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Decree of the President of the Republic of Indonesia No 55/M of 2020 Concerning Termination and Appointment of Membership No After the Supreme Court Decision Number5P/HUM/2021

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ABSTRACT
The purpose of this research is to find outpositionNO as an independent institution after the Decision of the Supreme Court Number 5 P/HUM/2021 and the Decision of the Supreme Court Number 5 P/HUM/2021 against the Decree of the President of the Republic of Indonesia No. 55/M, this research method uses normative juridical issues through law by looking at legal norms in force, also aims to reveal the truth in a systematic and consistent manner. Research results The validity of a decision and/or can be seen from 3 aspects, namely authority, procedure and substance which can be tested based on laws and regulations, AUPB, court decisions, and whether or not there is a juridical defect. So that decisions or actions of government administration are declared invalid if they are wrong in terms of authority and declared null and void if they are wrong in terms of procedure and/or substance. Supreme Court decision number 5P/HUM/2021 considers the MENKES Regulation a form of government interference in KKI, so Permenkes Number 81 of 2019 concerning Amendments to Minister of Health Regulation Number 496/MENKES/PER/V/2008 is null and void by law including the Decree of the President of the Republic of Indonesia No 55/M of 2020 regarding the appointment of KKI members for the period 2020 to 2025

Keywords: MA, President, KKI, MENKES, UUD

1. INTRODUCTION

As a legal state, the Republic of Indonesia aims to prosper its people (Susanto, 2021), for this achievement to be realized through a process of developing the quality and professionalism of human resources. The Law of the Republic of Indonesia Number 36 of 2009 concerning Health, states that health is a human right so that it must be realized as the ideals of the Indonesian nation (Agustina, 2016). In an effort to maintain and improve the degree of public health, the principles of non-discrimination, participation and sustainability must be realized (Junef, 2021), therefore the state must be present in people's lives and ensure that the realization of general welfare is achieved, but the presence of the state must remain based on applicable laws and regulations, so that the principle of equality before the law is guaranteed to every citizen (U. U. D. Indonesia, 1945).

In Article 28 H of the 1945 Constitution it is stated that everyone has the right to live in physical and spiritual prosperity, to have a place to live and to get a good and healthy environment

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and has the right to obtain health services, while in Article 34 paragraph (3) it is stated that the state is responsible for providing facilities proper health services and public service facilities (M. B. Kurniawan, 2018). Therefore the health services provided must be of good quality (R. Indonesia, 2009).

The Indonesian Medical Council, which is abbreviated as (KKI) which is used in this paper, was born to protect the public, foster the profession and provide legal certainty to users and providers of medical practice services. KKI membership is delegates from institutions and organizations to community representatives, and in Indonesia. KKI is a State Institution as mandated by Law No. 29 of 2004 concerning Medical Practice or abbreviated as (UUPK) (K. K. Indonesia, 2012).

Article 7 UUPK contains the duties and powers of KKI including:

a. registration of doctors and dentists.
b. ratify professional education standards for doctors and dentists,
c. provide guidance on the implementation of medical practice carried out together with related institutions in accordance with their respective functions.

Article 8 UUPK contains the authority of KKI, namely:

a. approve and reject applications for registration of doctors and dentists,
b. issue and revoke registration certificates of doctors and dentists,
c. ratify the competency standards of doctors and dentists
d. conduct examination of the registration requirements of doctors and dentists
e. authorizes the application of the branches of medicine and dentistry
f. carry out joint coaching for doctors and dentists regarding the implementation of professional ethics established by professional organizations; and,
g. record doctors and dentists who are subject to sanctions by professional organizations or their apparatus for violating provisions of professional ethics (Fajar, 2021).

This mechanism is carried out so that medical and dental professional education meets standards. Procedures for the appointment and dismissal of members no regulated in Regulation of the Minister of Health Number 496 / Menkes / Per / V / 2008 concerning Procedures for Proposing Candidates for Members of the Indonesian Medical Council and strengthened by Presidential Regulation Number 35 of 2008 concerning Procedures for Appointment and Termination of Membership of the Indonesian Medical Council. However, until the term of KKI membership for the 2014-2019 period ends, the prospective KKI members who have been proposed are deemed not to have met the requirements by the Ministry of Health, so an extension is made for three months through Presidential Decree Number 34/M of 2019 concerning Extension of the Term of Office of

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KKI Membership, then it is extended again without a time limit through Presidential Decree Number 47/M of 2019.

