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Authority Integration of Judicial Review Conducted By Judiciary in Indonesia

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ABSTRACT

The separation of authority of judicial review between Supreme Court and the Constitutional Court which exists in Article 24A point (1) and Article 24C point (1) of the 1945 constitution is not ideal because it can cause legal problems which are complicated, both in terms of the philosophical, theoretical, and juridicial. Therefore, the authority integration of judicial review by a judicial review becomes an urgent constitutional need in terms of providing a guarantee of legal and justice certainty and as a consequence of the applied hierarchical theory of legal norms in the Indonesian legal system.

Keywords: judicial review, the integration of authority, hierarchy of legal norms.

A. Background

After the third change of the Constitution NRI 1945, the regulation ofjudicial review conductedby the judiciary is an interesting academic study. Despite of the formation of new institutionthat one of theauthorities is reviewing the constitutionality of law toward the Constitution of 1945 that is the Constitutional Court, it also happens due that it isno longer centering the state power only in one branch of state power that is the President or the executive. Thus,now the legal norm or legislation under the Constitution of 1945 is widely petitioned to the Supreme Court and the Constitutional Court. This situation is still positive, in order to be better in in giving thelegal safeguardwarrantyof the citizensrights guaranteed by the Constitution, because there is not a few of material/ content of legislation that lose out the rights of citizens guaranteed by the Constitution.

After the Third Amendment to the 1945 Constitution, on 19th of November 2001, the authority to review the legislation is given to the two judiciaries which are, the Supreme Court to review the legislation under the Constitution in accordance with the Article 24A point (1) NRI 1945, and the Constitutional Court to review the Constitution against the Constitution of NRI 1945, as regulated in Article 24C point (1) Constitution of NRI 1945. Hence, with this third change, the authority of the judicial authorities to conduct judicial review that the juridical legitimacy is strengthened and reinforced, if it is only regulated by Constitution previously, that is Law No. 14 of 1970 of Judicial Power and its amendment, at this time it is directly regulated in the Law/ Constitution of NRI 1945. If only legislation under the Constitution can be reviewed before, but now the constitutionality of Law also can be reviewed by the Constitutional Court.

However, by the advance of regulation of judicial review, it does not mean that it has no problems. The main issues will be the focus of this research is dividing the authority ofjudicial review between the Supreme Court and the Constitutional Court as regulated in Article 24A point (1) and Article 24C point (1) Constitution of NRI 1945, becauseactually the kind and the hierarchy of judicial review, exist in the unity of system that is integral in accordance with the legal norm theory, that is the *Stufenbau De Rechttheory* or the *Hirarchi of Law theory* of Hans Kelsen. This means that between one kind and the hierarchyof legislation rule and another there is a set of values which underlie each other, up to a highest value called *grudnorm* (Kelsen) or *staat fundamental norm* (Nawiaski) that then is regulated in Law No. 12 Year 2011 on the Establishment of Law and Regulation.[1]

Thus, according to the Indonesian legal system, law and regulation or written law was arranged in a level called hierarchy of law and regulation. Sequence order shows the levels of each related form, that the so-called first has a higher position than the form that is called after it. In addition, the sequence order has the legal consequences in the form of rules or regulations that levels are lower than that and itmay not contain material that is contrary to

[1]Look at Article 7 UU Number 12 Year 2011 tentangEstablishment of Law and Regulation.

the material that exist in a higher rule, regardless of the matter of who has authority to make a review of the legislation material and how is the consequence later if a material of rule is considered as contrary to the higher legislation material.[1] It is in line with the legal principle of *lex superiori derogate legi inferiori* (higher law beats legal that level is below it). It is intended to create legal certainty in the system of law and regulation.

Therefore, the separation of authority in the field of judicial review between the Supreme Court and the Constitutional Court has caused philosophical, theoretical, and juridical problems. Philosophically, that separation of authority makes the objective of the law failed to be achieved and disrupts the unity of the value system of law and regulation, and theoretically that separation of authority is contrary to the theory of constituional state, political theory of law, legal norm theory, and theory of legal norm review. Then juridically, it can lead to judgment conflict between the Supreme Court and the Constitutional Court *(conflict of norm)* and it can create the impression that the Constitutional Court has a higher position than the Supreme Court.

From the description above, the research problems are formulated as follows: why is the integration of authority on the judicial review conducted by one judiciary needed? How is the arrangement of the concept and which one is ideal to be given authority in judicial review?

