

MODEL FOR FOLLOWING UP ON CONSTITUTIONAL COURT DECISIONS

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ABSTRACT

The decision of the Constitutional Court is final and binding, effective immediately upon its announcement in open session. This means that the decision applies to all parties, not just the litigants, and has legal implications for the regulation of laws and the civil rights of citizens. The decision requires follow-up in the form of lawmaking or amendments, with the Government and the DPR RI playing crucial roles in implementing the Court's decision. However, not all Constitutional Court decisions are followed up by lawmakers. This study aims to explore the implications of the decision and the follow-up model based on justice and legal certainty, focusing on the Constitutional Court's decisions related to civil rights. The research used the normative legal research method. This research shows that the Constitutional Court's decision is only sometimes enforceable by the addressee, which can lead to a legal vacuum and a decline in the authority of law. The model of the Constitutional Court's order to the addressee (judicial order), in the form of suggestions or encouragement for the legislative body to consider certain aspects of the requested norm change, can facilitate and encourage the DPR RI and Government to implement the Constitutional Court's decision. This model simultaneously serves as a means of controlling constitutional compliance.

Keywords: Model, follow up, decision, constitutional court

1. PREFACE

The Republic of Indonesia is established as a state of law, a principle affirmed in Article 1, paragraph (3) of the 1945 Constitution: "The State of Indonesia is a State of Law." Additionally, Article 1, paragraph (2) of the same constitution declares that "Sovereignty is vested in the people and is exercised in accordance with the Constitution." This provision underscores Indonesia's status as a state governed by law, where the constitution holds the highest authority. Consequently, the constitution's supremacy is emphasized, reflecting Indonesia's commitment to upholding its principles. This constitutional framework highlights the symbiotic relationship between the rule of law and democracy. In essence, a state of law necessitates the supremacy of the Constitution, which inherently embodies democratic principles. Asshiddiqie (1997) notes that the constitution serves as the pinnacle of social agreement, symbolizing the highest expression of democratic governance.

As a state of law, the administration must reflect the characteristics of a lawful state by applying the principles of the "Rule of Law." These principles include: (a) the recognition and protection of human rights to ensure equal treatment in politics, law, socio-economics, culture, and education; (b) legality in all forms of law; and (c) a free and impartial judiciary, independent from the influence of other powers (Adji, 1980).

Referring to these principles, the existence of the Constitutional Court as the "guardian of the constitution" is strategically vital for ensuring that the state and government base their policies on

constitutional law. The Constitutional Court's strategic position as one of the holders of judicial power in Indonesia is outlined in Article 24, paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This article states that "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative judicial environment, and by a Constitutional Court." This provision recognizes and legitimizes the existence of the Constitutional Court.

The decision of the Constitutional Court is final and binding. Once read in an open session, it applies to all parties (*erga omnes*), not just the litigants. When a petition for judicial review of a law is granted, whether in part or in whole, the decision impacts the regulation of the law, including the civil rights of citizens. Consequently, the Court's decision necessitates follow-up in the form of creating or amending laws. The role of the Government and the DPR RI is crucial in implementing the Constitutional Court's decisions. However, in practice, not all Constitutional Court decisions have been followed up by lawmakers.

Based on this background, it is intriguing to study the implications of the Constitutional Court's decisions and their follow-up models, grounded in justice and legal certainty. This research focuses specifically on the Constitutional Court's decisions related to civil rights. By analyzing these decisions in the field of civil law over a certain period, it will be possible to construct effective follow-up forms and models.

2. RESEARCH METHOD

The researchers employed normative legal research, which entails a focused examination of law as a positive norm, also referred to as doctrinal research (Soetandyo, 2002). In doctrinal legal research, what is studied is legal material that contains normative rules. The legal material consists of primary and secondary legal materials. Primary legal material in the form of the 1945 Constitution of the Republic of Indonesia; Law and decisions of the Constitutional Court that are relevant to the field under study, especially those related to the formation of laws and implications for civil rights. Secondary legal material in this study are in the form of summary of discussion of law, academic draft of bill, research results or scientific papers and books that discuss the decisions of the Constitutional Court and civil rights.