With the consideration that the requirements have not been met as a proposed new KKI member for up to two extensions of the term of office, the Ministry of Health issued Regulation of the Minister of Health of the Republic of Indonesia Number 81 of 2019 which amended Regulation of the Minister of Health Number 496 / MENKES / PER / V / 2008 concerning 2008 concerning Governance How to Propose Candidate Members of the Indonesian Medical Council. The legal basis for the changes to the PERMENKES are Article 22 and Article 23 of Law Number 30 of 2014 concerning Government Administration.

Article 22 (2) Every use of the Discretion of Government Officials is aimed at: facilitating administration of government, filling legal voids, providing legal certainty; and overcoming governmental stagnation in the public interest. Article 23 discretion of Government Officials includes: making decisions and or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions; making decisions and/or actions because laws and regulations do not regulate; making decisions and/or actions due to incomplete or unclear laws and regulations; and decision-making and/or action due to government stagnation for broader interests (Razak & Situmorang, 2019).

With the amendment to Article 6 of the Regulation of the Minister of Health Number 496/MENKES/PER/V/2008 concerning Procedures for Proposing Candidates for Members of the Indonesian Medical Council which is in the Regulation of the Minister of Health Number 81 of 2019 concerning Amendments to the Regulation of the Minister of Health Number 496 /MENKES/PER/V / 2008 concerning Procedures for Proposing Prospective Members of the Indonesian Medical Council (Law, 2014).

Whereas in terms of the leadership of each element and the Indonesian Medical Council for the current period:

a. does not nominate candidates for members of the Indonesian Medical Council;
b. the number proposed is less than 2 (two) times the number of representatives of each member of the Indonesian Medical Council; and/or
c. candidate members of the Indonesian Medical Council who are proposed do not meet the requirements, the Minister of Health can nominate candidates for members of the Indonesian Medical Council to the President (P. R. Indonesia, 2008).

On the basis of the amendment to this Article, new KKI members can be legalized and stipulated through Presidential Decree No. 55/M 2020 concerning dismissal and appointment of KKI members. However, this step by the Ministry of Health received a protest in an official and

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open letter dated 18 August 2020, which stated that the names of KKI members determined by the President through Presidential Decree 55 / M / 2020 did not match the proposals that had been submitted to the Ministry of Health. Due to no response, the five organizations IDI, PDGI, AIPKI, AFDOKGI,MKKI, MKKGI, andARSPI filed a lawsuit because it was considered that the Ministry of Health had acted arbitrarily by setting aside the five organizations' rights to nominate members of the Indonesian Medical Council (P. R. Indonesia, 2008). Based on the background described above, what is the positionNO after the publication of the Regulation of the Minister of Health of the Republic of Indonesia Number 81 of 2019 and the consequences arising from the Supreme Court Decision Number 5 P/HUM/2021 against the Presidential Decree of the Republic of Indonesia No 55/M of 2020.

2. RESEARCH METHOD

The research method is by approaching the problem through the law by looking at the applicable legal norms. Or what is called normative juridically and also aims to reveal the truth in a systematic and consistent manner. Or called the statute approach. This type of legal research is basically a systematic method and thought to study legal phenomena and then analyze and examine in depth the legal facts to then solve the problem. What is conceptualized as what is written in statutory regulations or law in books as rules that are considered appropriate and facts in the field so that this type of writing is called normative juridical research.

Sources of Legal Materials

This writing uses secondary legal materials, in the form of all publications about law including books, texts, legal dictionaries, legal journals and comments on court decisions.

Problem Approach.

1. The statutory approach.
2. Conceptual Approach The conceptual approach is carried out if the researcher does not depart from existing legal rules, so he must take an approach from the views and doctrines that develop in the science of law to become a basis for building arguments in resolving a legal issue.

