

Judicial Review Authority of the Articles of Association and Bylaws of Political Parties: Progressive Law Perspective

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ABSTRACT

Keywords:

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This study analyzes the Supreme Court's consideration in reviewing the Articles of Association and Bylaws of the House Ladder Political Party from the perspective of progressive legal thought rooted in Indonesian legal tradition. Using a doctrinal approach, this study applies content analysis to examine relevant legislation, constitutional provisions, legal doctrines, and case law. The findings reveal that judicial review decisions of regulations under the Constitution must be published in official channels such as the Regional Gazette or its supplement, depending on the nature of the reviewed regulation. In this context, the Supreme Court stated that the Articles and Bylaws in question do not qualify as statutory regulations subject to judicial review, since they were not issued by an authorized state institution under delegated legislative authority. However, the Court did not fully implement progressive legal reasoning, which allows the interpretation of legal norms to reflect living law and the public sense of justice. Progressive legal thought enables the law to evolve beyond formalistic boundaries, providing space for substantive justice, especially when positive law is silent or rigid. The study emphasizes the importance of continuously developing a systematic and philosophically grounded model of progressive legal theory to ensure that law aligns with the values and justice aspirations of the Indonesian people.

1. INTRODUCTION

Articles of Association and Bylaws House Ladder party legalized politics through a Ministerial Decree and announced in The State Gazette, has the status of a regulatory legislation below laws and Ministerial Decrees. Therefore, the Supreme Court has the authority to ensure that the Articles of Association and Bylaws House Ladder party politics are not contradictory to the Constitution Party Politics.¹ However, the authority often brings up the debate about the uncertainty law.² Studies previously show that the

¹ Fahri Bachmid and Diani Indah Rachmitasari, "The Supreme Court's Authority: Judicial Review of Statutes and Bylaws of Political Parties against Laws," *Law Reform: Jurnal Pembaharuan Hukum* 18, no. 2 (2022): 184–204, <https://doi.org/10.14710/lr.v18i2.46275>.

² Mohammad Ibrahim, "Does the Indonesian Judicial Review System Need Reform?," *Australian Journal of Asian Law* 22, no. 1 (2022): 17–33.

Supreme Court is on duty to test the rules below the Law to uphold norms and more laws.³ Besides that, other studies highlight that party politics as an entity of Law public's own role is important in determining the direction of constitutional development in Indonesia.⁴ Although there are many studies about authority, the Supreme Court has limitations that focus on normative aspects without considering the approach to progressive Law.⁵

Satjipto Rahardjo confirms that the law is dynamic and must adapt to change in public and developing values.⁶ Approach law progressive prioritizes justice substantive above formal compliance with rigid laws, allowing flexible interpretation to achieve justice.⁷ Besides that, the integration marks local culture into Law is necessary for regulation still relevant to structuring the social public.⁸ In practice, this approach encourages judges to decide by normative law and contribute towards legal reform and social justice.⁹ Legal education plays a role in forming professional Law that considers the moral and ethical aspects of interpreting the Law. This approach also emphasizes that Laws that are not fair can be set aside for the sake of social welfare.¹⁰ However, its implementation faces challenges, such as using the principle of progressive Law in a selective way that can create bias and resistance from the system law that maintains formalism.¹¹ Overall, the theory of progressive law Rahardjo offers an approach that adapts Law to change society and pushes for more fair and responsive legal reform.

Progressive Law has become a paradigm key in legal reform, encouraging judges to consider the implications of social decisions, and they then follow interpretation rigid normative.¹² The principle of progressive law emphasizes a holistic understanding of law

³ Dian Agung Wicaksono and Faiz Rahman, "Influencing or Intervention? Impact of Constitutional Court Decisions on the Supreme Court in Indonesia," *Constitutional Review* 8, no. 2 (2022), <https://doi.org/10.31078/consrev823>.

⁴ Bachmid and Rachmitasari, "The Supreme Court's Authority: Judicial Review of Statutes and Bylaws of Political Parties against Laws."

⁵ Ibrahim, "Does the Indonesian Judicial Review System Need Reform?"

⁶ Muhammad Zulfa Aulia et al., "The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication," *Journal of the Constitution* 20, no. 3 (2023): 423–50, <https://doi.org/10.31078/jk2034>; I. Dewa Made Suartha, I. Dewa Agung Gede Mahardika Martha, and Bagus Hermanto, "Innovation Based on Balinese Local Genius Shifting Alternative Legal Concept: Towards Indonesia Development Acceleration," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1–9.

