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LEGITIMACY AND FORMULATION OF OPEN LEGAL POLICY CONSIDERATIONS IN JUDICIAL REVIEW CASE DECISIONS CONSTITUTIONAL COURT

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Abstract

Constitutional Court is one of the implementing institutions of judicial power in Indonesia mandated by Article 24 of the Indonesian Constitution 1945 to uphold law and justice. The exercise of judicial power is supported by the independent and independent institutional nature of the Constitutional Court. The independence of the Constitutional Court in an independent constitutional system was realized through the independence of the Constitutional Court from the influence of the executive, legislative, and other elements in the State. One of the Constitutional Court's authorities is to examine the Law against the Indonesian Constitution 1945. Through this authority, the Constitutional Court has the right to declare a law or part of law contrary to the Indonesian Constitution 1945 and has no binding force. However, the Constitutional Court has no authority to declare a law contrary to the Indonesian Constitution 1945 and has no binding force when the material of the law or part of the law falls under the category of Open legal policy of the Government. The main problem of the open legal policy regime in procedural law testing laws in the Constitutional Court is the lack of legitimacy in using open legal policy in deciding judicial review cases and the absence of regulation on the use of the open legal policy. Therefore, it is interesting to study or examine the basis of legitimacy and urgency as well as the formulation of the use of the open legal policy method in cases of testing the Law on the Indonesian Constitution 1945. Therefore, the legal issues studied in this study include (1) Basic Legitimacy of Using Open Legal Policy Methods; (2) The urgency of institutionalizing the use of open legal policy methods, and (3) The direction of formulation of the use of open legal policy methods. The type of research used is doctrinal or normative research using 4 (four) approaches, namely: (1) legislation, (2) conceptual, (3) history, and (4) comparison. The results of the study are: (1) The basis for the legitimacy of using the Open Legal Policy method includes: (a) does not exceed the authority of the framer of the law; (b) not abuse authority; (c) is not contrary to the Indonesian Constitution 1945; (d) the Constitution does not provide; (e) The Indonesian Constitution 1945 does not specify limitations. (2) The urgency of institutionalizing the use of open legal policy methods is to: (a) implement the provisions of the Constitution, which requires further elaboration by law; (b) implement the provisions of the Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (P3); (c) implement the concept of the welfare state adopted by the Indonesian nation; (d) does not maintain the status quo of the law; (3) The direction of formulation of the use of open legal policy methods is: (a) must not conflict with the applicable legal system (positive legal rules, namely the Constitution; (b) is intended to be in the public interest only; (c) must be accountable to God Almighty, upholding the dignity, dignity of man, the value of truth, justice, unity and unity; (d) does not exceed the authority of the framer of the law; (c) not abuse authority (willekeur); (d) does not exceed the authority of the framer of the law; (e) The application of open legal policy is carried out if there is a policy/choice of law/authority.

Keywords: Open Legal Policy, Judicial Review, Constitutional Court.

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INTRODUCTION

Constitutional Court (Mahkamah Konstitusi) is one of the implementing institutions of judicial power in the Republic of Indonesia mandated by Article 24 of the Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945) to uphold law and justice. The exercise of judicial power is supported by the independent and independent institutional nature of the Constitutional Court. The independence of the Constitutional Court in an independent constitutional system is realized through the independence of the Constitutional Court from the influence of the power of the executive, legislative, and other elements in the State. The form of independence of the power of the Constitutional Court is when judges decide cases that cannot be intervened by anyone.

As the holder of judicial power, the Constitutional Court is given the authority by the Indonesian Constitution 1945 to (1). Test laws against the Basic Law; (2) Decide disputes over the authority of state institutions whose authority is granted by the Constitution; (3) Decide the dissolution of political parties, and (4) Resolve disputes about election results. In addition to these 4 (four) authorities, the Constitutional Court is also given the obligation of 1 (one) **Obligation**, namely to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.

Since its establishment, the Constitutional Court has produced binding and final rulings. However, not all decisions of the Constitutional Court are fully accepted and implemented by the parties. Several decisions are already final and binding but are not followed up by the party affected by the decision (addressed at the decision). This happens a lot in the decision of judicial review cases. The Constitutional Court itself cannot force the parties to implement its decisions immediately because the Constitutional Court itself [1]does not have an executory apparatus and institutionally is also not authorized to be the executor of its own decisions, because the nature of the decision to review the law against the Indonesian Constitution 1945 is a declaratory constitute. Therefore, the implementation of the decisions of the Constitutional Court depends largely on the awareness and obedience of the parties concerned. On the other hand, many of the Constitutional Court's rulings are in the public spotlight. Constitutional Court rulings that are often in the public spotlight are rulings related to judicial review that use an open legal policy consideration approach.

The problematic decision of the Constitutional Court on judicial review using an open legal policy approach is rooted in the question: Whether the Constitutional Court as a state institution is constitutionally tasked with being the guardian and sole interpreter of the Constitution) do not have the freedom to make decisions with conviction and evidence when faced with open legal policy considerations. The use of open legal policy in Constitutional Court decisions essentially causes a reduction in the authority of the Constitutional Court as the sole guardian and sole interpreter of the Constitution because the Constitutional Court is unable to maximally exercise its constitutional authority. With the argument of open legal policy, the Constitutional Court is unable to weigh more deeply the issue of the constitutionality of legal norms because this provision has become the domain of law formers who cannot be tested for validity with constitutional norms by the Constitutional Court. The Constitutional Court is given

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constitutional authority to test laws against the Constitution to uphold law and justice. Because of this broad authority, the Constitutional Court should consider all aspects in interpreting the compatibility between laws and the Indonesian Constitution 1945. Here it seems that the Constitutional Court only presents procedural justice, not presenting true substantive justice. The use of Open legal policy should not contradict the Constitution.