3. RESULTS AND DISCUSSION

Indonesian Medical Council

Medical education began with dr.Vd.Bosch's idea by opening a "Doctor Jav School" in the Weltevreden area, or currently located in the area of the Gatot Subroto Army Hospital, Kwini, Central Jakarta and in 1851, and developed into the School tot Opleiding Voor Indische Arts (STOVIA) later became Geneskundige Hoogeschool (GH), and during the Japanese colonial period

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it became Ika Dai Gaku. After independence, it became the Jakarta Medical College, which later became the Faculty of Medicine, University of Indonesia. Simultaneously in Surabaya, the Nederlandsche Indische Artsen School (NIAS) was established, both of which were the forerunners of higher education in Indonesia. Then in 1949, the government of the Republic of Indonesia opened Gadjah Mada University in Yogyakarta including the Faculty of Medicine in it, as a symbol of higher education that was built independently by the State (Herlianto, 2014).

The Medical Council first appeared in England in 1851, as an independent and independent institution that regulates medical education and practice called the General Medical Council (GMC) followed by former British colony countries such as Malaysia (Malaysian Medical Council), India (Indian Medical Council). Council), Bangladesh (Bangladesh Medical Council), Sri Lanka (Srilanka Medical Council), Australian and so on. Many countries in the world feel the need for an independent and independent institution to regulate the medical profession because of the uniqueness of the profession and because of the need for strong and well-established regulations to regulate the medical profession, because this profession is related to human life. KKI is intended to protect the public receiving health services and to improve the quality of health services through upholding the discipline of its members in carrying out the profession. Established legal basisNO is the Medical Practice Law number 29 of 2004, as a state institution the position is the same as other state institutions established by law such as the Corruption Eradication Commission, the Constitutional Court and other institutions. Article 1 paragraph 3 of Law 29/2004 that KKI is an autonomous, independent, non-structural and independent body that carries out regulatory functions. The reasons for the establishment of KKI are:

1. For structural differentiation.
2. The need to centralize services in one institution.

As the executive and legislature, KKI makes regulations in the field of medical practice and as a judiciary, this institution adjudicates violations of the discipline of medical practice, the mechanism of which is through the Indonesian Medical Discipline Honorary Council (MKDKI) (Sulaiman et al., 2021).

Independence of State Institutions

Etymologically, independence means the ability to stand alone. There is no interference from power (Sirajuddin & Winardi, 2015). InBlack‟s Law Dictionary mentions independent as not dependent; not subject to control, restriction, modification, or limitation from a given outside source. not dependent on, not subject to any control, restriction, modification or resource limitations provided outside. So independence is freedom from influence, instruction or direction,

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or control from other parties. Institutional independence substantively must be owned by state institutions including

1. Institutional or structural independence, where the structure of an organization can be described in a completely separate chart.
2. Functional independence, guarantees the implementation of functions and is not emphasized from the institutional structure
3. Administrative independence in the form of financial independence
4. Personnel independence. but must be subject to limitations in the form of laws so as not to cause arbitrariness.

The Medical Practice Act contains norms that bind and regulate the rights and obligations of the entire public. The law also determines to what extent an institution, or what institution as the executor of the law is given the authority to carry out regulatory functions. Guided by the UUPK, KKI produces products such as Indonesian Medical Council Regulations, abbreviated as Perkonsil, and Medical Council Decrees, which are abbreviated as Perkonsil.

Legal products from state institutions are determined by a hierarchy of norms, so the rules for both Perkonsil and Perkonsil as products from KKI as regulators have the same level as government regulations, according to the order in the legislation, namely the Constitution, Laws, Perpu, PP, Perpres , provincial regulations, district/city regional regulations. Therefore, ministerial regulations or regional regulations may not conflict with Perkonsil or PerkonsilKepkonsil. On the other hand the Consul can only be changed by law. This is a trust from the reformation, where political dynamics cannot influence the independent institution that regulates the medical profession (RI, n.d.).

Regulation of the Minister of Health Number 496/MENKES/PER/V/2008

In Article 3 it is stated that prospective KKI members who come from professional organizations, associations and collegiums are selected through an election mechanism in their respective environments and determined by professional organizations, associations and collegiums. Whereas candidates from the Ministry of National Education are determined by the Minister of National Education and candidate members who come from community leaders are selected according to the provisions stipulated in the Regulations of the Indonesian Medical Council and have been determined to be proposed to the Minister of Health except for candidate members who come from the Ministry of Health. If during his journey the candidate has not met the requirements, then in accordance with Article 4, the candidate will be returned to the proposing element to complete the requirements.

