Scientific Research Journal (SCIRJ), Volume III, Issue V, May 2015
ISSN 2201-2796

The Importance of the Examination on Regulation and Legislation in Indonesia

Dr. Hoesein Zainal Arifin, S.H
University Of Islam As-Syafi'iyah, Jakarta

Abstract: **Concern on the importance of the implementation of regulation as well as legislation has increased significantly in Indonesia in recent years. Not only that, discussion on the meaning of law was also rising. This paper aims at discussing how can regulation and legislation in Indonesia were examined. Using data and information advanced in the literature and other secondary data, it was found that as a normative control, the examination can be performed by the institution itself or its maker can also be done by institutions outside the regulatory agencies. If the examinations performed by the manufacturer agencies can be called internal examination or internal controls, but if the examination is author institution outside the institution may be called external examination or external supervision. The regulatory agency that produced legislation is possible to examine its own law. The establishment of the authority of legislation attached to the legislative control of the normative examining is commonly called legislative review that its object is the law and the constitution and product Legal equivalents. However, if the establishment of regulatory authority is the executive or government regulations as a command execution laws or regulations as the implementation of the functions and duties of governance, then the normative control or examining are commonly called executive review. But if the normative control of the various regulations issued by the executive performed by institutions outside the executive in this case by the institution of judicial power, the normative control or examining are commonly referred to judicial review. These normative controls intended to prevent all forms of government activities in running the government does not get stuck on the authoritarian practice, because the trend towards authoritarian is very open.**

Index Terms—**Regulation, legislation, Supreme Court of Justice, legislative review, executive review and authoritarian practice**

I. INTRODUCTION

Concern on the importance of the implementation of regulation as well as legislation has increased significantly in Indonesia in recent years. Not only that, discussion on the meaning of law was also rising. Some argued that a law should be defined as what Kelsen (1945) said as a normative hierarchy of the relationship, not a causal relationship. Thus, the essence lies on "what it is and what it should be". Therefore, a law following Kelsen's view includes the rule of law (the legal norm), its elements, interrelationships, the legal order of the overall structure, the relationship of different legal order, and the unity of the legal order of positive law.

Others argued, however, that a law is not a manifestation of a superhuman authority, but it is a social engineering based on human experience. This suggests that the basis of a law is not the principles of meta-juristic, but it is in a Juristic hypothesis, which is a basic norm established by a logical analysis of actual juristic thinking. Thus, Kelsen did not talk about the law as a reality in practice, but the law as a discipline. This includes what happens with the law in practice which is different from what is learned in the science of law. The later studies the positive legal norm, but not deals with the ethical aspects, political, or sociological aspects that may arise in the practice of law.

The above notes highlight that the validity of a law lies in its adaptability with other norms, especially the basic norm. In this connection it can be explained that the basic norms can be divided into two, namely, the norm static and dynamic norm. Static norm is a norm that has to have validity, so that the entire contents of these norms adhered to and applied in individual and social life. This means that each of the contents of these norms has binding power. This is because it comes from a specific basic norm, which is believed to have validity and is seen as the highest norm. Whilst the dynamic norms can be defined as the establishment of certain basic norms which associated with social reality. A norm is a part of a dynamic system, if the norms have been made in the manner prescribed by the basic norms.

The description above shows that a legal norm is valid, because it is made in a manner prescribed by other legal norms, and other legal norms are the foundation of the validity of the legal norm. The relationship between the legal norms that regulate the formation of another norm with other norms as the relationship between "superordinate" with "subordinate" or "superior to the inferior norm" that indicates the level or hierarchy of norms. Norms that determine the formation of other norms are norms of higher rank, and vice versa, the established norms of a lower rank. In this connection, the relationship between the higher norms with norms under a hierarchy of relationship norms. The consequence is that the norm is inferior not justified conflict with the norms on it (Attamimi, 1990).

Thus, an entity is a series of hierarchical relationships between norms that should not be contradictory to each other. Norm as a unitary value of living in the community have power and adhered to, when the norm has been placed as a will statement, both the

© 2015, Scientific Research Journal

individual and the revelation of the will of the statement of lawmakers. The revelation of the will is manifested either in the form of a legal transaction or in a law that contains elements or the necessity to obey orders (validity) and applied (effectiveness). This shows that any legal norms have forced elements, both on the side of compliance, as well as the application, and to have introduced an element of the sanctions. Meaning the validity of legal norms is that the substance of any rule of law and forced to certain legal subjects in performing any legal act. While the effectiveness of legal norms, means in terms of the substance of the application of the law by an organ that has the authority to implement a legal norm.

This paper aims at discussing how can regulation and legislation in Indonesia be examined. The examination includes regulation and legislation in the national constitution as well as in the form of other laws. However, before examining the above issues, section 2 discusses the essence of the examination of the legislation as the background analysis. Section 3, then, addresses the examination of regulation introduced by the Supreme High Court of Justice and its procedures. Finally, some concluding remarks are drawn in section 4.

II. THE ESSENCE OF EXAMINATION OF LEGISLATION

a. The Meaning of Examination and Legislation

The words examination of law consists of "*examination* and *'legislation'.* Examination or examining is derived from the root word *'examination'* that has meaning the experiment to determine the quality of something, so that *'examining'* is defined as a process, method, or act. While legislation can be interpreted as written rules established by the state institutions or officials authorized and it is generally binding. Thereby, examining the legislation can be interpreted as a process to examine both the written rules established by the state institutions and the competent authorities which have binding force in general. Therefore, examining legislation is defined as a process for examining that was associated with the *'who'* (the subject) and *'what'* (object) in the process of examining the legislation.

The issue of subject and object in the perspective of regulatory, can cause a variety of terminology that sometimes and even often interpret mistakenly. For example, the term *toetsingsrecht* is often used interchangeably with the judicial review. Both of these terms actually has a different sense, because *toetsingsrecht* has a wider meaning and still is general and can be attached to either the state power institutions, judicial, legislative, and executive. While *judicial review* has the extent and scope is limited to the examining authority that carried out through judicial mechanisms and institutions simply attached to the institution of judicial power. In addition, the difference in the two terms in examining legislation also lies in the object (Asshidiqie, 2005). Therefore, in order to avoid the crux of the meaning of *'toetsingsrecht'* and *'judicial review'*, the following explanation is important.

