



## Consequences of Non-compliance with the Constitutional Court Decision in Judicial Review of the UUD 1945

Putu Eka Pitriyantini<sup>1</sup>, Ni Luh Gede Astariyani<sup>2</sup>

<sup>1</sup>Faculty of Law, Universitas Udayana, E-mail: [eka0504.putriarsana@gmail.com](mailto:eka0504.putriarsana@gmail.com)

<sup>2</sup> Faculty of Law, Universitas Udayana, E-mail: [luh\\_astariyani@unud.ac.id](mailto:luh_astariyani@unud.ac.id)

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#### Corresponding Author:

Putu Eka Pitriyantini, E-mail :  
[eka0504.putriarsana@gmail.com](mailto:eka0504.putriarsana@gmail.com)

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### Abstract

*This writing aimed to examine the causes of non-compliance with the implementation of the Constitutional Court Decision as well as analyze and examine the consequence of non-compliance with the decisions of the Constitutional Court in Reviewing Laws and Constitutional Court Decisions. This writing was normative legal research using statutory approach, conceptual approach and historical approach. The study indicated that there are several causes leading to non-compliance with the implementation of the Constitutional Court Decisions; among others are the sectoral ego of state institutions that causes reluctance to implement the Constitutional Court decisions, the Constitutional Court which does not have an executive body, the void of legal norms, the connection with state institutions that are obliged to follow up on the Constitutional Court decisions, and the interpretation of the final meaning attached to the Constitutional Court decisions. These things have resulted in injustice to the petitioners and citizen whose constitutional rights have been violated by policies of government.*

### 1. Introduction

In research conducted by the Indonesian Legal Roundtable, it was found that there were many decisions of the Constitutional Court that had not been complied with and not implemented by the legislature. The research was conducted on the judicial review decisions of the Constitutional Court in 2003-2018, especially on the decisions granting a petition.<sup>1</sup> One form of neglect of the Constitutional Court's decision is found in the Constitutional Court Decision Number 10/PUU-VI/2008. In the decision, it was emphasized that there shall be explicit provisions regarding the requirements for domicile in the province to be represented for candidates for members of the Regional Representatives Council. In contrast, in fact Regulations of the General Election Commission as well as the amendments of Law Number 10 of 2008 concerning the General Election of Members of the People's Representative Council (DPR), Regional People's Representative Council (DPRD), and Regional Representative Council (DPD), to the Law Number 8 of 2012 do not contain the decision of the Constitutional Court Number 10/PUU-VI/2008. The fact was confirmed by the Anwar Usman, Chief Justice

<sup>1</sup> Pan Mohamad Faiz, *Mahkota Mahkamah Konstitusi Bunga Rampai 16 Tahun Mahkamah Konstitusi* (Depok: Rajawali Pers, 2019). p. 22.

of the Constitutional Court of Indonesia, who admitted that he was uneasy about the results of a research conducted by a lecturer at the Faculty of Law at Trisakti University in 2019, which found that there were 59 decisions or 22.01 percent, which were not complied with. According to Anwar Usman, disobedience to the decision of the Constitutional Court, apart from being against the rule of law doctrine, is also a form of defiance of the Constitution.<sup>2</sup> These several examples of legal events have made the public doubt the effectiveness of implementing the decisions of the Constitutional Court which tended to be ignored or not to be complied with.

The 1945 Constitution of the Republic of Indonesia, which is referred to as the *UUD 1945*, has determined the division of duties and authorities of each state institution, including the Constitutional Court as the perpetrator of judicial power which is an independent power to administer justice in order to uphold law and justice. This is based on Article 24 C paragraph (1) of the 1945 Constitution, which stipulates that “the Constitutional Court shall have the authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections”. Article 24 C paragraph (2) of the 1945 Constitution determines that the Constitutional Court shall possess the authority to issue a decision over a notion of the People’s Representative Council (DPR) concerning alleged violations by the President and/or Vice-President by virtue of this Constitution. The authority of the Constituent Court is re-affirmed in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court, which was amended to become Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court and was amended again to become Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. Furthermore, in this paper, these provisions are written in terms of the Constitutional Court Law (UU MK) and Article 29 paragraph (1) and paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. In particular, the authority of the Constitutional Court, which is to examine laws against the 1945 Constitution, aims to oversee the national legal politics so that there are no more statutory provisions that contradict the substance of the constitution. All forms of statutory regulations, especially laws, shall be in line with the material of the 1945 Constitution. The spirit of upholding the constitution as the highest legal basis of the state causes the Constitutional Court to be called the guardian constitution and the final interpreter of the constitution.<sup>3</sup>

Article 24C paragraph (1) of the 1945 Constitution has determined that the Constitutional Court shall have the authority to adjudicate at the first and final levels whose decisions are final and followed by the types of authority granted. The article confirms that there is no legal remedy that can be taken to overturn the decision of the Constitutional Court. In other words, at the time the Constitutional Court makes a

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<sup>2</sup> Dian Erika Nugraheny, “Banyak Putusan MK Tak Dipatuhi, Anwar Usman: Pembangkangan Konstitusi,” *Kompas Nasional*, 2020, <https://nasional.kompas.com>.

