



Enforcement of Supreme Court Regulations of the Republic Of Indonesia in the Administration of Justice

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Abstrak

Regulations of the Supreme Court of the Republic of Indonesia should be limited to the internal environment of the Supreme Court, but in the practice of administering justice there are several Supreme Court Regulations that apply generally or externally, and function like laws. Therefore, the purpose of this research is to analyze and find out about the enforcement of Supreme Court Regulations of the Republic of Indonesia in the administration of justice. The method of this research is normative juridical. Normative juridical is a method in normative legal research that analyzes secondary data. The secondary data is then analyzed in a qualitative juridical manner. The results of this research are as follows: The enactment of the Regulation of the Supreme Court of the Republic of Indonesia in the administration of justice, namely through a process ... like a law, because it is to fill the legal vacuum for the administration of justice and to facilitate the administration of justice.

Keywords

enforcement; supreme court regulations; judiciary.

Introduction

Since its inception, Indonesia has been envisioned as a state of law (*rechtstaat*). Article 1(3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) expressly states that: "The State of Indonesia is a State of Law". One of the main characteristics and requirements of a state of law is the existence of the principle of separation of powers or the principle of distribution of powers, which usually consists of legislative power in making laws; executive power to run the government based on the laws made by the legislature; and judicial power that runs the judiciary if there are irregularities in the implementation of laws; and administrative power.¹

Judicial power in Indonesia is exercised by the Supreme Court and its subordinate judicial bodies, and by a Constitutional Court. This is as stated in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia: "Judicial power is exercised by a Supreme Court and the judicial bodies subordinate to it within the general judicial system, religious judicial system, military judicial system, state administrative judicial system, and by a Constitutional Court."

Article 18 of Law No. 48/2009 on Judicial Power states: "Judicial power is exercised by a Supreme Court and the judicial bodies subordinate to it within the general judicial system, religious judicial system, military judicial system, state administrative judicial system, and by a Constitutional Court". Referring to the provisions of Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 18 of Law No. 48/2009 on Judicial Power, it appears that one of the actors of judicial power is the Supreme Court.

To carry out its authority, the Supreme Court is given several functions by law, namely, the function of adjudicating at the cassation level, the function of examining any legislation under the law against the law and has other powers granted by law in accordance with Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia.² Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia states:

The Supreme Court is authorized to:

- a. adjudicate at the cassation level against decisions rendered at the final level by courts in all judicial circles under the Supreme Court, unless the law provides otherwise;
- b. to examine laws and regulations under the law against the law; and
- c. other authorities granted by law.

In addition, there is a function to provide advice to other state institutions, a function to supervise all judicial institutions under it, an administrative function,

¹ Ronal S Lumbuun, *Wujud Kerancuan Antara Praktik Pembagian Dan Pemisahaan Kekuasaan* (Jakarta: PT RajaGrafindo Persada, 2011).

² Lumbuun.

and a regulatory function. The regulatory function possessed by the Supreme Court gives rise to an authority to issue Supreme Court Circulars, and Supreme Court Regulations to expedite the administration of justice which is often hampered, due to the absence or incompleteness of procedural law arrangements contained in the law.³ The discussion of this article is focused on the discussion of the Supreme Court Regulation. To strengthen the legitimacy of a legislation, it must at least have a clear basis of authority, be in accordance with its form and in accordance with its material.⁴ Legislation can only be formed by institutions that obtain statutory authority, namely the power to form laws.

With regard to "other authorities granted by law" to the Supreme Court as referred to in Article 20 paragraph (2) letter c of Law Number 48 of 2009 concerning Judicial Power, namely the Supreme Court as a judicial institution is given attributive authority, namely the authority attached institutionally to the Supreme Court to form or determine its own internal regulations, one of which is to form a Regulation of the Supreme Court of the Republic of Indonesia, hereinafter referred to as the Supreme Court Regulation.⁵ This can be seen in Article 79 of Law Number 14 of 1985 concerning the Supreme Court which reads: "The Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in this law". The elucidation of Article 79 of Law Number 14 Year 1985 explains:

"If in the course of justice there is a shortage or legal vacuum in a matter, the Supreme Court is authorized to make rules as a complement to fill the shortage or vacuum."

In this Law, the Supreme Court is authorized to determine regulations on how to resolve a matter that has not been or is not regulated in this Law. In this regard, regulations issued by the Supreme Court are distinguished from regulations prepared by the legislator. The administration of justice intended by this Law is only part of the overall procedural law. Thus, the Supreme Court will not interfere with and exceed the regulation of the rights and obligations of citizens in general, nor will it regulate the nature, strength, means of proof and its assessment or the distribution of the burden of proof.