⁷ Lisma, "Progressive Law Functions in Realizing Justice in Indonesia," *Syariah: Journal of Law and Thought* 19, no. 1 (March 21, 2019): 1–13, <https://doi.org/10.18592/sy.v19i1.2543>.

⁸ Suartha, Martha, and Hermanto, "Innovation Based on Balinese Local Genius Shifting Alternative Legal Concept: Towards Indonesia Development Acceleration."

⁹ Suad Fikriawan, Syamsul Anwar, and Misnen Ardiansyah, "The Paradigm of Progressive Judge's Decision and Its Contribution to Islamic Legal Reform in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (2021): 249–66, <https://doi.org/10.24090/mnh.v15i2.4730>.

¹⁰ Lisma, "Progressive Law Functions in Realizing Justice in Indonesia."

¹¹ Brooke Greenwood, Sarah Schwartz, and Susan Wnukowska-Mtonga, "Returning to Rebellious Roots: What Rebellious Lawyering Can Offer Progressive Law in Australia," *Alternative Law Journal* 49, no. 3 (2024): 174–80, <https://doi.org/10.1177/1037969X241269204>.

¹² fikriawan, Anwar, And Ardiansyah, "The Paradigm Of Progressive Judge's Decision And Its Contribution To Islamic Legal Reform In Indonesia"; Nur Hidayah And Abdul Azis, "Implementation Of

by integrating social values, local wisdom, and the dynamic nature of normative legal norms. This perspective enables the law to be more responsive to societal needs in situations of legal ambiguity, judges often exercise discretion to prioritize fundamental human rights and constitutional principles over rigid legal formalism.¹³ The judicial review mechanism employed by the Supreme Court in examining the Articles of Association and Bylaws of the House Ladder Political Party significantly affects both legal and political legitimacy.¹⁴ Strengthening the Supreme Court's capacity to address complex cases involving political party regulations is essential to reinforce the rule of law and promote democratic governance.¹⁵

Based on the official website of the Supreme Court, it is known that the number of political party disputes is large and varied, namely, with a special civil classification of 635 decisions,¹⁶ While with a state administrative classification of 183 decisions.¹⁷ In addition to deciding on political party disputes, the Supreme Court has also decided on a judicial review of the formation of the Articles of Association and Bylaws of the Democratic Party, which have been ratified based on the Decree of the Minister of Law and Human Rights, namely the Supreme Court Decision Number 39 P / HUM / 2021. There are two demands in the judicial review: the formation process and the material's content. The Supreme Court decided not to accept the judicial review application because the Articles of Association and Bylaws of Political Parties are not laws or regulations under laws that can be subject to judicial review.

This study will analyze the authority of the Supreme Court to conduct a judicial review of statutory regulations under the Law and the legal considerations of the Supreme Court judges not accepting the application for judicial review of the Formation of the Articles of Association and Budget. House Ladder Party Politics from a progressive legal perspective.

Progressive Law In Sharia Banking Dispute Settlement: Case Study of Religious Court Decisions in Indonesia," *Ulumuna* 27, no. 1 (2023): 227–57, <https://doi.org/10.20414/ujis.v27i1.652>.

¹³ Basar Dikuraisyin et al., "Reconstruction of Marriage Law: Judges' Progressive Reasoning Based on Maqāsid in Addressing Divergent Interpretations in Indonesian Courts," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (August 16, 2024): 219–36, <https://doi.org/10.24090/mnh.v18i2.9436>.

¹⁴ Theunis Roux, "Indonesia's Judicial Review Regime in Comparative Perspective," *Constitutional Review* 4, no. 2 (2018): 188–221, <https://doi.org/10.31078/consrev422>.

¹⁵ Retno Mawarini Sukmariningsih, "Reconstruction of Setting Judicial Review of Legal Material by Indonesia Supreme Court," *International Journal of Civil Engineering and Technology* 9, no. 2 (2018): 727–32.

¹⁶ Supreme Court of the Republic of Indonesia, "Number of Special Civil Disputes Regarding Political Parties," Directory of Supreme Court Decisions, 2023, <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/Partai Politik-1.html>.

¹⁷ Supreme Court of the Republic of Indonesia, "Number of State Administrative Disputes of Political Parties," Directory of Supreme Court Decisions, 2023.