<sup>3</sup> Mohammad Mahrus Ali, Meyrinda Rahmawaty Hilipito, and Syukri Asy’ari, “Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru,” *Jurnal Konstitusi* 12, no. 3 (2015): 633, <https://doi.org/https://doi.org/10.31078/jk12310>.

decision, the decision is binding and has permanent legal force.<sup>4</sup> The distinctive characteristic of the decisions of the Constitutional Court is distinguishable from that of judicial institutions within the Supreme Court which provide other legal remedies, including the mechanism for review (PK) and clemenc.<sup>5</sup> Decisions of the Constitutional Court which are final and binding have the implication that all forms of decisions of the Constitutional Court, whether granting a request for judicial review of the Constitution or granting part or all of it, automatically amend the provisions of a law by claiming that it is contrary to the 1945 Constitution and states that the contradictory provisions have no binding legal force. The decision of the Constitutional Court is final and is reaffirmed in the provisions of Article 47 of the Constitutional Court Law (UU MK) that the decisions of the Constitutional Court shall have permanent legal force, starting from the time they are finished being announced in a plenary session open to the public. The consequences of the final decision are valid and binding immediately after it has been read by the relevant Constitutional Court. This clause is in accordance with the provisions of Article 57 of the Constitutional Court Law, which stipulates:

- (1) "The ruling of the decision of the Constitutional Court declaring that the material substance of the paragraphs, articles and/or sections of the law contravene the 1945 Constitution of the Republic of Indonesia renders such material substance of the paragraphs, articles and/or section devoid of legal binding force and effect.
- (2) The ruling of the decision of the Constitutional Court declaring that the formulation of the said law is inconsistent with the provisions on the formulation of laws prescribed by the 1945 Constitution of the Republic of Indonesia renders such law devoid of legal binding force and effect.
- (3) The decision of the Constitutional Court which grants favor to the petitions filed shall be published in the State Gazette within a period of 30 (thirty) working days from when the decision is announced".

Inosentius Samsul stated that the legal consequences (*rechtsgevolg*) of the Court's decision arose from the moment it was announced, and the enactment of a material norm, the content of paragraphs, articles, and/or parts of the law - which had been declared legally non-binding by the Court - could no longer be stretched in the future.<sup>6</sup> Regarding its final and binding nature, the decisions of the Constitutional Court have often appeared as the subject of discussion in legal circles. First, regarding the emergence of the word 'binding' which accompanies the word 'final', some question with a reason that the provisions of Article 24C paragraph (1) of the 1945 Constitution do not mention the term 'binding'. This is actually not a substantial problem. Every judge's decision having permanent legal force must have a binding nature. Academically, it is a juridical consequence to emphasize that the judge's or court's decision must be obeyed. In other words, the obligation to obey the decision lies in the

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<sup>4</sup>Dewa Gede Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain* (Konstitusi Press (Konpress), 2018). p. 123

<sup>5</sup>Fajar Laksono Soeroso, "Aspek Keadilan Dalam Sifat Final Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no.1 (2014): 65, <https://doi.org/https://doi.org/10.31078/jk%25x>.

<sup>6</sup>Faiz, *Mahkota Mahkamah Konstitusi Bunga Rampai 16 Tahun Mahkamah Konstitusi*. p. 27

form of the binding nature of the decision in question. Because, if they are not binding, the decisions of judges or courts are only things having no effect.<sup>7</sup>

The final decision of the Constitutional Court is inseparable from the principle of *erga omnes*. *Erga omnes* refers to the decision of the Constitutional Court which is not only binding on litigants whose constitutional rights have been impaired, but also publicly binding. In Indonesia, the decision of the Constitutional Court is legally binding and absolutely must be complied with by every citizen.<sup>8</sup> The nature of *Erga Omnes* is attached to the decision to review the constitutionality of the law because the object of the review is a written regulation that regulates and binds the general public. Even if the application for judicial review is submitted by one person or several persons, the validity of the decision for the right to judicial review is binding on everyone.<sup>9</sup> In principle, the Constitutional Court appears as one of the actors of independent judicial power in order to uphold the constitution and the principle of the rule of law through decisions on constitutional cases which are its authority and obligations. Based on the legal issues raised at the beginning of this paper, there are several decisions of the Constitutional Court that were not implemented, so two issues to be discussed in the paper are found: (1) why does non-compliance with the implementation of the Constitutional Court decision occur and (2) what are the consequences of non-compliance against the decision of the Constitutional Court in judicial review?

In connection with the study in this paper, the author has conducted searches through electronic media and libraries with the aim of determining whether or not there have been previous studies examining the same legal issues as the one the present study is examining. Based on a search of various scientific papers, the author found that there had indeed been several writings discussing the consequences of non-compliance with the Constitutional Court Decision in judicial review, but from a different perspective from which the present study is examining. A study examining the object related to the object of the current paper was published in the *Jurnal Pembaharuan Hukum* in January-April 2017, with the title "*Problem Ketidapatuhan Terhadap Putusan Mahkamah Konstitusi tentang Pengujian Undang-Undang*", which in English means the problem of non-compliance with the constitutional court decision on judicial review. Discussion in the past study highlighted that one of the factors for non-compliance with the decisions of the Constitutional Court lies in the unavailability of the instrument or the executing agency of the Constitutional Court in charge of ensuring the implementation of its decisions. The next study was published in the *Jurnal Konstitusi* in December 2015, with the title "*Ketidapastian Hukum Kewenangan Lembaga Pembentuk Undang-Undang Akibat Pengabaian Putusan Mahkamah Konstitusi*", which in Indonesian is equivalent with legal uncertainty in the authority of law-making institutions due to neglect of constitutional court decisions. Discussion in the latest study focuses on the dualism of norms, that is to say, Law Number 17 of 2014 which has been declared contrary to the Constitution by the Constitutional Court and the Constitutional Court Decision Number 92/PUU-X/2012. Based on the search results, none of these papers discusses

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<sup>7</sup> Palguna, *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*. p. 124.

