

Uniformity in The Legislative Process Following Constitutional Court Rulings

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Abstract. *Constitutional Court rulings are final and binding, having a direct impact on the validity of existing legal regulations. This study aims to highlight the lack of uniformity in the legislative steps taken after Constitutional Court decisions. Employing a qualitative, descriptive approach, the research systematically collects data to provide an accurate and timely representation of the current legislative context. The findings reveal that the inconsistency in legislative processes following Constitutional Court rulings contributes to legal uncertainty, underscoring the necessity for standardized procedures in the legislative follow-up.*

Keywords: *Constitutional Court, Constitutional Court Ruling, Legislative Process, Post-Ruling.*

INTRODUCTION

Indonesia is a rule-of-law state, as explicitly enshrined in Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which asserts that the exercise of governmental power is founded upon the rule of law. Every aspect of societal, national, and state life, including governance, must be governed by laws that conform to the national legal system. This national legal system encompasses the body of laws in effect within Indonesia, with its various components working synergistically to address and resolve issues emerging in the social, national, and state spheres—all following Pancasila and the 1945 Constitution of the Republic of Indonesia.

In a rule-of-law state, legal certainty is a fundamental element in preserving national stability and resilience. Legal certainty ensures that all individuals, institutions, and the government adhere to their rights and obligations following established legal frameworks. One critical mechanism for ensuring legal certainty is the legislative process, which involves the formulation and promulgation of laws that serve as the legal foundation of the state. However, the legislative process in Indonesia is often confronted with challenges such as inconsistencies between regulations, conflicts of interest, and incoherent policymaking. These challenges can generate legal uncertainty, which, in turn, undermines national resilience. As noted by Mahfud M.D. (2010),¹ legal uncertainty creates vulnerabilities that erode public trust in the rule of law. This highlights the need for an effective and efficient legislative process that not only strengthens legal legitimacy but also mitigates potential instability.

¹ Mahfud M.D., 2010, *Politik Hukum di Indonesia* [English: *Politics of Law in Indonesia*], Jakarta: Rajawali Press.

Following the principle that Indonesia is a rule-of-law state, the formation of legal regulations is explicitly governed by Indonesia's Law No. 12/2011 (hereinafter referred to as the Law on the Formation of Legislation). This law outlines the fundamental principles of legislative formation, including the types, hierarchy, and material content of regulations, as well as the planning, drafting techniques, discussion, and ratification of laws. It also covers the discussion and determination of draft regional regulations at the provincial and district/city levels, the promulgation and dissemination of regulations, public participation in the regulatory process, and provisions related to the issuance of presidential decrees and regulations by other state institutions and government agencies. Furthermore, the hierarchy of legal regulations is structured as follows: the 1945 Constitution of the Republic of Indonesia, Decrees of the People's Consultative Assembly, Laws and Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and District/City Regional Regulations. Notably, the law also includes regulations issued by the Constitutional Court. As such, decisions made by the Constitutional Court are recognized as a distinct form of legal regulation.

The Constitutional Court serves as the guardian of the constitution, playing an indispensable role in ensuring that the laws enacted align with the 1945 Constitution of the Republic of Indonesia. Its rulings are final and binding, thereby directly influencing the validity of prevailing legal regulations. Decisions that annul or amend laws necessitate corresponding adjustments in the legislative process to uphold legal certainty. As articulated by Jimly Asshiddiqie (2006),² Constitutional Court rulings must be followed by the revision of the affected laws to maintain their constitutional relevance. Optimizing the legislative process in the aftermath of Constitutional Court decisions is crucial for preserving legal certainty. This process involves revising laws that have been invalidated or altered by such rulings and ensuring the harmonization of related regulations. By doing so, it guarantees that the law remains consistent, applicable, and responsive to societal needs. Furthermore, legislative optimization contributes to national resilience by providing a robust legal framework capable of addressing domestic and global challenges.

