LEGAL IMPLICATIONS OF THE PEOPLE'S CONSULTATIVE ASSEMBLY PROVISIONS IN THE HIERARCHY OF LEGISLATION REGULATORY INDONESIA

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Abstract: *The People's Consultative Assembly (MPR) is a representative institution which is one of the highest state institutions in the Indonesian constitutional system. MPR Decrees are MPR Decrees to determine the exercise of MPR powers, namely to determine policies on State Policy Guidelines (GBHN). The MPR decree is one of the types of laws and regulations in force in Indonesia. The existence of the MPR Decree in the hierarchy of laws and regulations in force in Indonesia almost always experiences dynamics and ambivalence. Whether it is due to changes in the Indonesian constitutional system, as well as the development of knowledge and knowledge regarding the legislation itself. This raises several problems, both physiologically, juridical and theoretically. The purpose of this study was to determine the legal implications of the existence of MPR decrees in the hierarchy of laws and regulations in Indonesia. This research is a normative juridical research with a statutory approach, a historical approach, a conceptual approach, and a philosophical approach. The legal materials used are primary, secondary, and tertiary law materials with perspective analysis techniques with deductive-inductive reasoning. The results showed that the re-entry of the MPR Decree in Law no.12 of 2011 as a type of Legislation and its hierarchy is placed after the 1945 Constitution as regulated in MPR Decree No. III/MPR/2000, making the implications of the MPR Decree very large and significant. MPR decrees have again become a source of formal and material law.*
Keywords: *MPR, MPR Decree, Legal Implications, Legislation, Indonesia.*

INTRODUCTION

In the framework of developing national law, the formation of laws and regulations is one of the important requirements (Ministry of Law and Human Rights, 2019). According to Law Number 12 Year 2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law 12/2011), the Decrees issued by the People's Consultative Assembly (hereinafter referred to as “MPR”) are known as MPR Decrees (hereinafter referred to as “Tap MPR ”) is one of the laws and regulations in force in Indonesia. The position of the MPR Decree in the hierarchy of laws and regulations cannot be separated from the position and authority of the MPR in the constitutional system in Indonesia.

Historically, the Indonesian constitution has never explicitly stipulated or stated a MPR Decree as a type of statutory regulation. However, in essence, the existence of the MPR Decree is based on 2 (two) things, namely (Handoyo, 2008): the interpretation of Article 3 paragraph (1) of the 1945 Constitution and the convention of constitutions which

have been practiced since around 1960. The 1945 Constitution also does not regulate the hierarchy or order of the laws and regulations in force in Indonesia. Therefore, since the New Order era, Indonesia has begun to discipline its laws and regulations in an order through MPR/S Decree Number XX/MPRS/1966 concerning the Memorandum of the Mutual Cooperation Council (DPRGR) regarding the Sources of Order of Law and Order Laws and regulations. In the MPR/S Decree Number XX/MPRS/1966, the forms of legislation in force in Indonesia include the 1945 Constitution, the MPR Decree, Laws (UU)/Government Regulations in Lieu of Laws (Perpu), Government Regulations, Presidential Decrees, and other implementing regulations, such as Ministerial Regulations, Ministerial Instruction, and others.

In practice, the order based on the MPR/S Decree Number XX/MPRS/1966 actually created confusion, which led to criticism from some experts in constitutional law. One of them is Mahfud MD (2010) who argues that the placement of the MPR Decree as a statutory regulation in second place, right under the 1945 Constitution, is actually just an interpretation of the MPRS, because the 1945 Constitution itself does not state that the MPR Decree must contain regulations (regeling). And in the form of statutory regulations (Huda, 2005). Continuing during the reform period, the MPR succeeded in compiling a new legal order through MPR Decree No. III/MPR/2000 concerning Legal Sources and Order of Legislation. When you look at the material contained in this MPR Decree, it seems as if it aims to limit the power of the President. Unfortunately, the desire to limit executive power was carried out excessively and was counterproductive, resulting in the enactment of MPR Decree No. III/MPR/2000 is not correct.

Judging from the theory of the level of norms, the MPR Decree should not be enforceable as a statutory regulation with a higher level than the Law, instead it should be given legitimacy or be recognized based on a lower level Law. This proves that the re-enactment of the MPR Decree through the Act, not only creates a dilemma in the practice of constitutional law in Indonesia, but also violates scientific theory about legislation itself.

