



## The Problem of the Implications of the Execution of the Constitutional Court's Decision as Judicial Making in Realizing Legal Certainty

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Histori Artikel	Abstrak
Masuk: 15 Jun 2024 Diulas: 24 Apr 2025 Diterima: 26 Apr 2025 Terbit: 26 Apr 2025	Secara normatif-yuridis putusan Mahkamah Konstitusi bersifat final dan mengikat sejak diucapkan dalam sidang pleno yang terbuka untuk umum, namun dalam kenyatannya implementasi Putusan Mahkamah Konstitusi seringkali menimbulkan polemik dalam Sistem Ketatanegaraan Indonesia. Berangkat dari hal tersebut, penulis tertarik melakukan penelitian lebih lanjut mengenai problematika eksekusi putusan Mahkamah Konstitusi terhadap kedudukan Mahkamah Konstitusi sebagai judicial making dan upaya optimalisasi implementasi eksekusi putusan Mahkamah Konstitusi guna menciptakan kepastian hukum. Penelitian ini menggunakan metode yuridis normatif yaitu pendekatan yang dilakukan dengan penelitian kepustakaan dikorelasikan dengan peraturan perundang-undangan terkait sehingga diperoleh data mengenai permasalahan dalam implikasi eksekusi putusan Mahkamah Konstitusi serta solusi guna optimalisasi eksekusi putusan Mahkamah Konstitusi yang mengalami hambatan. Adapun metode analisis yang digunakan yakni deskriptif kualitatif. Hasil penelitian ini menunjukkan bahwa terdapat faktor-faktor yang mempengaruhi implementasi putusan Mahkamah Konstitusi yakni keterbatasan kewenangan Mahkamah Konstitusi, ketiadaan lembaga eksekutor khusus, absennya tenggang waktu implementasi, kekurangan konsekuensi atas pelanggaran putusan, dan biaya kepatuhan yang mungkin meningkat. Upaya optimalisasi eksekusi putusan Mahkamah Konstitusi untuk menciptakan kepastian hukum meliputi: revisi Undang-Undang terkait untuk memberikan kewenangan lebih pada Mahkamah Konstitusi serta pembentukan unit eksekutorial untuk memastikan kepatuhan lembaga terhadap putusan Mahkamah Konstitusi.



	<b>Kata Kunci:</b> Problematika; Eksekusi; Putusan; Mahkamah; Konstitusi
<b>Article's History</b>	<b>Abstract</b>
<p>Received: 15 Jun 2024 Reviewed: 24 Apr 2025 Accepted: 26 Apr 2025 Published: 26 Apr 2025</p>	<p><i>From a normative-legal perspective, decisions of the Constitutional Court are deemed final and binding from the moment they are pronounced in a public plenary session. However, in practice, the implementation of Constitutional Court decisions often sparks controversy within Indonesia's Constitutional System. Building on this, the author is interested in conducting further research on the issues surrounding the execution of Constitutional Court decisions concerning the position of the Constitutional Court as a judicial maker and efforts to optimize the implementation of Constitutional Court decision execution to create legal certainty. This research employs a normative juridical method, which involves correlating library research with relevant legislation to obtain data on the problems in the implementation of Constitutional Court decision execution and solutions to overcome the barriers. The analysis method used is descriptive qualitative. The results of this study indicate that there are factors influencing the implementation of Constitutional Court decisions, including the limited authority of the Constitutional Court, the absence of specialized enforcement agencies, the lack of implementation timeframes, the insufficient consequences for violating decisions, and the potential increase in compliance costs. Efforts to optimize the execution of Constitutional Court decisions to create legal certainty include revising relevant laws to grant greater authority to the Constitutional Court and establishing enforcement units to ensure institutional compliance with Constitutional Court decisions.</i></p> <p><b>Keywords:</b> Problems; Execution; Decision; Constitution; Court</p>
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## Introduction

The amendment to the Indonesian Constitution of 1945 (hereinafter referred to as the 1945's Constitution) which occurred for 4 (four) times: amendment I (October 19, 1999), amendment II (August 18, 2000), amendment III (November 10, 2001) and amendment IV (August 10, 2002) (Jamaluddin, 2020; Satrio, 2023; Siburian, 2022) has brought changes to the existence of the constitutional system in Indonesia. The system adopted by the amendment to



the 1945 Constitution of the Republic of Indonesia is actually something new for Indonesia because it gives birth to a functional horizontal division of power that replaces the hierarchical vertical form. The shift towards the arrangement of power that is horizontal in nature and functional makes the position of state institutions equal, each of which functionally supervises other state institutions as the organizers of state power. In addition, these changes have also strengthened the position of state institutions that exercise 3 (three) powers in state administration, namely executive power, legislative power, and judicial power.

