

RATIONAL RESTRICTIONS OR PRUNING OF RIGHTS ? DEADLINE FOR SUBMITTING FORMAL TESTS AT THE CONSTITUTIONAL COURT

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Accepted: 8 Mei 2024

Approved: 25 Mei 2024

Published: 26 Juni 2024

Abstract

The time limit in the judicial review of legislative process was first made in Constitutional Court Decision Number 27/PUU-VII/2009, in legal considerations the judge made a new law (judge making of law) by limiting the filing of formal test applications 45 today the law was published in the state gazette. This was done for the sake of legal certainty and the impact of the formal test application submitted past the 45-day deadline would be rejected by the Constitutional Court. This research uses a normative or doctrinal juridical type that focuses on library research. The purpose of this research is to find out the legal reasoning of the Constitutional Court judges in limiting the filing of formal tests and analyzing these restrictions from the aspect of justice. This research is a doctrinal research using statutory, conceptual and case approaches. The results of the study show that restrictions on the filing of formal tests are imposed in order to achieve legal certainty, so that the law requested for a formal test is more quickly known whether its status has been made legally or not, because formal testing will cause the law to be canceled from the start. Time restrictions in the Constitutional Court are not entirely contrary to the principle of justice, because in practice the Constitutional Court still provides space of justice for applicants to submit formal tests.

Keywords: *limitation, judicial review, act*

A. INTRODUCTION

The state body formed after the amendment to the 1945 Constitution was the Constitutional Court. The Constitutional Court is the sole locus of judicial review practice. In order for the constitution to run in harmony, it needs to be supervised by the Constitutional Court. The presence of the Constitutional Court has duties and authorities that are crucial for constitutional progress. The Constitutional Court has constitutional powers as regulated in Article 24C of the 1945 Constitution, namely reviewing laws against

the Constitution¹. Apart from that, the review of the proposed law can be used as a benchmark if the law has many inconsistencies with the 1945 Constitution. The review of the law is submitted to the Constitutional Court with the aim of implementing the supremacy of the 1945 Constitution itself which in the history of law in Indonesia, judicial review -laws against the 1945 Constitution were implemented for the first time by the Constitutional Court. However, there is indeed a time when the Supreme Court has the authority to review a law, but the law being reviewed is a federal law. This took place when Indonesia was still a federal state (union) in 1949-1950.

In Indonesia, those who can submit a formal test are those who have legal standing, people who take part or participate in the process of forming a law. The applicant is a legal entity that meets the legal requirements to file a lawsuit with the Constitutional Court. These requirements are met to determine the legal standing of a legal subject so that it can submit a legal review with a valid applicant². There are differences between a material test and a formal test, the legal standing requirements for a judicial review applied by the Constitutional Court cannot be implemented for a formal test. The legal standing requirement for the formal test is that the applicant is directly related to the law that will be proposed. The application for formal review of a law is intended as a form of review regarding the formation of a law that is not in accordance with the 1945 Constitution³. In terms of time, this material test can be carried out without any time limit. Meanwhile, this formal test is given a time limit of 45 days from the promulgation of the Law. If the applicant exceeds the stipulated time limit, the applicant's application is considered expired and cannot be continued.

The regulation of time limits in formal trials was first made in Constitutional Court Decision Number 27/PUU-VII/2009, which was previously not in the Constitution and was not regulated in the Constitutional Court Regulations. In the Constitutional Court Decision Number 27/PUU-VII/2009, it is explained in terms of legal considerations that the Constitutional Court needs to provide time limits for laws submitted to be formally tested. This consideration is made because the characteristics of formal tests are different from material tests.⁴ Laws that are formed not in accordance with the procedures determined by

¹ Hapsoro and Ismail, "Interpretation of the Constitution in Testing Constitutionality to Realize The Living Constitution."

² Wicaksono and Nurbaningsih, "Legis Ratio Determining Taxpayer (Taxpayer) as a Legal Position in Reviewing Laws by the Constitutional Court."