The existence of Constitutional Court rulings that use the interpretation of open legal policy about the exercise of the Constitutional Court's authority, theoretically and practically can cause serious problems. Several Constitutional Court rulings use open legal policy arguments such as: (1). Decision Number 10/PUU-III/2005; (2) Decision No. 16/PUU-V/2007; (3). Decision No. 51-52-59/PUU-VI/2008; (4). Decision No. 3/PUU-VII/2009; (5). Decision No. 86/PUU-X/2012; (6) Decision Number 02/PUU-XI/2013; (7) Decision No. 38/PUU-XI/2013; (8) Decision No. 73/PUU-XII/2014 These Constitutional Court decisions do not relate to substantive justice which requires more in-depth consideration by the judges of the Constitutional Court. In subsequent developments, many decisions of the Constitutional Court were not related to substance justice in realizing democratic and political life, such as the decision on the threshold for presidential and vice presidential nominations (presidential threshold) which was considered controversial by some circles.[2] Likewise, the decision of the Constitutional Court Number 16 / PUU-XII / 2014 relating to the authority of the DPR in the process of filling the positions of commissioners of the Judicial Commission (KY) and the Corruption Eradication Commission (KPK) also drew criticism from academics and the Chairman of KY.[3]

Even among constitutional judges, the use of open legal policy reasons has become a debate among the panel of judges. This is evidenced by the existence of different dissenting opinions. In the Constitutional Court decision Number 06/PUU-XIV/2016, for example, constitutional judges Anwar Usman, Arif Hidayat, Wahidudin Adams, and Aswanto criticized the concept of open legal policy in the construction of Constitutional Court judges' decisions. There are two criticisms of the judges against open legal policy: **First,** open legal policy in the formation of laws and regulations must not violate the principle of fair legal certainty and contradict the Constitution of the Republic of Indonesia Year 1945 (the Indonesian Constitution 1945) so that the framer of the law is not fully given the freedom to form laws if the laws formed are contrary to the principle of fair legal certainty. **Second,** the formation of open legal policy in the formation of laws is colored by the political configuration in parliament that allows the rules contained in laws and regulations is not a reflection of the principle of fair legal certainty but a reflection of the political configuration in parliament which tends to political victory in parliament not to fairness in that value.

Another issue surrounding rulings containing open legal policy is the issue of institutionalizing the open legal policy regime in the procedural law of legal review in the Constitutional Court. The existence of open legal policy considerations until now there have been no clear regulations and restrictions in Law Number 24 of 2003 concerning the Constitutional Court and Constitutional Court Regulation Number 06 / PMK / 2005 and Constitutional Court Regulation Number 9 of 2020 concerning Procedural Guidelines in Law Test Cases. The

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absence of open legal policy arrangements in procedural law testing causes the existence of an open legal policy regime to be questioned based on legitimacy to be used by Constitutional Court judges in deciding cases.

On the other hand, if the consideration of open legal policy is regulated in a Constitutional Cemetery Procedural Law such as the procedural guidelines issued by the Constitutional Court, it is feared that there will be interference with the freedom of Constitutional Court judges in deciding cases. Until now, restrictions on the use of open legal policy considerations are explicitly contained in the decisions of the Constitutional Court itself, which also does not have uniformity between one decision and another.

In the context of controversy and the lack of legitimacy of the existence of an open legal policy regime in the decisions of the Constitutional Court as described above, it is important to conduct scientific research that will find the basis for the legitimacy of the existence of the open legal policy regime in the decisions of the Constitutional Court court, and then symbolize in a regulation the Constitutional Court Guidelines for procedural judges. The existence of the Constitutional Cemetery procedural law as a procedural guideline for constitutional judges who regulate open legal policy is expected to be a source of legal legitimacy for the Constitutional Court in deciding judicial review cases in the Constitutional Court.

The main problem of the open legal policy regime in the procedural law of judicial review in the Constitutional Court is the absence of a legitimate basis for using open legal policy in deciding judicial review cases and the absence of regulation on the use of open legal policy in the procedural law of legal review in the Constitutional Court. The three main issues are then narrated in research questions, as follows: (1) what is the basis for the legitimacy of using the open legal policy method in considering the Constitutional Court decision on judicial review? (2) What is the urgency of establishing the use of open legal policy methods in considering the decision of the Constitutional Court on judicial review? (3) What is the direction of formulation of the use of open legal policy methods in considering the decision of the Constitutional Court on judicial review?

RESEARCH METHODS

This type of research is doctrinal or normative research. The approaches used in doctrinal/normative research are the statutory approach, conceptual approach, historical approach, and comparative approach. The legislative approaches studied in this study are various laws and regulations related to open legal policy policies starting from the 1945 NRI Constitution, the Law on judicial power, Law Number 24 of 2003 concerning the Constitutional Cemetery, and Law Number 8 of 2011 concerning amendments to Law Number 24 of 2003 concerning the Constitutional Cemetery and Constitutional Court Regulation Number 06 / PMK / 2005 and Constitutional Court Regulation Number 9 of 2020 concerning Procedural Guidelines in Legal Test Cases. With a conceptual approach, open legal policy concepts that develop in the practice of events in MK and MK in other countries will be studied. Meanwhile, the historical approach will examine the development of open legal policy arrangements and practices in the Constitutional Court to dig deeper into the concept of consideration of existing

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open legal policies and existing law concepts. The comparative approach will compare the application of open legal policy practiced in countries that have a Constitutional Court such as Austria, Germany, Turkey, and others.

DISCUSSION

1. The Basis of Legitimacy for the Use of Open Legal Policy Method in Consideration of Constitutional Decisions on Judicial Review

As revealed in the Background section, there are several Constitutional Court Decisions that use open legal policy arguments such as Decision Number 10 / PUU-III / 2005, Decision Number 16 / PUU-V / 2007, Decision Number 51-52-59 / PUU-VI / 2008, Decision Number 3 / Puu-VII / 2009, Decision Number 86 / Puu-X / 2012, Decision Number 02 / Puu-Xi / 2013, Decision Number 38 / Puu-Xi / 2013, Decision Number 73 / Puu-XII / 2014.

