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Enhancing the Competence of Supreme Court Judges Through the Specialization of Judges at the Supreme Court

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Abstract

The research aims to analyze the characteristics of judicial reviews carried out by the Supreme Court and efforts to increase the competence of Supreme Court judges through differentiation of judges' expertise in judicial reviews. This research is normative legal research with a conceptual and statutory approach. The results of the research show that the characteristics of the judicial review carried out by the Supreme Court are extensive or broad in nature, not only focusing on and referring to the hierarchy of statutory regulations, but the Supreme Court must first qualify a statutory regulation that is formed based on authority or on the orders of higher statutory regulations. The means to increase the competence of Supreme Court judges through differentiation of judges' expertise in judicial review are necessary so that judges' considerations can be comprehensive and substantive. Differentiation of expertise of Supreme Court judges is oriented towards aspects of special training for judges related to judicial review at the Supreme Court because the characteristics of judicial reviews are testing general and abstract norms, and further differentiation of judges' expertise needs to be optimized in terms of the types and characteristics of the regulations being tested.

Keywords: Judicial Review; Competence; Supreme Court.

1. INTRODUCTION

Judicial review, which generally involves the examination of a legal regulation against a higher-level regulation, is a practice that developed in the 20th century as a form of implementation of the doctrine of the separation of powers.[1] Judicial review serves as a means of checks and balances to ensure that legislation, whether created by the legislative or executive branches, can be examined by the judiciary if there is a tendency for a legislative or executive regulation to conflict with the higher laws.[2] Judicial review, besides being an implementation of the checks and balances among state institutions, is also a manifestation of the conception regarding the hierarchy of legal norms. The concept of the hierarchy

1 Tanto Lailam and M. Lutfi Chakim, "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 2 (2023): 148–71, https://doi.org/10.22304/pjih.v10n2.a1.

2 Dian Narwastuty Arman Tjoneng, "Judicial Review by the Public Prosecutor After Ratification of Prosecutor ' s Law in 2021," *Dialogia Iuridica* 14, no. 2 (2023): 160–81.

 DOI: http://dx.doi.org/10.29303/v12i1.1368

of legal norms, as articulated by Hans Kelsen and Hans Nawiasky, emphasizes that legal norms are arranged in a hierarchical manner. From this nature, it follows that legal norms at a lower level must not conflict with those existing at a higher level.[3] Viewed from the aspect of the hierarchy of legal norms above, legal efforts in the form of judicial review are intended to ensure consistency so that legal norms align with the hierarchy as explained by Hans Kelsen and Hans Nawiasky.

In Indonesia, judicial review is carried out by two judicial authorities, namely the Supreme Court (MA) and the Constitutional Court (MK). Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia essentially affirms that one of the authorities of the Supreme Court regarding judicial review is to examine regulations below the law. Unlike the Supreme Court, the Constitutional Court has the authority of judicial review, specifically the examination of laws against the constitution, as stated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Judicial review conducted by the Constitutional Court is clearer, as it involves testing laws against the constitution. Judicial review carried out by the Supreme Court can be considered broader, as it involves examining regulations below the law with the law.The regulations under this law are certainly not just one legal product, but can encompass various types of legal products with their own respective nomenclature and characteristics.

One of the problems related to judicial review conducted by the Supreme Court (MA) regarding regulations under the law being tested against the law is that they have different types and characteristics. For example, ministerial regulations and regional regulations, although both are legal regulations under the law, have different characteristics. This sometimes leads to inconsistencies in the legal considerations (ratio decidendi) made by MA judges because they equate the characteristics of legal regulations under the law in the same way, even though there are legal regulations under the law that have different types and characteristics.

Based on the above problems, there is a need for an improvement in competence and specific regulations so that in the judicial review process carried out by the Supreme Court (MA), comprehensive legal considerations can be produced, and its decisions can result in justice for justice seekers (those seeking justice). Therefore, this research focuses on analyzing the characteristics of judicial reviews conducted by the Supreme Court and efforts to enhance the competence of Supreme Court judges through differentiation of expertise in judicial review.

