

# Constitutionality of Judicial Review Versus Judicial Review in Civil Cases Based on Constitutional Court Adjudication Number 108/PUU-XIV/2016

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## ABSTRACT

The availability of Judicial Review as one of the legal recourses in the judicial procedural law system is intended to protect Human Rights (HAM) without sacrificing the principle of legal certainty (*rechtszekerheid*), which is the foundation of the rule of law. The issue raised in this article is the allowance for more than one judicial review in civil cases since the implementation of PUU Number 108 anno 2016. This article applies normative legal research, which focuses on studying the principles and norms of positive law. The implications of existing. That Supreme Court ruling was based on the conflict in findings between the High Court's ruling 360 PK/Pdt/2008, which granted legal ownership of a contested property to PT Baktiparamita Putrasma, and the High Court's ruling 568 PK/Pdt/2016, which granted legal ownership to the heir H. Abdul Rachman Saleh. The ruling 568 PK/Pdt/2016 is now considered a judicial oversight or an intentional mistake.

**Keywords:** *Judicial Review, the implementation of PUU Number 108 anno 2016.*

## 1. INTRODUCTION

As the time comes forward, more problems will occur because of mutual interests between a person or parties. Conflicts will always happen with or without consent of the person or parties, by some people, defending their rights is one of their primary rights as people who lives in the nation of the law, in the court of every degree there will always be conflict whether it formed in private case of criminal or penal case. The limitation of PK/ civil (civil) requests can only be once based on Article 66 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court and has not changed in the two amendments to the law. Paragraph (1) of this Article 66 stipulates clearly and unequivocally that "application for reconsideration can be submitted only 1 (one) time". In the article's explanation, it turns out that there is no further explanation as, why the PK can only be submitted once.[1]

The limitation of judicial review in civil cases was strengthened by the Constitutional Court Adjudication Number 108/PUU-XIV/2016, which decided that the submission of judicial review other than criminal cases was only once. The legal consequence of the adjudication is that it is permitted to carry out a judicial review more than once, which applies specifically to criminal cases

and does not apply to civil law. Civil cases always end with a verdict, for every Judge's verdict usually, legal strive are requested by the plaintiffs or defendants to prevent any legal oversights from the verdict. [2] with every branch of justice, whether it is judicial justice, should not distinguish between any people, in between those who rich or poor, between those are aristocrats or not, or any absolute justice, there is no distinguished justice. [3]

In reality, the Supreme Court's adjudication Number 36 PK/Pdt/2018 annulled the judicial review of the previous case with the same case as in the Supreme Court of the Republic of Indonesia Adjudication Number 568 PK/Pdt/2016 dated 31st October 2016. This deviates from Article 24 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, Article 66 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004, and lastly by Law Number 3 In 2009, the Constitutional Court's adjudication Number 34/PUU-XI/2013, and the Constitutional Court's Adjudication Number 108/PUU-XIV/2016, all of which limit the review of more than one time in civil cases.

The conflict between facts and court adjudications and against the legal norms of the legislation, in this case, is Law Number 8 of 2015 j.o Law Number 10 of 2016

concerning the a quo case. Based on these provisions, the author wants to know about the review efforts in the context of civil law because if indeed the novum problem related to the criminal PK is something that is considered substantial, the author thinks so will the novum issue related to the civil PK or TUN, because maybe after the PK is submitted and decided, there is a substantial new state (novum) that has not been found at the time of the previous PK.

The above reality shows that the author sees the implementation of legal remedies for repeated judicial review in civil cases as evidence of legal developments in Indonesia, thus attracting the author's attention to consent in writing articles with the issue "Legal analysis of judicial review in civil cases is more once after the Constitutional Court Adjudication Number 108/PUU-XIV/2016." The problems that the authors raise are as follows:

1. What is the arrangement for judicial review of more than one time in civil cases after PUU Number 108 of 2016?
2. How is the implementation of judicial review more than once in civil cases after PUU No 108 of 2016?

## 2. METHODS

This research uses the normative method, using mainly primary legal materials. Legal materials are gathered by literature method by reading, analysing, and comparing the legal materials. Primary legal materials used are Codes, Supreme Court's Adjudications, and Constitutional Court's Adjudications. Statutes are also examined in this research (statutory approach). Since the implementation of PUU Number 108 anno 2016 restricts the availability of Judicial Review to only once per case, there have been legal cases where more than one Judicial Review was allowed based on the ruling 36 PK/Pdt/2018 by the Supreme Court.

