and Policy Transfer: A Case of Indonesian Bureaucratic Reform Policy" (2022) 26:1 J Kebijak dan Adm Publik 33–46, online: <https://journal.ugm.ac.id/jkap/article/view/68703>.

21 Muhammad Adiguna Bimasakti, *Hukum Acara dan Wacana Citizen Lawsuit di Indonesia Pasca Undang-Undang Administrasi Pemerintahan* (Yogyakarta: Deepublish, 2019).

22 alwiyah Sakti Ramdhon Syah, "Simplifikasi terhadap Peraturan-Peraturan Pelaksanaan yang Dibentuk oleh Presiden dalam Sistem Ketatanegaraan Republik Indonesia" (2021) 10:2 J RechtsVinding 249–262, online: <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/720>.

to form laws and regulations based on government authority. For example, the President can form Presidential regulations based on Article 4, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the president holds the power of government. This is reaffirmed in the provisions of Article 8, paragraph (2) of Law No. 12 of 2011, which stipulates that laws and regulations under the law can be formed based on orders from higher laws and regulations or based on government authority.

Articles 31 and 31A of the Supreme Court Law only stipulate that the examination of laws and regulations under the law is carried out based on the formation procedure and the content of the regulation. This means that in the Supreme Court's review mechanism, no provision allows for testing whether the body or official that formed the regulation has the authority to issue it. However, in practice, there are Supreme Court decisions that test the authority to form laws and regulations, such as Decision No. 03 P/HUM/2001, which tested the authority of the Berau Regency Regional Government to issue Berau Regency Regional Regulation No. 2/2001 on the Management and Business of Swallow Nests.[23]

3. Concept of Procedural Test for the Formation of Legislation under the Law

Procedural testing of laws and regulations under the law aims to ensure that the procedures for their formation have been carried out by the applicable provisions. If the procedures are not met, the regulation can be canceled or declared to have no binding legal force. This test includes an evaluation of the drafting process, public participation, socialization, and compliance with applicable formats and guidelines. Even though a regulation is made by an authorized official, if its formation does not comply with procedures, it can still be canceled. This shows that the authority in the formation of regulations is not absolute but must follow the applicable legal provisions.

Provisions regarding the formation of laws and regulations are regulated in Law No. 12/2011, which is then further delegated in Presidential Regulation No. 87/2014. This Perpres regulates the procedures for the formation of regulations that are in the hierarchy of Article 7, paragraph (1) of Law No. 12/2011. However, regulations that are not included in the hierarchy do not have clear arrangements. Some regional regulations also regulate the procedures for the formation of regional regulations and regional heads, even though they are not explicitly delegated by Law No. 12 of 2011. This creates uncertainty in determining the mechanism for formal testing of the procedures for the formation of laws and regulations under the law.

The main issue is whether regulations governing the procedure for the formation of laws and regulations below the law can be used as a test tool. According to Articles 31 and 31A of the Supreme Court Law, only laws or higher laws and regulations can be used as test instruments. If the procedures for the formation of regulations are regulated in regulations equal to or lower than the regulations being tested, it creates uncertainty in the testing process. Therefore, further arrangements are needed that emphasize the hierarchy and mechanism

[23] Mahkamah Agung, *Himpunan Putusan Hak Uji Materiel Mahkamah Agung RI* (Jakarta: Mahkamah Agung RI, 2002).

of formal testing of the procedures for the formation of laws and regulations under the law so that there is no conflict of norms in the Indonesian legal system.

Other problems also arise in practices carried out by several state or government institutions. Some state or government institutions use policy regulations as a means of regulating the procedures for the formation of laws and regulations within their institutions. For example, the Supreme Court issued Decree of the Chief Justice of the Republic of Indonesia No. 271/KMA/SK/X/2013 concerning Guidelines for the Formulation of Supreme Court Policies of the Republic of Indonesia as amended by Decree of the Chief Justice of the Republic of Indonesia No. 57/KMA/SK/IV/2016 which also regulates the procedures for the formation of Supreme Court Regulations. This certainly raises new problems because the formal test of laws and regulations under the law can only use a test tool in the form of laws and regulations, not policy regulations.