Research on judicial review has actually been conducted by several previous studies, such as: (i) Prasetio and Ilyas (2022), who analyzed aspects related to the problems of testing constitutional court regulations in relation to the independence of the judiciary.[4] The novelty of the Prasetio and Ilyas (2022) research affirms that the doctrinal testing issues of constitutional court regulations fall within the authority of the Supreme Court (MA), and to ensure the independence of the MA court institution examining

3 Jimly Asshiddiqie, *Teori Hierarki Norma Hukum*, 1st ed. (Jakarta: Konstitusi Press, 2020).

4 Dicky Eko Prasetio Adam Ilyas, "Problematika Peraturan Mahkamah Konstitusi Dan Implikasinya," *Konstitusi* 19, no. 4 (2022): 807.

constitutional court legal products, there is a need to enhance the competence of MA judges in adjudicating constitutional court regulations. The difference between the research conducted by Prasetio and Ilyas (2022) and the research conducted by the author is that the author's research focuses more on improving the quality of judges in the Supreme Court's (MA) adjudicating judicial reviews. Another study conducted by Hasanah and Kharisma (2022) discusses the orientation of judicial activism by constitutional court judges in judicial review.[5] The novelty of Hasanah and Kharisma (2022) research lies in the judicial review process where judicial activism is a common practice, and in certain conditions, Constitutional Court judges are allowed to engage in judicial activism. The research conducted by Hasanah and Kharisma (2022), which focuses on the judicial activism of court institutions in conducting judicial review, is certainly different from the research that the author is conducting, which focuses on improving the quality of judges in judicial review.

Further research conducted by Hasibuan and Rumesten (2023) explores the essence of judicial review in relation to the principle of constitutional supremacy. The novelty of Hasibuan and Rumesten's (2023) research is that the Constitutional Court, as a court of law, is oriented towards affirming the supremacy of the constitution, and through judicial review conducted by the Constitutional Court, the essence of constitutional supremacy can be maintained.[6] The research conducted by Hasibuan and Rumesten (2023), which focuses on judicial review between laws and the constitution with an orientation towards upholding constitutional supremacy, is certainly different from the research focus of the author, which emphasizes the quality of judges in judicial review.

Continuing research on judicial review is conducted by Muhtar et al. (2023), specifically addressing the legal force of Constitutional Court (MK) decisions in judicial review. The novelty of Muhtar et al.'s (2023) research lies in affirming that the legal force of MK decisions in judicial review is fundamentally based on the philosophical and juridical strength of MK decisions. The difference between Muhtar et al.'s (2023) research and the author's research is that Muhtar et al.'s (2023) research focuses on the legal power of judges in judicial review, while the author's research focuses on improving the quality of judges in judicial review. Another study was conducted by Esteban (2024), which discusses the importance of judicial review in protecting the rights of minorities. The difference between Esteban's (2024) research and the author's research is that Esteban's (2024) research focuses on the relationship between judicial review and efforts to protect minority rights, while the author's research focuses on improving the quality of judges in judicial review.

From the five previous studies above, it can be concluded that research specifically addressing the characteristics of judicial review conducted by the Supreme Court (MA) and efforts to enhance the competence of MA judges through the differentiation of

5 Dona Budi Kharisma Galuh Nur Hasanah, "Eksistensi Judicial Activism Dalam Praktik Konstitusi Oleh Mahkamah Konstitusi," *Souvereignty* 1, no. 4 (2022): 739.

6 Iza Rumesten M. Fadly Hasibuan, "Reorientasi Kewenangan Judicial Review Di Mahkamah Konstitusi Berdasarkan Prinsip Supremasi Konstitusi," *Ekspose* 22, no. 2 (2023): 42–55.

judges' expertise in judicial review has not received a comprehensive analysis in the three previous studies. Therefore, this research is considered original.

The research specifically discusses the characteristics of judicial review conducted by the Supreme Court (MA) and efforts to enhance the competence of MA judges through the differentiation of expertise in judicial review. It is a normative legal research that focuses on the analysis of legislation related to judicial review conducted by the MA and efforts to improve the competence of MA judges through the differentiation of expertise in judicial review. The primary legal sources in this research are the 1945 Constitution of the Republic of Indonesia, Law No. 48 of 2009 concerning Judicial Power (Judicial Power Law), and Law No. 3 of 2009 concerning the Second Amendment to Law No. 14 of 1985 concerning the Supreme Court (Second Amendment Law of the Supreme Court). Secondary legal sources include journal articles, books, and research findings discussing judicial review and judicial power. Non-legal sources include language dictionaries. The research adopts a conceptual and statute approach.

