

**SOLUTIONS FOR FOLLOW-UP THE IMPLEMENTATIVE OF
THE FINAL AND BINDING CONSTITUTIONAL COURT
DECISIONS****Irfan Aditya¹, Eka NAM Sihombing²**¹Master of Law Student, Universitas Sumatera Utara²Lecturer at the Faculty of Law, Universitas Muhammadiyah Sumatera
UtaraEmail: Irfanaditya42@yahoo.com

ABSTRACT

Indonesia has been through 4 times of constitution changing, started from 1999 to 2002. The amendment has created a few of the country's new institutions, such as a Constitutional Court of Indonesian Republic. The final decision that the Constitutional Court made turns out to have a few of the Constitutional Court that is not obeyed. Hence, it's not aligned with the nature of the Constitutional Court itself. This research is made to know how is the solution to the follow-up of the Constitutional Court's decision that is final and binding implementative. The method of this research is the normative law research with the statue approach. The source of the data that is used is a secondary data with primary legal material, secondary legal materials and tertiary legal materials, data analysis was carried out using the qualitative methods. The results show there are several factors that caused the Constitutional Court Decision to not be implemented, which are: the Constitutional Court as a negative legislature; no decision executive institution; there is no grace period to carry out the decision; and there are no juridical consequences for ignoring the decision. Therefore, the solution is to form an executive working unit for decisions under the Registrar's Office of the Constitutional Court to provide coercive power to the parties concerned and if the Constitutional Court Decisions are still not complied with and enforced, then the related parties will be subject to sanctions.

Keywords: Constitutional Court Decision, Final, Binding**Journal History**

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INTRODUCTION

Indonesia has currently undergone four constitutional amendments from 1999 to 2002. The amendments have created several new state institutions, one of the new state institutions that was born after the amendment was the Constitutional Court of the Republic of Indonesia (constitutional court) .

The establishment of the Constitutional Court aims to provide legal media to deal with cases that are closely related to the administration of the state and political developments, which are resolved by the court or constitutional council through judicial review, which means the authority to review laws *against* the constitution.

The position of the Constitutional Court is contained in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which reads "judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, administrative court environment state effort, and by a Constitutional Court.

The powers of the Constitutional Court based on the constitutional mandate of Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia are as follows:

- (1) The Constitutional Court has the authority to try at the first and final levels whose decisions are to review laws against the Constitution, decide on disputes over the authority of state institutions whose powers are granted by the Constitution, decide on the dissolution of political parties, and decide on disputes over election results.
- (2) The Constitutional Court is obliged to give a decision on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the Constitution.

Derivatives of the constitutional mandate can be seen in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court. Article 47 of the Constitutional Court Law also emphasizes the final character by stating that the decision of the Constitutional Court has permanent legal force since it is pronounced in a plenary session which is open to the public. From these provisions, the nature of the final shows at least three things, namely (1) that the decision of the Constitutional Court directly obtains legal force; (2) the decision of the Constitutional Court has legal consequences for all parties, not only for related parties; (3) because it is the first and last trial.¹

¹Fajar Laksono Soeroso, "Aspek Keadilan dalam Sifat Final Putusan Mahkamah Konstitusi", *Jurnal Konstitusi*, Vol. 11, no. 1, March 2014, p. 65.

The binding phrase is then emphasized in the elucidation of Article 10 of Law Number 8 of 2011 regarding changes to the previous Constitutional Court Law, which states that "the final character of the Constitutional Court decision in this Law also includes binding legal force". This can also be found in Article 29 paragraph (1) of Law Number 48 of 2009 concerning judicial power which states that "The Constitutional Court has the authority to try at the first and last levels whose decision is final."