³ Heryansyah and Nugraha, "The Relevance of the Judicial Review Decision by the Constitutional Court on the Checks and Balances System in the Formation of Laws."

⁴ Sungkar et al., "The Urgency of Formal Testing in Indonesia: Legitimacy and Validity Testing."

the 1945 Constitution will be easier to find out compared to laws that conflict with the 1945 Constitution. For legal certainty, the status of a law needs to be known more quickly, whether it has been made legally or not. because formal testing will cause the law to be invalid from the start⁵. The Court considers that the deadline of 45 (forty five) days after the Law is published in the State Gazette is sufficient time to submit a formal review of the Law. Then this provision only appeared in 2021 as regulated in Article 9 paragraph (2) PMK Number 2 of 2021 concerning Procedures in Legal Review Cases explaining "A request for formal review as intended in Article 2 paragraph (3) is submitted within a maximum period of time. within 45 (forty five) days after the law or Perppu was promulgated in the State Gazette of the Republic of Indonesia." This time limit provision is an open legal policy or what is called an open legal policy⁶. The Constitutional Court said that the deadline given for 45 days was considered sufficient, no more and no less to dispute an issue regarding the law. So, the Constitutional Court believes that if this time limitation is made longer it will actually have a bad impact.

The consideration of the Constitutional Court Judges in determining 45 days to realize legal certainty was because the proposed formal test was not continuously leveraged. The Constitutional Court judge felt that this should be limited to 45 days. Legal certainty must be upheld to achieve justice⁷. Hans Kelsen believes that law is a system of norms, which contains several rules that must be obeyed. Law as a general rule functions as a guide for each individual and in social relations. In its implementation, this rule creates legal certainty. Justice must be upheld in order to achieve the nation's ideals, as stated in the 5th principle of Pancasila. Whether or not there is a time limit for formal testing of a law against the 1945 Constitution of 45 days, legal certainty will remain intact. If we only focus on legal certainty, the principles of justice will actually be left behind. Justice and legal certainty must be observed because both are inseparable parts of the law, which according to Gustav Radbruch, legal certainty must be protected for state security and order in order to achieve the values of justice and happiness.⁸.

The time limitation means that the applicant is not free to submit a formal test application, so that the application submitted is not optimal and unclear. For justice enforcers, especially the formal examination of a law is a crucial issue for upholding

⁵ Sungkar et al.

⁶ Satriawan and Lailam, "Open Legal Policy in Constitutional Court Decisions and the Formation of Laws."

⁷ Putri and Arifin, "THEORETICAL REVIEW OF JUSTICE AND CERTAINTY IN LAW IN INDONESIA (The Theoretical Review of Justice and Legal Certainty in Indonesia)."

⁸ Lalatta Costerbosa, "The Courageous Judge of Gustav Radbruch."

justice. The scale of priorities for justice is continually being shifted further and further. In reality, what happens in society, justice is an abstract matter that can be achieved with perfect goals.

The impact of the regulation limiting the time limit for submitting formal tests to 45 days has given rise to a lot of polemics, many requests from applicants cannot be granted because they are hampered by the time limit so that the applications submitted are expired or past the deadline.

Table 1. Formal test cases that were rejected because they missed the filing deadline.⁹

No	MK Decision Number	Announcement of Decision	Reason
1.	53/PUU-XX/2022	Rejected	Missed the 45 day deadline (expired)
2.	54/PUU-XX/2022	Rejected	Missed the 45 day deadline (expired)

Constitutional Court Decision Number 53/PUU-XX/2022 and Constitutional Court Decision Number 54/PUU-XX/2022 cannot be granted by the Constitutional Court on the grounds that the petition has passed the deadline using the basis of Constitutional Court Decision Number 27/PUU-VII/2009, Article 1 number 12 of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, and consideration of Constitutional Court Decision Number 14/PUU-XX/2022 which is also rejected for the same reasons.

