The Seybold REPORT

ISSN 1533-9211

DOI: 10.5281/zenodo.13167458

THE ESSENCE OF CONSTITUTIONAL COURT DECISIONS WHICH ARE FINAL AND BINDING IN STATE ADMINISTRATION

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Abstract

The aim of this research is to discover the essence of the Constitutional Court's decisionWhich is Final and Binding in State Administration. This research is normative legal research, using a statutory approach, conceptual approach, philosophical approach, and case approach. The research results show thatThe essence of the Constitutional Court's decision which has final and binding status in its implementation is a). final means, that there is no further legal remedy for the parties to request changes to the Constitutional Court Decision or it has been closed to all possibility of taking legal action afterwards or as the first and final decision for which there is no legal space to review it again; b). binding means: 1). That the Constitutional Court's decision has obtained legal force, and 2). Because it has obtained legal force, the parties must obey or comply with the Constitutional Court's decision and must not violate it.

Keywords: Essence; Constitutional Court Decision; State Administration.

INTRODUCTION

Indonesia is a country that adheres to the Continental European legal tradition or often called the civil law system. One of the main characteristics of the civil law system is the importance of statutory regulations or "statutory legislation". The position of "statutory laws" takes precedence over appeals to judge decisions or jurisprudence. This is different from the common law system which prioritizes the judge's decision as a reference for resolving a case. Therefore, the common law system is also called "the judicial law" or "the case law".[1]

Departing from the legal principles above, one question can be raised, namely what is the relationship between one written legal provision and another, an important thing to know the answer to because it concerns the binding power of written law as a valid legal provision.[2]The relationship between legal norms can be described as a relationship between "super ordination" and "subordination" which is a spatial metaphor.

The legal order, especially the legal order personified in the form of the State, is not a system of norms which are merely coordinated with each other, which stand parallel or equal, but rather a sequence of norms from different levels. The unity of this norm is demonstrated by the fact that the formation of a lower norm is determined by another higher norm whose formation is determined by another even higher norm, and that this regress us (series of law formation processes) is terminated by a highest basic norm.[3]

The search for reasons for the validity of norms cannot go on endlessly like the search for the cause of an effect. This search must culminate in a norm that is assumed to be the final and highest because its validity can no longer be questioned.[4]

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DOI: 10.5281/zenodo.13167458

In other words, the search for reasons for the validity of a norm is not a regressus ad infinitum (an endless process). Norms whose validity cannot be obtained from other higher norms are called basic norms (grundnorms).[5]This norm is pre-supposed, cannot be further traced on the basis of its validity so it needs to be accepted as something that cannot be debated any longer, as a hypothesis, something fictional, or an axiom (self-evident). This is necessary to not shake the layers of the legal system which ultimately depend or base themselves on these basic norms.

Weak execution of decisions This Constitutional Court has actually been realized since the beginning of the establishment of the Constitutional Court. Alexander Hamilton said that the judiciary (especially the Constitutional Court) was the weakest branch of power among the other branches of power. If you pay attention to other state institutions, such as the executive holding a sword in his arms because he has the state apparatus to implement (enforce) his policies, the legislative institution has large funds (has money) because it can regulate the country's economy through a budgeting function, then the Constitutional Court does not have any equipment. even to enforce its decision.[6]

Several factors can be identified as to why there are still no decisions so far The Constitutional Court tends to be ignored by decision implementers. First, there is no special enforcement agency. The absence of a special executing agency appointed to enforce the implementation of decisions, like other judicial institutions which are carried out by police agencies or court bailiffs, is an important factor in the weak execution of Constitutional Court decisions. The absence of an executorial institution is due to the Constitutional Court's decision having the nature of "automatic execution", namely that the decision can immediately have binding legal force along with the legal consequences that arise from the moment it is pronounced. For example, if a law is declared unconstitutional then the law itself has no binding force and cannot be used as a legal basis. However, implementing decisions may include the same norms in the formation of other laws.

The description above shows once again that the weak executive power of Constitutional Court decisions so that the number of waivers is still quite high is a problem that needs serious attention. As the sole interpreter of the constitution, disobedience to the Constitutional Court's decision is no different from denying the constitution. Likewise, the Constitutional Court is a form of institutional and constitutional effort towards a rule of law which shows that ignoring its decisions is a form of betrayal of the rule of law itself.