Table 1. Comparison of the Hierarchy of Legislation

MPR/S Decree No. XX/MPRS/1966	**MPR Decree No. III/MPR/2000**	**Law 10/2004**	**Law 12/2011**
The 1945 Constitution; MPR Decree; Law/Perpu; PP; Presidential Decree; Other implementing regulations, such as Ministerial Regulations, Ministerial Instruction, and others.	The 1945 Constitution; MPR Decree; Law Perpu; PP; Presidential Decree; Regional Regulation.	The 1945 Constitution; Law/Perpu; PP; Presidential Decree; Regional Regulation, such Provincial regulations are made by the Provincial Regional Representative Council (DPRD) together with the Governor, Village regulations/regulations at the same level, are made by the village representative body.	The 1945 Constitution; MPR Decree; Law/Perpu; PP; Presidential Decree; Provincial regulations; and distrct and city regional regulations.

Source: compiled by the author.

The re-insertion of the MPR Decree in the order of laws and regulations according to Law 12/2011 raises problems in juridical, theoretical, and sociological aspects which

ultimately result in legal uncertainty. This uncertainty indicates a philosophical problem in the epistemological aspect which indicates the absence of standard standards in the formation of a good legal product. This of course has implications for the vulnerability of protection of human rights which may be violated due to the enactment of a legal product. There is not even a single applicable statutory regulation, including Law 12/2011, which contains a mechanism for examining the MPR Decree against the 1945 Constitution of the Republic of Indonesia as well as laws and regulations under the Law on the MPR Decree. Such conditions further perpetuate a series of problems regarding the status and position of the MPR Decree itself in the hierarchy of the prevailing laws and regulations in Indonesia. Description of the existence/existence of the MPR Decree in the order of the Indonesian laws and regulations in accordance with Art. 7 Paragraph (1) Point b of Law no. 12/2011 above has philosophical, juridical, theoretical, and sociological problems.

Physiologically, the existence of the MPR Decree in the hierarchy indicates that the legislators do not have standard standards in drafting laws and regulations. There is legal uncertainty over human rights guarantees because there is no single institution that oversees the content or material of the provisions of the MPR Decree, There is uncertainty in preparation of laws and regulations in Indonesia using a hierarchical system (Widarto, 2016). Juridically, the absence of regulations regarding the content of the MPR Decree in Law 12/2011 makes the content of the MPR Decree unclear and the absence of norms in Law No.12 of 2011 regarding which institution is authorized to examine the material for the MPR Decree. Theoretically, the consequence of the principle of constitutional supremacy, as Hans Kelsen's opinion, is that there should be a special court to ensure the conformity of lower legal rules with the rule of law above it. The juridical problem, according to Matthias Klatt (2008), is that it cannot be determined about the proper "what is the law" or legal indeterminacy. The cause of this juridical problem, could be due to vagueness, ambiguous meaning or ambiguousness, inconsistency or inconsistency, or various fundamental concepts indicating contradiction. This is named after Gallie as concepts that are still open to evaluation (evaluative openness). UU no. 12/2011 (Articles 10 to 14) does not regulate the content of the MPR Tap. So, it only regulates the contents of the Law, Perpu, PP, Perpres, and Perda. This creates a juridical problem due to inconsistency when regulating the existence of the MPR Decree in the "Types, Hierarchy, and Material of Legislation" as referred to in Chapter III of Law no. 12/2011. Based on this, this research was conducted to determine the legal implications of the existence of the People's Consultative Assembly Decree in the order of the laws and regulations in Indonesia?

LEGAL MATERIALS AND METHOD

This type of research is juridical normative, which seeks to take a qualitative approach by looking at and analyzing legal norms in Indonesian laws and regulations, as well as doctrines, expert legal opinions, and court decisions related to statutory science (Soekanto & Mamudji, 1994). This research focuses on examining the MPR Decree in the legal system in Indonesia. The approaches used include the statutory approach, historical approach, conceptual approach, and philosophical approach. This study uses secondary data obtained from legal materials (Soekanto, 2008). These legal materials are primary legal materials consisting of basic norms or rules, basic regulations, statutory regulations

and court decisions that have permanent legal force, and jurisprudence. Secondary legal materials consist of books, journal articles, and other literature covering the legal system and the statutory system in Indonesia. Tertiary legal materials, namely materials that provide instructions or explanations for primary and secondary legal materials, such as dictionaries.

The collection of legal materials in this study is carried out through library research and internet searching. Even these laws are then analyzed through a logical, systemic and sequential legal reasoning process. The analysis of legal materials uses a prescriptive normative method, namely a method of analysis in research that is intended to obtain suggestions on how concepts and solutions for the formation of legislation after the inclusion of the MPR Decree in the hierarchy of laws and regulations. The explanations that are used in this prescriptive research are deductive-inductive explanations to produce the concept as answers to questions or research findings (Sunggono, 2015). The meaning of which is from various sources of laws related to the administration of the formation of statutory rules, specifically the rules that are formed based on authority (attributive) which are positive theories described in theory are based on theory.

