

# **The Authority of The Supreme Court over The Articles of Association or by Laws of Political Parties**

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## **ABSTRACT**

The purpose of this Study to keep no legal void the creation of legal certainty. Articles of Association of a Political Party or commonly referred to as AD/ART, is a binding provision for its members, which is binding, the same as a statutory regulation. The recent phenomenon is that the review of the articles of association of a political party to the Supreme Court, which had never existed before or had never happened in this Republic. There are 2 (two) State Institutions that have the right to Judicial Review against existing laws and regulations, namely the Supreme Court (MA) and the Constitutional Court, This test must be carried out so that there is no legal vacuum in it. The method used in this research is normative research, namely research using a statutory and conceptual approach. The results of this study, AD/ART is not a statutory regulation because it is not included in the hierarchy of laws and regulations, but from the point of view of civil law AD/ART is an agreement between the parties who made it and binds it. The Supreme Court continues to test the AD/ART so that there is no legal vacuum and the creation of a legal certainty.

**keywords:** Judicial review, AD/ART, Supreme Court

## **1. INTRODUCTION**

The Political party is a container to convey political aspirations for its members. One of them is the Articles of Association or household budget. There is a recent phenomenon at the end of this end of the problem that occurred to political parties, namely the issue of the Articles of Association or household budget called AD or ART (Lees-Marshment, 2001).

The Examination of the articles of association or by laws of political parties or commonly referred to as AD or ART to the Supreme Court is a recent phenomenon because there is no institution authorized to carry out such testing. Examination of AD or ART to the Supreme Court, then consider that AD or ART as a statutory regulation. Where the Supreme Court has the authority to examine the legislation under the Law against the Law (Seidel et al., 2019).

The only Supreme justice of all judicial environments is the Supreme Court. The Supreme Court is an independent judicial power that cannot be influence by any member of the government (executive), Legislator (Legislative), or any other party in conducting judicial proceedings to upload law and justice (Roesli et al., 2019).

The Judicial Power is given the authority to examine a statutory rule if the lower statutory regulation contradicts the higher regulation. This is known as the Judicial review, namely the Supreme Court and the Constitutional court. The Constitutional court has the authority to examine laws against the 1945 Constitution of The Republic of Indonesia (Abdullah, 2006).



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The Laws of the laws that occurs is a new challenge for the judge to do the living invention to solve a problem. The duty of a judge in doing the discovery of laws as a problem solving by using two methods. The first legal interpretation method is a legal discovery method by explicitly expanded related to the text of the law to the scope of the rule can be applied to concrete events. The causer is there but not clear. Second, do legal construction. Judge is using it in checking the case that does not specify regarding it.

AD or ART testing is a solution to a problem for which there is no legal regulation. Therefore, making judges make legal discoveries by digging deeper and based on legal values that live in society in accordance with the times. <sup>1</sup>

Based on this background, a formulation can be drawn, namely whether the Supreme court has the authority to review the articles of association or the budgets of political parties?

### **Results of library research**

Bagir Manan and Kuntana Magarar argue that the laws and regulations contain the element of the following elements:

1. In the Form of a written decision, the legislation as a rule of law is commonly referred to as written law
2. Established by officials in making common or binding rules

The Characteristic of regulations are binding Laws that have no means to have to bind everyone, just show that legislation is not valid in certain concrete events or individuals (Raz, 1971). Jan Michiel Otto defines legal certainty as follows :

1. The rules are clear, fixed, easy to obtain, published and recognized by state power.
2. People's behaviour is based on these rules
3. The government consistently applied the rule of the LAW and submitted to it.
4. The Judge in judicial power is independent so as not to apply the law at all times in resolving legal issues.
5. The decision of the court should be concerned.

The Purpose of research is about to see and analyze whether the Supreme Court has the Authority to test the budget or the political budget of the political party (Soeroso, 2011).

## 2. RESEARCH METHODS

This research uses normative legal research which is carried out by reviewing legal rules or norms in laws and regulations and other reference sources related to the authority of the Supreme Court in examining the articles of association or political party budgets. Using a statutory and conceptual approach. Types and data collection by means of literature studies and using qualitative methods.