B. Research Method

This type of research is a normative legal research that is research that reviews the law and regulation in a coherent legal system and unwritten legal values that exist in the community. With the specific characteristic of jurisprudence, this kind of research/ legal review *(rechtsbeoefening)* moves from the study of positive law whichreview includes three layers of legal, which are dogmatic law, legal theory, and the philosophy of law. Specific characteristics *(sui generis)* of normative jurisprudence explained by D.H.M. Meuwissenare: a) the empirical-analytical characteristic, that provides exposure and analyze the content and structure of law, b) systematization of symptoms of law, c) interprets the existing law, d) assess the existing law, and e) the practical significance of jurisprudence which is closely related to normative dimension.[2]

C. Results and Discussion

1. The Urgency of Authority Integration of Judicial Review Conducted by Judiciary in Indonesia

a. Philosophical, Theoretical, and Juridical Basis.

Philosophically, type and hierarchy of law and regulation of Indonesia, basically exist in a unity of integral value system that is appropriate with the legal norm theory, which is *Stufenbau De Rechttheory or The Hirarchi of Law Theory* of Hans Kelsen. This means that between one kind and the hierarchy of legislation rule and another there is a set of values which underlie each other, up to a highest value called *grudnorm* (Kelsen) or *staat fundamental norm* (Nawiaski) or Pancasila that then is regulated in Law No. 12 Year 2011 on the Establishment of Law and Regulation.[3]

Pancasila and the Preamble of Constitution 1945 are considered as the basic norms, as a source of positive law. The arrangement of the basic laws in the Articles contained in the body of Constitution 1945 is the radiance of the existing norms in the Preamble of the Constitution 1945 and Pancasila. Pancasila principles are contained in and part of the Constitution 1945, so by mentioning the Preamble of Constitution1945 only, those principles have been covered. The explanation of the Constitution 1945 it self has also expressed the same, although it does not use the basic norm term, but by mentioning it as"the ideals of law *(rechtsidee)*" realized from the main ideas contained in the Preamble of the Constitution 1945, "which controls the basic law of country, both the written law (constitution), and the unwritten law".Beside as the ideals of law, for the Preamble of Constitution1945 there

[1]Ni'matul Huda, *Negara Hukum, DemokrasidanYudicial Review,* (Yogyakarta: UII Press, 2005), page 50.
[2] D.H.M. Meuwissen, *In Apeldoom'sInleiding Tot de Studie van het NederlandseRecht,* W.E.J. Tjeenk Zwolle, 1985, page 446-447.
[3] Look at The Article 7 Law Number 12 Year 2011 onEstablishment of Law and Regulation.

was another term that is used", which is *Grundnorm* and *Staatsfundamentalnorm*[1] or"main fundamental principle of the State", as it is used by Notonagoro.[2]

Theoretically, in the perspective of the constitutional state theory, a democratic constitutional statemust fulfil the elements or certain principles of a constitutional state. Principles or elements that are relevant to be applied in the authority integration of judicial review is the supremacy of law and protection of human rights. In the principle of supremacy of law, the law must exist above other powers, therefore the law should be able to provide legal and justice certainty. And it potentially cannot beachieved, if the authority of judicial review is detached between the Supreme Court and the Constitutional Court.

In the perspective of the theory of constitution, material of law and regulation must be based on and derived from the constitution. And to ensure that the materials and the values of the constitution is obeyed by the norms which are below them, so it needs the mechanism for judicial review carried out by the judiciary.

Meanwhile, from the perspective of theory of authority, even the authority of the Supreme Court and the Constitutional Court in the field of judicial review are equally derived from the Constitution (attribution), but this theory will be used to analyze the weight of that authority, which is associated with the background and purpose of the establishment of those judiciaries, so it can be determined whichjudiciary is more appropriate to be given the authority in the field of judicial review, which in this case is the Constitutional Court.

From the perspective of political theory of law, separation of authority of judicial review is not based on clear political law for the strategic interests of the nation and state life, but only based on the technical and practical matters because the Supreme Court began before the amendment of the Constitution 1945 already has the authority of judicial review under the legislation. However, the arrangement of legal policy is actually based on the ideals and strategic interests of the nation and state life. Hence, with authority integration on the judicial reviewin a judiciary, it is meant to be able to maintain and synchronize values of constitution in the material of law and regulation that underlieit.