The legal consequence of the provisions mentioned above is that the decision of the Constitutional Court has clear and firm juridical consequences, and no further legal remedies can be taken since the decision has been pronounced in a hearing open to the public. ²Based on this explanation, what can be drawn is that there is no other choice but to consistently implement the Constitutional Court's decision. Moreover, the Constitutional Court decision applies the *Erga Omnes principle*, which means that the decision is not only binding on the parties litigating at the Constitutional Court, but also binding on all Indonesian people.

The Chief Justice of the Constitutional Court for this period, Anwar Usman, is worried about university research showing a high rate of non-compliance in carrying out Constitutional Court decisions. This was conveyed at the special plenary session for submitting the 2019 annual report at the Constitutional Court building, the findings "as many as 59 decisions or 54.12 percent were fully complied with, as many as 6 decisions or 5.50 percent decisions were partially complied with, and as many as 24 decisions or 22.01 percent of decisions are not complied with."³

Seeing the development of the Constitutional Court, several problems emerged when the Constitutional Court Decision could not be implemented concretely (*non-executable*). ⁴Based on this statement, it is necessary to carry out deeper research to examine issues related to the follow-up of decisions of the Constitutional Court, especially in the jurisdiction of *judicial review*.

Based on the description of the problem, this research will raise the formulation of the problem, what is the solution so that the follow-up to the Constitutional Court Decision which is final and binding is implementable?

²Fajar Laksono, et al, *Implikasi dan Implementasi Putusan Mahkamah Konstitusi Nomor 5/PUU-X/2012 Tentang Sekolah Bertaraf Internasional(SBI)*, (Jakarta: Registrar's Office and Secretariat General of the Constitutional Court of the Republic of Indonesia, 2013), p. 4.

³Dian Erika Nugraheny, "Banyak Putusan MK Tak Dipatuhi, Anwar Usman: Pembangkangan Konstitusi", in dalam <https://nasional.kompas.com/read/2020/01/28/12490461/banyak-putusan-mk-tak-dipatuhi-anwar-usman-pembangkangan-konstitusi>, accessed on 31 May 2022.

⁴M. Agus Maulidi, "Problematika Hukum Implementasi Putusan Final dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum", *JH Ius Quia Iustum*, Vol. 24, issue 4, October 2017, p. 536.

METHOD

This type of research is normative juridical research with the nature of the research used is prescriptive analysis. in this study using a statutory research approach (*statue approach*).⁵

The data source used is secondary data with primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law No. 24 of 2003 concerning the Constitutional Court, and others. Secondary legal materials are books and scientific writings such as journals, theses and theses. Tertiary legal materials are like the Big Indonesian Dictionary. Data collection techniques through document studies with library research (*library research*), and after the data has been collected, qualitative analysis is used.

DISCUSSION

Types of Decisions of the Constitutional Court of the Republic of Indonesia

In the constitutional system, of course, we recognize the hierarchy of laws and regulations, namely the order of the positions of laws and regulations systematically starting from the highest position, namely the 1945 Constitution of the Republic of Indonesia to Regency/City Regional Regulations. In this case, laws and regulations that have a lower position may not conflict with laws and regulations that are above them. If a rule is found to conflict with the rules above it, the rule will be null and void.⁶

In adjudicating constitutional cases, the Constitutional Court uses procedural law determined by statutory regulations. The examination process in the constitutional court ended with the reading of the decision by the Panel of Judges. The decision of the Constitutional Court itself has developed in line with the development of cases at the Constitutional Court. Therefore, below will be explained regarding the types of Constitutional Court Decisions.⁷

Based on the 1945 Constitution of the Republic of Indonesia, the Constitutional Court decides cases according to the evidence and convictions of the judges. The decision of the Constitutional Court granting the petition must be based on at least two pieces of evidence. The decision of the Constitutional Court must contain the facts revealed in the examination and legal considerations which form the basis of the decision. ⁸In Article 56 of Law No. 24 of 2003 concerning the Constitutional Court, there are provisions related to the types of judgments, namely

⁵ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

⁶ Maria Farida Indrati, *Ilmu Perundang-undangan*, (Yogyakarta: Kanisius, 2007), p. 33.