2. ANALYSIS AND DISCUSSION

2.1. The Characteristics of Judicial Review Conducted by the Supreme Court

Judicial review is one of the authorities of the judicial institution with the aim of upholding the supremacy of law.[7] The rule of law or nomocracy is one of the principles recognized by almost all countries in the world, especially after the Second World War. In a rule of law state, the law is supreme, meaning that the law is the highest aspect in a country. Judicial review serves as a mechanism to affirm the existence of the law as the highest aspect in a country, so that all legislation must adhere to the substance of the rule of law.[8] When there are legal regulations that conflict with the substance of the rule of law, such regulations are legally null and void.

In practice, judicial review emphasizes efforts to strengthen the judiciary as the guardian of the law.[9] This is because in the mechanism of judicial review, the judiciary acts as a control over the regulations created by the executive and legislative branches.[10] Although it is an idea oriented towards strengthening the existence of the rule of law, the concept of judicial review is not without criticism in its presence. Criticism of the judicial review concept arises because it deviates from the doctrine of separation of powers, as articulated by Montesquieu.[11] Montesquieu believed that in the doctrine of separation of powers, the role of the judicial institution is solely focused on the aspect of

7 Handar Subhandi Bakhtiar Muhammad Fauzan, "Digitalization of Evidence in the Constitutional Court: Opportunities and Requisite," *Veteran Law Review* 6, no. 1 (2022): 1–14.

8 Mohammad Ibrahim, "Does the Indonesian Judicial Review System Need Reform?," *Australian Journal of Asian Law* 22, no. 1 (2022): 17–33.

9 Tanto Lailam and Nita Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia," *Bestuur* 11, no. 1 (2023): 75–94, https://doi.org/10.20961/bestuur.v11i1.70052.

10 Iwan Satriawan et al., "A Comparison of Appointment of Supreme Court Justices in Indonesia and Malaysia," *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 633–76, https://doi.org/10.15294/jils.v7i2.60862.

11 Andrés Fernando Mejía Restrepo and Liliana Damaris Pabón Giraldo, "Collective Choice and Dissenting Opinions in Multimember Courts. Elements for Assessing Judicial Reasoning in Courts of Constitutional Decision Making in South America," *Estudios Constitucionales* 21, no. 1 (2023): 142–68, https://doi.org/10.4067/S0718-52002023000100142.

law enforcement.[12] The court, in Montesquieu's view, only has the authority to uphold provisions stated in statutory laws (black letter law).[13] This perspective emphasizes that the judicial institution should not annul or assess legal products created by legislative or judicial institutions.

Although there are criticisms of the idea of judicial review, in its development, it refers to Tom Ginsburg's perspective that the concept of judicial review does not oppose the doctrine of separation of powers, but rather enhances the doctrine of separation of powers.[14] In Tom Ginsburg's view, the concept of judicial review has three orientations to develop the doctrine of separation of powers. Firstly, the idea of judicial review aims to assess legal products in the form of legislation created by legislative or executive bodies. It is also important to note that every legislation created by legislative or executive bodies cannot be separated from political purposes and interests.[15] Therefore, to anticipate that every legislation made by legislative and executive institutions is not solely aimed at political interests, there is a need for a mechanism to test such legal products, and this is relevant to be done by judicial institutions.

Secondly, the concept of judicial review essentially emphasizes the existence of popular sovereignty in relation to a legal product in the form of legislation. A legal product created by legislative or executive bodies generally focuses on the majority rule aspect, allowing the majority in legislative or executive bodies a significant opportunity to create a legal product according to their preferences.[16] However, besides the majority rule aspect, it is also necessary to consider the aspect of minority rights in the formation of legal products in the form of legislation. Minority rights are the rights or interests of a minority group that have not been accommodated in legislative or executive institutions, so legal products in the form of legislation have not yet addressed the needs of minority parties.[17] The presence of judicial review essentially aims to protect minority rights so that they are not diminished by the majority rule. Judicial review also seeks to accommodate the facilitation of minority rights in the formation of legal products, such as legislation and regulations.

Third, the concept of judicial review essentially aims to strengthen the legal maxim that states, "politiae legius non leges politii adoptandae," which means that a political decision must be based on and must not contradict the law.[18] A political decision that

12 Sarah Nur Annisa, "Konsep Independensi Kejaksaan Republik Indonesia Dalam Perspektif Teori the New Separation of Power Bruce Ackerman," *JIL : Journal of Indonesian Law* 2, no. 2 (2021): 226–48, https://doi.org/10.18326/jil.v2i2.226-248.