Open legal policy as a basis for consideration of Constitutional Court judges in judicial review cases provides an opportunity for legislators (lawmakers) not to be blamed by Constitutional Court judges even though the applicant considers a law or part of the law is considered contrary to the Constitution. The use of the reason Open legal policy as a justification for a formulation in the Law that is considered contrary to the Constitution by the applicant can endanger legal certainty, moreover until now there has been no regulation that regulates restrictions on the use of open legal policy, both in Law Number 24 of 2003 concerning the Constitutional Court and Constitutional Court regulation Number: 06 / PMK / 2005 concerning Procedural Guidelines in Law Test Cases. The absence of open legal policy arrangements in procedural law testing causes the existence of an open legal policy regime to be questioned based on legitimacy to be used by Constitutional Court judges in deciding cases.

As is known, the open legal policy owned by lawmakers causes the law as a product of legislators cannot be tested by the Constitutional Court. Open legal policy in the view of the Constitutional Court is a policy regarding the provisions in certain articles in the law which is the authority of the framer of the law. According to the Constitutional Court, broadly speaking, a policy of law formation, in this case, the law can be said to be open (open legal policy) when the Constitution of the Republic of Indonesia Year 1945 **(UUD 1945)** or the constitution as the highest legal norm in Indonesia does not regulate or does not provide restrictions regarding what and how certain material must be regulated by law. However, based on the Constitutional Court Decision Number 86/PUU-X/2012 (p. 100), in its legal considerations, it is affirmed that the open legal policy owned by the framer of the law cannot be carried out freely, and must pay attention to fair demands by moral considerations, religious values, security, and public order as stated in Article 28J paragraph (2) of the 1945 Indoensian Constitution which states: "In exercising his or her rights and freedoms, everyone shall be subject to restrictions established by law for the sole purpose of ensuring recognition and respect for the rights and freedoms of others and of meeting just demands by considerations of morals, religious values, security, and public order in a democratic society".

Based on the provisions of Article 28J paragraph (2) of the Indonesian Constitution 1945,

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basically the Constitutional Court can test laws formed through open legal policy and may cancel the law if it violates the provisions of Article 28J paragraph (2) of the Indonesian Constitution 1945 as legal considerations in Constitutional Court Decision Number 86 / PUU-X / 2012 above. Constitutional Court Decision Number 46 / PUU-XIV / 2016 related to the examination of Article 284 of the Criminal Code which rejects the expansion of the meaning of adultery. The Constitutional Court argues that the authority to expand the crime is the authority of the framer of the law, which essentially leaves the criminal regulation to the framer of the law (open legal policy).

Constitutional Court Decision No.14/PUU-XI/2013 regarding material examination of Law No.42 of 2008 concerning Presidential and Vice Presidential Elections (Presidential Election Law), especially related to the provisions of the Presidential Threshold (the threshold for determining Presidential and Vice Presidential candidates). According to the Constitutional Court Presidential Threshold contained in Article 9 of the Presidential Election Law "Candidate Pairs proposed by Political Parties or Combinations of Political Parties participating in the election who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total DPR seats or obtaining 25% (twenty-five percent) of the national valid votes in the DPR member elections, before the implementation of the Presidential and Vice Presidential Elections" is the authority the framer of the law while still basing on the provisions of the Indonesian Constitution 1945. This means that the Constitutional Court submits the presidential threshold provisions to the framer of the law (open legal policy). Yet the presidential threshold is the most obvious political compromise.

Open legal policy by the framer of the law (DPR and President + DPD) can be done if you carry out the mandate of forming organic and inorganic laws. For organic law, the open legal policy can be done if the provisions in the Constitution contain the meaning of the choice of law or policy or the authority to interpret phrases in every paragraph and article in the Indonesian Constitution 1945 so that the phrase will be constitutional if interpreted by the understanding of the constitution by the framer of the law. For the formation of inorganic laws, the framer of the law far has the discretion in determining the norms that are by the times and even the interests of the framer of the law.

The results of Radita Ajie's study stated that the framer of the law is given the flexibility in determining a rule, prohibition, obligation, or limitation contained in a legal norm that is being made which is the choice of lawmaker policy as long as:[4]

1. Does not contradict the Indonesian Constitution 1945, for example, it is not allowed to formulate norms for setting the education budget at less than twenty percent of the State Budget and Regional Budget, because it contradicts Article 31 paragraph (4) of the Indonesian Constitution 1945.
2. Does not exceed the authority of the framer of the law (detournement de pouvoir), for example, the framer of the law drafts amendments/amendments to the Indonesian Constitution 1945 which is the authority of the MPR.
3. Does not constitute an abuse of authority (willekeur).

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To find out the basis for the legitimacy of using the open legal policy method in considering the Constitutional Court decision on judicial review, the following will be analyzed several decisions of the Constitutional Court which in its decision consider open legal politics, as follows:

a. Decision No. 26/PUU-VII/2009

That the Court in its function as guardian of the constitution is unlikely to invalidate a law or part of its contents if the norm is an open delegation of authority that can be determined as legal policy by the framer of the law. Even if the content of a law is considered bad, then the Court cannot overturn it, unless the product of the legal policy violates morality, rationality, and intolerable injustice. As long as the policy choice is not beyond the authority of the framer of the law, does not constitute an abuse of authority, and does not manifestly contradict the 1945 Constitution of the Republic of Indonesia (the Indonesian Constitution 1945), such a policy choice cannot be canceled by the Court".

b. Decision No. 37-39/PUU-VIII/2010

Concerning age criteria, the Indonesian Constitution 1945 does not specify a certain minimum or maximum age limit as a generally accepted criterion for all government positions or activities. That means the Indonesian Constitution 1945 left the determination of the age limit to the framer of the law to regulate it. In other words, the Indonesian Constitution 1945, is considered part of the legal policy of the framer of the Law. Therefore, the minimum age requirements for each position or government activity are regulated differently in various laws and regulations according to the characteristics of the needs of each position.

