

Legal Certainty In The Implementation of Judicial Review Decisions By The Constitutional Court In Indonesia

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ABSTRACT

This study aims to analyze the implementation of Constitutional Court decisions in Indonesia, particularly focusing on the gap between the legal force of such decisions and their actual enforcement. Despite the Constitutional Court's decisions being final and binding, many are not implemented in accordance with the principle of erga omnes, leading to legal uncertainty and hindering the achievement of justice. This research employs a normative juridical approach, utilizing the theory of the state of law, the constitution, and legal certainty as analytical tools. The study's findings indicate that while Constitutional Court decisions have permanent legal force and should be binding on all parties, inconsistent implementation by institutions such as the House of Representatives and the President remains a significant issue. The primary cause of non-compliance is often the lack of adequate legislative responses or the absence of clear implementing regulations. Furthermore, the study highlights that an ideal implementation of Constitutional Court decisions would require stronger monitoring mechanisms and sanctions to ensure compliance. In conclusion, this study recommends revising relevant laws and regulations and establishing more detailed implementation procedures to support the effective execution of Constitutional Court decisions, ensuring legal certainty, justice, and public trust in the legal system.

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Introduction

Indonesia is a country of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). The state of law (rechtsstaat) is a concept that places law as the main foundation in the administration of the state, by ensuring the protection of human rights, the division of power, and the rule of law. In this context, all actions of the government

and state institutions must be based on the law, including the implementation of decisions of judicial institutions (Indratanto & Nurainun, 2020).

The Constitutional Court has an important role as the guardian of the constitution and the sole interpreter of the constitution. As stipulated in Article 24C of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has the authority to: (Mulyata, 2015)

1. Testing the Law against the 1945 Constitution,
2. Deciding disputes over authority between state institutions,
3. Dissolve political parties, and
4. Resolve disputes over election results.

The Constitutional Court's decision is final and binding, which means that the decision cannot be appealed or cassation and must be implemented by all parties. This principle also includes the principle of *erga omnes*, which ensures that the Constitutional Court's rulings apply to all people and state institutions without exception. The main purpose of this trait is to create legal certainty, prevent legal vacuums, and maintain justice in the legal system (Siahaan, 2009).

However, the implementation of the Constitutional Court's decision in practice often faces obstacles. Some decisions are not implemented by the authorities, such as the House of Representatives and the President (Prayogo, 2016). An example is the Constitutional Court Decision Number 91/PUU-XVIII/2020, which states that the Job Creation Law is unconstitutional and gives two years to be corrected. Instead of revising it, the government issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022, which is considered contrary to the order of the Constitutional Court (Christia et al., 2024). This shows that there is a legal vacuum that has the potential to weaken legal certainty. In addition, in the Constitutional Court Decision Number 30/PUU-XVI/2018, the Constitutional Court stated that candidates for members of the Regional Representative Council (DPD) must not come from political party administrators. Although this decision was implemented by the General Election Commission (KPU), its implementation caused controversy because there were different interpretations, including from the Supreme Court. This condition shows that there are obstacles in the application of the principle of *erga omnes* (Asshiddiqie, 2016). According to Gustav Radbruch, legal certainty is one of the main elements in the legal system that guarantees clarity, stability, and enforceability of the law (Radbruch, 1950). However, non-compliance with the Constitutional Court's decision creates legal uncertainty and weakens the principle of the rule of law. Jimly Asshiddiqie also emphasized that without the consistent implementation of the Constitutional Court's decisions, the function of the Constitutional Court as the guardian of the constitutional supremacy will lose legitimacy (Fattah & Mustaufiy, 2024).

The Constitutional Court's decision is final and binding since it was pronounced in a plenary session that is open to the public, that is, since then the Constitutional Court's decision must be implemented, but there are still Constitutional Court decisions that have not been implemented in accordance with the provisions of the constitution, it should be According to Law number 12 of 2011 and its amendments, there is a norm that regulates that the House of Representatives and the President who make laws must respond to the decision of the constitutional court when the constitutional court grants the norm's application (Budhiati, 2020).

Based on the above statement, the problem will be formulated as follows:

1. What is the Legal Certainty of the Implementation of the Decision on the Right to Judicial Examination by the Constitutional Court in Indonesia?
2. How is the implementation of the Constitutional Court's decision not implemented according to the principle of Erga Omnes?
3. How to Execute the Ideal Implementation of Constitutional Court Decisions to Realize Final and Binding Legal Certainty

This research uses the Theory of the State of Law which emphasizes the rule of law as the basis for state administration, the Theory of Legal Certainty which guarantees substantive justice, and the Constitutional Theory which makes basic norms as the main guideline (Muhdar & Susilowati, 2023). With this approach, it is hoped that the research can make practical and theoretical contributions to strengthen the implementation of the Constitutional Court's decisions.