In terms of judicial power, the Constitutional Court was born as one of the actors of judicial power, besides the Supreme Court (Armia, 2015; Indra et al., 2023). The juridical basis for the birth of the Constitutional Court institution began at the time of the third amendment of the 1945 Constitution of the Republic of Indonesia which mandated the establishment of institutions holding other judicial powers outside the Supreme Court (Ibrahim, 2022; Purwadi et al., 2024; Wicaksono & Rahman, 2022). In such a position, the Constitutional Court is bound by the general principle of the implementation of independent judicial power and free from the influence of the power of other institutions in upholding law and justice. Article 24 C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia provides authority and obligations to the Constitutional Court to:

1. Testing the Law against the 1945 NRI Constitution;
2. Deciding disputes over authority between state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia;
3. Decide on the dissolution of political parties;
4. Deciding disputes over election results; and
5. Giving a decision on the opinion of the House of Representatives regarding alleged violations of the law by the President and/or Vice President according to the 1945 Constitution of the Republic of Indonesia

Like judicial institutions in general, the Constitutional Court also issues legal products in the form of decisions. The Constitutional Court's decision consists of two forms, namely the Decision and the Decree. A decision is a legal product issued when an application has been examined and adjudicated by the Constitutional Court, while a ruling is a legal product issued in the event that the application is revoked or withdrawn by the applicant. The very fundamental difference between the decisions issued by the Constitutional Court and other judicial institutions lies in the follow-up legal remedies for the decisions. If the decision is issued by other judicial institutions such as the



Supreme Court and the courts under it, legal remedies can be carried out, either in the form of appeals, cassations, or reviews, while in the decision of the Constitutional Court the mechanism is not adopted. It is said in the constitution that the Constitutional Court is the first and last court whose decision is final, this is reaffirmed in Article 10 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court that the meaning of the final nature of the Constitutional Court's decision also includes binding force. This means that the Constitutional Court's decision immediately obtains permanent legal force since it was pronounced and no legal remedy can be taken.

Although the Constitutional Court's Decision has binding legal force since it has been read, not all Constitutional Court decisions grant the application. It can be assumed that the follow-up or implementation of the Constitutional Court's decision is only limited to the form of Laws and Government Regulations in Lieu of Law (Perppu) which are the authority of the House of Representatives (DPR) and the President. This has also been expressly regulated in Article 10 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations which states that:

- (1) The content material that must be regulated by the Law contains:
  - a. further arrangements regarding the provisions of the 1945 Constitution of the Republic of Indonesia;
  - b. an order for a law to be regulated by law;
  - c. ratification of certain international agreements;
  - d. follow-up on the Constitutional Court's decision; and/or
  - e. fulfillment of legal needs in society.
- (2) Follow-up to the Constitutional Court's decision as referred to in paragraph (1) d is carried out by the House of Representatives or the President

Article 10 paragraph (2) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations provides limitations on legal products that can be follow-up or implementation rules of the Constitutional Court's decisions. Looking at the developments and realities that accompany the journey of the Constitutional Court until now, it is not uncommon for Constitutional Court decisions that are final and binding to be very difficult in their implementation and follow-up and can easily be deviated/ignored. The issue of the Constitutional Court's decision that requires follow-up to realize it has a high enough level of urgency to be resolved immediately. In fact, the final



and binding force on the Constitutional Court's decision cannot be implemented concretely (non-executable) and is only floating execution.

For example, several Constitutional Court decisions that have been ignored are in the application for material review of Law Number 7 of 2017 concerning Elections which was then decided through the Constitutional Court Decision Number 30/PUU-XVI/2018 read on July 23, 2018 which ruled that Article 182 letter l of Law Number 7 of 2017 concerning Elections in the phrase "other work" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as It is not interpreted to include political party administrators (functionaries). For this matter, the General Election Commission (KPU) has the authority, one of which is to establish the KPU Regulation (PKPU). The decision was then followed up by the KPU by issuing PKPU Number 26 of 2018 concerning the Second Amendment to the General Election Commission Regulation Number 14 of 2018 concerning Individual Nomination of General Election Participants for Members of the Regional Representative Council (Permatasari et al., 2020). Of course, there is a legal loophole in the issuance of the PKPU, because Law Number 12 of 2011 concerning the Establishment of Laws and Regulations limits legal products that can be a follow-up to the Constitutional Court's decision, namely in the form of Laws and Perppu which are institutionally the authority of the House of Representatives and the President, but the House of Representatives and the President are proven not to follow up on the Constitutional Court's decision.

