

POSSIBILITY OF RECONSIDERATION OF CONSTITUTIONAL COURT DECISIONS

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Abstract

A key characteristic of a constitution in any country is the final and binding nature of its rulings. This characteristic also applies to the Constitutional Court of the Republic of Indonesia. Article 24C, paragraph (1) of the 1945 Constitution stipulates that the Constitutional Court has the authority to adjudicate at the first and final instance—with rulings that are final—on matters such as reviewing laws against the Constitution, resolving disputes over the authority of state institutions whose powers are granted by the Constitution, deciding on the dissolution of political parties, and resolving disputes regarding general election results. This study employs normative legal research, utilizing statutory, conceptual, historical, and comparative approaches. The legal materials used comprise primary, secondary, and tertiary sources. Data collection was conducted through document study, and the analysis was descriptive-analytical in nature. The research findings indicate that, from a normative perspective, a request for a judicial review (re-examination) of a Constitutional Court ruling is not permissible. Article 47 of the Constitutional Court Law affirms that the Court's rulings are final and binding from the moment they are pronounced in a plenary session open to the public; the elucidation of Article 10, point (1) further clarifies that "final and binding" means no further legal recourse is available. Furthermore, Constitutional Court Regulation Number 06/PMK/2005 concerning Procedural Guidelines for Judicial Review Cases makes no provision for such a re-examination process.

Keywords: Constitutional Court, Final

INTRODUCTION

A key characteristic of a constitutional court in any country is the final and binding nature of its rulings. This characteristic also applies to the Constitutional Court of the Republic of Indonesia. Article 24C, Paragraph (1) of the 1945 Constitution stipulates that the Constitutional Court has the authority to adjudicate at the first and final instance—with rulings that are final—on the judicial review of laws against the Constitution, disputes regarding the authority of state institutions whose powers are granted by the Constitution, the dissolution of political parties, and disputes concerning general election results. Meanwhile, Article 24C, Paragraph (2) states that the Constitutional Court is required to issue a ruling regarding the opinion of the House of Representatives concerning an alleged violation by the President and/or Vice President as stipulated by the Constitution.

The formulation in Article 24C, Paragraph (1) of the 1945 Constitution begins by establishing the authority to adjudicate at the first and final instance-with rulings that are final-followed by the specific types of authority granted. This underscores that no legal recourse exists to overturn a Constitutional Court ruling; in other words, once the Constitutional Court issues a ruling, it is binding and possesses permanent legal force.

This is further emphasized in Article 47 of the Constitutional Court Law, which states that the Constitutional Court's decision has permanent legal force from the moment it is pronounced in a plenary session open to the public. Therefore, for example, in a judicial review, if the Constitutional Court grants a petition for judicial review and declares the law in question to be in conflict with the 1945 Constitution and not legally binding, the decision immediately has binding legal force from the moment it is pronounced in a plenary session open to the public. Therefore, in the closing section of its decision, the Constitutional Court always states the day, date, and time the decision was pronounced.

The final and binding nature of Constitutional Court rulings is a frequent topic of discussion within legal circles. Regarding the inclusion of the word "binding" alongside "final," some have raised objections on the grounds that Article 24C, Paragraph (1) of the 1945 Constitution does not explicitly mention the term "binding." In reality, however, this is not a substantive issue; any judicial ruling (that has acquired permanent legal force) is inherently binding.

From an academic perspective, this represents a legal consequence emphasizing that judicial rulings or court decisions must be obeyed. A judicial ruling (once it has attained permanent legal force) possesses binding legal power—much like a statute; in terms of their binding nature, there is no distinction between the two, as both are equally binding, whether issued by the Constitutional Court or by ordinary courts. In other words, the binding nature of a ruling lies precisely in the obligation to comply with it; for if such rulings were not binding, they would serve no purpose.

Secondly, regarding the final nature of Constitutional Court rulings: beyond arguments rooted in universally applicable empirical facts-namely, that no Constitutional Court ruling anywhere in the world is anything other than final-a deeper analysis reveals a logical basis for this finality. First, the Constitutional Court-like its counterparts worldwide-is the sole tribunal with jurisdiction over constitutional matters. Furthermore, the Constitutional Court-much like those in nations employing the European Model of constitutional review (often termed the Kelsenian or Centralized Model)-operates without any superior or inferior courts.

Unlike courts within the four judicial branches under the Supreme Court-whose rulings are subject to appeal at a high court (corresponding to the specific judicial branch) and further appeal (kasasi) to the Supreme Court-rulings by the Constitutional Court are final and binding at the first and last instance, as stipulated in Article 24C paragraph (1) of the 1945 Constitution. This means there are no mechanisms for appeal or kasasi. The issue addressed in this study is whether a judicial review (peninjauan kembali) of a Constitutional Court ruling is possible.