In general, the term *'toetsingsrecht'* can be defined as *'the right or authority to examine'* or the *'right to examination'.* The definition makes it clear that *'toetsingrecht'* is a process to do examination and can literally be interpreted as authority for examining. The idea of examining is a process to examine, assess, and decide on the object. Comprehension examination or perform the examination in perspective *'toetsingsrecht'* means examine, assess, and decide on the level of the constitutionality of a legislation against legislation that rank higher by a state institution by the constitution and / or by enactment Act granted authority.

Definition of *'toetsingrecht'* is quite extensive, so the use of this terminology depends on the *'subject'* and *'object '*in the examination. If it is associated with the subject, then *toetsingsrecht* can be attached to the institutions of state power judicial, legislative, and executive. However, if the right or authority to examination is given to the institution of judicial power or a judge, then it is called a *'judicial review'.* But if the authority granted to the legislature, the term becomes *'legislative* review' and similarly if the authority is granted to the executive branch, then the term has also become *'executive review'.*

Similarly, the notion *toetsingsrecht* if it is associated with an object and time, then the examination is done right *'a posteriori',* and *'a priori'.* Authority to examine *'a posteriori',* if the object is a law or after the occurrence of the act or acts of government, then the action is called *'judicial review'.* Whereas the authority to conduct examining in *'a priori',* if the examination object is Bill which has been approved but not yet promulgated together as it should, then it is called a *'judicial preview' (Lotulung, 1993).*

The above description shows that the *'toetsingsrecht'* has a fairly broad meaning, in addition to depending on the subject, object, also depends on the legal system in each country, including to determine to which state power agencies, the authority will be given. As such, the notion *toetsingsrecht* broader in appeal with *judicial review.* Also, the above explanation illustrates that the notion *toetsingsrecht* in perspective *'judicial review'* can be interpreted as *'toetsingsrecht'* in the narrow sense or judicial examination that particular subject, namely the institution of judicial power and its object is also certain that the legislation that is set (regels). Thus, it can be distinguished from that *toetsingsrecht* as the *judicial* perspective, *legislative review* and *executive review* in terms of the subject. Similarly, in terms of its object, then *toetsingsrecht as judicial* perspective object under examination is legislation that is set (Asshidiqie, 2005).

Toetsingsrecht within the meaning of the concept of judicial review will then be called *'judicial review'* is part of the principle of judicial control over the product of legislation so as not to conflict with legal norms hierarchically. As explained upfront, that *toetsingsrecht* in the sense of *judicial review* can be done, when the power of the state adheres to the principle of separation of powers or the *'separation of power'* and *'checks and balances' (Kommers, 1970).*

The second principle allows for the balance of the position and power branches of state authority such as the legislature, executive and judiciary can run horizontally, and allows each branch of state power can perform appropriate functions set forth and defined in the constitution and / or the law. Just as Joseph Tanenhus formulating that, *judicial review* is *"the process with his unconstitutional specify a judicial body from action- what is done by the legislative body and by executive head (Tannehus, 1968).*

© 2015, Scientific Research Journal

This formulation illustrates that *judicial review* is a process to examination the constitutionality of a legal product level legislative or executive bodies. The formula above indicates three (3) main elements of the *judicial review,* namely, *first,* carry out *a judicial* body is a body / institution of judicial power; S*econd,* the element of conflict between legal norms which rank below the legal norms which rank in the top; and T*hird;* the object being examination is the scope of action or legislative laws and ordinances of the chief executive (Abraham, 1975).

Thus, the authority to implement the *'judicial review'* is the authority of the judicial power bodies who were given special authority to it by the constitution and / or legislation, to examination the level of the constitutionality or validity of a legislation against legislation that hierarchically higher rank (Sueur and Herberg, 1995).

b. The Object of Legislation Examination

The object of legislation examination is the written rules established by state agencies or competent authorities and generally binding or called *regeling*. Manan (1992) also defined the legislation as written decision issued by an official or authorized office environment which contains the rules of behavior that are common or binding rules of behavior which contains provisions on rights, obligations, functions, status and an order. He further explained that the legislation has three (3) important elements, namely, a. legislation written decision-shaped, so it can also be called the written law; b. Legislation established by official or office environment (body, organ), which has the authority to make regulations applicable or binding general; and c. Legislation is binding in general.

While a decision that can be categorized as *'provisions'* or *'beshcikking'* if it meets several elements, namely, a. unilateral decision; b. The decision is a legal action in the field of public law; c. decisions made by the entity or state administrative official; d. a decision on the issue or the concrete circumstances and the individual; and e. the decision is intended to have certain legal consequences, namely, create, modify, suspend, or cancel a legal relationship (Nugraha, et.al, 2005).

Thus, it can be distinguished from the decision in the form of laws and regulations that are set *(Regeling)* and generally binding decision *beschikking* shaped. In terms of understanding the rules that are set and binding in general and the provisions that are concrete and individual. However, Asshidiqie (2004) particularly defined the legislation as the whole hierarchical arrangement of legislation in the form of the Act to the bottom, i.e all legal products involving the role of the representative body of the people together with the government or involves the role of the government because of his political position in order to carry out legislative product set by the representative body of the people together with the government according to its level.

Viewed in terms of the type and layout sequence, Hamid Attamimi (1990) argued with reference to the Assembly TAP No. XX / MPRS / 1966 and in 1945 *(prior to amendment),* that the Constitution and MPR Decree are not included in the group of legislation but rather as *'Ground Rules'* or *'rules of the Basic State'.* While those that includes as the legislations are government regulation, Presidential Decree, Ministerial Decree, Decree of the Head of Non-Departmental Government Institutions, Decree of the Head of State Councils, regulation at Provincial, Districts as well as Regent / Mayor level. However, this view was criticized by Manan (1994).