<sup>8</sup> Zuhro Nuridahwati, "Karakter Final Putusan Mahkamah Konstitusi Dalam Melaksanakan Kewenangan Sesuai Pasal 24C Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Ilmiah Raad Kertha* 3, no. 1 (2020): 105-19. p. 72.

<sup>9</sup> Imam Soebechi, *Hak Uji Materil* (Jakarta: Sinar Grafika, 2016). p. 172.

legal issues that are exactly the same as the legal issues that are the subject of the present study.

## **2. Research Method**

This study used a normative legal research method. Normative legal research is a method of legal research that examines law from an internal perspective, with the object of research being legal norms.<sup>10</sup> The study used several types of approaches, including the statutory approach, conceptual approach, and the Historical Approach to the Rule of Law. The types of sources of legal materials used in the study include primary legal materials, secondary legal materials and tertiary legal materials. After the legal materials are collected, an analysis is carried out to obtain the final argument in the form of answers to the research problems.

## **3. Results and Discussion**

### **3.1 Uncertainty of Implementation of Norms**

The juridical basis for the establishment of the institution of the Constitutional Court of the Republic of Indonesia was initiated by the third amendment of the 1945 Constitution, which mandated the establishment of institutions holding other judicial powers outside the Supreme Court.<sup>11</sup> The legal basis for the holder of judicial power in Indonesia is contained in Article 24 paragraph (2) of the 1945 Constitution which stipulates that “the judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court”. According to Ibrahim R, in the provisions of Article 24 paragraph (2) of the 1945 Constitution, judicial power underwent a paradigm shift where judicial power was held by the Constitutional Court and the Supreme Court, which made Indonesia adopt a bifurcation system. Indonesia’s judicial power is referred to as “bifurcation” because the ordinary court is under the authority of the Supreme Court and constitutional review is under the authority of the Constitutional Court. In essence, the distinction is made because the Supreme Court is more of a court of justice, while the Constitutional Court is more concerned with the court of law.<sup>12</sup> Authority of Constitutional Court is based on Article 24C paragraph (1) of the 1945 Constitution, which stipulates that “the Constitutional Court shall possess the authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections”. This provision is reaffirmed in Article 10 paragraph (1) of the Constitutional Court Law. Then, Article 47 of the Law on the

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<sup>10</sup> I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif* (Jakarta: Kencana, 2017). p. 12.

<sup>11</sup> Rizki Wahyudi, Muhammad Gaussyah, and Darmawan Darmawan, “Optimalisasi Pelaksanaan Putusan Mahkamah Konstitusi Dalam Hal Pengujian Undang-Undang Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” *Jurnal Mercatoria* 11, no. 2 (2018): 174-92, <https://doi.org/https://doi.org/10.31289/mercatoria.v11i2.1740>.

<sup>12</sup> Jimly Asshiddiqie, “Mahkamah Konstitusi Dan Pengujian Undang-Undang,” *Jurnal Hukum Ius Quia Iustum* 11, no. 27 (2004): 1-6.

Constitutional Court confirms the final nature by stipulating that the Constitutional Court decision has permanent legal force from the moment it has been announced in a plenary session which is open to the public.

Court's decision is the most awaited by litigants. It is a natural proposition considering that the decision stage is an important stage, as the last link in the entire judicial process that must be implemented and provides an aspect of certainty for those who are in the dispute. Decisions in court are acts of judges as authorized state officials, which are announced in a trial open to the public and made in writing to end the dispute the disputing parties face to it. As a legal act that will resolve the dispute faced by them, the judge's decision is an act of the state, that is to say, the authority is delegated to the judge, both based on the 1945 Constitution and the laws.<sup>13</sup>

Based on Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) letter a of the Constitutional Court Law, the authority is given to the Constitutional Court to review and even annul a law against the Constitution. If it is deemed contradictory, the Constitutional Justice has the right to pass a final decision, which states that part of the material or the whole law can be declared no longer valid to be binding on the public. The consequence is that all parties must comply with changes in the legal situation created through the decisions of the Constitutional Court and implement them (*erga omnes*). Judicial review as one of the powers of the Constitutional Court is the embodiment of the concept of checks and balances between state institutions. Judicial review by the Constitutional Court is a means to examine materially produced by the legislature so as not to harm the public.<sup>14</sup> Although the decisions of the Constitutional Court have binding legal force, there are several court decisions and law enforcement processes that ignore the decisions of the Constitutional Court. The forms of neglect of the Constitutional Court's decision in cases of material review of the law against the Basic Law, include the Constitutional Court Decision Number 34/PUU-XI/2013 which has revoked the provisions of Article 268 paragraph (3) of Law Number 8 of 1981 concerning The Criminal Procedure Code (KUHAP). Article 268 paragraph 3 of the Criminal Procedure Code stipulates that a request for a review of a decision can only be made once. The article has been declared unconstitutional and a request for reconsideration can be made more than once. This is expressly stated in the Decision of the Constitutional Court Number 34/PUU-XI/2013 concerning Judicial Review. However, the decision of the Constitutional Court was not followed by the Supreme Court by the issuance of Circular Letter of the Supreme Court (SEMA) Number 7 of 2014 concerning Restrictions on Judicial Review. In the SEMA it is stated that judicial review in criminal cases is restricted to only one time.<sup>15</sup> Another form of neglect is found in the decision of the Constitutional Court Number 93/PUU-XV/2017 concerning the Review of Law Number 24 of 2003 on the Constitutional Court as has been amended to Law Number 8 of 2011 concerning Amendments to Law