13 Andryan Andryan, "Open Court Principle for The Public in Material Judicial Review Right in The Supreme Court," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 387, https://doi.org/10.30641/dejure.2022.v22.387-394.

14 Amal Sethi, "Sub-Constitutionally Repairing the United States Supreme Court," *Common Law World Review* 52, no. 4 (2023): 128–49, https://doi.org/10.1177/14737795231205324.

15 Wendy K. Mariner, "Shifting Standards of Judicial Review during the Coronavirus Pandemic in the United States," *German Law Journal* 22, no. 6 (2021): 1039–59, https://doi.org/10.1017/glj.2021.51.

16 Retno Ambarsari, "Hukum Acara Dalam Pengujian Undang-Undang Di Indonesia," *Jurnal Ilmiah Indonesia* 2, no. 5 (2022): 607–13.

17 Purawich Watanasukh, "When the Minority Overruled the Majority: The Politics of the Constitutional Amendment Regarding the Acquisition of Senators in Thailand in 2013," *Political Science and Public Administration Journal* 11, no. 2 (2020): 219–52.

18 Hananto Widodo Dicky Eko Prasetio, "Ius Constituendum Pengujian Formil Dalam Perubahan Konstitusi," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 2.

contradicts the law must be invalidated by legal mechanisms. In connection with the idea of judicial review, legal products in the form of regulations can be considered as part of political products. Therefore, to affirm that legal products in the form of regulations do not contradict the law, there is a need for a mechanism to ensure that a regulation can be legally examined by the judiciary, namely through judicial review.

From the three arguments above, it can be concluded that the idea of judicial review essentially aims to strengthen the essence of the doctrine of separation of powers. This is because, in its development, the doctrine of separation of powers cannot be rigidly executed as proposed by Montesquieu. Instead, it should be implemented by emphasizing checks and balances, where each state institution can be supervised and balanced by other state institutions. The development of judicial review, as proposed by Hans Kelsen and Hans Nawiasky, is related to the idea of the hierarchy of legal norms. In addition to the concept of the hierarchy of legal norms, Hans Kelsen's idea specifically emphasizes the need for a state institution that specializes in conducting judicial review, ideally carried out by the Constitutional Court (MK) according to Hans Kelsen.[19]

From the perspectives of Hans Kelsen and Hans Nawiasky on the hierarchy of legal norms mentioned above, the concept of judicial review increasingly finds its existence applicable in countries that substantively adhere to constitutional democracy. Although Hans Kelsen's idea idealizes judicial review carried out by the Constitutional Court (MK), in practice, there are countries that do not implement judicial review through the Constitutional Court but through the Supreme Court (MA). The United States is a country that implements judicial review through the Supreme Court. Despite the variation in the implementation of judicial review through either the Supreme Court or the Constitutional Court, the main essence is that the concept of judicial review has been embraced by all countries without exception.[20]

The development of ideas regarding judicial review is also implemented in Indonesia. In Indonesia itself, there are three phases regarding the implementation of the idea of judicial review, namely: first, the idea of judicial review proposed by Moh. Yamin in the session of the Body of Investigators of Independence Efforts (BPUPK). Moh. Yamin is one of the founding leaders who put forward the idea of judicial review with the term "comparing laws."[21] Although the idea of judicial review in Indonesia was proposed by Moh. Yamin, the concept was rejected, one of the opponents being Soepomo. Soepomo explained the reason for rejecting the idea of judicial review using the term "comparing laws." According to Soepomo, the rejection was based on the absence of legal experts in Indonesia who were capable of conducting judicial review at that time (in 1945). Soepomo also argued that Indonesia did not adhere to the doctrine of separation of powers because, in his view, the concept of judicial review was synonymous with the

19 A'an Efendi Dyah Ochtorina Susanti, "Pancasila Dalam Teori Jenjang Norma Hukum Hans Kelsen," *Legislasi Indonesia* 18, no. 4 (2021): 518.

20 Jessica Bulman-Pozen and Miriam Seifter, "Countering the New Election Subversion: The Democracy Principle and the Role of State Courts," *Wisconsin Law Review* 2022, no. 5 (2022): 1337–65.

21 RM. A.B. Kusuma, *Lahirnya Undang-Undang Dasar: Memuat Salinan Dokumen Otentik Oentoek Menyelidiki Oesaha-Oesaha Persiapan Kemerdekaan*, 1st ed. (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2004).

doctrine of separation of powers.[22] Because Moh. Yamin's ideas were rejected in the BPUPK session, the concept of judicial review was not applied in Indonesia at that time.