2. RESEARCH METHOD

This study is doctrinal in nature, aiming to understand normative legal principles and analyze the draft of progressive legal theory, an original legal concept rooted in Indonesian jurisprudence.¹⁸ The research employs a legislative, constitutional, conceptual, case-based, and interpretive approach.¹⁹ The legal materials analyzed include primary sources such as statutory laws and Supreme Court decisions, as well as secondary sources in the form of scholarly references. All materials are examined using content analysis to explore and interpret the development and application of progressive legal thought.²⁰

3. RESULTS AND DISCUSSION

3.1. Authority Supreme Court Judicial Review Regulation Legislation Under the Act

The authority of the Supreme Court to review laws and regulations under the Law against the Law is a mandate of Article 24A paragraph (1) of the 1945 Constitution, then further regulated in Article 31 of the Republic of Indonesia Law Number 14 of 1985 concerning the Supreme Court as amended by the Republic of Indonesia Law Number 5 of 2004 and the Republic of Indonesia Law Number 3 of 2009. The provisions on judicial review authority for laws and regulations under the Law against the Law have changed. In line with the change Constitution Supreme Court, namely: First, the Supreme Court Law of 1985 regulates that If the Supreme Court declares the regulation being tested invalid because it conflicts with higher laws and regulations or its formation does not meet the applicable provisions, then the regulation is declared invalid by the relevant agency and does not have binding legal force. Second, the Supreme Court Act of 2004 provides that the Decision of the Supreme Court on judicial review must be published in the State Gazette of the Republic of Indonesia within a maximum period of thirty working days since the decision was pronounced. Third, the 2009 Supreme Court Law abolished the terms of the obligation load Decision The Supreme in the State News of the Republic of Indonesia. Fourth, Supreme Court Regulation Number 01 of 2011 concerning the Right to Judicial Review regulates the implementation of judicial review decisions by including an excerpt of the decision in the State Gazette and publishing it at the expense of the State. If, within ninety days after the decision is sent to the State Administrative Agency or

¹⁸ Mark van Hoecke, "Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law," in *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?*, ed. Mark van Hoecke (Oregon: Hart Publishing, 2014), 17–18, <https://doi.org/10.5040/9781472560896.ch-005>.

¹⁹ Irwansyah, Legal Research, Choice of Methods & Practice of Article Writing, op. cit., pp. 157-158.

²⁰ Klaus Krippendorff, Content Analysis An Introduction to Its Methodology, 2nd Edition, SAGE Publications, London, 2004, <https://doi.org/10.1103/PhysRevB.31.3460>.

Official who issued the Legislation, it turns out that the Official concerned has not carried out his/her obligations by Law, the Legislation concerned has no legal force.

Provision implementation of the issuing agency regulations made the initial judicial review decision, then changed and became loaded in state news without anyone strong law like regulation legislation. The State Administrative Agency or Official that issues regulatory legislation must carry out the decisions Supreme Court. Provisions the need connected to the provision of regulatory legislation are the object of judicial review, which is the authority of the Supreme Court in Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation. First, Article 7 Article (1) regulates the types and hierarchy of statutory regulations consisting of the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly, Laws/Government Regulations instead of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations. Second, Article 8 regulates that Legislation also includes regulations stipulated by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by Law or the Government by order of Law, Provincial People's Representative Council, Governor, Regency/City People's Representative Council, Regent/Mayor, Village Head or the equivalent. Third, Article 81 regulates the promulgation of a statutory regulation by placing it in the State Gazette of the Republic of Indonesia, Supplement to the State Gazette of the Republic of Indonesia, State News of the Republic of Indonesia, Supplement to the State News of the Republic of Indonesia, Regional Gazette, Supplement to the Regional Gazette, or Regional News.

Considering that the object of judicial review of laws and regulations under the Law is the authority of the Supreme Court, not all promulgated in the state gazette, such as regional regulations or village regulations that are promulgated in the regional gazette, additional regional gazette, or regional news. The provisions for implementing judicial review decisions, as referred to in Supreme Court Regulation Number 01 of 2011, are only included in the State Gazette; it is necessary to customize the provisions in the Law on the Formation of Legislation become also regulated to be placed in the Regional Gazette, Additional Regional Gazette, or Regional News according to the object of judicial review.

