The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

CHARACTERISTICS OF THE SUPREME COURT CIRCULAR AND CONSTITUTIONAL COURT DECISION REGARDING THE APPLICATION FOR REVIEW

EMANUEL SUJATMOKO[1], WILDA PRIHATININGTYAS[2] INDRIA WAHYUNI[3], ALI RAHMAN[4], TASLIM[5] and FIRMAN TONGKE[6]

[1, 2, 3] Airlangga University.
[4]Sawerigading University.
[5]Bone Muhammadiyah University.
[6]Handayani University.
Email: [1]sujatmoko@fh.unair.ac.id, [2]wilda@fh.unair.ac.id, [3]indria@fh.unair.ac.id, [4]alirahmann1990@gmail.com, [5]taslim@unimbone.ac.id, [6]fhirthoalkajanggy@gmail.com

Abstract

The characteristics of a circular letter from the Supreme Court in the Indonesian legal system are not categorized as statutory regulations, but only as policy regulations based on the principle of freedom of action known as freie ermessen / beleidsvrijheid / beoordelingvrijheid, whereas the Constitutional Court decisions basically have a final binding character, meaning in every Constitutional Court Decision, the verdict is final and there is no legal remedy as is customary in the judicial system. The authority of a decision issued by a judicial institution lies in its binding power. The decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (inter parties) but also must be obeyed by anyone (erga omnes). The validity of the Supreme Court Circular Letter Number 7 of 2014 and the Decision of the Constitutional Court Number 34 / PUU-XI / 2013 in the Application for Reconsideration is SEMA Number 7 of 2014 concerning Reconsideration contrary to the Constitutional Court Decision Number 34 / PUU-XI / 2013 which stated the PK in Criminal cases can be carried out repeatedly, so that the legal consequence is that normatively SEMA Number 7 of 2014 can be said to be null and void.

Keywords: Circular; Decision; Constitutional Court; Supreme Court

PENDAHULUAN

Conceptually Indonesia adheres to the principle of a rule of law state where it is emphasized in the constitution that the State of Indonesia is a state of law (rechstaat) not a state of power (machstaat) meaning that the state in carrying out its activities may not be based on power but must be based on law, so law enforcement must be based on a clear footing so that there are no pros and cons in enforcement.

On April 10, 2013 Antashari Azhar as a convict in the murder case Director of PT Putra Rajawali Banjaran Nasrudin Zulkarnaen submitted a request for review of Article 268 paragraph (3) of the Criminal Procedure Code to the Constitutional Court, In Article 268 paragraph 3 of the Criminal Procedure Code it is stated that the request for review of a decision is only can be done only once, this is what later according to Ansahari Azhar as the applicant feels that his constitutional rights have been impaired due to the request for review[1] limited to one time only.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

The Constitutional Court itself according to Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 (hereinafter abbreviated as the Constitutional Court Law) in Article 10 paragraph (1) and paragraph (2)) it is explained regarding the authority of the Constitutional Court that the article explains that one of the powers of the Constitutional Court is to adjudicate a review of law against the 1945 Constitution of the Republic of Indonesia at the first and final levels where the decision is final.

On March 6, 2014 the Constitutional Court issued Decision Number 34/PUU-XI/2013 (hereinafter abbreviated as MK Decision 34/PUU-XI/2013) which in the ruling the Constitutional Court stated

1. Granted the petition of the Petitioners:

1.1. Article 268 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) is contrary to the 1945 Constitution of the Republic of Indonesia;

1.2. Article 268 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have binding legal force;

2. Order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate[2]

Based on the Constitutional Court Decision 34/PUU-XI/2013, if it is understood as an argumentum a contrario, the request for review can be made more than once. The Supreme Court as an institution authorized to receive requests for review in response to the Constitutional Court Decision 34/PUU-XI/2013 by issuing a Supreme Court Circular Letter Number 7 of 2014 concerning Submission of Requests for Judicial Review in Criminal Cases (hereinafter abbreviated as SEMA 7/2014) which in essence limits the request for review is only once which of course invites pros and cons because previously there was a Constitutional Court Decision 34/PUU-XI/2013 which allowed requests for review more than once.