The Petitioner stated that he submitted a request for formal review to the Constitutional Court on 31 March 2022, but after being examined by the Constitutional Court it turned out that the applicant's application was submitted on 1 April 2022 as stated in the Deed of Submission of Petition No. 48/PUU/PAN.MK/ AP3/04/2022 and written in the Electronic Constitutional Case Registration Book on April 7 2022 with Number 53/PUU-XX/2022. Meanwhile, Law Number 3 of 2022 was promulgated on February 15 2022 in the State Gazette. Thus the application submitted by the applicant for formal testing is considered to have passed the deadline, because the application for formal testing is calculated to be submitted on the 46th (forty-sixth) day. The Constitutional Court stated

⁹ Mardianah, "Case Application No. 53/PUU-XX/2022."

that the application could not be accepted because it did not meet the formal review deadline requirements set by the Constitutional Court.

In the Constitutional Court Decision Number 54/PUU-XX/2022 the applicant submitted a request for formal review to the Constitutional Court on April 1 2022 based on the Deed of Submission of the Petitioner's Application Number 49/PUU/PAN.MK/AP3/04/2022 and has been recorded in the Registration Book Electronic Constitution Case on April 7 2022 with Number 54/PUU-XX/2022. Meanwhile, Law Number 3 of 2022 concerning IKN was promulgated on February 15 2022 in the State Gazette. Thus the application submitted by the applicant for formal testing is considered to have passed the deadline, because the application for formal testing is calculated to be submitted on the 46th (forty-sixth) day. The Constitutional Court stated that the application could not be accepted because it did not meet the formal review deadline requirements set by the Constitutional Court.

In research conducted by Jorawati Simarmata in 2017 with the title "FORMAL TESTING OF LEGISLATION BY THE CONSTITUTIONAL COURT: IS IT INEVITABLE? (COMPARISON OF THE RULING OF THE CONSTITUTIONAL COURT NUMBER 79/PUU-XII/2014 AND THE RULING OF THE CONSTITUTIONAL COURT NUMBER 27/PUU-VII/2009)" has been stated that the difficulty in granting formal review by the Constitutional Court is due to the tendency of the Constitutional Court to prioritize substantial review of conformity of the Law with the 1945 Constitution and prioritizing the principle of expediency.¹⁰

Based on the issues above, there is a tug-of-war between the aspect of legal certainty and the aspect of justice where the time limit for applicants in submitting formal tests is limited to only 45 days. Limiting formal tests is certainly contrary to the realization of justice in society, every citizen has a legal position to fight for his or her rights.

B. RESEARCH METHODS

This research uses a normative or doctrinal juridical type where the focus of the study is literature study, from primary legal materials in the form of statutory regulations related to the research issue and also secondary legal materials in the form of books, journals, magazines that are relevant to the problem being researched.¹¹

¹⁰ Simarmata, "Formal Testing of Laws by the Constitutional Court: Is it inevitable? (Comparison of Constitutional Court Decision Number 79/PUU-XII/2014 and Constitutional Court Decision Number 27/PUU-VII/2009)."

¹¹ Marzuki, Legal Research: Revised Edition.

The approach models used are the statutory approach and the conceptual approach. The collected legal material is then reviewed using legal interpretation methods and the theories used, resulting in a prescriptive analysis. Next, conclusions are carried out using the deductive reasoning method.

C. RESULTS AND DISCUSSION

Legal Reasoning for Restrictions on Submitting Formal Tests at the Constitutional Court

The 45 day time limitation regulation for submitting a formal test to the Constitutional Court first appeared in Constitutional Court Decision Number 27/PUU-VII/2009. In his decision, the Constitutional Court Judge considered that the Constitutional Court needed to provide time restrictions or deadlines, because the characteristics of formal testing are different from material testing. The Constitutional Court judge was of the opinion that if a law was made that was not in accordance with what was stipulated in the 1945 Constitution, it would certainly be easier to recognize compared to a law whose roots were in conflict with the 1945 Constitution.