METHOD

This research is normative legal research. Meanwhile, the approach used in this research uses a statutory approach, a conceptual approach, a philosophical approach, a case approach. The theoretical framework used as a tool for analysis is the theory of the rule of law, Constitutional theory, theory of State Organs/State Institutions, and theory of Legal Effectiveness.

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RESULTS AND DISCUSSION

The Constitutional Court (MK) as a constitutional court, has unique characteristics that differentiate it from general courts or ordinary courts. One of these distinctive characteristics is the nature of the Constitutional Court's decision which is determined to be final and there are no other legal remedies. This nature is different from the decisions of judicial institutions within the Supreme Court (MA) which provide other legal remedy mechanisms, including through Judicial Review (PK) mechanisms and/or through pardon.

Regarding the final nature of the Constitutional Court's Decision, it is confirmed in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) which states:

> "The Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, decide disputes over the authority of State institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding election results ."

These provisions were then derived into Article 10 paragraph (1) of the Constitutional Court Law. Article 47 of the Constitutional Court Law emphasizes this final nature by stating that the Constitutional Court's decision has permanent legal force since it was pronounced in a plenary session which is open to the public.

Based on these provisions, the final nature indicates at least 3 (three) things, namely (1) that the Constitutional Court Decision directly has legal force; (2). Because it has obtained legal force, the Constitutional Court's decision has legal consequences for all parties related to the decision. This is because the Constitutional Court's decision is different from general court decisions which only bind the parties to the case (interparties). All parties are obliged to comply with and implement the Constitutional Court's decision.

In the Constitutional Court's decision related to judicial review (PUU), for example, when the Constitutional Court decides that a law is contrary to the Constitution and declares it to have no binding force, the decision is not only binding on the party submitting the case to the Constitutional Court, but also binding on all citizens as is the case. 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 final court, there are no other legal remedies that can be taken. A decision if no legal action can be taken means that it has permanent legal force (in kracht van gewijsde) and has binding force (resjudicata pro veritate habetur).

In practice, the final nature of the Constitutional Court's decision is often questioned, giving rise to a suspicion that the final nature of the Constitutional Court's decision then contributes to ordaining the Constitutional Court as a superbody constitutional organ. This means that, through its final decision, the Constitutional Court has extraordinary power, exceeding the power of other state institutions.

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DOI: 10.5281/zenodo.13167458

This problem also made the Constitutional Court unable to be controlled by any institution. In line with this, a philosophical problem that also arises is the closure of opportunities for justice seekers (justisiabelen) to take legal action against the Constitutional Court's decision, especially when the decision is felt to be unfair. This shows that the final nature of the Constitutional Court's decision, even though it has been stipulated in the 1945 Constitution, essentially leaves room for potential injustice.

Based on this argument, several groups consider it important that for the sake of justice and truth, the Constitutional Court's decision should be corrected if it is clear that there is a mistake or fatal mistake. Because, instead of protecting the constitutional rights of citizens, it is not impossible that this decision will actually degrade them.

Legal action is the right of the interested party, therefore, the party concerned himself must be active by submitting it to the court which is given the power to do so if he wishes. Judges cannot force or prevent parties from exercising their right to file legal action. In other words, the issue of finality and non-finality of a court decision is directly related to the fairness of a decision. Therefore, the demand that the court's decision not necessarily be final means it is necessary to open up other legal remedies which are closely related to aspects of justice.

This is different from the view expressed by Prof. DR. Arief Hidayat in his view stated:

> The Constitutional Court's decision is final and binding so no action or other legal remedies are required. In principle, there is no appeal in the final. Meanwhile, binding means that the decision must be completely obeyed by all the people, all stakeholders must obey the court's decision. The decision is erga omnes to apply to the whole. However, some of these decisions take effect immediately, while others wait to be changed by the legislators. Depends on the scale of implementation. For example, the decision made during the era of Pak Mahfud MD, regarding urgent elections, there were citizens whose constitutional rights were harmed who then submitted a judicial review to the Court, in the a quo case the decision was immediately effective and binding because there was no governing law (vacuum of recth). Without the need to change the law. In the aquo case, as an example, voters who are not registered in the DPT are allowed to exercise their voting rights according to their place of residence. Another example follows in the judicial review of the Marriage Law which relates to the age of marriage. In the a quo case, the Court in its decision decided that the age of marriage for women should be immediately adjusted. However, it turned out that after 2 years it was not adjusted. Then, regarding the substance of the aquo case, a judicial review was carried out again on the a qo petition. The Court in its decision reiterated that regarding age, it is an open legal policy, so the Court stated that the age at marriage for women in Indonesia is equal to the age at marriage for men. This means that determining the age at marriage is returned to the legislator, in this case the DPR. This decision is referred to as a non-self implementing decision (declaring invalid or null and void. Not non-self-implementing (conditionally unconstitutional), or a decision whose implementation is postponed, and a decision that formulates new norms.[7]