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<sup>13</sup> Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi, Republik Indonesia* (Mahkamah Konstitusi Republik Indonesia, 2006). p. 201.

<sup>14</sup> Faiz Rahman and Dian Agung Wicaksono, "Eksistensi Dan Karakteristik Putusan Bersyarat Mahkamah Konstitusi," *Jurnal Konstitusi* 13, no. 2 (206AD): 352, <https://doi.org/https://doi.org/10.31078/jk1326>.

<sup>15</sup> Meirina Fajarwati, "Validitas Surat Edaran Mahkamah Agung (Sema) Nomor 7 Tahun 2014 Tentang Pengajuan Peninjauan Kembali Dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan," *Jurnal Legislasi Indonesia* 14, no. 2 (2018): 145-62.

Number 24 of 2003 concerning Constitutional Court against the 1945 Constitution of the Republic of Indonesia. Article 55 of the Constitutional Court Law stipulates that the review of statutory regulations under the law that is being carried out by the Supreme Court shall be suspended if the law that is the basis for reviewing the regulation is in the process of reviewing by the Constitutional Court until there is a decision issued by the Constitutional Court. It is as long as the word 'suspended' is declared contrary to the 1945 Constitution and has no binding legal force, as long as it is not interpreted that the review of legislation under the law that is being applied by the Supreme Court is postponed if the law that is the basis for the review of the regulation is postponed. is in the process of being reviewed by the Constitutional Court until there is a decision by the Constitutional Court. Against the decision of the Constitutional Court, the Supreme Court issued SEMA Number 3/2018 as a Guide to the Implementation of Duties for the Court. In Roman numeral V letter A of the letter, it is stated that the Supreme Court shall be have the authority to exercise the right to judicial review, even though the law that is the basis for reviewing the right to judicial review at the Supreme Court is still being reviewed by the Constitutional Court, as long as the chapter and material content of the article or paragraph which is being tested in the Constitutional Court does not serve as the basis for reviewing legislation under the law in the Supreme Court. This provision, of course, does not fully comply with the decision of the Constitutional Court because it still provides room for not delaying an application for judicial review at the Supreme Court even though the law that is used as the basis for review is being reviewed by the Constitutional Court.<sup>16</sup> These legal events are some examples of forms of neglect of the Constitutional Court's decision. This form of disobedience to the decision of the Constitutional Court can be categorized as a constitutional disobedience that can threaten the supremacy of the constitution.<sup>17</sup>

Obedience to the law is clearly an essential element of the functioning of the legal order. Various literatures describe that it turns out that someone obeys the law or violates the law is, apart from being a result of a deterrent factor or fear after witnessing or considering the possible sanctions that are given to them if they do not obey the law, also because of pressure from other individuals or group pressure. One decides to obey a rule of law for personal moral reasons. On the other hand, another individual may decide not to obey a rule of law for moral **reasons**.<sup>18</sup> The word 'obedience' according to the Large Indonesian Language Dictionary (KKBI) can be equated with the terms 'compliance' and '**loyalty**'.<sup>19</sup> The cause of the disobedience of the parties who are the addressees of the Constitutional Court's decision, based on the results of the research on the Cooperation between the Constitutional Court and the Faculty of Law, Trisakti University in 2019, is that it is undeniable that in constitutional interactions there is a sectoral ego that always occurs, so that the potential for products

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<sup>16</sup> Pusat Penelitian Dan Pengkajian Perkara Dan Pengelolaan Perpustakaan Keapaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi, *Constitutional Compliance Atas Putusan Mahkamah Konstitusi Oleh Lembaga-Lembaga Negara* (Jakarta: Pusat Penelitian dan Pengkajian Perkara dan Pengelolaan Perpustakaan Keapaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2019).p.68

<sup>17</sup> Ibid. h.16

<sup>18</sup> Achmad Ali, "Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)," *Jakarta: Kencana 1* (2009). p. 344-345.