⁷ Ahmad Fadlil Sumadi, *Hukum Acara Mahkamah Konstitusi, Perkembangan dalam Praktik*, (Jakarta: Rajawali Press, 2019), p. 117.

⁸ *Ibid.*, p. 119.

the application cannot be accepted, the application is granted, and the application is rejected.⁹

Article 56 paragraph (1) of Law No. 24 of 2003 concerning the Constitutional Court regulates a decision declaring an application unacceptable, namely "in the event that the Constitutional Court is of the opinion that the Petitioner and/or his application does not meet the requirements referred to in Article 50 and Article 51, the verdict states that the application cannot be accepted "¹⁰

Article 56 paragraph (2) of the Law on the Constitutional Court regulates the verdict stating that the application is granted, namely "in the event that the Constitutional Court is of the opinion that the application is justified, the decision states that the application is granted".¹¹

In Article 56 paragraph (5) of the Law on the Constitutional Court, it is also regulated regarding the verdict declaring the application rejected, namely "in the event that the law in question does not conflict with the 1945 Constitution of the Republic of Indonesia, both regarding its formation and material in part or in whole, the ruling states the application is rejected".¹²

The types of decisions of the Constitutional Court can be deduced from the verdicts, which are divided into *declaratory*, *constitutive* and *condemnatory decisions*.¹³ The decision is said to be *condemnatory* if the decision contains a penalty against the Respondent for carrying out a feat. A *declaratory* decision is a decision in which the judge states what becomes the law, in a decision which states that the application is rejected because it is not sufficiently reasoned, it is a declaratory decision. A *constitutive* decision is a decision that negates a legal situation or creates a new legal situation, a decision which in its decision states that the request is granted is a constitutive decision.¹⁴

In practice, there have been developments related to the Rulings of the Constitutional Court Rulings, there are other models in the decisions of the Constitutional Court whose characters are different from one another, namely the model of conditionally constitutional decisions *and* conditionally unconstitutional decisions *which* are basically legally does not cancel and declare that a norm does not apply, but both contain or contain an interpretation of a material content of paragraphs, articles and/parts of the law or the law as a whole which is basically

⁹See Article 56 of Law No. 24 of 2003 concerning the Constitutional Court.

¹⁰*Ibid*, Article 56 paragraph (1).

¹¹See Article 56 paragraph (2) of Law No. 24 of 2003 concerning the Constitutional Court.

¹²*Ibid*, Article 56 paragraph (5).

¹³Ahmad Fadlil Sumadi, *op. cit.*, p. 120.

¹⁴Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: Sinar Grafika, 2012), p. 241-242.

declared contrary to or not against the constitution and still has the force of law or do not have binding legal force.¹⁵

Not only the two models above, but there is also a limited *constitutional decision model* which basically aims to provide a transition period for rules that are contrary to the constitution to remain in effect and have binding legal force for a certain time. There are also other decision models that formulate new norms in order to overcome the unconstitutionality of the application of norms. Basically, the formulation of the new norms is only temporary which will later be taken over by the authorized institution.¹⁶

Examples of Non-Implementative Constitutional Court Decisions

One example of a Constitutional Court Decision that was not complied with, causing uproar, can be found in the Constitutional Court Decision No. 91/PUU-XVIII/2020 regarding the Formal Review of Law No. 11 of 2020 concerning Job creation against the 1945 Constitution of the Republic of Indonesia. The Petitioners consist of 6 (six) Petitioners where Petitioners I, II and III are individuals and Petitioners IV, V and VI are legal entities which then give their power of attorney to the Legal Team The Movement for Constitutional Rights Fighters filed an application for a formal review of the formation of Law no. 11 of 2020 concerning Job Creation which is considered to be contrary to the constitution.¹⁷