c. Decision No. 6/PUU-III/2005

Considering that the requirement for proposing candidates for spouses of regional heads / deputy regional heads must be through the proposal of political parties, is a mechanism or procedure for how the election of the regional head is carried out, and in no way eliminates the right of individuals to participate in government, as long as the conditions for proposing through political parties are carried out, so that with the formulation of discrimination as outlined in Article 1 paragraph (3) of Law Number 39 of the Year 1999 and Article 2 of the International Covenant on Civil and Political Rights, namely as long as the distinction made is not based on religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language and political beliefs, then the proposal through such a political party cannot be considered contrary to the Indonesian Constitution 1945, because the choice of such a system is a policy (legal policy) that cannot be tested unless done arbitrarily (willekeur) and beyond the authority of the legislator (detournement de pouvoir);

d. Decision Number 56/PUU-X/2012

The determination of the age limit for judges is an open legal policy, which can be changed by the framer of the law by the demands of existing developmental needs by the type and specifications, and qualifications of the position. Thus, the determination of the age limit is entirely the authority of the framer of the Law. According to the Court, there is a difference in

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retirement age between Ad Hoc Judges of Industrial Relations of the Supreme Court (Applicant I), Ad Hoc Judges of the Industrial Relations Court (Applicant II), and other Ad Hoc Judges, Judges, and Supreme Court Justices but this difference does not necessarily cause differences in treatment as referred to in Article 28I paragraph (2) of the Indonesian Constitution 1945. Differences can be justified as long as the nature, character, and needs of the position are different. It will cause discrimination if you treat the same thing towards a different person or vice versa treat different things towards the same.

e. Decision No. 5/PUU-V/2007

The Court in decision Number 072-073 / PUU-II / 2004 once stated that it was the policy choice of the framer of the law to regulate the procedures for electing regional heads. The Local Government Law has outlined the order of Article 18 Paragraph (4) of the Indonesian Constitution 1945 by stipulating that elections for regional heads and deputy regional heads are carried out by direct general elections whose candidates are submitted by political parties or a combination of political parties. This is the policy of the framer of the law.

f. Decision Number 7/PUU-XI/2013

The Court held that against the age criteria that the Indonesian Constitution 1945 does not specify a certain age limit for occupying all government positions and activities, this is the legal policy of the framer of the Law, which at any time can be changed by the framer of the Law by the demands of existing developmental needs. This is entirely the authority of the framer of the law which, whatever the choice, is not prohibited and does not contradict the Indonesian Constitution 1945. However, according to the Court, this can become a constitutionality problem if the rule creates institutional problems, namely that it cannot be implemented, the rule causes a legal deadlock and hinders the implementation of the performance of the state institution concerned which ultimately causes damage to the constitutionality of citizens;

g. Decision No. 30 and 74/PUU-XII/2014,

Moreover, several rulings No. 49/PUU-IX/2011, Decision No. 37-39/PUU-VIII/2010, and decision No. 15/PUUV/2007 have also considered the minimum age limit to be an open legal policy forming the Law which can be changed at any time by the demands of development needs or legislative review efforts. "It is entirely the authority of the framer of the law, whatever the choice, is not prohibited and as long as it does not contradict the Indonesian Constitution 1945".

Analysis

The Constitutional Court Decision Number: **26 / PUU-VII / 2009** mentions several limits on the use of open legal policy, namely: if the legal policy product violates morality, rationality, and intolerable injustice. This means that the provisions of law cannot be made because of open legal policy while: a. the open legal policy product violates morality, b. the open legal policy product violates rationality, and c. the open legal policy product violates intolerable injustice.

In the Constitutional Court Decision, it can also be seen that restrictions on the use of open

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legal policy arguments are: a. the policy does not constitute something that exceeds the authority of the framer of the law, b. does not constitute an abuse of authority, and c. does not manifestly contradict the Constitution of the Republic of Indonesia Year 1945.

In Decision Number Decision Number: **37-39 / PUU-VIII / 2010**, there is one reason to use the reason for open legal policy, namely: that the Constitution does not specify restrictions, in this case, certain minimum or maximum age limits as generally accepted criteria for all government positions or activities. That means the Indonesian Constitution 1945 left the determination of the age limit to the framer of the law to regulate it.

In **Decision Number 6/PUU-III/2005,** the Constitutional Court held that open legal policy can be used if the regulations made do not eliminate individual rights, as long as the distinctions made are not based on religion, ethnicity, race, ethnicity, group, class, social status, economic status, gender, language, and political beliefs.

In **Decision Number 56 / PUU-X / 2012** the Constitutional Court held that Open legal policy can be carried out if it meets the demands of existing development needs and is by the type and specifications and qualifications of the position. Differences can be justified as long as the nature, character, and needs of the position are different. It will cause discrimination if you treat the same thing towards a different thing or vice versa treat different things towards the same thing.

In **Decision Number 5/PUU-V/2007** the Constitutional Court confirmed the use of open legal policy. While is necessary for further elaboration of the provisions of the Constitution.

Meanwhile, in **Decision Number 7 / PUU-XI / 2013** the Court held that open legal policy can be used when it does not cause problems with the regulations formed in the form of non-implementation of the regulations or laws (deadlock) and hinder the implementation of the performance of the relevant state institution in the end.

Based on the results of the review and search of the literature and judges' decisions, it can be concluded that open legal policy may be used if:

1) As long as the choice of policy does not exceed the authority of the framer of the law;
2) does not constitute an abuse of authority, and
3) is not manifestly contrary to the Indonesian Constitution 1945 of the Republic of Indonesia;
4) The Constitution does not regulate;
5) Not contrary to the Constitution;
6) The Indonesian Constitution 1945 does not specify Limitations;

Legal Policy is prohibited if:

1) violates intolerable morality, rationality, and injustice;
2) If it turns out that there is no constitutional need; or

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3) It turns out that the basis, motive, or legal purpose behind the choice of model was not proven; or
4) the constitutional necessity when the choice was made at a certain time turned out to be no longer necessary;
5) carried out arbitrarily (willekeur) and beyond the authority of the legislator (detournement de pouvoir);
6) treat the same thing towards a different thing or otherwise treat differently towards the same thing;
7) The regulation creates institutional problems, that is, it cannot be implemented;
8) Its rules cause legal deadlock and hinder the implementation of the performance of the institutions concerned which ultimately leads to the loss of constitutionality of citizens.