Meanwhile, in the perspective of the theory of legal norm, the sequence order of the law and regulation can be related to the precept of Hans Kalsen about related *Stufenbau des Rech* or *The Hierarchy of Law* that the rule of law is an arrangement in stages and every rule in the lower leve lcomes from the higher rule. That law is valid if it is made by the institution or the authority and based on the higher norms so that in this case the lower norm (inferior) can be formed by the higher norm (superior), and the law has stages and layers to form hierarchy, where a lower norm is enforced, sourced, and based on the higher norms, it does so again and again until a norm that cannot be searched further and it is hypothetical and fictional, that is the basic norm *(grundnorm)*.[3] Thus, it is sufficient if the authority to conduct a judicial review is given to one judiciary, in order to better ensure a unity of system of values included in the content of material law and regulation.

It must establish an important consequence of the principles of the hierarchy of legal norm that is a mechanism to maintain and ensure in order that those principles are not deviated or breached. The mechanism in the perspective of theory of reviewing legal norm (judicial review theory) is a legal review system for every law and regulation, or policies or another government's action, toward the higher law and regulation or the highest level that is the Constitution and it must be conducted by a judiciary whose decisionis final and binding. Without those consequences, the sequence order is meaningless.

On the other hand, juridically/normatively, the separation of authority of judicial review between the Supreme Court and the Constitutional Court will have an impact on the lack of guarantee of legal certainty, and inefficiency in the process of implementation of the law and regulation itself. Because a citizen could possibly feel that his/her right harmed by the establisment of a law and regulation under constitution so that he/she brings lawsuit/ demand of right of materiil review to the Supreme Court and the lawsuit was granted, but at the same time or after it if there is another residents who filed a judicial review application toward the Law that became the basis of the establishment of that rule to the Constitutional Court and the demand was granted, then this condition will cause legal uncertainty for the first citizen, and potentially cause legal problem that is quite complicated, instead of unefficiency of that judicial review system. Moreover, authority integration on the

[1]For example byUsepRanuwijaya, in his book, *Hukum Tata Negara Indonesia, Dasar-dasarnya,* (Jakarta: Ghalia Indonesia, 1983), page 175.
[2]Notonagoro, *PancasilaDasarFalsafah Negara,* (Jakarta: PantjuranTujuh, 1974), page 9 and page. 44.
[3]*Loc.Cit.*

judicial review conducted by one judiciary will be able to guarantee the equal position of the Supreme Court and the Constitutional Court.

b. The arrangement of the concept of authority integration ofjudicial review.

As the provisions of Article 24 point (2) Constitution of the Republic of Indonesia Year 1945 regulates that the organizing the judicial power is currently given to the two state gazette; the Supreme Court and the Constitutional Court. To distinguish the position, duties, functions and authority of both judiciaries, it is arranged in limited way in Article 24A point (1) of Article 24C point (1) Constitution of the Republic of Indonesia Year 1945.

Elaboration of provisions on the duties and functions of those two judiciaries is further regulated in Article 10 point (1), (2) and (3) of Law No. 23 Year 2003 about the Constitutional Court, as amended by Law No. 8 of 2011; Article 11 (2) and (3) of Law No. 4 Year 2004 about JudicialPower,[1] and Article 31 point (1) through (5) and Article 31A point (1) through (7) of Law No. 5 of 2004 on the Amendment of Law Number 14 Year 1985 about the Supreme Court.

The arrangement ofjudicial review in Law No. 24 of 2003 can be seen in Article that regulates authority and obligation attached to the Constitutional Court as stipulated in Article 10 point (1) and (2) of Law No. 24 of 2003 stated as follows:

(1) The Constitutional Court has authority to adjudicate at the first and last level whose decision is final to:

a. review the law against the Constitution the Republic of Indonesia Year 1945,
b. decide authority dispute of state gazette whose authority is given by the Constitution of RI 1945;
c. decide dissolution of political parties;
d. decide dispute concerning on the results of election.

(2) The Constitutional Court shall give a decision on House Representative's opinion that the president and/ or vice president is guessed to have done law infringement in the form of treason to the state, corruption, bribery, other felonies, or contemptible thing, and/or no longer fulfill requirementas president and/or vice president as stipulated in the Constitution the Republic of Indonesia Year 1945.

