

Disobedience of The Constitutional Court's Decision by The Supreme Court

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Abstract

The Constitutional Court as one of the institutions that exercises judicial function has a final and binding decision that binds all parties. However, in practice, the decisions of the Constitutional Court are often ignored by parties, one of which is the Supreme Court. There are several Supreme Court decisions that do not consider the decisions of the Constitutional Court. This demonstrates disobedience to legal norms that are final. This is the reason why the researcher wants to examine the constitutionality of the Constitutional Court, and what are the legal implications. This research is doctrinal research with a normative legal approach, that used secondary data obtained through literature study. Based on the results of the study, the decisions of the Supreme Court which do not consider the decisions of the Constitutional Court can be said to be unconstitutional, or it can be said that there has been a violation of the constitution because the decisions of the Constitutional Court represent the essence of the 1945 Constitution of the Republic of Indonesia. The legal implication obtained are the supreme court decision is still be act as jurisprudence; there is legal confusion and uncertainty regarding the conflicting decisions; the occurrence of constitutionalism justice delay; and can undermine the authority of the 1945 Constitution of the Republic of Indonesia.

A. Introduction

The Constitution of the Republic of Indonesia in Article 1 paragraph (3) states that Indonesia is a rule of law. A rule of law can be interpreted as a country whose governance is based on legal principles with the aim of limiting government authorization.¹

As a consequence of a rule of law, the division of power in Indonesia is divided into three branches, namely the executive, legislative and judicial branches. Judicial authorization is exercised with the aim of guaranteeing the implementation of judicial authorization

that is independent, impartial and free from interference by other parties.

Based on Article 24 paragraph (2) of the Constitution of the Republic of Indonesia, judicial institution is exercised by the Supreme Court and the courts under it, and is carried out by the Constitutional Court. The Constitutional Court was formed with the aim of becoming the guardian of the constitution as the highest law in the country.

The Constitutional Court is formed, the state wants to ensure that the constitution is really implemented in the state and becomes the basis for the rule of making. Apart from being held by the Constitutional Court, judicial authorization is also exercised by the

1 I Dewa gede Atmadja, *Hukum Konstitusi Problematika Konstitusi Indonesia Sesudah Perubahan UUD 1945* (Malang: Setara Press, 2011).

Supreme Court which has an equal position with the Constitutional Court.

The position of the Supreme Court does not supervise and has a position above the Constitutional Court. In the other hand, the Constitutional Court also does not supervise and has a position above the Supreme Court. This means that the positions of the Supreme Court and the Constitutional Court are equal, as institutions that exercises judicial function in Indonesia.²

The Constitutional Court in trying and deciding a case, its decision is *erga omnes*, meaning that the decision does not only apply to the applicant for judicial review (the parties to the case) who requested a review of the law, but also to all parties related to the Constitutional Court's decision.³

Therefore, the Constitutional Court's decision has equal power with the law, and for its implementation does not have to wait for changes to the law first. This is the basis for the decision of the Constitutional Court which must be obeyed by all parties who are related to matters relating to the substance of the decision of the Constitutional Court.

The final and binding characteristic of the Constitutional Court's decision when viewed from a law in book aspect is the best form and choice. This is as explained by Hamdan Zoelva, the reason for making this provision is that the Constitutional Court was formed to protect the purity of the constitution with a more detailed interpretation. The interpretation will be used as a basis for resolving all issues related to the matter being interpreted. Therefore, it is appropriate that the interpretation only applies once and is binding and the decision must be placed at the first and last level which cannot be made any attempt to cancel it.⁴ Whatever the form

2 Budi Suhariyanto, "Masalah Eksekutabilitas Putusan Mahkamah Konstitusi Oleh Mahkamah Agung," *Jurnal Konstitusi* 13, no. 1 (2016): 175.

3 Widayati, "Problem Ketidapatuhan Terhadap Putusan Mahkamah Konstitusi Tentang Pengujian Undang-Undang," *Jurnal Pembaharuan Hukum* 4, no. 1 (2017): 10.