A noteworthy aspect of Constitutional Court rulings is that they are final and binding, underscoring the immediate enforceability of such decisions. This stems from the fact that the Constitutional Court's judicial process constitutes the initial and final stage of adjudication; in other words, once a Constitutional Court decision is rendered, no further legal recourse is available. These rulings are not subject to appeal or extraordinary legal remedies.³ However,

² Jimly Asshiddiqie (2006), *Konstitusi dan Konstitusionalisme Indonesia* [English: *Constitution and Constitutionalism in Indonesia*], Jakarta: Konstitusi Press.

³ The explanatory note to Article 10(1) of Indonesia's Law No. 8/2011 affirms that Constitutional Court decisions acquire permanent legal force immediately upon their pronouncement, with no further legal

despite their immediate applicability, as Constitutional Court decisions are regarded as a form of legal regulation, their implementation requires follow-up action by the House of Representatives and the President, as stipulated in Article 10 of Indonesia's Law on the Formation of Legislation.⁴

A closer examination reveals a lack of consistency in the legislative steps taken in response to Constitutional Court rulings. For instance, in response to Constitutional Court Ruling No. 21/PUU-XII/2014, dated April 28, 2015, which assessed the constitutionality of Article 77(a) of Law No. 8/1981 concerning the Criminal Procedure Code, the Court determined that the establishment of a suspect is subject to pretrial proceedings. However, to date, no amendments have been made to Law No. 8/1981, and there has been no legislative follow-up from the House of Representatives or the President. In contrast, Constitutional Court Ruling No. 49/PUU-X/2012, which examined Article 66, Paragraph 1 of Law No. 30/2004 on Notaries, resulted in an amendment to the law through Law No. 2/2014. Similarly, Constitutional Court Ruling No. 90/PUU-XXI/2023, dated October 23, 2023, which examined the constitutionality of Article 169 letter q of Law No. 7/2017 on General Elections concerning the age limit for presidential and vice-presidential candidates, prompted amendments to the General Election Commission's regulation. Likewise, Constitutional Court Ruling No. 60/PUU-XXII/2024, dated August 20, 2024, regarding the parliamentary threshold and the minimum age requirement for regional head candidates, has been followed by legislative action, with Commission II of the House of Representatives and the General Election Commission agreeing to incorporate the ruling into the draft of General Election Commission's Regulation No. 8/2024. These examples illustrate the inconsistency in legislative responses to Constitutional Court rulings. This lack of uniformity in the post-ruling legislative process may contribute to legal uncertainty.

remedies available. This finality encompasses not only the irrevocable nature of the rulings but also their binding legal effect, establishing them as *final and binding*.

⁴ The content that must be regulated by law encompasses several key areas: provisions elaborating on the 1945 Constitution of the Republic of Indonesia, mandates within existing laws that require regulation through legislative enactment, ratification of specific international treaties, legislative responses to Constitutional Court rulings, and/or addressing the legal needs of society. The explanatory note to Article 10(1)(d) specifies that "follow-up actions on Constitutional Court decisions pertain to the Court's rulings on the judicial review of laws against the 1945 Constitution of the Republic of Indonesia." The regulated subject matter under this provision addresses the articles, sections, and/or provisions of laws explicitly declared by the Constitutional Court to conflict with the Constitution. Furthermore, the explanatory note to Article 10(2) underscores that follow-up actions on Constitutional Court decisions are designed to prevent legal vacuums. Such actions, carried out by the House of Representatives and the President, are understood as part of the legislative process, given that the authority to create laws is vested jointly in the House of Representatives and the President.