One of the legal bases for considering the Supreme Court Law is the Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power. The appropriate provision for thinking Law progressively is Article 5, paragraph (1) stipulates that judges are obliged to explore, follow, and understand the legal values and sense of justice in society. Provisions the obligatory judges in deciding a dispute do not only base their decisions on

written Law solely,²¹ Judge must liberate thought and action so that the Law can flow naturally toward its goal of serving humanity,²² The people's interests are based on legal principles combined with empirical context and the suitability of one idea with another.²³

Progressive Law requires a paradigmatic transformation from legal positivism to legal progressivism that contains a sense of compassion, empathy, and determination to create justice for society.²⁴ Legal positivism is fixated on standard rules that prioritize logical truth, ignoring social and moral contexts, so that sometimes it is not by social developments; for that, it needs to be combined with progressive Law.²⁵ Progressive legal thinking is original Indonesian legal thinking that is in line with the development of world legal thinking, such as responsive Law, sociological jurisprudence, legal realism, and critical legal studies that are populist according to the will of society.²⁶ as an embodiment of the soul of the nation (Volk Geist),²⁷ Namely, the values of Pancasila.²⁸ Justice as the core of Law cannot be formulated in static statutory texts, sometimes incomplete, unclear, and not by social reality. Therefore, a legal breakthrough is needed to realize justice. Substance al.²⁹

Judges, as central actors in dispute resolution, must possess not only the ability to analyze the law progressively but also uphold integrity, morality, ethics, sincerity, and a

²¹ Yusuf Saefudin, "Living Law in the Perspective of Progressive Law: The Urgency of Its Regulation in the Draft Indonesian Criminal Code," *Journal of Legal Dynamics* 21, no. 2 (2021): 358, <https://doi.org/10.20884/1.jdh.2021.21.2.3526>.

²² Teja Sukmana, "Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo," *Peradaban Journal of Law and Society* 2, no. 1 (2023): 92–105, <https://doi.org/10.59001/pjls.v2i1.82>.

²³ Liky Faizal, "Problematics of Progressive Law in Indonesia," *Ijtima'iyya* 9, no. 2 (October 19, 2016): 1–24, <https://doi.org/10.24042/ijpmi.v9i2.947>.

²⁴ Muhammad Akbar, "Progressive Law as an Ideal Legal Alternative," *Bilancia: Journal of Sharia and Legal Studies* 15, no. 1 (2021): 125–37, <https://doi.org/10.24239/blc.v15i1.702>.

²⁵ Muhammad Dimas Sandro and FXJoko Priyono, "The Role of Morals in the Legal System and Its Influence on the Judiciary in Indonesia," *International Journal of Social Science and Human Research* 6, no. 08 (2023): 4653–58, <https://doi.org/10.47191/ijsshr/v6-i8-06>.

²⁶ Irfan Iryadi et al., "The Role of Jurisprudence as Form of Legal Prescriptions: A Case Study of Notaries in Indonesia," *WSEAS Transactions on Environment and Development* 17, no. 1 (2021): 75–80, <https://doi.org/10.37394/232015.2021.17.8>.

²⁷ Rahmanuddin Tomalili et al., "The Problem of Indigenous Criminal Settlement in the Progressive Law Perspective," *IOSR Journal Of Humanities And Social Science* 24, no. 1 (2019): 62–72, <https://doi.org/10.9790/0837-2401056272>.

²⁸ I Gede Agus Kurniawan, "The Enforcement of Progressive Law: Optimizing Alternative Dispute Resolution as the Implementation of Pancasila Values," in *International Conference Towards Humanity Justice for Law Enforcement and Dispute Settlement*, vol. 1, 2022, 1–11, <https://journal.undiknas.ac.id/index.php/icfh/article/view/3927>.

²⁹ M. Yasin Al Arif, "Law Enforcement in the Perspective of Progressive Law," *Undang: Jurnal Hukum* 2, no. 1 (2019): 169–92, <https://doi.org/10.22437/ujh.2.1.169-192>.

deep concern for the people.^{30,31} Progressive legal theory views law as an evolving, flexible, and dynamic instrument that enables legal breakthroughs aligned with the values of justice inherent in society.³² To effectively explore, follow, and understand the living legal values and the societal sense of justice, as mandated in Article 5, paragraph (1) of the Judicial Power Law, judges must internalize and apply progressive legal theory. This application should occur both individually and institutionally, including through structured training for prospective judges. Such an approach allows judges to develop contextual legal reasoning that transcends rigid textual interpretation and mechanical cause-effect syllogism, thereby fostering a more responsive and justice-oriented legal system.³³

