



Checks and balances of the house of representatives and the constitutional court regarding the formation of laws in realizing a democratic government system

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Abstract

This article discusses the legislative practice of reviewing and overruling the constitution as an effort to realize a responsive law, as well as discussing the checks and balances between the DPR and the Constitutional Court in the formation of laws. The writing is done using a normative juridical method, which applies a legal approach and a conceptual approach. The results of the analysis show that the magnitude of egocentricity between state institutions that make laws has not achieved substantial justice in society. This tendency to neglect is caused by the declatour nature of the Constitutional Court Decision, which is influenced by the political will of state institutions. For this matter, the author hopes that there will be awareness and mutual respect between state institutions so that the formation of laws can realize rules that are following the democratization system in Indonesia.

Keywords: check and balances, constitutional court, democratic government system, house of representatives, legislator

Introduction

The state is an organization in an area that has the highest power, is legitimate, and is obeyed by its people (Dimiyati, 2020). As an independent and sovereign legal state, Indonesia places the 1945 Constitution of the Republic of Indonesia as the basic rule or principle of the state. (*staat grundgesetz*) (Fauzani, Rohman, & H., 2021). This has juridical consequences, namely that the 1945 Constitution of the Republic of Indonesia must be the source for its regulations. The regulations below it must not conflict with the 1945 Constitution of the Republic of Indonesia, as the theory of Adolf Merkl regarding two legal faces (*das doppelte Rechtsantlitz*) (Tchet, 2021).

In its journey, the 1945 Constitution (UUD 1945), before becoming the current 1945 Constitution of the Republic of Indonesia, underwent 4 (four) changes from 1999-2002 (Nugraha, Izzaty, & Putri, 2019). The amendments to the constitution were carried out in order to be able to follow the dynamic development of people's lives or known as *living constitution* (Sokolska, 2019). Changes is the essence of a rule, following the classical legal adage (Kourou Takis, 2017): "*Perpetua lex est, nullam legem humanum ac positive perpetuam esse.*" As for the free translation: eternal law, that is, there is no eternal human or positive law. This is also parallel with the opinion of Thomas Jefferson, who said that: "Laws and institutions must be in line with the development of human thought. When human thought becomes more advanced, more enlightened, when discoveries are made, new truths are discovered, and attitudes and opinions change, in line with changing situations and conditions, state institutions must come forward so as not too outdated (Sulaiman, 2019)."

The 3rd (three) amendment to the 1945 Constitution in 2001 presented the Constitutional Court as one of the state institutions implementing judicial power. Article 24C of the 1945 Constitution of the Republic of Indonesia regulates the *limitation* authority and obligations of the Constitutional Court. The Constitutional Court is present as *the sole interpreter of the constitution*, namely as the only state

institution that is given the authority to interpret the constitution and also as *the guardian of constitution* (Asshiddiqie, 2012).

The role of the Constitutional Court as *the sole interpreter and the guardian of the constitution*, Of course, gives birth to logical consequences related to the role of the Constitutional Court in the process of forming the law as a legal product (Reza, 2019). The presence of the Constitutional Court is a real manifestation of the system of *checks and balances* in Indonesia so that the House of Representatives and the President in formulating and forming laws, can no longer act arbitrarily and take actions that are contrary to the constitution because the Constitutional Court can annul the law. - Laws that are contrary to the 1945 Constitution of the Republic of Indonesia, both in part and in whole (Sulistyowati, Nasef, & Rido, 2020).

From 2003 to 2021, the Constitutional Court can be categorized as one of Indonesia's reliable and honored state institutions (Huda, 2020)^[6]. The data shows that 45% of the Constitutional Court Decisions are decisions related to judicial review of the Constitution, namely with a total registration of 1,538 applications for registration, and the Constitutional Court made decisions related to judicial review of 1,492 decisions ("Recapitulation of Cases for Judicial Review | Constitutional Court RI," 2021). This fact shows that the Indonesian people are not satisfied with the performance of the The state is an organization in an area that has the highest power, is legitimate, and is obeyed by its people (Dimiyati, 2020). As an independent and sovereign legal state, Indonesia places the 1945 Constitution of the Republic of Indonesia as the basic rule or principle of the state. (*staat grundgesetz*) (Fauzani, Rohman, & H., 2021). This has juridical consequences, namely that the 1945 Constitution of the Republic of Indonesia must be the source for its regulations. The regulations below it must not conflict with the 1945 Constitution of the Republic of Indonesia, as the theory of Adolf Merkl regarding two legal faces (*das doppelte Rechtsantlitz*) (Tchet, 2021).