RESULTS AND DISCUSSION

The Decree of the People's Consultative Assembly as the Prevailing Laws

With the inclusion of a source of law into the hierarchy of statutory regulations, the rules that are under it in its formation must be based on a higher rule, and a lower rule must not conflict with a higher rule. When Law 10/2004 came into effect, which did not include the MPR Decree in the hierarchy of statutory regulations, the MPR Decrees based on the MPR Decree I/2003 were declared still valid, in fact they were still valid. The position of the MPR Decree which is not included in the hierarchy does not affect the validity of the MPR Decree which is based on the MPR Decree I/2003 is still valid. Even though in the preparation of Law 12/2011, one of the things that was taken into consideration was the re-insertion of the MPR Decree into the hierarchy because the MPR Decree which was still in effect was not used as a legal basis in any lower regulation formation, even though the MPR Decree referred to was the MPR Decree which is of a basic legal nature, so that in order to provide certainty about the existence of the MPR Decree which is still valid, it is deemed necessary to re-enter the MPR Decree into the hierarchy of laws and regulations.
According to the author, this decree will take a long time to realize so that the material is accommodated in the Law. What is happening now is that the agrarian reform is running sectorally. BPN has drafted a Bill on Agrarian Principles, the Ministry of Forestry has also made its own regulations. The MPR Decree should be used as a reference for evaluating sectoral legislation. However, after 12 years of this decree coming into effect, and 10 years of being mandated to make a law to accommodate this decree, it seems that agrarian reform is still in place. Specifically for this Tap, according to the author, it is a tough job to unite all sectors so that they can integrally realize the agrarian reform mandated by this Tap. However, it is not impossible if the government can create a special team regarding agrarian reform, which comprehensively makes efforts, especially efforts to formulate integral legislation regarding agrarian reform, then the dream of realizing agrarian reform into an integrated, realizable, and mandated law Tap IX/2001 this can be run.

According to the author, all Taps in Article 4 of Tap I/2003 must be re-inventoried and reviewed, any matters that are deemed not yet accommodated are provisions that are scattered in various laws. Subsequently, a law that regulates it was immediately drawn up. Because it is clear that the placement of the Tap in Article 4 has limited the effectiveness of the MPR Decrees in this article until the existence of a Law. For this reason, the homework for legislators is to complete the Law related to the content of each Tap in Article 4 of this Tap I/2003.

Relationship and Influence of the Position of the Decree of the People's Consultative Assembly on the Position of the People's Consultative Assembly

Although legally formally, the MPR after the amendment of the 1945 Constitution has the position of a state institution, but in constitutional practice, the MPR still has the highest authority compared to other state institutions. It is as explained above that the MPR has the authority to be able to amend and stipulate the 1945 Constitution (MPR, 2017). The position of the MPR is not properly aligned with state institutions because of the MPR's authority to dismiss the president/or vice president, after a legally guilty verdict by the Constitutional Court. Because in this case, the MPR is then in control to determine whether the President can be impeached or not, even though it goes through the first constitutional stage. Therefore, although the MPR is said to be legally formal with other state institutions, in practice, however, the MPR's authority is still above the average for State institutions, that is, it has the authority to stipulate and amend the 1945 Constitution. Another authority that is considered higher, namely the MPR can dismiss the president and/or representatives according to the provisions of the 1945 Constitution of the Republic of Indonesia.

The strengthening of the MPR institution is one of the reasons for placing the MPR Decree into the hierarchy of statutory regulations in Law 12/2011. However, the question is, are there possible implications for the position of the MPR institution, after the MPR Decree is placed in the hierarchy of laws and regulations? Based on Article 1 paragraph 2 of the 1945 Constitution, that the position of the MPR, which was previously the holder of people's sovereignty, the incarnation of the people who hold state sovereignty (Asshidiqie, 2006), even as the highest state administrator, with the amendment of the 1945 Constitution, this provision was removed and replaced with the principle of supremacy of constitution by appointing the constitution as the implementer of the people's sovereignty. With this fact, sovereignty is not only in the hands of one state institution, but is divided among the same and equal state institutions. There are no longer the highest state institutions, all are the same, state institutions, which are under one constitutional umbrella, namely the 1945 Constitution.