2. The urgency of establishing the use of open legal policy methods in considering the Constitutional Court decision on judicial review;

In this section, the researcher discusses what exactly is the urgency or importance of establishing the use of open legal policy methods in considering the Constitutional Court decision on judicial review. This issue needs to be studied considering that the concept of open legal policy in Constitutional Court decisions does not yet have clear limits so constitutional judges also often differ in views on the issue of using open legal policy in the decisions of Constitutional Court judges. Second, in the Indonesian Constitution 1945 and also in the laws and regulations under the Indonesian Constitution 1945 there is no provision regarding the use of open legal policy both regarding the reasons and limits of its use. This can cause legal uncertainty and may make law-forming institutions hide behind the use of open legal policy to achieve the ideals of certain groups in the DPR / DPRD and the ideals of the ruling government by ignoring the constitutional rights of the community.

Therefore, it is very necessary to formulate the use of open legal policy. However, for this matter, it is necessary to know in advance what the urgency of using open legal policy is in the formation of the Law and the consideration of the Constitutional Court Judge in judicial review. To answer this problem, researchers take two approaches, namely the conceptual or doctrinal approach and the case or non-doctrinal approach. In the statutory approach (statute approach) or doctrinal, the author uses the doctrines or opinions of the bachelor on related issues, while in the non-doctrinal approach, the author studies the decisions of the Constitutional Court judges, namely by examining the basis of judges' considerations (ratio decidendi of Constitutional Court decisions) related to the use of open legal policy as a basis for consideration justifying the framer of the law.

From the statutory or doctrinal approach, this study identifies several opinions related to the reasons why open legal policy needs to be applied, namely others:

1. The use of open legal policy is related to attribution in the form of the Constitution's order, that to implement further provisions of the Constitution a Law was formed. In carrying out

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these further provisions, of course, the framer of the Law is given the flexibility to make provisions that lead to the content of the order in the Article of the Constitution, requiring that further arrangements be given to the Law. For example, based on the provisions of Article 2 paragraph (1) of the Indonesian Constitution 1945 which states: The People's Consultative Assembly consists of members of the People's Representative Council and members of the Regional Representative Council elected through general elections and further regulated by law.

Based on these provisions, of course, the framer of the Law in regulating the membership of the People's Consultative Assembly, both the number, and the procedure for filling it through elections is the right of the framer of the Law to regulate it. It is also related that the Constitution does not regulate in detail the number and procedure for slicing it through the election. In other words, how many members of the MPR, members of the DPR, and DPD will become members of the People's Consultative Assembly entirely on the consideration or policy of the framer of the law, Similarly, what kind of MPR member election system is used will depend really on the will or policy of the framer of the law.

Another provision in the Constitution that requires further regulation with the Law is contained in Article 6 paragraph (2) which states: The conditions for becoming President and Vice President are further regulated by law.

From the sound of the provisions of Article 6 paragraph (2) of the Indonesian Constitution 1945, it gives free authority to the framer of the law to determine what is required to become President and Vice President, for example, related to age, work experience, political support, and others. Another example is the provision of Article 12 of the Indonesian Constitution 1945 stating: "The president declared a state of danger. The conditions, conditions, and consequences of the state of danger are established by law". Article 12 gives free authority to the framer of the law to regulate what is a condition and what is the result of a state of danger.

If you look at the provisions of the Indonesian Constitution 1945, many articles mention the need for the formation of laws to further describe the orders of the Constitution. So in this context, the urgency of open legal policy is to further implement the provisions of the Constitution that are indeed ordered to be made or regulated by law. This relates to the condition that the Constitution as the highest legal norm in Indonesia does not regulate or does not provide restrictions regarding what and how certain material must be regulated by law. This is in line with what was revealed by Mukthie Fadjar, that open legal policy or open legal policy emerged when the Indonesian Constitution 1945 ordered to regulate certain norms in the form of laws, but only provided direction in outline. While the laws formed must regulate in more detail. Regulating in more detail what is meant here is an open or free area for the framer of the law to determine as long as it is still within the outline frame regulated by the Indonesian Constitution 1945.

2. The use of open legal policy is a must or condition sinequanon to the contents of the provisions of Law P3, namely Law Number 12 of 2011 jis Law No. 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and

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Regulations and Law No. 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. Article 10 of Law 12 of 2011 states the material content of the Law, among others:

a. Further regulation of the provisions of the Constitution of the Republic of Indonesia Year 1945;
b. Order of an Act to be governed by an Act;
c. Fulfillment of legal needs in society.

Taking into account the provisions regarding the material content of the Law as regulated by Law Number 12 of 2011 concerning the Establishment of Laws and Regulations gives free authority bound to the framer of the Law to further regulate with the Law as the implementation of the Constitution, the implementation of the Law and to meet legal needs in the community. So the existence of legal policy given to the framer of the law is by the legal system in force in Indonesia. From this description, it can be concluded that the use of open legal policy in implementing further provisions of the Constitution

3. The right to freedom to determine the content of the law by the framer of the law (open legal policy legislator) when viewed from the concept of the welfare law state is a necessity as a consequence of the idea of the welfare state where the state and government must meet or provide services to the community for all their needs from the womb to the grave (from the cradle to the grave) for the realization of people's welfare. As is known, in a welfare state the main task of the government is to provide services to the community for all the needs of life. This is different from the type of night guard law state (policy state) which is only tasked with ensuring order and security alone and does not participate in realizing the welfare of the people. The welfare of the people is the right and duty of the people themselves. Indonesia is undoubtedly a welfare state. This can be seen from the purpose of the Indonesian state established as stated in Aline IV of the Preamble of the Indonesian Constitution 1945 which states: "Then from that to protect the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the life of the nation… and so on."

The idea of the welfare state can also be seen from various provisions in the Body of the Indonesian Constitution 1945, including:

a. Article 33 paragraph (2) states: The branches of production that are important to the state and that control the livelihoods of the people are controlled by the state.
b. Article 33 paragraph (3): Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
c. Article 34 (1): "The poor and abandoned children are cared for by the state.
d. Article 34 paragraph (2): The State shall develop a system of social guarantees for all people and empower the weak and indigent by human dignity.
e. Article 34 paragraph (3) states: "The State shall be responsible for the provision of health care facilities and adequate public service facilities.