<sup>19</sup> Suharso and Ana Retnoningsih, *Kamus Besar Bahasa Indonesia, Kamus Besar Bahasa Indonesia. Semarang: Widya Karya* (Semarang: Widya Karya, 2017). p. 511.

issued by certain state institutions not necessarily followed up by other state institutions that have the responsibility to implement it.<sup>20</sup> Non-compliance with the decisions of the Constitutional Court can occur because the Constitutional Court does not have an executive body that guarantees the implementation of decisions that are final and binding. It cannot be denied that as a political product, the substance of the law certainly contains the political interests of the legislators themselves. As the holder of the legislature's power, whose members are representatives of political parties, it is certain that the substance of the laws enacted by the legislature, in this case the DPR, reflects the will of political parties, especially political parties that dominate the legislative body.<sup>21</sup> The implementation of the Constitutional Court decision lies in the legal awareness of the petitioners related to the decision, of course without any coercion.<sup>22</sup> However, it is difficult to implement without strict rules that can compel the addressees of the decision to comply with the decision of the Constitutional Court. Based on the results of a study regarding the decision on judicial review of the Constitution on the Constitutional Court of the Republic of Indonesia for the period 2013-2018, it was found that there were three (3) forms of non-compliance with the decision of the Constitutional Court in terms of judicial review, namely:

1. "Non-compliance with the decision of the Constitutional Court in a normative form, which is manifested in the form of follow-up with statutory regulations;
2. Non-compliance to the decisions of the Constitutional Court in a practical form, which is manifested in the form of indifference to state administration practices in the executive, legislative and judicial fields; and
3. Non-compliance with the decisions of the Constitutional Court in normative and practical forms".<sup>23</sup>

The disobedience of state administrators occurs because there is no coercion in the decisions of the Constitutional Court as is the case in legal procedures in general,<sup>24</sup> and the authority to revoke regulations that are declared invalid is given to the agency that issued the regulation. It is based on Article 59 paragraph (2) of the Constitutional Court Law which states that "if changes to the law that have been reviewed are necessary, the DPR or the President shall immediately follow up on the decision of the Constitutional Court as referred to in paragraph (1) in accordance with the legislations". Provisions of Article 59 paragraph (2) have been removed in the third amendment to the Constitutional Court Law, namely Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. The abolition of the provisions further adds to the legal uncertainty regarding which state institutions are obliged to carry out the decisions of the Constitutional Court. Another

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<sup>20</sup> Pusat Penelitian dan Pengkajian Perkara dan Pengelolaan Perpustakaan Keapaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, *Op, cit*, p. 119-110.

<sup>21</sup> Widayati Widayati, "Problem Ketidakpatuhan Terhadap Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang," *Jurnal Pembaharuan Hukum* 4, no. 1 (2017): 1-14, <https://doi.org/http://dx.doi.org/10.26532/jph.v4i1.1634>.

<sup>22</sup> Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian Undang-Undang Terhadap Undang-Undang Dasar* (Jakarta: Raih Asa Sukses, 2015). p. 232.

<sup>23</sup> Tri Sulistyowati, Ali Ridho, and M Imam Nasef, "Constitutional Compliance Solution to Law Testing Rulings in the Constitutional Court," *Jambura Law Review* 3 (2021): 117-34, <https://doi.org/https://doi.org/10.33756/jlr.v3i0.10735>.

<sup>24</sup> *Ibid*.p. 127-128



factor causing the addressees' non-compliance with the Constitutional Court decision concerns the interpretation of the meaning of the term 'final' attached to the Constitutional Court decision. Many parties refused to accept the characteristics of the Constitutional Court decision because if the decision is accepted, or on the other hand it is not accepted, there are no other legal remedies for the petitioners who do not accept the decision, such as a review of the rule of law or a constitutional complaint.<sup>25</sup> This certainly cannot guarantee justice and certainty for petitioners, whose constitutional rights have been violated.

Decision of the Constitutional Court as a judicial body guarding the constitution necessarily needs to be obeyed, not only by the litigants, but also by all Indonesian people. The essence of the decision issued by the Constitutional Court contains the soul of the constitution and the findings of the theory of constitution jurisprudence. Not respecting, complying with, and implementing the decisions of the Constitutional Court shows disobedience to the decisions of state institutions that have been appointed by the constitution to guard the purity of the implementation of the constitution, namely the Constitutional Court and the constitution itself. Ronald Dworkin in his book entitled "Freedom's Law; The moral Reading of The American Constitution", states that it is inappropriate for parliament to reject justice just because it does not agree with certain parts of the constitution.<sup>26</sup>

### **3.2. Constitutional Injustice**

The establishment of a constitutional guarantor institution aims to safeguard the constitutional rights of citizens and state institutions so as not to be harmed by a statutory power. In the amendments to the 1945 Constitution, the Constitutional Court serves as a state institution aimed at safeguarding the constitution.<sup>27</sup> The final and binding characteristics of the Constitutional Court decision appear special characteristics that distinguish the Constitutional Court from other judicial institutions. The fact shows that many decisions of the Constitutional Court are not implemented and even tend to be ignored by legislators. As a body guarding the constitution, the decision of the Constitutional Court should be complied with and followed up by both case petitioners and all Indonesian citizens since it is a legal obligation. Implementation of the decision of the Constitutional Court is one of the efforts to fulfill the constitutional rights of citizens provided by the constitution.

Article 10 paragraphs (1) and (2) of Law Number 12 of 2011 concerning the Establishment of Legislation, as amended into Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation - the law, confirms the legal consequences or consequences of the Constitutional Court

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<sup>25</sup> Eliska Wagnerova, "The Effects of The Decisions of The Constitutional Court in Relation to Other Jurisdictions," *Conference on The Role of The Constitutional Court in The Maintenance of The Stability and Development of The Constitution*, 2004. p. 2.