The consequence is that the MPR's position is no longer higher than that of other state institutions. The main reason for the elimination of the MPR's authority was to strengthen the presidential system, in which the President and Vice President were no longer the mandate of the MPR and did not have a line of accountability to the MPR in exercising government power. The line of responsibility of the President and Vice President is now direct to the people based on the provisions stipulated in the 1945 Constitution. The decline in the position of the MPR was followed by the elimination of the authority to make GBHN, so that the legal products produced by the MPR were only changes to the 1945 Constitution, and other decisions of an administrative nature. , or if it

is regulating, it will only organize internally into institutions. Thus, the MPR does not have the authority to make general regulations (regeling) (Yuliandri, 2012).

The elimination of the authority to form the MPR Decree is regulated in Article 3 of the third amendment of the 1945 Constitution. In Article 3 of the third amendment of the 1945 Constitution, there is no mention of the authority to form an MPR Decree. The current authority of the MPR is based on Article 3 of the third amendment of the 1945 Constitution:

- Amend and enact the Basic Law;
- Inaugurate the President and/or Vice President; and
- May dismiss the President and/or Vice President during their term of office according to the Constitution.

Another fact that must be realized is that even so, the MPR still has the authority to amend the constitution, and to stipulate the constitution, where this fact is actually sufficient to place the MPR in a high enough position, considering that the constitution replaces the MPR's position as the implementer of the people's sovereignty. At least from the entire hierarchy of laws and regulations, the MPR's legal product is the highest product. According to the author, the placement of the MPR Decree in the hierarchy of laws and regulations does not make a difference to the position of the MPR institution. In contrast to the Ministry's institutions, in the PPP Bill Special Committee Work Meeting, the discussion of Ministerial Regulations in the hierarchy of statutory regulations was very long. The goal is clear, namely to strengthen the existence of the Ministry or Minister concerned, because so far Regional Regulations that are included in the hierarchy of statutory regulations are more powerful than Ministerial Regulations.

In regards to the placement of the MPR in the hierarchy of laws and regulations, according to the author, its placement is determined by the position of the MPR itself. When the existence of norms in Tap I/2003 is to be strengthened, then placed into a hierarchy, then its placement in the hierarchy among other laws and regulations is determined by the position of the MPR. Due to the position of the MPR as the maker of the Constitution, and also on the consideration that the substance of the MPR Decree which is still valid is still basic law, the position of the MPR Decree is placed above the Law. This is consistent with Hans Kelsen's dynamic norm theory, that state organs that have the authority to form laws can be traced to their validity through a hierarchical institutional relationship (Asshidiqie, 2006). This concept can be understood as a consequence of the character of hierarchical legal norm formation. From this theory it can be concluded that the norm system is strongly influenced by the institutional structure in a country.

Although the change in the hierarchy of the MPR Decree in Law 10/2004 into the hierarchy in Law 12/2011 was not accompanied by a shift in the institutional system, Law 12/2011 attempts to place the legal product of an institution that is still valid in the hierarchy in accordance with the position of the institution concerned, and in accordance with the content of the laws and regulations. So that when viewed from the position of the Institution, the MPR Decree made by the MPR is the same as the Constitution which was also made by the MPR, but when viewed from the content, the MPR Decree cannot be equated with the Constitution, because it is not a basic law, but is an outline of the direction country.

Furthermore, after the placement of the MPR Decree in the hierarchy, there are some people who think that with the inclusion of the MPR Decree into the hierarchy of

statutory regulations, it seems that there is no longer any prohibition to make legal products that regulate general (*regeling*). This is because all statutory regulations that enter the hierarchy are of an exit nature, as is the definition of statutory regulations stipulated in Law 12/2011, namely

"written regulations containing legally binding norms and established or stipulated by state institutions or authorized officials through the procedures stipulated in the Legislation."

The assumption of this group is that all MPR Decrees are regulatory, and the MPR can form MPR Decrees. Even though not all MPR decrees are regulatory. This assumption is clearly untrue, because in the Elucidation of Article 7 paragraph (1) letter b of Law 12/2011 it is clearly stated that what is meant by "Decree of the People's Consultative Assembly" is the Decree of the Provisional People's Consultative Assembly and the still-in force of the People's Consultative Assembly as referred to in Article 2 and Article 4 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: I/MPR/2003 concerning Review of the Material and Legal Status of the Provisional People's Consultative Assembly Stipulations and the Decrees of the People's Consultative Assembly of 1960 to 2002, August 7, 2003. So that the boundaries are clear, that there is no other MPR Decree that can qualify into the hierarchy of laws and regulations other than those that are limitatively regulated in Article 2 and Article 4 of Tap I/2003.