METHOD

This study employs a normative legal research approach. The object of study is legal norms-specifically, the norms contained in Article 47 of the Constitutional Court Law. As noted by Soerjono Soekanto, normative legal research encompasses, among other things, the study of legal principles, legal systematics, comparative law, legal history, and the synchronization of legal norms. Normative legal research is employed here because Article 47 of the Constitutional Court Law stipulates that a Constitutional Court ruling acquires permanent legal force the moment it is pronounced in a plenary session open to the public. Given this provision, a question arises regarding situations where a Constitutional Court ruling gives rise to issues—such as a clear violation of the Court's code of ethics or a breach of its procedural law—despite the fact that the ruling is deemed to have permanent legal force immediately upon its public pronouncement. In such circumstances, a legal vacuum exists, as Indonesian law provides no solution for this scenario.

RESULTS AND DISCUSSION

The Possibility of a Judicial Review of Constitutional Court Decisions

The Constitutional Court is a state institution that exercises judicial power and serves as the guardian of the supremacy of the Constitution. A distinctive feature of the Constitutional Court is its authority to review lower laws against the highest law (judicial review) in order to establish a system of checks and balances among state institutions.

In exercising its authority, the Constitutional Court issues rulings that are final and binding, as stipulated in Article 24C, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The final and binding nature of these rulings means they apply to everyone. Such rulings may serve as legal considerations for judges when issuing decisions and as reference material in the legislative process.

Constitutional reform brought about changes to the state structure, involving the abolition of certain state institutions and the addition of others. One of the newly added institutions is the Constitutional Court, which exercises judicial power alongside the Supreme

Court. As stipulated in Article 24, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, judicial power is exercised by a Supreme Court and the judicial bodies subordinate to it—comprising the general, religious, military, and state administrative court systems—as well as by a Constitutional Court. Thus, the Constitutional Court holds a position as an institution that exercises judicial power jointly with the Supreme Court. The Constitutional Court occupies a highly strategic position, as it possesses authority that directly concerns the parties involved—both those currently holding power and those seeking to attain it.

The Constitutional Court has the authority to adjudicate at the first and final instance—with its decisions being final—on the judicial review of laws against the Constitution, disputes regarding the authority of state institutions whose powers are granted by the Constitution, the dissolution of political parties, and disputes concerning general election results.

Based on an analysis of the deliberations surrounding the amendment of the law, the concept of the Constitutional Court's rulings being final is inextricably linked to the agreement to establish the Court as a tribunal of first and last resort. This designation entails that no legal mechanism exists within other judicial bodies to appeal or overturn such rulings. Consequently—as noted by Maruarar Siahaan regarding the final and binding nature of the Constitutional Court's decisions—the criterion for determining whether a court ruling is final and legally binding lies in the existence (or absence) of a body legally authorized to review that ruling, as well as the presence of procedural mechanisms specifying who may conduct such a review and the manner in which it is to be carried out.

Given that the Constitutional Court's authority stems directly from the Constitution, there are no mechanisms or subordinate legal regulations capable of reviewing its rulings. As a unique judicial body that neither oversees nor is subordinate to any other court, the Constitutional Court's rulings carry immediate, binding legal force, and no avenues for further legal recourse exist. This absence of further legal remedies is intended to ensure that the Court—through its rulings—resolves issues and provides legal certainty swiftly, in accordance with the principles of expeditious and simple judicial proceedings. Were avenues for further legal challenge to be permitted, the Court's rulings would likely be subject to perpetual dispute, thereby undermining legal certainty. This is particularly critical given that the Constitutional Court adjudicates constitutional matters, which demand legal certainty and are subject to time constraints essential to the continuity of constitutional processes.

An underlying principle exists here: given that the Constitutional Court possesses extraordinarily broad authority—particularly in adjudicating constitutional matters—the proceedings must be simple and expeditious to ensure legal certainty. As Pataniari Siahaan has

noted, the Constitutional Court serves as both the court of first and last instance; its proceedings differ from those of ordinary courts, fostering the expectation that all issues can be resolved in a single hearing.

Recognizing the extensive authority of the Constitutional Court—whose rulings are final and binding—the drafters of the constitutional amendments placed great emphasis on exercising caution regarding the appointment of its members. This is evident from the conclusions reached during the follow-up meeting of the MPR Working Committee I (PAH I BP MPR) on October 10, 2001, regarding the draft amendment to Chapter IX of the 1945 Constitution. Point 2 of these conclusions stated:

It was agreed that the membership of the Constitutional Court would be filled by individuals possessing integrity and an unblemished character; acting as statesmen with a mastery of the Constitution and matters of statecraft; holding no concurrent state or government offices; and meeting other requirements stipulated by law.