<sup>26</sup> Aan Eko Widiarto, "Ketidakpastian Hukum Kewenangan Lembaga Pembentuk Undang-Undang Akibat Pengabaian Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 4 (2016): 735-54, <https://doi.org/https://doi.org/10.31078/jk1244>.

<sup>27</sup> Beni Kharisma Arrasuli, "Konstitusionalisme Bemegara Dan Kepatuhan Terhadap Putusan Mahkamah Konstitusi," *Ensiklopedia Sosial Review* 1, no. 2 (2019), <https://doi.org/https://doi.org/10.33559/esr.v1i2.284>.

decision that must be implemented by the legislators. Article 10 paragraph (1) letter d of the Law on the Establishment of Legislation stipulates that “the content that shall be regulated by law contains a follow-up to the decision of the Constitutional Court”. Furthermore, the provisions of Article 10 paragraph (2) of the Law on the Establishment of Legislations reads, “Follow up on the decision of the Constitutional Court as referred to in paragraph (1) letter d shall be implemented by the DPR or the President”. In the second explanation of the article, the purpose of following up on the decision of the Constitutional Court related to the decision of the Constitutional Court regarding the judicial review of the 1945 Constitution has been elaborated. The purpose of following up on the decision of the Constitutional Court is to prevent a legal vacuum from occurring. From the second explanation of the article, the importance of the decisions of the Constitutional Court in the system of laws and regulations in Indonesia can be seen. The fact is that many decisions of the Constitutional Court in judicial review of the constitution are not implemented, not only by state legislatures but also by state institutions that are supposed to implement the decisions of the Constitutional Court. Disobedience to the decision of the Constitutional Court certainly has legal consequences for citizens who feel that their constitutional rights have been harmed by the non-compliance of state institutions as addressees of the decision.

The word ‘consequence’ according to the Large Indonesian Language (KBBI) refers to the result of an event, something that becomes the end or result of an event.<sup>28</sup> Legal consequences are the result of an action taken to obtain a result of something that the perpetrator wants regulated by law. Legal consequences arise from a legal event that precedes it.<sup>29</sup> Questions that are often asked to the Constitutional Court are what form of execution of the Constitutional Court decision is carried out? What if the government does not comply with the decision of the Constitutional Court while still treating laws that have been declared to have no binding force? The decision of the Constitutional Court in reviewing the law is *declaratoir constitutief*, which means that the decision of the Constitutional Court creates or eliminates a new legal situation or forms a new law. The nature of a *declaratoir* decision is a decision that does not require an executive body to implement the decision.<sup>30</sup> In Black’s Law Dictionary, a decision is “announced”, preventing nonsuit, when courts conclusion on issue tried is made known from bench or by any publication, oral or written...<sup>31</sup> Sudikno Mertokusumo defines a judge's decision as a statement by a judge who is an authorized official, announced at a trial aimed at ending a case or dispute between the parties.<sup>32</sup> As the main actor in the judiciary, the position of the judge is an important position due to its authority in making a decision. Through this decision, the judge can change and even

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<sup>28</sup> Suharso and Retnoningsih, *Kamus Besar Bahasa Indonesia*. p. 23.

<sup>29</sup> Soegeng Ari Soebagyo and Gunarto Gunarto, “Akibat Hukum Akta Otentik Yang Terdegradasi Menjadi Akta Dibawah Tangan,” *Jurnal Akta* 4, no. 3 (2017): 323-30. P. 9-15.

<sup>30</sup> Siahaan, *Hukum Acara Mahkamah Konstitusi, Republik Indonesia*. p. 212

<sup>31</sup> Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American* (Minnesota, 1990). p. 115

<sup>32</sup> Sudikno Mertokusumo, “Mengenal Hukum Sebuah Pengantar,” *Yogyakarta: Liberty*, 1999. p. 158.

revoke the constitutional rights of citizens, that is to say, the decision taken is an effort to uphold justice.<sup>33</sup>

The judge's decision in resolving a case is expected not only to view cases in terms of statutory provisions but must consider the sense of justice and its usefulness. Consideration of justice and benefits and legal certainty must be realized for the sake of a good law enforcement. This is in line with what was stated by Gustav Radbruch that enforcing the law must fulfill 3 (three) elements, namely legal certainty, expediency, and justice.<sup>34</sup> In Article 1 point 1 of the Law on Judicial Power it is emphasized that "judicial power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the State of Law of the Republic of Indonesia". Basically, the judge's decision must be accountable to all parties, not only to the litigants but also to those who are not involved in the case (general public). This is made in order to improve the quality of judges' decisions and the image of the judiciary itself in the community. In fact, benchmarks for the concept of a decision containing justice, expediency and legal certainty are difficult to find in litigants, because what is fair for the party who wins the case is not necessarily fair for the loser.<sup>35</sup>