The rejection of Moh. Yamin's ideas during the BPUPK session indicates that at that time (in 1945), the practice of judicial review was not considered urgent to be implemented in Indonesia, as believed by the founding leaders of the Indonesian nation. The views of the founding leaders of Indonesia, as represented by Moh. Yamin's perspective, actually show that the practice of judicial review, besides not being commonly understood by the founders of the Indonesian state, was also considered irrelevant to be applied in a newly independent country like Indonesia. At this phase, the idea of judicial review in Indonesia can be said to be still in the realm of discourse or evolving ideas, and there was no urgency for judicial review to be immediately implemented in Indonesia.

The lack of development of the idea of judicial review, especially in the early days of Indonesia's independence, can be understood because the Indonesian constitutional system before the amendments can be said to adhere to the sovereignty of the people with institutional supremacy, namely the People's Consultative Assembly (MPR) as the highest state institution and manifestation of popular sovereignty. In addition to being oriented towards institutional supremacy, with the MPR as the highest state institution, Indonesia's constitutional system before the amendments was also based on a duo-political system, where the highest political power resided in the MPR institution while the highest legal power resided in the Supreme Court (MA) institution. This essentially affirms that, based on Indonesia's constitutional system before the amendments, it was difficult for the idea of judicial review to be accepted, let alone developed in Indonesia.

The second development regarding the idea of judicial review in Indonesia essentially appears with the effort to provide an opportunity to challenge a regulation under the law through the law. The implementation of the judicial review concept in Indonesia is tested in the Supreme Court (MA), and even though rules have been formulated for it, in practice, it is not effectively carried out. Furthermore, in this second development regarding the idea of judicial review in Indonesia, there is also discourse on implementing judicial review against laws related to the constitution, even though in the end, this discourse is rejected with the argument that testing laws against the constitution falls within the realm of political review and is not relevant to be conducted through the judicial institution.[23]

In its development, before the year 1970, there was no orientation towards granting judicial review authority through the Supreme Court (MA). This, in practice, created problems because there were various regulations below the law that contradicted the law. At the proposal of the Indonesian Legal Scholars Association (Ikatan Sarjana Hukum Indonesia), it was necessary to grant authority to the MA, particularly regarding judicial review. The proposal from the Indonesian Legal Scholars Association regarding the importance of granting judicial review authority to the MA is based on two arguments: ***First***, the importance of granting judicial review authority to the MA is essentially a

22 RM. A.B. Kusuma
23 Armia et al.

reaffirmation of the rule of law, where the products of regulations below the law must be based on the law as the superior regulation. This also affirms that the MA, as a judicial institution, can also exercise control over regulations below the law to ensure they are in accordance with and harmonized with the law. ***Second,*** judicial review authority by the MA is also important to ensure consistency in the hierarchy of legal norms. There needs to be judicial oversight to ensure consistency in the hierarchy of legal norms.

From these two arguments, the formulation of Law No. 14 of 1970 concerning the Judicial Power was made, which includes one of its provisions granting judicial review authority through the MA.

The third development regarding the idea of judicial review in Indonesia was optimally formulated during the reform era, especially in the implementation of constitutional amendments from 1999 to 2002.[24] In this development, the concept of judicial review in Indonesia is implemented through two judicial power institutions, namely the testing of a regulation under the law by the Supreme Court (MA) and the testing of a law against the constitution by the Constitutional Court (MK). From these three developments in the concept of judicial review in Indonesia, it can be concluded that Indonesia establishes the legal effort of judicial review through two institutions, namely the Supreme Court (MA) and the Constitutional Court (MK).

The practice of judicial review in the Constitutional Court (MK) can be considered relevant because the judges of the Constitutional Court, in general, are filled by legal experts in constitutional law, which is certainly relevant to be entrusted with tasks in the field of judicial review.[25] This is certainly in contrast to the judicial review in the Supreme Court (MA), where not all MA judges adjudicating judicial review cases are legal experts in constitutional law, especially in the field of legislation. There are three constraints regarding the quality or expertise of MA judges in adjudicating judicial review cases compared to the practice in the Constitutional Court (MK), namely: first, judicial review carried out in the MK is essentially the main authority of the MK institution because, in general, the primary and essential authority of the MK is related to judicial review, although there are other authorities in the field of constitutional law. This is in contrast to the practice of judicial review in the MA because the main authority of the MA is not related to judicial review, but rather to adjudicating legal cases in criminal, civil, and administrative domains.[26] This makes the practice of judicial review in the Supreme Court seem like a "side job" compared to its main task of adjudicating legal cases in criminal, civil, and administrative domains.