The provision of Article 79 of Law No. 14 of 1985 on the Supreme Court grants legislative power to the Supreme Court specifically to formulate or stipulate limited regulations of a complementary nature concerning the manner of resolving a matter that has not been regulated in the Law of Procedure for the smooth running of the Judiciary,⁶ one of which is stipulating Supreme Court Regulations. Supreme Court Regulation is a regulation that contains provisions of a procedural

³ Lumbuun.

⁴ Maria Farida Indrati, *Ilmu Perundang- Undangan: Proses Dan Teknik Penyusunan* (Yogyakarta: Kanisius, 2007).

⁵ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: PT RajaGrafindo Persada, 2014).

⁶ Henry P Panggabean, *Fungsi Mahkamah Agung Dalam Praktek Sehari-Hari* (Jakarta: Pustaka Sinar Harapan, 2002).

law nature as referred to in the Appendix to the Decree of the Chief Justice of the Republic of Indonesia Number: 57/KMA/SK/1V/2016 concerning Amendments to the Decree of the Chief Justice of the Republic of Indonesia Number 271/KMA/SK/X/2013 concerning Guidelines for Policy Formulation of the Supreme Court of the Republic of Indonesia.

Supreme Court Regulation is a form of regulation from the principles of the Supreme Court to all levels of the judiciary that is more administrative in nature.⁷ Judiciary - (rechtspraak; Bld, judiciary; Ing), is everything related to the duty of the State to uphold law and justice. Article 24 of the 1945 Constitution stipulates: 1) Judicial power is an independent power to administer justice in order to uphold law and justice; 2) Judicial power is exercised by a Supreme Court and judicial bodies subordinate to it within the general, religious, military and administrative courts and by a Constitutional Court; and 3) Other bodies whose functions are related to judicial power are regulated by law.⁸

The implementation of the judiciary in Indonesia is the will of the constitution in order to provide legal protection, guarantee justice and legal certainty to the people as much as possible.⁹ The administration of justice as intended by Law Number 14 of 1985 concerning the Supreme Court (State Gazette of the Republic of Indonesia of 1985 Number 73, Supplement to State Gazette of the Republic of Indonesia Number 3316) as amended several times lastly by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court (State Gazette of the Republic of Indonesia of 2009 Number 3, Supplement to State Gazette of the Republic of Indonesia Number 4958) is only part of the overall procedural law. Thus, the Supreme Court will not interfere with and exceed the regulation of the rights and obligations of citizens in general and does not also regulate the nature, strength, means of proof and its assessment or the distribution of the burden of proof.

However, the Supreme Court as the organizer of justice is often faced with a vacuum or lack of regulation by law in the field of procedural law, so that the Supreme Court to form or determine its own internal regulations, one of which is to form a Supreme Court Regulation. At this point a problem arises, namely the Regulation of the Supreme Court of the Republic of Indonesia should apply limited to the internal environment of the Supreme Court, but in the practice of administering justice there are several Supreme Court Regulations that apply generally or externally, and function like laws.

Supreme Court Regulations actually contain administrative arrangements in terms of procedural law, namely procedures to facilitate the administration of justice, and should not contain rules that regulate the rights and obligations of citizens. However, in practice, often the legal products of the Supreme Court, such as Supreme Court Regulations, have the effect of creating new legal norms that

⁷ Panggabean.

⁸ B N Marbun, *Kamus Hukum Indonesia* (Jakarta: Pustaka Sinar Harapan, 2006).

⁹ Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara* (Depok: Rajawali Pers, 2015).

should be outside the scope of the power of the Supreme Court as a judicial body. Supreme Court Regulations are no longer administrative in nature or merely regulate procedural law with the aim of expediting the judicial process, but as described above, they already cover and impact on the substance of the rights and obligations of citizens that should not be carried out by judicial bodies.¹⁰

Thus, a Supreme Court Regulation made by the Supreme Court that regulates the rights and obligations of a citizen, then the Supreme Court Regulation has exceeded and exceeded what has been outlined by law. For example: Supreme Court Regulation No. 1 of 2022 on the Procedure for Settling Applications and Providing Restitution and Compensation to Victims of Crime, Supreme Court Regulation No. 2 of 2022 on the Procedure for Settling Objections of Third Parties in Good Faith to Decisions on the Forfeiture of Goods Not Belonging to the Defendant in Criminal Cases, Supreme Court Regulation No. 3 of 2022 on Electronic Court Mediation, Supreme Court Regulation No. 6 of 2022 on the Amendment to Supreme Court Regulation No. 1 of 2019 on the Administration of Cases and Trials in Court Electronically, Supreme Court Regulation No. 7 of 2022 on the Amendment to Supreme Court Regulation No. 4 of 2020 on the Administration and Trial of Criminal Cases in Court Electronically, and Supreme Court Regulation No. 8 of 2022 on the Administration of Filing Legal Remedies and Trial of Cassation and Judicial Review in the Supreme Court Electronically.