## 3. RESULT AND DISCUSSION

### 3.1 Supreme Court's Adjudication Number 108/PUU-XIV/2016

In practice, reprinting in civil cases after the Constitutional Court Number 108/PU-XIV/2016, which explicitly prohibits re-establishing more than once in civil cases, is not applied in the Supreme Court. This can be seen in the judicial review of more than one civil case number 36 PK/Pdt/2018, which shows that the practice of reassembling more than once in civil cases is still practiced in the Supreme Court.

In the author's search results, that Defendant II or PT. BAKTIPARAMITA PUTRASAMA made legal efforts to request a judicial review of the case review or review of case Number 568 PK/Pdt/2016. Based on the second petition for review by Defendant II or PT. BAKTIPARAMITA PUTRASAMA The Supreme Court which examined and tried by deciding in its adjudication in case Number 36 PK/Pdt/2018, as follows:[2]

- Granted the petition for reconsideration from the Petitioner for Review of PT BAKTIPARAMITA PUTRASAMA;
- Canceled the Adjudication of the Supreme Court of the Republic of Indonesia Number 568 PK/Pdt/2016 dated 31st October 2016;

### 3.2 Case Position

- a. Relief Sought in 230/Pdt.G/2013/PN South Jakarta Case

The relief sought by the Plaintiff's lawsuit, requesting the South Jakarta District Court to give the order that having a Subsidiary quality, so the Judges that in charge could give the best order (*ex aequo et bono*).

- b. Order of the Court

Supreme Court was made a Judicial Review, with the order:

1. Denying the Plaintiff's Lawsuit (*niet ontvankelijke verklaard*);
2. Penalized the Respondent of Judicial Review to pay the court fee in every Court decree in the sum of Rp.2.500.000,00 (Two Million and Five Hundred thousand Rupiah)

- c. Reasoning Behind Judicial Review Case number 36/PK/Pdt/2018

The principal of this case, the applicant of the second Judicial Review by the date 13th July 2017, and before that, they were the respondent on the first Judicial Review in number 568/PK/Pdt/2016. The reasoning behind the applicant requesting for Judicial Review is to substantiate the court's order because there were 2 (two) contradictive orders by the assumption of the Judge's oversights in a quo case.

- d. Legal Judgment of the 2nd Judicial Review by the Council on the Case number 36/PK/Pdt/2018

The Judge's Judgement in the 2nd Judicial Review, the reason behind the Judicial Review request was able to allow, because of the contradictive of the orders of the court number 281/Pdt/Bth/2001/PN North Jakarta, *juncto* number 111/PDT/2003/PT Special Area Capital of Jakarta *juncto* number 499K/Pdt/2005 *juncto* number 360 PK/Pdt/2008, that ordered the object of the dispute is owned by Baktiparamita Putrasama Ltd., otherwise by the case number 2652 K/Pdt/2014 *juncto* number 242/PDT/2015/PT Special Area Capital of Jakarta *juncto* number 2652 K/Pt/2014 *juncto* number 568 PK/Pdt/2016 that ordered the object of the dispute was owned by H. Abdul Rachman Saleh (deceased)/his heirs. It was found that oversights of the judges and/or mistakes that were real in the order of the court number 230/Pdt.G/2013/PN South Jakarta *juncto* number 242/PDT/2014/PT Special Area of Capital Jakarta *juncto* number 2652 K/Pdt/2014 *juncto* number 568 PK/Pdt/2016.

### 3.3 Legal Judgment of the 2nd Judicial Review by the Council on the Case number 36/PK/Pdt/2018

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### 3.4 Legal Consideration for the 2nd Judicial Review Case Number 36 PK/Pdt/2018

Judges consideration about the granting of 2nd Judicial Review with the considerations:

- a.) First of all, object of dispute *a quo* that located in Nias 7 street, second district of Pegangsaan North Jakarta is owned by Sar'ih bin Paul according to Freehold Title Certificate number 78/Petukangan III dated 4th November 1974, Measurement Letter number 979/1974 named Sar'ih bin Paul 21.220m<sup>2</sup> width, by CV Griya Tirta with H. Abdul Rachman Saleh as the Director was used to be collateral to Industri Sandang Ltd. d/h Industri Sandang Jakarta Ltd. That has States-Owned Enterprises status. Because of the unfinished debt by CV Griya Tirta, according to the deed that has been reaching an agreement, has been handed over to National Debt Affair Agency;
- b.) secondly, the object of the dispute has been purchased by Baktiparamita Putrasama Ltd. Based by discharge and submission deed number 7 dated 25th January 1996, then authorized Building Rights Title Certificate number 9698/Pegangsaan Dua dated 30th November 2010 after the latest measurement, 18.762m<sup>2</sup> width, and the object of the dispute was managed by the applicant until the dispute held;
- c.) by the date 28th October 2001, the 3rd party *in casu* Baktiparamita Putrasama Ltd. Has been requested *Derden verzet* on the confiscation of the land deed has been granted by the court with justified the objection that the confiscated object is owned by the exoptant *in*