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So that the Ministry of Health only waits for the proposing organization, does not play an active role and even makes appointments, this is also reinforced by the Presidential Regulation of the Republic of Indonesia Number 35 of 2008 concerning Procedures for Appointing and Termination of Membership of the Indonesian Medical Council.

Background of the Issuance of Regulation of the Minister of Health of the Republic of Indonesia Number 81 of 2019.

It states that the background for the issuance of the Permenkes is in accordance with the provisions of Article 14 paragraph (3) of Law Number 29 of 2004 concerning Medical Practice, which states that the Minister of Health is responsible for proposing KKI membership to be determined by the President, there is also a legal vacuum in arrangements for filling KKI membership whose term of service has ended but there are no proposals that comply with statutory provisions so as to maintain the smooth running of government, fill legal voids, provide legal certainty, and overcome government stagnation in certain circumstances for the benefit and public interest is also based on the provisions of Article 22 and Article 23 of Law Number 30 of 2014 concerning Government Administration, it is necessary to change the arrangements for proposing KKI membership, that based on these considerations the Minister of Health can designate potential KKI members to the President n. In the current case, the criteria for proposing new members have not met up to two extensions of the term of office. The legal basis used to amend the PERMENKES is Article 22 and Article 23 of Law Number 30 of 2014 concerning Government Administration (R. D. Kurniawan &Yuliharson, 2022).

Article 22 (2) Every use of Government Official Discretion aims to:

a. launching government administration;

b. filling legal voids;

c. provide legal certainty; and

d. overcome government stagnation in the public interest.

Article 23 Discretion of Government Officials includes:

a. making decisions and/or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions;
b. taking decisions and/or actions because laws and regulations do not regulate;
c. taking decisions and/or actions because the laws and regulations are incomplete or unclear; and
d. decision-making and/or action due to government stagnation for wider interests.

So according to the Ministry of Health when Article 6 reads as follows,

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Whereas in terms of the leadership of each element and the Indonesian Medical Council for the current period:

a. not nominate candidates for members of the Indonesian Medical Council
b. the number proposed is less than 2 (two) times the number of representatives of each member of the Indonesian Medical Council membership and/or the proposed candidates for members of the Indonesian Medical Council do not meet the requirements, the Minister of Health can nominate candidates for members of the Indonesian Medical Council to the President.

Then it will be easier to propose candidates for KKI members to the President. On the basis of the new Ministerial Regulation, new KKI members will be prioritized through Presidential Decree No. 55/M 2020 concerning dismissal and appointment of KKI members, whereas in the next article in Law number 30 of 2014 concerning Government Administration it is stated that discretion can be taken if not contrary to the law.

Article 24 Government officials who use discretion must meet the following requirements:

a. in accordance with the purpose of Discretion as referred to in Article 22 paragraph (2);
b. does not conflict with the provisions of laws and regulations;
c. in accordance with the general principles of good governance;
d. based on objective reasons;
e. does not cause a conflict of interest.
f. done in good faith.

So that this change is contrary to Article 1 point 3 of Law Number 29 of 2004 concerning Medical Practice which reads the Indonesian Medical Council is an autonomous, independent, non-structural and independent body, directly responsible to the President of the Republic of Indonesia, with the aim of providing protection to patients, maintain and improve the quality of medical services provided by doctors and dentists, and provide legal certainty to the public, doctors and dentists. Consequences Caused by the Issuance of Supreme Court Decision Number 5 P/HUM/2021

Validity

Legitimacy or legality or in terms of Dutch law "rechtmatig" which means "based on law" or in English it is called "legality" which means "law fullness" or in accordance with the law. This concept stems from the birth of the conception of a rule of law state (rechtsstaat) in which government action must be based on legal provisions governing "rechtsmatig van het bestuur", that is, in essence, the application of the principle of legality in government legal actions. The concept was born as an attempt to limit the absolute power of the King as the holder of sovereignty

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(principle legibus solutus est). Therefore law is born as a limitation of power, so that if government actions are not based on law or exceed the provisions stipulated by law, then government actions become legally flawed or are called onrechtmatige, so that the principle of legitimacy or legality is very closely related to the aim of protecting human rights. people from government actions (Hadi & Michael, 2017).