3.2. Judicial review Formation Articles of Association and Bylaws House Ladder Party Political

Supreme Court Decision Number 39 P/HUM/2021 examines and adjudicates the case of the judicial review objection application regarding the Formation of the Articles of Association and Budget House Ladder Democratic Party 2020, which has been ratified based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.H09.AH.11.01 of 2020, concerning Ratification of Amendments to the Articles of Association and Budget House Ladder Democratic Party. The judicial review objection application was filed by four leaders of the Democratic Party branches against the Minister of Law and Human Rights. The applicants requested that the Supreme Court examine and adjudicate the application for a formal review of the formation of the Articles of Association and Budget House Ladder Democratic Party 2020 and judicial review of several articles in the Basic Law and Budget House Ladder The Democratic Party because it conflicts with the Political Party Law, the Law on the Formation of Legislation, and the 2015 Democratic Party Articles of Association. The applicants demand that the Supreme Court declare the Articles of Association and the 2015 Democratic Party Articles of Association. House Ladder The 2020 Democratic Party is invalid or does not apply to the public and orders the Minister of Law and Human Rights to revoke the ratification of the Articles of Association and Budget House Ladder Democratic Party 2020.

³⁰ Elita Agestina, "The Effectiveness of Law Changes as Progressive Law Implementation on Law Enforcement by Prioritizing Islamic Law as a Benchmark," *Ratio Legis Journal* 1, no. 4 (2022): 464–80, <https://doi.org/10.30659/rjlj.1.4.%25p>.

³¹ Mukhamad Luthfan Setiaji and Aminullah Ibrahim, "Human rights studies in the rule of law: Between progressive law and positive law," *Lex Scientia Law Review* 1, no. 1 (December 7, 2017): 69–80, <https://doi.org/10.15294/lesrev.v1i01.19483>.

³² Broto Hastono and Yos Johan Utama, "Judicial System As A Legal Sub System In Indonesia," *Journal of Positive School Psychology* 2023, no. 2 (2023): 374–82, <https://www.journalppw.com/index.php/jpsp/article/view/15599>.

³³ Hastono and Johan Utama.

The applicant thinks that the Articles of Association and the Bylaws of House Ladder Party Politics are a regulation under the Law that can be submitted for judicial review objection to the Supreme Court. The legal basis and arguments are: First, Article 1 of Supreme Court Regulation Number 01 of 2011 formulates the definition of the Supreme Court's Right to Judicial Review as the Right of the Supreme Court to assess the material content of Regulations under the Law against Regulations of a higher level. Based on this definition, the object of judicial review is very broad, namely, all regulatory norms, binding on the general public, that do not regulate concrete matters, and their position is below the Law. To be tested with laws or regulations other than laws with a higher position than the object being tested. Articles of Association and Budget House Ladder Party Politics are an object of judicial review because it is binding internally and externally. This can be seen from the statement of the General Chairperson of the Indonesian Democratic Party of Struggle, Megawati Sukarnoputri, that members of political parties who have served as President of the Republic of Indonesia are "Party Officers" which can be interpreted that the Articles of Association and Articles of Association House Ladder Party Politics also binds out. In addition, based on its position as a public legal entity, all regulations and decisions produced by political parties should be viewed as a legal product that has a broad impact on the interests of society, the nation, and the State. Therefore, forming the Articles of Association and the Articles of Association House Ladder Party Politics requires supervision and control from the judicial organ of power, namely the Supreme Court.

Second, Article 8 paragraph (1) of the Law The formation of Legislation on the types of regulations that are not mentioned hierarchically in Article 7 must be interpreted that what is mentioned is only an example, not a limitation, because not all state bodies or institutions can be mentioned one by one in an article. Third, Article 1, numbers 2 and 3 of the Political Party Law define the Political Party Articles of Association as the basic regulations of the Political Party, while the Political Party Bylaws are regulations formed as an elaboration of the Political Party budget. Basis. The mention of the Articles of Association and Bylaws of Political Parties as "regulations" has explicitly placed the Articles of Association and Bylaws of Political Parties as "regulations". House Ladder Party Politics is equivalent to regulations formed and issued by bodies, institutions, or commissions whose hierarchy is under the law. Thus, the formation and content of the Articles of Association and the Articles of Association House Ladder Party Politics that conflict with the law can be subject to judicial review at the Supreme Court.