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From the sound of several provisions of the Constitution, it is undeniable that Indonesia is a welfare state. Thus, the existence of an open legal policy for the framers of the law is a logical consequence of the adoption of the concept of the welfare state by the Indonesian nation. In the welfare state, the framers of the law are given ample opportunity to regulate the law as long as they do not do anything arbitrarily. In progressive legal theory, legal interpreters are asked not to maintain the status quo of the law and to pay greater attention to changes that occur in society and the state.

For several reasons that have been stated in the description above, the urgency of the establishment or granting of open legal policy rights is because:

a. in connection with the provisions of the Indonesian Constitution 1945,
b. in connection with the implementation of some provisions of the Law; and
c. as a consequence of the adoption of the concept of the welfare state for the Indonesian people which provides the right to freedom for the government to administer government to realize the welfare of the people.

3. Direction of formulation of the use of open legal policy methods in considering the decision of the Constitutional Court on judicial review

The third issue to be discussed in this study is related to the formulation of the use of open legal policy methods in considering the Constitutional Court decision on judicial review. As stated in the description at the beginning, during this time the term open legal policy was not widely known in legal science. The term Policy is more widely known in the field of public policy studies, including in the terms Public Policy (public policy), and Social Policy (social policy). In the field of public policy, the term policy already contains the meaning of free or open, because the meaning of policy always refers to the flexibility of officials/authorities to do certain things whose implementation is not or has not been regulated by laws and regulations. This is different from the notion of open (open) in the field of law formation (in the national legal system).[5]

In the Science of State Administration Law (HAN) it is known as Policy about the concept of policy rule or policy regulations or also often known as freies ermessen or free authority for government apparatus or state administration. Fries ermessen for state administration is one of the sources of authority of the state administration apparat.

According to Markus Lukman elaborated that freies ermessen in German comes from the word frei which means free, loose, unbound, and independent. Freies means free, unbound, and free people. While ermessen means considering, judging, guessing, and estimating. Freies ermessen means one who has the freedom to judge, guess and consider things.[6] This term is then typically used in the field of government so that freies ermessen is interpreted as one of the means that provides space to move for officials or state administrative bodies to carry out actions without having to be fully demanded by laws and regulations. Policy regulations grow and start from the existence of state administration products based on the use of freies ermessen which become absolute in the type of welfare state.

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So this freies ermessen departs from the government's obligation in the welfare state, which asserts that the main task of the government is to provide public services or legalize welfare for citizens, in addition to protecting citizens in carrying out their functions. When connected with our country, freies ermessen appears along with the assignment of the task to the government to realize the objectives of the state as stated in the fourth paragraph of the preamble to the Indonesian Constitution 1945, which affirms "to establish a government of the Indonesian state, which protects the entire Indonesian nation and all Indonesian virgins, and to promote the general welfare, educate the life of the nation and participate in implementing world order based on independence, lasting peace, and social justice.

Because the main task of the government in the conception of the welfare state is to provide services for citizens, the principle arises "The government must not refuse to provide services to the community because there are no laws and regulations governing it." Instead, he is required to find and provide a solution according to the principle of freies ermessen given to him. Although the government is granted free authority or freies ermessen, in a country the use of freies ermessen must be within the limits permitted by applicable law. According to Muchsan the restrictions on the use of freies ermessen are:[7]

1. The use of freies ermessen must not be contrary to the applicable legal system (positive legal rules).
2. The use of freies ermessen is intended only for the public interest.

Meanwhile, Sajhran Basah argues that the implementation of the freies ermessen must be morally accountable to God Almighty, uphold the dignity and dignity of human beings and the values of truth and justice, and prioritize unity and unity, for the sake of common interests.[8] Thus between the rules of policy and freies ermessen is like the relationship between the child and the mother. Or it can be said that policy regulation is a specific form of the policy of the embodiment of freies ermessen.

Freies ermessen itself was born consciously by the makers of laws and regulations because they could not regulate them thoroughly and precisely, so they were given space for freedom to the state administration to determine for themselves what should be done. If so, freies ermessen itself cannot be categorized as legislation, moreover, policy regulation really cannot be called part of any form of legislation. Today there are policy regulations that are pure and generally accepted and some are not pure and not too general in nature, but only institutional and apply inward.

J.H. Van Kreveld points out that the main features of policy regulation are:[9]

1) The establishment of policy regulations is not based on provisions that expressly originate from the attribution or delegation of laws.
2) Its formation can be written and unwritten which originates from the free authority to act government agencies or is only based on the provisions of general laws and regulations that provide discretion space for administrative bodies or officials to take separate initiatives to take public legal actions that are regulatory or determined.

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3) Redaction of the content of regulations is flexible and general without explaining to citizens how government agencies should exercise their free authority over citizens in situations determined (regarded) by a regulation.
4) The redaction of juridical policy regulations in the Netherlands is formed following the format of ordinary laws and regulations and is officially announced in the government periodical, although in consideration it does not refer to the law that authorizes its formation to the government body concerned.
5) It can also be determined by the juridical format itself by officials or state administrative bodies that have policy space for it.

According to Marcus Lukman, these characteristics are what distinguish policy regulations from pure laws and regulations that are tangibly, firmly, and clearly ordered to be formed by superior-level laws and regulations (attribution and delegation).[10] Although policy regulations are different from pure laws and regulations, in practice they are legally enforced and implemented as befits ordinary laws and regulations. According to Belifante that policy regulations are not laws and regulations, but in many cases policy regulations are also in the character of laws such as binding in general where the community has no other choice but to obey them.[11]

Furthermore, Hammid Attamini described that in terms of form and format, policy regulations resemble laws and regulations complete with an opening in the form of considerations "weighing" and legal bases "remembering", the torso in the form of articles, parts of chapters, and closing.[12] However, judges are not required to apply policy regulations because judges are only required to apply laws and regulations. This fact is quite problematic academically among legal scholars. Some consider it not as law, some view it as a valid rule of law because it chooses to justify reasons that can be legally accounted for, namely if it is by the principle of freies ermessen, the general principle of proper governance", "administrative customs", or "constitutional conventions". Conversely, policy regulations can be rejected on the same grounds that they contradict the principles mentioned above.