According to Asshiddiqie (2016), the implementation of Constitutional Court decisions is central to upholding the rule of law, but non-compliance from state institutions, such as the House of Representatives and the President, undermines legal certainty. He highlights that failure to follow these decisions weakens the authority of the Constitutional Court. Similarly, Christia et al. (2024) discuss the political implications of judicial decisions, emphasizing that the failure to execute Constitutional Court rulings leads to legal uncertainty, which diminishes the public's trust in the legal system and the courts.

The urgency of this research arises from the growing concerns regarding the inconsistent implementation of Constitutional Court decisions in Indonesia. Although these decisions are final and binding, their non-implementation by various state institutions creates significant legal uncertainty, undermining public trust in the legal system. As Indonesia continues to develop its democracy and rule of law, ensuring that Constitutional Court decisions are consistently implemented is crucial for strengthening legal certainty and maintaining justice in the country.

While existing research has addressed the general implications of Constitutional Court decisions, few studies have specifically explored the practical challenges and legal barriers to implementing these decisions in accordance with the principle of erga omnes. This gap is particularly evident in examining how non-compliance by state institutions affects the broader legal system, creating a need for more targeted research on the enforcement of Constitutional Court decisions and its impact on legal certainty.

This study provides a novel contribution by analyzing the legal certainty of implementing Constitutional Court decisions, particularly focusing on the persistent issue of non-compliance. By utilizing the theory of the state of law, the constitution, and legal certainty, this research offers a comprehensive framework for understanding the obstacles to the implementation of the erga omnes principle. The study proposes practical solutions, such as establishing independent supervisory bodies and sanction mechanisms, which have not been widely explored in previous literature.

The primary objective of this research is to examine the legal certainty surrounding the implementation of Constitutional Court decisions, focusing on the gap between the Court's final and binding rulings and their actual enforcement. The findings aim to provide actionable recommendations for ensuring the consistent implementation of these decisions, thereby reinforcing legal certainty and public trust. The benefits of this research are twofold: it contributes to the academic discourse on constitutional law and provides practical insights for improving the enforcement mechanisms of the Constitutional Court's rulings, which is essential for maintaining justice and the rule of law in Indonesia.

Research Methods

This type of research is juridical, normative, and descriptive analytical with a statute approach, a comparative approach, an analytical approach, a dictionary approach, a conceptual approach, and a philosophical approach. Law No. 8 of 2011 concerning Amendments to Law No. 24 of 2003 concerning the Constitutional Court., Law No. 12 of 2011 concerning the Establishment of Laws and Regulations and Their Amendments. Constitutional Court Decisions, mass media, websites, journals, and articles related to research. Legal materials obtained through literature studies are reviewed and analyzed based on qualitative methods.

Results and Discussions

Legal Certainty of the Implementation of the Decision on the Right to Material Examination of the Law by the Constitutional Court in Indonesia

Legal certainty is one of the fundamental principles in the legal system that ensures that the law is enforced consistently so that individuals and society understand their rights and obligations. Gustav Radbruch, a philosopher of law, stated that legal certainty is one of the essential purposes of law. He emphasized that the law must be positive, meaning that positive law is legislation that is based on facts and is clearly formulated to avoid mistakes in interpretation and is easy to implement.

The Constitution is the highest basic law that serves as a guideline in the administration of the state. In Indonesia's constitutional system, the constitution has a position as a basic norm (Grundnorm) that regulates the relationship between state institutions, the government, and citizens (Kelsen, 2017). The importance of the supremacy of the constitution is the main foundation for the sustainability of democracy and the rule of law (Hadjon, 2018). To ensure this supremacy, an institution is needed that has special authority to keep all legal products in line with the constitution, namely the Constitutional Court (MK). The Constitutional Court, in accordance with Article 24C of the 1945 Constitution, has the main task of testing the law against the Constitution. As a judicial institution, the Constitutional Court acts as a guardian of the supremacy of the constitution as well as a protector of the constitutional rights of citizens.