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ISSN 1533-9211

DOI: 10.5281/zenodo.13167458

Apart from the final and binding discourse of meaning. In the author's opinion, the existence of final and binding phrases in the Constitutional Court Law at least creates problems, both philosophical, juridical, social, political and theoretical.[8]When the parties feel the injustice of the Constitutional Court's decision, while there are no other legal remedies available, there is nothing else they can do except accept, obey and implement the decision. This means that even though justice is shackled and shackled by the Constitutional Court's decision, justice seekers have no other choice but to carry out the wishes of the decision. Presumably, at this point it is suspected that there are problems with the justice aspect regarding the final nature of the Constitutional Court's decision, especially from the perspective of justice seekers.

The problem that is then important to raise is whether the final nature of the Constitutional Court's decision truly guarantees the realization of justice. Or, on the contrary, do these provisions actually hinder the achievement of justice for justice seekers? Court decisions are law. As Van Apeldoorn stated, the form of law is not only limited to legally binding regulations but also manifests itself in court decisions which are also regulatory and coercive.[9]

Based on the questions and hopes as stated above, it is important to carry out an investigation and also examine why the changers to the 1945 Constitution designed the Constitutional Court as the first and last instance of justice whose decisions are final.

To understand the meaning of a provision in the 1945 Constitution, as stated in the Explanation of the 1945 Constitution before the Amendment, the Constitution in any country cannot be understood correctly if the text is simply read. To be able to truly understand the meaning of the provisions of a country's Constitution, it is necessary to study how the text came into being, to understand the information and also to know in what atmosphere the text was formulated. In this way, the meaning of the provisions of the law will be known, and even what events or thoughts underlie and surround them. In this regard, the interpretation method plays an important role in this, in this case using the original intent interpretation method.

The original intent approach is part of the originalism school. In the flow of originalism, in principle there are 2 (two) major theories, namely original intent theory and original meaning theory.

a) *Original intent theory*states that the interpretation of a written constitution is (should) be in accordance with what was intended by the people who drafted or formulated the constitution;

b) *Original meaning theory*search for the meaning of the text based on when the text was formulated.

In an effort to interpret the meaning of the constitution, the interpreter does not try to enter someone's mind, but based on the words someone says which are based on the meaning of the words when the words are used. This means emphasizing how the "text" is understood by someone based on the meaning in the history of the constitution when it was formulated or implemented for the first time. Using different terms, Steven D. Smith more clearly describes the difference between original intent theory and original meaning theory. Smith uses the term

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enactors intentions for original intent theory and uses the words (in Historical Context) for original meaning theory.

According to Steven D. Smith, "enactors intentions" presupposes that interpretation is based on the intentions of the framers of the constitution. Meanwhile, in the context of the words (in Historical Context), words have meaning, which is given by something like the "rules of language" at that time, regardless of the semantic intentions of their composer. If what the author meant was A but used words that (according to the rules of the language) mean B, then B is correct.[10]

Regardless of the conflict between the two (original intent theory and original meaning theory). However, it is possible that interpretation using the original intent approach is necessary to determine the intention, spirit or spiritual situation, in this case the intention, spirit or spiritual situation of the framers of the 1945 Constitution so that in the end they agree on the provisions regarding the final nature of the Constitutional Court's decision. In full, Article 24C Paragraph (1) states:

> "The Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, decide disputes over the authority of State institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding election results ."

In this context, what needs to be explored in depth through the original intent is the formulation of the sentence which states "....has the authority to judge at the first and last level whose decision is final...". This formulation was translated into the Constitutional Court Law by emphasizing that the Constitutional Court's decision is "final and binding".

