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## LEGAL CONCEPTUALISM OF FOREIGN CITIZENS AS APPLICANTS FOR THE RIGHT TO MATERIAL EXAMINATION

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**ABSTRACT;** *One of the powers possessed by the Supreme Court of the Republic of Indonesia is the right of judicial review. Applicants who can apply for the right of judicial review are only Indonesian citizens, indigenous peoples, and civil legal entities. This makes foreign nationals do not have the right to apply for judicial review rights. From this, the researcher raises two problem formulations, namely 1) how are the rights of foreign citizens in reviewing statutory regulations under the law against the law as the fulfillment of human rights in Indonesia; and 2) what is the conceptualism of the legal standing of foreign citizens as applicants in cases of judicial review rights in Indonesia. The results of the research found that granting rights to foreigners in making requests for judicial review to the Supreme Court included granting the right to freedom of expression and the right to a decent life in the country of residence which is a form of upholding human rights. The concept of granting legal standing to foreigners is given only to statutory regulations governing foreigners so that this can limit the right of foreigners to become applicants through amendments to the Supreme Court Law.*

**Keywords:** Legal Standing; The Rights of Material Examination; Foreign Citizens; Human Rights.

### INTRODUCTION

Indonesia has a long history of its highest court since pre-independence. The assertion of the holder of the authority of the highest court in Indonesia is the ratification of the 1945 Constitution of the Republic of Indonesia on August 18, 1945.<sup>1</sup> In article 24 of 1945 Constitution, it emphasizes the Supreme Court (MA) as the highest institution holding judicial power as the highest judicial power holder.<sup>2</sup> Changes in political dynamics in post-independence Indonesia have affected the position of the Supreme Court as the highest judicial institution. In 1947, the period before the recognition of state sovereignty by the Netherlands, the power of the Supreme Court only covered the capital city of Yogyakarta and the areas under it. Likewise in 1950 when the territory of Indonesia became a Union, power only covered the main territory of Indonesia so that it was divided into assemblies. In further developments, after the stipulation of Law no. 14 of 1970 concerning Main Provisions of Judicial Power defines the Supreme Court as the highest state court.<sup>3</sup>

One of the authorities of the Supreme Court is to examine laws and regulations against laws in accordance with Article 24A paragraph (1) of the 1945 Constitution, one of which is about examining laws and regulations under laws, emphasized in Supreme Court Regulation Number 1 of 2011 regarding Right to Judicial Review (Supreme Court Regulation No. 1/2011).<sup>4</sup> The Supreme Court has the right to evaluate a material contained in statutory regulations under the law against higher regulations. If the community feels that their rights have been violated by a regulation, they can submit an application to the Supreme Court. The implementation of this decision is *contrarius actus*, which means that it does not directly declare the results of the test to be contradictory but rather to hand it over to the institution where the rule existed.<sup>5</sup> The intended

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<sup>1</sup> Mahkamah Agung. (1986). *Sejarah Berdirinya Mahkamah Agung Republik Indonesia*. Jakarta: Mahkamah Agung, p. 13.

<sup>2</sup> Pasal 24 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>3</sup> Pasal 10 ayat (2) undang-Undang Nomor 14 Tahun 1970 tentang Ketentuan-Ketentuan Pokok Kekuasaan Kehakiman.

<sup>4</sup> Ramadhan, F., Efendi, S., & Rafiqi, I.D. (2022). Penentuan Jenis Produk Hukum dalam pelaksanaan Putusan Mahkamah Agung (kajian Terhadap Tindak Lanjut Putusan Mahkamah Agung 28/P/HUM/2018) (*Determination of Types Legal products in Implementation of The Jurisdiction Supreme Court Material Testing Rights: The Study of Follow Up on Supreme Court Decisions 28P/HUM/2018*). *Jurnal RechtsVinding*, 11(1): 56. <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/850/289>

<sup>5</sup> *Ibid*, p. 3.

applicant is only limited to Indonesian citizens, both individually and in groups, the rights of foreign nationals are not explained in applying for judicial review rights. Even though there are many regulations that discuss the rights or interests of foreign nationals in Indonesia.