In the context of Indonesian constitutional law, the Constitutional Court's decision is binding and final in the 1945 Constitution of the Republic of Indonesia Article 24C paragraph (1). This provision is emphasized by Law Number 8 of 2011 concerning the Constitutional Court Article 10 paragraph (1), The nature of the Constitutional Court's decision has a validity period since it was pronounced in a plenary session that is open and public. This nature has implications for three fundamental things, namely: (a) Immediately having legal force: (b) There is no room for other legal remedies, (c) All parties (erga omnes) are obliged to obey and implement the Constitutional Court's decision, not only the parties to the case. However, in its dynamics, the Constitutional Court's decision is not always complied with by the decision addressees.

Technically, in its implementation, it is explained in the Constitutional Court Regulation Number 06 of 2005 concerning procedural guidelines, especially the testing of the Law on the 1945 Constitution of the Republic of Indonesia. Testing of laws or laws is divided into two (Marzuki et al., 2005), namely material testing (related to the content of material or legal norms in the law being tested) and formal testing (procedural testing or the process in the formation of laws).

The Implementation of the Constitutional Court's Decision Is Not Implemented in Accordance with the Erga Omnes Principle

The decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (inter parties) but must also be obeyed by anyone (erga omnes). The principle of erga omnes is reflected in the provision that the Constitutional Court's decision can be directly implemented by no longer requiring the decision of the authorized official unless the laws and regulations provide otherwise. The principle of the Constitutional Court's decision has permanent legal force and is final as stated in article 10 paragraph (1) following the explanation of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which reads:

"The Constitutional Court's decision is final, that is, the Constitutional Court's decision immediately obtains legal force from the moment it is pronounced and no legal remedy can be taken. The final nature of the Constitutional Court's decision in this Law also includes final and binding legal force".

However, in reality, there are several Constitutional Court Decisions that are not implemented by the Judicial, Legislative and Executive Institutions, as follows:

1. The decision of case Number 91/PUU-XVIII/2020, states that the CIPTAKER Law is conditionally unconstitutional and orders the suspension of all strategic and wide-impact policies related to the CIPTAKER Law. Then prohibit the issuance of all implementing regulations related to the law. However, in reality, the government has issued Presidential Regulation Number 113 of 2021 concerning the Structure and Implementation of Land Bank Agencies which was announced on Dec 27, 2021. Then continued with Government Regulation Number 12 of 2022 concerning the Leadership Coordination Forum in the Regions which was stipulated on February 25, 2022.
2. Ignoring the Constitutional Court Decision Number 2/PUU-V/2007, Constitutional Court Decision Number 3/PUU-VI/2007, Constitutional Court Decision Number 21/PUU-VI/2008, and Constitutional Court Decision Number 15/PUU-X/2012 which states that the death penalty is constitutional. In this case, the Supreme Court said that contrary and stated that this punishment was not in line with or contrary to the 1945 Constitution. This situation raises conflicts and discussions about the Supreme Court which has taken actions beyond the authority given by the law. Because in fact the authority to interpret the law is the special authority of the Constitutional Court.

Execution of the Ideal Implementation of Constitutional Court Decisions to Realize Final and Binding Legal Certainty

Law is a product of politics. Of course, every law contains political messages related to political interests. Therefore, the substance of the law can be tested at any time so that the content of the political messages contained in it is in accordance with the general will. As a legislative product, the law must be controlled so that it does not contradict the values of the constitution and does not harm the interests of the people. Thus, a check and balance mechanism applies and does not mean only to thwart legislation products. This is necessary in order to maintain legal order because the implementation of this legal order is one of the characteristics of a democratic legal state order (Moh Mahfud, 2013). Although the authority of the Constitutional Court is to test and cancel the actions of legal organs if they are believed to be inconsistent with the constitution. Facts show that final and binding verdicts are often not responded positively

to by the organ. In fact, the final verdict is not uncommon to receive fierce challenges from a handful of non-judicial state actors. This indicates that every decision of the Constitutional Court, even if it is final and binding, will always be hampered by the complexity of the problems that arise at the final decision stage. related to the birth of the final nature of the Constitutional Court's decision, it was basically formed from the initial agreement on the establishment of the Constitutional Court institution in Indonesia with the judicial system at the first and last level (Soeroso, 2014).

This implicitly means that the Constitutional Court has a logical consequence of this nature that there is no further legal procedure for the Constitutional Court's decision that has been issued. This is in line with Maruarar Siahaan's opinion that the measure to determine a decision can be categorized as final and binding is the presence of a judicial institution that plays a role in conducting a judicial review of the court's decision. Based on this, the authority of the Constitutional Court mandated by the 1945 Constitution emphasizes that there are no legal procedures and regulations under it that can review the Constitutional Court's Decision because of its final and binding nature. The Constitutional Court as a constitutional judicial institution in resolving cases must provide legal certainty in accordance with the principles of fast and simple justice. In addition, in implementing legal certainty, a time limit is needed so as not to interfere with the legal order in Indonesia.