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In deciding cases, the Constitutional Court's decision is final and binding. This means that after the Constitutional Court's decision is read out, which incidentally takes effect immediately and has binding legal force, there is no longer any legal action against the *quo* Constitutional Court's decision (Maulidi, 2017)^[14]. However, the facts show that the final and binding nature of the Constitutional Court

Decision is not "absolute." For example, in the Constitutional Court's Decision Number 33/PUU-XIV/2016, the Court, in the-*a quo* decision, said that Article 263 paragraph (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code must be interpreted that the prosecutor is not authorized to conduct a judicial review (PK). However, the prosecutor's authority to carry out the judicial review is revived in Article 30C letter h of Law Number 1 of 2021 concerning the Prosecutor's Office. In this regard, Supardji Ahmad, Lecturer of Criminal Law at Al Azhar University, Indonesia, stated that bringing back judicial review as the authority of the prosecutor's office is not legal disobedience but an improvement and expansion of norms. ("Polemic on the Authority of the Prosecutor to Apply for Reconsideration," n.d.) This statement certainly shows that over time, the norms that the Constitutional Court has canceled are considered to be no longer relevant and require renewal. In fact, the Constitutional Court can also "change" its view of the law. This kind of constitutional practice is known as *overruling Constitution*.

Overruling the constitution is a form of correcting misinterpretations or judicial interpretations made by previous courts to maintain the truth of the constitution (Melatyugra, Rauta, & Wauran, 2021)^[15]. An example is the Constitutional Court Decision Number 003/PUU-IV/2006 which states that what is meant by the phrase "detriment to state finances" contained in Articles 2 and 3 of Law 31 of 1999 concerning Eradication of Criminal Acts of Corruption as *potential loss* or potentially harmful, in which the article can be imposed even though it is only potentially harmful. However, in its development, the Constitutional Court corrected its decision with the Constitutional Court Decision Number 25/PUU-XIV/2016, which stated that to be considered a state loss, it must be an *actual loss*, that is a real loss to the state (Fatkhurohman & Kurniawan, 2017)^[3]. This practice of *overruling* the constitution certainly shows that although it is final, the Constitutional Court can still make improvements to previous decisions, as the principle of *lex posterior derogat legi priori* means that the new legal regulations can override or negate the previous legal regulations. Such a situation certainly gives birth to a dilemma; on the one hand, legal change is logical, and it can even be said to be a juridical consequence of *responsive* law. On the other hand, the law-forming state institutions in carrying out their roles sometimes still show a large enough ego so that efforts to realize a democratic system of government in Indonesia are hampered.

Sociologically, if the legislator makes provisions different from the Constitutional Court Decision, it is considered *constitutional disobedience*. But keep in mind that something that the Constitutional Court has decided is not absolute as essential truth. This is because, in practice, the Constitutional Court is also often considered inconsistent because it produces decisions that are different from *overruling*. Some decisions of the Constitutional Court can also be categorized as deviating from the provisions of the law relating to the Constitutional Court, can even be included in the category of *constitutional court heavy*, and the integrity of judges in the Constitutional Court in deciding a case has been tarnished because of involvement

in cases that are contrary to the morality and ethics of the constitution (Lailam, 2021).

Based on this background, this study was conducted to explain strengthening the checks and balances for the formation of laws in an effort to realize a democratic system of government in Indonesia. This writing is a development of previous writings, namely from Rizky Andrian Ramadhan Pulungan and Lita Tyesta A.L.W who discussed "Mechanisms for the Implementation of the *Checks and Balances* Principle between the Legislative and Executive Institutions in the Formation of Laws in the Indonesian Constitutional System," and also the previous study from Sunarto with the title "Principles of *Checks and Balances* in the Indonesian Constitutional System," as well as writing from Tanto Lailam which discusses "Problems and Solutions for Structuring the *Check and Balances* System in the Formation and Testing of Laws in Indonesia.

Furthermore, what distinguishes this writing from previous writings is that this study focuses on examining these *checks and balances* with the role of state institutions, The House of Representatives, and the Constitutional Court, and then relating them to a democratic system of government in Indonesia.

In order to explain the topic, this study aims to explain: First; Follow-up on the Constitutional Court Decision in Indonesia, Second; the Formulation of *checks and balances* between The House of Representatives and the Constitutional Court in the formation of law, in accordance to create a democratic system of government in Indonesia.