On the basis of Assidhiqie (2004) and Attamimi (1990), it can be concluded that the national Constitution in this respect the Constitution of the Republic of Indonesia Year 1945 does not include legislation but rather as *'Ground Rules'* or *'rules of the Basic State'* or *'Basic Regulation'.* Therefore, the object of examining laws and regulations in terms of *judicial review* is all forms of legislation that is set *(Regeling)* and generally binding.

c. ***Examination toward Act against the Constitution***

Legislation is a written agreement made by the agency may be authorized by the constitution. In the context of the State Constitution of Republic of Indonesia in 1945, the law made by the Parliament and the President, so that each bill is discussed and approved by the joint of both institutions. Thus, the authority of legislation is in the House but the process and the establishment of a law to be in the House and President. Therefore, the institution of Parliament is a political institution that is one of its functions in accordance with the State Constitution RI 1945 is in the field of legislation.

Change authority of making laws which formerly was the President and switch on the House made on the first changes the state Constitution RI 1945 in 1999 (October 19, 1999). These changes indicate a shift in the role of the legislature which was originally in the field of making laws just placed as the agency approval to any draft legislation, and subsequently converted into an initiator in the establishment of institutions legislation. Therefore, Parliament is a political institution, and every legal product is also a political process, then by itself every formation law, cannot be separated from the intervention and political interests. Act as a political process, then decision made cannot be separated from the political forces that support / approve and / or disapprove by the *'power of the majority'.*

To avoid the *'power of the majority'* who disregard and ignore the aspect of truth and justice that must be reflected in any legislation and consistency, synchronization normative vertically, it needs a legal mechanism that is the process of examining material into law by a duly authorized institution specifically for a examination run. As well as the experience and the issuance of Law No. 19 Year 1964 on Basic Provisions of Justice powers (Article 19) is clearly contrary to the 1945 Constitution, allowed to remain in force because there is no institution that controls or examination over the mistake. Therefore, it is very important and strategic the position of the examining agency regulations to control the legislation in order to maintain consistency, harmonization, synchronization vertically, as well as maintaining law and order and legal certainty.

The act is a form of legislation which is quite extensive range of materials, both related to the life of the state, government, society and individuals. Fields that cannot be regulated by law only things that have been set by the constitution, or that the law itself

© 2015, Scientific Research Journal

has been delegated in the form of other legislation. Broadly speaking, the substance of a law relating to two (2) main points: *first,* set further provisions of the Constitution, and *secondly,* because it was ordered by the Constitution to be regulated by law.

The substance of a law according to Bagir Manan (1992) based on the benchmarks that are still common, among other things are as follows: (1) set out in the constitution; (2) set out in the legislation earlier; (3) set in order to remove, add or replace the old law; (4) concerning basic rights / human rights; and (5) concerning people's interests or obligations.

The benchmarks are, in certain respects is not absolute, i.e. not all of the substance must be formally regulated in a law, but the law in question may delegate its settings to the legislation that a lower level. Therefore, the extent of the substance to be regulated in a law, and if it is associated with the formation process is a political process, hence the tendency to put the political interests of certain groups are very open, even interests that are not in line either with the norms set out in the Constitution as well as various forms of legislation that the same degree can still be done.

Thus, every political decision, not always impartially and in line with the principles of normative, but very open and vulnerable to short-term political interests intervention. To avoid the neglect of the principle of consistency, synchronization and harmonization vertically and horizontally, it is necessary any legal product of the results of political decisions, can be examined by a particular institution is given authority to do so by the constitution. Examining of a law against the national constitution defined by Asshidiqie (2004) as *'constitutional examination'* or *'constitutional review',* i.e. examining the constitutionality of a legal norm that is being examined *(judicial review on the constitutionality of law).* In general, judicial review of laws against the constitution be implemented in countries with a system of government based on democratic principles, the rule of law, the principle of separation of powers, and the principles of human rights. This means, examining laws against the constitution will be run as it should, if the state administration adheres to the principle of *'rule of law'* and not *'supremacy of parliament'.* Because the principle of the supremacy of parliament, the laws (UU) produced by the Parliament cannot be examined, since parliament is the representation of the people's sovereignty.

Therefore, the position of judicial review of laws against the constitution be of strategic importance, because the two (2) things: *first,* to ensure the proper functioning of the democratic system in relation to the balance between the role of the legislative branch, the executive and judicial branches; and *secondly,* to protect every citizen from abuse of power by state agencies that harm their fundamental rights guaranteed in the constitution. Examining laws against the Constitution in the perspective of 1945 (prior to amendment) is not known, although there is not a provision in the 1945 Constitution, which prohibits such examining. This is due espoused the principle of division of power that led to the practice of the principle of parliamentary supremacy.

This suggests that judicial review of laws against the constitution basically be implemented if the principle of power in the country adheres to the principle of *separation of power* and the principle of *'checks and balances'* that explores the practice of the principles of the rule of law. Examining legislations with the object of the law against new constitution introduced in the state system of Indonesia since 2000, namely, through the MPR Decree No. III / MPR / 2000, which is stipulated in Article 5 (1) which states: (1) The Consultative Assembly authorized to act against the Constitution of 1945, and the People's Consultative Assembly Decree.

The article 5 (1) Decree No. III / MPR / 2000 understood not examining legislation in the sense of *'judicial review',* but *'legislative review',* because the Assembly is the representative body of the people and not a judicial institution. The emergence of this setting is to accommodate the aspirations that arise, so that every statute is not sterile or can be examined with regard to setting the hierarchy of legislation set out in Article 2 of Decree No. III / MPR / 2000. Therefore, the 1945 Constitution does not provide for judicial review of laws and implementing institutions, then set the Assembly as the highest state institutions and embodiment of popular sovereignty, so it is logical that the institution of legal products below can be examined by the Assembly.