Several alternative steps are needed to realize the implementation of the ideal Constitutional Court decision to realize final and binding legal certainty, namely:

1. The Constitutional Court's decision must be accompanied by a judicial order directed to individuals or state institutions. Basically, the Constitutional Court's decision has binding force that is *erga omnes*. To implement the decision, a decision of the authorized official is no longer required. This is because the implementation of the decision is automatic, that is, since the decision of the Constitutional Court is read in the trial or within a certain grace period does not meet the decision of the Constitutional Court, by itself the decision of the Constitutional Court is immediately binding and has legal consequences. Therefore, there is no longer a need for any other actions or efforts from the Court
2. Delay of Enforcement of Judgment
We know that one of the reasons for the non-implementation of the final and consequentially binding decision of the Constitutional Court is the need for other legal instruments to follow up on the Constitutional Court's decision. Such a form of follow-up to the Constitutional Court's decision cannot be carried out immediately after the completion of the Constitutional Court's decision pronounced in a plenary session that is open to the public, considering the need for a process of formal procedural character. Thus, it takes a sufficient time interval as a space to go through the formal and procedural process.
3. Establishment of an Independent Supervisory Institution.
The establishment of an independent supervisory institution with a special task to monitor and supervise the implementation of the Constitutional Court's decision can be considered. This institution will be tasked with conducting periodic evaluations, as well as providing reports on the status of the implementation of Constitutional Court decisions that have not been properly implemented. This institution is not bound to the executive, legislative, or judicial institutions so that it can act independently. The main function is to supervise the implementation, conduct periodic evaluations, and report on the status of the implementation of the

Constitutional Court's decisions.

4. Strengthening the Supervisory Function by the DPR.
The House of Representatives (DPR) has a supervisory function over the course of government. By strengthening the role of the House of Representatives as a supervisor, the House of Representatives can monitor the implementation of the Constitutional Court's decisions, especially for executive and legislative institutions that have not implemented the Constitutional Court's decisions.
5. Determination of Sanctions for Parties Who Do Not Implement the Decision.
Providing a sanction mechanism for parties who are negligent or deliberately do not implement the Constitutional Court's decision can be one of the effective solutions. These sanctions can be administrative, fines, or other legal actions, which will increase compliance with the Constitutional Court's decision.
6. Strengthening the Constitutional Court's Authority to Evaluate the Implementation of Decisions. One alternative solution is to give additional authority to the Constitutional Court to evaluate and follow up on its own decision.
7. Inter-Institutional Cooperation in Monitoring the Implementation of Decisions, Strengthening cooperation between the Constitutional Court, the Supreme Court (MA), the Prosecutor's Office, and relevant ministries to support each other in the supervision and implementation of decisions.

Through the establishment of a special forum or council tasked with supervising and coordinating the implementation of the Constitutional Court's decision, where each institution has a supervisory role that supports each other.

Conclusion

The Constitutional Court (MK) has the authority to test the law against the 1945 Constitution based on Article 24C of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision is final and binding in accordance with Article 56 and Article 57 of Law Number 8 of 2011. Although the Constitutional Court in principle acts as a negative legislator—canceling norms that are not in accordance with the constitution—the Constitutional Court's rulings often include conditional clauses. In practice, the Constitutional Court sometimes formulates changes to new norms so that the norms tested remain constitutional, thus causing debate about the role of the Constitutional Court which has the potential to shift to positive legislators.

The principle of *erga omnes* in the Constitutional Court's decision emphasizes that the decision is binding on all parties, both individuals, state institutions, and the community. However, the implementation of decisions is often not in accordance with this principle, reflecting structural problems in law enforcement in Indonesia. Non-compliance with the principle of *erga omnes* weakens the authority of the Constitutional Court, creates legal uncertainty, and reduces public trust in the national legal system. The Constitutional Court's difficult position in the constitutional system also affects the effectiveness of the implementation of its rulings.

Several factors hinder the consequential implementation of the Constitutional Court's decision, including unrealistic implementation grace periods and anomalies in the provisions of the law. Postponement of the enforcement of the decision is a potential solution to give time for the address of the decision to prepare for implementation. However, the absence of consequences for those who ignore the Constitutional Court's decision further exacerbates this problem. Strategic steps are needed to ensure the

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consistent implementation of the Constitutional Court's rulings, increase compliance, and strengthen the rule of law in Indonesia.

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