The rapid development of the era often erodes the rights of citizens by itself. Moreover, the government's role as the only regulator in the country makes it prone to violations in the field of legislation. Abroad as in the United States there are legal remedies for judicial review in the Supreme Court between laws against the Federal Constitution.<sup>6</sup> When there is a violation in the realm of law, the applicant can request an annulment to the Supreme Court. As an example is the case of *Marbury v. Madison* (1803) which resulted in a decision that canceled Section 13 Judiciary Act 1789.<sup>7</sup> Even though the nature of the decision was *ultra petita*, the decision of the United States Supreme Court at that time became a legal discovery of the judicial review process in the world.<sup>8</sup>

Judicial review authority in Indonesia is held by the Constitutional Court and the Supreme Court. The Constitutional Court has judicial review authority limited to the level of laws and government regulations with a focus on examining the 1945 Constitution as the *staatsfundamentalnorm* of the Indonesian state.<sup>9</sup> So that when the Constitutional Court examines statutory regulations other than laws and regulations, the petition for review cannot be accepted because the court does not have the authority to review them.<sup>10</sup> Then the Supreme Court has the right and authority for judicial review (usually referred to as the authority for Judicial Review Rights) to examine statutory regulations that lie under the law with the touchstone of the law which forms the basis for remembering the object of the review application regulation.<sup>11</sup> Initially, the Supreme Court had the authority to judicially review laws against the 1945 Constitution, but after the reform, this authority was transferred to the Constitutional Court and the Supreme Court did not have the authority to review laws again. The basis of this is oriented to the Austrian Constitutional Court system which has its own institution to adjudicate a law that is suspected of violating the country's constitution.<sup>12</sup>

The government through the President and/or DPR as a positive legislator regulates all aspects of people's lives in the form of regulations that are *regeling* in nature.<sup>13</sup> This is also inseparable from the regulation of foreign citizens in Indonesia. The legal problem of the judicial review right is the absence of applicants who are foreign nationals when their rights are violated by the enforcement of a rule, in this case the provisions in Article 7 Paragraph (1) letter d – g of Law Number 12 of 2011 concerning Formation of Legislation (hereinafter referred to as UU P3) which states that “*Types and hierarchies of regulations are as follows:.....d. Government Regulation (PP) e. Presidential Regulation (Perpres); f. Provincial Regulation (Perda); and g. District/City Regional Regulations (Perda).*”<sup>14</sup> Apart from the regulations referred to in Article 7 Paragraph (1) of the P3

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<sup>6</sup> Qanar, N. (2012). Kewenangan Judicial Review Mahkamah Konstitusi. *Jurnal Konstitusi*, 1(1): 11. **Lihat juga** Doni Silalahi, S. A. (2016). Kewenangan Yudisial Review Mahkamah Agung Terhadap Peraturan Perundang-Undangan di Bawah Undang-Undang. *Jurnal Nestor Magister Hukum*, 3(3), 209848.

<sup>7</sup> *Ibid*, p. 5.

<sup>8</sup> Azmi, M.R. (2019). Dinamika Perubahan Konstitusi Melalui Kebiasaan Ketatanegaraan dan Putusan Hakim. *Jurnal Cahaya Keadilan*, 7(2): 384.

<sup>9</sup> Lihat Pasal 24C Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. **Lihat juga** Setiadi, W. (2022). *Ilmu & Pembentukan Peraturan Perundang-Undangan*. Jakarta: Damera Press, hlm. 26. **Lihat juga** Ansori, L. (2020). *Legal Drafting: Teori dan praktik Penyusunan Peraturan Perundang-Undangan*. Depok: Rajawali Pers, hlm. 21.

<sup>10</sup> Tim Penyusun Hukum Acara Mahkamah Konstitusi. (2010). *Hukum Acara Mahkamah Konstitusi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, hlm. 48.

<sup>11</sup> Lihat Pasal 24A Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. **Lihat juga** Syamsuddin, A. (2021). *Proses & Teknik Penyusunan Undang-Undang Edisi Ke-3*. Jakarta: Sekretariat Jenderal Dewan Perwakilan Rakyat Republik Indonesia, hlm. xix.