*casu* Baktiparamita Putrasama Ltd. Declared that confiscated object is invalid and must be revoked;

- d.) by the date 16th April 2013, H. Abdul Rahman Saleh requested a lawsuit to South Jakarta District Court case number 230/Pdt.G/2013/PN South Jakarta *juncto* number 242/PDT/2014/PT Special Region of Capital *juncto* number 2652K/Pdt/2014 *juncto* number 568 PK/Pdt/2016, and the court favored him;
- e.) the ownership of the object of the dispute by H. Abdul Rahman Saleh is just based on his own "Self-proclaim," not by *Recht title* given by the law. Because there was not any legal-based written proof that there was an assignment between him and Sar'ih bin Paul from Freehold Title Certificate number 78/Petukangan III that was made in front of Conveyancer because the land affair agency has registered the land has been told by Supreme Court Adjudication number 2652 K/Pdt/2014 dated 17th February 2015;
- f.) on the contrary, the ownership by the Judicial Review applicant as the buyer with good faith has been finalized and validated with Verdict number 281/Pdt/Bth/2001 North Jakarta *juncto* number 111/PDT/2003/PT Special Region of Capital *juncto* number 499 K/Pdt/2005 *junco* number 36 PK/Pdt/2008.

### 3.5 Analysis on the Implementation of Judicial Reviews More than Once in Private Case Number 36 PK/Pdt/2018 after the Constitutional Court Adjudication Number 108/PUU-XIV/2016

Based by 48th Act year 2009 about Judiciary Authority, article 24 section 2, 14th Act year 1985 about Supreme Court that has been changed by 5th Act year 2004 and the 2nd and the 2nd change with 3rd Act year 2009 article 66 section 1, declared that Judicial Review in Private Case is still in charge except in Penal or Criminal Law.

Law that regulates the restriction of Judicial Review more than once based by written above, reinforced by Supreme Court's Adjudication number 16/PUU-VII/2010, Constitutional Court's Adjudication number 45/PUU-XIII/2015, and Constitutional Court's Adjudication number 108/PUU-XIV/2016, those regulations explicitly forbade Judicial Review that occurs more than once in Private Case. However, Constitutional Courts also justify if there are 2 (two) verdicts contradict one another against the same case. According to the 10th Supreme Court's year 2009, it is possible to do the second Judicial Review.

In reality, based on the author's findings in the private case in Supreme Court's Adjudication, number 36/PK/Pdt/2018 canceled Supreme Court's Adjudication number 568 PK/Pdt/2016 dated 31st October 2016. The author was found that Supreme Court Adjudication

number 36/PK/Pdt/2018 cannot be legally allowed because it was contradictive with Act of Judiciary Authority, Act of Supreme Court, and Constitutional Court's Adjudication that explicitly allowed Judicial Review that occurs more than once only in Penal of Criminal Law.

Moreover, Supreme Court's Adjudication number 36 PK/Pdt/2018 canceled Supreme Court's number 568 PK/Pdt/2016 according to the author's finding that adjudication cannot be legally allowed. Author's argument, that adjudication based on the legal argumentation, that adjudication instead making some legal uncertainty, because of the adjudication is being contradictive with Supreme Court's Adjudication number 25 PK/TUN/2015 dated 24th June 2015 verdict; granting the Judicial Review request of H. Abdur Rachman Saleh (he was the plaintiff in the first-degree civil verdict) and canceled Supreme Court's Adjudication number 437 K/TUN/2013 dated 18th December 2013 that granted the request for cassation from the Chief of Agrarian Affair Agency in Administration City of North Jakarta, cassation applicant II by the Head of National Agrarian Affair Agency in DKI Jakarta Province.

The Judicial Review based by Supreme Court Adjudication number 25 PK/TUN/2015, the order was:

1. Granted the Plaintiff's lawsuit;
2. Canceling the object of dispute, which is:
  - a. Chief of Land Affairs Agency's Adjudication of DKI Jakarta number 192/HGB/BPN.31/2010 dated 20th August 2010 about Building Right Title to Baktiparamita Putrasama Ltd. Authorized by the Defendant I;
  - b. Building Right Title Certificate number 9698/Pegangsaan Dua, dated 30th November 2010 named Baktiparamita Putrasama Ltd. Authorized by Defendant II;
  - c. Letter number 661/31/72-300.7/IV/2012, dated 18th April 2012, about Request for Substitute Certificate, authorized by Defendant II.
3. Ordering Defendant I to revoke the Chief of Land Affairs Agency's Adjudication of DKI Jakarta number 192/HGB/BPN.31/2010, dated 20th August 2010 about Building Right Title Granting for Baktiparamita Putrasama Ltd. For 18.762m<sup>2</sup> width of the land. Furthermore, ordering to Defendant II:
  - a. Building Right Title Certificate number 9698/Pegangsaan Dua, dated 30th November 2010 named Baktiparamitha Putrasama Ltd. 18.762m<sup>2</sup> width of land;
  - b. Letter number 661/31/72-300.7/IV/2012, dated 18th April 2012, about Request for Certificate Substitution.