The Petitioners have a constitutional disadvantage that is potentially harmed in reasonable reasoning that could occur if the Job Creation Law is enacted. In addition to the constitutional losses of the Petitioners, according to the Constitutional Court, there is a determination of the conditions that must be met by the Petitioners in making efforts to formally review a law against the 1945 Constitution of the Republic of Indonesia. These conditions have been confirmed by the Court in Decision No. 27/PUU-VII/2009 which states that although those who determine the existence of *legal standing* to submit an application still have to refer to Article 51 paragraph (1) of the Constitutional Court Law, this is different from the judicial review, in the formal test the constitutional loss of the Petitioner must be seen from the trust and mandate given to representatives as *fiduciary duties* which must be carried out in good faith and responsibly, in an uninterrupted mandate relationship with the election and inauguration of members of the DPR as representatives of the electorate. Therefore, the loss of the constitutional rights and/or authorities of every citizen who has given the right to vote in elections which

¹⁵Syukri Asyari, et al, *Model dan Implementasi Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang*, (Jakarta: Registrar's Office and Secretariat General of the Constitutional Court, 2013), p. 7-14.

¹⁶Ahmad Fadlil Sumadi, *op. cit.*, p. 122.

¹⁷See Ruling of the Constitutional Court Case No. 91/PUU-XVIII/2020

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results in the election of people's representatives in the DPR, is considered to occur when the people's representatives institutionally do not carry out the tasks entrusted in a fair, honest, reasonable and responsible manner.¹⁸

According to the Petitioners, the process for establishing the Job Creation Law was clear and clear and publicly known. In forming the Job Creation Law, the legislators used methods that demonstrated that the mandate of the people's representatives was not carried out in an open, fair, honest and responsible manner. The Constitutional Court in its decision stated:¹⁹

- (1) Declare that the petitions of Petitioners I and II cannot be accepted;
- (2) Granted the petition of Petitioner III, IV, V, and VI in part;
- (3) Declare the formation of Law no. 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it does not mean "no improvement has been made within 2 (two) years since this decision was pronounced;
- (4) Declare that the law *a quo* is still in force until the formation is corrected in accordance with the stipulated deadline;
- (5) Order the legislators to make corrections within a maximum period of 2 (two) years from the pronouncement of the decision and if corrections are not made within that timeframe, the *a quo* law will become permanently unconstitutional;
- (6) Declare if within a period of 2 (two) years the legislator cannot complete the revision of the *a quo law*, then the law or articles or material content of the law that has been revoked or amended by the *a quo law*, declared reinstated;
- (7) Declare to suspend all actions / policies which are strategic in nature and have broad impact, and it is also not justified to issue new implementing regulations relating to the *a quo law*.

the a quo law as mentioned in the ruling on the decision above as long as it is within the specified deadline, namely 2 (two) years since the decision was pronounced. This means that from 2020 to 2022 the law must be revised. Because, if the legislators do not amend the *a quo law within 2 (years) after the verdict is pronounced, then the a quo law will become permanently unconstitutional and the law which has been revoked or amended by the law will be reintroduced.*

The President surprisingly issued Perppu No. 2 of 2022 on December 30, 2022 to revoke Law no. 11 of 2020 concerning Job Creation. Whereas in the Constitutional Court Decision it is very clear that the Constitutional Court ordered

¹⁸ *Ibid.*

¹⁹ *Ibid.*

to improve the establishment of Law No. 11 of 2020 concerning Job Creation within a period of 2 (two) years. There is Perppu No. 2 of 2022 shows an example of real and open non-compliance by the President with the Constitutional Court Decision No. 91/PUU-XVIII/2020. The President, who is supposed to set an example for everyone to comply with what has been decided by the Constitutional Court, actually does not comply with the Constitutional Court Decision itself. Currently, there is Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to become Law.