The Supreme Court in SEMA 7/2014 postulates that the regulation regarding requests for review is limited to one time, not only regulated in Article 268 paragraph (3) of the Criminal Procedure Code which has been declared no longer legally binding based on the Constitutional Court Decision 34/PUU-XI/2013, will but it is also regulated in Article 24 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which reads: "A review cannot be carried out against a judicial review decision"; and Article 66 paragraph (1) of Law Number 14 of 1985 in conjunction with Law Number 5 of 2004 in conjunction with Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court reads: “Request for Judicial Review can be submitted only 1 (one) time”;[3]

Through SEMA 7/2014, the Supreme Court also emphasized that the decision of the Constitutional Court that allows multiple PKs does not have binding legal force. The Constitutional Court's decision was non-executable because it was based on Law no. 48 of

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

2009 and the Law on the Supreme Court, PK applications can only be submitted 1 (one) time. Not only is it a reference for institutions within the Supreme Court, SEMA 7/2014 is also used as a reference by the Attorney General's Office (Kejagung).

The Constitutional Court in its ruling stated that Article 263 paragraph (3) of the Criminal Procedure Code was declared to have no binding legal force, which means that a request for review in a criminal case can be made more than once, but in the Supreme Court Circular Letter Number 7 of 2014 the third number states that requests for review in criminal cases are limited to only one time so that it necessitates a conflict of norms between the two because the norms contained in the Supreme Court Circular Letter Number 7 of 2014 conflict with the Norms contained in the Constitutional Court Decision Number 34/PUU-XI/2013 and from the point of view of its enforcement, both have binding legal force, causing confusion in the process of requesting a review. Decisions of the Constitutional Court are ergo omnes, which means that everyone must obey them, therefore a Circular Letter of the Supreme Court may not override decisions issued by the Constitutional Court.

RESEARCH PROBLEM

What are the characteristics and enforceability of the Supreme Court Circular Letter Number 7 of 2014 and the Constitutional Court Decision Number 34/PUU-XI/2013 in the Request for Judicial Review?

RESEARCH METHOD

The type of research used in the preparation of this thesis is a type of Doctrinal Research. Where according to Hutchinson: "Doctrinal Research is Research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and hopes to predict future development"

This research was conducted with the aim of providing a systematic explanation of the theme raised (legal category) as well as explaining difficult areas within the theme. This research is expected to, if possible, be able to provide predictions regarding matters related to the theme raised in the future. According to Peter Mahmud Marzuki, "legal research is carried out to produce arguments, theories or new concepts as prescriptions in solving the problems at hand"[4].

The approaches used in this study are as follows:

a. Pa. Conceptual approach (conceptual approach)

This approach departs from the views and doctrines that have developed in the science of law. By studying the views and doctrines in the science of law, researchers will find ideas that give rise to legal notions, legal concepts, and legal principles that are relevant to the issue at hand.[5]

b. Conceptual approach (conceptual approach)

This approach departs from the views and doctrines that have developed in the science of law. By studying the views and doctrines in the science of law, researchers will find ideas

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

that give rise to legal notions, legal concepts, and legal principles that are relevant to the issue at hand.[6]

DISCUSSION

Characteristics of Supreme Court Circulars and Constitutional Court Decisions

The Constitutional Court (MK) plays an important role in law enforcement in Indonesia. The Constitutional Court is designed as a guardian body as well as the sole interpreter of the constitution (the guardian and interpreter of the constitution). This is the basic idea of forming the Constitutional Court, which can at least be seen from its authority to review the constitutionality of laws and decide disputes over constitutional authority between institutions.[7]

Decisions of the Constitutional Court are decisions at the first and last levels, so no legal remedies can be taken. Unlike the Supreme Court, the Indonesian MKs only recognize one stage/level of justice, so that the decisions handed down by the Indonesian MKs have no further legal remedies that can be taken to try to sue the verdict. There are no other institutions and legal remedies that can be taken afterwards, but to carry out and carry out the mandate of the decision[8]