Open law policy is the freedom for parties who make regulations or laws to stipulate provisions because the 1945 Constitution does not provide regulatory direction¹². The concept of open legal policy or what is called open legal policy means unlimited freedom, but it will cause problems when implemented in social life. Abdul Mukhtie Fadjar and I Dewa Gede Palguna stated in the Constitutional Court Decision Number 072-073/PUU-III/2005, that the idea of an open legal policy was first introduced in the a quo decision. The a quo decision does not apply the principle of open legal policy, but in general from this decision the concept of open legal policy emerges. In general, according to Mukhtie Fadjar, the open law policy emerged when the 1945 Constitution required certain norms to be regulated in the form of a law, but only provided overall instructions while the law had to be regulated in more detail.¹³

Freedom to make a decision or choice is the right of every human being. If this freedom is applied in the context of humans as rulers for other rulers, then the freedom for rulers will be different from the people below them. Power has a tendency to be

¹² Baihaki, Fathudin, and Kharlie, "Problematics of Open Legal Policy in the Term of Office of Constitutional Judges."

¹³ Ajie, "Limits of Policy Choices for Law Makers (Open Legal Policy) in Forming Legislation Based on Interpretation of Constitutional Court Decisions."

arbitrary and can harm other people and always benefits the holder of the highest power. Indonesia implements restrictions on power, guarantees of freedom as well as limitations, and democratization.

The method of providing adequate space for Judges in interpreting legal facts is discretionary. In exercising discretion by means of interpretation, the meaning is that the judge must choose from many methods. Judges have the option to position facts under one legal category.

The judge's decision has a subjective nature, influenced by the judge's thinking in deciding decisions with limitations that are deemed appropriate based on the principle of propriety. Judges in the process of deciding a decision are obliged to combine legal interests and the interests of justice, with the aim that the legal decision must contain the meaning of justice¹⁴.

The judge's benchmark for making a decision is through consideration. Judges must be careful and sincere in handing down a decision, because the decision must be taken based on justice. The judge's decision which has legal force must still be recognized as correct. Therefore, if the decision cannot fulfill the values of justice as sought by justice enforcers, then the decision will definitely be detrimental to the parties and offend the values of justice that have been upheld in the world of justice. If a judge's decision cannot help what justice enforcers are looking for, it will be considered that the decision is detrimental to the value of justice and the stakeholders involved.

Judges are obliged to see that law and justice are vertical, which means that justice is enforced on the basis of law, the law is enforced to create justice. However, the fact is that often law with justice is horizontal, which means that when approaching one particular aspect it moves away from others. When handing down a decision, if the judge only aims at legal certainty, the judge will move away from the principles of justice. Of course, this also happens when the judge gives a decision that leads to justice, the judge will move away from the principle of certainty.

The Constitutional Court is a negative legislator, where the Court has the authority to cancel or delete norms from laws. The Constitutional Court can also be a positive legislator in its development when issuing decisions on requests for judicial review, in its decisions formulating new norms and forming new regulations. Because in Law Number

¹⁴ Khasanah and Lumbanraja, "Development of Legal Interpretation by Judges in Indonesia Under the Dominance of the Civil Law System Tradition."

24 of 2003 there are no restrictions for the Constitutional Court to decide on formal judicial review cases. So the Constitutional Court Decision Number 27/PUU-VII/2009 Judges can still make new regulations, namely limiting the time for submitting formal tests. Then Law Number 24 of 2003 was amended on July 20 2011 to become Law Number 8 of 2011¹⁵.

The purpose of this article is for the Constitutional Court to limit itself to being only a negative legislator. The application of Article 57 paragraph (2a) letter c of Law Number 8 of 2011 has been declared contrary to the 1945 Constitution and does not have binding legal force, through Constitutional Court Decision Number 48/PUU-IX/2011. The Constitutional Court is of the opinion that Article 57 paragraph (2a) of Law Number 8 of 2011 is contrary to the aim of establishing the Constitutional Court to uphold law and justice, especially in the constitution based on the 1945 Constitution. , carry out the obligations of constitutional judges in understanding legal values and a sense of justice in society.

A judge is a law enforcer who can make legal discoveries to decide the law. In legal discoveries carried out by judges, they must be able to adapt norms to actual conditions occurring in society to realize equal rights for the public interest. Judges can also find law through existing legal sources. In finding the law, judges can do it using two methods, namely interpretation and construction.