<sup>12</sup> Asshiddiqie, J. (2005). *Model-Model Pengujian Konstitusional di Berbagai Negara*. (Jakarta: Konpress), hlm. 6 – 9. **Lihat juga** Isra, S. (2015). Titik Singgung Wewenang Mahkamah Agung dengan Mahkamah Konstitusi. *Jurnal Hukum dan Peradilan*, 4(1): 18. **Lihat juga** Siahaan, M. (2009). Peran Mahkamah Konstitusi dalam Penegakan Hukum Konstitusi. *Jurnal Hukum*, 16(3): 359. **Lihat juga** Nugraha, X., Izzaty, R., & Anira, A. (2020). *Constitutional Review di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 48/PUU-IX/2011: Dari Negative Legislator Menjadi Positive Legislator*. *Rechtidee*, 15(1): 2. **Lihat juga** Passaglia, P. (2016). Making a Centralized System of Judicial Review Coexist with Decentralized Guardians of the Constitution: The Italian Way. *The Italian Law Journal*, 2(2): 408.

<sup>13</sup> Syamsuddin, A. (2021). *Proses & teknik Penyusunan Undang-Undang Edisi Ke-3*. Jakarta: Sekretariat Jenderal Dewan Perwakilan Rakyat Indonesia, hlm. xix, hlm. 62. **Lihat juga** Fauzan, M. (2022). *Perluasan Kewenangan Hakim dalam Pengeksekusian Putusan Peradilan Tata Usaha Negara dan Relevansinya dengan Sila Ke-5 Pancasila*, dalam Book Chapter Eksistensi Nilai-Nilai Pancasila di Era Digital Society 5.0 Melalui Semangat Bela Negara. Bogor: Idemedia Pustaka Utama, hlm. 19.

<sup>14</sup> Lihat Ketentuan Pasal 7 Ayat (1) Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia

Law, there are also other regulations or institutional regulations that may become the object of an application for judicial review rights (HUM) at the Supreme Court.<sup>15</sup> However, there is no legal remedy for foreigners whose rights have been violated by the enactment of a statutory regulation.

It is undeniable that arrangements for foreign nationals in Indonesia are not always regulated in laws, but are also contained in statutory regulations which are located under laws. This can create the potential for violations committed by the government in making a statutory regulation on the rights of foreign citizens in Indonesia. In fact, when humans face the law, their rights must be guaranteed, one of which is the guarantee of the rights of foreign nationals to apply for the right to judicial review to the Supreme Court when there is a violation of the enforcement of laws and regulations under the law. So that there is still a legal vacuum regarding the legal standing of foreign nationals in cases of judicial review rights.

## PROBLEM

- 1) How are the rights of foreign citizens in reviewing statutory regulations under laws against laws as fulfillment of human rights in Indonesia; And
- 2) How is the conceptualism of the legal standing of foreign citizens as applicants in cases of judicial review rights in Indonesia.

## RESEARCH METHODS

This research is a normative juridical research with statutory and conceptual approaches. Normative juridical research is legal research that discusses positive legal norms (*Ius Constitutum*) as its main object.<sup>16</sup> In this research, law is not seen as mere utopia but has been concretized by writing in the form of norms as well as institutions and principles. Normative juridical research is also often said to be dogmatic research that examines and develops arguments and positive law intentions with logical structures.<sup>17</sup> The statutory approach is the study of laws and regulations that have relevance to the topic or problem of the research focus.<sup>18</sup> In this case, the researcher used the 1945 Constitution of the Republic of Indonesia, Law Number 14 of 1985 concerning the Supreme Court and its amendments and Supreme Court Regulation Number 1 of 2011 concerning the Right to Judicial Review. The conceptual approach is an approach that departs from opinions or doctrines that are developed and recognized in the science of law.<sup>19</sup> In the case of this research, the researcher used the theory of human rights, the theory of state sovereignty, the theory of authority and the theory of procedural law of judicial rights as a knife for the analysis of this research.

## DISCUSSION

### **Rights of Foreign Citizens in Examination of Statutory Regulations under the Law Against the Law as the Fulfillment of Human Rights in Indonesia**

Human Rights (HAM) are rights that are inherent in every human being as basic or basic rights (Nurdiansyah, 2023).<sup>20</sup> Budimansyah believes that human rights are a gift from God to humans, are noble and holy (Hidayat et al., 2022). Human rights are one of the manifestations of the ideals of the Indonesian people to prosper their nation. In achieving these goals, the government makes regulations in order to pay attention to the rights obtained by the community. Human rights are regulated in the state constitution, namely in Article 28 A-J of the 1945 Constitution. Further explanation on human rights is confirmed by Law no. 39 of 1999 concerning Human Rights which states that human rights must be respected, upheld and protected by the state, government and

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Nomor 5234) sebagaimana terakhir kali telah diubah pada Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>15</sup> Lihat Pasal 8 Ayat (1) jo. Pasal 9 Ayat (2) Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234).