In the Big Indonesian Dictionary, validity itself comes from the word ke.ab.sah.an which can mean a valid noun (noun). Law exists to integrate and coordinate the interests of society by limiting and protecting conflicting interests (Satjipto, 2000). For this reason, the law must provide protection to all because everyone has the same position before the law.

Legal certainty

The definition of legal certainty is legal rules, both written and unwritten, which contain rules that are general in nature and serve as guidelines for individuals to behave in society and become limits for society in burdening or taking action against individuals. The principle of legal certainty is necessary for the creation of the principles of the rule of law. Normatively, when a regulation is made and promulgated, it does not raise doubts because it has multiple interpretations, is logical and has predictability. So that the function of legal certainty is as a guide so that people comply with the law and protect the community against arbitrary government actions which with their strength can make and enforce new legal rules.

Legal Certainty Theory Legal certainty according to Jan Michiel Otto is defined as the possibility that in certain situations:

1. There are rules that are clear, consistent and easy to obtain, issued by and recognized by the state.
2. The ruling agencies apply these legal rules consistently and also obey and obey them.
3. Citizens in principle adjust their behavior to these rules.
4. Independent, thoughtless (judicial) judges apply these legal rules consistently when they resolve legal disputes.

Legal certainty is a guarantee that the law is implemented in a good way (Abdullah, 1994). According to Kelsen, the principle of certainty, expediency and justice, law is a system of norms that emphasizes the "should" or das sollen aspects, where laws containing general rules serve as guidelines for individuals to behave in society.

Supreme Court decision

The Supreme Court (abbreviated as MA) together with the Constitutional Court (abbreviated as MK) are state institutions that exercise judicial power in Indonesia as stipulated in Article 24 Paragraph (2) of the 1945 Constitution. Together with the Judicial Commission (KY),

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the three are state judicial institutions in charge of oversee the implementation of applicable laws. MA is a court of justice or court of justice. Meanwhile, the Constitutional Court is more inclined as a court of law or court of law.

MA is a state institution authorized to adjudicate at the cassation level, examine statutory regulations under the law against the law, and has other powers granted by law. According to Law Number 4 of 2004 concerning judicial power, article 11 paragraph (1), the Supreme Court is the highest state court of the four judicial environments as referred to in Article 10 paragraph (2) the judicial bodies under the Supreme Court include judicial bodies in the environment of general courts, religious courts, military courts and state administrative courts. Whereas Article 1 and Article 2 of Law Number 14 of 1985 concerning the Supreme Court states: Article 1: The Supreme Court is a State High Institution as referred to in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number: III/MPR/1978. Whereas in article 2 it is explained: The Supreme Court is the highest court of all judicial environments which in carrying out its duties is independent from government influence and other influences, so that the Supreme Court can examine and decide on requests for cassation, disputes regarding the authority to adjudicate, and requests for review of court decisions that has obtained permanent legal force; Providing legal advice, whether requested or not, to high state institutions; Provide legal advice to the President as the head of state for granting and refusing clemency; Examine materially only against statutory regulations under the law; and Carry out other duties and authorities based on the law.

When can an action be canceled (canceled or invalid).

Various reading sources on state administrative law provide many theories regarding the various legal consequences that can occur if a decision does not meet legal requirements, which can be in the form of:

1. Canceled due to law: will result in the decision being canceled retroactively, starting from the date of issuance of the decision being canceled. The situation is returned to its original state before the issuance of the decision (ex tunc) and the legal consequences arising from the decision are deemed to have never existed. Decisions that can be canceled are declared null and void after being declared null and void by the judge or the competent authority and the cancellation is not retroactive. Thus legally the act and the legal consequences arising from it are deemed to have existed and are valid, until the issuance of a decision to annulment (ex nunc), unless the law determines otherwise.
2. Absolute annulment: that is, when the annulment of the decision can be demanded by everyone.

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3. Relative cancellation: namely a decision whose cancellation can only be demanded by certain people.