Factors Influencing the Decision of the Constitutional Court Not Implemented

In order to find out how the solutions for the problems in this study can be solved, of course, identification must be carried out from several examples of the Constitutional Court Decisions that are not implemented. Agus Maulidi in his research said that there were several reasons or factors causing the Constitutional Court Decision not to be carried out as it should, namely:²⁰

1. The Constitutional Court as a *negative legislature*

Since its inception, the Constitutional Court has only been given the task of reviewing statutory regulations that are contrary to the constitution. If it is proven that the law being requested by the Petitioner is unconstitutional, then the Constitutional Court will only declare that *the a quo* law is canceled and no longer has binding legal force since the decision was read out in the plenary session.

In an effort to ensure that the relevant parties comply with the Constitutional Court Decision, in Article 57 paragraph (3) of Law no. 24 of 2003 concerning the Constitutional Court only stipulates that a decision granting an application must be published in the State Gazette within a period of no later than 30 (thirty) days from the pronouncement of the decision.²¹

The decision of the Constitutional Court declaring a law unconstitutional also creates a new legal situation, namely the loss of binding legal force of the law. However, for decisions that require follow-up, the Constitutional Court cannot follow up on its own decisions. It depends on the related parties whether to follow up on the Constitutional Court Decision or not, the Constitutional Court is only a *negative legislature* which does not have more authority to make a new legal product.²²

2. There is no decision executorial institution

In its development, the Constitutional Court's decision is not only finished until it declares an unconstitutional law, but also requires follow-up

²⁰M. Agus Maulidi, "Problematika Hukum.." *op.cit.*, p. 548-554.

²¹See Article 57 paragraph (3) of Law no. 24 of 2003 concerning the Constitutional Court.

²²M. Agus Maulidi, "Problematika Hukum.." *op.cit.*, p. 548-549.

on the decision. Unlike other judicial institutions, the Constitutional Court does not have an internal institution to follow up on its decisions, the Constitutional Court does not have bailiffs or the police.²³

Wahiduddin Adams, who is a Constitutional Justice, added that in relation to the implementation of the Constitutional Court Decision, the institution does not have the tools and apparatus to supervise and execute its decisions. In the end, everything returns to the awareness of citizens to implement it. In fact, disobedience to the Constitutional Court Ruling is in principle the same as delaying justice.²⁴

Agree with the statement of Constitutional Justice Wahiduddin Adams above, In essence the strength of a decision can be seen from its executorial power. Because the Constitutional Court does not have an executorial unit to compel the related parties, the Constitutional Court's decision only becomes a formality and has no real meaning if the decision is not complied with by the parties .

3. There is no grace period for the implementation of the decision

The juridical consequence of the provision stating that the Constitutional Court Decision has binding legal force since it was pronounced in a plenary session that was open to the public is that it must be implemented from then on. This also raises difficulties for related parties to carry out in accordance with the Constitutional Court's decision. Because, to follow up on the mandate also requires a process and a transitional period.²⁵

In the case where the related party is the legislature, of course it requires a new legal instrument in the form of changes or new laws which in its formation go through a process that also takes a long time. In certain circumstances, it is true that the Constitutional Court Ruling cannot be implemented immediately, some decisions must pass for a long time depending on the social, political and economic conditions of the country.²⁶

4. There are no juridical consequences for ignoring the decision

The absence of a regulation that provides sanctions against related parties if they do not follow up on the Constitutional Court Decision is one of the factors that makes the decision not implementable. In fact, it must be admitted

²³ *Ibid.*, p. 550.

²⁴ Nano Tresna Arfana, "Wahiduddin Adams Ungkap Adanya Ketidapatuhan Terhadap Putusan Mahkamah Konstitusi", in <https://www.mkri.id/index.php?page=web.Berita&id=18355&menu=2>, accessed on 19 October 2022.

²⁵ M. Agus Maulidi, "Problematika Hukum.", *op.cit.*, p. 551.