In this study, the data were arranged systematically in accordance with the research problem and then analyzed qualitatively. Qualitative analysis is carried out by interpreting, describing, explaining, and compiling data consistently, systematically, and logically in accordance with the research objectives (Hartono, 1994). The step of describing the data is carried out by describing the data related to the Constitutional Court's decision that has an impact on civil rights by looking at the reasons for the applicant and respondent, as well as the judge's consideration in deciding the case concerned. The data is then connected to the norms or doctrines of civil rights and human rights principles and then discussed.

The research uses systematic interpretation namely by interpreting by trying to understand the decisions of the Constitutional Court not only the rulings and legal considerations of the decision, but are associated with other decisions that have similarities or with law or other legal documents. The interpretation of the decision of the Constitutional Court or the norms of a law will be carried out by referring to the same provisions, especially those that have similar principles in other

regulations. Systematic interpretation will also look for provisions that are interconnected, so that a relationship can be found that determines the meaning to be concluded (Asshiddiqie, 1997).

3. RESULT AND DISCUSSION

Over the past two decades, the Constitutional Court of the Republic of Indonesia has reviewed and decided on a total of 3,851 cases. These cases encompass Law Examination (PUU) cases, Disputes over the Authority of State Institutions (SKLN), Disputes over General Election Results (PHPU), and Disputes over Regional Head Election Results (PHPKADA). PUU cases, numbering 1,801 or 46.77% of the total cases, hold the top position (Table 1). Law review cases are classified into two groups: material testing, which assesses the substance or content of the law or legal norms, and formal testing, which examines the procedures for law formation. In practice, the same applicant can simultaneously pursue material and formal judicial review.

Table 1

Recapitulation Decisions 2024

Case	Total	Percentage (%)
PUU	1,801	46.77
SKLN	29	0.75
PHPU	885	22.98
PHPKADA	1,136	29.50
Total	3,851	100.00

Table 2

Judicial Review of Law in 2003–2024

Year	Accepted	Registered	Total	Decision						Total Decisions	On Process
				Granted	Rejected	Denied	Withdrawn	Dismissed	Not authorized		
2003	0	24	24	0	0	3	1	0	0	4	20
2004	20	27	47	11	8	12	4	0	0	35	12
2005	12	25	37	10	14	4	0	0	0	28	9
2006	9	27	36	8	8	11	2	0	0	29	7
2007	7	30	37	4	11	7	5	0	0	27	10
2008	11	36	47	10	12	7	5	0	0	34	12
2009	12	78	90	15	17	12	7	0	0	51	39
2010	39	81	120	17	23	16	5	0	0	61	59
2011	59	86	145	21	29	35	9	0	0	94	51
2012	51	118	169	30	31	28	5	2	1	97	72
2013	72	109	181	22	52	22	12	1	1	110	71
2001	71	114	211	29	41	37	17	6	1	131	80
2015	80	140	220	25	50	61	15	4	2	157	63
2016	63	111	174	19	34	30	9	3	1	96	78
2017	78	102	180	22	48	44	12	4	1	131	49
2018	49	102	151	15	42	47	7	1	2	114	37
2019	37	85	122	4	46	32	8	2	0	92	30
2020	30	109	139	3	27	45	14	0	0	89	50
2021	50	71	121	14	44	29	11	0	1	99	22
2022	22	121	143	15	53	37	18	1	0	124	19
2023	19	168	187	13	57	41	25	0	0	136	51
2024	50	40	90	8	33	9	7	3	0	60	
Total	-	1,804	-	315	680	569	198	27	10	1,799	-

Table 2 illustrates that over its 21-year existence (data as of June 3, 2024), the Constitutional Court has registered a total of 1,804 cases of judicial review, with 1,799 cases having been decided. The

categories of decisions are as follows: 315 cases (17.46%) were granted the petition, 680 cases (37.69%) rejected the petition. Additionally, 569 cases (31.54%) of the Constitutional Court's decisions deemed the petition inadmissible; the applicants withdrew 198 petitions (10.98%); 27 cases (1.50%) were declared void; and 10 decisions (0.55%) of the Constitutional Court stated that the Court did not have the authority to hear the case requested by the applicants.