The Constitutional Court's decision Number 27/PUU-VII/2009 which limits the time for formal examination applications to 45 days is a legal finding by a Constitutional Court Judge. The purpose of this time limitation is to create legal certainty. Previously, this regulation did not exist, then the judge made this time limitation regulation through a decision. This means that the judge makes legal discoveries using the construction method, where the judge fills in the gaps in norms with the principle of legal certainty.

The judge's aim in deciding a decision is to realize the value of justice, a quality decision is obtained from the judge's way of thinking through his choices which reflect judicial activism. Making decisions to realize justice is the meaning of judicial activism. Judges tend to position themselves as institutions with the authority to provide considerations regarding political, economic and social policies¹⁶.

Judging from the concept of a judge, in giving a decision, the judge should realize

¹⁵ Sari and Raharjo, "The Constitutional Court as a Negative Legislator and a Positive Legislator."

¹⁶ Young, "A MOST POLITICAL JUDGMENT."

justice. However, in the Constitutional Court Decision Number 27/PUU-VII/2009 the regulation on limiting the time to create certainty is not considered on the principle of justice. Judges in making regulations must be rational, using clear and sound reasons. not done arbitrarily just for individual interests.

This 45 day time limit prevents justice enforcers from realizing justice as expected by the community. Constitutional Court judges only focus on legal certainty, even though to realize certainty they must also pay attention to justice. Certainty and justice are an inseparable unity. As in the words of Gustav Radbruch, the priority parameter for achieving legal goals is justice, because the goal of law is to achieve the rights and obligations of individuals in society.¹⁷.

The Court considers that the deadline of 45 days after the law is published in the state gazette is sufficient time to submit a formal review application for the law. The Constitutional Court considers that this time limitation is imposed to ensure that the formal test application process does not drag on and can be decided quickly.¹⁸. The status of a law needs to be known quickly, whether it has been legally established or vice versa, because a formal test will cause it to be completely invalidated. This is a form of realizing legal certainty.

In Indonesia, legal certainty is not synonymous with justice. This is because Indonesia uses empirical positivism legal thinking, where law is perceived as provisions issued by legitimate power, containing sanctions and orders. It does not matter whether the provisions are fair or not, because justice is an abstract problem. Thus, if regulations have been issued by the highest legitimate authority and contain sanctions and orders, then justice is not too much of a problem. This is the main characteristic of the empirical legal positivism school which is very dominant in Indonesian legal teaching.

The Constitutional Court has set a time limit of 45 days for submitting formal legal reviews from the time the law is promulgated in the state gazette. This timing raises pros and cons for the community. This creates challenges for justice enforcers. Mahfud MD said that there were several big leaps regarding procedural law for formal testing of the Supreme Court Law which were carried out by several activists from non-governmental organizations. This decision is a formal review decision which was thoroughly examined by the Constitutional Court. The Constitutional Court has made clear procedural law in

¹⁷ Lalatta Costerbosa, "The Courageous Judge of Gustav Radbruch."

¹⁸ Socawibawa and Wibowo, "INDEPENDENCE OF JUDICIAL POWER IN CONSTITUTIONAL COURT PROCEDURES."

considering the decision, because previously there was no clear procedural law. One of them is limiting laws that can be formally tested to laws that have not passed the 45 day time limit since they were published in the state gazette. Laws that have passed the 45 day deadline after being registered in the state gazette cannot be formally submitted. According to Mahfud MD, this is to provide legal certainty. In fact, according to Mahfud MD, someone previously proposed limiting the formal testing time to 30 (thirty) days. According to Mahfud, the regulations limiting the time for formal trials are regulated in decisions because Constitutional Court decisions are stronger than Constitutional Court Regulations, this is because Constitutional Court Regulations can be tested at the Supreme Court.