To support his opinion, the applicant submitted evidence in the form of expert statements as follows: First, Zainal Arifin Hoesein thinks that the ratio legis method of establishing a Political Party, the working environment, and authority are regulated in the Constitution, the Political Party Law, the Election Law, and several Decisions of the Constitutional Court of the Republic of Indonesia. Position of the Articles of Association

and Articles of Association House Ladder Party Politics related to filling state positions can be qualified as laws and regulations under the Law because their formation is autonomous and must be approved by the Ministry of Law and Human Rights. So, the process of forming the Basic Law and Budget House Ladder Party Politics is the same as forming laws and regulations under the Law. Second, Abdul Gani Abdullah argues that if the Law delegates further regulations to lower regulations, it is done using a judicial review to determine whether the delegation is by the Law. The Political Party Law regulates delegation so that political parties make Articles of Association and a Budget House Ladder Party Politics, then a judicial review can be conducted by the Supreme Court to determine whether or not it is in the intent and purpose of the delegation. Third, Fahri Bachmid thinks that because the Articles of Association and the Articles of Association House Ladder Party Politics are formed based on the delegation of laws and political Parties, their implementation and changes require the requirement of ratification by the Minister of Law and Human Rights. The formation and content of the contents must not conflict with the delegated law. The Supreme Court needs to make a progressive and responsive legal breakthrough by stating that it has the authority to conduct a judicial review of the Articles of Association and the Articles of Association. House Ladder Party Politics conflict with the Law.

The applicants also submitted the opinions of legal experts, namely: First, Hamid Awaluddin, former Minister of Law and Human Rights, who argued that the Political Party Law very clearly requires every political party to carry out the sacred mission of upholding democracy. Suppose the Articles of Association and Articles of Association House Ladder Party Politics are contrary to the democratic values that are the goal of political parties. The Supreme Court, as the guardian of justice, must dare to take progressive legal breakthroughs by opening up opportunities for judicial review of the Articles of Association and the Bylaws. House Ladder Party Politics. Second, Fahri Bachmid argued that judicial review of the Articles of Association and House Ladder Party Politics by the Supreme Court is a legal control over the political process to ensure consistency with the Law. This is by the theory of Judicial Activision, which according to Moh. Mahfud has at least three reasons, namely 1) law as a political product always represents a character that is very much determined by the political constellation that gave birth to it, so that sometimes it is incompatible or contradicts higher regulations, 2) the possibility, often there is inconsistency with higher regulations, and 3) the alternative institutionalization of judicial review is the most concrete solution.

The applicant thinks that political parties, according to the Political Parties Law, must be in the form of and be given the status of a public legal entity, the requirements and procedures for its establishment of which are regulated by Law and must be approved by the Minister of Law and Human Rights. Before approving the Articles of Association and Bylaws of House Ladder Party Politics, the Minister of Law and Human Rights

examines whether the Articles of Association and the Articles of House Ladder Party Politics align with the applicable laws. However, because the Minister of Law and Human Rights is an executive organ that is not authorized to review the contents of the Articles of Association and the Budget House Ladder Party Politics, then the authority is the judiciary, which is independent and free from the influence of any party including the government. Political parties, unlike social organizations, religious, business, associations, and the like, because after being officially formed, cannot be dissolved by the government but must be based on the Decision of the Constitutional Court. Political parties will control officials in certain positions, starting from the president and vice president, ministers from political parties, governors and deputy governors, regents and deputy regents and mayors and deputy mayors, ambassadors and other strategic positions in the country. Based on the experts' legal basis and opinions, the applicant thinks that the Articles of Association and the Articles of Association House Ladder Party Politics a legal regulations under the Law that can be subject to judicial review in the Supreme Court.

As the Respondent, the Minister of Law and Human Rights thinks the definition of statutory regulations is based on Article 1, paragraph (2) of the Law. The formation of Legislation is a written regulation that contains generally binding legal norms and is formed or stipulated by a state institution or authorized official through procedures stipulated in the Legislation. Other types of Legislation that are not mentioned in the hierarchy as referred to in Article 8 of the Law The formation of Legislation must meet two requirements, namely: 1) the regulation must be ordered by higher Legislation or based on authority, and 2) the regulation must be formed by a state institution, minister, agency, institution, or commission of the same level which is formed based on Law or by order of Law. Articles of Association and Budget House Ladder Party Politics does not qualify because the Law does not order political parties to form Legislation, and political parties are not state institutions, bodies, agencies, or commissions formed by Law or the government on the orders of the Law.