Secondly, the authority burden of the Supreme Court (MA) can also be considered greater compared to the Constitutional Court (MK). Referring to Article 24C of the 1945 Constitution of the Republic of Indonesia, the authority of the Constitutional

24 Armia et al.

25 Febrian Indar et al., "The Potential Of Judicial Review As An Incremental Business Strategy The Emergence Of Sharing Economy And One-Stop Services Application In Indonesia," *Jurnal Hukum Dan Peradilan* 12, no. 1 (2023): 159–88.

26 Ansorullah Dio Siaga Putra and Mahasiswa, "Kewenangan Mahkamah Agung Dalam Judicial Review Terhadap Peraturan Perundang-Undangan Di Bawah Undang-Undang," *Limbago: Journal of Constitutional Law* 2, no. 1 (2022): 53–63.

Court is limitatively defined as regulated in Article 24C of the 1945 Constitution of the Republic of Indonesia. This is certainly different from the authority of the Supreme Court as stated in Article 24A of the 1945 Constitution of the Republic of Indonesia, which provides room for the Supreme Court to have authority beyond that specified in Article 24A of the 1945 Constitution, especially in the phrase, "...and other authorities granted by law." This essentially indicates that there is a significant burden of authority on the Supreme Court, so it is reasonable if judicial review in the Supreme Court is not as optimal as that carried out in the Constitutional Court.

Third, referring to the provisions of Article 24A of the Constitution of the Republic of Indonesia and Article 31A of the Judicial Authority Law, one of the main orientations of the Supreme Court's authority is to examine legislation under the law with the law. The provisions regarding legislation under the law are interpreted broadly or extensively, not only as emphasized in Law No. 12 of 2011. Article 7 paragraph (1) of Law No. 12 of 2011 emphasizes that under the law, there are several legal products, including: Government regulations, Presidential regulations, Provincial regulations, and Regency/city regulations. The interpretation of legislation under the law that can be subject to judicial review in the Supreme Court is not limited as stated in Article 7 paragraph (1) of Law No. 12 of 2011 above, including various other legislation formed based on authority or under the order of higher legislation.

From the three explanations regarding the authority of the Supreme Court (MA) in judicial review, which differs from the Constitutional Court's (MK) authority concerning judicial review mentioned above, it can be observed that the authority of the Supreme Court in judicial review is more extensive, especially in the interpretation of legal regulations below the law. It encompasses laws interpreted broadly, not limited to statutory regulations as outlined in the hierarchy of legal regulations, but also includes various other legal regulations formed based on the authority or at the command of higher legal regulations.[27] Therefore, the characteristic of judicial review carried out by the Supreme Court (MA) is extensive or broad, not only focusing on and referring to the hierarchy of legal regulations but also requiring the Supreme Court to first qualify a legal regulation that is formed based on authority or under the command of a higher legal regulation. This makes the legal products examined by the Supreme Court through the mechanism of judicial review unlimited and different from the Constitutional Court (MK), where judicial review is limited to legal products related to constitutional laws.

2.2. Efforts to Improve the Competence of Supreme Court Judges Through Specialization of Judicial Review Skills

The judicial review practice carried out by the Supreme Court (MA) that provides broadly defined provisions related to legislation under the law essentially becomes a separate problem for the Supreme Court in the judicial review process. This is because various types of legal products in the form of legislation under the law, due to their large number, also imply different characteristics, especially in the process of interpretation

27 Bayu Dwi Anggono, "Pembaruan Penataan Peraturan Perundang-Undangan: Suatu Telaah Kelembagaan" (Jember: Universitas Jember, 2022).

or construction of legal products in the form of legislation under the law.[28] If compared to the judicial review practice conducted by the Constitutional Court (MK), then at the level of interpretation or construction of legal products carried out by judicial review becomes clear because the type of legal product in the form of laws is clear, and the characteristics of laws are generally abstract and drafted either due to constitutional mandates or the legal needs of society proposed by the President or the DPR.[29]

The effort to conduct a judicial review of laws challenged under the constitution is also evident due to the nature of the constitution itself. The constitution or constitutionality also has a specific way of interpretation and understanding, as expressed by Ronald Dworkin, stating that the interpretation of the constitution should be through a moral and comprehensive reading.[30] This affirms that the judicial review process is relatively clear because both the legal products of laws and the constitution, which serve as its benchmarks, have distinct characteristics. The practice of judicial review carried out by the Supreme Court (MA) is certainly different because, although the law as its benchmark has clear and understandable characteristics, the nature of legal products in the form of regulations under the law undoubtedly has different characteristics.