²⁶ *Ibid.*, p. 552.

that legal sanctions are the most powerful instrument to maintain legal authority.²⁷

In principle, there are orders or prohibitions and sanctions if these orders or prohibitions are not complied with. Commands or prohibitions with sanctions are like two sides of a coin that cannot be separated. Orders or prohibitions without sanctions will certainly make the orders or prohibitions violated or not obeyed. This is what happened to the Constitutional Court in an effort to implement its ruling. One of the reasons why Constitutional Court Decisions are often not complied with is the absence of juridical sanctions against parties involved for neglect or non-compliance with Constitutional Court Decisions. Thus causing the related parties to feel that there is no compulsion to have to follow the Constitutional Decision.

The Constitutional Court in its ruling only stated whether a law was contrary to the 1945 Constitution of the Republic of Indonesia or not, if the Petitioner's request is granted, the Constitutional Court's decision must be published in the State Gazette no later than 30 (thirty) days after it was pronounced in a session open to the public.²⁸

5. The powers of the Constitutional Court are broad and tend to go beyond the boundaries

The change from the principle of power sharing to the separation of powers and also using a system of *checks and balances* has not been implemented optimally. The Constitutional Court with its authority is a *superbody state institution*.²⁹

According to Fajar Laksono, the Constitutional Court as a *superbody institution* is found to have large and broad powers and even exceed the powers of other state institutions from the several decisions they issue.³⁰ Mahfud MD said that the Constitutional Court's exit from the limits of its authority was based on laws that did not provide legal recourse, so that in these circumstances benefits would be difficult to achieve. Whereas in accordance with the objectives of the law is the creation of justice, certainty, and expediency.³¹ Therefore, this situation will affect disharmony between branches of state power. Several times, the DPR in forming laws has

²⁷Bambang Sutiyoso, *Tata Cara Penyelesaian Sengketa di Lingkungan Mahkamah Konstitusi* first printing, (Yogyakarta: UII Press, 2009), p. 124.

²⁸See Article 41 PMK No. 06/PMK/2005 concerning Guidelines for Procedures in Cases of Reviewing the Law.

²⁹M Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final dan Mengikat Mahkamah Konstitusi", *Jurnal Konstitusi*, Vol. 16, No. 2, June 2019, p. 345-346.

³⁰Fajar Laksono, *Aspek Keadilan..*, *op.cit.*, p. 67.

³¹M Agus Maulidi, "Menyoal Kekuatan..", *op.cit.*, p. 346.

substantially limited the authority of the Constitutional Court because the Constitutional Court is a *superbody institution*.³²

other factors that influence the decision of the Constitutional Court is not implemented, among others, namely:³³

1. There is no political will from legislators to comply with the Constitutional Court Ruling

Experts observing the *constitutional review system*, Alec Stone, Landfried and Tate, stated that legislators often take preventive steps to avoid following up on the Constitutional Court's decision regarding the review of laws.³⁴ In fact, if the legislature, in this case the DPR avoids reviewing the law, before the regulation is promulgated, in formulating a norm in the law, it must examine more clearly whether the legal product they make in the future this is a law that has the potential to be reviewed in the Constitutional Court because it contradicts the 1945 Constitution of the Republic of Indonesia. A legal product can be said to be a good rule if the product does not contradict the statutory regulations above it, in this case what is meant is a law The law cannot conflict with the constitution.

2. The decision of the Constitutional Court which reviewed *the* law was deemed contrary to the principles of democracy

In his book, Maruarar Siahaan assesses the difficulties or obstacles in implementing the Constitutional Court Ruling due to an understanding that judges that the legislature which is supervised and controlled by the constitutional court through *constitutional review* is contrary to the principles of democracy. There is an idea that says if the legislature and executive are directly elected by the people as the holders of sovereignty, how is it possible that the people's choices are actually supervised and controlled by Constitutional Justices who are not directly elected by the people.³⁵ This thinking needs to be straightened out, because the election of Constitutional Justices is also through a presidential decree on submissions consisting of three people each from branches of power such

³²Bisariyadi, "Yudisialisasi Politik dan Sikap Menahan Diri: Peran Mahkamah Konstitusi dalam Menguji Undang-Undang", *Jurnal Konstitusi*, Vol. 12. No. 3, September 2015, p. 482.