## 3. RESULTS AND DISCUSSION

### **The Political party's position in the hierarchy of the regulatory regulations.**

Based on the definition of article 1 point 2 of Law 12/2011 it provides characteristic that legislation must contains five elements as follows:

1. Written rules
2. It contains legal norms
3. Legally binding
4. Formed and determined as a state institution or authorized official.
5. Defined as a procedur

Article number seven of Law number twelve of 2011 jo. Law number 15 of 2019 is concerning the formation of Laws and regulations states the types and hierarchies of legislation, including :

- a. The 1945 constitution of the Republic of Indonesia
- b. MPR Decree
- c. Laws or Government regulation in Lieu of Laws;
- d. Government Regulation;
- e. Presidential Decree;
- f. Provincial Regulation;
- g. Regency / city regulation Regulation

Article 8 of the law on the formation of laws and regulations also states that there are other types of legislation other than those mentioned in article 7, namely regulations set by the People's Representative Council, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, banks (Sihombing & Hadita, 2021). Indonesia, ministers, institutions or commissions of the same level established by law or by the government by order of law, provincial regional people's representative councils, governors, regency or city regional people's representatives, regents or mayors, village heads or the equivalent. The regulation is also a type of statutory regulation so that its existence is recognized and has binding legal force as long

as it is ordered by a higher statutory regulation based on the authority given (Yuliati & Widayati, 2021).

Based on article 2, article 7 and article 8 of Law 12 of 2011 in conjunction with 15 of 2019 a regulation can be categorized as legislation if the first, fulfills the 5 (fifth) elements contained in article 2, the second, enters into the deepest type of hierarchy of laws and regulations is Article 7. Third, getting orders from higher regulations on the basis of authority, this regulation is also recognized for its existence and has binding legal force. The following are 4 kinds of changes in the hierarchy of legislation, including: Hierarchy of Legislation Table :

MPR Decree No. XX/MPRS/1996.	MPR Decree No. III/MPR/2000.	Law number 10 year 2004.	Law Number 12 year 2011.
1. The Constitution 1945;	1. The Constitution 1945;	1. The Constitution of 1945;	1. The Constitution of 1945;
2.MPR Decree	2.MPR Decree	2.Laws or	2. MPR Decision;
3. Laws or Governmnet regulations in Lieu of Laws;	3..Laws or Governmnet regulations in Lieu of Laws;	Governmnet regulations in Lieu of Laws	3.Laws or Governmnet regulations in Lieu of Laws
4. Government Regulations;	4. Governmnet regulation;	3.Government regulation;	4. Government regulation;
5. Presidential Degree	5. Presidential Degree ;	4.Presidensial Degree ;	5.Presidensial Degree ;
6. Government decision;	6.Local Regional Regulation	5.Local Regional regulation .	6. Provincial Regulations
7.Other Implementing Regulation			7. District or city regulation.

Based on the hierarchy of laws that have undergone various changes, the Articles of Association or By laws of political parties are not part of the hierarchy of legislation. Based on article 2 of Law number 12/2011 AD/ART does not meet the five elements mentioned to become legislation. The elements can be summed up as follows:

1. AD/ART is in the form of written regulations.



2. Determined by the authorized Party, namely the Minister of Law and Human Rights who stipulates it in the form of a decree.
3. The AD/ART is formed based on the mutual agreement of the members of the political party. A political party is an organization that is national in nature, not as a state institution or government official.
4. Applies internally to an organization.

Based on Article 8 of the Political Party Act, this Articles of Association is mentioned in the political party law but is not explicitly explained, in the political party law that states that every political party should have a composite as it is important and the basis of the rules (Howse & Langille, 2012). This law only mandates that political party's must have a component of not a form of legislation.