The Respondent, to support his opinion, submitted the definition of Legislation according to legal experts, namely: First, Maria Farida Indrati, theoretically, Legislation includes the process and content of material or results of the formation of central and regional state regulations that are general and aimed at all citizens, not aimed at an individual. Second, Bagir Manan, Legislation is every written decision issued by an authorized official that is binding on the public, contains rules regarding rights, obligations, functions, status, and abstract order, and does not regulate certain concrete events. Third, Jimly Asshiddiqie, there are three types of legal norms, namely normative decisions that are regulatory (regeling), administrative determinations (beschikking), and verdicts. In addition, it is also known as quasi-regulations in the form of policy regulations (beleids regels). Fourth, Satjipto Rahardjo, Legislation is general, comprehensive, and

universal, and includes a clause on the possibility of a judicial review. Fifth, Philipus Hadjon, the main elements of Legislation are written legal norms that are generally binding and are determined by state institutions or authorized officials. Sixth, Zainal Arifin Mochtar, state institutions make the regulations; Political Parties are not State institutions, so the Articles of Association and the Articles of Association are not House Ladder Party Politics cannot be equated with Legislation. Seventh, Susi Dwi Harijanti, in terms of legal science, Legislation is defined as a written decision of the State containing instructions or patterns of behavior that are legally binding. Political parties are not countries or governments and cannot be equated with countries with the authority to form Legislation. Eighth, Aan Eko Widiarto, political parties are autonomous political infrastructures, and if there is a substance of the articles of association that is suspected of contradicting higher regulations, it should be changed in the highest decision-making forum of political parties, not through judicial review at the Supreme Court.

Based on the law and expert opinions, the Respondent concluded that the qualifications of statutory regulations are regulatory and generally binding, stipulated by a state institution or authorized official, and have general and abstract characteristics that do not regulate certain concrete objects/events/symptoms. Thus, the Articles of Association and the Articles of Association House Ladder Party Politics cannot be categorized as a legal regulation because the scope of their regulation is only for internal political parties. In addition, the Basic Law and the Articles of Association House Ladder Party Politics are not formed by state institutions or state officials but rather the result of a consensus with members of political parties. Thus, the Basic Law and the Budget House Ladder Party Politics are not legal regulations that can be subject to judicial review at the Supreme Court.

Respondent, regarding the dispute regarding the formation and content of the Articles of Association and Budget House Ladder Party Political opinion, is a political party dispute, the resolution of which is regulated in Article 32 of the Law. Party The policy is that political party disputes are resolved internally by the political party as regulated in the Articles of Association and Bylaws. House Ladder Party Politics by the Political Party Court submitted to the Ministry. Settlement of internal disputes of Political Parties must be completed no later than sixty days, which is final and binding internally in the case of disputes relating to management. If efforts through the Party Court are not completed, a lawsuit can be filed with the District Court, the court of first and final instance, and can only be filed for cassation to the Supreme Court as referred to in Article 33 of the Political Party Law.

Respondent, regarding the authority to ratify the Articles of Association and Budget House Ladder Party Politics, must be effective because of the authority granted by Law. Party Politics is only limited to the completeness of the required documents, not to the truth of the material of the required documents. This authority is different from the

authority to ratify the establishment of a political party legal entity, where the Minister of Law and Human Rights is given the authority to accept registration and conduct research and/or verification of its completeness and truth.

The Supreme Court thinks that the authority to examine, try, and decide on a judicial review application for Legislation below the Law against higher Legislation is provided that the object of the application must fulfill the elements of Legislation, namely: 1) is a written regulation, 2) contains general legal norms, not only for a person, several people, or many specific people, 3) is formed by a state institution or authorized Official, 4) the formation process is through procedures that have been determined in Legislation, and 5) there is an order or delegation from higher Legislation.

Supreme Court, regarding the material test object, namely the Articles of Association and the Bylaws House Ladder Party Politics is linked to elements of Legislation, stating: 1) Basic Statutes and Bylaws House Ladder Party Politics is not a legal norm that is binding in general, but only binds the internal political party concerned, 2) Political Parties are not state institutions, bodies, or institutions formed by Law or the Government on the orders of Law, and c) no delegation from the Law orders political parties to form laws and regulations. Thus, the Articles of Association and the Articles of Association House Ladder Party Politics do not fulfill the elements of a statutory regulation that can be subject to judicial review by the Supreme Court, so the applicant's application is declared inadmissible.