Therefore, the emergence of the Constitutional Court is a state gazette whose position equal to other state gazette and the regulation is stipulated in Constitution of RI 1945 and Law Number 24 Year 2003 jo. Law Number 8 of 2011 is part of the judicial control to the operation of the state through legal mechanism. The mechanism of control by the institution of judicial power is an important part of effort to build and develop the principles of a democratic state based on law or democratic constitutional state. By doing so, Indonesia, after the third amendment to the Constitution of NRI of 1945 adopts constitutional supremacy.

Similarly, Law No. 4 of 2004 about JudicialPower is the unification of Act No. 14 of 1970 and Act No. 35 of 1999 on the amendment of Law No. 14 of 1970. The establishment of Law No. 4 2004 is a legal consequenceof amendment of Constitution of RI Year1945 in the field of judicial power, that is Article 24 point(2), Article 24A point (1), and Article 24C point (1). Normatively, judicial review is also regulated in Act number 4 Year 2004, in Article 2, Article 11 (2) b, and Article 12 point (1) letter a, as amended by the Act No. 48 Year 2009 of Judicial Power.

Article 18 of Law No. 48 of 2009 regulates that, "Judicial power, as carried out by a Supreme Court and judiciary underneath it in the public court, religious court, military court, state administrative court, and by a Constitutional Court"

While Article 20 point (2) b of Law No. 48 Year 2009 is regulated as follows; "The Supreme Court has the authority: ... review lawand regulation under the law against the law...".

Anything that is related to authority of Constitutional Court regulated in Article 29 point (1) letter a of Law No. 48 of 2009, here is as follows; "The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final: a. Review laws against the Constitution of the Republic of Indonesia Year 1945 ", and so on.

[1] *Loc.Cit.*

Similarly, in Act No. 5 of 2004 on amendment of Act Number 14 of 1985 on the Supreme Court, can be seen in Article 31 point (1), (2), (3), (4) and (5) as follows.

1. The Supreme Court has the authority to review the judicial review under the law toward the law.
2. The Supreme Court states invalid law and regulation under the law because it is contrary to the legislation that is higher or the establishment does not fulfil the existing provisions.
3. The decision regarding it unlawful legislation referred to in point (2) can be taken either related to examination on cassation level or by a direct demand to the Supreme Court.
4. Law and regulation that is judged as invalidasstated in point (3) does not have binding legal force;
5. The decision referred to in point(3) shall be published in the Official Gazette of the Republic of Indonesia within a period not later than 30 (thirty) office dayssince the decision is stated.

In contrast, Article 31A as an additional Article regulates the procedure of filing a petition for judicial review by the direct applicant to the Supreme Court. Therefore, judicial review under legislation sets out in Article 31 and 31A of the Act No. 5 of 2004 in two ways: first, through the examination on cassation level (withlawsuit), and second, through direct demand to the Supreme Court.

Thus, the regulation of judicial review has been completed normatively, ranging from the Constitution of the Republic of Indonesia Year 1945, Law No. 24 of 2003 and its amendment, Law No. 4 of 2004 has been replaced by Law No. 48 of 2009 and Law No. 5 of 2004, as amended by Law No. 3 of 2009, and the agencies of implementation is detached between the authority of the Supreme Court for judicial review under the law against the law and the authority of the Constitutional Court for a constitution reviewtoward the Constitution of NRI 1945.

But if it is viewed from the perspective of philosophical, theoretical and juridical as described in the foundation of philosophical, theoretical, and normative above, the arrangement of the concept of authority of judicial review which is detached between being the authority of the Supreme Court and the Constitutional Court's authority is not ideal, because it possibly causes problems for the philosophical, theoretical, and juridical aspect as described in former discussions.

If we analyze carefully, formulating 24A point (1) and Article 24C point (1) Constitution of the Republic of Indonesia Year 1945 from the perspective of political theory of law have shown their willingness to provide the opportunity of developing control normative against any laws as a political decision in order to keep consistency and harmonization of normative legal products hierarchically. However, when organizing the detached judicial review between the authorities of the Supreme Court forjudicial review against the law, and under the authority of the Constitutional Court for a judicial review of law against the Constitution, the laws of political purpose or potential is not reached. Due to the decision of the Supreme Court and the Constitutional Court has the potential to make a difference (conflict of norm) as benchmark/ parameter and legal consideration that is used is also different.