Based on the background of the problem mentioned above, the author is interested in conducting this legal research with the title: Enforcement of Supreme Court Regulation in the Implementation of Judiciary. Based on the above background, the problems in this research are as follows: How is the enforcement of Supreme Court Regulation of the Republic of Indonesia in the administration of justice? The analysis of this problem is inseparable from the legal basis for the establishment or stipulation of Supreme Court Rules, the authority of the Supreme Court of the Republic of Indonesia to establish or stipulate Supreme Court Rules, the position of Supreme Court Rules in national laws and regulations, the role of Supreme Court Rules in meeting the needs of the administration of justice, and the socialization of Supreme Court Rules, which is the process of enforcing Supreme Court Rules.

In relation to the originality of the research, the author has conducted a literature search from various references and the internet, and other sources of information has not found previous research similar to the research that the author compiled, especially in the form of articles published in journals that are used as comparison materials with the research that the author compiled. However, there are several writings on the theme of "Supreme Court Regulation ...", namely as follows:

Budianto Eldist Daud Tamin, in the Abstract of the article entitled: "Juridical

¹⁰ Maqdir Ismail & Partners, "Mahkamah Agung – Badan Legislatif Ke-Empat Di Indonesia?," Maqdir Ismail & Partners, n.d., <https://mip-law.com/uncategorized/mahkamah-agung-badan-legislatif-ke-empat-di-indonesia/>.

Review of the Position of the Supreme Court Regulation in the Hierarchy of Legislation in Indonesia" states:¹¹ The purpose of this research is to find out how the Authority of the Supreme Court as a Judiciary Institution in Making a Legislation, how the Position of Supreme Court Regulations in the Hierarchy of Legislation in Indonesia, and how the Existence of the Role of Supreme Court Regulations in meeting the needs of the Judiciary in Indonesia, where by using normative legal research methods it is concluded:

- a. The Supreme Court is a Judicial Institution which is a first-tier institution or organ in the Indonesian constitutional system (primary constitutional organs), this makes the Supreme Court have the authority and functions mandated directly by the 1945 Indonesian Constitution and the Law. One of the authorities possessed by the Supreme Court is the authority to make laws and regulations (Regelende Functie,) which forms a legal norm product (rule making power) commonly known as the Supreme Court Regulation (PERMA).
- b. The position of the Supreme Court Regulation in the Hierarchy of Legislation in Indonesia is clearly outlined in Law No.12 of 2011 Article 7 Paragraph (1) which replaces Law No.10 of 2004 concerning the Establishment of Legislation, the Law states that the Supreme Court Regulation has a position outside the hierarchy of existing laws and regulations, but it is reaffirmed in Article 8 Paragraphs (1) and (2), that the Supreme Court Regulation is included in the type of Legislation that is recognized and has binding legal force.

The existence of the role of Supreme Court Regulations in meeting the needs of the judiciary in Indonesia can be seen from the set of Supreme Court Regulations issued from year to year, according to the graph of the formation of Supreme Court Regulations experiencing a significant increase with a total of 84 types of Supreme Court Regulations issued from 1950-2018, and for characteristics and binding power there are 58 Supreme Court Regulations that purely regulate and bind the internal judiciary, And a total of 26 Supreme Court Regulations have characteristics of public binding power or related to other bodies, from the comparison of several studies related to the existence of Supreme Court Regulations, there are also several problems related to the application of Supreme Court Regulations by law enforcement officials where the main factor of the problem is the lack of understanding of law enforcement officials related to the position of the Supreme Court Regulations itself. In its existence, the Supreme Court Regulations also in 2013 has been recorded and promulgated in the State Gazette of the Republic of Indonesia, in accordance with the principle of legal fiction.