4. Procedural Test Setting for the Formation of Legislation under the Law

In formal testing, the Supreme Court can cancel a regulation under the law if there is a procedural defect in the formation process, as stipulated in Articles 31 and 31A of the Supreme Court Law.[24] If a statutory regulation under the law is declared formally invalid, then the statutory regulation under the law cannot be enforced and has no binding legal force.[25]

In the context of formal testing, the Supreme Court has the authority to annul a regulation under the law if a procedural defect is found in the process of its formation. This authority is regulated in Article 31 paragraph (2) of Law No. 5 of 2004 and Article 31A paragraph (3) letter b of Law No. 3 of 2009 (Amendment of Supreme Court Law). If a regulation under the law does not fulfill the applicable provisions in its formation, then the regulation can be tested and canceled by the Supreme Court.

II. Concept and Regulation of Test Tools in Formal Testing of Legislation under the Law by the Supreme Court

1. Concept of Test Tool in Formal Testing of Legislation under the Law

In the context of testing laws and regulations, conceptually, various theories can be used to determine what test tools can be used to test the validity of laws and regulations.[26] For example, based on Hans Kelsen's hierarchy of norms theory, it is clear that lower norms should not contradict higher norms. This means that, according to Kelsen, a norm can be tested for its validity against the norms above it in stages. Meanwhile, if using the theory of hierarchy of state legal norms proposed by Hans Nawasky, a legislation that is below the law can only be tested with the formal law test tool. According to Hans Nawiasky, both implementing regulations and autonomous regulations are both directly under

[24] Oce Madril & Jery Hasinanda, "Perkembangan Kedudukan Hukum (Legal Standing) dalam Pengujian Administratif di Pengadilan Tata Usaha Negara dan Uji Materi di Mahkamah Agung" (2021) 51:4 J Huk Pembang 952–970, online: <https://scholarhub.ui.ac.id/jhp/vol51/iss4/7/>.

[25] Ferika Nurfransiska et al, "Tinjauan Yuridis terhadap Ketentuan Metode Penghitungan 30 Persen Keterwakilan Perempuan dalam Pencalonan Anggota Legislatif oleh Komisi Pemilihan Umum (Studi Putusan Mahkamah Agung Nomor 24 P/HUM/2023)" (2024) 3:2 J Lawnesia 579–589.

[26] Fathul Hamdani et al, *Meaningful Participation dalam Pengesahan Perjanjian Internasional: Perspektif Pembentukan Perundang-undangan* (Jakarta: Kencana Prenada Media Group, 2025).

the law.[27] There is no hierarchy in the layer of implementing regulations. Because only formal law can give the authority to form implementing regulations. Likewise, autonomous regulations are a grant of attribution authority from the law to the formers of autonomous regulations.

In Hans Kelsen's thinking, the norms that apply in society are tiered to form a hierarchy. Lower norms must not contradict higher norms.[28] Hans Kelsen does not make a dichotomy between one norm and another norm based on its type but only based on its position in the hierarchy. He also did not distinguish which institution is authorized to form a norm. Therefore, Hans Kelsen's theory also applies to other norms that apply in society, not only legal norms created by the state. The problem is that if this is the case, then it must be known in advance where the position of a norm is in the hierarchy of norms. For example, in the context of positive law in a country, a law must have a clear position in the hierarchy of laws and regulations in that country. The problem is that not all countries have regulations regarding the hierarchy of laws and regulations. In addition, even though the state has regulated the hierarchy of laws and regulations, there are still laws and regulations that are not included in the hierarchy of laws and regulations. Because the position is not clear in the hierarchy, it will be difficult to determine which norm is higher or which norm is lower.

The weakness of Hans Kelsen's theory was later corrected by Hans Nawiasky. According to Hans Nawiasky, legal norms in a state are not only tiered or hierarchical but also dichotomized in terms of type. Therefore, according to Hans Nawiasky, the legal norms of a state consist of fundamental norms of the state *(staatsfundamentalnorm),* basic laws of the state *(staatsgrundgesetz),* laws in the formal sense *(formelle gesetz),* implementing regulations *(verordnung satzung),* and autonomous regulations *(autonome satzung)*.[29]

The four types of state legal norms are hierarchical or tiered so that lower regulations or norms must not conflict with higher norms.[30] However, Hans Nawiasky does not make a dichotomy and further classification for implementing regulations and autonomous regulations. So it can be concluded that according to Hans Nawiasky, all implementing regulations and autonomous regulations are equal; no one is higher and no one is lower. Because all implementing regulations and autonomous regulations are directly under the formal law.