Although it was ultimately agreed that the Constitutional Court would comprise nine members—three nominated by the President, three by the Supreme Court, and three by the House of Representatives—the established requirements remained the primary guiding principle, regardless of the individuals' identities or the specific processes and nominating bodies involved in their selection.

As a constitutional judicial body, the Constitutional Court possesses distinct characteristics that set it apart from the general court system. These unique features lie in the nature of the Court's rulings, which are final and binding, applying according to the *erga omnes* principle. A ruling against which no further legal recourse is available is deemed to possess permanent legal force (in *kracht van gewijsde*) and carries binding authority (*res judicata pro veritate habetur*). The final and binding nature of the Constitutional Court's rulings gives rise to legal consequences that must be observed with the same authority as statutory law.

A ruling by the Constitutional Court acquires permanent legal force the moment it is pronounced during a plenary session open to the public. This is a consequence of the Court's rulings being designated as final under the 1945 Constitution. Consequently, the Constitutional Court serves as a court of first and last instance, and its rulings are not subject to further legal challenge.

While it is possible for a Constitutional Court ruling—which is final and binding—to contain errors or flaws, it remains immune to challenge. Undoubtedly, the normative provisions establishing the finality of the Court's rulings give rise to various issues—philosophical, legal, social, and political. When parties perceive a ruling as unjust yet have no other legal recourse

available, they have no choice but to accept and implement it. In other words, even if a party feels that justice has been stifled by the ruling, there is no alternative to compliance.

The final nature of Constitutional Court rulings is affirmed in Article 24C, Paragraph (1) of the 1945 Constitution, which stipulates that the Constitutional Court has the authority to adjudicate constitutional cases at the first and final instance, with its rulings being final. This provision is further regulated in Article 10, Paragraph (1) of the Constitutional Court Law. According to the Elucidation of Article 10, Paragraph (1), the final nature of the ruling means that it acquires permanent legal force immediately upon pronouncement, and no further legal remedies may be pursued. Article 47 of the Constitutional Court Law reinforces this finality by stating that a Constitutional Court ruling acquires permanent legal force the moment it is pronounced in a plenary session open to the public.

It is well established that Constitutional Court rulings are final and binding, meaning there is no legal avenue to challenge them. Nevertheless, issues frequently arise regarding the Court's decisions—particularly in cases involving the judicial review of statutes—often drawing significant public scrutiny. These rulings are frequently highly controversial, sparking public debate and disagreement. Such outcomes can have a psychological impact and undermine the sense of justice among litigants disappointed by decisions that are legally final and binding. Given this situation, the researcher argues that for cases likely to generate public controversy, it is necessary to extend the duration of the proceedings—for instance, by increasing the number of expert opinions summoned by the Court. Extending the proceedings in this manner is preferable to allowing legal challenges (such as a judicial review or *peninjauan kembali*) against the Court's rulings, as the former approach does not require amending the 1945 Constitution or the Court's procedural laws. Conversely, permitting legal challenges against Constitutional Court rulings would necessitate changes to the 1945 Constitution and the Court's procedural rules. It would also raise complex questions regarding which body holds the authority to correct the Court's rulings and what procedures would apply—such as whether they would mirror the Supreme Court's judicial review process or follow a different mechanism. For these reasons, the researcher concludes that extending the duration of proceedings is a better approach than subjecting Constitutional Court rulings to a judicial review process.

CONCLUSION

From a normative perspective, a judicial review of a Constitutional Court ruling is not possible; Article 47 of the Constitutional Court Law affirms that the Court's rulings are final

and binding from the moment they are pronounced in a plenary session open to the public. Furthermore, the elucidation of Article 10, point (1), clarifies that "final and binding" means no legal recourse is available. Additionally, Constitutional Court Regulation No. 06/PMK/2005 concerning Procedural Guidelines for the Judicial Review of Laws makes no provision for such a review.

Suggestion

Allowing for a legal remedy-specifically a judicial review (peninjauan kembali)-against Constitutional Court rulings would necessitate amendments to the 1945 Constitution and the Court's procedural laws. It would also raise questions regarding which body holds the authority to revise such rulings and what the applicable procedure would be-whether it would mirror the judicial review process at the Supreme Court or follow a different mechanism. For these reasons, the researcher holds the view that extending the duration of the proceedings is preferable to subjecting Constitutional Court rulings to a judicial review process.

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