Agus Satory, Hotma Sibuea, in the Abstract of his article entitled: "Problematics of the Position and Testing of Supreme Court Regulations Materially

¹¹ Budianto Eldist Daud Tamin, "Tinjauan Yuridis Terhadap Kedudukan Peraturan Mahkamah Agung (Perma) Dalam Hierarki Peraturan Perundang-Undangan Di Indonesia," *LEX ADMINISTRATUM* 6, no. 3 (2018), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/22740>.

as Legislation" states:¹² Supreme Court Regulation is one form of legislation. In relation to Perma, the legal issues to be studied are as follows. First, where is the position of Supreme Court Regulations in the hierarchy of Indonesian laws and regulations? Second, what state institutions are authorized to examine Perma? The research method used is a normative juridical research method that examines primary, secondary and tertiary legal materials. There are 2 (two) conclusions put forward, namely as follows. First, the position of Supreme Court Regulations as legislation under the law and equal to Government Regulation (PP). Second, the state institution authorized to materially examine Supreme Court Regulations as a statutory regulation is a court that still needs to be established. Suggestions that can be put forward are as follows. First, Article 24A of the 1945 Constitution and Article 31 paragraph (1) of Law Number 14 of 1985 need to be amended. Second, an autonomous and permanent Court of Laws and Regulations Examiners needs to be established.

Thus, writing in the form of articles published in several journals can be said to be different from the research that the author wrote. This research analyzes the issue of the enforcement of the Supreme Court Regulation of the Republic of Indonesia in the administration of justice, so that the author's research is different from previous or previous research, original, and has novelty.

Research Methods

This research is normative legal research. Normative legal research, is one that examines legal issues from the point of view of legal science and in-depth on established legal norms.¹³ Normative legal research or library legal research, is legal research conducted solely by looking at secondary sources of information.¹⁴ In line with this type of research, this research is descriptive analytical, because its main purpose is to provide a description of society or certain groups of individuals, as well as disorders or other symptoms.¹⁵

The research approach in normative legal research, namely normative juridical, is legal research conducted by examining secondary data.¹⁶ Soerjono Soekanto argues:

Secondary data is data obtained through library materials, which include the following:

- a. Primary legal materials, namely binding legal materials, which consist of:
 - 1) Norms (basic) or basic rules, namely the Preamble of the 1945 Constitution

¹² Agus Satory and Hotma Sibuea, "Problematika Kedudukan Dan Pengujian Peraturan Mahkamah Agung Secara Materiil Sebagai Peraturan Perundang-Undangan," *PALAR: Pakuan Law Review* 6, no. 1 (2020): 1–27.

¹³ Hadin Muhjad and Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer* (Yogyakarta: Genta Publishing, 2012).

¹⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: PT. Rajagrafindo Persada, 2015).

¹⁵ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT RajaGrafindo Persada, 2001).

¹⁶ Soekanto and Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 2015.

- 2) Basic Rules
 - (a) Body of the 1945 Constitution;
 - (b) Decrees of the People's Consultative Assembly.
- 3) Statutory regulations,
 - (a) Laws and equivalent regulations
 - (b) Government Regulations and equivalent regulations
 - (c) Presidential Decrees and equivalent regulations
 - (d) Ministerial Decrees and equivalent regulations
 - (e) Regional regulations
- 4) Legal materials that are not codified, such as customary law
- 5) Jurisprudence or court decisions (especially for research in the form of case studies);¹⁷
- 6) Tracts
- 7) Materials from the colonial era that are still valid today.
 - b. Secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as research results, works from legal circles, and so on.
 - c. Tertiary legal materials, namely legal materials that provide guidance and explanation of primary and secondary legal materials such as dictionaries, encyclopedias, and so on.¹⁸

Secondary data that is inventoried as material for this research, namely: First, secondary legal materials in the form of: literature books. Second, primary legal materials in the form of laws and regulations, namely, among others, the 1945 Constitution of the Republic of Indonesia, Law Number 14 of 1985 concerning the Supreme Court as amended several times lastly by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, Law Number 12 of 2011 concerning the Formation of Legislation as amended several times lastly by Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation, Law Number 48 of 2009 concerning Judicial Power, and other laws and regulations. Third, tertiary legal materials, such as dictionaries, scientific journals and others.

The data source is obtained through a data collection technique. According to Soerjono Soekanto, there are three main categories of data collection tools used in research: document studies (also known as library materials), observation, and interviews. These three tools can be used separately or together.¹⁹ In accordance with the data collection tools and the type of research, the data collection techniques used are: "desk study" of secondary data. The data sources obtained are then analyzed juridically qualitatively and arranged in the form of sentence

¹⁷ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

¹⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: PT RajaGrafindo Persada, 2022).

¹⁹ Soekanto and Mamudji, *Penelitian Hukum Normatif*.

descriptions.²⁰ Juridical in the sense of starting from the applicable laws and regulations. Qualitative, namely without numerical data, statistical models, and mathematical calculations.²¹

Research Results and Discussion

The Supreme Court is one of the organizers of judicial power or the judiciary as referred to in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 18 of Law Number 48 of 2009 concerning Judicial Power. The Supreme Court as mentioned in Article 24A paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 is reiterated in the provisions of Article 20 paragraph (2) of Law Number 48 Year 2009 on Judicial Power, authorized:

- a. adjudicate at the cassation level against decisions rendered at the final level by courts in all judicial circles under the Supreme Court, unless the law provides otherwise;
- b. to examine laws and regulations under the law against the law; and
- c. other authorities granted by law.