Legal Politics of the Establishment of MPR Decrees

The policy of forming the MPR Decree as a legal product as a result of the political agreement of all the representatives of the Indonesian people who are in the MPR is also often influenced by political conditions. In the course of the following state history, the direction of post-reform legal politics requires the MPR Decree to no longer be formed because it has ended with the MPR Decree Number I/MPR/2003 as a result of an effort to review 139 MPR decrees that have existed since 1960 which are mandated by the Constitution. NRI 1945. The manifestation of the political will to strengthen the presidential system is also seen in the amendment to Article 3 of the 1945 Constitution where the MPR's authority to form the GBHN is removed and the abolition of the MPR concept as the highest institution becomes the equality of all state institutions by applying the concept of checks and balances. The MPR no longer has the authority to form an MPR Decree as a regulation (*regeling*), the MPR only has the authority to form an MPR Decree as a stipulation (*beschikking*), such as the Decree on the Decree of the Vice President to become President if the President is permanently unable. In addition, based on Article 8 of Law No.12 of 2011 the MPR is also authorized to form MPR Regulations as statutory regulations which have binding power as regulations (Kuntari, 2017).

In the field of legislation, the Provisional People's Consultative Assembly Decree Number XX/MPRS/1966 concerning Legal Sources and the Order of Legislation is a fundamental decree for the first time determining the forms of regulations in an order, namely consisting of:

- Constitution.
- MPR Decree.
- Law/Perpu.
- Government regulations.
- Presidential Decree and/or Presidential Instruction.

- Other implementing regulations, such as: Ministerial Regulations, Ministerial Instruction, and others.

As stated by Bagir Manan, there are several shortcomings of TAP MPRS Number XX/MPRS/1966177 that require improvement, including:

- This provision only regulates the composition of laws and regulations at the central level. Regional regulations as laws at the regional level are not included. Possible consideration, since autonomous regions that make regional regulations, do not legally have a hierarchical relationship with the center. An autonomous region is a legal subject environment that stands alone not a hierarchical part of the central government. There is some truth in this view, but there is a confusion between the statutory system and the system of government organization. As statutory regulations, regional regulations are a subsystem of an orderly system of statutory regulations, therefore they must comply with and follow an orderly system of laws and regulations. In the order of statutory regulations, this provision also includes decisions that are not classified as statutory regulations, such as "Presidential Instruction".

In practice, MPR decrees do not always take the form of statutory regulations. So far, there are provisions on the appointment of the president and provisions on the appointment of the vice president. This kind of provision is not a statutory regulation, because it regulates something concrete and individual in nature.

Presidential decree. There are presidential decrees that are not statutory regulations such as decisions regarding appointments in a position. Decisions of this kind are "*beschikking*" not statutory regulations.

In its later journey, as an effort to renew the MPRS Decree, the People's Consultative Assembly issued MPR RI Decree Number III/MPR/2000, which regulates the Source of Law and Order of Legislation. It also mentions several forms of statutory regulations, as well as emphasizing Pancasila as the source of all laws.

Legal implications for the existence of the People's Consultative Assembly Decree in the order of the laws and regulations in Indonesia

If the remaining MPR/S Decree is deemed to be equivalent to the law, then what can be seen as having the authority to discuss it is a state institution that is given the authority to discuss laws. Therefore, the legal status of the remaining MPR/S Decree must be ascertained. Based on the provisions of the Fourth Amendment of the 1945 Constitution, the MPR is no longer authorized to evaluate and even make these decrees the object of discussion in court. In short, the MPR can no longer discuss decisions that it has made itself in the past outside of its four powers. After the Fourth Amendment to the 1945 Constitution, the MPR Session can only schedule discussions on one of the four powers, namely (i) amendments to the constitution, (ii) dismissal of the president and/or vice president, (iii) presidential and/or vice presidential elections to fill vacancies, or (iv) the inauguration of the president and/or vice president. Apart from the four agendas, constitutionally, there is no other MPR session (Asshidiqie, 2006).

In Decree Number I/MPR/2003, the MPR itself also determines the existence of 11 MPR/S decrees which remain in effect until the law that regulates the material of these decrees is formed. This means that the 11 MPR/S decrees are subordinated by the MPR itself, so that they can be changed by or by law. Therefore, it can be said that the MPR

itself has subordinated the legal status of the decrees that it has made to the level of the law, so that the remaining decrees must be viewed as equal to the law. If this is the case, then there are four state institutions authorized to discuss laws, namely (i) DPR, (i) President, (iii) DPD, and (iv) Constitutional Court (MK), in accordance with their respective constitutional authorities..