³³Tohadi and Dian Eka Prastiwi, "Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme *Checks and Balances*", *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*, Vol. 11. No. 1, April 2002, p. 25-29.

³⁴C. Nael Tate, *Why the Expansion of Judicial Power*, p. 27. Quoted from Tohadi and Dian Eka Prastiwi, *ibid*, p. 27.

³⁵Maruarar Siahaan, *UUD 1945 Sebagai Konstitusi yang Hidup*, (Jakarta: Sekretariat General and Registrar of the Constitutional Court, 2008), p. 54.

as the Supreme Court, the DPR and the President. Of course, the DPR and the President are directly elected by the people, so in essence there is no conflict with democratic principles.

Solutions for Follow-Up of Constitutional Court Decisions which are Final and Binding to be Implemented

In its development, although the Constitutional Court has had a major impact on the advancement of the legal system in Indonesia which was formed as a judicial institution exercising judicial power that safeguards the nobility of the constitution, in the implementation of its decisions there is often non-compliance with the mandate contained in its rulings. This is in line with the discovery of factors that often influence Constitutional Court Decisions not to be implemented as explained in the previous explanation.

In accordance with what was said by Wahiduddin Adams, that non-compliance with the Constitutional Court Decision is an attempt to delay justice in the principle of a rule of law state.³⁶ However, this should not be allowed to continue to drag on which will later lead to the emergence of other new problems and lack of legal certainty. Therefore, of course it is necessary to formulate a solution for implementing the Constitutional Court's decision so that it is in accordance with the nature of the decision which is final and binding.

Below are several offers and solutions so that the Constitutional Court can regain its dignity as guardian of the constitution in accordance with the beginning of its establishment, namely:

- (1) Establish an executive working unit for decisions under the Registrar Office of the Constitutional Court.
- (2) If the decision of the Constitutional Court contains orders and time limits for related parties to comply with the Constitutional Court Decision. However, it turns out that the related party is found to still not comply with and follow up on the Constitutional Court Ruling as it should be, then the party concerned is given a sanction.

Related to the urgency of forming an executorial work unit for decisions from the internal Constitutional Court, namely because in its development, the Constitutional Court in its Decisions does not only extend to the pronouncement of a constitutional or unconstitutional law. A new breakthrough is needed to force the related parties to comply with what has been mandated by the Constitutional Court in its ruling.

One of the solutions that can be taken so that the Constitutional Court Decision is carried out properly in accordance with its final and binding nature is

³⁶ *Op. cit.*, Tresna Arfana.

to form an executive working unit for decisions under the Registrar's Office of the Constitutional Court. This was adopted from the existence of a bailiff under the clerk in the State Administrative Court. Technically, later on the executive work unit for decisions under the Registrar's Office of the Constitutional Court will not be much different from what was done by the bailiff. Because, this is considered to give more coercive power to the parties to comply with and implement the Constitutional Court Decision. Later, if the parties do not comply with and carry out the Constitutional Court Ruling as they should, the related party institutions will be conveyed and reported by the executive work unit of the decision to the public through print/electronic media that the institution has not carried out and complied with the Constitutional Court Ruling. Of course, as a result of such reporting, it will cause the disgrace of the institution to fall so that it can reduce the legitimacy of the community towards these institutions, in this case the President and the DPR-RI.

If the order of the Constitutional Court in its ruling is not complied with by the parties concerned and after the time limit has passed, the solution offered is to impose sanctions on these parties. Widayati said this was an insult to the judiciary. Because, the Constitutional Court as one of the judicial institutions that exercise judicial power in Indonesia.³⁷ These sanctions are needed in order to maintain compliance with the substance of the law. Regarding the choice of what sanctions are appropriate to give to related parties, of course, requires a separate, more in-depth study, but there is already an overview of how the pattern is applied to impose sanctions on related parties, in this case the President and DPR-RI.