4 Tim Penyusun Naskah Komprehensif Proses dan Hasil Perubahan UUD 1945, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia: Buku VI, Kekuasaan Kehakiman, Revisi*. (Jakarta: Sekretariat Jenderal

of the Constitutional Court's decision, the decision remains binding on all parties.

In fact, there are still decisions of the Constitutional Court that are not carried out by other judicial institutions (in this case the Supreme Court) which results in the decisions of the Constitutional Court being in a floating position (floating execution). This can result in the Constitutional Court's decision being considered non-binding by some parties, even though the legal product interpreted by the Constitutional Court is the Constitution of the Republic of Indonesia which has the highest position in the hierarchy of laws and regulations based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning establishment of law.

The decisions of the Constitutional Court and the Supreme Court that are not in synchronize can be seen in the Decision of the Supreme Court Number 103K/Pid/2007 which is not in accordance with the Decision of the Constitutional Court Number 003/PUU-IV/2006 concerning the explanation of Article 2 paragraph (1) of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes. The decision stated that the material law violation was unconstitutional. However, in the Supreme Court Decision No. 103K/Pid/2007, the judge used formal and material law violations.

Another example can be seen in the Constitutional Court decision Number 19/PUU-IX/2011 regarding the judicial review of Article 164 paragraph (3) of Law Number 13 of 2003 concerning employment which was not considered by the Supreme Court decision in decision Number 295K/Pdt.Sus-PHI/2015 which in fact still uses provisions that have been declared contrary to the Constitution of the Republic of Indonesia.

The several examples above illustrate that the Constitutional Court's decision is not always considered as the Supreme Court's consideration in deciding every case. The previous explanation states that the Constitutional Court's decisions are final and binding which is an interpretation of the substance of the Constitution of the Republic of Indonesia dan Kepaniteraan Mahkamah Konstitusi, 2010).

sia. However, several Supreme Court decisions described above do not implement the final and binding of the Constitutional Court's decisions. This is proven by not taking into consider the Constitutional Court's decision in deciding the case so that the decision is not in accordance with the substance of the Constitutional Court's decision.

This causes an issues of disobedience to legal norms which are final and binding, which can then be questioned regarding the constitutionality of the Supreme Court decision. Based on the description above, it is interesting to study and analyze more deeply regarding the following problems: What is the constitutionality of the Supreme Court's decision that does not consider the Constitutional Court's decision? What are the legal implications of the Supreme Court's decision that does not consider the Constitutional Court's decision?

B. Method

This research is a doctrinal research with a normative legal approach. The research uses secondary data obtained from legal materials. Secondary data was obtained using literature study related to the topics discussed. This research examines laws and regulations and decisions of the Supreme Court that are inconsistent with decisions of the Constitutional Court.

C. Result and Discussion

1. The constitutionality of the Supreme Court's decision that does not consider the Constitutional Court's decision.

Decisions of the Supreme Court and the Constitutional Court have final and binding force, but there are several different aspects in their implementation. In particular, the Constitutional Court, which has the authority to examine, adjudicate, and decide on certain cases based on constitutional considerations, in this case it can be interpreted that the Constitutional Court has five inherent functions in accordance with its authority.

These functions are as the guardian of the constitution, the final interpreter of the constitution, the protector of human right,

the protector of the citizen's constitutional right, and the protector of democracy.⁵

The Constitutional Court, which has several functions as mentioned above, makes it a judicial institution whose decisions do not only affect the applicant and/or the respondent but affect the community given the nature of the *erga omnes*. The Constitutional Court's decision must be a reference for other courts that will decide on a case, including the Supreme Court, so that the decision does not conflict with the Constitutional Court's decision that was decided before.