Based on the applicant's opinion from a progressive legal perspective, it is known that the applicant applies progressive Law broadly: First, the Constitution Party Politics defines the Basic Regulations of Political Parties as the basic regulations of Political Parties, while the Basic Regulations of Political Parties are. House Ladder is a regulation formed as an elaboration of the Articles of Association. The applicant interprets the word "regulation" in the definition as a regulation under the Law. In this case, the applicant interprets only the word "regulation" separated from the next word; it should be interpreted as one phrase, "basic regulation of political parties," which indicates that the regulation applies only to certain political parties, not the public. Second, the statement of the general chairman of one of the political parties that party members, even though they have served as president, is still "party officials" is not a law that lives in society. On the contrary, members of political parties who have held public office should work for all the people, not only for political parties. Third, political parties are interpreted as bodies or institutions delegated to make regulations under the Law. In this case, bodies or institutions must be formed by Law or the government on the orders of Law, and the regulations made are recognized and have binding legal force as long as they are ordered by higher regulations or formed based on authority. Political parties are not bodies or institutions formed by Law or the government on the orders of Law and statutory regulations, so the articles of association and bylaws of House Ladder Party Politics

formed by Political Parties are not statutory regulations under the Law. Fourth, the opinion of legal experts that the Basic Law and the Articles of Association House Ladder Party Politics is a regulation under the Law that can be subject to judicial review in the Supreme Court can be justified as a thought to develop the Law, but cannot be fully implemented. This is Saifullah's opinion that progressive Law, in addition to having advantages, also has weaknesses, including not being complete as a theory, still as a movement of thought that still has to be developed into a systematic model and its philosophical roots, can eliminate the aspect of the legitimacy of legal norms, open up too broad Discretion which causes the loss of the function of Law as social control which causes the complexity of legal problems and reduces legal certainty.³⁴

The Respondent, although conveying the opinions of eight legal experts, cannot be said to be applying progressive Law because the eight expert opinions strengthen positive Law that the Articles of Association and the Articles of House Ladder Party Politics are not a regulation under the Law because it is not formed based on delegation from a higher law or regulation, and is not formed by a state agency or institution. However, the Respondent provided an alternative solution to the problem, although the applicant did not object, namely that the Law Party Politics regulates that political party disputes must be resolved internally first; if not resolved, a lawsuit is filed with the district court. If the problem is the authority of the Minister of Law and Human Rights to ratify the Articles of Association and Budget House Ladder Party Politics or changes to it should be filed with the state administrative court, not a judicial review at the Supreme Court.

The Supreme Court decided that the applicant's lawsuit was inadmissible because, based on positive law in force, Articles of Association and Bylaws House Ladder Party Political No fulfill element regulation legislation containing legal norms general, formed by state institutions or authorized officials, there are orders or delegations from higher statutory regulations. However, it also implements progressive legal thinking by defining general legal norms, not only for a person or individual but progressively interpreted as several people or many specific people, namely members of a political party.

This study agrees with Erlyn Indarti that progressive Law has not succeeded in explaining and defining its philosophical roots, but de facto plays a role as a comparison of the contemporary mainstream, namely static positivist legal thought. However, progressive legal thought has the potential to be developed in order to create a legal theory that is by the Indonesian nation.³⁵ Based on empirical data and case decisions court for

³⁴ Saifullah, *Dynamics Of Legal Theory A Critical-Paradigmatic Reading* (Yogyakarta: Pustaka Pelajar, 2018).

³⁵ Erlyn Indarti, "Progressive Law Revealed: A Legal Philosophical Overview," *Diponegoro Law Review* 3, no. 1 (August 2018): 28, <https://doi.org/10.14710/dilrev.3.1.2018.28-42>.

Law Progressive needs to be advanced to find a systematic philosophical model for its application and roots.

4. CONCLUSION

Provision Decision Supreme Court on judicial review of regulations Legislation under the Constitution loaded in State News needed to be customized and published in the Regional Gazette, Supplement Regional Gazette, or Regional News according to the objects of judicial review. The Supreme Court judge needs to apply thinking Law progressive to dig, follow, and understand the values of Law and a living sense of justice in public.

Supreme Court ruled Articles of Association and Bylaws House Ladder Party Political No regulation legislation below laws that can file a judicial review because No fulfill element regulation applicable laws and regulations general, made by the institution or authorized state official based on delegation regulation more Legislation tall. Supreme Court No direct apply thinking Law progressive that gives meaning to norm law general, not individual who is not set up in Law positive can interpret as some people or many specific people, namely member A party politics. Thoughts Law Progressive can complete Law positively to fit with mark law and justice Indonesian nation, for That need Keep going developed to find systematic models and roots philosophically.

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