<sup>16</sup> Soekanto, S., & Mahmudji, S. (2003). *Penelitian Hukum Normatif, Suatu Tujuan Singkat*. Jakarta: Rajagrafindo Persada, p. 13.

<sup>17</sup> Wiradipradja, E.S. (2015). *Penuntun Praktis Metode Penelitian dan Penulisan Karya Tulis Ilmiah Hukum*. Bandung: Keni Media, p. 5. **Lihat juga** Marzuki, P.M. (2005). *Penelitian Hukum: Edisi Revisi*. (Jakarta: Kencana Prenada Media Group), p. 47.

<sup>18</sup> Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram: Mataram University Press, p. 56.

<sup>19</sup> Marzuki, P.M. Op.Cit, p. 93 – 95.

<sup>20</sup> Nurdiansyah, M. A. (2023). Penerapan kebijakan Komutasi Pidana Mati Pada RKUHP dalam Perspektif Hukum dan Hak Asasi Manusia. *Jurnal Hukum dan HAM Wara Sains*, 2(1): 22.

society.<sup>21</sup> In the international scope, human rights are also an issue of concern, the 1948 Universal Declaration of Human Rights (DUHAM) is a declaration regarding the recognition of individual rights.

The essential concepts related to human rights have been introduced by John Locke through Natural Rights Theory.<sup>22</sup> Inherent rights such as the right to life, the right to freedom, the right to property cannot be revoked by the state. In its development, Karel Vasak conveyed his thoughts on the division of human rights generations, namely the first generation (liberte), second generation (egalite) and third generation (fraternity).<sup>23</sup> The meaning of freedom in the first generation often represents civil and political rights. In contrast to the second generation which emphasizes equality in the form of protection of economic, social and cultural rights.<sup>24</sup> As for the third generation, the background of the demands of developing countries voiced the importance of a just international order so as to bring about international cooperation.

The concept of the first generation was motivated by demands to break away from colonial countries, namely the outbreak of the United States revolution in the 17th and 18th centuries. The Sipol concept places the state not playing an active role because it upholds the right to freedom of movement, political rights, the right to life and others. Civil rights are recognized internationally by the International Covenant on Civil and Political Rights Established by General Assembly Resolution 2200 A (XXI) dated 16 December 1966, open for signature, ratification and accession. This means that the countries of the world have agreed and agreed to respect civil and political rights. Civil and political rights contain basic democratic rights and emphasize individual freedom in relation to the state.

The demand to fulfill the basic needs of the state is the background for the emergence of Egalite or Social and Social Security. The state acts more actively and effectively in meeting the needs of its people in the form of the right to education, the right to health, the right to food and others. The Ekosob right has been recognized and contained in the DUHAM. Related rights are Workers' Rights which are maintained under the ILO labor organization. The right to work is part of human dignity, including through the provision of fair and decent wages. For workers, it means anyone who devotes his energy, both native citizens and foreign nationals.

The granting of rights to foreigners in making requests for judicial review to the Supreme Court includes the granting of the right to freedom of expression and the right to obtain a decent life in the country of residence which is a form of upholding human rights. Everyone has the right to freedom of opinion and expression. Foreigners have personal interests that must be respected if they intersect with applicable positive law. However, the granting of these rights needs to be limited, only laws concerning the rights of foreigners, both Law No. 6 of 2011 concerning Immigration and Government Regulation Number 34 of 2021 on the Use of Foreign Workers. This is one of the enforcement of human rights for foreigners who stop in Indonesia.

### **The Concept of Legal Standing for Foreign Citizens as Applicant in Material Examination Rights Cases**

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<sup>21</sup> See Pasal 1 (1) Undang-Undang No. 39 Tahun 1999 tentang Hak Asasi Manusia.

<sup>22</sup> Andini, S.D. (2022). Universalisme dan Relativisme Budaya dalam penegakan HAM Terhadap kasus Kerangkeng Manusia dan Perbudakan Modern. *Widya Yuridika: Jurnal Hukum*, 5(2): 332. **Lihat juga** Samekto, F.X.A. (2019). Menelusuri Akar Pemikiran Hans Kelsen Tentang Stufenbeautheorie dalam Pendekatan Normatif-Filosofis. *Jurnal Hukum Progresif*, 7(1): 9. **Lihat juga** Basuki, U. (2018). HAM, Islam dan Konstitusi: Mengkaji Nilai-Nilai Hak Asasi Manusia Islam dalam UUD 1945. *Tanjungpura Law Journal*, 2(1): 64.

