

# EXECUTION OF CONSTITUTIONAL COURT VERDICTS IN ACHIEVING A CONSTITUTIONAL RULE OF LAW IN INDONESIA

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## ABSTRACT

*One of the authorities granted by the 1945 Constitution of the Republic of Indonesia to Constitutional Court is the judicial review of the 1945 Constitution of The Republic of Indonesia. This shows the progress made in Constitutional Law in Indonesia and its 1945 Constitution. From 2004 to 2015 many verdicts were pronounced by the Constitutional Court. Some of these verdicts have been implemented, some have not. The non-execution of the court's verdicts is a constitutional violation as Article 24 C section 1 of the 1945 Constitution says that Constitutional Court's verdicts are final and binding, and as such, they have legal force right after reading in court hearings. The non-implementation of the Constitutional Court's verdicts is because, under Indonesian Law, a constitutional court verdict requires parliamentary approval/ratification for an immediate implementation since the Constitutional Court itself does not have an instrument or an executorial institution to carry out verdicts. This is a normative research drawing on constitutional provisions and court rulings. The study shows that the Indonesian legal system adheres to the concept of constitutionality. However, the study notes the unconstitutionality of many laws enacted by the House of Representatives. This is counterproductive to democracy and the rule of law in Indonesia. Legislation must not only ensure that the Constitutional Court's verdicts are immediately complied with according to the 1945 Constitution but also provide sanctions when there is non-compliance.*

**Keywords:** Verdict Execution, Constitutional Court Verdicts, Constitutional Court Rule of Law, Judicial Review.

## INTRODUCTION

Article 24 Section 2 after the amendment to the 1945 Constitution reads: "*Judicial power is exercised by a Supreme Court and the judiciary bodies under it in the general court, religious court environment, military court, environmental court, state administrative court environment, and by a Constitutional Court*". The idea of establishing a Constitutional Court is based on serious efforts to protect the human and constitutional rights of the Indonesians people (Gaffar, 2009). The Constitutional Court provides guarantees for the protection of citizens' constitutional rights (Law, 2003; Law, 2011). The authority of the Constitutional Court is regulated in Article 24 C which confirms that: The Constitutional Court has the authority to adjudicate at the first and last level the law deemed unconstitutional, disputes among state institutions with regard to the authority by the Constitution, the dissolution of political parties, and general election result disputes.

Besides, the Constitutional Court is also vested with the power to examine the decisions

of the Indonesian House of Representatives or Dewan Perwakilan Rakyat (DPR-RI) regarding an alleged misconduct or the violation of law by a sitting President and/or Vice President. These include betrayal of the state, corruption, bribery, other serious criminal offenses, or despicable acts, and / or the inability of the president and/or vice president to fulfil their oath of office as specified in the 1945 Constitution of the Republic of Indonesia. It is important to note that this decision is not final because it is subject to the decision of the People Consultative Assembly or Majelis Perwakilan Rakyat (MPR), a political institution authorized to impeach the President/vice president. Judicial review is an examination by the judiciary about the consistency of the Basic Law or statutory regulations against higher statutory regulations.

In the context of the authority of the Constitutional Court, judicial review is testing the law against the Basic Law, while the authority to examine the regulations under the law that are contrary to the law becomes the authority of the Supreme Court (Baehaqi, 2013). During the initial period of the establishment of the Constitutional Court, from 2003 to 2015 the Constitutional Court had conducted as many as 694 judicial reviews. This shows how the submission of judicial review of the Law is increasing from year to year. Of these reviews, only 203 were approved by the Constitutional Court of the Republic of Indonesia. This means that there have been some years where no cases were approved at all. This also indicates that the submission of a judicial review conducted so far cannot be proven to violate the 1945 Constitution.

Furthermore, these approved verdicts show an insignificant amount; approximately 30% of the total submissions for a judicial review are approved. This also indicates that not all products in the form of the law obey the 1945 Constitution as a source of basic law. It can also be said that several laws have violated the constitutional rights of citizens, both only regulated in sections, articles, or even the substance of the law as a whole. Of the 203 approved cases, not all of the verdicts were carried out properly. Some have been implemented, some were not, which brings up the question as to why these verdicts of the Constitutional Court that are final and binding fail to carry out. This is interesting to be studied in-depth to find out steps to take to strengthen the verdicts of Constitutional Court.