MPR Decree was born, after two (2) years of the commencement of the reform, including legal and political reform and democratization that is visible in the social and political organization of the country so strong. Therefore, no provision of the 1945 Constitution which regulate and prohibit not about examining the law against the Constitution, the MPR Decree No.III / MPR / 2000 is considered to be a natural and necessary to help the present democracy transition.

However, in the present time, the examination of laws against the constitution clearly stipulated in Article 24C paragraph (1) Republic of Indonesia Year 1945 Constitution, and Article of Law No. 24 Year 2003 regarding the Constitutional Court. Thus, judicial review of laws against the constitution have emerged since 2000 and immediately sounded significantly in the Constitution and its implementing legislation. Institutional given the authority to carry out examining of law against the constitution is the Constitutional Court which was formed on August 13, 2003.

d. Examination on Legislation under the law against the National Constitution

Examining legislations with the object of regulation under the law is not dealt with explicitly in 1945, but since 1970 explicitly provided for in a law and other regulations. First set out in Article 26 of Law No. 14 of 1970 on the provisions of the Basic Judicial Power, and corroborated by Article 11 of Decree No. III / MPR / 1978, as well as Article 31 of Law No. 14 of 1985 on the Supreme Court. Settings examining regulations under this law indirectly practicing the principle of *'checks and balances'* although limited. For examining regulations can basically be run, if the principle of separation of powers and *checks and balances'* adopted and implemented in the state administration.

The existence of regulatory examining arrangements under this law is also intended as a normative controls every action or legal product in the form of regulations of the executive in this case the President and other state institutions. This is due, the President by 1945 given the task and authority that is large enough to translate the contents of a statute in the form of government regulation. The position of the president in relation to the process of formation and implementation is quite large. When the legislation is still in the process, the position of the President is as one of the discussants and the approver, in addition also entitled to submit the

© 2015, Scientific Research Journal

Draft Law. In addition, the President also has the right and obligation to create and issued Government Regulation (PP) as an instrument for the implementation of the legislation.

Government regulations as the implementing legislation, then by itself cannot be made to run the RI State Constitution of 1945, as the legal instrument to carry out a constitution is law. Therefore, government regulation as the implementing legislation essentially is the payload material substance of the law, but more detailed. Therefore, the position of the President is quite large in interpreting the substance of legislation that will be poured in the form of government regulation, as well as big enough political intervention for the benefit of the President. In addition, the President may also issue a decision in the form of regulations to carry out its duties and functions as a state institution. For this, the inherent authority and born as a body or official of the state administration that is based on the principle of freedom of action (*Freis ermessen*). However, the principle of freedom of action to run the government does not mean freedom without limitations, but remains bound by the principles of proper public governance, such as the principle of equal treatment, the principle of legal certainty, and the principle trustworthy. In practice, these things can be a Presidential Regulation, Presidential Instruction, and others.

As the sequence order legislation, the Regional Regulation is also the legislation though the coverage area enforceability limited to the area concerned (local) , Therefore, the Local Regulation legislation and an integral part of a unified system of legislation nationally. This implies, the creation of a Regional Regulation is not just associated with formal competence as an autonomous region or merely see and be based regional interests are concerned, but more should be based on the unity of the administration and the national interest as a whole. This principle is related to the principle of normative consistency vertically, although still open to the diversity of the substance as outlined in the Regional Regulation, but still have no normative relationship vertically.

Thus, the object of regulatory examining under the laws of the statute is Government Regulation, the Presidential Decree and Regional Regulation. In hierarchical, object-examining regulations under the law can be seen from the perspective of the form and order legislation governed by MPRS / MPR, and legislation.

III. Examining Regulations under the Act by the Supreme Court and Its Procedure

a. Examination on the arrangement of Legislation Based on Supreme Court Regulation No. 1 1993

In the period 1993 - 1998 the examination on the legislation arrangements basically provided for in Article 26 of Law No. 14 of 1970, Article 31 of Law No. 1985, and Article 11 of MPR Decree Third Year 1978. In the period 1993-1998 the examination on the legislation arrangement basically provided for in Article 26 of Law No. 14 of 1970, Article 31 of Law No.1985, and Article 11 of MPR Decree of the Year 1978. The three rules are generally the basis for examining the implementation of the legislation, but the trio did not set the technical implementation of examining legislation. Weakness seen in various regulations issued on examining legislation is not followed by a technical arrangement, namely the implementation of the examining procedure law legislation. Given the brevity such examining conditions governing legislation, have an impact on the difficulties the Supreme Court to carry out its functions in the examining legislation. To overcome the technical difficulties of examining the implementation of regulatory proficiency level, the Supreme Court of the Supreme Court issued Regulation No. 1 of 1993 (Perma No. 1 of 1993) .

In addition, the birth of Supreme Court Regulation No. 1 In 1993 the Supreme Court interpretation of the provisions of Article 26 paragraph (2) jo. Article 31 paragraph (3) U No. 14 of 1985 which states that: ' *The decision on invalidity of statement* may *be taken in connection with the examination of the appeal level*. ' In this regard, there are two words, ' *judgment* ' and ' *may* ' is interpreted to mean that, *firstly,* these provisions using the formula ' *decision* ' and not a ' *determination* ' , so that the examination of regulatory proceedings in the form of a judgment or verdict as in the case *contensiosa*. *Secondly,* that the provision in the legislation also use the word ' *may* 'and not the word ' *must* ' or ' *only may* ' , so that that provision is not limiting, but it provides an alternative space. Therefore, the Supreme Court held that the lawsuit case of judicial review of legislation can be addressed directly to the Supreme Court (Soemantri, 2000). In addition, Perma No. 1 In 1993 the internal rules of the Supreme Court to carry out its functions as mandated by Article 26 of Law No. 14 of 1970, Article 31 of Law No. 14, 1985, and article 11 Tap. MPR No. III / MPR / 1978. Also, Perma No. 1 of 1993 as well as the implementation of Article 79 of Law No.14 of 1985, Thus, Perma No. 1 1993 can also be called a ' *code of conduct* '. Perma No. 1 of 1993 has material substance that govern the procedures of the rights of laws, examination at trial, the notification of the decision and other provisions. Weakness is still found in Perma No. 1 1993 is not set explicitly on the implementation of the decision to punish or deadline to the agency issued a regulation to repeal or replace it. Indeed, the provisions stipulated in Article 26 of Law No. 14 of 1970, and Article 31 of Law No.14 1985 instructed the regulators who revoke or change it, but there's no time limit so as to complicate the implementation of the decision of the examining rules themselves.