Referring to Article 7, paragraph (1) of Law No. 12 of 2011, it emphasizes that under the law, there are several legal products, including Government Regulations, Presidential Regulations, Provincial Regulations, and District/City Regulations. According to the hierarchy of legislation as stated in Article 7, paragraph (1) of Law No. 12 of 2011, there are four different types of legal products under the law. This does not yet include the provision of Article 7, paragraph (1) of Law No. 12 of 2011, which asserts that legislation under the law also includes various other legislative regulations formed based on authority or under the command of higher-level legislative regulations. This makes legislation under the law unrestricted and can take various forms, not only as affirmed in Article 7, paragraph (1) of Law No. 12 of 2011 mentioned earlier.

The abundance of legislation under the law that can undergo judicial review in the Supreme Court (MA) raises at least three issues: first, the numerous types and products of legislation under the law that can be examined in the MA may result in various types and nomenclatures of legal products that have the potential to be tested by the MA. In recent developments, legal products such as Circulars, Joint Decisions, and other legal products with different nomenclatures are commonly used, and even though these legal products are often debated as policy regulations (beleidsregel), they substantively have characteristics similar to legislation.[31] The multitude of types and products of legislation under the law that can be tested in the Supreme Court actually requires a separate effort to classify legislation under the law according to its type, nature, and characteristics.

28 Syaifullahil Maslul, "Judicial Restraint Dalam Pengujian Kewenangan Judicial Review Di Mahkamah Agung," *Jurnal Yudisial* 15, no. 3 (2023): 385, https://doi.org/10.29123/jy.v15i3.496.

29 Muhammad Anwar Tanjung Tanjung, Retno Saraswati, and Lita Tyesta A.L.W, "Constitutional Democracy and National Legal Instruments in Resolving Regional Election Disputes," *Lex Publica* 7, no. 1 (2020): 95–109, https://doi.org/10.58829/lp.7.1.2020.95-109.

30 Muh. Afif Mahfud, "The Relevance of Ronald Dworkin 's Theory for Creating Agrarian Justice in Indonesia," *Yustisia* 8, no. 3 (2019): 385–99, https://doi.org/10.20961/yustisia.v8i3.27386.

31 Dicky Eko Prasetio, et.al. "Policy Evaluation of the Imposition of Restrictions on Emergency Community Activities (PPKM) in East Java," in *Proceedings of the International Joint Conference on Arts and Humanities 2021 (IJCAH 2021)*, 2021, 871–78.

Secondly, one of the issues related to judicial review in the Supreme Court is the examination of legislation under laws that are regulations delegated from the laws above them. Delegated regulations, as stated by Moh. Fadli, are regulations created as a follow-up or command of regulations above them.[32] Testing against this delegation regulation also poses its own problems because of the various types and nomenclature of legal regulations that can undergo judicial review in the Supreme Court. This makes it necessary to enhance the understanding of Supreme Court judges regarding delegation regulations. This is to anticipate the lack of consideration by judges and inappropriate considerations related to judicial review in the Supreme Court.

Third, the issues related to judicial review in the Supreme Court (MA) can be understood because, if referring to the main authority of the MA, it is not within the scope of judicial review. The primary authority of the MA is to adjudicate in criminal, civil, and administrative matters in a specific legal case. This can imply that judicial review in the MA may not be optimal, not only due to the heavy caseload in the MA but also because it is related to the competence of MA judges, the majority of whom have expertise in adjudicating criminal, civil, and administrative matters in a specific legal case.