By tracing the original intent, we will know the intention of the drafters of the 1945 Constitutional Amendment in agreeing to this formulation. The editorial formulation which essentially states "The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final..." has emerged since the First Amendment, when the MPR Working Body (BP) Ad Hoc Committee I (PAH I) discussed changes to the provisions regarding the Supreme Court. . After going through intensive discussions at PAH I, PAH I finally submitted the resulting formulation to BP MPR. At the 5th BP MPR meeting on 23 October 2001, the PAH I leadership submitted a progress report on the implementation of PAH I's duties to BP MPR. Regarding the formulation in question, PAH I, through Jacob Tobing, submitted a report. In the report, the formulation of Article 24A paragraph (2) states,[11]"The Constitutional Court has the authority to hear cases from the first and final level whose decisions are final to review laws (and statutory regulations under them) against the Constitution, decide disputes over authority or competence between (state) institutions, decide on the dissolution of political parties (on legitimate demands), and decide disputes regarding the results of general elections.

From discussions during the First Amendment and Second Amendment, discussions occurred around whether or not a Constitutional Court should be formed. Discussions are still trying to deepen the formation of the Constitutional Court. If it is formed, will the Constitutional Court

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ISSN 1533-9211
DOI: 10.5281/zenodo.13167458

be ad hoc or permanent? Will the Constitutional Court be placed as part of the MPR, part of the Supreme Court, or stand alone? On these occasions, there was no discussion regarding the nature of the Constitutional Court's decision. Even after close examination, discussions regarding the nature of the Constitutional Court's decisions are very rare. Concrete suggestions regarding the final and binding nature of the Constitutional Court's decision first appeared at the 51st PAH I Plenary Meeting of the BP MPR on 29 July 2000. The BP MPR formulated the authority of the Constitutional Court in Article 25B paragraph (2) and paragraph (3), as follows:[12]

Paragraph (2) The Constitutional Court has the authority to materially review laws, provide decisions on conflicts between laws, (Alternative 1: provide decisions on authority disputes between state institutions, between the central government and regional governments, and between regional governments. Alternative 2: not necessary), as well as exercising other authorities granted by law) Paragraph (3) The decision of the Constitutional Court is a decision of the first and final level. At the 51st PAH I Plenary Meeting of the BP MPR on 29 July 2000, the faction's final views regarding the results of the finalization of the Second Amendment were conveyed. In this case, Hamdan Zoelva from the F-PBB stated, among other things:

> "In this proposed amendment to the Constitution, we have all agreed that there is a Constitutional Court. We have also agreed that this Court will have the authority to materially review laws, as well as provide decisions on conflicts between laws. The decision of the Constitutional Court is a decision of the first and final level. Therefore, no effort can be made to cancel the Constitutional Court's decision. However, the provisions regarding the final nature of the Constitutional Court's decision have not been accommodated. The formulation of Article 25B which was reported as a draft amendment to the Constitution at the MPR Annual Session on 7-18 August 2000, especially the one containing the proposal for the formation of the Constitutional Court, has not yet been found. In its development, the Second Amendment failed to agree on the conception and formation of the Constitutional Court. As a result, the MPR gave itself the authority to test laws against the Constitution..."[13]

Discussion regarding the Constitutional Court continues in the Third Amendment. On this occasion, the nature of the Constitutional Court's decision began to be touched upon and discussed. As is known, PAH I asked the MPR Expert Team to formulate a draft of the Third Amendment. The idea of the final and binding nature of the Constitutional Court's decision was only touched upon by Prof. Jimly Asshiddiqie as the PAH I BP MPR Expert Team in the results of the Expert Team's formulation. Jimly Asshiddiqie stated:

> Then we propose to detail the provisions of Article 24, there is an additional Article 24A. The Constitutional Court has the authority to hear cases at the first and final level, to examine the material of laws and statutory regulations under the law, to give decisions on conflicts or disputes between state institutions, between the central and regional governments in implementing statutory regulations, and carry out other authorities granted by law.[14]

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DOI: 10.5281/zenodo.13167458

However, Prof. Dr. Soewoto Mulyosoedarmo, in his view as the PAH I Expert Team, stated that it was necessary to consider the Constitutional Court at the provincial level, so that this institution was not the only judicial body at the first and last level.[15]Responding to this, the PDI-P faction also stated:

> ...at the same time, from the faction's point of view, in this case it is necessary to establish a Constitutional Court. The issues that need to be equalized are the limits of authority, the position of the Supreme Court and the Constitutional Court in the constitutional structure, and it is necessary to consider that the Constitutional Court is not the only judicial body at the first and last level.[16]

In contrast to this opinion, Agun Gunanjar Sudarsa, a member of the PAH I Golkar faction, emphasized that the Supreme Court as the highest court should also carry out the functions of the Constitutional Court. As the highest court, it carries out the authority to hear and examine cases at the cassation level. [17]This means that the position of the Constitutional Court is proposed to become part of the Supreme Court.