According to Jimly, the duty ofdividing in the field of judicial review on legislation between the Supreme Court and the Court is completely not ideal, as it can lead to discrepancies or conflicting decision between the Constitutional Court and the Supreme Court. In the future, it should think about the possibility of integrating the whole system ofjudicial review under the authority of the Constitutional Court. There are four reasons that led to the separation of judicial review that is not ideal, stated as follows:

1. The granting of authority ofjudicial review of lawmaterial against the Basic Law to the Constitutional Court that is newly formed impresses that only a part additional arrangement against the Constitution material easily and patchy, as if the conception of the right of review that is given toMK. That kind of arrangement impresses that it is not based on a conceptual deepening related to the conception of materiilreview itself comprehensively.
2. The separation of power is rational to do if the enforced power system is still based on the principle of power sharing as adopted by the 1945 before it changethefirst and second, Constitution of 1945 after the change has been officially and firmly adheres to the principle of separation of horizontal powerthat make the principle of checks and balances to be the priority. Therefore, the separation between the material of law and the material of rule under the law should not be done anymore.
3. In the practice of implementation later, hypothetically it can arise substantive disagreement between the Supreme Court’s decision andConstitutional Court’s decision. Therefore, the system of judicial

review under the Constitution should be integrated under Constitutional Court. Thus,each Court can focus on a different issue. MA handles thematter of justice and injustice for the citizens, while the Constitutional Courtguarantees the constitutionality of the overall law and regulation.

4. If the authority on review of rule material under the Constitution is totallygiven to the Constitutional Court, the burden of Supreme Court should be able to be reduced.[1]

Therefore, according to ZainalArifinHoesein,[2] institutionallyit needs any form of judicial review that is centralized in a state gazette, as practiced in German Federal state. Institutional centralization ofjudicial review function both legislation to the Constitution of Republic of Indonesia 1945 and regulations under the laws to the legislation that is intended in order that the function ofjudicial review can be implemented effectively and efficiently, in addition it is meant to avoid legal conflict. Therefore, the regulation ofreview is still differentiated between subject and object as defined in Article 24A and Article 24C of the Constitution the Republic of Indonesia Year 1945, to provide interpretation that position of MK is higher than MA, whereas in the Constitution of Republic of Indonesia 1945 those state gazettesare in equal legal status, only the duties and functionswhich are different.

The separation of the object and the subject of the judicial review as stipulated in Article 24A point (1) and Article 24C point (1) RI State Constitution of 1945 has a weakness in its implementation. Because if there is a difference of decision in the object being reviewed that hasnormative relevance vertically, then it could lead to the chaos both in terms of enforcement of the verdict and in term of order of law. Differentiation of object ofreviewis only related to the authorized institution to carry it out. Thus, it needs to end the differentiation of object of judicial review, which is the whole legislation under the Constitution against the constitution becomes the object of reviewofConstitutional Court, with the benchmark of the review that is started from the Constitution 1945 (the Constitution) and all law and regulation that is higher than the object (law and regulation) arereviewed.

Thus, in the future after seeing the current practice in Indonesiaafter the amendment of the Constitution of NRI Year 1945, judicial review whose object and subject are distinguished needs to be redefined, which is integrating the authority of judicial review under one roof of the Constitutional Court, as practiced in the Germany, Austria, and Hungary Federal State, with the combination in accordance with the legal system of Indonesia.

So that the arrangement of the provisions of Article 24A point (1) and Article 24C point (1) Constitution of the Republic of Indonesia Year 1945, which formerly state:

24A point (1):

The Supreme Court has authority to adjudicate in a cassation level, review the law and regulation under the law against the law, and has other authorities given by constitution.

Article 24C point (1):

The Constitutional Court has authority to adjudicate at the first andlast level whose decision is final, to review the law against the Constitution, decide the authority dispute of state gazettewhose authority is granted by the Constitution, decide dissolution of political parties, and to decide dispute concerning the result of general election.

Ideally, it is revised by integrating the authority of the judicial reviewbecomes the authority of onejudiciary, which is the Constitutional Court with the review benchmark that is law and regulation whose position starts one level higher than the object that isreviewed until the highest law and regulation, which is the Constitution of the Indonesia Republic Year 1945, so that the arrangement is as follows:

24A point (1):

The Supreme Court has authority to adjudicatein the cassation level and has other authority provided by law.