<sup>23</sup> Salim, A., & Suyadi, A. (2020). Hak Politik Individual Pra dan Pasca Menjadi Narapidana Dalam Sistem Ketatanegaraan. *Rechtsregel Jurnal Ilmu Hukum*, 3(1): 3. **Lihat juga** Hariri, A., Rahayu, L.P., Utami, C.B., Firman, E., & Hidayat, N.A. (2021). State Responsibility for the Fulfillment of the Right to Indonesia Citizen Health Constitutional Perspective. *Proceedings of the 2 nd International Conference on Law Reform (INCLAIR 2021)*. Netherlands: Atlantic Press, hlm.164. **Lihat juga** Nugroho, H.P. (2021). Etikolegal Hal Menolak Perawatan Pada Masa Pandemi: Pertentangan Hak Individu dan Masyarakat. *Jurnal Hukum Kesehatan Indonesia*, 1(1): 41. **Lihat juga** Sharaningtyas, Y.N. (2016). Gugatan Warga Negara (Citizen Law Suit) dan Justiciability Pemenuhan Hak Atas Lingkungan Hidup yang Baik dan Sehat. *Kertha Patrika*, 38(1): 40. **Lihat juga** Perwira, I. (2014). Memahami Kesehatan sebagai Hak Asasi Manusia. *Jurnal ELSAM*, hlm. 8.

<sup>24</sup> Hidayat, E. (2016). Perlindungan Hak Asasi manusia dalam Negara Hukum Indonesia. *ASAS Jurnal Hukum Ekonomi Syariah*, 8(2): 83. **Lihat juga** Sari, R.K., & Budoyo, S. (2019). Perkembangan pengaturan Hak Asasi Manusia (HAM) dalam Hukum di Indonesia. *Jurnal Meta-Yuridis*, 2(1): 94. **Lihat juga** Dharmawan, N.K.S. (2014). Relevansi Hak Kekayaan Intelektual dengan Hak Asasi Manusia Generasi Kedua. *Jurnal Dinamika Hukum*, 14(3): 519.

Legal Standing can be interpreted as a situation in which a person or group of people is declared or determined to fulfill the requirements and therefore has the right to file an application or lawsuit before a court.<sup>25</sup> Legal standing also means reasons that can be accepted by the applicant or plaintiff to be able to file a lawsuit or request to the competent court in accordance with their competence when there is a dispute or violation of law.<sup>26</sup> In the context of the Constitutional Court, which has more concrete arrangements regarding the legal standing of a judicial review applicant, at least has the condition that the applicant must be directly affected or there is a violation of the right to the application of a law and has the following qualifications: “a) *an individual with Indonesian citizenship; b) indigenous peoples who still exist and whose existence is recognized and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia; c) public or private legal entities; d) state institutions.*”<sup>27</sup>

The procedural law of the Constitutional Court as a quo has not yet recognized the existence of a foreign citizen applicant. However, when compared with several previous studies, foreign national applicants may have the right to submit a judicial review to the Constitutional Court on the basis of human rights.<sup>28</sup> So that it is not impossible for foreign nationals to also apply for the Right to Judicial Review to the Supreme Court as a form of protection for the rights of the foreign nationals concerned.

In the context of the procedural law for judicial review as regulated in Article 31A Paragraph (2) of Law Number 3 of 2009 concerning the Third Amendment to Law No. 14 of 1985 concerning the Supreme Court (hereinafter referred to as the Supreme Court Law) indicates that a party that can grant a request for judicial review is “a) *an individual with Indonesian citizenship; b) indigenous peoples who still exist and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated in law; or c) public legal entity or private legal entity.*”<sup>29</sup> From the provisions of the article above, foreign nationals are not included in the classification of applicants for judicial review rights at the Supreme Court so that if a foreigner submits an application, the application cannot be accepted.<sup>30</sup>

The concept of granting legal standing to foreign citizens in cases of judicial review rights can be carried out through amendments to the Supreme Court Law because there are no limitations on granting rights in the Constitution to apply, especially in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that “*All Citizens share their position before law and government and are obliged to uphold that law and government without exception.*”<sup>31</sup> The phrase all citizens is not limited to Indonesian citizens only so that there is an opportunity for foreign nationals to be able to become applicants for the judicial review rights of laws and regulations which are located under the law against the law (Material Review Rights).