In trying a case, the Supreme Court will base its examination process and decision on certain laws. In that context, if the law which is used as the basis for examining a case has been annulled or decided unconstitutional by the Constitutional Court, then the Supreme Court basically has an obligation to comply with it.⁶ It means that the Supreme Court must see the details of the related Constitutional Court decision to find out clearly about the result of the Constitutional Court's official interpretation of the law.

In practice, the Constitutional Court's decisions are not always followed and taken into consideration by the Supreme Court. This raises questions regarding the nature of the Constitutional Court's decision which is *erga omnes* in nature.

The following are some of the Supreme Court decisions that did not consider the Constitutional Court's decision:

- a. *Supreme Court Decision Number 103K/Pid/2007.*

The Supreme Court Decision Number 103K/Pid/2007 is one of the decisions that should be subject to the Constitutional Court Decision Number 003/PUU-IV/2006. In the Constitutional Court's decision, the judge decided on the explanation of Article 2 paragraph (1) of Law Number 20 of 2001 con-

5 Ayu Desiana, "Analisis Kewenangan Mahkamah Konstitusi Dalam Mengeluarkan Putusan Yang Bersifat Ultra Petita Berdasarkan Undang-Undang Nomor 24 Tahun 2003," *Majalah Hukum Forum Akademika* 25, no. 1 (2014): 50.

6 Saldi Isra, "Titik Singgung Wewenang Mahkamah Agung Dengan Mahkamah Konstitusi," *Jurnal Hukum dan Peradilan* 4, no. 1 (2015): 26.

cerning the Eradication of Corruption Crimes insofar as it relates to the phrase: "What is meant by 'unlawfully' in this article includes acts against the law in the sense formally or in a material sense, that is, even though the act is not regulated in statutory regulations, if the act is considered disgraceful because it is not in accordance with the sense of justice or the norms of social life in society, then the act may be subject to punishment, must be declared contrary to the Constitution of the Republic of Indonesia..

The concept of unlawful material law (*materiele wederrechtelijk*), which refers to unwritten laws in terms of decency, prudence and accuracy living in society, as a norm of justice, is an uncertain measure, and varies from one particular social environment. to other communities, so that what is against the law in one place may be accepted and recognized as something legal and not against the law, according to standards known in the life of the local community, as stated by Expert Prof. Dr. Andi Hamzah, S.H. in court.

In its development, the Supreme Court in decision 103K/Pid/2007 used the nature of unlawful formal and material, which stated that the Constitutional Court's decision which interpreted the element of unlawful as against the formal law made the meaning of unlawful in Article 2 paragraph (1) unclear, so the judge must explore the meaning of against the law to the legal values that develop in society when the provisions are applied in concrete cases.

b. Supreme Court Decision Number 295K/Pdt.Sus-PHI/2015.

The Supreme Court decision Number 295K/Pdt.Sus-PHI/2015 is one of the decisions that should be subject to the Constitutional Court decision Number 19/PUU-IX/2011, in which the Constitutional Court stated that the use of the phrase "closed company" as long as it does not mean closed company permanent or temporarily closed, then the article is unconstitutional. The decision handed down by the Constitutional Court was based on the fact that the phrase was considered to be contrary to Article 28D para-

graph (2) of the Constitution of the Republic of Indonesia.

In the Supreme Court cassation decision 295K/Pdt.Sus-PHI/2015, the judge in his legal considerations at the *judex juris* examination only based that the cassation applicant's reasons could be justified because the *judex factie* decision was wrong in its application of law. The judge in his considerations was limited to the provisions of Article 164 paragraph (3) of Law Number 13 of 2003 concerning employment which had previously been declared contrary to the Constitution of the Republic of Indonesia and did not have binding legal force.

This can be questioned considering that there are other legal provisions, namely the Constitutional Court Decision Number 19/PUU-IX/2011 which was decided at the plenary session of the Constitutional Court which is open to the public. From the explanation above, the decision of the Supreme Court Number 295K/Pdt.Sus-PHI/2015 which still uses Article 164 paragraph (3) of Law Number 13 of 2003 concerning employment.