In simple terms, the concept of void, null and void and revocable is explained by Hadjon as follows: An invalid decision can result in "nietigheid van rechtswege", namely null and void, "nietig" (canceled) or "vernietigbaar" or can be cancelled. "Nietig" means that according to the law the act committed is considered non-existent. Consequently, in law the consequences of the act are deemed to have never existed, while "Vernietigbaar" means in law the act committed and its consequences are deemed to exist until the time of cancellation by a judge or other competent body. "Nietigheid van rechtswege" means that according to law the consequences of an act are considered non-existent without the need for a decision to cancel the act. Government actions can result in null and void, void, or can be canceled depending on the essence of whether there are deficiencies in the decision.

Whereas cancellations and legal consequences of decisions and or actions that are null and void, every decision and or action is always considered valid or rechmatig, until there is an annulment, this is the principle of the presumption of rechtmatig or presumptio iustae causa, so that every decision and action cannot be declared defects unless based on testing the validity of the decision.

According to the Big Indonesian Dictionary or abbreviated as KBBI, the term "invalid" is not specifically known, what exists is the definition of "legal" related to law, namely carried out according to law or law, regulations that apply even though etymologically, the meaning is void related to by law is invalid or invalid so it is difficult to interpret the difference etymologically null and void. It is different when viewed from the legal definition, namely based on statutory regulations which are currently regulated in the Government Administration Act. There are at least three terms that can be found related to the cancellation of Decisions and or Actions in the Government Administration Law, namely invalid, null and void.

Article 66 Paragraph (1) of the Government Administration Law which states that a Decision can only be canceled if there is a defect: a. authority; b. procedure; and or c. substance.
Article 71 Paragraphs (1) and (2) which state that:
(1) Decisions and/or Actions can be canceled when:
a. there is a procedural error; or
b. there is a substance error.
(2) The legal consequences of the Decisions and/or Actions as referred to in paragraph (1):
a. non-binding from the time it is canceled or remains valid until there is cancellation;
b. and ends after there is a cancellation

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The definition of invalid can be seen in

Article 19 Paragraph (1) which states that: What is meant by "invalid" is Decisions and/or Actions determined and/or carried out by Government Agencies and/or Officials who are not authorized so that they are deemed to have never existed or to be returned to their original state before Decisions and/or actions are determined and/or carried out and all legal consequences arising are deemed to have never existed.

Definitions and legal consequences of cancellation and invalidity of a Decision and/or Action can be seen in Articles 70-71 of the Government Administration Law which can be described as follows: null and void non-binding since the Decision and/or Action is stipulated; and is not binding from the time it is canceled or remains valid until there is cancellation; and all the legal consequences that arise are considered to have never existed. ends after cancellation.

In the event that a decision resulting in payment from state funds is declared null and void, the decision to cancel is made by a government official and/or superior official, the agency and/or government official must return the money to the state treasury. stipulate and/or carry out new decisions and/or Actions of Government Officials or based on court orders.

It can be concluded that the meaning of "invalid" for a KTUN is actually the same as the nietig concept in Administrative Law theory. regarding null and void in PTUN decisions, but in practice so far in PTUN, the application of null and void in PTUN decisions is the same as the definition contained in the Government Administration Law, so that the definition of the Government Administration Law is in line with practice so far at PTUN.

Supreme Court considerations

It should be realized that the Minister of Health of the Republic of Indonesia obtains attributive authority from the applicable laws and regulations to issue provisions regarding the procedures for nominating Candidates for Members of the Indonesian Medical Council, so that from the perspective of authority, it is in accordance with the mandate of Law Number 29 of 2004 concerning Medical Practice and Presidential Regulation Number 35 of 2008 concerning Procedures for Appointing and Termination of Membership of the Indonesian Medical Council but the content material is Article 1 Regulation of the Minister of Health of the Republic of Indonesia Number 81 of 2019 concerning Amendments to Regulation of the Minister of Health Number 496 / MENKES / PER /V/2008 concerning Procedures Proposal for Prospective Members of the Indonesian Medical Council which determines: The provisions of Article 6 in the Regulation of the Minister of Health Number 496 / Menkes / Per / V / 2008 concerning Procedures for Proposing Candidates for Members of the Indonesian Medical Council, amended so that it reads as follows:

Article 6

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(1) In the event that the leadership of each element and the Indonesian Medical Council for the current period as referred to in Article 2 paragraph (1) and paragraph (2):

a. does not nominate candidates for members of the Indonesian Medical Council;
b. the number proposed is less than 2 (two) times the number of representatives of each member of the Indonesian Medical Council; and/or;
c. the proposed candidate for members of the Indonesian Medical Council does not meet the requirements; The Minister may propose candidates for members of the Indonesian Medical Council to the President;

(2) In proposing the membership of the Indonesian Medical Council as referred to in paragraph (1), the Minister still considers the representation of each element."