At the 35th Meeting of PAH I MPR, Pataniari Siahaan from F-PDIP said that the 9 (nine) members of the MK were intended so that the trial could be short, fast, but representative. 25 In the end, the results of the work of PAH I BP MPR were related to the draft changes to Chapter IX of the 1945 Constitution was reported at the 5th BP MPR Meeting, 23 October 2001. Regarding the Constitutional Court, Jacob Tobing conveyed the formulations produced by PAH I BP MPR, including:

Article 24A paragraph (2):

> *The Constitutional Court has the authority to hear cases at the first and last level whose decisions are final to test laws (and statutory regulations under them) against the Constitution, decide disputes, authority or competence between (state) institutions, decide on the dissolution of parties politics (on legitimate demands) that decides disputes about the results of general elections.*

The formulations resulting from the discussion of PAH I BP MPR were then submitted to the MPR Annual Session which was held from 1 November to 10 November 2001. In the 2001 MPR Annual Session, the draft Third Amendment to the 1945 Constitution, including the draft CHAPTER IX concerning Judicial Power, was discussed in Commission A MPR.

In the discussion at Commission A, there was not much discussion about the nature of the Constitutional Court's decision. In fact, no one questions the nature of the Constitutional Court's decisions or its existence as a judicial institution that hears cases at the first and final level. The thing that invites a lot of confirmation is related to the existence of the Constitutional Court in the state administration structure, whether it is part of the Supreme Court or stands alone. Apart from that, the Constitutional Court's powers also receive attention, especially whether it only reviews laws against the Constitution or can also test all statutory regulations.

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The results of discussions at Commission A of the MPR were reported to the 6th Plenary Meeting of the MPR, 8 November 2001. Jacob Tobing presented the Draft Third Amendment to the 1945 Constitution. Regarding the Constitutional Court, the formulation has been collected into Article 24C which consists of 6 (six) paragraphs. Regarding the Constitutional Court's decision, stated in Article 24C paragraph (1), namely:

> The Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes over election results. general.

The draft was then brought to the 7th Plenary Session of the MPR to obtain final views from the factions before it was ratified as part of the Third Amendment to the 1945 Constitution. In general, although they provided input, basically the final views expressed by the factions firmly agreed on the formulation the reported plan.

Finally, in the Third Amendment to the 1945 Constitution in 2001, the formation of the Constitutional Court was agreed upon and it was officially placed as one of the actors of judicial power in Indonesia, apart from the Supreme Court and the judicial bodies below it. The formulation of Article 24C as reported was then ratified as the final formulation. If we look closely, the formulation of Article 24C paragraph (1) shows clearly that the Constitutional Court is the first and final level judicial body, to adjudicate cases of judicial review, disputes over the authority of state institutions whose authority is granted by the Constitution, the dissolution of political parties, and disputes general election results. Thus, in exercising its authority, the Constitutional Court does not recognize the existence of appeal and cassation mechanisms.[18]

Based on an analysis of the discussion in the Amendment to the Law, the idea of the final nature of the Constitutional Court's decision is actually inseparable from the agreement to establish the Constitutional Court as a court at the first and final level. This means that the approval of the Constitutional Court as a court at the first and last level has the consequence that there is no legal mechanism in other courts that can appeal or correct the decision. Therefore, as Maruarar Siahaan said, the nature of the Constitutional Court's decision is final and binding, the measure for determining whether a court's decision is final and has binding legal force is whether or not there is a legally authorized body reviewing the court's decision, and whether there is whether there is a mechanism in the procedural law regarding who and how the review will be carried out.[19]

Considering that the Constitutional Court's authority is a constitutional attribution, there are no mechanisms and legal regulations under it that can assess the Constitutional Court's decision as a product of authority. As a single court that does not supervise any court or is under any court, the Constitutional Court's decision immediately has binding legal force and there is no room for other legal remedies. In this case, the absence of space for legal action is intended so that the Constitutional Court through its decisions resolves problems and provides legal certainty quickly in accordance with the principles of fast and simple justice. If legal action is

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DOI: 10.5281/zenodo.13167458

opened, it is very likely that the Constitutional Court's decision will continue to be questioned, giving rise to problems of legal certainty. In fact, the Constitutional Court adjudicates constitutional issues, which require legal certainty and are bound by time limitations regarding the continuation of the constitutional agenda.