It means that it is still guided by the fact that the Termination of Employment carried out by the Company due to efficiency without having to close the company is legal and can be done. This is not in accordance with the Constitutional Court decision 19/PUU-IX/2011 which basically states that a company can terminate employment for reasons of efficiency if the company permanently closes.

c. Supreme Court Decision Number 65 P/HUM/2018.

The Supreme Court decision number 65 P/HUM/2018 is one of the decisions that should be subject to the decision of the Constitutional Court decision number 30/PUU-XVI/2018, which in the decision states that Article 182 letter I Law Number 7 of 2017 concerning General Elections in the phrase "other work" is contrary to the Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted to include political party officials.

In its implementation, the Supreme Court decision Number 65 P/HUM/2018 has a substance that contradicts the Constitutional Court's decision. Supreme Court Decision number 65 P/HUM/2018 in outline tried Dr. Oesman Sapta Odang as the applicant against the Chairman of the General Election Commission as the respondent. The General Election Commission, guided by the Constitutional Court Decision 30/PUU-XVI/2018, issued the General Election Commission Regulation Number 26 of 2018 concerning the Second Amendment to the General Election Commission Regulation Number 14 of 2018 concerning the Nomination of Individual Election Contestants for Members of the Regional Representatives Council and Letter Number 1043/PL.01.4-SD/ 06/KPU/IX/2018 dated 10 September 2018 regarding the Requirements for Candidates for Regional Representative Council Members.

The Supreme Court judge stated that the provisions of Article 60A the General Election Commission Regulation Number 26 of 2018 contradict higher regulations, namely Article 5 letter d and Article 6 paragraph (1) letter i Law Number 12 of 2011 concerning the Formation of Legislation, even though Article 60A refers to the decision of the Constitutional Court Number 30/PUU-XVI/2018 where the decision is a form of interpretation of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, the provisions of Article 60A remain binding as long as it is not treated retroactively against Participants The Regional Representative Council election in 2019 who have followed the stages, programs and schedule for holding the 2019 elections.

In addition to using the 1945 Constitution of the Republic of Indonesia as a test stone, the Constitutional Court's decision was also decided earlier than the Supreme Court's decision so that the Constitutional Court's decision should be a consideration for the Supreme Court to comply with in adjudicating disputes.

d. Supreme Court Decision Number 1.110 K/Pid.Sus/2012

The Supreme Court decision Number 1.110 K/Pid.Sus/2012 should be obedient to the Constitutional Court decision Number 4/PUU-V/2007, which contains that the application of imprisonment and/or confinement in Article 75 paragraph (1), Article 76, and Article 79 Law Number 29 of 2004 concerning Medical Practice is contrary to the Constitution of the Republic of Indonesia and has no binding legal force. Based on this decision, the actions of a doctor who fulfills the formulation of this article can no longer be subject to criminal sanctions in the form of imprisonment and confinement, but can only be subject to fines.

Based on the considerations of the Constitutional Court judges, the criminal provisions related to medical practice in several of the articles above cannot be justified and are not proportional enough which, if applied, could harm the medical profession because they have created feelings of insecurity and fear as a result of the disproportionate difference between the violations committed and the criminal threats stipulated in the law. The Constitutional Court's decision in its implementation was not adhered to by the Supreme Court.

The Supreme Court judge in Decision Number 1.110 K/Pid.Sus/2012 imposed a prison sentence of one year and six months. This was based on the fact that the defendant violated Article 76 of Law Number 29 of 2004 concerning Medical Practice regarding "deliberately practicing medicine without having a license to practice", as well as Article 79 letter c concerning "not fulfilling his obligation to provide medical services in accordance with professional standards and standard operating procedures". As explained above, the provisions on imprisonment and confinement in articles 76 and articles 79 letter c of Law Number 29 of 2004 concerning Medical Practice have been declared unconstitutional and do not have binding force.

Some of the examples of decisions above illustrate that the Constitutional Court's decision, which is the official interpretation of the constitution, may not be considered by the Supreme Court in adjudicating a case.