When compared with the theory of authority, the authority of the Supreme Court to adjudicate judicial review rights and all forms of implementation of procedural law originates from Article 24A Paragraph (1) of the 1945 Constitution and more detailed provisions (such as procedural law and so on) are regulated by law. So the authority of the Supreme Court is obtained through attribution through the 1945 Constitution and the Supreme Court Law because the theory of

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<sup>25</sup> Rahmah, I.F., Triningsih, A., Harumdani, A., & Kurniawan, N. (2011). Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat dalam Proses Pengujian Undang-Undang di Mahkamah Konstitusi. *Jurnal Konstitusi*, 8(5): 5 – 6. **Lihat juga** Mertokusumo, S. (1981). *Hukum Acara Perdata Indonesia cet. ke-3*. (Yogyakarta: Liberty, 1981), p. 23. **Lihat juga** Harjono. (2008). *Konstitusi sebagai Rumah Pemikiran Hukum Dr. Harjono, S.H., M.C.L Wakil Ketua MK*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 176.

<sup>26</sup> Lee, E.T., & Ellis, J.M. (2012). The Standing Doctrine’s Dirty Little Secret. *Northwestern University Law Review*, 107(1): 185. **Lihat juga**, Rosenkranz, N.Q. (2010). The Subjects of The Constitution. *Stanford Law Review*, 62(5): 1240.

<sup>27</sup> Lihat Pasal 51 Ayat (1) UU Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi (Lembaran Negara Tahun 2003 Nomor 98, Tambahan Lembaran Negara Nomor 4316) yang terakhir kali diubah oleh Undang-Undang Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

<sup>28</sup> Anwar, A. (2011). Legal Standing Pemohon Berkewarganegaraan Asing untuk Memohon Pengujian Undang-Undang terhadap UUD 1945 pada Mahkamah Konstitusi. *Jurnal Konstitusi*, 3(1): 13. **Lihat juga** Yusa, I.G., Sudibya, K.P., Aryani, N.M., & Hermanto, B. (2018). Gagasan Pemberian Legal Standing bagi Warga Negara Asing dalam Constitution Review. *Jurnal Konstitusi*, 15(4): 762 – 763.

<sup>29</sup> Lihat Ketentuan Pasal 31A Ayat (2) Undang-Undang Nomor 3 Tahun 2009 tentang Perubahan Ketiga Atas Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung.

<sup>30</sup> Lihat Ketentuan Pasal 31A Ayat (5) Undang-Undang Nomor 3 Tahun 2009 tentang Perubahan Ketiga Atas Undang-Undang Nomor 14 Tahun 1985 tentang Mahkamah Agung (Lembaran Negara Tahun 2009 Nomor 3, Tambahan Lembaran Negara Nomor 4958).

<sup>31</sup> Lihat Ketentuan Pasal 27 Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

attributional authority wishes that authority can only be obtained through laws.<sup>32</sup> Although in its development in Indonesia there is an expansion of the meaning of self-attribution in Article 12 Paragraph (1) of Law Number 30 of 2014 concerning Government Administration which states that "Government Agencies and/or Officials obtain Authority through attribution if: a) it is regulated in the Law The 1945 Constitution of the Republic of Indonesia and/or laws; b) is a new Authority or previously did not exist; and c) Attribution is given to government agencies and/or officials."<sup>33</sup> So that in this case, the government through the DPR together with the President as a positive legislator has the authority to amend Article 31A Paragraph (2) of the Supreme Court Law. This change requires the inclusion of provisions on the legal standing of foreign nationals as applicants for judicial review rights.

The construction of the concept of regulation on the rights of citizens of foreign citizenship to apply for judicial review rights must be limited and not for all regulations under the law. This is based on the theory of state sovereignty which requires that the state has full power over the legal arrangements in the country so that the state is free to regulate all kinds of matters within its legal jurisdiction.<sup>34</sup> The sovereignty of a country cannot be disturbed or intervened by anything, both domestic and foreign factors.<sup>35</sup> So that the limitation of these rights aims to realize state sovereignty over foreign citizens so that Indonesian citizens still have broader rights to apply for judicial review rights to the Supreme Court.