There is an implied spirit, considering that the Constitutional Court is a court with extraordinary authority, especially in adjudicating constitutional cases, so a simple and fast court is needed so that legal certainty can be realized. This is as stated by Pataniari Siahaan, that the Constitutional Court is the first and last trial and the trial is not like the trials in the courts that we usually face, so it can be expected that in the Constitutional Court trial, all problems will be resolved in 1 (one) trial.

Realizing the enormous authority of the Constitutional Court with final and binding decisions, the amendments to the Constitution paid great attention to caution in filling out the membership of the Constitutional Court. This can be seen from the conclusions produced at the PAH I BP MPR follow-up meeting on the discussion of the draft amendments to Chapter IX of the 1945 Constitution on 10 October 2001. In point two the conclusion was stated:

> MK membership is approved to be filled by people who have integrity and personality that is beyond reproach, act as statesmen who understand the constitution and constitutional issues, do not hold concurrent state and government positions, and fulfill other requirements determined by law.[20]

Although a proposal was later agreed which stated that the Constitutional Court would have nine members, consisting of three proposed by the President, three by the Supreme Court, three by the People's Representative Council.[21], these requirements are the main spirit that is put forward, regardless of who the person is, how, and by whom the members or constitutional judges come from or are proposed. What is important is that the decision handed down must be respected by both parties. All parties may not take actions that oppose or conflict with the decision. In other words, the binding power of a court decision is intended to resolve a problem or dispute and determine rights or law.

When the party concerned submits and entrusts a dispute to a court or judge for examination and trial, this has the meaning and consequence that the parties concerned will submit and comply with the decision handed down. On this basis, the court decision that has been handed down must be respected by both parties. No party may then act contrary to the decision.

Decisions are the essence of justice, the core and objective of all judicial activities or processes, containing the resolution of cases which since the process began have burdened the parties. According to Sudikno Mertokusumo, a judge's decision is a statement that the judge, as a state official authorized to do so, pronounces in court and aims to end or resolve a case or dispute between the parties.[22] For this reason, the answer to the problem of justice in the provisions regarding the final nature of the Constitutional Court's decision is basically the answer to the question: what is the supporting basis so that the Constitutional Court's decision is a decision of the first and final level and no legal action can be taken to annul it?

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DOI: 10.5281/zenodo.13167458

First, the final decision of the Constitutional Court is not only due to the reason that the Constitutional Court is the only institution or institution that exercises its authority, but more than that, the final decision of the Constitutional Court is attached to the essence of the position of the Constitution as the highest law so that there is no other law that has a higher position than it. . The meaning of this statement is that when an issue is brought before the Constitutional Court and the Constitution is the basis for its review, then the decision on the issue is absolutely final. This is because the parties have made efforts to seek justice and guarantee their rights, where these efforts are linked to the law which has the highest degree of supremacy as the basis for testing.

The answer to the legal problems faced by the Parties through litigating at the Constitutional Court is provided by a law of the highest degree. The Constitution as the highest level of law provides guarantees to the parties regarding their rights through litigation at the Constitutional Court, where the provision of guarantees is carried out by the Constitutional Court in a judicial process through its judges who interpret the Constitution which ends with a decision as the final decision. . In this context, the judicial process held at the Constitutional Court is actually the final judicial process because the administration of justice at the Constitutional Court uses the benchmarks of the Constitution. The rationality of a judicial process with the highest law as the benchmark is that the decision handed down by the court is the final level decision. Because, there is no longer a judicial process with a higher level of law as a reference for testing the decision. The Constitutional Court is an institution that carries out justice at the first and final levels which is a logical consequence of the existence of the constitution as the highest law.