Basically, the Constitutional Court's decision is negative for the legislature, which is *erga omnes* in nature, meaning that it applies to all citizens.⁷

According to K. C Wheare, the interpretation of Constitution Court judges is one way to change the constitution informally. This means that in reviewing laws, the Constitutional Court's decision is a new constitution that has binding legal force. With that regard, there is no reason for all parties not to implement the Constitutional Court's decision because basically it has the same legal force as the constitution.⁸

By pronouncing it at a plenary session which is open to the public and has the nature of *erga omnes*, all parties have the obligation to implement the contents of the Constitutional Court's decision, including the Supreme Court as one of the institutions administering judicial authorization in Indonesia. The decision of the Constitutional Court has also been published in the state news of the Republic of Indonesia, which means that the Supreme Court and the judicial bodies under it are obliged to know and comply with the decision of the Constitutional Court.⁹

The existence of non-compliance with the Constitutional Court Decision Number 003/PUU-IV/2006, the Constitutional Court Decision Number 19/PUU-IX/2011, the Constitutional Court Decision Number 30/PUU-XVI/2018, and the Constitutional Court Decision Number 4/PUU-V/2007 indicates that there is non-compliance against legal norms that are final and binding. The Constitutional Court's decision, whatever its form, whether it is considered good or bad in society, is still binding because the decision is a form of official interpretation of the current constitution.

Not taking the Constitutional Court's decision as a consideration in adjudicating a

case is a form of disobedience and disregard for the constitution and the Constitutional Court's decision. The act of non-compliance with the Constitutional Court's decision will give birth to a systemically disordered constitutional situation and condition, because the Constitutional Court's decision which is supposed to uphold the values of the Indonesian constitution is binding and final since the decision was read,¹⁰ has not been considered or disobeyed by the Supreme Court, which basically has a position as the organizer of judicial authorization. Not considering the Constitutional Court's decision is the same as not considering the constitution, so this can be said to be an unconstitutional action.

This also applies in court, for example if the Constitutional Court has decided that an article is declared unconstitutional, other courts are not permitted to use the article in the law as a basis for deciding a case unless the law is interpreted in accordance with what is the substance. from the Court's decision. If it is still used, it means that the judge who decided the case did not consider the Constitutional Court's decision.

A decision that does not take into account the Constitutional Court's decision is the same as not complying with and considering the 1945 Constitution of the Republic of Indonesia, because the Constitutional Court's decision represents the nature of the 1945 Constitution of the Republic of Indonesia as the highest law, so that when a judge's decision does not consider the Constitutional Court's decision, the judge's decision does not pay attention to the highest law in a country, so that it can be said that the judge's decision was unconstitutional,¹¹ or it can be said that the decision has violated the existing constitutional values.

Disobedience to the decisions of the Constitutional Court can occur because the Constitutional Court does not have an exe-

7 Dri Utari Cristina, Ismail hasani, ed., *Masa Depan Mahkamah Konstitusi RI: Naskah Konferensi Mahkamah Konstitusi Dan Pemajuan Hak Konstitusional Warga* (Jakarta: Pustaka Masyarakat Setara, 2013).

8 *Ibid.*

9 Saputra, "Tinjauan Yuridis Terhadap Putusan MA 295 K/Pdt.Sus-Phi/2015 Yang Tidak Mempertimbangkan Putusan MK 19/PUU-IX/2011."

10 Fadjar Laksono, Winda Wijayanti et.al, "Implikasi Dan Implementasi Putusan Mahkamah Konstitusi Nomor 5/PUU-X/2012 Tentang SBI Atau RSBI," *Jurnal Konstitusi* 10, no. 4 (2013): 733.