Therefore, hierarchically, the sources of these laws are higher laws and regulations, namely Law Number 29 of 2004 concerning Medical Practice, which is then elaborated in Presidential Regulation Number 35 of 2008 concerning Procedures for Appointing and Termination of Membership of the Indonesian Medical Council, so that The Supreme Court is guided by these two regulations namely Article 14 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice regulates:

(1) The number of members of the Indonesian Medical Council is 17 (seventeen) people consisting of elements from:

a. 2 (two) medical professional organizations;
b. Dental professional organization 2 (two) people;
c. Association of medical education institutions 1 (one) person;
d. Dental education institution association 1 (one) person;
e. Medical College 1 (one) person;
f. College of dentistry 1 (one) person;
g. 2 (two) teaching hospital associations;
h. Community leaders 3 (three) people;
i. Ministry of Health 2 (two) people;
j. Ministry of National Education 2 (two) people;

(2) The procedures for selecting community leaders as referred to in paragraph (1) are regulated by the Indonesian Medical Council Regulations;

(3) The membership of the Indonesian Medical Council is determined by the President on the recommendation of the Minister;

(4) In proposing the membership of the Indonesian Medical Council, the minister must be based on suggestions from organizations and associations as referred to in paragraph (1);

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(5) Provisions regarding procedures for appointing members of the Indonesian Medical Council are regulated by a Presidential Regulation.

These provisions have been followed up with Presidential Regulation Number 35 of 2008 concerning Procedures for Appointing and Termination of Membership of the Indonesian Medical Council. So that the provisions mentioned above have been regulated rigidly regarding the main authority in proposing candidates for members of the Indonesian Medical Council who come from the elements as mentioned in Article 14 paragraph (1) letters a to f of Law Number 29 of 2004 are in each each organization and association represented by the respective heads of these organizations and associations and if interpreted grammatically, this authority is absolute/absolute as indicated by the existence of the "must" clause in Article 14 paragraph (4) of Law Number 29 of 2004, whereas the role of the Minister of Health of the Republic of Indonesia in the process of nominating candidates for members of the Indonesian Medical Council is merely to forward proposals from the respective organizations and associations.

So that the proposals from these organizations and associations serve as the basis for the Minister to nominate Candidates for Members of the Indonesian Medical Council which are imperative or command in nature. and the Dentistry Council as independent institutions, so that it is appropriate if the nomination of prospective members is carried out by the organization and association that oversees it (Roesli et al., 2017). Therefore the Government, in this case represented by the Minister should not take this authority because apart from reducing objectivity in proposing candidates for members of the Indonesian Medical Council, it can also reduce the independence of Indonesian Medical Council Members in carrying out the functions, duties and authorities of the Indonesian Medical Council. Tony, 2014).

In addition, in the order of legislation known as the principle of lex superiori derogat legi inferiori, which means that lower regulations may not conflict with higher rules so that in order to measure consistency, lower regulations should refer to higher rules, so reference rules that is what will be included in the considerations. In its consideration, the Supreme Court also considered that the Minister of Health had deviated from the regulations that were used as references in the preamble, namely the provisions of Article 14 paragraph (4) of Law Number 29 of 2004 concerning Medical Practice juncto Article 5 of Presidential Regulation Number 35 of 2008 concerning Procedures Appointment and Termination of Membership of the Indonesian Medical Council, so that the Supreme Court is of the opinion, what the government is doing, in this case the Minister of Health, is contrary to the two laws and regulations.

So that in carrying out the Government Functions in the implementation of Government Administration, Government Officials are given the authority to exercise discretion as an effort to

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overcome concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there are government stagnation. With regard to the authority to nominate candidates for members of the Indonesian Medical Council, laws and regulations have provided clear arrangements, so that there are problems of non-fulfillment of the requirements for candidates for members of the Indonesian Medical Council for the 2019-2024 period which will replace the term of service for members of the Indonesian Medical Council for the 2014-2019 period should be resolved with other mechanisms, other than those that have been clearly regulated in laws and regulations; That based on Article 7 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, it regulates that Government Officials are obliged to carry out Government Administration in accordance with the provisions of laws and regulations, government policies, and AUPB, then in paragraph (2) letter a it is also regulated that Government Officials have the obligation to make decisions and/or Actions in accordance with their authority.