THEORETICAL FRAMEWORK

This study draws on Gustav Radbruch's theory of legal certainty, which is a fundamental objective of law and integral to the pursuit of justice. Legal certainty manifests in the consistent implementation and enforcement of laws, applied impartially to all individuals, regardless of their identity. Through legal certainty, individuals can anticipate the consequences of their actions within the legal framework. Radbruch's perspective on legal certainty posits that law—as a positive construct—is designed to regulate the interests of all members of society and must be followed, even when the law itself is perceived as unjust. Moreover, legal certainty embodies a state of definitiveness, wherein legal provisions and determinations provide clear guidance and expectations.⁵

METHODS

This study is legal research employing multiple approaches to address the research questions, specifically (1) the statute approach, (2) the conceptual approach, (3) the comparative approach, and (4) the historical and philosophical approaches. Data analysis is conducted qualitatively. The collected legal materials are systematically organized according to the research issues. These materials are then critically analyzed and discussed concerning the research problems, drawing on relevant theoretical frameworks. To answer the research questions, the systematized legal materials are assessed to determine their precise meaning, legal status, and implications.

RESULTS AND DISCUSSION

The legislative process encompasses the formulation of legal regulations, beginning with planning, drafting, deliberation, ratification, and promulgation, as stipulated in the Law on the Formation of Legislation. When drafting derivative regulations following Constitutional Court rulings, distinct procedural stages must be employed, considering the final and binding nature of these rulings. The protracted and time-intensive legislative process is increasingly impractical and necessitates harmonization among relevant stakeholders. Every type of legal regulation must be formulated by a competent state institution or authorized official. Any regulation enacted by an unauthorized body or individual may be annulled or declared *void ab initio*. To address this, it is essential to refine the drafting techniques for post-Constitutional Court rulings, providing explicit and standardized guidelines supported by illustrative examples for creating such regulations. These refinements would ensure proper alignment with the specific requirements arising from Constitutional Court decisions. Accordingly, research into the drafting of regulations post-Constitutional Court rulings is indispensable to streamline

⁵ Satjipto Rahardjo, 2012, *Ilmu Hukum* [English: *Legal Science*], Bandung: Citra Aditya Bakti, p. 19.

and harmonize the legislative process. Such enhancements would facilitate the timely enactment of provisions, ensure their effective binding force on the public, and uphold the principles of legal certainty. Based on the background and key issues outlined above, it can be stated that the legislative process for drafting new laws as a follow-up to Constitutional Court rulings has not yet achieved consistency in approach. The root causes, trends, and implications are as follows:

1. Root Causes

- a. The absence of a standardized and universally agreed-upon mechanism for following up on Constitutional Court rulings
- b. The complexity and inefficiency in coordinating between bureaucratic institutions, which delays the legislative process
- c. Limited resources and time constraints in drafting derivative regulations in the aftermath of Constitutional Court rulings

2. Trends

- a. The irregularity in lawmaking has increased due to the use of divergent mechanisms.
- b. Ineffective coordination leads to overlapping responsibilities and functions among institutions.
- c. A significant number of Constitutional Court rulings remain unaddressed, resulting in legal vacuums and uncertainty regarding the application of regulations.

3. Implications

- a. Stagnation in the legislative process due to delays in decision-making and implementation
- b. Erosion of public trust resulting from the diminishing legitimacy of regulations
- c. Deterioration in the quality of the laws enacted, coupled with ambiguity in their implementation

4. Objective Conditions and Discussion

- a. From 2004 to 2024, the Constitutional Court has granted 322 requests for judicial review of legislative regulations. Lawmakers, specifically the House of Representatives and the government, have the authority to either execute or reject Constitutional Court rulings. However, only 52 percent of these rulings have been effectively implemented by the House of Representatives and the government.



Source: Presentation by Rasamala Aritonang during a Limited Working Meeting of the National Resilience Council on September 23, 2024