Therefore, the issuance of Perma No. 1 of 1993 has historical value for examining legislation, due to the Supreme Court dared to undertake a strategic step in the law reform, in addition to confirming the positions of the Supreme Court as an institution is given the authority to control legal products in the form of legislation under the law , In addition, the Supreme Court courage to publish Perma No. 1 1993, can also provide insight for the government to be more selective and careful in understanding and formulating regulations in implementing enactment of the laws.

b. Procedures of Examination

© 2015, Scientific Research Journal

1. Filing Claims and Appeals Procedures

The procedure for application in examining legislation is not regulated in different laws governing the examining rules under the legislation as described above, but the settings through the Rules of the Supreme Court. The birth of the Supreme Court Rules on the Rights of the Material Examining is to carry out orders the Constitution of the Republic of Indonesia in 1945, MPR Decree Law and others. Explicitly examination the implementation of the technical provisions of legislation such as the Regulation Supreme Court is only regulated in Article 79 of Law No. 14 of 1985, is by itself the Supreme Court granted the authority to issue regulations that are internal. To that end, the Supreme Court has issued the Supreme Court (Perma) No. 1 of 1993 and updated with Perma No. 1 of 1999.

Regulation of the Supreme Court (Perma) No. 1 of 1993 contains regulations on the filing procedure for judicial rights, the proceedings, the decision and the decision notice. The provisions set forth in Perma No. 1 In 1993 a special provision as the elaboration and execution of commands legislation relating to the examining of legislations.

a. According PERMA No. 1 Th. 1993

1) The lawsuit addressed to Board / Administrative Officer businesses state that issued the legislation in question, signed by the claimant or their legal representatives, can be submitted directly to the Supreme Court or by the first instance court in the jurisdiction of the defendant, clearly stating the reason for the lawsuit, and made in triplicate;
2) Judicial Material lawsuit filed directly to the Supreme Court, when they fulfill the formal requirements of the administrative, shall be registered in a special register by the Director of the Administrative Supreme Court of the Republic of Indonesia. The lawsuit filed by the first instance court, when they fulfill the formal requirements of the administrative, listed by the Chief Registrar of the court, then the file is sent to the Director of the Administrative Supreme Court to be registered, and the plaintiff be given a receipt or their proxies his case file.
3) Director of the Administrative Supreme Court examine the completeness of his case file, and if there is a shortage accessories can be direct or through to the relevant court and ask the claimant or attorney to complete. If the case file is complete, the Director of the Administrative Supreme Court submitted to the Chairman of the Supreme amah SDA.

b. According PERMA No. 1, 1999

Regulatory examining procedures for filing cases under the laws of the statute by Perma No. 1 1999 can be done through ' *claim* ' and ' *request* '. In detail the procedures for filing regulatory examining under the laws of the statute by Perma No. 1 1999 can be explained as follows:

Claims Procedure

(1) The lawsuit can be filed to the Supreme Court by way of: a. directly to the Supreme Court, and b. through the District Court.
(2) The lawsuit may be filed against the legislation, except for the legislation that is directly related to each other .
(3) The lawsuit made copies as needed by mentioning clearly the reasons that basis the complaint and must be signed by the plaintiff or his authorized proxy.
4) The lawsuit filed within the period of 180 (one hundred eighty) days after the entry into force of the legislation concerned.
5) Plaintiff pays court fees when enrolling a lawsuit that the amount would be regulated separately.

Furthermore, the ordinance on the examining process, if there is a lawsuit directly to the Supreme Court as follows:

(1) In the case of a lawsuit filed directly to the Supreme Court, the Supreme Court listed secretariat and recorded in a separate register book using the code: .... G / HUM / Th ......
(2) Clerk of the Supreme Court examine the completeness of the file and if there is a shortage may request directly to the plaintiff or his authorized proxy .
(3) Clerk of the Supreme Court shall send a copy of the lawsuit to the defendant after completion fulfilled his file .
4) Defendants shall send or deliver the answer to the clerk of the Supreme Court within 14 (fourteen) days from the receipt of a copy of the lawsuit.
5) Deliver to the Registrar of the Supreme Court Chief Justice to the Supreme Council of Judges determined after a complete file the lawsuit.

Furthermore, if the lawsuit is filed by a court, then the procedures as follows :

(1) In the case of a lawsuit filed by a local District Court, registered with the secretariat and recorded in the register book of its own case by using the code: .... G / HUM / Th ..... / PN ..... after Plaintiff or authorized proxy pay court fees and was given a receipt of the court fees.
(2) State court clerks check the completeness of the lawsuit that has been filed by the Plaintiff or his authorized proxy.
(3) Clerk of the District Court before proceeding with the lawsuit to the Supreme Court shall send a copy of the first lawsuit to the defendant to get an answer to Plaintiff.
(4) Defendant within 14 (fourteen) days from the receipt of a copy of the lawsuit should send or submit the answer to the Clerk of Courts concerned .

© 2015, Scientific Research Journal

(5) The Clerk of the District Court concerned immediately sent to the Supreme Court the next day after the deadline referred to paragraph (4).
(6) submit to the Registrar of the Supreme Court Chief Justice to the Supreme Council of Judges assigned .

