

Review of the Final and Binding Constitutional Court Decisions of the Republic of Indonesia

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Abstract- This study aims to find out what the legal meaning of the Constitutional Court (MK) decisions are final and binding, and how the legal consequences arising from the final and binding decisions of the Constitutional Court. This type of research is a normative legal research, with secondary data. Based on the discussion, the result is that the Constitutional Court's decision which is final and binding contains 4 (four) legal meanings, First, realizing legal certainty as soon as possible for the disputing parties, the final nature of the Constitutional Court's decision refers to the desire to immediately realize legal certainty for justice seekers. Second, the existence of the Constitutional Court as a constitutional court, thus realizing the purpose of establishing the Constitutional Court as a guardian constitution. Third, meaningful as one form of social control conducted by the Constitutional Court, to determine which behavior is considered a deviation from the rule of law. Fourth, as the sole guardian and interpreter of the constitution, the Constitutional Court is not only an interpreter through its decisions, but also as a corrector whose application is reflected in examining and evaluating laws made by the House of Representatives and the President with the constitutional test stones through critical interpretation and dynamic. In addition, the Constitutional Court's decision which is final and binding, raises a number of legal consequences both positive and negative in its application. The Constitutional Court's Decision which causes positive legal consequences is to end a legal dispute; Maintain the principle of checks and balances; and Encouraging political processes. While the negative legal consequences are the closure of access to legal efforts and the occurrence of a legal vacuum when a decision is not carried out by the legislators.

Keywords- Decision, Constitutional Court, Final, Binding

I. INTRODUCTION

The era of reform that has been rolling gave birth to a variety of fundamental changes in the Indonesian constitutional system. One of the fundamental changes is the affirmation of the principle of the rule of law (*rechtsstaat*), as stated in Article 1 paragraph (3) of the 1945 Constitution, which affirms that "the State of Indonesia is a state of law". The idealized state of law is a state based on the recognition that sovereignty is in the hands of the people, namely a democratic rule of law and at the same time a democratic state based on law, as described in Article 1 paragraph (2) of the 1945 Constitution that "Sovereignty is in the hands of people and implemented according to the Constitution". Not only

that, the composition of state institutions also experienced a very significant overhaul. Including the establishment of the paradigm of supremacy of the constitution (*supremacy of the constitution*) which was agreed to replace the *supremacy of parliament* [1].

One of the many state institutions formed as a result of constitutional amendments is the Constitutional Court of the Republic of Indonesia (*constitutional court*). Article 24 Paragraph (2) of the 1945 Constitution: "Judicial power is exercised by a Supreme Court (MA) and the judiciary below it in the general court, religious court, military court, state administrative court, and by a court The Constitution (MK)". These provisions are the form of recognition and legitimacy of existence (MK). MK is determined to stand alone, separate and outside the Supreme Court. Both are executing institutions of judicial power that have different functions and authorities.

From the formulation, it is understood that currently judicial power is exercised by two institutions namely the Constitutional Court and the Supreme Court. Both are equal or equivalent as independent state institutions. This means, judicial power adheres to the *bifurcation system*, where judicial power is divided into 2 (two) branches, namely the *ordinary court* branch which culminates in the Supreme Court and the constitutional justice branch which has the authority to conduct *constitutional review* of legislative products carried out by the Constitutional Court [2].

Furthermore, based on the mandate of the constitution in Article 24C paragraphs (1) and (2) of the 1945 Constitution, the Constitutional Court has the following authority: state institutions whose authority is given by the Constitution, decides the dissolution of political parties, and decides disputes about the results of elections. In addition, the Constitutional Court must give a decision on the opinion of the House of Representatives regarding alleged violations of the President and / or Vice President according to Constitution.