Judging from the state of the State Administration Law, based on Article 1 Number 2 Law Number 5 Year 1986 Jo. Article 1 of the 9 Number of Law Number 51 Year 2009 on the State Administration of State, all Body Ten or Officials Implement the affairs of government based on applicable legislation. In its context, the Articles of Association gained an attempt from the Ministry of Law and Human Rights (Kemenkumham) in the form of decision-letter (SK) whose form is written. In case of a budgetary change shall also earn a decision of the Ministry of Law and Human Rights (Kemenkumham). Therefore, the Articles of Association can be used as a law based on the decision issued by the Minister of Law and Human Rights (INDONESIA, 2009).

Based on the legal side of civil law, bylaw is a matter of national deliberation. Article 1338 of the civil law code states that all agreements made legally are valid as laws for those making the agreements. Based on this, the charter can be said to be the statute under article 1338 KUH Perdata (Indonesia, 2009).

#### **Authority of the Supreme Court in reviewing the Articles of Association of Political Parties.**

The Supreme Court is the highest court of all neighborhoods under it. In other words, the Supreme Court has the highest supervision over the judiciary in the general court environment, the religious court environment, the military court environment, and the state administrative court environment.

Based on article 24A paragraph 1 of the 1945 Constitution of the Republic of Indonesia, the Supreme Court is given 3 powers, including :

- a. Test the Law under the Law in addition to being regulated in the state constitution, the Supreme Court's right to examine regulations under the law is also regulated in article 11 paragraph 2 letter b of Law Number 4 of 2004 concerning judicial power. The right of testing that is carried out contains the contents of paragraphs, articles, and/or higher parts of the legislation as well as the

establishment of the relevant legislation (Tutupoho, 2016). The right to examine the Supreme Court is limited in nature, that is, it only examines statutory regulations under the Act against the law. So that its authority cannot reach the judicial review of the 1945 Constitution of the Republic of Indonesia.

b. Judget at the level of Cassation.

Article 11 of Law 4 of 2004 concerning judicial power states that the Supreme Court is the highest state court. In addition, it is also stated in Article 20 paragraph 2 letter a which emphasizes its position and capacity as the highest state court. Article 32 of Law 3 of 2009 concerning the Supreme Court also affirms that it has the right to exercise the highest supervision over the judiciary under it.

c. Other Authorities granted by Law.

The Supreme Court has the authority to decide post-conflict local election disputes. This is regulated in Article 106 paragraph 1 of Law No. 32 of 2004 concerning Regional Government. However, this authority was transferred to the Constitutional Court based on Article 236C of Law No. 12 of 2008 concerning the second amendment to Law 32 of 2004 concerning Regional Government. So, if it is the law that gives authority, the competent institution such as the Supreme Court must also carry out what is stated in the law.

The three powers of the supreme court as regulated in the state constitution are also strengthened by law number 48 of 2009 concerning judicial power. Requests for review conducted by the Supreme Court can only be made by parties who feel aggrieved by the enactment of laws and regulations under the law as regulated in Article 31A of Law number 3 of 2009 concerning the Supreme Court.

The authority of the Supreme Court to examine laws and regulations is also regulated in Article 31A of Law Number 3 of 2009 concerning the second amendment to Law Number 14 of 1985 concerning the Supreme Court. In addition, the Supreme Court Regulation, precisely in Article 1 point 1 of Perma No. 1 of 2011 concerning the right to judicial review, also regulates the authority of the Supreme Court to examine laws and regulations under the law against higher laws and regulations. So we can conclude that the main requirement for testing the Supreme Court, the object of the application must meet the elements of the legislation.

The review of AD/ART to the Supreme Court is a new thing because no one has done this test to any court institution. The decision number 39 P/HUM/2021 states that the applicant has no legal standing and the applicant's application in the form of reviewing the AD/ART of the democratic party to the Supreme Court is rejected and cannot be accepted. This refusal is because the AD/ART does not meet the elements as legislation so that the Court is not authorized to carry

out the examination. The opinion of the supreme court regarding the AD/ART of political parties is as follows:

- The AD/ART of a political party is not a legal norm that binds the general public, but only binds the internal party of the political party concerned .
- Political parties are not state institutions, bodies, or institution formed by law or by the government by order of Law.
- The Law does not delegate political parties to form laws and regulations.