Forms of Indonesian Legal Products If the eight MPR/S Decrees are to be reviewed, a legislative review can be carried out by forming laws that amend or revoke those decrees. State institutions that can take the initiative are the President or the DPR as appropriate. In the event that the MPR/S Decree relates to the area of authority of the DPD (Regional Representative Council), the DPD can also be involved or involved in the process of drafting or discussing the draft law concerned. However, if before a legislative review is carried out, the MPR/S Decree causes a loss of the constitutional rights of certain parties, then by expanding the meaning of a law that can be reviewed by the Constitutional Court, the parties concerned can only propose it as a constitutional review case in the Court. Constitution. In this case, the mechanism adopted is the judicial review mechanism which is regulated according to the provisions of Law Number 24 of 2003 concerning the Constitutional Court.

The initial spirit of the formation of the Constitutional Court was to protect the constitutional rights of citizens from the enactment of laws that contradict the 1945 Constitution. The formation of the Constitutional Court was based on the premise that the 1945 Constitution which is the basis of the state (*stategroundgesetz*) must be consistently maintained and guarded. The existence of the Constitutional Court in the structure of the Indonesian military is to function as the guardian of the 1945 Constitution (the quardian of the constitution) and the interpreter of the constitution. In addition, the existence of the Constitutional Court is also intended to guarantee a check and balance system that places all state institutions equal and balanced (Ramadhani, 2013).

Looking back at the authority of the Court in the 1945 Constitution, which is based on Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution that the Constitutional Court only has four powers and one constitutional obligation, namely, the Constitutional Court has the authority to judge at the first and last levels whose decisions are final for examining laws against the Constitution, resolving disputes over the authority of state institutions whose authority is granted by the Constitution, deciding the dissolution of political parties, and resolving disputes over the results of general elections, and the Constitutional Court is obliged to give decisions on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Basic Law (Kelsen, 2007).

The concept of hierarchical norms taught by Kelsen does state that a norm belongs to a certain norm system that can be tested only by ensuring that the norm derives its validity from the basic norms that make up the legal system. So the reason for the validity of a norm is a proposition that there is a valid final norm, namely the basic norm. The explanation of the reasons for the validity of this norm is not an endless explanation, but ends at the highest norm which becomes the final reason for validity in the normative system. With Kelsen's teachings, it is true that the basis is the highest basic norm. However, there is a gap between the norms, the lowest norms refer to and cannot conflict with the norms above, the norms above must refer to and must not conflict with the norms that are more above it, continue to do so, until the highest point is the basic norm. If based on

Kelsen's teachings, indeed the MPR Decree which is placed under the Constitution, should be able to be tested against the Constitution. However, the institution that tested it was clearly not the Constitutional Court.

If the Constitutional Court does not have the authority to examine the MPR Decree against the Constitution, which institution is authorized? In theory regarding the right to test, testing can be carried out by a judicial institution that is appointed to have the authority to do so (judicial review), examination by a political body (political review), and examination by an official or state administrative body (administrative review). The right to test is given to a parliamentary institution as a legislator, so the testing process is called a legislative review. If the right to test is granted to the government, it is called an executive review.

Of the three possibilities, judicial review is a difficult thing to do, because of the limited authority of the judiciary, both the Constitutional Court and the Supreme Court, which is regulated by the Constitution. Meanwhile, the examination by the official or state administrative agency is something that is impossible to do with the MPR decree which is regulating as stated in Article 2 and Article 4 of the Decree I/2003. Testing by administrative bodies is carried out on legal products that are administrative in nature. Therefore, what is still possible is a political review. Political reviews are often identified with legislative reviews conducted by the DPR on their own products, namely laws. However, in the context of testing the MPR Decree, according to the author, political review can be interpreted as a constitutional review by the MPR on its own products. Before the amendment to the 1945 Constitution, the MPR became an institution that was given the authority to examine laws both against the UUD and against the MPR Decree, and in Article I of the Additional Rules of the 1945 Constitution after the amendment, the MPR was also given the task of reviewing the material and legal status of MPR decrees from 1960-2002, and the review is carried out based on the 1945 Constitution after the amendment. So that the review conducted by the MPR is not new.

However, it becomes a question if the MPR reviews it again, because Article I of the Additional Rules of the 1945 Constitution has also assigned the MPR to conduct a review, the results of which are contained in Decree I/2003. If the MPR Decree I/2003 is considered to be a review process, then is it possible to have a test on the same basis of testing, namely the 1945 Constitution, take place after the amendment? There is a legal principle of ne bis in idem, that is, legal action may not be taken a second time in the same case. In criminal law a person may not be prosecuted a second time for the same case (Article 76 paragraph (1) of the Criminal Code), in Civil law (Article 1917 of the Civil Code), even in cases of Judicial Review in the Constitutional Court also known as the principle of ne bis in idem. , whereas the material contained in paragraphs, articles, and/or parts of the Law that has been tested, cannot be applied for re-examination, unless the material contained in the 1945 Constitution which is used as a basis for testing is different (Article 60 of the Constitutional Court Law).