11 Saputra, "Tinjauan Yuridis Terhadap Putusan MA 295 K/Pdt.Sus-Phi/2015 Yang Tidak Mempertimbangkan Putusan MK 19/PUU-IX/2011."

cutor agency that is given the task of guaranteeing the implementation of its decisions which are final and binding. In addition, the Constitutional Court does not have coercive power to implement its decisions because there have not been any sanctions related to the decisions of judicial judges under the Supreme Court that contradict the decisions of the Constitutional Court, which is one of the causes of the many disregards of the decisions of the Constitutional Court.

The basis for the implementation of the Constitutional Court's decision is in the legal awareness of the parties related to the decision without coercion. Implementation of the Constitutional Court's decision requires moral awareness as well as legal awareness of the relevant institutions.¹²

The author believes that the implementation of the Constitutional Court's decision is important in an effort to raise awareness to implement the contents of the constitution. The existence of provisions governing the implementation of the Constitutional Court's decision will make the Constitutional Court's decision more obeyed by all parties.

e. *The Legal Implications of Supreme Court Decisions that do not Consider Constitutional Court Decisions.*

The Constitutional Court of Indonesia is an institution that carries out a judicial function with the competence of the object of constitutional cases and its existence in order to strengthen the constitutional basics of Constitution of the Republic of Indonesia.¹³

In order to establish the law and justice, the Constitutional Court has the authority to make decisions on cases it handles. Decisions that can be passed by the Constitutional Court in adjudicating cases include the application not being accepted, the application being rejected, and the application being granted. The decision has binding legal force for both the applicant and all citizens because

of the erga omnes nature of the decision.

The nature of the Constitutional Court's decision in reviewing a law is a declaratory constitutive, so any laws and regulations containing articles, phrases, and/or paragraphs that have been declared contrary to the constitution must be declared not to have binding legal force.¹⁴

This is because the decision issued by the Constitutional Court is an official interpretation of the constitution which can be said to have legal force equal to that of the constitution. As explained in the previous discussion, not considering the Constitutional Court's decision in deciding and adjudicating a case can be interpreted as not considering the Constitution of the Republic of Indonesia as the highest applicable basic law, so this can be said to be an unconstitutional action.

In its implementation, with the legal force described above, there is still disobedience to the decisions of the Constitutional Court. In this article, the author specifically discusses the legal implications of the Supreme Court's decision which does not consider the Constitutional Court's decision, including:

f. *The decision still has the position as jurisprudence.*

The decision of the Supreme Court, regardless of its form, since the decision has permanent legal force, it has been valid as jurisprudence. The judiciary is a means for citizens to seek justice and efforts to resolve the problems they face related to conflicts of rights and obligations. The task of the judge in this case is to establish the law, so that the decision handed down must be based on the applicable legal provisions in order to achieve justice.

The existence of a Supreme Court decision that does not consider the decision of the Constitutional Court does not necessarily eliminate the position of the Supreme Court decision as a jurisprudence. Jurisprudence is a law which is binding and strengthened by

12 Bachtar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD* (Jakarta: Raih Asa Sukses, 2015).

13 Nanang Sri Darmadi, "Kedudukan Dan Wewenang Mahkamah Konstitusi Dalam Sistem Hukum Ketatanegaraan Indonesia," *Jurnal Hukum* 26, no. 2 (2011): 678.

14 Saputra, "Tinjauan Yuridis Terhadap Putusan MA 295 K/Pdt.Sus-Phi/2015 Yang Tidak Mempertimbangkan Putusan MK 19/PUU-IX/2011."

the principle of *res judicata pro veritate habetur* which has the definition that all judge decisions must be considered good and right.

Based on this matter, the decision of a judicial institution even though in substance contradicts the decision of another judicial institution, it still applies as jurisprudence and becomes a source of law. In this case the decisions of the Supreme Court and the decisions of the Constitutional Court, although there are substances that intersect with each other, neither loses their position as jurisprudence because both are decisions of judges in courts that have permanent legal force and are decided based on the applicable legal rules.

g. *The decision may cause confusion in the application of the law.*

Court decisions are one source of applicable law in Indonesia. The Supreme Court and the Constitutional Court have an equal position. The existence of disobedience to decisions issued by the Constitutional Court can lead to legal uncertainty that has been issued by the Court, even though the Constitutional Court's decision is final as explained in Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court which states that:

"The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to review laws against the Constitution of the Republic of Indonesia, to decide on disputes over the authority of institutions whose powers are granted by the Constitution of the Republic of Indonesia, to decide on the dissolution political parties, and decide disputes about election results".