Application Procedures

Procedure ' *request* 'is not contained in the formulation of various provisions of the examining legislation as stipulated in Article 26 of Law No. 14, 1970, article 31 of Law No. 14 of 1985 and Article 11 Tap. MPR No. III / MPR / 1978. If traced the provisions of Article 26 paragraph (2), Article 31 paragraph (3) of Law No. 14 of 1985, then both use the word examination results. This means that all the examination cases is a case ' *contentious* ', so that the final settlement with the' *verdict* 'judges. Conceptually, the verdict is a revelation by the judge, as a state official who is authorized to it, pronounced in the trial that aims to end or settle a problem or dispute between the parties (Sudikno, 1999). In a matter of dispute can be distinguished are two (2) things that is, a case that is' *contentious* ' or disputes stemming from the lawsuit, and the cases that are ' *voluntary* or disputes originating from the petition. The decision has different types, namely, for the case ' *contentious* ', then this type of decision-called' *ruling* ', while for the case' *voluntary* ', then this type of decision-called' *determination* '.

Therefore, procedure *'petition* 'which is set in Perma No. 1, 1999 should not be rated anything contrary to the law, because the provision is also not regulated prohibition procedure ' *request* ', but precisely based on sociological grounds, where more people using the procedure of' *request* '.

Procedure ' *petition* ' examination case under the rule of law against the law, can be explained as follows:
(1) Objection petition filed to the Supreme Court by way of: a. directly to the Supreme Court, and b. through the District Court in the jurisdiction of domicile of the Applicant.
(2) Petition of objection may be filed against the legislation, except for the legislation be mutually related directly.
(3) Request copies objection made necessary by stating clearly the reasons shall be the basis of the objection and signed by the applicant or his authorized proxy.
(4) Request objections filed within the period of 180 (one hundred eighty) days after the entry into force of the rules and regulations concerned.
(5) The applicant to pay the application fee at the time of registering an objection petition which amount regulated separately.

If the submission of ' *request* 'is made directly to the Supreme Court, then the process is as follows:
(1) In the case of objection filed petition directly to the Supreme Court, the Supreme Court listed secretariat and recorded in a separate register book by clicking use the code: ..... P / HUM / Th ....
(2) Clerk of the Supreme Court examine the completeness of the file and if there is a shortage may request directly to the applicant or his authorized proxy.
(3) Deliver to the Registrar of the Supreme Court chief justice for the Supreme Council of Judges determined, after a complete application file objections.

Similarly, if the submission of ' *request* 'is conducted through the District Court, then the process is as follows:
(1) In the case of objection petition filed through the local District Court, filed in court reporting and recorded in the register book of its own case by using the code: .... P / HUM / Th ..... / PN ..... after the Applicant or authorized proxy pay application fee and be given a receipt.
(2) State court clerks check the completeness of objection letters have been registered by the applicant or his authorized proxy, and if there are deficiencies can be requested directly to the applicant or his authorized proxy.
(3) Clerk of the District Court concerned immediately sent to the Supreme Court the next day.
(4) Deliver to the Registrar of the Supreme Court Chief Justice to the Supreme Council of Judges assigned.

2. *Examination in the trial*

Provisions governing the procedure for examination of both the lawsuit and petition for regulation under the laws of the statute explicitly as follows:
(1) Chairman of the Supreme Court establishes that the Assembly will examine and decide both the lawsuit and petition for regulation under the Act against the law.
(2) Panel of Judges of the Supreme examine and decide on the right to a judicial lawsuit by applying the applicable legal provisions for lawsuits in the short examination possible time in accordance with the principles of justice that is simple, fast and low cost.
(3) Panel of Judges of the Supreme examine and decide upon the objection of judicial rights by applying the provisions of law applicable to the case request in the short examination possible time in accordance with the principles of justice that is simple, fast and low cost.

Inspection process specified in Perma No. 1 1993 with Perma No. 1 In 1999, in principle no different and distinguishable only by the case of petition objection that is not regulated or recognized in Perma No. 1 in 1993, but is set in Perma No. 1 of 1999. Examination of the examination cases, either through a lawsuit or by petition of objection are all conducted in accordance with the legal provisions applicable to lawsuit or solicitation in the short examination possible time.

© 2015, Scientific Research Journal

Therefore examined, assessed and decided upon is not a concrete event carried out by legal subjects, but a binding legal norms in general, so the multi-dimensional impact both normative and political, social, economic and even cultural, the precautionary principle and the principle justice that is simple, fast and low cost are also being treated for the examination case .

3. Verdict

As described above, that Article 31 paragraph (2) of Law No. 14 in 1985 and Perma No. 1 1993 and Perma No. 1, 1999 using the word ' *decision* 'and not the word' *establishment* '. The word ' *decision* ' *,* the ' *verdict* 'judge or panel of judges to settle a problem that is' *contentious* ', and the word' *determination* 'is used in the case of a '*voluntary* 'or through a' *request* '. Therefore, the provisions of Article 31 paragraph (3) and Perma No. 1 1993 and Perma No. 1 in 1999 use the word ' *decision* ', then by itself the provisions of Article 5 Perma No. 1 of 1999 which introduced the procedure of ' *request* 'for examining under the rule of law against the law which should be the end result of these examinations is with the word' *establishment* ' or a case of petition included in the case voluntary.

However, it turns out, all the examinations, and assessment of examining rules under the laws of the statute Perma No. 1 1999 still uses the word ' *decision* '. This is due to that case of judicial rules, is not the same with the case ' *voluntary* ' because the petition filed objection is not to the applicants themselves, but precisely in the public interest, so that in this case there are still two (2) litigants.

The verdict in the examining rules under the laws of the statute is divided into three (3) types of decision, namely, as follows.

(1) In the event that the Supreme Court found the suit groundless, because the legislation is contrary to law or legislation are higher, the Supreme Court granted the lawsuit. The Supreme Court in its decision stated that legislation such as invalid and does not apply to the public and ordered the immediate revocation to the agency concerned.
(2) In the event that the Supreme Court found the suit are groundless, the judges of the Supreme reject the lawsuit.
(3) Supreme Court ruling referred to paragraph (1) and (2) may only be imposed after the defendant be heard.