The author has argued that the Supreme Court as a judicial institution is given attributive authority, namely the authority attached institutionally to the Supreme Court to form or determine its own internal regulations, one of which is to form a Supreme Court Regulation.

Regulation of the Supreme Court of the Republic of Indonesia, hereinafter referred to as Supreme Court Regulation, is one of the laws and regulations promulgated in the State Gazette of the Republic of Indonesia. Supreme Court Regulation is a regulation that contains provisions of a procedural law nature as referred to in the Appendix to the Decree of the Chief Justice of the Republic of Indonesia Number: 57/KMA/SK/1V/2016 concerning Amendments to the Decree of the Chief Justice of the Republic of Indonesia Number 271/KMA/SK/X/2013 concerning Guidelines for Policy Formulation of the Supreme Court of the Republic of Indonesia.

The Supreme Court routinely issues Supreme Court Regulation products every year. This shows that the Supreme Court Regulation is still valid. To see the legal basis of the Supreme Court Regulation, we must see the Supreme Court Law as the legal umbrella of the validity of the Supreme Court Regulation itself.

The Supreme Court Regulation is a statutory regulation prepared based on the 1945 Constitution of the Republic of Indonesia, and several provisions of the law, namely:

1. Article 79 of Law No. 14 of 1985 on the Supreme Court stipulates: "The Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently

²⁰ Lorenz Bagus, *Kamus Filsafat* (Jakarta: Gramedia, 2002).

²¹ C.S.T Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989).

regulated in this law". This provision is a reflection of the other authority possessed by the Supreme Court in addition to adjudicating at the cassation level, examining legislation under the law against the law as referred to in Article 24A paragraph (1) of the 1945 Constitution.

2. Article 8 paragraph (1) of Law Number 12 Year 2011 on the Formation of Legislation, stipulates: "one of the types of laws and regulations as referred to in Article 7 paragraph (1) of Law Number 12 Year 2011 includes regulations stipulated by the Supreme Court". Recognition of the authority of the Supreme Court to formulate regulations is emphasized in this regulation, even the specificity of the Supreme Court compared to other state institutions is the content of regulations to fill the legal vacuum for the administration of justice.
3. The provisions of Article 4 paragraph (2) of Law No. 48 of 2009 on Judicial Power which stipulates "Courts assist justice seekers and try to overcome all obstacles and obstacles to achieve simple, fast, and low cost justice".

Currently, the legal basis that can serve as a guideline in explaining the position of Supreme Court Regulations, namely Article 79 of Law Number 14 of 1985 concerning the Supreme Court. The original reads as follows:

"The Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in this Law."

The provision of Article 79 of Law No. 14 of 1985 Concerning the Supreme Court grants legislative power to the Supreme Court specifically to make limited regulations (rule making) of a complementary nature concerning the method of resolving a matter that has not been regulated in the Procedural Law for the smooth running of the Judiciary.²² Article 79 of Law Number 14 of 1985 Concerning the Supreme Court is actually the function of the Supreme Court's rule power, where the Supreme Court can make regulations regarding the settlement of a case that is not regulated in law. Of course, this authority is also actually based on the provisions of Article 10 of Law Number 48 of 2009 concerning Judicial Power, which contains the principle that judges may not reject a case because there is no or unclear law.

Supreme Court regulations are absolutely necessary in Indonesia, given the slow pace of national law formation, especially procedural law. Unlike the administrative jurisdiction that can use the principle of *freies ermessen*, the Supreme Court in filling the legal vacuum in terms of case handling (procedural law) must be based on legislation because it is bound by the principle of legality. Therefore, the rule making power granted by Article 79 of Law Number 14 of 1985 is very important. To further understand the position of Supreme Court Regulations in the rule making power function of the Supreme Court, which of course must also see the explanation of Article 79 of Law Number 14 of 1985 concerning the Supreme Court:

²² Panggabean, *Fungsi Mahkamah Agung Dalam Praktek Sehari-Hari*.

"If in the course of justice there is a shortage or legal vacuum in a matter, the Supreme Court is authorized to make rules as a complement to fill the shortage or vacuum."