The 'final' characteristic of the Constitutional Court decision is often not responded positively by the legislature. Not infrequently the final decision often faces fierce challenges from the addressees of the decision until many decisions of the Constitutional Court are not implemented.<sup>36</sup> In addition to the nature of being 'final', the decision of the Constitutional Court has binding power that is *erga omnes* and does not require law enforcement tools to implement the decision. It is because the object of the test is a written and general regulation. According to Bambang Sutyoso, such a decision has weaknesses and shortcomings because the normative law is not enough to only contain orders and prohibitions. Behind the prohibition there must be provisions for sanctions for non-compliance.<sup>37</sup> Decisions of the Constitutional Court which tend to be ignored by the legislature certainly have an unfair impact on the petitioners and even for the Indonesian people whose constitutional rights have been violated by policies that have been re-established by state administrators, despite having been declared contradictory or unconstitutional by the Constitutional Court. Regarding the decisions of the Constitutional Court Judges in the context of law enforcement, basically, every decision issued by the court must represent the conscience of the people seeking justice. The judge's decision is required to examine, resolve, and decide cases that are submitted to the court. The decision should not be to the point of

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<sup>33</sup>Rosita Indrayati, "Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia," *Kertha Patrika* 38 (2016), <https://ojs.unud.ac.id/index.php/kerthapatrika/article/download/30089/18461>.

<sup>34</sup>Margono, *Asas Keadilan, Kemanfaatan & Kepastian Hukum Dalam Putusan Hakim* (Sinar Grafika, 2019). p. 120.

<sup>35</sup>*Ibid.* p. 121-122

<sup>36</sup>Berly Geral Tapahing, "Akibat Hukum Putusan Mahkamah Konstitusi Terkait Pengujian Undang-Undang Terhadap Undang-Undang Dasar Dalam Sistem Pembentukan Peraturan Perundang-Undangan," *Lex Administratum* 6, no. 1 (2018), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/20328>.

<sup>37</sup>Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian Undang-Undang Terhadap Undang-Undang Dasar*. p. 235-236

clouding the situation or even causing controversy in the community. All judges' decisions, not just Constitutional judges' decisions, should have a settlement effect between the value of justice and the value of legal certainty. Justice is one of the goals of law. It is relative so that it often obscures other elements that are also important, such as the element of legal certainty. Adage that is always echoed is *summum jus, summa injuria, summa lex, summa crux* (a harsh law will injure deeply, unless justice can help it). If only justice is pursued, positive law becomes completely uncertain. A further consequence of the legal uncertainty is injustice to the larger number of people. In order for the law to be enforced, state instruments are required which are then charged with the task and responsibility to enforce the law with certain powers to force legal provisions to be obeyed.<sup>38</sup>

#### **4. Conclusions**

Based on the abovementioned, it can be concluded that the causes of non-compliance with the implementation of the Constitutional Court Decision include: 1) There is a sectoral ego that always occurs in constitutional interactions, so that the potential for products issued by certain state institutions may not necessarily be followed up by other state institutions that have the responsibility to implement them; 2) Constitutional Court does not have an executive body that guarantees the implementation of decisions that are final and binding; 3) There is a lack of norms regarding state institutions that are obliged to follow up on the decisions of the Constitutional Court; 4) Regarding the interpretation of the meaning of the term 'final' attached to the Constitutional Court decision, many parties reject the characteristics of the Constitutional Court decision because, if the decision is accepted or on the other hand it is inaccepted, there is no other legal remedy for petitioners who do not accept the decision, such as as a review of the rule of law or a constitutional complaint. It certainly cannot guarantee justice and certainty for the petitioners whose constitutional rights have been violated. Moreover, the consequence of non-compliance with the decisions of the Constitutional Court in Reviewing Laws and Constitutional Court Decisions which tend to be ignored by legislatures is the emergence of injustice for petitioners and even for the Indonesian people whose constitutional rights have been violated by policies that have been re-established by state administrators, despite having been declared contradictory or unconstitutional by the Constitutional Court. Basically, every decision issued by the court must represent the conscience of the people seeking justice.

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<sup>38</sup> Rita Herlina and Ismail Rumadan, *Efektivitas Penegakan Hukum Lingkungan Hidup Melalui Putusan Pengadilan* (Jakarta: Kencana, 2021). p. 17.

## References

### Books

- Ali, Achmad. "Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)." Jakarta: Kencana 1 (2009).
- Bachtiar. *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian Undang-Undang Terhadap Undang-Undang Dasar*. Jakarta: Raih Asa Sukses, 2015.
- Black, Henry Campbell. *Black's Law Dictionary: Definitions of the Terms and Phrases of American*. Minnesota, 1990.
- Diantha, I Made Pasek. *Metodelogi Penelitian Hukum Normatif*. Jakarta: Kencana, 2017.
- Faiz, Pan Mohamad. *Mahkota Mahkamah Konstitusi Bunga Rampai 16 Tahun Mahkamah Konstitusi*. Depok: Rajawali Pers, 2019.
- Herlina, Rita, and Ismail Rumadan. *Efektivitas Penegakan Hukum Lingkungan Hidup Melalui Putusan Pengadilan*. Jakarta: Kencana, 2021.
- Margono. *Asas Keadilan, Kemanfaatan & Kepastian Hukum Dalam Putusan Hakim*. Sinar Grafika, 2019.
- Mertokusumo, Sudikno. "Mengenal Hukum Sebuah Pengantar." Yogyakarta: Liberty, 1999.
- Soebechi, Imam. *Hak Uji Materiil*. Jakarta: Sinar Grafika, 2016.
- Siahaan, Maruarar. *Hukum Acara Mahkamah Konstitusi, Republik Indonesia*. Mahkamah Konstitusi Republik Indonesia, 2006.
- Suharso, and Ana Retnoningsih. *Kamus Besar Bahasa Indonesia. Kamus Besar Bahasa Indonesia*. Semarang: Widya Karya. Semarang: Widya Karya, 2017.