Ideal policy regulations are only those that are limited and binding in character to state administration such as Work Guidelines, Implementation Guidelines (Juklak), Technical Guidelines (Juknis), and Circular Letters (CL), announcements are only institutional internal conduct, so that they are expected not to disrupt the structure and hierarchy of existing laws and regulations. Hammid Attamini suggested that laws and regulations are one of the most powerful methods and instruments available to regulate and direct people's lives towards the expected ideals. In practice, this is what the framer of the law did because now the power of forming laws is mainly to provide direction and show the way for the realization of the ideals of national life through the laws he formed.[13]

If you pay attention to the meaning, purpose, and purpose of using fries ermessen for the government as a source of government authority, then it is not much different from the use of the open legal policy. In other words, the use of open legal policy can be analogous to the use of Freies ermessen by state administration officials. In the national legal system, the legal

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policy can be interpreted as the action of the framer of the law in determining the subject, object, deed, event, and/or effect be regulated in laws and regulations. Thus, the word "open" in the term "open legal policy" is interpreted as freedom for the framer of the law to take legal policy.

However, in the use of these freedoms, according to Radita Adjie, the framer of the law in determining a rule, prohibition, obligation, and limitation that will be contained in law can be done and is subject to 3 conditions, namely:

a) not in manifest conflict with the Indonesian Constitution 1945;

b) does not exceed the authority of the framer of the law such as making amendments to the Indonesian Constitution 1945;

c) and not included in abuse of authority.

If analogous to the use of open legal policy with fries ermessen, then the direction of the use of legal policy in the formation of laws by the framer of the law can be done provided:

a) must not conflict with the applicable legal system (positive legal rules, namely the Constitution;

b) the use of Open legal policy is only intended for the public interest or the people, the interests of the nation and state, and the interests of development;

c) the use of open legal policy can be used but must be morally accountable to God Almighty, uphold the dignity and degree of human dignity and the values of truth and justice, and prioritize unity and unity, for the sake of common interests.

In addition, by following the basis of the Constitutional Court's consideration in some of its decisions mentioned earlier, the use of open legal policy must also pay attention to the following:

a) does not exceed the authority of the framer of the law (detournement de pouvoir), for example, the framer of the law drafts amendments/amendments to the Indonesian Constitution 1945 which is the authority of the MPR.

b) does not constitute an abuse of authority (willekeur);

c) as long as the choice of policy does not exceed the authority of the framer of the law;

d) does not constitute an abuse of authority, and

e) Open legal policy can be done if in its implementation it adheres to the mandate of forming organic and inorganic laws and regulations. The application of open legal policy in organic law is carried out if there is a policy/choice of law/authority that asks to interpret the phrase in each paragraph and article, and results in the phrase no longer being constitutional because it has been interpreted by the framer of the law. As for inorganic laws, the framer of the law has the discretion to determine norms that are by the times and the interests of the framer of the law.

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CONCLUSION

From the results of the research, as revealed in the discussion above, the following conclusions can be drawn:

1. The Basis of Legitimacy for the Use of Open Legal Policy Method in Consideration of Constitutional Decisions on Judicial Review:
   a. As long as the choice of policy does not exceed the authority of the framer of the law.
   b. Does not constitute an abuse of authority.
   c. Is not manifestly contrary to the Indonesian Constitution 1945 of the Republic of Indonesia;
   d. The Constitution does not regulate.
   e. Not contrary to the Constitution.
   f. The Indonesian Constitution 1945 does not specify limits.

Legal Policy is prohibited if:

   a. Violates intolerable morality, rationality, and injustice.
   b. If it turns out that there is no constitutional need or.
   c. It turns out that the basis, motive, or legal purpose behind the choice of model is not proven.
   d. The constitutional necessity when the choice was made at a certain time turned out to be no longer necessary.
   e. Carried out arbitrarily (willekeur) and beyond the authority of the legislator (detournement de pouvoir).
   f. Treat the same thing towards a different person or conversely treat differently towards the same thing.
   g. The regulation creates institutional problems, namely that it cannot be implemented, the rules cause legal deadlock, and hinder the implementation of the performance of the institutions concerned which ultimately causes damage to the constitutionality of citizens.

2. The urgency of establishing the use of open legal policy methods in considering the Constitutional Court decision on judicial review is:
   a. To implement the provisions of the Constitution (1945 Constitution), which requires further elaboration with the Law carried out by the framer of the Law.
   b. To implement the provisions of Law P3 (Law Number 12 of 2011 concerning the Establishment of Laws and Regulations) which requires.

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c. To implement the concept of a welfare state adopted by the Indonesian nation.

d. In order not to maintain the status quo of the law and pay more attention to the changes that occur in society and the state.

3. The direction of formulation of the use of the open legal policy method in considering the decision of the Constitutional Court on judicial review, namely:

   a. Must not contradict the applicable legal system (positive legal rules, namely the Constitution.

   b. The use of Open legal policy is only intended for the public interest or the people, the interests of the nation and state, and the interests of development.

   c. The use of open legal policy can be used but must be morally accountable to God Almighty, uphold the dignity and degree of human dignity and the values of truth and justice, and prioritize unity and unity, for the sake of common interests.

   d. Does not exceed the authority of the framer of the law (detournement de pouvoir), for example, the framer of the law drafts amendments/amendments to the Indonesian Constitution 1945 which is the authority of the MPR.

   e. Does not constitute an abuse of authority (willekeur).

   f. As long as the choice of policy does not exceed the authority of the framer of the law,

   g. The application of open legal policy in organic law is carried out if there is a policy/choice of law/authority.