Therefore, in carrying out Government Administration that occurred in the process of proposing candidates for members of the Indonesian Medical Council, the Government, in this case the Minister of Health, has acted contrary to the applicable laws and regulations and has acted not in accordance with its authority. Therefore Regulation of the Minister of Health of the Republic of Indonesia Number 81 of 2019 concerning Amendments to Regulation of the Minister of Health Number 496 / MENKES / PER V/2008 concerning Procedures for Proposing Candidates for Members of the Indonesian Medical Council is contrary to the provisions of higher laws and regulations, namely Article 14 paragraph (4) Law Number 29 of 2004 concerning Medical Practice juncto Article 5 Presidential Regulation Number 35 of 2008 concerning Procedures for Appointing and Termination of Indonesian Medical Council Membership, Article 7 paragraph (1) and paragraph (2) letter a of Law Number 30 of 2014 concerning Government Administration, therefore the review of laws and regulations under the proposed law does not have binding legal force so it is ordered to revoke the object of application in this case the Regulation of the Minister of Health of the Republic of Indonesia Number 81 of 2019 concerning Amendments to Regulations of the Minister of Health Number 496/MENKES/PER/V/200 8 .

Legal Consequences of Supreme Court Decisions

The Court's decision which has legal force can still be used as evidence with positive definite force, that what the judge has decided is deemed correct so that proof to the contrary is not permitted. That what has been decided by the judge must be considered correct (resjudidicata proveretate habetur) is a fundamental principle in the decision of the examiner of the law, but the executive power of a decision that has binding legal force alone is not sufficient and will mean

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nothing if the decision cannot be realized. or executed (Prang, 2011). Therefore a decision that has executive power is a decision that stipulates its rights and law explicitly to be realized through execution by state instruments. Several factors inhibiting law enforcement in Indonesia, the seven factors are:

Weak political will and political action of the leaders of this country, to become the law as commander in chief, the existing laws and regulations still reflect more on the political interests of the rulers than the interests of the people, low moral integrity, credibility, professionalism and legal awareness of law enforcement officials, minimal facilities and infrastructure as well as facilities that support the smooth running of the law enforcement process, the level of awareness and legal culture of the community is lacking and lacking, the law enforcement paradigm is still comprehensive and systematically positivist-legalistic.

4. CONCLUSION

The validity of a decision and or can be seen from 3 aspects, namely authority, procedure and substance which can be tested based on laws and regulations, AUPB, court decisions, and whether or not there is a juridical defect. So that decisions or actions of government administration are declared invalid if they are wrong in terms of authority and declared null and void if they are wrong in terms of procedure and/or substance. In KBBI, the term "invalid" is not specifically known, what exists is the definition of "legal" related to law, namely carried out according to law or law, regulations that apply even though etymologically, the meaning of null and void related to law is not valid or invalid so it is difficult to interpret the difference etymologically invalid and invalid. It is different when viewed from the legal definition, namely based on statutory regulations which are currently regulated in the Government Administration Act. Therefore, in accordance with the consideration of the Supreme Court, if the changes to the Minister of Health are enacted, it is considered as interference by the government cq the Ministry of Health towards KKI.

If a decision does not meet the legal requirements, it will result in being null and void by law so that the decision being canceled is retroactively effective, starting from the date of issue of the decision being canceled. So that the situation is returned to its original state as it was before the issuance of the decision (ex tunc) and the legal consequences that have arisen from the decision are deemed to have never existed. Illegal means not binding since the Decision and/or Action is stipulated and all legal consequences arising are deemed to have never existed. Meanwhile, null and void means that it is not binding from the time it was canceled or remains valid until the cancellation and ends after the cancellation. Therefore, all derivative decisions made based on the

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annulled law are also considered invalid, including the Decree of the President of the Republic of Indonesia No. 55/M of 2020 concerning appointments KKI members for the period 2020 to 2025.

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