From the three issues related to judicial review in the Supreme Court (MA) mentioned above, efforts are needed to enhance the competence of Supreme Court judges in the judicial review process, which should be based on the differentiation of judges' expertise. Differentiation, according to the Indonesian Language Dictionary, refers to the distinction or method of distinguishing, and in this context, the differentiation of judges' expertise in the judicial review process involves specifying the expertise of Supreme Court judges specifically related to judicial review in the MA. The differentiation of judges' expertise in the judicial review process is intended to improve the quality of MA judges in the judicial review process. The improvement in the quality of MA judges in the judicial review process is meant to enable judges to provide comprehensive considerations in the judicial review process. Referring to Article 5, paragraph (1) of the Judiciary Law, it is emphasized that judges, including Supreme Court judges and constitutional judges, are obligated to understand and explore the sense of justice prevailing in society. Efforts to explore the sense of justice in society in the judicial review process at the MA involve comprehensive legal considerations conducted by Supreme Court judges in the judicial review process.

Efforts to enhance the competence of the Chief Justice in the judicial review process through the differentiation of judges' expertise essentially need to be carried out in two aspects, namely: first, specialized training for judges related to judicial review in the Supreme Court (MA). The characteristics of judicial review, which examines norms that are general and abstract in nature, are certainly different from adjudicating individuals in criminal, civil, or administrative domains. Second, further differentiation of judges' expertise needs to be optimized in terms of the types and characteristics of the

32 Moh. Fadli, "Peraturan Delegasi Di Indonesia: Ide Untuk Membangun Kontrol Preventif Terhadap Peraturan Pemerintah" (Malang: Universitas Brawijaya, 2020).

regulations being examined. For example, if the regulation being tested is a government regulation or a presidential regulation against the law, then specialized judges trained to handle it are necessary. This also applies if the regulation being tested is a regional regulation against the law, requiring specialized judges trained to handle it. These two orientations are crucial efforts to ensure that the judicial review process in the Supreme Court can be optimized through the differentiation of judges' expertise.

To enhance the abilities and competencies of Supreme Court justices in conducting judicial review, a structured approach can be taken to outline the steps to be taken and the competencies or skills that need to be enhanced. Below is a proposed table outlining this approach:

Classification/Type of Regulation	Steps to be Taken	Competencies/ Skills to be Enhanced
Constitutional Regulations	1. Review constitutional provisions and relevant jurisprudence.	• Understanding of constitutional law principles.
	2. Analyze the constitutionality oflawsorgovernmentactions.	• Legal analysis and reasoning skills.
	3. Assess the impact of laws or actions on constitutional rights and principles.	• Critical thinking and problem-solving abilities.
Statutory Regulations	1. Interpret statutory provisions in line with legislative intent.	• Knowledge of statutory interpretation principles.
	2. Evaluate the conformity of laws with higher legal norms (e.g., Constitution, international treaties).	• Familiarity with legal hierarchy and interrelation of legal norms.
	. Apply legal doctrines (e.g., presumption of constitutionality) when reviewing laws.	• Application of legal principles to specific cases.
Subordinate Regulations	1. Examine subordinate regulations for compliance with statutory authority.	• Understanding of administrative law principles.
	2. Assess the reasonableness and proportionality of regulatory measures.	• Analytical skills to evaluate regulatory impact.
	3. Ensure procedural fairness in the promulgation of subordinate regulations.	• Awareness of procedural due process requirements.

Additionally, a schematic model illustrating the process of judicial review at the Supreme Court (MA) based on the specialized competencies and skills required can be developed. This model could include stages such as case selection, legal analysis, deliberation, and decision-making, with specific competencies and skills highlighted at each stage.

By incorporating these structured approaches, the abilities and competencies of Supreme Court justices in conducting judicial review can be systematically enhanced, contributing to the effectiveness and integrity of the judicial review process.

3. CONCLUSION

The characteristic of judicial review conducted by the Supreme Court (MA) is extensive or broad, not only focusing on and referring to the hierarchy of legal regulations but also requiring the Supreme Court to qualify a legal regulation formed based on authority or under the command of a higher legal regulation. This makes the legal products examined by the Supreme Court through the judicial review mechanism unlimited and different from the Constitutional Court (MK), where judicial review is limited to legal products of laws against the constitution.

The effort to enhance the competence of the Supreme Court justices through specialization in judicial review is necessary so that the judges' considerations can be comprehensive and substantive in handling judicial reviews in the Supreme Court. The specialization of the expertise of Supreme Court judges It is mandatory to master several skills, such as: understanding of constitutional law principles; legal analysis and reasoning skills, critical thinking and problem-solving abilities; knowledge of statutory interpretation principles; familiarity with legal hierarchy and the interrelationship of legal norms; application of legal principles to specific cases; understanding of administrative law principles; analytical skills to evaluate regulatory impact; and awareness of procedural due process requirements.

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