### Journals

- Ali, Mohammad Mahrus, Meyrinda Rahmawaty Hilipito, and Syukri Asy'ari. "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru." *Jurnal Konstitusi* 12, no. 3 (2015): 633. <https://doi.org/https://doi.org/10.31078/jk12310>.
- Arrasuli, Beni Kharisma. "Konstitusionalisme Bernegara Dan Kepatuhan Terhadap Putusan Mahkamah Konstitusi." *Ensiklopedia Sosial Review* 1, no. 2 (2019). <https://doi.org/https://doi.org/10.33559/esr.v1i2.284>.
- Asshiddiqie, Jimly. "Mahkamah Konstitusi Dan Pengujian Undang-Undang." *Jurnal Hukum Ius Quia Iustum* 11, no. 27 (2004): 1-6.
- Eliska Wagnerova. "The Effects of The Decisions of The Constitutional Court in Relation to Other Jurisdictions." *Conference on The Role of The Constitutional Court in The Maintenance of The Stability and Development of The Constitution*, 2004.
- Fajar Laksono Soeroso. "Aspek Keadilan Dalam Sifat Final Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 11, no. 1 (2014): 65. <https://doi.org/https://doi.org/10.31078/jk%25x>.
- Fajarwati, Meirina. "Validitas Surat Edaran Mahkamah Agung (Sema) Nomor 7 Tahun 2014 Tentang Pengajuan Peninjauan Kembali Dalam Perkara Pidana Ditinjau Dari Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Legislasi Indonesia* 14, no. 2 (2018): 145-62.
- Indrayati, Rosita. "Revitalisasi Peran Hakim Sebagai Pelaku Kekuasaan Kehakiman Dalam Sistem Ketatanegaraan Indonesia." *Kertha Patrika* 38 (2016). <https://ojs.unud.ac.id/index.php/kerthapatrika/article/download/30089/18461>

- Nuridahwati, Zuhro. "Karakter Final Putusan Mahkamah Konstitusi Dalam Melaksanakan Kewenangan Sesuai Pasal 24C Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Ilmiah Raad Kertha* 3, no. 1 (2020): 105-19.
- Palguna, Dewa Gede. *Mahkamah Konstitusi: Dasar Pemikiran, Kewenangan, Dan Perbandingan Dengan Negara Lain*. Konstitusi Press (Konpress), 2018.
- Rahman, Faiz, and Dian Agung Wicaksono. "Eksistensi Dan Karakteristik Putusan Bersyarat Mahkamah Konstitusi." *Jurnal Konstitusi* 13, no. 2 (206AD): 352. <https://doi.org/https://doi.org/10.31078/jk1326>.
- Soebagyo, Soegeng Ari, and Gunarto Gunarto. "Akibat Hukum Akta Otentik Yang Terdegradasi Menjadi Akta Dibawah Tangan." *Jurnal Akta* 4, no. 3 (2017): 323-30.
- Sulistiyowati, Tri, Ali Ridho, and M Imam Nasef. "Constitutional Compliance Solution to Law Testing Rulings in the Constitutional Court." *Jambura Law Review* 3 (2021): 117-34. <https://doi.org/https://doi.org/10.33756/jlr.v3i0.10735>.
- Tapahing, Berly Geral. "Akibat Hukum Putusan Mahkamah Konstitusi Terkait Pengujian Undang-Undang Terhadap Undang-Undang Dasar Dalam Sistem Pembentukan Peraturan Perundang-Undangan." *Lex Administratum* 6, no. 1 (2018). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/20328>.
- Wahyudi, Rizki, Muhammad Gaussyah, and Darmawan Darmawan. "Optimalisasi Pelaksanaan Putusan Mahkamah Konstitusi Dalam Hal Pengujian Undang-Undang Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Mertacoria* 11, no. 2 (2018): 174-92. <https://doi.org/https://doi.org/10.31289/mercatoria.v11i2.1740>.
- Widayati, Widayati. "Problem Ketidapatuhan Terhadap Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang." *Jurnal Pembaharuan Hukum* 4, no. 1 (2017): 1-14. <https://doi.org/http://dx.doi.org/10.26532/jph.v4i1.1634>.
- Widiarto, Aan Eko. "Ketidakpastian Hukum Kewenangan Lembaga Pembentuk Undang-Undang Akibat Pengabaian Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 12, no. 4 (2016): 735-54. <https://doi.org/https://doi.org/10.31078/jk1244>.

## **Report**

*Pusat Penelitian Dan Pengkajian Perkara Dan Pengelolaan Perpustakaan Keapaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi, Constitutional Compliance Atas Putusan Mahkamah Konstitusi Oleh Lembaga-Lembaga Negara*. Jakarta: Pusat Penelitian dan Pengkajian Perkara dan Pengelolaan Perpustakaan Keapaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi, 2019.

## **Website**

Dian Erika Nugraheny. "Banyak Putusan MK Tak Dipatuhi, Anwar Usman: Pembangkangan Konstitusi." *Kompas Nasional*, 2020. <https://nasional.kompas.com>.