Refly Harun, who is an observer of constitutional law, considers this time limit for formal tests strange. According to him, the Constitutional Court only looks at the formal review of the formation of a law in accordance with procedures and techniques or not, even though formal testing is more than that. Refly Harun gave an example of a law that was made technically and procedurally correct, but behind the making of this law there was an act of bribery and according to him the law could be submitted for formal testing, but to obtain evidence it would take quite a long time and of course it would take more than 45 day. These restrictions can become shackles for people whose constitutional rights are violated.

According to Refly Harun, the attitude of the Constitutional Court is contrary to the attitude of the previous generation of the Constitutional Court. At that time, there was Article 59 of the Constitutional Court Law which limited whether laws could be reviewed substantively, namely laws issued after the Constitutional Court was formed. However, these restrictions can be overturned by the Constitutional Court, so that the institution that oversees the constitution can review all laws, and Refly considers that the Constitutional Court's position is contradictory. The reason why Constitutional Court judges provide regulations limiting the time for formal trials in their decisions is because the decision is final and has binding legal force. Thus, these regulations cannot be contested and can apply thereafter. If these regulations are regulated for the first time in a regulation, they can be tested and changed¹⁹.

In implementing time limits for filing formal trials, the Constitutional Court

¹⁹ Sa'adah, "The Constitutional Court as a Guardian of Democracy and the Constitution, Especially in Carrying out Constitutional Review."

considers making limitation regulations based on the concept of limitations on filing lawsuits or claims in other judicial procedural laws. An example is the State Administrative Court which provides a deadline for filing a lawsuit of 90 days. This is regulated in Article 55 of the PTUN Law²⁰. The purpose of the time limitation in the PTUN is to create legal certainty. In civil court regarding debts and receivables and others, it also provides a deadline of 30 years²¹. However, granting a relatively long time limit could result in injustice if evidence is lost²².

Of the three examples of time limitations in each procedural law, each has the same goal, namely certainty. Constitutional Court judges consider that it is necessary to provide a time limit for submitting a request for formal review, in order to minimize losses from the impact of the treatment of a law which if proven unconstitutional. The Court took the risk so that the impact would not be greater. The Constitutional Court judges also considered that this time limitation did not completely limit the fairness of the applicants, because the Constitutional Court still provided space for the public to carry out formal trials.

Principles of Justice and Certainty in Restrictions on Submitting Formal Tests at the Constitutional Court

The concept of time limitations in filing an application or lawsuit applies to various procedural laws. Not only is the Constitutional Court limited by deadlines, the State Administrative Court (PTUN) is also limited by time. There are differences in the time limits for submitting an application to the PTUN and the Constitutional Court.

The time limit for filing a lawsuit at the PTUN is greater than the deadline given by the Constitutional Court for filing a formal test. The PTUN provides a time limit of 90 (ninety) days for filing a lawsuit, whereas at the Constitutional Court, a deadline of 45 (forty five) days is given to the Constitutional Court when submitting a request for formal review. The difference in time limitation regulations in the PTUN is regulated in Article 55 of the PTUN Law which states "A lawsuit can only be filed within a grace period of ninety days from the time the Decision of the State Administrative Agency or Official is received or announced", while the time limitation regulations for submitting formal tests

²⁰ Kadir, Bariun, and Siregar, "DEADLINE FOR FILING A LAWSUIT IN THE KENDARI STATE ADMINISTRATIVE COURT AFTER THE ENTRANCE OF PERMA NO. 6 OF 2018."

²¹ Munthe, "Determination of Expiry Date in the Notary's Liability for the Deed He Makes."

²² Putra, Widiati, and Uj, "The Lawsuit Cannot Be Accepted (Niet Ontvankelijke Verklaard) in the Divorce Lawsuit at the Badung Religious Court."

were first regulated in Constitutional Court Decision Number 27/PUU-VII/2009, then clarified again in Article 9 paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Legal Review Cases. The similarity between the time limitation regulations in the PTUN and the Constitutional Court is that they both create legal certainty.