This is then emphasized in the Explanation of Article 10 paragraph (1) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that:

"The decision of the Constitutional Court is final, meaning that the decision of the Constitutional Court immediately obtains permanent legal force from the moment it is announced and there are no legal remedies that can be taken. The final nature of the Constitutional Court's decision in this Law also includes binding force (final and binding).

Disobedience to the decisions of the Constitutional Court by all parties, especially by the Supreme Court which both have the position as judicial institutions based on Article 24 paragraph (2) of the Constitution of the Republic of Indonesia is a form of disruption to the decisions of the Constitutional Court which can cause citizens to lose confidence in the Constitutional Court as a final interpreter of the constitution. Citizens will think that the Constitutional Court's decision is only limited to law in book without any power in law in action.

The existence of different substances from the two decisions will cause confusion for other judicial authorization holders in seeking considerations related to cases that have relevance to the said decisions, especially since both already have a position as jurisprudence. The existence of differences in the decisions handed down will certainly lead to confusion, both in society and in other judicial circles, considering that both are jurisprudence which are recognized sources of law in Indonesia. Basically, to anticipate the existence of two conflicting decisions, Law Number 24 of 2003 states that:

"The Constitutional Court notifies the Supreme Court of the existence of a request for review of a law within a period of no later than 7 (seven) working days since the request is recorded in the Constitutional Case Registration Book".

The purpose of the contents of the article is so that the Supreme Court can consider postponing the settlement of cases that are related to laws that are currently in the process of being reviewed. The decision regarding the review of the law is then included in the state news of the Republic of Indonesia, which can be known by all parties. Based on this, there is no reason for the Supreme Court not to be aware of the Constitutional Court's decision.

h. *Causing constitutionalism justice delay*

Constitutionalism justice delay yaitu postponement of justice whose basis is the values of the Indonesian constitution, because justice to the constitutional rights of citizens protected by Constitutional Court decisions is not carried out due to disobedience to the

decisions of the Constitutional Court, even by the Supreme Court as the organizer of judicial authorization.¹⁵

Article 47 of Law Number 24 of 2003 concerning the Constitutional Court confirms that: "The decision of the Constitutional Court has permanent legal force since it has been pronounced in a plenary session which is open to the public". This indicates that since the completion of the pronouncement or reading of the decision, from that moment on the order for the decision must be implemented. Based on these provisions, the decision of the Constitutional Court can be implemented without having to wait for changes to the law first.

In reality, the existence of disobedience to the Constitutional Court's decision indicates a delay in the implementation of justice for the fulfillment of citizens' constitutional rights, which is not in accordance with Article 47 of Law Number 24 of 2003 concerning the Constitutional Court. This will create a bad image for constitutional enforcement in Indonesia and weaken the constitutional foundations of the Constitution of the Republic of Indonesia.

i. Can weaken the authority of the Constitution of the Republic of Indonesia.

The existence of the four Supreme Court decisions that have been explained in the previous discussion indicates a disregard for the decisions of the Constitutional Court which are final and binding in nature. The more acts of disobedience or disregard for the decisions of the Constitutional Court will weaken the authority of the Constitution of the Republic of Indonesia as the supreme constitution, including weakening the position of the Constitutional Court which has the function of being the guardian of the constitution.¹⁶

If this is allowed, the Constitutional Court's decision can be considered as textually strong but weak in its implementation.

15 Novendri M.Nggilu, "Menggagas Sanksi Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 1 (2019): 56–57.

16 *Ibid.*

The fact that can be seen is that one of the things that weakens the position of the Constitution of the Republic of Indonesia and the institution of the Constitutional Court is the Supreme Court itself which is part of the judicial authorization.