Since it was officially formed on October 15, 2003, the presence of the Constitutional Court in the Indonesian constitutional system is intended to accommodate the availability of legal avenues in dealing with cases that are closely related to the administration of the state and political life. Thus conflicts related to these two things do not develop into political-state conflicts without a standard settlement pattern, but are managed legally, so that legal disputes are resolved legally as well. Therefore,

the Constitutional Court is often referred to as *the guardian and interpreter of the constitution*.²⁰

According to Jimly Asshiddiqie, the Constitutional Court was formed to ensure that the constitution as the highest law could be upheld properly. Therefore, the Constitutional Court is commonly referred to as *the guardian*⁴¹ the constitution as the term is commonly attributed to the Supreme Court in the United States. The reason is because there is no Constitutional Court there. The function of the Constitutional Court, commonly known in the European system that adheres to civil law traditions such as Austria, Germany and Italy, is integrated into the authority of the United States Supreme Court, so that the Supreme Court is referred to as *The Guardian of American constitution* [3].

MK as a constitutional court, has a distinctive character that distinguishes it from the general court or ordinary court. One thing that is unique is the nature of the Constitutional Court's decision which is determined to be final and binding no other legal remedies. This characteristic is different from the judicial institution's decision in the Supreme Court which provides other legal remedy mechanisms, including through the Review (PK) mechanism and / or through clemency. The final and binding decision made by the Constitutional Court was also affirmed in Article 47 of the Constitutional Court Law which states that the Constitutional Court's decision to obtain permanent legal force since it was announced in a plenary session that was open to the public. Based on these provisions, the final nature shows at least 3 (three) things, namely (1) that the Constitutional Court's Decision directly obtains legal force; (2). because it has obtained legal force, the Constitutional Court's Decision has legal consequences²² for all parties related to the decision. This is because the Constitutional Court's decision is different from the general court's decision which only binds the parties to litigate (*inter partes*).¹¹ Therefore all parties must obey and implement the Constitutional Court Decision [4].

In the Constitutional Court Decision related to judicial review (PUU), for example, when the Constitutional Court decides an Act that is contrary to the Constitution and states that it has no binding power, the decision is not only binding for those who file cases in the Court, but also binds all citizens as well as The law is generally binding on all citizens. On that basis, the Constitutional Court's decision is *erga omnes*; and (3) because it is the first and last court, no other remedies can be taken. A decision if no legal remedies can be taken means to have permanent legal force (*in kracht van gewijsde*) and obtain binding force (*resjudicata pro veritate habetur*) [5].⁶

In practice, the final decision of the Constitutional Court⁶ is often questioned. Moreover, there have been a number of cases that were submitted to the Constitutional Court related to the final nature, namely Case Number 36 / PUU-IX / 2011 submitted by Salim Alkatiri, although in the end the Court rejected its request [6]. On February 25, 2014, the Constitutional Court held a first hearing to

⁹ examine the Petition for Review of the Decision of the Constitutional Court Number 14 / PUU-XI / 2013 concerning the review of Law Number 42 Year 2008 concerning the Election of the President and Vice President of the 1945 Constitution. Habibburahman as the Petitioner in its petition arguing, the Court has the authority to conduct a PK (review) of its¹⁸ decision. The applicant rests on his interpretation of the provisions of Article 24C paragraph (1) of the 1945 Constitution. According to the Petitioner, the phrase "at the first and last level" can also be interpreted that the Constitutional Court has the authority to examine the Law on the Constitution "at the first level" and also "at the last level" or commonly referred to as the level of "Review." Thus, according to the Petitioner, the review is the last legal remedy given to justice seekers. Because justice is above the law, the law must not only be fixed on mere formal law, and in this case, the final nature of the Constitutional Court Decision is formal [7].

Related to the nature of the final and binding decisions as mandated by the constitution, making the Constitutional Court to be the only judicial institution in Indonesia that does not accommodate tiered judicial processes. The Constitutional Court's decision which was final meant that there were no other legal remedies that could be taken by *the justices*. Therefore, the decision has general binding force where all parties must submit and obey the decision [8].