The restriction on the rights of foreign nationals is only limited to reviewing the regulations governing foreign nationals so that they have legal standing in the Supreme Court when they have the right to review the statutory regulations which are under the law in the future. When restricted in terms of these rights, foreign nationals are directed to review laws and regulations that do violate their rights as human beings. In addition, legal protection for the rights of foreign nationals when they are in Indonesia is guaranteed by the right to judicial review/judicial review.

The granting of this right will also have implications for changes in implementing regulations if the process of amending the Supreme Court Law goes through which includes provisions on the legal standing of foreign citizens. Amendments were made to Supreme Court Regulation Number 1 of 2011 concerning Right to Judicial Review. Even though the Perma currently does not include provisions on applicants being able to make Material Examination Rights applications, it is of course still necessary to include it in the Perma a quo so that potential Applicants can find out the complete procedure. The provisions in the Supreme Court Regulation must be in accordance with the amendments to the Supreme Court Law which have included provisions regarding the legal standing of foreign nationals as applicants, especially changes to Article 31A Paragraph (1) of the Supreme Court Law which regulates parties/legal subjects entitled to apply for judicial review rights.

## CONCLUSION

Foreign Citizens have the right to apply for judicial review rights to the Supreme Court based on civil and political rights. The granting of rights to foreigners in making requests for judicial review to the Supreme Court includes the granting of the right to freedom of expression and the right to obtain a decent life in the country of residence which is a form of upholding human rights. Foreigners have personal interests that must be respected if they intersect with applicable positive

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<sup>32</sup> Ridwan HR. (2020). *Hukum Administrasi Negara Cet. 16*. Depok: Rajagrafindo Persada, p. 102. **Lihat juga** Van Wijk, H.D., & Konijnenbelt, W. (1995). *Hoofdstukken van Administratief Recht*. Vuga: s Gravenhage, p. 99. **Lihat juga** Kosasih, A., Kenedi, J., & Mahdi, I. (2017). *Dinamika Hukum Administrasi Indonesia Mengenal Konstruksi Baru Hukum Administrasi Pasca Terbitnya Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan*. **Lihat juga** Fachruddin, I. (2004). *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*. Bandung: Alumni, p. 35 – 36.

<sup>33</sup> Lihat Ketentuan Pasal 13 Ayat (1) Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan (Lembaran Negara Tahun 2014 Nomor 292, Tambahan Lembaran Negara Nomor 5601).

<sup>34</sup> Yuhdi, M. (2016). Pergeseran Konsep Kedaulatan Rakyat Pasca Perubahan UUD NRI 1945. *Maksigama Jurnal Hukum*, 19(1): 27. **Lihat juga** Hingorani, R.C. (1982). *Modern International Law Second Edition*. New Delhi: Oxford & IBH Publishing Co. **Lihat juga** Kusumaatmadja, M. (2015). *Pengantar Hukum Internasional. Cet. 5*. Bandung: Alumni, hlm. 58.

<sup>35</sup> Aji, M.P. (2022). Sistem Keamanan Siber dan Kedaulatan Data di Indonesia dalam Perspektif Ekonomi Politik (Studi kasus Perlindungan Data Pribadi) *Cyber Security System and Data Sovereignty in Indonesia in Political Economic Perspective (Case Study of Personal Data Protection)*. *Politica*, 13(2): 232. **Lihat juga** Sodikin. (2019). Gagasan Kedaulatan Lingkungan dalam Konstitusi dan Implementasinya dalam Pelestarian Lingkungan Hidup. *Masalah-Masalah Hukum*, 48(3): 296. **Lihat juga** Asshiddiqie, J. (2009). *Green Constitution: Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jakarta: Rajawali Press, hlm. 109.

law. Moreover, there are many laws and regulations that regulate foreign citizens so that the restrictions on applicants in the Supreme Court Law must be changed.

The concept of granting the right to judicial review to foreigners is through amendments to the Supreme Court Law by amending the provisions of Article 31A of the Supreme Court Law. The granting of this right must be limited only to the review of statutory regulations under the law governing foreign nationals. Rules governing non-foreign citizens must be rejected by the court. This limitation is based on the theory of state sovereignty which requires that the state can regulate all of its elements as long as it is within its jurisdiction. So that from these restrictions can maximize the rights of foreign citizens in applying for judicial review rights at the Supreme Court. In addition, these restrictions can also provide wide space for Indonesian citizens to apply for judicial review rights to the Supreme Court if there is a violation in the preparation of statutory regulations under the law.

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