If it is explained about the relationship between the two judicial institutions, in fact it has been explained in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that judicial power is exercised by a Supreme Court and the courts under it, namely in the general court, religious court, and military court, and administrative court, as well as carried out by the Constitutional Court.

Article 53 of Law Number 24 of 2003 concerning the Constitutional Court states that "The Constitutional Court notifies the Supreme Court of a request for review of a law within a period of no later than 7 (seven) working days since the request is recorded in the Constitutional Case Registration Book". Apart from that, the decision of the Constitutional Court was also pronounced in a plenary session which was open to the public and then included in the State News of the Republic of Indonesia.

It means that there is no reason for the Supreme Court not to be aware of the Constitutional Court's decision. Obedience to the decisions of the Constitutional Court is a real form of loyalty to the constitution. As is known, the Constitution as a reference that serves as a guideline and is implemented by every element of the nation, has regulated fundamental matters, one of which is the formation and distribution of powers of the main state institutions, including the Constitutional Court.¹⁷

If the official interpretation of the constitution as outlined in the form of a Constitutional Court decision is not obeyed with and is not considered by other judicial institutions, including the Supreme Court, then this indicates a condition which weakens the authority of the Constitution of the Republic of Indonesia itself. The reason is that if this happens it will reduce public confidence in

17 *Ibid.*

the contents and position of the constitution, including for decisions of the Constitutional Court.

One of the potentials of disobedience to the decisions of the Constitutional Court is that it can reduce the enthusiasm of citizens in upholding constitutional values, such as the reduction in cases of reviewing laws carried out by the Constitutional Court as an administrative court.

It can be said to be a dangerous condition, because judicial review is a process of seeking justice by citizens for the enactment of laws, so that if the enthusiasm of citizens to apply for judicial review decreases, it will allow for many inequalities to occur which can result in citizens lose their constitutional rights.

The next implication is that it will reduce the function and position of the Constitutional Court as the final interpreter and guardian of the constitution.¹⁸ This is because the decision is no longer considered strong because of the weak nature of law in action in decisions issued by the Constitutional Court. The nature of a strong law in book must be followed by law in action so that the Constitutional Court can be trusted to be a judicial institution that can guarantee constitutional values are always upheld in the constitution.

The constitution as the highest law in a country must be upheld. One of the steps that can be taken is to implement constitutional values in the life of the state, including carrying out its official interpretation in the form of a Constitutional Court decision. Conditions that occur if you do not consider or do not implement the Constitutional Court's decision, there will be several legal consequences as described above.

The Supreme Court and the Constitutional Court as two institutions holding judicial authorization, should work together to produce decisions that are oriented towards upholding law and justice without weakening the position of one another. This concept aims to support Indonesia's position as

a constitutional state which in its operation is guided by applicable legal principles.

D. Conclusion

The Supreme Court's decision which does not take into account the Constitutional Court's decision can be said to be contrary to the Constitution of the Republic of Indonesia (unconstitutional) because the Constitutional Court's decision represents the essence of the Constitution of the Republic of Indonesia as the highest basic law. The Constitutional Court as a judicial institution which has the function of being the final interpreter of the constitution makes its decisions erga omnes or binding on all citizens, because they are related to the upholding of the constitution. Regardless of the form of the Constitutional Court's decision, it must still be implemented because it is a reflection of the constitution.

The decision of the Supreme Court which does not consider the decision of the Constitutional Court has several legal implications, including the decision of the Supreme Court which is still valid as jurisprudence, can cause confusion in the application of law, causes constitutional justice delays, and weakens the authority of the Constitution of the Republic of Indonesia as the supreme law. The next implication is that it will reduce the function and position of the Constitutional Court as the final interpreter and guardian of the constitution. This is because the decision is no longer considered strong because of the weak nature of law in action in decisions issued by the Constitutional Court.

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