The Constitutional Court's decision basically has the character of being final binding, meaning that in every decision of the Constitutional Court, the decision is final and there is no further legal action as is usual in the justice system. The authority of a decision issued by a judicial institution lies in its binding power. The decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (inter parties) but also must be obeyed by anyone (erga omnes). The principle of erga omes is reflected in the provisions which state that the Constitutional Court's decision can be implemented immediately without requiring the decision of the competent authority, unless the laws and regulations stipulate otherwise. The provisions above reflect binding legal force and because of the public nature of the law, they apply to anyone, not only to the parties to the dispute. The principle of the Constitutional Court's decision has permanent legal force and is final as stated in Article 10 paragraph (1) and the explanation of the Constitutional Court Law regulates:

> *"The decision of the Constitutional Court is final, namely the decision of the Constitutional Court immediately obtains legal force from the moment it is pronounced and there are no legal remedies that can be taken. The final nature of the Constitutional Court's decision in this Law also includes binding legal force (final and binding).*

The principle of binding decisions in erga omnes above is reflected in the final sentence in the Constitutional Court's decision in this Law which also includes binding legal force (final and binding). Erga omnes comes from the Latin which means applies to everyone (toward every one). The principle of erga omnes or legal action applies to every individual, person or state without distinction (A erga omnes law or legal act applies as against every individual, person or state without distinction). A right or obligation that is erga omnes can be implemented and enforced against any person or institution, if there is a violation of that right or does not fulfill an obligation. Whereas SEMA which has the character of a policy regulation is basically not a

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

statutory regulation but a policy regulation. This policy regulation is only similar to the law but not the law.

Furthermore, regarding the position of circular letters in the Indonesian legal system, they are not categorized as statutory regulations, but only as policy regulations based on the principle of freedom of action known as freie ermessen/beleidsvrijheid/beoordelingvrijheid. Issuance of a circular letter is not based on the laws and regulations above it which are arranged hierarchically and is not an order for a law, but only the policy of a state administration official in carrying out or carrying out government activities within the scope of the administration of a state institution that issues just the circular.[9]

Policy regulations (beleidsregel) are actually a product of state administration, based on the use of freis ermessen. According to A.D. Belifante pseudowetgeving' born from the use of freis ermessen in connection with the operational arrangements of statutory regulations algemene verbindende voorschrif). Policy regulations (beleidsregel) are nothing but the use of freis ermessen (the exercise of discretionary power) in written form. Policy regulations will later be issued by the Constitutional Court (naar buiten gebracht) and then bind citizens (burgers). J.H van Kreveld in his dissertation entitled beleidsregel in het recht argued that policy regulations (beleidsregel) or police rules are general rules which are adopted and followed by an administrative authority in the exercise of its discretionary power.) ie :[10]

a) het gaat om algemene regels
b) omtrent de oitoefening van een vrije bestuursbevoegdheid jegens de burger
c) van welke regels de grondslag niet uitdrukkelijk in de wet doch impliciet in de bestuursbevoeghdheid ligt opgesloten en
d) welke regels beginselen binderd zujn ingevolge de beginslen van behoorlijk bestuur

In practice, policy regulations can be formulated in several forms, namely decisions, instructions, circulars, announcements. In the opinion of Phillipus M. Hadjon, products such as policy regulations cannot be separated from the use of Freies Ermessen, namely the relevant State Administration agency or official formulates the policy in various forms "jurisdische regel", such as regulations, guidelines, announcements, and circulars and announcements. wisdom . A Pseude Legislation (pseude wetgeving) or Beleidsregel (Policy Regulation) is essentially a product of the actions of the State Administration which aims to reveal a written policy (naar buiten gebracht schriftelijk beleid) but without the authority to make regulations from an Administrative body or official The country that created the policy regulations[11].