In this Law, the Supreme Court is authorized to determine regulations on how to resolve a matter that has not been or is not regulated in this Law. In this regard, regulations issued by the Supreme Court are distinguished from regulations prepared by the legislator. The administration of justice intended by this Law is only part of the overall procedural law. Thus, the Supreme Court will not interfere with and exceed the regulation of the rights and obligations of citizens in general, nor will it regulate the nature, strength, means of proof and its assessment or the distribution of the burden of proof.

Seeing the explanation of Article 79 of Law Number 14 of 1985 concerning the Supreme Court, the regulations referred to in the explanation of Article 79 of Law Number 14 of 1985 are not literally interpreted as Supreme Court Regulations, but are interpreted as all forms of regulations formed by the Supreme Court which contain or relate to regulations that fill legal gaps in the area of procedural law by not exceeding and interfering with the regulation of the rights and obligations of citizens and not regulating the strength of evidence. So that the form of legal products of the Supreme Court referred to in Article 79 of Law Number 14 of 1985 concerning the Supreme Court can be seen in the form of Supreme Court Regulations, in addition to Supreme Court Circular Letters.

In terms of authority, Supreme Court Regulations are formed based on the regulatory authority possessed by the Supreme Court. The regulation is related to other functions, namely administration, advice, supervision, and judiciary. Such powers and duties are referred to in the literature as the regulatory function or *regelende functie* of the Supreme Court. This is also in line with the formulation of Article 79 of Law No. 14 of 1985 Concerning the Supreme Court, which stipulates that the Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in this Law.

Furthermore, Article 8 paragraph (1) of Law Number 12 Year 2011 on the Formation of Legislation, stipulates: "one of the types of legislation as referred to in Article 7 paragraph (1) of Law Number 12 Year 2011 includes regulations stipulated by the Supreme Court", namely one of the Supreme Court Regulations. Article 8 paragraph (1) of Law Number 12 Year 2011 on the Establishment of Legislation is related to the position of Court Regulations.²³ The Supreme Court Regulation in Law Number 12/2011 on the Formation of Legislation is not regulated in the provisions of Article 7 paragraph (1) which reads:

Types and hierarchy of laws and regulations consist of:

- a. The 1945 Constitution of the Republic of Indonesia
- b. Decree of the People's Consultative Assembly
- c. Law / Government Regulation in Lieu of Law.

²³ Panggabean.

- d. Government Regulation;
- e. Presidential Regulation;
- f. Provincial Regional Regulations; and
- g. Regency/City Regional Regulations.

However, the type of Supreme Court regulation is regulated in Article 8 paragraph (1) of Law Number 12 Year 2011 on the Establishment of Legislation, which states:

“Types of laws and regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or Government by order of Law, Provincial Regional House of Representatives, Governors, Regency/City Regional House of Representatives, Regents/Mayors, Village Heads or equivalent.”

Provisions in Article 8 of Law Number 12/2011 on the Establishment of Legislation. That although in reality the content of the Supreme Court Regulation mostly functions as a policy regulation (*beleidsregel*), but because the basis for its formation is based on the order of Article 79 of the Supreme Court Law. Therefore, SEMA can be classified as legislation and has binding legal force as specified in Article 8 paragraph (2) of Law Number 12/2011 on the Establishment of Legislation. The next issue is, what is the binding force of the Supreme Court Regulation? Article 8 paragraph (2) of Law Number 12 Year 2011 on the Formation of Legislation confirms:

“The laws and regulations as referred to in paragraph (1) are recognized and have binding legal force to the extent that they are ordered by higher laws and regulations or formed based on authority.”

Based on the above provisions, there are two conditions for the regulations referred to in Article 8 paragraph (1) of Law Number 12/2011 on the Formation of Legislation to have binding force as Legislation, namely:

- 1) Ordered by higher laws and regulations
- 2) Formed based on authority.

The formation of laws and regulations can occur due to two things, namely due to the authority of attribution or delegation authority.²⁴ The authority of attribution in the formation of laws and regulations (*attributie van wetgevingsbevoegdheid*) is the granting or creation of authority to form laws and regulations given by the Grondwet (Basic Law) or by wet (Law) to a state institution or government institution.²⁵ Attribution of authority in the formation of laws and regulations (*attributie van wetgevingsbevoegdheid*) is the granting of authority to form laws and regulations granted by the Grondwet (Basic Law) or wet (Law) to a

²⁴ Maria Farida Indrati, *Ilmu Perundang-Undangan: Proses Dan Teknik Penyusunan 2* (Yogyakarta: PT Kanisius, 2020).