The offer regarding the pattern of giving the right sanctions to the President if he does not comply with and carry out the mandate of the Constitutional Court Decision is that the President can be dismissed during his term of office by the MPR-RI, of course this is at the suggestion of the DPR-RI. Regarding the legal basis that can be used as a reference in this matter is Article 7A of the 1945 Constitution of the Republic of Indonesia, which reads:

The President and/or Vice President may be dismissed during their term of office by the MPR at the recommendation of the DPR, both if they are proven to have violated the law in the form of treason against the state, corruption, bribery, other serious crimes or disgraceful acts or if they are proven to no longer fulfill the requirements as President and/or Vice President.³⁸

Disobeying and implementing the Constitutional Court Decision made by the President is considered sufficient to be proposed by the DPR taking into account

³⁷Widayati, "Problem Ketidakpatuhan Terhadap Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang", *Jurnal Pembaharuan Hukum*, Vol. IV. No. 1, January-April 2017, p. 12.

³⁸See Article 7A of the 1945 Constitution of the Republic of Indonesia

the news published by the executive work unit of the decision through print/electronic media on the previous offer to terminate his term of office. It is felt that this has met the requirements for dismissal of the President during his tenure in accordance with the phrase "disgraceful behavior" in the clause in Article 7A. How could the President as the head of state and government set a negative example to his people by ignoring the Constitutional Court Ruling. This is not in line with the rule of law principle applied in Indonesia where essentially the highest authority lies in the law and not in other powers, one of which is the President, thus the President must be subject to the law itself.

The sanction imposed on the DPR-RI for ignoring the Constitutional Supreme Court's decision is by following up on the news that has been published by the executive work unit for decisions under the clerkship of the Constitutional Court which will then be delegated to the Honorary Council of the Council to follow up on the news of the disregard for the Constitutional Court's decision by the DPR institution. itself in order to impose sanctions on the Member of the DPR-RI. What's more, the existence of this news emphasizes the non-compliance of each member of the DPR with the obligations imposed on him in accordance with the provisions on Obligations of DPR Members in Article 81 of Law No. 17 of 2014 concerning the MPR, DPR, DPD and DPRD which states that members of the DPR are obliged to adhere to and practice Pancasila, implement the 1945 Constitution of the Republic of Indonesia and comply with statutory provisions.³⁹

Of course, to be able to implement some of these offers requires awareness and willingness by the legislature and the government as related parties. Each branch of power must eliminate its sectoral ego so that the Constitutional Court Decision which is final and binding can be implemented properly in accordance with the principles of the rule of law and the supremacy of the constitution. What's more, there is already a rule in Article 10 paragraphs (1) and (2) of Law No. 12 of 2011 concerning Formation of Legislation which says "The content material that must be regulated by law contains one of them in letter d, namely the act of follow-up on the Constitutional Court Decision and follow-up on the Constitutional Court Decision is carried out by the DPR or the President".⁴⁰

CONCLUSION

There are several factors that cause the Constitutional Court Decision not to be implemented, namely: the Constitutional Court as a *negative legislature*; no decision executorial institution ; there is no grace period to carry out the decision;

³⁹See Article 81 Law no. 17 of 2014 concerning the MPR, DPR, DPD and DPRD.

⁴⁰See Article 10 paragraph (1) and (2) of Law No. 12 of 2011 concerning Formation of Legislation.

and there are no juridical consequences for ignoring the decision. Therefore, in order to make decisions of the Constitutional Court carried out properly in accordance with their final and binding nature, in order to form an executive work unit for decisions under the Registrar of the Constitutional Court in order to provide coercive power to the parties involved and if the Constitutional Court Decisions are still not complied with and enforced, then related parties will be given sanctions.

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