Even though circulars do not have direct binding power, they do contain legal relevance. Bearing in mind a policy regulation intended for state administration officials and will have an impact on the general public who have an interest in the state administration agency/official. Circulars are only meant to provide an opportunity for officials or a state administrative agency to carry out governmental authority (beschikking sbevoegdheid) which must be linked to governmental authority on the basis of discretionary use.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

SEMA itself is a policy regulation with the first several reasons, seen from the shape of the Supreme Court Circular Letter which does not have a formal form similar to statutory regulations in general. In general, laws and regulations have forming parts such as naming, preamble, body, and closing.[12]

Therefore, it is clear that the position of circular letters within the framework of the legal system in Indonesia is not as statutory regulations as referred to in Article 7 and Article 8 of Law no. 12 of 2011 concerning the Establishment of Legislation, but only as a policy of certain state administrative bodies (policy regulations) with the aim of carrying out government work based on the principle of freedom of action. To see the legal basis for the Supreme Court Circular Letter (SEMA), we must look at the Supreme Court Act as the legal basis for the application of the SEMA itself. Article 79 Law no. 14 of 1985 concerning the Supreme Court gives rule making power authority to the Supreme Court.

When the basis for the birth of SEMA is discretion and is classified as a policy regulation, then its substance must merely guide, guide, provide policy direction and regulate the implementation of tasks that are more administrative in nature. However, in reality, there are several SEMAs which do not only contain instructions and guidance of an administrative nature, but also touch further in terms of substance, either creating or abolishing norms. For example SEMA No. 3 of 1963 concerning the idea of considering the Burgerlijk Wetboek not as a law. In this circular, the Supreme Court considered several articles in the Burgerlijk Wetboek to be no longer valid.[13]

This authority is given so that the Supreme Court can resolve issues that are not regulated in detail in the Act. In the elucidation of Article 79 of Law no. 14 of 1985 it is explained that the Supreme Court is given the authority to issue complementary regulations to fill legal deficiencies and voids. In this case the regulations issued by the Supreme Court are distinguished from regulations drawn up by legislators. The administration of justice referred to in this Law is only part of the overall procedural law. Thus the Supreme Court will not interfere with and exceed arrangements regarding the rights and obligations of citizens in general and will not regulate the nature, strength, means of proof and assessment or the distribution of the burden of proof.[14]

Applicability of Supreme Court Circular Letter Number 7 of 2014 and Constitutional Court Decision Number 34/PUU-XI/2013 in the Request for Judicial Review

The Constitutional Court's decision is final and binding, in other words there are no other legal remedies. Regarding the final nature of the Constitutional Court's decision, it is also emphasized in Article 24 C paragraph (1) of the 1945 Constitution. Based on the provisions above, the Constitutional Court's decision is final, which means: (1) it directly obtains legal force, (2) because it has obtained permanent legal force, the decision The Constitutional Court has legal consequences for all parties related to the decision. This shows that the Constitutional Court's decision is different from the general court's decision which only binds the litigants (interparties). All parties are obliged to obey and implement the Constitutional Court's decision, (3) because it is the first and last court, there are no other legal remedies that can be taken. A

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

decision which if there are no legal remedies that can be taken means that it has permanent legal force (in kracht van gewijsde) and has binding power (resjudidicata pro veritate habeteur). Strictly speaking, the Constitutional Court's decision which has permanent legal force automatically has binding legal force to be implemented. However, in practice, the Constitutional Court's decision has problems in its implementation. Among them is the decision of the Constitutional Court Number 34/PUU-XI/2013 which states that Article 268 paragraph (3) of the Criminal Procedure Code is unconstitutional. Article 268 paragraph 3 of the Criminal Procedure Code stipulates that judicial review in criminal cases can only be carried out once, but the Constitutional Court stated that PK in criminal cases could be carried out more than once or many times.

In implementing the Constitutional Court's decision, the Supreme Court was reluctant to implement the Constitutional Court's decision Number 34/PUU-XI/2013 which stated that PK in criminal cases could be carried out repeatedly on the grounds that it would add to the buildup of cases which is a latent problem for this institution. Furthermore, the Constitutional Court issued SEMA Number 7 of 2014 concerning Reconsideration because this SEMA referred to the provisions in the Supreme Court law and the Judicial Power Act which stipulate that PK is only carried out once, not the provisions in the Criminal Procedure Code which were canceled by the Constitutional Court. On the other hand, the Attorney General's Office objected to repeat PKs, because it would hinder the implementation of executions where the Prosecutor's Office was the only executor in criminal cases.