Conversely, the arrangement of Article 24C point (1) becomes:

[1]JimlyAsshiddiqie, *KonsolidasiNaskah UUD 1945 setelahPerubahanKeempat,* (Jakarta: PSHTN FH UI, 2002), hlm. 40-41.
[2] ZainalAriffinHoesein, *Judicial Review di MahkamahAgung RI, TigaDekadePengujianPeraturanPerundang-undangan,* (Jakarta: Raja GrafindoGrafika, 2009), hlm. 317-318.

The Constitutional Court has authority to adjudicate at the first and last level whose decision is final to review constitution and law and regulation under it against the Constitution and /or against the higher law and regulation, decide on the dispute of authority of state gazette whose authorities are granted by the Constitution, to decide the dissolution of political parties, and to decide disputeconcerning the result of the general election.

Changes of the arrangement of the provisions of Article 24A point(1) and Article 24C point (1) of the 1945 Constitution that, for the next course should be followed by changes in the provisions of the Law of Judicial Power, the Law on the Supreme Court, and the Law on the Constitutional Court, and several other technical regulations.

2. Constitutional Court as the Ideal Institute for Implementing Judicial Review in Indonesia.

After discussing why the integration / unification of authority on the judicial review is needed, namely the Constitutional Courtas described above, then the question arises, why does it need to be united under the authority of the Constitutional Court?

AsAsshiddiqie described above, there are four reasons that led to the separation of the regulationreviewthat becomes not ideal. Meanwhile, in the perspective of the theory of authority, political theory of law and theory of legal normreview, choice of unification of judicial review under the regulations of the Constitutional Court, is also based on several legal reasons as follows:

First, to reduce the burden/ stacks of job of case handling in MA that is incredibly large. So with the unified authority of judicial review under the Constitutional Court, the Supreme Court is expected to focus more on concrete case handling in cassation level and review for justice seekers (the theory of authority and legal politic).

Second, to provide certainty and fairness to the community because there will not be no more differences of interpretation or conflicting decision between the Supreme Court and the Constitutional Court (the political theory of law).

Third, it would be more efficient and effective in terms of the operational time of the review. So it is no need for the existing ban setting for the Supreme Court to review a rule under the law where at the Constitutional Court,the constitution is being reviewedrelated to the regulation which will be reviewed in the Supreme Court as regulated in Article 55 of Law Number 24 Year 2003 on the Constitutional Court, and it will be able to better guarantee the material harmonization of law and regulation through normative control mechanism (theory of legal norm review). In addition, according to the resultof dissertation of HoeseinZainalArifin, viewed from the practical, efficient and effective sides, even the judicial review conducted by the Supreme Court is very ineffective, because the average cases resolved per year are between 1.-2 (lawsuit) and 3 cases (petition). On the contrary, the Constitutional Court is more productive, because only 1 (one) year 1 (one) month it can finish 22 (twenty two) cases.[1]

Fourth, because from the perspective of theory of authorityand the theory of politic of law, the purpose of establishment and the main duty and function of the Constitutional Court as described in the General Elucidation of Law Number 24 Year 2003 on the Constitutional Court that is tohandlethe caseof administration of state or certain constitutional cases in the framework of the constitution in order to be implemented in a responsible manner in line with people's want and democratic ideal. The existence of the Constitutional Court is also functioned to maintain an implementation of government of state which is stable, and also a correction of administration state life experiences in the past that is caused by the double interpretation toward the constitution. Therefore, instead of the function as the guardian of the constitution, the Constitutional Court also becomes the supreme interpreter of the sole interpreter of constitution.[2]

And fifth, because the procedure of judicial review in the Constitutional Court is more open than the procedure of judicial review in the Supreme Court, by involving and inviting the applicant, the defendant, and the people involved in each stage of the court.[3]

[1]Zainal Ariffin Hoesein, *Judicial Review di Mahkamah Agung RI, Tiga Dekade Pengujian Peraturan Perundang-undangan,* (Jakarta: Raja GrafindoGrafika, 2009), hlm. 311-312.

D. Conclusion

From the description above, it can be concluded that the separation of authority of judicial review between the Supreme Court and the Constitutional Court is not ideal and it potentially causes complex legal problems, both in terms of possibility of the existence of decision conflict between those two judiciaries, which also cause confusion of position equivalence between the Supreme Court and the Constitutional Court. Therefore, it needs to be rearranged then by integrating the authority of judicial review to the Constitutional Court with the measurement standard of testing that is from the higher legislation to the constitution level.

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