Second, The final nature of the Constitutional Court's decision is nothing more than an effort to maintain and protect the authority of the constitutional judiciary. The reason is, if the Constitutional court accommodates legal remedies, then it is no different from the general court. In general courts, cases where legal action is filed against the decision will usually take a long time until the case is completely resolved (inkracht). The consequences include, among other things, that the parties will experience being held hostage in terms of time, energy and costs, all of which is contrary to the principle of justice which is carried out quickly, simply and at low cost.

Third, regarding the risk that the Constitutional Court's decision contains errors or errors, it is impossible to eliminate it, although it can be minimized. This cannot be separated from the fact that constitutional judges are ordinary people who naturally have weaknesses that make it possible to make mistakes. However, regarding this matter, as said by Moh. Mahfud MD, the Constitutional Court's decision must remain final because, (1) the choice of verdict depends on the perspective and theory used by the judge; (2) hukmul haakim yarfa'ul khilaaf, which means the judge's decision resolves differences; and (3) there is no better alternative to eliminate finality. Therefore, the idea of needing to provide room for other legal remedies for the Constitutional Court's decision is something that cannot be justified because it has no constitutional basis. In accordance with the Constitution, let alone other parties, the Constitutional Court itself is not given the authority to review decisions that have been handed

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ISSN 1533-9211
DOI: 10.5281/zenodo.13167458

down. Therefore, the desire to submit another legal remedy against the Constitutional Court's decision means having to change the constitutional provisions first. This is in line with the opinion of Sri Soemantri Martosoewignjo who stated, whatever the reason, the Constitutional Court's decision is final and binding.

There are no other legal remedies, including PK efforts. If you want the Constitutional Court's decision to be reviewed, then the only way is to amend the 1945 Constitution. Because, in the 1945 Constitution, it is stated that the Constitutional Court's decision is final.

So, what about injustices that might arise from the assessment of the Constitutional Court's decision, should that be allowed? Aristotle stated that the word fair contains more than one meaning. Fair can mean "according to the law", and "what is proportionate" or "as is appropriate". Therefore, people who ignore the law can also be said to be unjust, because everything that is based on the law can actually be considered fair.[23]

Based on this description, the author states that there is no problem with the justice aspect in the provisions which state that the Constitutional Court's decision is final if from the start the Parties understand at least the 3 (three) things above. In fact, these final provisions help guarantee the realization of the Constitutional Court's judicial institution as guardian of the constitution as desired by the amendments to the Constitution as well as realizing laws that have the essence of justice, legal certainty and usefulness in resolving constitutional cases.

From the description above, it relates to the nature of the Constitutional Court's decisions in Indonesia and in several countries using a comparative approach. So, according to the author, we can conclude that what is very relevant and has many similar characteristics in making decisions and the nature of the decisions with the Constitutional Court decisions in Indonesia is the decision of the Conseil Constitutional Francis (CCF).

Because, the CCF has the main powers as guardian of the constitution and the nature of its decisions is final and binding as is the case in Indonesia. This is expressly regulated in article 62 of the Constitution of the French Fifth Republic, that The Constitutional Council will determine the conditions and limitations that can give rise to objections to the consequences arising from these provisions. There shall be no appeal against the decision of the Constitutional Council. These regulations are binding on public authorities and all administrative authorities and all courts.

The meaning of the verdict Court The Constitution (Conseil Constitutionnel) is final in France, namely after the Court Constitution France issues a decision on a constitutional issue, the decision is binding and cannot be appealed again by other legal institutions in France. So the final nature of the decision of the French Constitutional Court shows the important role of the Court in maintaining compliance with the French constitution and ensuring legal consistency in the country. It also affirms the authority of the French Constitutional Court as the guardian of the constitution with the authority to interpret laws and maintain constitutional justice.