Philosophically, the Constitutional Court's decision does not adhere to the principle²³ of tiered justice other than because the Constitutional Court's function as the sole interpreter of the constitution, is also due to the Court's decision being representative of the value of justice. So that it deserves to be a court of law at the first and last level whose decisions are final. But what about the reality and dynamics that have taken place in the implementation of the Constitutional Court's authority over the years. It is of course also necessary to get more attention in realizing the life of the Indonesian state administration which characterizes the rule of law and democratic values. Based on these descriptions, The Author formulate the problem Why is the Constitutional Court's Decision final and binding?

II. FINDINGS AND DISCUSSION

The nature of the Constitutional Court's decision which is final and binding, gives birth to a number of legal consequences in its application. However, at the level of its application, not all legal consequences have a positive impact on the development of Indonesian state administration. There are also legal consequences arising from the nature of the Constitutional Court's decisions which in fact need further attention, especially the Constitutional Court decisions that contain controversy in society. The legal consequences arising from the decision of the Constitutional Court which are final and binding can be divided into 2 (two) parts, namely the positive legal consequences and the negative legal consequences.

Based on Indonesian Dictionary, "final" and "binding" in the sentence "The Constitutional Court's decision is final and binding" has its own meaning. "Final" means the last stage (round) of a series of examinations (work, competition), while the phrase "binding" means strengthen (grip). Starting from this literal meaning, the phrase "final" and the phrase "binding" have interrelated meanings, meaning the end of a process of examination, has the power to tighten or unite all wills and cannot be refuted again [1].

Literally, if it is related to the final and binding nature of the Constitutional Court's decision, it means that it has been closed to all possibilities to take legal remedies afterwards. When the verdict is pronounced in a plenary session, then ²⁸ it is born the force is legally binding. As regulated in Article 24C Paragraph (1) of the 1945 Constitution, which states that the Constitutional Court has the authority to adjudicate at the first and last level the decision is final to examine the law against the Basic Law, to decide on disputes over the authority of state institutions whose authority is granted by the Act The basis, deciding the dissolution of political parties, and resolving disputes about the results of the election "[9]. Thus, the Constitutional Court's decision has permanent legal force since it was read by the Constitutional Justice in the trial.

A decision is meaningless if it cannot be implemented, because it means that the rights of the parties can ¹⁵ be restored as clearly as expected. Implementation of the decision (execution) is the realization of the obligations of the parties committed to fulfill the achievements listed in the decision [10]. According to the provisions of Article 47 of Law Number 24 Year 2003 concerning the Constitutional Court, it states "The Constitutional Court's decision to obtain permanent legal force since it was finished pronounced ¹⁴ a plenary session open to the public." [11]. Thus the Constitutional Court's decision related to the implementation of its decision, is automatic ⁴² since the decision was read by the panel of Judges. It means that the Constitutional Court's decision is binding ² and has binding legal force [2]. The legal consequences of the Constitutional Court's decision which are final and binding cause a condition including:

1. Ending a Legal Dispute

Decisions made by the Constitutional Court through their decisions are final and binding, resulting in legal consequences that lead to the end of a legal dispute. However, this does not apply to every authority of the Constitutional Court, because only 3 (three) of the 4 (four) authorities that contain the content of legal disputes, namely the authority of the Court in deciding: (1). Testing the law against the 1945 Constitution; (2). Dispute over the authority of state institutions whose authority is given by the 1945 Constitution; and (3). Disputes about the results of general elections.

These three authorities, where the final and binding decision of the Constitutional Court, resulted in legal consequences that ended in legal disputes. The authority

⁸ of the Constitutional Court in deciding disputes over the results of general elections, for example. The parties, both the Petitioner, Respondent and Related Parties, each of whom are in direct contact with the legal dispute in question. So that after the decision of the Court, the legal dispute between the parties ³ in end as soon as possible. Likewise with the authority of the Constitutional Court in deciding disputes over the authority of state institutions whose authority was granted by the 1945 Constitution and against the testing of a law against the 1945 Constitution [12].