Not all Constitutional Court rulings are followed by subsequent legislative action. This can be attributed to several determinant factors, including differing legal interpretations of the Court's verdict and reasoning, as well as the presence of explicit mandates in the rulings, which may instruct lawmakers to take immediate action (judicial order). The substance of such "orders" often includes recommendations or encouragement for the legislature to consider specific aspects when effecting the requested changes. The purpose of the judicial order is to highlight the necessity for legislative compliance, serving as a mechanism of constitutional oversight. However, under current Indonesian positive law, there is no specific regulation or legal framework that explicitly addresses or governs the legal instrument of judicial orders. Nevertheless, it is important to highlight that the Constitutional Court of the Republic of Indonesia has previously issued a ruling incorporating the concept of a judicial order, as demonstrated in Constitutional Court Ruling No. 102/PUU-VII/2009, which reviewed Law No. 42/2008 on Presidential and Vice-Presidential Elections. In this ruling, the Court stated, "... the Court finds it necessary to order the General Elections Commission to further regulate the technical implementation of voting rights for Indonesian citizens not registered in the final voter list, based on the following guidelines ...".

Beyond the nature of Constitutional Court rulings discussed above, the absence of a standardized and uniform mechanism for the legislative process following Constitutional Court decisions poses a significant challenge. At present, no established procedure or guideline outlines how the House of Representatives and the government should respond to Constitutional Court rulings, resulting in delays in the legislative follow-up. Depending on the nature of the ruling, Constitutional Court decisions are classified into two categories: self-executing and non-self-executing. A self-executing ruling by the Constitutional Court does not require additional regulations or amendments to the provisions, articles, or content of the law. In other words, such a ruling is immediately enforceable without the need for new legal instruments or modifications; it takes effect automatically. In these cases, the provisions, articles, or sections of the law in question are declared null and void. This approach is designed to avoid legal vacuums, and as a result, self-executing rulings typically do not necessitate further legislative action. In contrast, a non-self-executing ruling is a decision that still requires revision or the creation of new regulations. These rulings are generally categorized into three types: conditional constitutional rulings, conditional unconstitutional rulings, and rulings that mandate the formulation of new legal norms. Consequently, the legislative process in responding to Constitutional Court decisions is not only affected by challenges in lawmaking, issues related to the harmonization and synchronization of regulations following Constitutional Court rulings, and the insufficient channels for public participation but also by underlying determinant factors. A Constitutional Court ruling may serve as an immediate legal reference for further action, without the need for additional technical regulations, as it can be implemented directly. However, the implementation of such rulings is often challenging due to the reliance on the self-respect and legal awareness of the parties involved, whether they are legislators or other state institutions acting as the addressees of the ruling. The emergence of new legal norms through Constitutional Court rulings is inevitable, as the Court, in its judicial capacity, is tasked with providing legal solutions and/or filling legal gaps. When conducting constitutional tests related to citizens' rights, it is technically complex for the Court to merely declare whether a provision or article of law is constitutionally valid, given the broad interpretative nature of such provisions. The Court's judicial order is not limited to the operative part of the ruling but is also articulated in the legal considerations. In certain instances, rulings may state "the petition is rejected," while the legal considerations issue a directive to the addressees (alternative lawmakers). Consequently, to determine which rulings necessitate further action, one must consider both the operative part and the legal considerations of the ruling. Furthermore, the lack of standardized guidelines or procedures for amending

legal norms following Constitutional Court rulings has resulted in public uncertainty regarding the continued validity of specific provisions. Although the Constitutional Court mandates the publication of its rulings in the State Gazette, there remains a common misconception that the legal norm of a provision persists, regardless of whether the Court has amended it or not.

- b. The synchronization among institutions involved in the follow-up process after Constitutional Court rulings remains inadequate. While the Constitutional Court continues to uphold the Constitution, the legislative process is often slow to respond. Factors such as bureaucratic inefficiencies, limited political attention, and competing strategic priorities contribute to these delays. The House of Representatives and the government frequently fail to coordinate effectively, resulting in postponed action on Constitutional Court rulings. These institutions often lack alignment in regulating derivative legislation following Constitutional Court decisions. The lengthy legislative process exacerbates delays in implementing the Court's rulings, leading to legal vacuums. As the volume of final and binding Constitutional Court rulings increases, disorder in the law-making process has become more prevalent. Key state institutions, including the President and the House of Representatives, do not yet have a standardized system for responding to Constitutional Court decisions. The coordination between the legislative and executive branches remains suboptimal, undermining their ability to perform their respective functions. Consequently, the legislative culture has become disorganized, lacking legal order. The unclear scope of authority further compounds challenges in implementing decisions. Inadequate supporting regulations hinder the effective execution of powers by these institutions. Additionally, divergent interpretations among law enforcement agencies regarding the implementation of Constitutional Court rulings lead to inconsistencies and a lack of uniformity in formulating coherent regulations.