Apart from this, other examples related to the expansion of the authority of the Regional Representative Council (DPD) in the legislation process in accordance with the Constitutional Court Decision Number 92/PUU-X/2012 read on March 27, 2013. The decision affirms, among other things, that (1) the DPD, the President and the House of Representatives (DPR) express their views if the draft law is related to the authority of the DPD, (2) the DPD submits an inventory list of issues on the Draft Law (RUU) originating from the President or the DPR related to regional autonomy, central and regional relations, the formation and expansion and merger of regions, the management of natural resources and other economic resources, as well as central and regional financial balances, and others. The Constitutional Court's decision regarding the authority of the DPD, should have become mandatory content, but it seems to have been ignored in the formation of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of



Representatives, the Regional Representative Council and the Regional House of Representatives (Kafandi et al., 2024; Reza, 2020).

On the other hand, regarding the implementation of the execution of the Constitutional Court's neglected decision, it also occurred in the Constitutional Court Decision No. 34/PUU-XI/2013 read on March 6, 2014 concerning the Review of Criminal Cases cannot be limited to only one time (Article 268 paragraph (3) of the Criminal Procedure Code (KUHAP) is declared to have no binding legal force, faced with the issuance and enforcement of the Supreme Court Circular Letter No. 7 of 2014 concerning the Submission of Applications Review in Criminal Cases which states that *"PK applications in criminal cases are limited to only 1 (one) time"*. Polemics and controversies also occurred among law enforcers and academics as well as legal observers (Bakri et al., 2023; Sitepu et al., 2023; Suhariyanto, 2016).

Some of the examples above show that the Constitutional Court's decision has firmness only at the normative level. The Constitutional Court's decisions only appear populist and progressive on the surface, but it is not uncommon for the decisions to fail to be implemented so that they cannot create justice and legal certainty because they stop at normative decisions only. This situation shows that the existence of the Constitutional Court until now can be assumed to have not had strong bargaining power as the only high state institution that has the authority to guard and interpret the constitution. Moreover, the existence of the Constitutional Court does not have the domain and authority to take part in the process of implementing its own decision. It is not wrong to say that the Constitutional Court as judicial institution is the weakest branch of power in the constitutional structure among other branches of state power (Muwahid & Bagus, 2023). As Hamilton said that (Hamilton, 1818):

“the judiciary, on the contrary, has no influence, over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgement; and must ultimately depend upon aid of the executive arm for the efficacious exercise even of this faculty.”

In the aspect of legal certainty, the problem as explained above is certainly a very fundamental problem. The Constitutional Court as the guardian of the constitution (Prasetianingsih, 2020; Pujayanti et al., 2024; Rezah & Sapada, 2023) and the form of institutionalization towards constitutional supremacy will certainly be far from its ideals. It can be said that the implementation of