Unlike the case with the dissolution of political parties, as ¹⁷ as the granting of decisions related to the allegations of the DPR stating that the President and / or ¹⁶ the President violated the law in the form of betrayal of the state, corruption, bribery, other serious crimes, or despicable acts, and / or no longer meet the conditions as President and / or Vice President as referred to in the 1945 Constitution, or what may be referred to as impeachment. That is because, these two authorities, are not included in the category of legal disputes but rather are more politically charged, involving political elites.

2. Maintain The Checks And Balances Principle

The Constitutional Court's decision which is final and binding can cancel a product of the law discussed by involving two state powers, namely the DPR, as the holder of legislative power and the Government, in the executive field. Although the political decision was produced through a tough debate and requires a long period of time, and spent a large enough state budget. However, in a relatively short period of time, 9 (nine) Constitutional Justices can overturn political decisions in ²⁵ form of a law. This is a form of legal consequences of the Constitutional Court's decision to maintain the principle of checks and balances. So, even though a law is the result of a discussion of two state powers (executive and legislative power), when violating the rules required by the constitution, then that's when the Court with a final and binding decision can cancel the enactment of a law, for the sake of maintaining the principle of checks and balances in the Indonesian constitutional system.

Besides that, the Constitutional Court's decision to overturn political decisions ⁶ made by legislators was also a form of control carried out by the Constitutional Court to ensure the direction of political development remained within the constitutional corridor.

3. Encourage the occurrence of Political Process

As is the case with the legal consequences that lead to the end of a legal dispute as discussed earlier, the legal consequences that led to this political process did not cover all the authorities held by the Constitutional Court, only 3 (three) authorities can implicate it, namely the case: (1). Testing of Law; (2). Dispute over General Election Results; and (3). Decision on ¹⁷ opinion of the DPR regarding alleged violations by the President and / or Vice President according to the 1945 Constitution.

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First, the legal consequences arising from the Constitutional Court's decision which has decided the judicial review case 23 is considered contrary to the 1945 Constitution. As in the decision of the Constitutional Court Number 05 / PUU-V / 2007, dated July 23, 2007 against the request for review of Law Number 32 of 2004 concerning Regional Government of the 1945 Constitution of the Republic of Indonesia [13].

In this decision, the Constitutional Court opened up opportunities for prospective individuals 36 met the requirements as referred to in Article 58 of Law Number 32 Year 2004 concerning Regional Government through democratic and transparent mechanisms 14. This is one form of legal consequences of the Constitutional Court's decision that played a role in encouraging the political process to change the 20. Furthermore, the political process will also occur as a result of the Constitutional Court's decision to decide upon disputes over 34 the results of general elections. This is due to the result of the Constitutional Court's decision which has the potential to change the political constellation in an area related to disputes over the results of the general election which is sued and legally binding.

Whereas in the Constitutional Court's decision regarding alleged violations of law committed by the President and / or Vice President in the form of betrayal of the state, corruption, bribery, other serious crimes, or despicable acts, and / or no longer fulfill the requirements as President and / or Vice President as referred to in the 1945 Constitution, also meant 8 be able to encourage political processes, both after the Constitutional Court decided the President and / or Vice President were presumed 16 to have violated the law, and when the Court decided the President and / or Vice President were innocent, it still gave birth to political consequences [14]. Therefore, one of the legal consequences that can be caused by the Constitutional Court's decision which is final and binding (binding), which can negate or create a political process, in order to ensure that applicable political practices continue to run according to the constitutional corridor.

4. Close Access to Legal Efforts

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Although it is known that the Constitutional Court's decision is final and binding, it means that no more space is given to take legal action against the Constitutional Court's decision. However, so far there have also been a number of issues relating to decisions issued by the Constitutional Court 23 which are often highlighted, especially in the case of judicial review of the law (judicial review).