The next possibility is to provide an interpretation of the MPR Decree, this can be done by the Supreme Court. According to Yusril Ihza Mahendra, MA can provide legal opinion on the sharp differences in views between the executive and the legislature. Yusril's statement was conveyed in 2001, at that time, Decree I/2003 had not yet been published, the statutory order at that time was still based on Tap III/2000, in which the MPR Decree had the same position as stipulated in Law 12/2011. It turned out that at that time it was

also in debate, who had the authority to test the MPR Decree. Despite rejecting the idea that the Supreme Court could test the MPR Decree, Yusril stated that the Supreme Court could provide a legal opinion, but the Supreme Court's legal opinion was only a direction or a fatwa and was not binding.

The re-issuance of MPRS Decrees and MPR RI Decrees as one of the types of legislation in the hierarchy of laws as stipulated in Law No.12 of 2011 is based on the premise that the law on the Formation of Legislative Regulations is an implementation of the order of Article 22 A The 1945 Constitution of the Republic of Indonesia which states that "Further provisions regarding the procedure for the formation of laws shall be further regulated by law". However, the scope of the material content of this law is expanded not only to laws but also to other laws and regulations, apart from the 1945 Constitution of the Republic of Indonesia and the Decrees of the People's Consultative Assembly. (Agustian, 2016).

It must be admitted that many pearls of thought by our statesmen in their respective ages are contained in the MPR and MPRS Decrees, which should not be discarded from the aspect of constitutional law and are not worthy of being reduced to law because most of the rules contained in the MPR Decree contain material content of the Constitution or the 1945 Constitution (Thaib, 2009).

Placement of MPRS/MPR Decrees below the 1945 Constitution in the order of laws and regulations has the consequence that the MPR Decrees must be in line with the 1945 Constitution. . In the event that the material content of the MPRS and MPR contradicts the 1945 Constitution of the Republic of Indonesia, of course these provisions can be tested against the 1945 Constitution (constitutional test). On the other hand, the MPRS and MPR decrees are the basic sources for the formation of existing laws and regulations.

In order to maintain the unity of the legal system within the state, it is necessary to examine whether one rule of law is not contradicting another rule of law, and especially whether a rule of law does not deviate from or has the character of setting aside a more important and higher degree legal rule (Huda, 2014).

The position of the MPRS and MPR decrees, with their juridical consequences, actually becomes a problem because of the ambiguity and inconsistency of regulations in Law no. 12 of 2011 itself. There is no mechanism for testing the MPRS and MPR Decrees and this creates a regulatory vacuum. Whereas in Article 9 of Law no. 12 of 2011 there are regulations for the examination of statutory regulations, but only to the extent of laws against the 1945 Constitution carried out by the Constitutional Court and statutory regulations under laws against laws carried out by the Supreme Court.

It is indeed difficult to regulate the authority to examine the MPR Decree which is placed in the hierarchy, which is why some experts prior to the formation of Law 12/2011 suggested that regulating the MPR Decree not in the hierarchy, but regulated in separate rules, that the formation of laws and regulations must pay attention to The MPR Decree which is still valid according to the MPR Decree I/2003 which is related to the material of the legislation to be discussed. Because Law 12/2011 has stipulated that the MPR Decree is included in the hierarchy of statutory regulations, among the possibilities described above, according to the author the most likely is a review by the MPR itself, Law 12/2011 can be revised again, if it is. In order to place the MPR Decree into the hierarchy, rules are made regarding the authority to test it, namely through a review by the MPR itself, the revision of Law 12/2011 must also be followed by a revision of the MPR, DPR, DPD and

DPRD Laws. Examining the MPR Decree against the Constitution, is not the authority of the MPR, so it should not be placed on provisions regarding authority. However, additional rules were made regarding the MPR Decree testing process by the MPR.