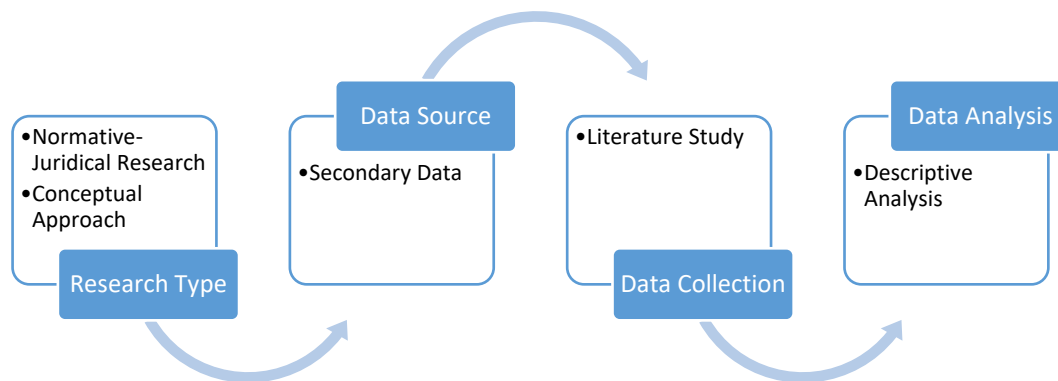


the Constitutional Court's decision is consequentially the main indicator of the upholding of the supremacy of the constitution. The principle of legal certainty is needed in the creation of laws and regulations because legal certainty is the main principle of various principles of the rule of law, which according to M. Kordela, legal certainty as the superior principle of the formal principle system of the state of law justifies the legal validity of a certain group of values (Kordela, 2008).

Based on Jan Michiel Otto's view, the better a state of law functions, the higher the level of real legal certainty (Otto, 2012). On the other hand, if a country does not have a legal system that functions autonomously, then the level of legal certainty is also small. There are 3 factors that in fact the level of legal certainty comes from the rule of law itself, comes from the implementation of the law of an agency or institution that forms a legal system, and the wider social environment (including: political, economic and socio-cultural factors). It can be said that the implementation of the Constitutional Court's decision is consequentially the main indicator of the upholding of the supremacy of the constitution. In a broader scope, this is a reflection of the upholding of the rule of law. The Constitutional Court's decision is only a paper tiger, not implementable and can hurt the crowning of the rule of law. For this reason, optimal efforts are needed to overcome the problems of the execution of the Constitutional Court's decisions in order to create legal certainty (Triningsih, 2016).

### **Method**

This paper is prepared with a normative juridical approach method so that the data used is secondary data obtained through several legal materials such as primary, secondary and tertiary legal materials. Secondary data used include books, official documents, laws and regulations, previous research and documents related to this research. The discovery of data will then be processed and analyzed to be able to provide answers related to the problems that occur. Thus, the study in this paper not only uses positive law but also uses existing phenomena.



## Research and Discussion

### The Problem of Executing the Constitutional Court's Decision on the Position of the Constitutional Court as Judicial Making

The establishment of the Constitutional Court can be understood from two sides, namely the political side and the legal side. From the political side of the constitution, the existence of the Constitutional Court is needed to balance the power to form laws owned by the House of Representatives and the President. On the other hand, changes in the constitution that no longer adhere to the supremacy of the People's Consultative Assembly (MPR) put state institutions on an equal footing. This allows in practice disputes between state institutions that require a forum to resolve them, and the most appropriate institution to resolve them is the Constitutional Court through its decision (Rosidin & Rosdiana, 2018)

The Constitutional Court's efforts to position itself as a controlling institution for legislative power in the event that there are errors, both formal and substantial, in the legislative process can be traced in a number of its decisions. As is known, the decisions handed down by the Constitutional Court in testing the law vary widely, ranging from granted, partially granted, rejected, to unacceptable. There are even several new developments in the Constitutional Court's decision as an effort to uphold law and justice. Each of these forms of decisions certainly has its own consequences. In reality, it is not uncommon for the Constitutional Court's decision to be doubted in its effectiveness because there is a tendency not to be complied with and ignored by the institution intended for the decision. In fact, according to Maruarar Siahaan, the effectiveness of *checks and balances* It can be seen from whether or not the Constitutional Court's decision is implemented by lawmakers (Asy'ari et al., 2016). Compliance in the implementation of the Constitutional Court's decision can also be a measure of whether the 1945 Constitution of the



Republic of Indonesia, which is the highest law in the country, is really a living law (Siahaan, 2010).

Article 57 paragraph (3) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court only stipulates that the decision of the Constitutional Court granting the application must be published in the state gazette within a maximum period of 30 (thirty) working days from the time the decision is pronounced. Regarding the qualification of the decision granted based on the following award models:

1. The model of the decision that is legally null and *void*;
2. Model of conditional constitutional rulings;
3. Model of conditionally unconstitutional rulings;
4. Model of decisions whose enforcement is postponed (*limited constitutional*);
5. A model of decisions that formulate new norms.

With the existence of various qualifications for decisions granted based on the models of decisions, it will lead to a Constitutional Court decision that can be immediately executed (*Self Implementing*) and Constitutional Court Decisions that are not directly executable (*Non-Self Implementing*) (Asy'ari et al., 2016).