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ISSN 1533-9211
DOI: 10.5281/zenodo.13167458

CONCLUSION

The essence of the Constitutional Court's decision which has final and binding status in its implementation is a). final means, that there is no further legal remedy for the parties to request changes to the Constitutional Court Decision or it has been closed to all possibility of taking legal action afterwards or as the first and final decision for which there is no legal space to review it again; b). binding means: 1). That the Constitutional Court's decision has obtained legal force, and 2). Because it has obtained legal force, the parties must obey or comply with the Constitutional Court's decision and must not violate it

Footnotes

1) Jimly Asshiddiqie, "Regarding the Law", (Jakarta: Rajawali Press, 2010) p. v
2) Mochtar Kusumaatmadja and Arief Sidharta. Introduction to Legal Science Book 1. (Bandung: PT. Alumni, 2009). p. 61-62
3) Ibid.
4) Hans Kelsen, Pure Theory of Law, (Berkely: University of California Press, 1978), translated by Raisul Muttaqien, Pure Theory of Law: Basics of Normative Legal Science, (Bandung: Nusa Media Publishers, p. 218.
5) Hans Kelsen, General Theory of Law and State, New York: Russel and Russel, 1971, translated by Raisul Muftaqien, General Theory of Law and State. (Bandung: Nusa Media Publishers, 2008). p. 179
6) Alexander Hamilton in Maruarar Siahaan, Procedural Law of the Constitutional Court of the Republic of Indonesia, second edition, (Jakarta; Sinar Graphic, 2012).p. 87
7) Interview Results with Prof. DR. Arief Hidayat, Judge of the Constitutional Court 2018-2025, on November 19 2023, Pkl. 13:30 WITA
8) Malik, Study of the Legal Meaning of Final and Binding Constitutional Court Decisions, Secretariat General and Registrar of the Constitutional Court, Constitutional Journal, Vol. 6 No. 1, April 2009.
9) Van Apeldoorn, Introduction to Legal Studies, Cet. XXIV, (translated by Oetarid Sadino), (Jakarta: Pradnya Paramita, 1990), p. 4-5.
10) Steven D. Smith, That Old-Time Originalism, University of San Diego School of Law Legal Studies Research Paper Series, Paper No. 08-028, 2008. Downloaded from http://ssrn.com/abstract=1150447. Accessed on July 25 2023. 11:17
11) Secretariat General of the Constitutional Court, Comprehensive Manuscript Book of Amendments to the 1945 Constitution of the Republic of Indonesia, collaboration between the Constitutional Court and the People's Consultative Assembly, Jakarta, 2010, p. 426-427.
12) Jimly Asshiddiqie, Upholding the Pillars of the Constitution, Memoir of Five Years of Prof. Leadership. Dr. Jimly Asshiddiqie, SH, at the Constitutional Court 2003-2008, Secretariat General and Registrar of the Constitutional Court, 2008, p. 36.
13) Ibid, p. 470 and p. 484.
14) Ibid, p. 496.
15) Ibid, p. 518
16) Ibid, p. 519.

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ISSN 1533-9211

DOI: 10.5281/zenodo.13167458

17) Ibid, p. 520
18) Ibid, p. 595.
19) Maruarar Siahaan, Procedural Law of the Constitutional Court, Constitutional Court of the Republic of Indonesia, Jakarta, 2006, p. 275.
20) Ibid, p. 560
21) Ibid, p. 585- 591.
22) Sudikno Mertokusumo, see insideIrfan Fachruddin, Administrative Justice Supervision of Government Actions, Bandung PT. Alumni, 2004, p. 227-228
23) Darji Darmodiharjo and Shidarta, Basics .... Op., Cit, p.156

Reference

1) Jimly Asshiddiqie, "Regarding the Law", (Jakarta: Rajawali Press, 2010) p. v
2) Mochtar Kusumaatmadja and Arief Sidharta. Introduction to Legal Science Book 1. (Bandung: PT. Alumni, 2009). p. 61-62
3) Hans Kelsen, Pure Theory of Law, (Berkely: University of California Press, 1978), translated by Raisul Muttaqien, Pure Theory of Law: Basics of Normative Legal Science, (Bandung: Nusa Media Publishers, p. 218.
4) Hans Kelsen, General Theory of Law and State, New York: Russel and Russel, 1971, translated by Raisul Muftaqien, General Theory of Law and State. (Bandung: Nusa Media Publishers, 2008). p. 179
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8) Van Apeldoorn, Introduction to Legal Studies, Cet. XXIV, (translated by Oetarid Sadino), (Jakarta: Pradnya Paramita, 1990), p. 4-5.
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12) Maruarar Siahaan, Procedural Law of the Constitutional Court, Constitutional Court of the Republic of Indonesia, Jakarta, 2006, p. 275.
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14) Darji Darmodiharjo and Shidarta, Basics ....Op., Cit, p.156