Bibliography

Book

1. A D Belinfante and Boerhanoeddin Soetan Batoetah, Fundamentals of Tata Law. State Business, Binacipta, Bandung, 1981.
2. Alexis De Tocqueville, Democracy in America, David Campbell Publisher, London, 1994. Bagir Manan, 2005, Authoritative Justice System (A Search), Faculty of Law UII Press, 2005.
3. D.J. Harris, Cases and Materials on International Law, fifth edition, Sweet and Maxwell, London, 1998.
4. Hamid Attamimi, The Role of the Presidential Decree of the Republic of Indonesia in the administration of the State a study of an analytical study of Presidential Decrees that function as a regulation during the period of Pelita I-Pelita IV, Dissertation, FH UI, Jakarta, 1993.
5. Herbert Jacob, Cour, Law and Politics in Comparative Perspective, Yale University Press, London, 1996.
6. Jimly Asshidiqie, Introduction to Constitutional Law, Volume I, Secretariat and Registrar of the Constitutional Court, Jakarta, 2006.
7. Constitution and Constitutionalism, Constitution Press, Jakarta. 2005.
8. K.C. Wheare, Modern Constitution, Oxford University, London, 1960.
9. Marcus Lukman, The Existence of Policy Regulations in the Field of Planning and Implementation of Development Plans in the Regions and Their Impact on the Development of National Written Legal

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/E8AK3

Materials, Dissertation, Padjajaran University, Bandung, 1996.

10. Maruarar Siahaan, Upholding Constitutionalism and the Rule of Law: Year-End Reflections, in Refly Harun et al, Keeping the Pulse of the Constitution: Reflections on One Year of the Constitutional Court, Constitution Press, 2004.
11. Muchsan., Some Notes on State Administrative Law and State Administrative Justice in Indonesia, Liberty, Yogyakarta, 1981.
12. Refly Harun et al, Keeping the Pulse of the Constitution: Reflections on One Year of the Constitutional Court, Constitution Press, 2004.
13. Sinta Dewi, et al, (ed), Legal Development in Indonesia: Retrospective and Prospective Review, Collection of Writings in the Framework of 70 Years of Prof.DR. Mieke Komar, SH.,MCL, Kerjasa PT. Remaja Risdakarya with the International Law Section of FH UNPAD, Bandung, 2012.
14. Sjachran Basah., Existence and Benchmarks of State Administrative Justice in Indonesia, Bandung: Alumni, 1997.
15. Sudikno Mertokusumo and Pitlo, Chapters on Legal Discovery, Citra Aditya Bhakti, 2013

Journal

1. Journal of Legislation, Vol. 13 N0. 02 - June 2016. Journal of the Constitution, Volume 12, Number 2, June 2015. Regulation
2. Constitution of the Republic of Indonesia Year 1945
3. Law Number 24 of 2003 concerning the Constitutional Court, State Gazette of the Republic of Indonesia of 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316.
4. Constitutional Court Regulation Number 9 of 2020 concerning Procedural Guidelines in Law Test Cases.

Court Verdict

1. Constitutional Court Decision Number 10/PUU-III/2005, Constitutional Court Decision Number 16/PUU-V/2007, Constitutional Court Decision Number 51-52-59/PUU-VI/2008, Constitutional Court Decision Number 3/PUU-VII/2009, Constitutional Court Decision Number 86/PUU-X/2012,
2. Constitutional Court Decision Number 02/Puu-Xi/2013, Constitutional Court Decision Number 38/Puu-Xi/2013, Constitutional Court Decision Number 73/Puu-Xii/2014

Research and Site Reports

1. Research Report, Cooperation between the Constitutional Court and the Association of Procedural Law Lecturers of the Constitutional Court, Faculty of Law, Sebelas Maret University, 2019.
2. http://krjogja.com/read/271540/konsep-open-legal-policy-perlu-dikoreksi.kr which is then uploaded on M's website
3. https://mkri.id/index.php?page=web.Berita&id=11867
4. According to Herdiansyah Hamzah, in his dissertation entitled Elaboration of Natural Resources Regulation Principles based on Constitutional Court Decisions. Mentioning that only 52 percent of the Constitutional Court's decisions are well implemented by the DPR and the Government. https://www.ugm.ac.id/id/berita/23695-sekitar-52-persen-putusan-mk-ditindaklanjuti-oleh-dpr-dan-pemerintah
5. Mardian Wibowo, Measuring the Constitutionality of an Open Legal Policy in Law Testing, Journal of the Constitution, Volume 12, Number 2, June 2015, pp. 204-210

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/E8AK3

6. http://krjogja.com/read/271540/konsep-open-legal-policy-perlu-dikoreksi.kr which was then uploaded on MK https://mkri.id/index.php?page=web.Berita&id=11867 website
7. Radita Ajie, Limit to Open Legal Policy in Legislation Making Based On Constitutional Court Decision, Journal of Legislation, Vol. 13 N0. 02 - June 2016 : 111 - 120
8. Mardian Wibowo, "Measuring the Constitutionality of an Open Law Policy in Law Testing-
9. Law", Journal of the Constitution, Volume 12, Number 2, June 2015, p.204
10. Marcus Lukman, 1996, The Existence of Policy Regulations in the Field of Planning and Implementation of Development Plans in the Regions and Their Impact on the Development of National Written Law Materials, Dissertation, Padjajaran University, Bandung, p. 205
11. Muchsan., Some Notes on State Administrative Law and State Administration Courtsin Indonesia, Yogyakarta : Liberty, 1981, p. 27.
12. Sjachran Basah., Existence and Benchmarks of State Administrative Justice in Indonesia, Bandung : Alumni, 1997, p. 151.
13. J.H. Van Kreveld, in Marcus Lukman, Op.cit., p. 121
14. Marcus Lukman, Op. cit., p.19.
15. A D Belinfante and Boerhanoeddin Soetan Batoetah, Fundamentals of Tata Law. State Business, Binacipta, Bandung, 1981, p.84
16. The Role of Presidential Decrees of the Republic of Indonesia in the administration of the country an analytical study of Presidential Decrees that function as regulators during the period of Pelita I-Pelita IV, Dissertation, FH UI, Jakarta, 1993, p. 13
17. Ibid, p.8