The arrangement of the meaning and nature of the Constitutional Court's decision aims to find out *original intent* in the drafter so that the intent of the provisions of the law and even the underlying and surrounding events will be known. The mandate of the 1945 NRI Constitution was then derived into Law Number 24 of 2003 concerning the Constitutional Court (Ru'ati et al., 2022). Article 10 paragraph (1) says:

*"The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final.". The final meaning of this law is explained, namely that the Constitutional Court's decision immediately obtains permanent legal force from the moment it is pronounced and no legal remedy can be taken. Further provisions to clarify the legal force of the Constitutional Court's decision can be seen in Article 47 which states that "The Constitutional Court's decision acquires permanent legal force since it has been pronounced in a plenary session open to the public".*

Provisions regarding the nature of the Constitutional Court's decision as a form of derivation of the 1945 Constitution of the Republic of Indonesia can also be found in Article 29 paragraph (1) of Law Number 48 of 2009



concerning Judicial Power which states that *"The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final"*.

In its development, the word binding then appeared in Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which changed the explanation of Article 10 paragraph (1) so that it reads that the Constitutional Court Decision is final, that is, the Constitutional Court's decision immediately obtains permanent legal force since it was 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*. The final and binding provisions of the Constitutional Court's decision are also strengthened by Decision No. 129/PUU-VII/2009 and Decision No. 36/PUU-IX/2011. Decision No. 129/PUU-VII/2009 examines Article 10 paragraph (1) of Law No. 23 of 2004. The decision shows that the Constitutional Court stated that the petitioners' application was inadmissible. Similarly, Decision No. 36/PUU-IX/2011 which also examines Article 10 paragraph (1) letter a of Law No. 24 of 2003 concerning the Constitutional Court because it is considered contrary to Article 28 I paragraph (2) of the 1945 Constitution. The existence of the Constitutional Court's decision further strengthens the final provisions and binds the decision.

In empirical reality, the problem of implementing the Constitutional Court's decisions often encounters difficulties (Flassy et al., 2025; Setiawan et al., 2024). In this case, solely relying on normative and imperative provisions in the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court and the Constitutional Court's decision are not enough to guarantee that there are no problems in the implementation of the decision. The imperative normative provisions regarding the final nature and enforceability of the Constitutional Court's decisions immediately remove obstacles in their implementation. Because in reality, the decision of the Constitutional Court will not be enforceable if it is understood as an independent entity and separate from its interaction with things outside of it.

In this case, as detailed by Mohamad Agus Maulidi, several factors that affect the implementation of the Constitutional Court's decision are as follows (Maulidi, 2017):

1. The Constitutional Court as a negative legislature, since its inception, the Constitutional Court has only been given the constitutional task of reviewing legislative products with the touchstone of the constitution as



the supreme law. The Constitutional Court has the authority to overturn laws or declare laws not legally binding, as an external control in the legislative process. The limited and weak authority of the Constitutional Court certainly affects the follow-up of its decision;

2. There are no special enforcement agencies compared to other judicial institutions where the Constitutional Court is a judicial institution that does not have an executive unit such as bailiffs or police;
3. The absence of a grace period for the implementation of the Decision as stated in Law No. 8 of 2011 concerning Amendments to Law No. 24 of 2003 concerning the Constitutional Court explicitly confirms that the Constitutional Court's decision is final and binding since it was pronounced in a plenary session that is open to the public. The juridical consequence of this provision is that the Constitutional Court's decision must be implemented since it was pronounced in accordance with the sound of the decision. Such a situation will also make it difficult for the institution intended in the decision to implement the decision of the Constitutional Court;
4. There are no juridical consequences for the neglect of the decision, namely the normatization of the law, which is indeed not enough just to contain orders and prohibitions. This situation is very vulnerable to being violated or not complied with. Therefore, behind the orders and prohibitions, it is also important to adopt provisions regarding sanctions for non-compliance;
5. The cost of compliance with the Constitutional Court's decision, if the cost of complying with the Constitutional Court's decision increases, the legislature's desire to fight the decision and try to avoid implementing the decision will increase.