²⁵ Indrati.

state / government institution. The authority is inherent and can be exercised on its own initiative whenever necessary, in accordance with the limits given. For example:

1. Article 22 of the 1945 Constitution authorizes the President to form a Government Regulation in Lieu of Law in the event of a "case of compelling urgency".
2. Law No. 23 of 2014 on Regional Government, in Article 236 authorizes Regional Governments to form Regional Regulations to carry out regional autonomy and assistance tasks.²⁶

Delegation of authority in the formation of laws and regulations (*delegatie van wetgevingsbevoegdheid*) is the delegation of authority to form laws and regulations made by higher laws and regulations to lower laws and regulations, whether the delegation is stated explicitly or not.²⁷ Delegation of authority in the formation of laws and regulations is actually an order from a higher law to a lower law, in accordance with the hierarchy of laws and regulations.²⁸

The delegation of authority often has to be done because there are things that cannot be formulated directly in higher laws and regulations because they are easy to change, or are too technical.²⁹ The issue of delegation of authority from a higher law to a lower law is formulated in guidelines No. 198 to guidelines No. 216 of Law No. 12 of 2011 concerning the Formation of Laws and Regulations.³⁰

In contrast to the authority of attribution, in the authority of delegation, the authority is not given, but "represented", and in addition this delegation authority is temporary in the sense that this authority can be held as long as the delegation still exists. For example:

1. Article 5 paragraph (2) of the 1945 Constitution which stipulates, "The President shall enact Government Regulations to implement the law as it stands."
2. Article 246 paragraph (1) of Law No. 23 Th. 2014 on Regional Government which formulates, "To implement regional regulations and on the authority of laws and regulations, the Regional Head stipulates regional head regulations (*Perkada*).³¹

Both article formulations are a delegation of authority to form laws and regulations, in this case Government Regulations to implement the Law, and Regional Head Regulations to implement Regional Regulations or (higher) laws and

²⁶ Maria Farida Indrati, *Ilmu Perundang-Undangan, Jenis, Fungsi Dan Materi Muatan 1* (Yogyakarta: PT Kanisius, 2020).

²⁷ Indrati.

²⁸ Siti Mardiyati and Warmiyana Zairi Absi, *Ilmu Perundang-Undangan* (Purbalingga: Eureka Media Aksara, 2022), <https://repository.penerbiteitureka.com/tr/publications/558585/>.

²⁹ Rokilah Rokilah and Sulasno Sulasno, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Ajudikasi : Jurnal Ilmu Hukum* 5, no. 2 (December 2021): 179–90, <https://doi.org/10.30656/ajudikasi.v5i2.3942>.

³⁰ M. Ilham F. Putuhena, "Politik Hukum Perundang-Undangan: Mempertegas Reformasi Legislasi Yang Progresif," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 2, no. 3 (December 31, 2013): 375–95, <https://doi.org/10.33331/rechtsvinding.v2i3.66>.

³¹ Sakti Ramdhon Syah, *Perundang-Undangan Indonesia: Kajian Mengenai Ilmu Dan Teori Perundang-Undangan Serta Pembentukannya* (Makassar: CV. Social Politic Genius (SIGn), 2020).

regulations.³² Article 8 of Law Number 12/2011 on the Formation of Legislation specifically states that regulations issued by the Supreme Court are recognized and have binding legal force as long as they meet the requirements as stated in Article 8 paragraph (2) "ordered by higher regulations" or "formed based on authority".

Regarding the phrase formed based on such authority, it is necessary to refer back to the functions and authority of the Supreme Court in Article 79 of Law Number 14 of 1985 concerning the Supreme Court, namely that the Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in this law. This means that the law provides a loophole and authority for the Supreme Court to fill in or regulate everything about the administration of justice for the smooth running of the judiciary itself. If in the course of justice there is a lack or legal vacuum in a matter, the Supreme Court is authorized to make regulations as a complement to fill or lack or vacuum. With this law, the Supreme Court is authorized to determine regulations on how to resolve a matter that has not been or is not regulated in the law.

Supreme Court Regulations are regulations issued by the Supreme Court of the Republic of Indonesia to regulate procedures and procedures in the administration of justice in Indonesia. The enactment of Supreme Court Regulations plays an important role in ensuring legal certainty, uniformity and effectiveness of the judicial system in this country. With regard to the enactment of Supreme Court Rules in the administration of justice, the Supreme Court has the authority to issue decisions and guidelines governing court procedures, legal procedures, and legal practices that must be followed by courts in Indonesia. Supreme Court Regulations regulate various aspects, including the procedure for registering cases, the trial process, the procedure for issuing decisions, and the enforcement of court decisions. In addition, Supreme Court Regulations may regulate the code of ethics for judges, the procedures for supervising judges, and the duties and obligations of the parties involved in the judicial process.