2. Test Equipment Arrangement in Formal Testing of Legislation Under the Law

Although Article 24A, paragraph (1) of the 1945 Constitution of the Republic of Indonesia does not use the term test tool, the provision regulates that

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[27] Muhammad F Hanafi & Sunny U Firdaus, "Implementasi Teori Hans Nawiasky dalam Peraturan Perundang-Undangan di Indonesia" (2022) 1:1 J Demokr dan Ketahanan Nas 79–83.

[28] Jimmly Assidiqie & M Ali Safaat, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006).

[29] Wahyu Prianto, "Analisis Hierarki Perundang-Undangan Berdasarkan Teori Norma Hukum oleh Hans Kelsen dan Hans Nawiasky" (2024) 2:1 J Ilm Ilmu Sos dan Pendidik 8–19, online: <https://jurnal.unusultra.ac.id/index.php/jisdik/article/view/52>.

[30] L M R Zeldi et al, "Application of theory and regulation of hierarchy legal regulations in the problem of forest area status" (2019) 343 IOP Conf Ser Earth Environ Sci 1–6, online: <https://iopscience.iop.org/article/10.1088/1755-1315/343/1/012124>.

testing of regulations under the law is carried out by the Supreme Court.[31] This means that both the material test and the formal test of laws and regulations under the law conducted by the Supreme Court use a test tool in the form of a law. What is meant by law in this provision is law in the formal sense *(wet in formele zin)* or what Hans Nawiasky calls *Formelle Gesetz*.

Based on this explanation, it is clear that Article 24A, paragraph (1) of the 1945 Constitution adheres to Hans Nawiasky's theory of hierarchy of norms. Because all laws and regulations under the law are considered to be directly under the law and are tested only to the law. This means that even though the authority and procedures for the formation of laws and regulations are regulated through other laws and regulations other than the law, the testing is still carried out against the law, not against other laws and regulations.

This paradigm of the framers of the basic law is understandable. The testing of all laws and regulations under the law must indeed be tested to the law because the source of legislative authority is in the hands of the legislator. So that all delegation of legislation must originate from the law, and the test must also be to the law. If the test tool used is higher legislation (not the law), then the legislation may also be contrary to the law.

CONCLUSION

Aspects of formal testing of laws and regulations under the law include testing of authority and formation procedures. The authority in the formation of laws and regulations consists of attribution and delegation, where attribution is the granting of new authority by the constitution or law, while delegation is the delegation of authority from higher to lower rules. The purpose of authority testing is to ensure that no regulation is formed without or exceeds authority. However, Indonesian law currently only regulates the testing of formation procedures, while the authority aspect is not explicitly regulated in the applicable legal system.

The test tool in the formal testing of laws and regulations under the law has different arrangements. The 1945 Constitution and several laws state that the test tool is the law, while Supreme Court regulations allow the use of higher regulations. According to the theory of norm hierarchy, the appropriate test tool is higher legislation, but Hans Nawiasky's theory states that formal laws can be a test tool. In addition, the test tool can refer to regulations that grant authority or regulate the formation procedure. However, in practice, establishment procedures are sometimes regulated in equivalent or lower regulations, even through administrative policies. Ideally, the testing of the authority aspect in the formal test of laws and regulations under the law is expressly regulated in the Supreme Court Law. Currently, the Supreme Court only regulates the testing of formation procedures and the substance of the regulations being tested. The law should be the only test tool, as stipulated in the 1945 Constitution and accordance with Hans Nawiasky's theory. Articles in Law No. 12/2011 on formation procedures and principles of legislation can be the basis for testing authority and procedures. These

[31] Meidiana, "Integrasi Pengujian Peraturan Perundang-undangan oleh Mahkamah Konstitusi" (2019) 2:2 Undang J Huk 381–408, online: <https://ujh.unja.ac.id/index.php/home/article/view/103>.

principles are flexible and can be developed by the Supreme Court through jurisprudence, strengthening a clearer and more consistent testing mechanism.

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