Not infrequently the Constitutional Court's ruling is very controversial, which then raises the pros and cons in society. This, in fact, will have a psychological impact and will continue to damage the sense 21 of justice of the justices who are disappointed with the Court's decision which is final and legally binding. For example in ruling No. 05 / PUU-IV / 2006, in its ruling, the Constitutional Court 7 canceled a number of articles or sections of articles in Law Number 22 of 2004 concerning Judicial

Commission, as well as Article 34 paragraph (3) of Law Number 4 of 2004 concerning Judicial Power, because they were considered to be in conflict with the Constitution 1945. Thus 7 these articles, no longer have binding legal force. In Article 34 paragraph (3) of Law Number 4 of 2004: "In the context of maintaining the honor, dignity and behavior of Supreme Court justices and judges, supervision is carried out by the Judicial Commission regulated in the 19 law". But bearing in mind that all the provisions of Law Number 22 Year 2004 concerning the Judicial Commission and Law Number 4 Year 2004 concerning Judicial Power, especially regarding the oversight function by the Judicial Commission, proved to cause legal uncertainty (*rechtsonzekerheid*). Thus, the Constitutional Court's ruling directly cut down on the authority previously held by the Judicial Commission in supervising judges who are in a judicial institution in Indonesia [15].

The Constitutional Court considered, the supervision conducted by the Judicial Commission in assessing the Judges' decision was a violation of judicial independence, as mandated by the constitution. But there are those who believe that judicial independence is not exactly serve as an excuse to avoid the supervision of a judge. Citing Shimon Shetreet's theory which states that the independence of judges that cannot be touched is independence in deciding cases (*substantive independence*). So that a judge as an institution and holder of judicial power should understand the philosophy of supervision that there is no single power without supervision. Thus, the Constitutional Court's ruling does not infrequently cause controversy 3 among the people. In this regard, according to Malik, the nature of justice can be seen in 2 (two) main meanings, namely: First, in the formal sense which 3 demands that the law is generally applicable. Second, in the material sense, it requires that each law must be in accordance with the ideals of community justice [16].

Thus, justice can change the contents, depending on the parties who determine the content of justice is, and how the legal culture that is built within the community itself. But in general, there are formal elements of a value of justice. As with the distribution of the flow of justice according to Hans Kelsen and Jhon Rawls which basically consists of: (1). Justice is a directing value, each party to provide protection for rights guaranteed by law (elements of rights) (2). This protection must ultimately provide benefits to each individual (element of benefits). With this benefit measure, the value of justice can ultimately be viewed in an empirical context (reality). For example, parties who submit an application to the Court to settle a dispute or for a *judicial review* of the law against the 1945 Constitution. When the Court has decided and there are parties who feel the values of justice neglected, then legally closed all possibilities to take other legal efforts . This is the legal consequence of the final and *binding* decision of the Constitutional Court.

5. Cause Legal Void

A legal vacuum can occur if the Constitutional Court's decision is final and binding (binding) is not implemented, so the decision is only a decision on paper (law in book). This is due to the Constitutional Court's decision which in some cases, as in the case of judicial review, is very dependent (interdependent) on the relevant parties, in this case, the Parliament and the government to immediately revise the provisions in the law that have been overturned by the Constitutional Court's decision.

Reflecting on the reality that accompanied the adoption of several Constitutional Court decisions, it was not uncommon to end up not implementing it. In deciding the judicial review of the 1945 Constitution, for example the Constitutional Court's decision was not immediately followed up by the Government and the Parliament by revising the law that had been canceled. Even slow and tend not to get a positive response.

One factor is the grace period for the implementation of the decision and anomalous provisions of the law. The law confirms that the Constitutional Court's decision obtained permanent legal force since it was read in a plenary session. Though it is impossible for the Constitutional Court's decision to be followed up immediately because it requires process and time to follow up on the decision. This is especially true for new legal instruments in the form of revisions or even new laws [17]. Another obstacle in the implementation of the Constitutional Court's decision is the absence of sanctions for law-forming institutions that ignore and do not comply with the decision. This is because the Constitutional Court does not have an instrument or executing agency that guarantees the implementation of the decision [18].