The Constitutional Court's decision which was reluctant to be implemented by the Supreme Court and the Attorney General's Office indicated that there were implementation problems in implementing the Constitutional Court's decision. This condition indicates that there is a difference between the rules and norms (das Sollen) in the implementation of the Constitutional Court's decision which adheres to the principle of Erga Omnes. Whereas factually there are different views from related institutions, namely the Attorney General's Office and the Supreme Court in implementing the provisions regarding PK (das Sein) against the Constitutional Court Decision regarding Judicial Review, namely the Constitutional Court Decision Number 34/PUU-XI/2013, where there is a tendency for the Constitutional Court's decision to be ignored by the Supreme Court and the Attorney General.

The Supreme Court as an institution that is authorized to carry out reviews should comply with and carry out everything contained in the Constitutional Court's decision, so that there is no need for a state organ that is given the authority to execute it. The implementation of the Constitutional Court's decision is related to the review of laws which are usually declaratoir constitutief decisions, which create, abolish or form a new legal situation, there is no need for a government organ to carry out the execution of decisions of the Constitutional Court.[15]

However, the issuance of the SEMA actually caused controversy, many criticized that the SEMA was a form of defiance of the Constitutional Court's decision, according to Puteri Hikmawati there were at least 2 (two) reasons why the SEMA then caused controversy, namely:[16]

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

1. 1. SEMA is an institutional decision of the Supreme Court, which is a structure in state life that is given independent power by law. SEMA has an internal nature, meaning that it only serves as technical guidance required internally in a working mechanism within all courts. However, the letter turned out to have an external impact, namely in the implementation of court decisions. Therefore, MA does not need to issue SEMA No. 7 of 2014, which is the ambivalence of the Supreme Court's attitude towards the Constitutional Court, because in the provisions of Article 66 paragraph (2) of the Law on the Supreme Court, it is determined that the request for review does not suspend or stop the implementation of the Court's decision. So PK efforts will not delay the implementation of decisions that have permanent legal force (in kracht). Thus, the submission of PK will not disturb the balance between legal certainty and justice because in principle legal certainty has been created since the in kracht van gewijsde decision was made.
2. 2. SEMA is not included in the types of statutory regulations as stipulated in Law no. 12 of 2011 concerning Formation of Legislation. SEMA is more of an MA order or instruction to the ranks below it. So SEMA is not a regulation that must be obeyed by parties outside the MA. Even though the Supreme Court said it did not violate the Constitutional Court's decision, because the articles referred to were different, the provisions (substance) issued by the Supreme Court were contrary to the Constitutional Court's Decision. The norms issued by the Supreme Court should not conflict with the Constitutional Court's decision. According to Article 10 paragraph (1) of Law no. 24 of 2003 concerning the Constitutional Court, the Constitutional Court's decision is final and binding, meaning that there are no other legal remedies that can be taken after the decision is read out. The Constitutional Court's decision is included in the type of statutory regulations, as stated in Law no. 12 of 2011.

In empirical reality, the problem of implementing MK decisions often experiences difficulties, at least showing many variations of problems and patterns of their implementation. The problem of implementing the Constitutional Court's decision is at least caused by 3 (three) things, namely: (1) as stated in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court's decision is only final but not accompanied by binding words so that sometimes it is perceived as non-binding; (2) The Constitutional Court does not have an executor unit tasked with guaranteeing the application of the final decision (special enforcement agencies); and (3) the final decision is very dependent on other branches of state power, namely the executive and legislative branches, namely the willingness and awareness to carry out the decision. From the three matters mentioned above, it is clear that in the field, the Constitutional Court's decisions are very vulnerable and have the potential to experience implementation problems. In this case, merely relying on the normative and imperative provisions in the 1945 Constitution, the Constitutional Court Law and the Constitutional Court's decision, is not enough to guarantee that there will be no problems in the implementation of the decision. Imperative normative provisions concerning the final nature and enforceability of the Constitutional Court's decisions do not necessarily eliminate obstacles in their implementation. Because in reality, the Constitutional Court's decision cannot be

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

enforced when it is understood as an independent entity, separate from its interactions with things outside that.