The process of enacting a Supreme Court Regulation involves several stages. After it is drafted, stipulated by the Chief Justice of the Supreme Court, and published in the State Gazette of the Republic of Indonesia, and signed by the Minister of Law and Human Rights of the Republic of Indonesia, it is then announced through a publishing event conducted by the Supreme Court, such as publication on the Supreme Court's official website or designated print media or socialization. Supreme Court Regulations become effective after a certain announcement and establishment process, which may include publication in various media and training for relevant legal practitioners. Usually, there is a transition period provided before the Supreme Court Rules come into full effect. Parties involved in the judiciary, such as judges, prosecutors, lawyers, and other relevant parties, are expected to understand and follow the provisions contained in the Supreme Court Regulations.

The enactment of Supreme Court Regulations in the administration of justice

³² Syah.

has several main objectives, among others: *First*, Simplification and standardization of judicial procedures: Supreme Court Regulations serve to regulate the procedures and procedures in various types of cases submitted to the court. With the existence of Perma, it is expected to create uniformity in case handling throughout the judicial environment. *Second*, increased legal certainty: The Supreme Court Regulation provides clear guidelines for judges, prosecutors, lawyers, and other related parties in dealing with cases submitted to the court. Thus, the implementation of Supreme Court Regulations can increase legal certainty for all parties involved. *Third*, judicial efficiency and effectiveness: Supreme Court Rules also aim to improve the efficiency and effectiveness of the judicial system. With clear and structured rules, it is expected that the judicial process can run more smoothly and faster, so that the public can obtain justice better.

In essence, the enactment of Supreme Court Rules in the administration of justice plays an important role in creating a structured, standardized and fair procedure in resolving cases in court. This promotes legal certainty, uniformity, justice, expediency, usefulness, efficiency and effectiveness of the judicial system in Indonesia. Thus, the main purpose of the Supreme Court Regulation is to ensure legal certainty, uniformity, justice, expediency, usefulness, efficiency and effectiveness of the judicial system in the administration of justice throughout Indonesia.

The enactment of Supreme Court Regulations involves several stages. After being drafted, stipulated by the Chief Justice of the Supreme Court, and promulgated in the State Gazette of the Republic of Indonesia, and signed by the Minister of Law and Human Rights of the Republic of Indonesia, it is then announced through a publishing event conducted by the Supreme Court officially, such as publication on the official website of the Supreme Court or designated print media or socialization, and disseminate it to all courts in Indonesia. Courts are expected to comply with and apply the provisions contained in the Supreme Court Regulation in every stage of the judicial process, so that the main objectives of the Supreme Court Regulation, namely to ensure legal certainty, uniformity, justice, expediency, usefulness, efficiency and effectiveness of the judicial system in Indonesia. Thus, the main objective of the Supreme Court Regulation, namely to ensure legal certainty, uniformity, justice, expediency, usefulness, efficiency and effectiveness of the judicial system in the administration of justice throughout Indonesia can be achieved.

Conclusion

The enactment of Supreme Court Regulations involves several stages. After being drafted, stipulated by the Chief Justice of the Supreme Court, and promulgated in the State Gazette of the Republic of Indonesia, and signed by the Minister of Law and Human Rights of the Republic of Indonesia, it is then announced through a publishing event conducted by the Supreme Court officially, such as publication on the official website of the Supreme Court or designated print media or socialization, and

disseminate it to all courts in Indonesia. Courts are expected to comply with and apply the provisions contained in the Supreme Court Regulation in every stage of the judicial process, so that the main objectives of the Supreme Court Regulation, namely to ensure legal certainty, uniformity, justice, expediency, usefulness, efficiency and effectiveness of the judicial system in Indonesia. Thus, the main objective of the Supreme Court Regulation, namely to ensure legal certainty, uniformity, justice, expediency, usefulness, efficiency and effectiveness of the judicial system in the administration of justice throughout Indonesia can be achieved.

However, it is important to note that the implementation of Supreme Court Regulations in the administration of justice must be synergized with law enforcement officials, such as advocates, police, and prosecutors, other relevant agencies, and of course other laws and regulations. However, in accordance with the principle that Supreme Court Regulations addressed to all levels of the judiciary containing provisions of judicial procedural law are used to regulate the Supreme Court and the judicial system internally, not externally, such as laws. Because of this problem, amendments should be made to Law No. 14 of 1985 on the Supreme Court, which includes an article stipulating that Supreme Court Regulations to facilitate the administration of justice are not only administrative in nature and regulate internally, but are external in nature and regulate the rights and obligations of citizens with the aim of facilitating the administration of justice, so that Supreme Court Regulations do not go beyond and exceed what has been outlined by law.

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