## RESULTS AND DISCUSSION

### Constitutional Court: The Guardian of the 1945 Constitution

The existence of the Constitutional Court in the Indonesian constitutional system, among others, has helped to organize the system of community life in the constitution. Through the constitutional authority mandated directly by the 1945 Constitution, the Constitutional Court functions as the guardian of the constitution. Law No. 24/2003 on the Constitutional Court is commonly referred to as "*the guardian of the constitution*" (Hidayat, 2016).. As the guardian of the constitution, it is intended to safeguard the constitution through the verdicts of Constitutional Justices, especially in judicial review that is not based on the substance of the constitution and that is proven to be a violation of citizens' constitutional rights. The constitution exists as an embodiment of democracy, that is, as the highest social agreement, and as such, democratic values are embedded in them as well as the foundation of democracy. It is even a prerequisite for a healthy and well-functioning democracy. It means that true and good democracy is based on a constitution (law) so that the relationship between democracy and the constitution is believed to

be able to deliver a country to become a constitutional democratic state. In this context, the Constitutional Court was presented, to regulate the State and protect constitutional democracy in Indonesia.

Constitutional testing aims to reduce the loss of constitutional of the applicant (Chandranegara, 2012). The implementation of judicial review by the Constitutional Court is now a picture that seems to be a violation of the constitutional rights of citizens only if the formation of the law (the House of Representatives with the President) makes a law that turns out to violate the constitutional rights of citizens. The violation of the citizens' constitutional rights does not only occur because of legal errors, but also because of the actions or negligence of public officials (Dewa, 2013). The authority to examine the law by the Constitutional Court (judicial review) follows the tradition established by Hans Kelsen in Austria. In October 1920, the Constitutional Court was formed in Austria chaired by Hans Kelsen (Asshiddiqie, 2006). Indonesia itself is the 78<sup>th</sup> country to form the Constitutional Court. According to Hans Kelsen, as quoted by Jimly Asshiddiqie, the Constitutional Court is expected to act as a negative legislator who is given the authority to override or even invalidate laws that are contrary to the constitution. However, in the development of constitutional law in various countries, due to the large number of laws that have been annulled by the Constitutional Court, there is an opinion that the role of the Constitutional Court as a negative legislator has shifted to positive legislators (Asshiddiqie, 2006).

Seen from a citizens' right protection prospective, the institutionalization of the constitutionality of judicial review is a confirmation and a guarantee that constitutional rights are fundamental rights (Dewa, 2013). Not only is the constitutionality review of the law only confirming the guarantee of constitutional rights, the constitutionality testing of acts (acts or negligence) of public officials which causes violations of a person's constitutional rights is also an affirmation as well as a guarantee of constitutional rights, so violations against them are also constitutional violations.

Furthermore, the existence of the authority to examine the law against the 1945 Constitution has shifted the paradigm of parliamentary supremacy with the principle of the law cannot be disturbed by the paradigm of the supremacy of the constitution with the principles of its structure in the legal hierarchy. Thus, there are no more state institutions that have a higher position. All state institutions have an equal position, distinguishing only in their respective functions. Each of the main State institutions has the right to check on its other counterparts as suggested by the Check and Balance principle (Asshiddiqie, 2006).

### **Types of Judicial Review Verdicts**

Article 56 of Law No. 24/2003 on the Constitutional Court regulates 3 types of verdicts, namely controversial verdicts, accepted/approved verdicts, and rejected verdicts. While Article 56 section 3 and Article 57 section 1 of Law no. 24/2003 on the Constitutional Court as amended by Law No. 8/2011 on the Amendments to the Constitutional Court Law, says that any law contrary to the 1945 Constitution in whole or in part has no binding legal force (legally null and void). In his dissertation, Fajar Laksono (2017) argues that from 2003 to 2015, 853 cases of judicial review were handled by the Constitutional Court of the Republic of Indonesia. Of these cases 89 were withdrawn; 13 declared null and void; 203 were approved; some 297 were rejected and 251 were not processed at all.

The data above shows the increasing requests for judicial review submitted to the Constitutional Court. Based on the above data, almost 30% of the number of submissions were approved. This indicates that much of the legislation during that timeframe was in contradiction with the 1945 Constitution. The constitutional examination of the law against the 1945 Constitution submitted to the Constitutional Court is to assess the suitability between laws and the 1945 Constitution. Thus this test becomes very important related to how the relationship between Democracy and the Constitution at the same time contains the important meaning of the function of the Constitutional Court in maintaining the spirit of the 1945 Constitution.