Decisions of the Constitutional Court that are not implemented will undermine the authority of the Constitutional Court as guardians and interpreters of the constitution as well as reducing public trust in the Constitutional Court. Even though the Constitutional Court does not have organs to carry out the execution of its decisions, Regardless of the internal institutional problems in implementing the Constitutional Court's decision, the Supreme Court and the Prosecutor's Office have a moral obligation to implement and comply with the Constitutional Court's decision in accordance with the erga omnes principle. Indonesia as a country that adheres to legal principles at the implementation level of the Supreme Court which has issued SEMA Number 7 of 2014 concerning Judicial Review should follow the Constitutional Court decision Number 34/PUU-XI/2013 which states that PK in criminal cases can be carried out repeatedly, so that it will describe harmony in institutional relations in Indonesia. Moreover, the Supreme Court and the Constitutional Court are high institutions in the justice system in Indonesia.

A judicial review has been carried out on SEMA 7/2014, which in essence the Supreme Court decided on Decision Number 27 P/HUM/2015 that:

Declare the petition for objection to the right of judicial review from the applicants:

1. Criminal justice reform community association or institute for criminal justice reform (icjr),
2. Association of participatory community initiatives for a just (impartial) Transition,
3. HRWG Association (working group of NGO coalition for international human rights advocacy),
4. Equal community association such is unacceptable;

The Supreme Court in its consideration said that the Supreme Court Circular Letter (SEMA) of the Republic of Indonesia Number 7 of 2014 dated 31 December 2014 concerning Submission of Requests for Judicial Review in Criminal Cases (object of judicial review rights a quo) was addressed to the chairman of the court of appeal and the chairman of the court of first instance is a circular form from the leadership of the Supreme Court as referred to by H.P. The fee is regulated and is not in the form of a regulation as a Supreme Court regulation, so that SEMA Number 7 of 2014 does not include the regulations as referred to in Article 7 and Article 8 of Law Number 12 of 2011, so that SEMA Number 7 of 2014 does not include objects of right to test material;

that there is no delegation regarding further arrangements regarding Judicial Review specified in higher laws and regulations as well as in the decision of the Constitutional Court Number 34/PUU-XI/2013 regarding submissions regarding Judicial Review, so that the object of review of the right of judicial review is in the form of a Circular Letter The Supreme Court does not include laws and regulations that can be reviewed by the Supreme Court or become the object of objection to judicial review at the Supreme Court of the Republic of Indonesia, because

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

SEMA Number 7 of 2014 concerning Submission of Requests for Judicial Review in Criminal Cases (object of judicial review rights) does not including statutory regulations that can be reviewed by the Supreme Court, the application for the a quo judicial review rights must be declared inadmissible (niet onvankelijke verklaard);

CONCLUSION

1. The characteristics of a Supreme Court Circular Letter in the Indonesian legal system are not categorized as statutory regulations, but only as policy regulations based on the principle of freedom of action known as freie ermessen/beleidsvrijheid/beoordelingvrijheid, while the Constitutional Court's decision basically has a final character binding means that in every decision of the Constitutional Court, the decision is final and there is no further legal action as is usual in the justice system. The authority of a decision issued by a judicial institution lies in its binding power. The decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (inter parties) but also must be obeyed by anyone (erga omnes).
2. The validity of the Supreme Court Circular Letter Number 7 of 2014 and the Decision of the Constitutional Court Number 34/PUU-XI/2013 in the Request for Review is SEMA Number 7 of 2014 concerning Judicial Review is contrary to the Decision of the Constitutional Court Number 34/PUU-XI/2013 which states PK in criminal cases can be carried out repeatedly, so that the legal consequences are normatively SEMA Number 7 of 2014 can be said to be null and void.

SUGGESTION

1. The Supreme Court should, in issuing regulations related to the exercise of its authority, pay attention to legal provisions or other statutory regulations, including the Constitutional Court's decision so that the contents to be regulated by the Supreme Court are in synergy with other legal provisions.
2. The Constitutional Court should carry out institutional coordination with institutions or agencies related to the implementation of the Constitutional Court's decision, in this case the Supreme Court. If there are obstacles in implementing the decisions of the Constitutional Court, then the Supreme Court can communicate with the Constitutional Court to question the essence of the contents of the decisions of the Constitutional Court and how to implement them based on the reality conditions of the Supreme Court and the Prosecutor's Office.