Similarly to the case *'petition'* , can be seen in the explanation of Article 10 paragraph (1), (2), and (3), namely:

(1) In the event that the Supreme Court found it reasonable objection petition, because the legislation is contrary to law or legislation are higher, the Supreme Court granted the appeal request.
(2) The Supreme Court in its decision stated that the legislation is filed the appeal as not valid and does not apply to the public and ordered the immediate revocation to the agency concerned.
(3) In the event that the Supreme Court found that unwarranted objection petition, the Supreme Council of Judges reject the appeal petition.

Besides verdict ' *grant* ', and' *reject* ' is also no decision ' *not acceptable* 'that if the case file does not meet the administrative requirements. Thus, the decision taken by the Supreme Council of Judges to ' *claim* 'and' *request*' objections, both use the word' *decision* 'to make the case of judicial legislation in the case of a' contentious ', and not a matter' of *voluntary* 'though the procedure using the ' *request* '.

4. Implementation of the Decision

Implementation of decisions as set out in Perma No. 1 of 1993 stated that if the Panel of Judges of the Supreme Court lawsuit argues reasoned, then the claim is granted by stating that the legislation which was sued as invalid because it conflicted with the legislation which rank higher. Implementation of the decision of the Supreme Court subsequently handed over to the agency / officer who issued intended legislation.

The aforementioned provisions puts Supreme Court as a state institution may be authorized by the 1945 Constitution as the supreme executor of judicial power in a weak position, because the decision was not immediately able to bind, but precisely depends on the political will of the maker of the legislation.

Therefore, the provisions amended by Perma No. 1 of 1999, in which article 12 paragraph (1) and (2) and Article 13 paragraph (1) and (2) states unequivocally on the implementation of the decision. Such provisions are as follows:

(1) Clerk of the Supreme Court's decision to include excerpts published in the Official Gazette and at the expense of the state.
(2) In the case of 90 (ninety days) after the Supreme Court's decision is sent to the Defendant, the Defendant did not carry out obligations it turns out, by law, the legislation in question does not have the force of law.

While in the Article 13 of Perma No. 1 1999, it was mentioned as follows.

(1) Clerk of the Supreme Court's decision to include excerpts published in the Official Gazette and at the expense of the state.
(2) In the case of 90 (ninety) days after the Supreme Court's decision is sent to the Agency or state administrative official who issued laws and regulations, it appeared that the relevant officials did not fulfill their obligation, by law, the legislation in question does not have the force of law.

The aforementioned provisions provide a strong foothold basis to the Supreme Court in carrying out its duties and authorities in the case of judicial legislation. All decisions of the examining regulations are required to be announced through the

© 2015, Scientific Research Journal

State Gazette, in which original it is not regulated. In addition, the prescribed time limit of 90 (ninety) days to repeal the legislation, and if it is not revoked, then declared invalid automatically.

Drastic changes in the provisions concerning the examining procedure law legislation through Perma No. 1 of 1999 on Perma No. 1 In 1993, it has become demand history. Such amendment is in line with social and political change in Indonesia, as a result of the statement stopped Soeharto as President and demands for reform which includes law reform. According to the assessment of the Supreme Court, Perma No. 1 of 1993 has been less than adequate even regarded as the instrument that is less support for legal reform. To that end, the Supreme Court issued Regulation No. 1 1999 instead of Perma No. 1 of 1993.

Supreme Court Regulation No. 1 of 1999 issued is to accommodate the growing aspirations of the people who demand the holding of legal reform in order upholding the rule of law and the independence of judicial bodies as mandated by MPR Decree No. X / MPR / 1998 on the Principles of Development Reform in Rescue order and normalization National Life as a State Policy. Perma No. 1 1999 basically just enhance Perma No. 1 In 1993 the Supreme Court of wills in order to be more creative, in addition to streamlining the implementation of the functions and authority of the Supreme Court in examining legislation as determined.

Substantially materials arranged in Perma No. 1 of 1999 is more progressive compared with Perma 1 of 1993, which regulates the implementation of previous decisions which are not dealt with in a limited, but technically it is not too much different, and that sets it apart is the implementation arrangements and procedures for filing decision coupled with the request.

Initially the implementation of the decision on the examining of legislation submitted to the agency or official concerned. But in Perma No. 1 of 1999 is given in a limited time that is 90 days after the decision is sent to the defendant (agencies / officials), and if the time limit is not well implemented, then by law the legislation is concerned, it does not have the force of law again.

The principal different between perma No. 1 1993 with Perma No. 1, 1999, among others:

1) In Perma No. 1 In 1993, it is not possible filing of a petition for legislation, but can only be submitted in the form of a lawsuit (Article 1 Perma No. 1 of 1983). But in Perma No. 1, 1999 filing of a petition for legislation may be submitted, in addition to the means filing a lawsuit (Article [2] and [5] Perma No. 1 of 1999).

2) Dictum decision in Perma No. 1 of 1993 simply states the legislation is being sued *'as illegitimate'*, as opposed to legislation which is more high degree. While the Perma no. 1 In 1999, the decision is more firmly that if the petition or lawsuit by *'The Supreme Court stated that the legislation is sued or filed an objection as not valid and does not apply to the public and ordered the immediate revocation to the agency concerned'* (Article 9 and 10 Perma No. 1 of 1999).

3) In Perma No. 1 of 1993 is not set to excerpts of the examination verdict of legislation included in the 'Official Gazette' and published at the expense of the state. Such provisions stipulated in Perma No. 1, 1999 (Article 12, paragraph [1]).

4) In Perma No. 1 of 1993 does not set the deadline for filing a lawsuit, but in Perma No. 1 of 1999 it is stipulated that, against all legislation that existed before issued Perma No. 1, 1999 can only be sued or filed not later than the date of June 1, 2000.

5) In Perma No. 1 In 1993, unregulated how the legal force of a legislation that is declared invalid or do not apply to the public, if the institution in question is not or has not removed it. But in Perma No. 1 1999 are strictly regulated, ie within a period of 90 days after the Supreme Court ruling was sent to the defendant or the applicant, and it was not carried out its obligations, then by law the legislation does not have the legal power again (Article 12, paragraph [2]).