### **Efforts to Optimize the Implications of the Execution of Constitutional Court Decisions in Creating Legal Certainty**

The Constitutional Court's decision in testing the law against the 1945 Constitution of the Republic of Indonesia is a form of judicial control in the mechanism of checks and balances among the branches of state power, especially the checks and balances of judicial power against legislative power. The supervision mechanism carried out is based on alignment with the constitution as the basic law and the highest law which is the source of legitimacy of the laws and regulations under it, both by order of the 1945 Constitution and as its elaboration and implementation. The Constitutional Supremacy enforced by the Constitutional Court through the authority of material tests on laws produced by the legislature is to ensure that the



resulting laws are in accordance with the 1945 Constitution of the Republic of Indonesia.

Strictly speaking, the 1945 Constitution of the Republic of Indonesia gives this authority to the Constitutional Court in the framework of the separation of powers and therefore if the Constitutional Court at any time declares that a law produced by the lawmaker is declared to no longer have binding or invalid legal force, it cannot be said to be an indication of the superiority of the Constitutional Court over the legislative branch of power but only carries out its obligations. Actually, what supervises and measures each legislative product is the 1945 Constitution itself by refusing to pass every law that is not in accordance with the 1945 Constitution. But every authority possessed by the position can only be moved through the officials themselves who will apply the static authority in a dynamic of life and state administration.

Moh. Mahfud MD argued that at least there are underlying reasons related to the Constitutional Court's decision must remain final and binding, namely the choice of verdict depends on the perspective and theory used by the judge, meaning that the judge's decision resolves differences and there is no better alternative to eliminate the final nature. Therefore, the Constitutional Court's decision must be based on philosophical values and have binding legal certainty values, which culminate in the values of justice. This shows that the Constitutional Court's decisions always uphold the values of justice and lead to justice and legal certainty so as to bring about the realization of juridical interests related to humanity and can be accepted and implemented in the administration of the state (Ru'ati et al., 2022).

The value of normative legal certainty is when a regulation is made and promulgated definitively because it regulates clearly and logically. It is clear in the sense that it does not give rise to multiple interpretations and is logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. The value of legal usefulness, that the purpose of law is solely to provide the greatest benefit or happiness for as many citizens as possible. The value of Justice, legal certainty and legal usefulness, is the legal substance that is the product of a legal decision, including the product of the Constitutional Court Decision which is final and binding, and actually sets a new norm in the norm system in Indonesia (Ru'ati et al., 2022).

The executory power in implementing the decisions of the administrative judiciary still gives rise to a negative paradigm about its effectiveness. One of



the main factors that are often assumed and have a big contribution to this problem is the absence of an institution/executing party after the verdicts are read, as well as the absence of coercion and the threat of serious sanctions if the verdict is not implemented. So far, the implementation of the Constitutional Court's decision has only relied on good cooperation / relations between the Constitutional Court as a judicial institution and the law-making organs (Parliament and the President) and other state organs, but on the other hand, if there is no good faith from the organs affected by the issuance of the Constitutional Court's decision, of course, the Constitutional Court's decision will only be a futile, helpless just black on white like a toothless tiger. It does not have the power to implement (Indrayana & Mochtar, 2007).

If the Government and the House of Representatives understand this attachment in the sense that it is their constitutional obligation to implement the Constitutional Court's decision as a *negative legislator*, there should be a standard procedure set out on the mechanism for the implementation of the decision, so that it does not solely depend on the values, ethics and morality embraced by the members of the House of Representatives and authorized Government Officials. The binding standard procedure is necessary because there are different legal consequences according to the type of law that is tested and declared unconstitutional so that it does not have binding legal force. Thus, as a consequence, the implementation of the Constitutional Court's decision that tests the law, the process and the mechanism are not the same because the law consists of several types or types seen from the substance of the norm, the actual subject and the binding force.

The difference in the content or material of the law in such a way that it has consequences in the test decision, although both do not have binding legal force, but the form of implementation or implementation of the statement does not have binding legal force on such a law which is *inkracht van gewijsde* is still not the same. This is also because in reality the Constitutional Court does not have an instrument to enforce the implementation or implementation of its rulings. Therefore, it is important to know where the last power lies to impose the implementation of the final and binding decision constitutionally in our constitutional system. Thus, in general, the problem faced is what and how to follow up on the Constitutional Court's decision carried out by the legislative and executive bodies as part of the law enforcement process. With this, it can be seen how to actually put the role of the Constitutional Court's decision in testing the law to realize an effective enforcement of *checks and balances* in the implementation of democratic state power based on the principle of



constitutionalism, so that techniques and strategies can be designed to empower the mechanism of our constitutional system regarding the effective implementation of the Constitutional Court's decision as a part of the law enforcement process. If it turns out that it is not effective, it can be known that there are weak points to make improvements and amendments to Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court as well as the mechanism for implementing the Constitutional Court's decision as negative *legislation* to be effective into *positive legislation* through the implementation carried out by the House of Representatives and the Government on the Constitutional Court's decision.