In its development, the existing decisions so far, the results of research conducted by researchers from the Center for Research and Study of Cases, Management of Information and Communication Technology of the Constitutional Court of the Republic of Indonesia (Asy'ari et al., 2013) showed that during the 2003-2012 period a variety of decisions were taken that include constitutional decision and unconstitutional decision models (which are decisions containing interpretations of sections, articles of laws declared either constitutional or unconstitutional), and the model of decisions that delay the enforcement of verdicts aiming to provide space for the transition of unconstitutional laws to remain in force and have binding legal force for a certain time.

Verdicts that have undergone development in the protection of the constitution turned out to be in practice related to the implementation of the decision not necessarily carried out by the parties. In practice, some decisions of the Constitutional Court have been carried out, some are still underway and others have not been implemented at all, as argued at the outset of this paper. Even though the decision of the Constitutional Court is final and binding, this means that the Constitutional Court's decision cannot be made by any legal effort. The consequences must be accepted and carried out without exception because the 1945 Constitution has designed like this. The verdicts of the Constitutional Court in judicial review cases declaring a law contradictory to the 1945 Constitution certainly set a stage for new legal policies that must be adopted in the future. Even though it is declaratory, the Constitutional Court's verdict has dramatically influenced legislation in Indonesia. This means that the Constitutional Court's verdicts set the stage for a new legal policy (Hidayat, 2016).

Such a transformation must be adopted by the legislators to prevent the enactment of unconstitutional laws. Then it becomes an obligation for the legislators to make changes so that the material contained in the law which is only based on the 1945 Constitution, because one of the contents of the Law is implementing the 1945 Constitution either directly or indirectly, besides that the 1945 Constitution is the basic law of the State which is the source of the law for the regulations below it mainly is the law. The facts that now it turns out there are still decisions of the Constitutional Court that have not been implemented even some are not implemented by the legislators. For example, Law No. 42/2014 on Amendments to Law No. 17/2014 on the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council is in contradiction with the Constitutional Court Decision No. 82/PUU-XII/2014 on the Representation of Women in the parliament since it does not accommodate the principles of the Constitutional Court regarding women's representation in public office. This is proof of a dismissal of the Constitutional Court's by the legislators (Law, 2014).

## Constitutional Court Verdicts Execution Efforts

A verdict pronounced by the Constitutional Court proved to be contrary to the 1945 Constitution means that the law contradicts its basic law and also violates the constitutional rights of the citizens that are outlined in the 1945 Constitution. One way to prevent such a situation is to raise the awareness of legislators on the fact that implementing the verdict of the Constitutional Court is essential to strengthening the rule of law and democracy as well as upholding checks and balances between the three branches of government. Upholding the constitutionality of laws is a key element of the rule of law and democracy (Saptenno, 2015; Law, 2014).

The Indonesian Parliament may ruin its reputation in the eyes of the community should it choose to ignore the verdict of the Constitutional Court. One of the steps taken by the Constitutional Court to raise awareness of the public on its existence and authority as well as allowing for a better understanding of its verdicts by the community.

Legally, this does not have to be written in a separate instrument but it can be done by including legal provisions for law-forming institutions to implement the decision of the Constitutional Court in the planned revision of Law No. 12/2011 on Legislation. It is not enough to only include the decision of the Constitutional Court as one of the contents of the law (Law, 2011). Including the follow-up to the verdicts of the Constitutional Court carried out from the planning stage by including in the list of the National Legislation Program, the time is adjusted to the results of the decision of the Constitutional Court, this is a form of commitment from the legislators to implement the results of the Constitutional Court's decision and at the same time as a consequence of checks and balances in strengthening the rule of law and democracy in Indonesia. The material for the decision must also be raised in the drafting process of the academic text, especially for the decision of the Constitutional Court in the form of cancellation of law and the amendment to the law that is to be replaced. Technically, the formation of legislation, the results of the decision of the Constitutional Court become one of the basic considerations of the legislators who are included in the "*basic considerations*" of the substitute laws as well as being included in the General Explanation as part of the description of the considerations of the enactment of changes in the law.

## CONCLUSION

To conclude, it is important to note that there is no need for a special instrument or an executorial agency to execute the decision of the Constitutional Court because the Law-Forming Institution (the President and the House of Representatives or Dewan Perwakilan Rakyat (DPR)) is one of the institutions implementing the decision of the Constitutional Court. A high level of commitment is needed for law-making institutions that implementing the Constitutional Court's verdicts is the path to the establishment of a democratic rule of law by carrying out the checks and balances function.

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