Indonesia upholds the principle of the rule of law (Article 1 paragraph (3) of The 1945 Constitution the State of The Republic of Indonesia/UUD 1945), necessitating obedience and respect for every court decision by its citizens. Fundamentally, the principle of rule of law in Indonesia implied in the UUD 1945 would be realized only if the entire governmental process in exercises according to the constitutional principles (Simamora, 2016:26). Disregarding court rulings is viewed internationally as a violation of the law, often categorized as contempt of court. In the context of non-compliance with the Court's decision, it can be called contempt of constitution (Widyawati, 2017). Hamdan Zoelva (2016) emphasizes that the level of respect for court decisions is influenced by public awareness of the law and the integrity of the decisions themselves. The implementation of Constitutional Court rulings differs from that of other court decisions, such as those in civil and criminal cases, where enforcement mechanisms are readily available. Compliance and reverence for Constitutional Court decisions hinge greatly on the constitutional consciousness of state institutions and the legal awareness of the public, both of which promote adherence to these institutions and their decisions.

The Constitutional Court's final and binding decision signifies that once it is announced in open session, it becomes "inkracht" and applies erga omnes. The Constitutional Court's decision holds universal binding force, requiring both the parties involved in the dispute and the broader community to comply with and implement it. Although the petition for review is based on the applicant's aggrieved constitutional rights, the action is to represent the legal interests of the entire community, for the sake of upholding the constitution (Sucahyono, 2019). The absence of legal remedies is intentional, ensuring that the Constitutional Court's decision can resolve disputes or issues fairly and with legal certainty.

On the other hand, failure to implement the Constitutional Court's decision can result in a legal vacuum. This occurs when the implementation of the decision is largely dependent on the relevant parties (Johansyah, 2021), namely the DPR RI and the Government, to promptly enact or revise the provisions in the law that the Court's decision has invalidated. If enforcement of the Constitutional Court's decision cannot be realized, it may diminish the authority of the law and stir unrest within the community (Bachtiar, 2015).

Referring to the final and binding nature of the Constitutional Court's decisions, as explained in Article 10, paragraph (1) of the Constitutional Court Law, the parties bound by the law are obliged to comply with it. Since the decision to review the law is declaratory-constitutive, enforcement of the Constitutional Court's decisions does not necessitate coercion. Therefore, the awareness and legal compliance of all parties in implementing court rulings, including those of the Constitutional Court, reflect the true respect for the rule of law in the state. Disregarding the Constitutional Court's decisions can be categorized as an unlawful act, as stated in the rationale of Constitutional Court Decision No. 8/PUU-XVI/2018. Failing to adhere to the Constitutional Court's decisions constitutes a clear violation of the Constitution.

The grant of constitutional authority to the Constitutional Court to examine laws against the 1945 Constitution affirms the realization of the principle of constitutional supremacy through the application of judicial supremacy, as seen in other countries that similarly uphold the principle of constitutional supremacy. Suppose a law, in both its formation and content, is found to be contrary to the 1945 Constitution of the Republic of Indonesia. In that case, the Constitutional Court is empowered to declare it as such, thereby upholding the principle of constitutional supremacy through the application of judicial supremacy. Such a decision renders the law without binding legal force. In this context, the Constitutional Court is often referred to as a negative legislator.

Neglecting the constitution should not occur if legislators, both in the legislative and executive branches, possess legal obedience and awareness that is internalized within an internal or professional legal culture. This legal culture is embodied by individuals who professionally have a background in legal knowledge or work in the field of law formation or enforcement (Friedman, 1990). The values, beliefs, views, and patterns of behavior exhibited by individuals within institutions in response to decisions made by the Constitutional Court are shaped by their experiences and influenced by factors such as history, politics, culture, and socioeconomics within a society or country (Herklotz, 2023).