During the reading of the Constitutional Court ruling, a government representative is present, and the operative part of the ruling mandates the government's obligation to publish the decision in the State Gazette of the Republic of Indonesia. This serves as an official notification to the public regarding changes to the norms of a law that has undergone judicial review by the Court. This notification should be sufficient for the legislature to amend the relevant legal provisions following the Court's decision. As previously outlined, the involvement of the House of Representatives as the legislative body has already played a significant role throughout the judicial review process. For example, during the petition filing stage, the Court's Secretariat provides the government (in this case, the House of Representatives) with copies of the petition concerning the law under review. In certain hearings, if necessary, the Constitutional

Court seeks input from both the government and the House of Representatives regarding the content of the law being tested. Therefore, procedurally, the Constitutional Court has involved both the House of Representatives and the government (represented by the Ministry of Law and Human Rights and/or relevant ministries) in the judicial review process. This indicates that coordination between the institutions has been established during the hearings. However, after the Constitutional Court's ruling is read, the subsequent legislative process between the government and the House of Representatives has not yet been effectively initiated.

- c. In the context of globalization and technological advancements, the failure to reform the legislative process will exacerbate the existing dysfunctions. Without necessary updates to the legislative mechanism, this issue will continue to worsen and pose a significant threat to the integrity of Indonesia's legal system. The limited time and resources allocated for drafting regulations following Constitutional Court rulings represent significant obstacles. The preparation of derivative regulations is often delayed due to insufficient time and a shortage of specialized expertise, leading to a sluggish harmonization process. Moreover, many existing regulations have not been repealed or revised, resulting in conflicts and overlaps between newly enacted laws and pre-existing regulations. A further challenge is the absence of an effective system for monitoring and evaluating the implementation of Constitutional Court rulings, which results in the frequent de-prioritization of legal harmonization efforts. The protracted legislative process, as outlined in Law No. 12/2011 and its subsequent amendments, has led to delays in adjusting many derivative or implementing regulations by the House of Representatives. This contributes to inaccuracies within these regulations, necessitating further modifications. Key obstacles in aligning legislative regulations include the limited availability of experts and inadequate technical support for the drafting process. Effective management within the House of Representatives and its supporting staff is crucial to optimally allocate resources and expertise, thus enhancing the efficiency of the legislative process.

CONCLUSIONS

The legislative process in Indonesia is a critical legal framework designed to create just and equitable regulations. It is essential for citizens who wish to actively engage in public policy formation to understand the processes through which laws are created and amended. Optimizing the post-Constitutional Court ruling legislative process is crucial for ensuring legal certainty. This includes revising laws that have been annulled or modified by Constitutional Court decisions, as well as harmonizing related regulations. Such a process ensures that the law remains consistent, enforceable, and responsive to societal needs. Furthermore, optimizing

the legislative process contributes to national resilience by establishing a robust legal foundation to address domestic and global challenges. Therefore, it is recommended to align the legislative process for drafting new laws as a follow-up to Constitutional Court rulings, to establish a standardized approach through the following measures:

1. Identifying and classifying Constitutional Court rulings that require follow-up action;
2. Developing standard operating procedures (SOP) for drafting laws in response to Constitutional Court rulings;
3. Streamlining the legislative process to ensure a timely and accurate response following Constitutional Court rulings;
4. Establishing a clear and binding timeline for the House of Representatives and the President to implement the necessary follow-up actions to Constitutional Court rulings.

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