Regulations limiting the time for filing lawsuits at the PTUN also raise pros and cons, such as limiting the time for filing formal trials at the Constitutional Court. Even though they both aim to create legal certainty, the time given is considered too fast. The time limit at the PTUN was once requested to be reviewed materially at the Constitutional Court. The Petitioner stated that the 90 days had harmed his constitutional rights, because it prevented him from getting justice²³.

When submitting a request for formal review at the Constitutional Court, which is only given a 45 day deadline, it is also considered to prevent the applicant from getting justice. With this time limitation, applicants cannot submit their applications optimally. Often requests submitted to the Constitutional Court, especially formal trials, cannot be granted because the specified deadline has passed, namely 45 days.

In contrast to the time limits set by the PTUN and the Constitutional Court, the time limits in civil procedural law are 30 years. This 30 year time limit is as explained in Article 1967 of the Civil Code. This deadline regulation has a different purpose from the PTUN and the Constitutional Court. The problem with filing a lawsuit in civil procedural law is that whether it is personal or material, it will be erased because it has expired by passing the 30 year deadline. However, the longer the deadline given, the more difficult it will be and the evidence will be less and less.

Ratio decidendi the reasons for making a judge's decision must take into account the basic philosophical basis based on relevant laws and regulations²⁴. In determining regulations limiting the time for submitting formal tests, the Constitutional Court considers that these regulations are to create legal certainty. The time limit for submitting a formal test to achieve legal certainty is also the same as the time limit for filing a lawsuit at the PTUN. The judge's reason for creating legal certainty is because if regulations or laws are not limited to a certain time period, then formal testing can be carried out at any

²³ Abrory, "JURIDICAL IMPLICATIONS OF POSITIVE AND NEGATIVE FICTIONAL STATE ADMINISTRATIVE DECISIONS."

²⁴ Satriawan and Lailam, "Open Legal Policy in Constitutional Court Decisions and the Formation of Laws."

time. In the Judge's decision, this legal certainty is a product of law enforcers based on the facts at the trial which are in accordance with the juridical results of the resolution of the case at the trial.

Judging from the principles of justice, of course the time limit for submitting formal tests prevents applicants from getting justice. The regulations limiting the time for formal trials at the Constitutional Court do not reflect the 5th principle of Pancasila. Pancasila is the source of all sources of law, when the Court considers making a regulation it should be based on Pancasila. Not only based on Pancasila, but also the 1945 Constitution. Article 28D (1) of the 1945 Constitution states that "everyone has the right to recognition, guarantees and fair legal certainty as well as equal treatment before the law". If only legal certainty is used as a benchmark, then this does not reflect the 5th principle of Pancasila.

The goals of law as stated by Gustav Radbruch are justice, certainty and benefit. Legal objectives can be said to be achieved if the three principles have been implemented in society. Gustav Radbruch positions justice as the main priority of legal objectives. These three principles form a unity that cannot be separated to achieve legal objectives²⁵. Thus it can be concluded that, it can be said to be fair if the law has certainty and usefulness. The law has legal certainty if it is fair and beneficial. And likewise, law can be useful if it is fair and has legal certainty.

The presence of the principle of legal certainty is a form of protection for justice seekers against arbitrary actions. Someone can get something they hope for in certain circumstances. Van Apeldoorn stated that legal certainty has two sides, namely the ability to determine the law on something concrete and legal security. This statement means that justice seekers want to understand what the law is on a particular matter before starting a case and protection for justice seekers²⁶.

To achieve justice according to John Rawls, one must be forced to fulfill one's desires in accordance with the principle of utility²⁷. Based on the concept of justice as explained by John Rawls, applicants who submit formal tests try hard so that their petition can be granted by the Constitutional Court with the aim of justice. The existence of these restrictive regulations means that applicants are not free to apply for formal tests. Not only the concept of thought from John Rawls, Thomas Hobbes argued that it can be said

²⁵ Isman, "LEGAL REASONING COMPARATIVE MODEL OF ASY SYATIBI AND GUSTAV RADBRUCH."

²⁶ Julyano and Sulistyawan, "UNDERSTANDING THE PRINCIPLES OF LEGAL CERTAINTY THROUGH THE CONSTRUCTION OF LEGAL POSITIVISM REASONING."