For example in the decision of the Constitutional Court Number 05 / PUU-IV / 2006, after the Constitutional Court decided to cancel the provisions that became the basis of the Judicial Commission in carrying out the supervisory function of the judge, at that time there was also a legal vacuum "at the level of the law regarding the implementation of the oversight function of the Judicial Commission, as long as the related parties do not immediately act on it by revising the law. So with this incident, indirectly, the Judge's supervision will again rely on internal supervision that had previously been applied. Even though all this time, internal supervision is considered not optimal in overseeing the practice of deviating judges.

Likewise with the authority of the Court in deciding disputes over general election results. It is still fresh in our minds how the Constitutional Court's decision on the dispute over the results of the West Kotawaringin regional election (Pemilukada) which invited controversy. Decision of the Constitutional Court Number 45 / PHPU.D-VIII / 2010 concerning Disputes on the Results of the Regional Election of Kotawaringin Barat, Central Kalimantan Province, decided to disqualify one of the Candidate Pairs and set one of the other Pairs Candidates as the elected pair. As a result, the

Constitutional Court's decision was also rejected by the local community and also the powerlessness of the local Election Commission (KPU) in carrying out the Constitutional Court's decision [19]. Based on the example, it can be seen how the legal consequences of the Constitutional Court's decision have the potential to cause a legal vacuum. In other facts it also shows that, the Constitutional Court's decision which is final and binding (binding), can actually reduce the authority of the law and make people uneasy, when law enforcement against the Constitutional Court's decision cannot be applied.

Other examples can be seen in MK Decision Number 058-059-060-063 / PUU-II / 2004 and MK Decision Number 08 / PUU-III / 2005 dated 19 July 2005 concerning the testing of Law Number 7 of 2004 concerning Water Resources (UU SDA) in lieu of Law Number 11 of 1974 concerning Irrigation. In this decision, the Constitutional Court stated that the SDA Law was considered to remain constitutional as long as in its implementation the Government referred to the legal considerations outlined by the Constitutional Court. The Constitutional Court's decision was then followed up by the government by issuing a Government Regulation (PP), one of which was by issuing PP No. 16/2005 concerning the Development of Drinking Water Supply Systems. It's just that in its development the SDA Law was again tested by several private legal entities and Indonesian citizens, because the implementation of the SDA Law was judged to be inconsistent with the interpretation of the Constitutional Court. Until now the natural resources law reexamination is in the process of being examined. The existence of a re-judicial review indicates that the rules for implementing the SDA Law are considered to have been interpreted differently from the intent as determined by the Constitutional Court's decision [20].

13 III. CONCLUSION

Based on the results of the discussion it can be concluded that the Constitutional Court's decision which is final and binding, contains 4 (four) legal meanings, namely *First*, in order to realize legal certainty as soon as possible for the parties to the dispute, the final nature of the Constitutional Court's decision refers to the desire to immediately realizing legal certainty for justice seekers. *Second*, the existence of the Constitutional Court as a constitutional court, so as to be able to realize the purpose of establishing the Constitutional Court as a guardian constitution. *Third*, meaningful as one form of social control conducted by the Constitutional Court, to determine which behavior is considered a deviation from the rule of law. Fourth, as the sole guardian and interpreter of the constitution, the Constitutional Court is not only an interpreter through its decisions, but also as a corrector whose application is reflected in examining and evaluating laws made by the DPR and the President with constitutional test stones through its critical and dynamic interpretation.

In addition, the Constitutional Court's decision which was final and binding, led to a number of legal consequences both positive and negative in its application. The Constitutional Court's ruling that causes positive legal consequences is to end a legal dispute, maintain the principles of *checks and balances* and encourage the political process. While the negative legal consequences, namely the closure of access to legal efforts and the occurrence of a legal vacuum when a decision is not carried out by the legislators.

With a final and binding decision, (1) the Court in deciding a case must reflect justice based on the constitution. So that through its decisions, the Constitutional Court still has a place in the eyes of justice seekers (judicial). (2). The legislators, namely the DPR **25** the government, must be proactive in following up on the Constitutional Court's decision **11** avoid a legal vacuum. (3). All parties must obey the Constitutional Court's decision because after all the Constitutional Court's decision is equal to the Law and binding on all parties.

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