Bibliography

- Cahyadi, I. A. (2014). Kedudukan Surat Edaran Mahkamah Agung (SEMA) dalam hukum positif di Indonesia. In English Language Teaching (Vol. 39, Nomor 1).
- Chakim, M. L. (2016). Mewujudkan Keadilan Melalui Upaya Hukum Peninjauan Kembali pasca Putusan Mahkamah Konstitusi. Jurnal Konstitusi, 12(2), 328. https://doi.org/10.31078/jk1227

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/VQE7K

- Fajarwati, M. (2017). Validitas Surat Edaran Mahkamah Agung (sema) Nomor 7 Tahun 2014 Tentang Pengajuan Peninjauan Kembali Dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan. Jurnal Legislasi Indonesia, 14(2), 145–162.
- Hadjon, P. M., Martosoeignjo, S. S., Basah, S., Manan, B., Marzuki, L., Berge, T., Buuren, V., & Stroink. (2011). Pengantar Hukum Administrasi Indonesia (11 ed.). Gadjah Mada University Press. https://ugmpress.ugm.ac.id/id/product/hukum/pengantar-hukum-administrasi-indonesia
- Indrati, M. F. (1998). Ilmu Perundang-Undangan. Kanisius.
- Librayanto, R., Riza, M., Ashri, M., & Kasman, A. (2019). Penataan Kewenangan Mahkamah Konstitusi dalam Memperkuat Independensi Kekuasaan Kehakiman. Amanna Gappa, 27(1), 111–121.
- Manan, B., & Manhar, K. (1997). Beberapa Masalah Hukum Tata Negara Indonesia. Alumni. https://simpus.mkri.id/opac/detail-opac?id=7920
- Marzuki, L. (1996). Peraturan Kebijaksanaa (Beleidsregel) serta Fungsinya Selaku Sarana Hukum Pemerintahan. In Penataran Nasional Hukum Acara dan Hukum Administrasi Negara.
- Marzuki, P. M. (2008). Penelitian Hukum. In Penelitian Hukum. Kencana.
- Saputra, I. E., Irwan, M., & Rahman, A. (2022). Analisis Normatif Kewenangan Peninjauan Kembali Oleh Kejaksaan. Sawerigading Law Journal, 1(2), 101-111. Retrieved from http://ojs.unsamakassar.ac.id/slj/article/view/222
- Siahaan, M. (2015). Hukum Acara Mahkamah Konstitusi Republik Indonesia.
- Simare-mare, G., & Anjari, W. (2019). Kekuatan Hukum Mengikat SEMA Nomor 7 Tahun 2014 Terhadap Putusan MK Nomor 34/PUU-XI/2013 Ditinjau Dari Prespektif Negara Hukum Pancasila. Jurnal Hukum, 2(2). http://journal.uta45jakarta.ac.id/index.php/STAATRECHTS/article/view/4871
- Wahyudi, R., & Gaussyah, M. (2018). Optimalisasi Pelaksanaan Putusan Mahkamah Konstitusi dalam Hal Pengujian Undang-Undang terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Mercatoria, 11(2), 174–196.
- Willink, S. H. D. T., & Rijn, A. aan den. (1985). Geschriften van de Vereniging voor Administratief Recht XCIII. Vereniging voor Administratief Recht.
- Yuniagara, R. (2021). Penggunaan Sema Nomor 7 Tahun 2014 Dalam Penolakan Peninjauan Kembali. Jurnal Yudisial, 13(2), 187–206. https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/411
- Yuniagara, R., Purnama, E., & Sjafei, M. S. (2017). Kekuatan Hukum Mengikat SEMA No. 7 Tahun 2014 tentang Pengajuan Permohonan Peninjauan Kembali dalam Perkara Pidana. Kanun Jurnal Ilmu Hukum. http://www.jurnal.unsyiah.ac.id/kanun/article/view/6669