²⁷ Anggara, "John Rawls's Theory of Justice Criticism of Liberal Democracy."

to be fair if it has been agreed upon in an agreement²⁸. The agreement must be agreed upon by the parties. If you look at Thomas's thoughts, the regulations limiting the time for submitting formal tests given by the Constitutional Court, of course, cannot be said to be fair. These regulations were only agreed upon by the Constitutional Court without any agreement with other parties, such as the community.

One of the things that law enforcement needs to create is justice. Legal experts or legal experts explain that the aim of law is justice. Justice cannot be separated from the law itself, justice is the essence of the law. Justice is something that cannot be negotiated and must be realized in society without sacrificing other interests²⁹.

The applicant's constitutional rights are not completely limited in submitting formal tests. The public is still given the opportunity to submit a formal test of the law. The Court considered that this did not completely limit justice. It's just that submitting the application is limited to 45 days. Making time limitation regulations in this formal test should be given a longer period of time, not just 45 days, such as the time limitation in the PTUN is given 90 days³⁰. Both have the same goal, namely legal certainty.

In the context of time limits for applications or lawsuits that have the same objective, the Constitutional Court should provide a time period that is more like the PTUN. That way, the applicant's request to carry out a formal test will be more optimal and clear. If given 90 days to submit a formal review at the Constitutional Court, it will provide justice for the applicants as in the PTUN.

Judges of the Constitutional Court place more emphasis on the principle of legal certainty, but the aim of the Judges in limiting the time in submitting requests for formal review is so that laws that have long been passed through the state gazette are then formally tested and proven to be unconstitutional. the law will be void in its entirety. The impact of a law that has been passed for a long time and then is canceled will cause losses to the parties who have implemented the law, so the Court considers it necessary to limit the time for formal review. However, it is felt that the 45-day limitation is still too short to accommodate the applicant's demands for justice in carrying out formal trials at the Constitutional Court. It is hoped that this time limitation can be extended so that

²⁸ Alwino, "Discourse Concerning Social Justice: A Study of the Theory of Justice in Locke's Liberalism, Marx's Equality, and Rawls' 'Justice as Fairness'."

²⁹ Arief, "CONFLICT OF LAW AS LEGAL CERTAINTY AND A SENSE OF JUSTICE TOWARDS CRIME VICTIMS."

³⁰ Kadir, Bariun, and Siregar, "DEADLINE FOR FILING A LAWSUIT IN THE KENDARI STATE ADMINISTRATIVE COURT AFTER THE ENTRANCE OF PERMA NO. 6 OF 2018."

maximum applications can be submitted. In this way, legal objectives consisting of legal certainty, legal justice and legal benefits can be achieved.

D. CONCLUSION

Based on the discussion, it can be concluded that the legal arguments developed by the Constitutional Court judges in terms of enforcing a deadline for submitting a formal review of a law of no later than 45 days after the requested law is published in the state gazette is solely to achieve legal certainty. Because, if a formal test is not given a time limit, the existence of the law will always be overshadowed by a formal test lawsuit so that legal certainty regarding its formal formation will not be created. Apart from that, if a law is requested for formal review and then the Constitutional Justice grants the request, it will be completely invalidated. In order to achieve legal certainty, constitutional judges are of the opinion that it is necessary to impose time limits on filing formal complaints at the Constitutional Court.

Limitations on the time for submitting a formal review of a law to the Constitutional Court in principle do not completely conflict with the principles of justice. Because in practice, the Constitutional Court still provides space for justice for applicants to submit a formal review of the enactment of a law. While the Constitutional Court continues to emphasize the principle of legal certainty, the deadline of 45 days after the law is promulgated in the State Gazette is still considered too short to accommodate the justice demands of the petitioners. With only 45 days to make the applicant's application, it is not optimal to submit a formal test, so the application has the potential to be rejected by the Constitutional Court. The Court should also consider the principles of justice in creating new norms to create justice for all citizens as contained in Pancasila as the supreme source of law in Indonesia.

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