In making legal discoveries, judges use legal construction if there is no law governing the problems they face (Thatcher & Sweet, 2002). One of the legal constructions is to use the analogy method, related to the too narrow scope of the legislation so that in creating the law the judge will expand its meaning by using the argumentum per analogy method. Similar events or cases regulated by law will be treated the same. In analogy, a special regulation in the law will be enforced or made general. If there are cases that have not been regulated by law, the judge will make legal discoveries. When making an analogy, it is extracted from the principles contained in it and concluded from the general provisions of special events. This method is used when there are different but similar, similar or even similar events that are regulated by law will be treated the same. However, the judge's decision does not apply the same between AD/ART and the law because the Supreme Court is of the opinion that AD/ART is not a statutory regulation. UU no. 12 of 2011 regulates the types of laws and regulations other than those regulated in article 7. Article 8 of this law can be interpreted more broadly if the AD/ART is made into legislation. In this context, the Supreme Court makes legal discoveries not by expanding the meaning of the law, but by narrowing the law, namely by narrowing the scope of legislation so that AD/ART cannot be said to be statutory regulations.

AD / Art political party is considered a law for members of the political party. The Commonists said that AD / ART is the laws and regulations of the issue of the reinforced by the opinion of the laws. In accordance with the construction of analogy law in which the AD / ART testing is a similar, similar kind of similarly similar to the regulations in the law will be equal to the same. In addition, based on grammatical interpretations that inter-use by the daily grammar. According to Jazim Hamidi(Jazim Hamidi,2011), Hermeneutics is a teaching of legal philosophy which is also a method of interpretation, which is an interpretation of the linkage between text, context, and contextualization. Article 1338 BW says each legitimate made agreement shall be legal to the regulations. If graphatically and hemeneutically, AD / ART is made based on the agreement of the political party members. So, AD / ART is considered a law.

Based on the principle of *ius curia novit*, judges are considered to know the law and must try cases that are brought to them. This principle places an obligation on judges to determine what law should be applied to a particular case and how it should be applied. In the civil law system, this principle has long been known to resolve cases that have not been regulated by law because judges are considered to know the law.

The principle of *ius curia novit* is contained in Article 5 paragraph 1 of Law Number 48/2009 concerning judicial power. The article states that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society. The principle of *ius curia novit* is interrelated with one another with the principle of *rechtweigening* because this principle is also known as the principle of prohibition of refusing a case. (Yuri Styawan, 2018) Article 10 paragraph 1 of the Law on Judicial Power regulates the prohibition for courts from refusing to examine, try, and decide on a case that is submitted on the grounds that there is no law governing it or it is unclear, but the court is obliged to examine and hear the case. Based on the principle of *ius curia novit*, judges are authorized to examine the AD/ART of a political party.

#### 4. CONCLUSION

Articles of Association/Budgets or commonly referred to as AD/ART of a political party are not statutory regulations and do not have a position in the statutory hierarchy when viewed based on Law No. 12 of 2011 Jo. Law Number 15 of 2019 concerning the formation of laws and regulations. The Supreme Court is not authorized to examine the AD/ART of political parties because the AD/ART is not a statutory regulation. As can be seen, the authority of the Supreme Court is to examine the law under the law against the law. However, when viewed from the side of Civil and Administrative Law, the AD/ART is a law so that the Supreme Court has the right to examine the AD/ART of a political party. In addition, by prioritizing the *ius curia novit* principle, namely that judges are considered to know the law and cannot refuse cases submitted to them, the judge is authorized to examine the Articles of Association/Budgets of political parties.

#### Suggestion

The Supreme Court should not interpret the AD/ART with legal narrowing, if the AD/ART is interpreted grammatically and hermeneutically based on article 1338 of the Civil Code, the AD/ART can be categorized as law, because the contents of article 1338 state that all agreements made are valid and valid as law. law for the makers. This AD/ART is an agreement made by members of a political party so that this AD/ART is a law for members of a political party. So, if



the AD/ART is referred to as a law, then in this case the Supreme Court has the authority to grant the review of the AD/ART for Political Parties.

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