In this regard, although the mechanism for preparing the National Legislation Program (Prolegnas) offers a pathway to follow up on Constitutional Court decisions through the Open Cumulative List, legislators' response to these decisions is heavily influenced by their values and beliefs, which shape their legal awareness. For instance, in Constitutional Court Decision No. 46/PUU-VIII/2010 regarding extra-marital children, religious beliefs that recognize only the civil relationship of such children with their biological mother influence lawmakers' decisions. This religious belief has political implications, leading lawmakers to refrain from accommodating the Constitutional Court Decision by amending Law No. 1 of 1974 on Marriage.

As known, Constitutional Court Decision No. 46/PUU-VIII/2010 declares Article 43, paragraph (1) of Law No. 1 of 1974 on Marriage contradictory to the 1945 Constitution. This article stipulates that "Children born outside of marriage only have a civil relationship with their mother and their mother's family" and is deemed without binding legal force, as it denies civil relationships with men proven to be biological fathers through scientific evidence or other legal means.

In contrast to Constitutional Court Decision Number 22/PUU-XV/2017, which regulates the minimum age limit for men and women to get married, the age limit of 19 years mandated by the Constitutional Court has been addressed through the amendment of Article 7, paragraph (1) of Law No. 1 of 1974, as stipulated in Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage. Despite variations in the age of adulthood across several laws, the adjustment of the minimum marriage age to 19 years, as mandated by the Constitutional Court Decision, has yet to encounter political or religious resistance.

Regarding the decisions of the Constitutional Court that the addressees should follow up on, one possible approach is to issue a judicial order in response to the Constitutional Court's decision. Judicial orders are directives from the court that both parties and citizens should adhere to and implement. These orders typically contain advice or encouragement for the legislature to consider

specific aspects of the requested norm change. The significance of the judicial order in this context underscores its mandatory implementation by the legislature, serving as a mechanism for ensuring constitutional compliance (Putri & Ali, 2019). Citing the perspectives of Gawson and Rogowski (2002), the Constitutional Court's consideration in its decisions aims to foster collective awareness among addressees to comply with and execute the final and binding decisions of the Constitutional Court, which apply universally.

Decisions containing judicial orders, affirming and indicating actions to be taken by the addressees, facilitate the implementation of Constitutional Court decisions. In terms of constitutional supremacy, Huda (2018) underscores that judicial orders contribute to establishing the constitution, encompassing both written and unwritten regulations, as the supreme law that legitimizes laws and regulations subordinate to it. This aligns with the principle of the constitution, which addresses fundamental issues and principles.

4. CONCLUSION AND SUGGESTION

The follow-up model of the Constitutional Court is constructed by comprehending the norms of the law as a unified system and implementing decisions through specific stages tailored to the essence of the decision. When delivering a decision on the judicial review of a law, including the Court's order to the addressee (judicial order) in the form of advice or encouragement for the legislature to consider certain aspects of the requested norm changes, can serve as a catalyst for the DPR RI and the Government to act upon the final and binding decision of the Constitutional Court. The Court can also underscore the importance of the legislature and government adhering to its decision, serving as a mechanism for controlling constitutional compliance.

Based on the analysis and discussions conducted, the researchers offer suggestions to the Government and the DPR RI as follows: 1) The DPR RI and the Government, as lawmakers, should optimize the functions of their support units in implementing Constitutional Court decisions. These units include the Center for Monitoring the Implementation of Laws at the Expertise Agency of the Indonesian House of Representatives (BK-DPR) within the Secretariat General of the DPR RI, and the Center for Analysis and Evaluation of the National Law at the National Law Development Agency (BPHN). These units are tasked with conducting studies and evaluations of the implementation of Constitutional Court decisions. The findings from these analyses and evaluations should serve as inputs for the DPR RI and the Government in drafting the Open Cumulative Bill List of the National Legislation Program, as a follow-up to the decisions of the Constitutional Court. 2) The Constitutional Court should enact regulations mandating the inclusion of judicial orders in its decisions, regardless of whether the decisions are granted, rejected, or conditional. 3) It is imperative to establish explicit provisions outlining the mechanism and timeline for implementing Constitutional Court decisions through the establishment or amendment of laws.

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