Ordering to Defendant II to authorize Substitute Certificate of Freehold Title number 78/Petukangan III named H. Abdul Rachman Saleh (Plaintiff).

## 4. CONCLUSION

Arrangements for judicial review more than once in civil cases with the perspective of Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law - Law Number 3 of 2009, and the Constitutional Court Adjudication Number 108/PUU-XIV/2016, expressly limit the judicial review may only be taken once.

Where eas the implementation of judicial review more than once in civil cases Number 108/PUU-XIV/2016 which limits the judicial review to only one time, there are facts of judicial review which exceed one time in civil cases based on the adjudication of the Supreme Court Number 36 PK/Pdt/2018 with legal considerations in the adjudication, namely there are conflicting adjudications between the adjudications of Case Number 360 PK/Pdt/2008, stating that the object of dispute belongs to PT Baktiparamita Putrasama. Meanwhile, in case Number 568 PK/Pdt/2016, the object of dispute belongs to H. Abdul Rachman Saleh (late)/heirs, and there was a judge's error and/or a fundamental error in the adjudication of case Number 568 PK/Pdt/2016.

## REFERENCES

- [1] Adami Chazawi, 2011, Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum dalam penyimpangan praktik dan peradilan sesat, cet. Ke-1, Tintamas, Jakarta.
- [2] Putusan Mahkmamah Agung Nomor 36 PK/Pdt/2018. h. 7.
- [3] Sudikno Mertokusumo, Hukum Acara Perdata Indonesia, (Yogyakarta: Liberty, 2009).
- [4] Adami Chazawi, Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum dalam Penyimpangan Praktik dan Peradilan Sesat, (Cet. II; Sinar Grafika: Jakarta, 2011), h.108.
- [5] Teungku Muhammad Hasbi as-Siddiqy, Beberapa Permasalahan Hukum Islam, cet. Ke-1 (Jakarta: Tintamas, t.t.).
- [6] Didik Harianto, Perspektif Hukum Islam Terhadap Penerimaan Peninjauan Kembali Mahkamah Agung (Studi Putusan Mahkamah Agung No 39 PK/Pid.Sus/2011), IN RIGHT Jurnal Agama dan Hak Azazi Manusia, Vol. 2, No. 2, Mei 2013.
- [7] Teungku Muhammad Hasbi as-Siddiqy, Beberapa Permasalahan Hukum Islam, cet. Ke-1 (Jakarta: Tintamas, t.t.)
- [8] Jimly Asshiddiqie. 2008, Menuju Negara Hukum Yang Demokratis, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta.

- [9] J. B. J. M. Ten Berge. 1996, *Besturen Door De Overheid*, W. E. J. Tjeenk Willink, Deventer, h. 34 – 38. Bandingkan dengan Ridwan HR, 2002, *Hukum Administrasi Negara*, UII-Press, Yogyakarta.
- [10] Frans Magnis Suseno, 1997, *Mencari Sosok Demokrasi; Sebuah Telaah Filosofis*, Gramedia, Jakarta
- [11] Jimly Asshiddiqie, *Perihal Undang-Undang*, h. 5-6. Lihat juga, Jimly Asshiddiqie 2005, *Model-Model Pengujian Konstitusional di Berbagai Negara*, Konpress, Jakarta. 2005
- [12] I Dewa Gede Palguna. 2009. *Constitutional Question: Latar Belakang dan Praktik Di Negara Lain serta Kemungkinan Penerapannya di Indonesia*.
- [13] Moh.Mahfud MD, 2010. *Konstitusi dan Hukum dalam Kontroversi Isu*, cet.ke-2, Rajawali Pers. Jakarta
- [14] Victor Ferreres Comella, “The Consequences of Centralizing Constitutional Review in A Special Court: Some Thoughts on Judicial Activism” dalam <http://www.utexas.edu/law/journals/tlr/abstracts/82/82ferreres.pdf>
- [15] James E. Mauch and Jack W. Birch. 1993, *Guide to the Successful Thesis and Desertation*, Third Edition, Marcel Dekker Inc, New York.
- [16] Jimly Asshiddiqie. 1998, *Teori & Aliran Penafsiran Hukum Tata Negara*. Ind. Hill-Co, Jakarta.