The publication of the Supreme Court Rules (PERMA) No. 1 of 1993 and the rules of the Supreme Court No. 1 of 1999 which opened the two (2) way of examining filing legislation that, through the procedure ' *claim* ' and '*petition objection* 'is meant as an attempt Court General to open the doors to the public who wish to apply for judicial review of regulations under legislation considered contrary to the law. Regulation of the Supreme Court is to describe the regulatory tasks ordered by the constitution and / or laws, and these laws are not included in the hierarchy of laws and regulations because of its technical and internal. However, Mahfouz considers that the Supreme Court Regulation No. 1 of 1999, which opened the door ' *petition objection* ' is to hold a new thing, and this is considered to deviate from the substance of the constitution and laws. Granting authority to examination the legislation to the Supreme Court is not in itself the authority can be carried out and got a response from the public. This is due in addition to setting a very tight and almost unenforceable, also public confidence in the institution of the Supreme Court is not too big. Two things that have an impact on the assessment of less proportionately from the public to the Supreme Court, even the Supreme Court can be classified on the outskirts position.

IV. Concluding Remarks

The examination of regulation and legislation in Indonesia has been considered important in Indonesia. The study found that as a normative control, the examination can be performed by the institution itself or its maker can also be done by institutions outside the regulatory agencies. If the examinations performed by the regulatory agencies can be called internal examination or internal controls, but if the examination is the outside institution may be called external examination or external supervision. However, the regulatory agencies is possible to examine its own law, and if the establishment of the authority of legislation attached to the legislative control of the normative examining is commonly called *legislative review* that its object is the law and the constitution and product Legal equivalents.

Furthermore, if the establishment of regulatory authority is the executive or government regulations as a command execution laws or regulations as the implementation of the functions and duties of governance, then the normative control or examiners are commonly called *executive review*. But if the normative control of the various regulations issued by the executive performed by

© 2015, Scientific Research Journal

ISSN 2201-2796

institutions outside the executive in this case by the institution of judicial power, the normative control or examining are commonly referred to *judicial review*. This normative controls intended to prevent all forms of government activities in running the government does not get stuck on the authoritarian practice, because the trend towards authoritarian is very open.

REFERENCES

Abraham, Henry J. ***The Judicial Process - An Introductory of the Court of The United States, England, and France,*** Third Edition Revised and enlarged (London: Oxford University Press, 1975)

Adler, John, and Peter English, ***Judicial Review of the Executive,*** the ***'Constitutional and Administrative Law'***(London: Macmillan Professionals M Asters, 1989)

Asshiddiqie, Jimly, ***Models Constitutional Examining in Various Countries,*** (Jakarta: Kon constitution press, 2005)

_________________, ***Constitution and Constitutionalism Indonesia,*** (Jakarta: Indonesian Constitutional Court and Center for Constitutional Law Studies Faculty of Law, University of Indonesia, 2004)

Attamimi, A. Hamid., ***Role of Decree of the President of the Republic of Indonesia in the Governance of State - A Study analysis on the Functioning of Presidential Decree setting the Time Period Pelita I - Pelita IV,*** dissertation defended in front of the Senate Professor of University of Indonesia on December 12, 1990 in University of Indonesia

Effendi, Paul, Lotulung, ***Multiple System on Legal Control of the government,*** (Bandung: Citra Aditya Ba KTI, 1993)

Friedmann, W, ***Legal Theory,*** Fifth Edition (New York: Columbia University Press, 1967)

Kelsen, Hans, ***General Theory of Law and State,*** (New York: Russell & Russell, 1945)

_______________, ***Pure Theory of Law,*** (Berkeley, Los Angeles, London: University of California Press, 1978),

Kommers, Donald P., ' ***Cross-National Comparison of Constitutional Court Toward a Theory of Judicial Review*** , Paper - presented at the annual meeting of the American Political Science Association, (Los Angeles, Calif, September 11, 1970).

Le Sueur, AP., And JW Herberg, ***Introduction to the Grounds of Judicial Review*** , the ***'Constitutional and Administrative Law*** , (London, British Library Cataloguing in Publication Data, 1995), p. 204.

Marzuki, M.Laica, ***stroll in the realm of law,*** (Jakarta: Konstitusi Press, 2005), p. 67

Manan, Bagir, **Function and Regulation Legislation Material,** Paper presented at Penataran Lecturer in Education and Training activities Proficiency Law, organized by the Faculty of Law, University of Lampung, 11 November 1994,

Martosoewignjo, Sri Soemantri, Final Report Assessment Team Law on Legal Issues Judicial Material, (Jakarta: BPHN Department of Law and Legislation RI, 1999/2000),

Nawiasky, Hans, ***Allgemeine Rechtslehre System als der rechtlichen Grundbegriffe*** , cet. The second (Einsiedeln / Zurich / Cologne: Benziger, 1948), p.31

Nugaraha, Safri et al, ***the State Administration Law,*** (Jakarta: Board Faculty of Law Publishers, 2005), p. 77.

Raz, Joseph, ***The Concept of a Legal System,*** Oxford: Oxford.

Soedirjo, ***the Supreme Court - Brief Description of the status, composition of His power according to Law No. 14 Year 985,*** (Jakarta: Sarana Media Press, 1987),

Tanenhus, Joseph, ***Judicial Review*** , the entries in " ***An International Encyclopedia of the Social Sciences "*** , (Macmillan, 1968).

© 2015, Scientific Research Journal

Teeuw, A., ***Dictionary Indonesia - Netherlands*** (Jakarta: Scholastic Press, 2002), and 842 hal.260 explaining that *toetsing*means examining, *toetsen* defined examination and *recht* interpreted or legal rights, so *toetsingrecht* can be interpreted as the authority to examine or to conduct the examining.

Williams, Jerre S., ***"Constitutional Analysis in a Nutshell",*** (St. Paul Minn: Weat Publishing Co., 1979)

© 2015, Scientific Research Journal