Apart from the universal nature of the Constitutional Court institution which is a *negative legislator* with a *declatoir constitutief decision*, that in the context of Indonesianness so far, which formally and legally tradition does not adhere to the principle of *stare decisis* or precedent which is the source of formal law as a type of jurisprudence rule born from the womb of the judicial institution. In this case, it is indeed not guaranteed to implement, especially for administrative judicial decisions by other non-judicial institutions, especially in Constitutional Court Decisions that cannot necessarily be enforced or decisions related to technical articles in a law, it turns out that they are still in the realm of "syubhat" and there is no clear concept of how to treat the court decisions.

In line with that, it is not possible that forever the decision of the Constitutional Court merely prioritizes *self-respect* and legal awareness of other parties in its realization. This can really pawn and harm the upholding of the principles of supremacy and legal certainty in society. Therefore, there are options and middle ways that can be taken by adopting articles that regulate how textual and concretization of the "binding nature" of court decisions in Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. At least a new norm formulation is needed in Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court which gives stronger authority to the Constitutional Court, both its inclusion in the substance of the law and also enshrined in the ruling, which allows the Constitutional Court to expressly contain orders to the law-making organs, within a certain time limit. To adjust the *original intent* of the law with the *Judicial Review Decision* and supervise its implementation. This must be clearly emphasized in Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003



concerning the Constitutional Court and even needs to be regulated in the constitution itself. Parliament can actually be used as an executor of all court decisions related to the process of testing laws.

The consistency of the implementation of all these mechanisms, stages, and patterns will undoubtedly further strengthen the reciprocal relationship between state organs in the framework of the separation of powers based on the principle of power *checks and balances*. Although the Constitutional Court and parliament are simultaneously constitutional interpreting organs, parliament with its various interests must realize that not all laws that are born are absolutely true. Therefore, it is the duty of the Constitutional Court (judicial) whose every decision is obliged to be used as a material that influences every policy-making and decision by parliament (legislature) and government (executive). By accommodating every point of court ruling/jurisprudence into the law, it should be able to be used as a more qualified reference and handle, along with it that the conception of a democratic legal state with legality and the suppression of the law can also be really enforced. Thus, the existence of the Constitutional Court in the constitutional system of the Republic of Indonesia can be considered as a subject that will give positive results to the continuity of development and reform of national laws based on the 1945 Constitution of the Republic of Indonesia (Wahyudi et al., 2018).

Starting from this, there are several efforts that can be made to optimize the implications of the execution of the Constitutional Court's decree in order to create legal certainty, which are as follows:

1. Lawmakers can revise Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court by expanding the authority of the Constitutional Court to control the execution of Constitutional Court decisions;
2. Lawmakers can revise Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court by expanding the authority of the Constitutional Court to be able to sanction parties who do not carry out the execution of Constitutional Court decisions. Another effort that can be made to increase compliance with the execution of the Constitutional Court's decision is by creating an executory unit that has the authority to provide witnesses to institutions that do not comply with the execution of the Constitutional Court's decision so that there is institutional compliance to obey the Constitutional Court's decision so that legal certainty is created.



## Conclusion

The problems with the Constitutional Court's decision that are not implemented are due to several factors, including the Constitutional Court which is naturally a negative legislature; the absence of special enforcement agencies; there is no grace period for the implementation of the decision; there are no laws and regulations that specifically regulate the consequences of ignoring the decision of the Constitutional Court. There are several efforts that can be made to optimize the execution of the Constitutional Court's decision in creating legal certainty, namely:

1. The revision of Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court by providing an expansion of the authority of the Constitutional Court to control the execution of Constitutional Court decisions;
2. The revision of Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court by providing an expansion of the authority of the Constitutional Court to be able to sanction parties who do not carry out the execution of the Constitutional Court's decision. Another effort that can be made to increase compliance with the execution of the Constitutional Court's decision is by creating an executory unit that has the authority to provide witnesses to institutions that do not comply with the execution of the Constitutional Court's decision so that there is institutional compliance to obey the Constitutional Court's decision so that legal certainty is created.

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