CONCLUSION

The position of the MPR Decree which is in charge of Law/PERPU has an implication that the regulated material must not conflict with the legal products above. In addition, lower legal products must refer to the above provisions. However, there are still issues that become a debate related to if there are legal products under the MPR Decree contradicting the MPR Decree, where to test? The Supreme Court and the Constitutional Court as legal product examiners are not normatively given the authority to conduct examinations on the content of the MPR Decree. The re-entry of the MPR Decree in Law no. 12 of 2011 as a type of Legislation and its hierarchy is placed after the 1945 Constitution as regulated in MPR Decree No. III/MPR/2000, making the implications of the MPR Decree very large and significant. MPR decrees have again become a source of formal and material law. The MPR Decree must again become a reference or one of the references other than the 1945 Constitution, not only in the formation of laws in this country, but also in the formation of other public policies. The DPR and the Government (President) absolutely must pay attention to the MPR Decrees which are still valid, even referring to them in the formation of laws and statutory regulations under them. Likewise with the formation of Government Regulations (PP), Presidential Regulations (Perpres), and Regional Regulations (Perda) absolutely must formally and materially base the MPR Decree.

References

1. Agustian, T. (2016). Implikasi Pengujian Ketetapan MPR dalam Sistem Ketatanegaraan Republik Indonesia Pasca Putusan Mahkamah Konstitusi No. 75/PUU-XII/2014. *Law Journal lex renaissance*, 1(1), 1-16. DOI: https://doi.org/10.20885/JLR.vol1.iss1.art1
2. Asshiddiqie, J. (2006). *Pokok-Pokok Hukum Tata Negara Pasca Reformasi*. Jakarta, PT. Bhuana Ilmu Populer.
3. _____(2006). *Teori Hans Kelsen tentang Hukum*. Jakarta, Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI.
4. _____. (2012). *Sejarah Constitusional Review dan Gagasan Pembentukan Mahkamah Konstitusi*. Jakarta, Pasific Place. Available at http://www.jimly.com/makalah/namafile/111/CONSTITUTIONAL_REVIEW__america.pdf.
5. Handoyo, B.H.C. (2008*). Prinsip-prinsip Legal Drafting dan Desain Naskah Akademik*. Yogyakarta, Universitas Atma Jaya.
6. Huda, N. (2014). *Perkembangan Hukum Tata Negara Perdebatan & Gagasan Penyempurnaan*. Yogyakarta, Penerbit FH UIIPress.
7. Kelsen, H. (2007). *General Theory of Law and State*. New Jersey, The Lawbook Exchange, Ltd.
8. Klatt, M. (2008). *Meking The Law Explicit: The Normativity of Legal Argumentation*. Oregon, Oxford and Portland.
9. Kuntari. (2017). *Ketetapan Majelis Permusyawaratan Rakyat Sebagai Dasar Hukum Pembentukan Undang-Undang (Analisis Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor*

Xvi/Mpr/1998 Tentang Politik Ekonomi Dalam Rangka Demokrasi Ekonomi). Jakarta, Universitas Indonesia.
10. Mahfud MD. (2010). *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*. Jakarta, Rajawali Pers.
11. Ministry of Law and Human Rights. *Politik Perundang-undangan*, downloaded from http://ditjenpp.kemenkumham.go.id/htn-dan-puu/480-politik-perundang-undangan.html accessed on 19 Maret 2019.
12. People's Consultative Assembly. (2017). *Check and balance dalam sistem ketatanegaraan Indonesia*. Jakarta, Badan Pengkajian MPR RI.
13. Ramadhani, Y. (2013). *Implikasi Hukum Atas Kedudukan Hukum Ketetapan Majelis Permusyawaratan Rakyat Dalam Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan*. Jakarta, Universitas Indonesia.
14. Soekanto, S. dan Mamudji, S. (1994). *Penelitian Hukum Normatif: Suatu Pengantar*. Jakarta, Rajawali Pers.
15. Soekanto, S. (2008). *Pengantar Penelitian Hukum*, Third Printed. Jakarta, UI Press.
16. Sunggono, B. (2015). *Metodologi Penelitian Hukum*, Fifteen Printed. Jakarta, Rajawali Pers.
17. Thaib, D. (2009). *Ketatanegaraan Indonesia Persfektif Konstitusional*. Yogyakarta, Total Media.
18. Widarto, J. (2016). *Konstitusionalitas Ketetapan Majelis Permusyawaratan Rakyat dalam Tata Urutan Peraturan Perundang-Undangan (Kajian Pasal 7 ayat (1) Butir b Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan*. Malang, Universitas Brawijaya.
19. Yuliandri. (2012). *Keberadaan Ketetapan MPRS?MPR dalam Perspektif Hierarki Peraturan Perundang-Undangan Pasca Pemberlakuan Undang-Undang Nomor 12 Tahun 2011*. Presented on the National Meeting in Commemoration of Constitution Day and 67th Anniversary of the Indonesian People's Consultative Assembly, August 29 2012.