Method of research

In order to get the results as expected, this writing is done using a normative juridical research method with a *statute approach, conceptual approach, and case approach*. Legal writing through the statute approach reviews all laws and regulations related to the legal issues being handled. The conceptual approach was conducted by analyzing and criticizing the implementation of the overruling constitution in practice and efforts to realize the *checks and balances* of state institutions in forming law in Indonesia. The specification of the research used was descriptive-analytical. While the data collection method used is *library research*, namely by searching legal materials and data relevant to the subject matter being studied in this paper (Johnny & Ibrahim, 2020). The data sources used consist of primary legal materials, namely laws and regulations, secondary legal materials, namely other sources that can help explain themes related to writing, such as books, journals, and papers, and tertiary legal materials in the form of dictionaries. The legal material is then analyzed descriptively and qualitatively and presented in a narrative text.

Results and discussion

the practice of legislative review and constitution overruling as a follow-up to the constitutional court's decision in Indonesia

Satjipto Rahardjo stated, "Law as an institution has a goal to deliver people to a just, prosperous and happy life" (Rahardjo, 2009). Starting from this discourse of thought, the legal substance contained in the legislation must be in line and in tandem with the development of the community's legal needs (Sufriadi, 2021) ^[22]. Presenting a law that is responsive and sensitive to the development of society is

one of the efforts to realize good positive law. One of the criteria for positive law to be good is the substance of the law, following the values and goals of the social community (Sufriadi, 2021) ^[22].

Efforts to realize the responsive nature of the law are then faced with the final and binding nature of the Constitutional Court Decision. Essentially, the Constitutional Court's decision is categorized as final (Mochtar, 2021) ^[17]. The binding nature of the Constitutional Court's decision is a logical consequence of the meaning that the Constitutional Court's decision is final, namely that the decision will immediately be binding on all Indonesian people. (Mochtar, 2021) ^[17]. The nature of final and binding cannot be separated from the principle of *erga omnes*, which means that the decision is *binding* not only on the object of the dispute but also in general and has implications for all Indonesian people (Fajarwati, 2017) ^[2]. Indonesia's constitutional practice shows that to realize responsive law, there are 2 (two) models of follow-up to the Constitutional Court's Decision in Indonesia, namely through the law-making institution, known as the legislative review and through the overruling constitution carried out by the Constitutional Court.

The action to carry out a legislative review as a follow-up to the Constitutional Court's Decision is explained in Article 10 paragraph (1) letter d of Law Number 12 of 2011 concerning the Establishment of Legislation, which essentially states that the content material must be regulated by law contains a follow-up to the decision of the Constitutional Court. Based on these provisions, it is known that The House of Representatives and the President as state institutions that make laws are given the mandate to carry out a legislative review, which aims to fill legal voids against articles or laws that the previous Constitutional Court has canceled.

Furthermore, when viewed from the system of checks and balances between state institutions, the Constitutional Court's decision in assessing the constitutionality of laws is a correction of the magnitude of political interest in the formation of laws in The House of Representatives (Lumbuun, 2009) ^[13]. So that the presence of the Constitutional Court Decision, which is oriented to pure law and breathes the values of Pancasila, is present to create balance in a law.

Some decisions of the Constitutional Court can be identified as decisions that are ignored and not followed up through a *legislative review*, or even the norms that have been annulled are re-incorporated in a new law. The tendency to ignore the Constitutional Court's Decision by other state institutions, especially The House of Representatives and the President, is influenced by the *declaratoir* nature of the Constitutional Court's Decision. This has implications for its implementation, which is influenced by the political will of the state institution (Huda, 2020) ^[6].

One of the tangible manifestations of ignoring the Constitutional Court's Decision is Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, and the article states that the Decision of the Election Organizing Honorary Council (DKPP) is final and binding. This statement of the final and binding nature of the Decision of the Election Organizing Honorary Council certainly makes DKPP a state institution with a superior position and potential *abuse of power*, as well as contrary to the nature of *checks and balances*. The Election Organizing

Honorary Council is a state administrative organ involved in organizing elections, so placing the Election Organizing Honorary Council Decision as a final and *binding decision* is an inappropriate action. On this matter, through the Constitutional Court Decision Number 32/PUU-XIX/2021, the Court stated that Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections is unconstitutional. This decision affirms the previous Constitutional Court Decision, namely the Constitutional Court Decision Number 31/PUU-XI/2013. The *quo decision* states that the final and binding nature of the Decision of The Election Organizing Honorary Council only applies to the President, the General Election Commission, the Provincial General Election Commission, the Regency/City General Election Commission, and the General Elections Supervisory Agency. The decision provides a limitation that the final and binding nature, as long as it is not interpreted for the decision of the institution above, is said to be unconstitutional (Ismail & Lutfianto Hapsoro, 2021).

This example is one of the many *constitutional disobedience* actions carried out by law-making institutions. The next effort that can be made in realizing responsive law is through *overruling the constitution*. In fact, *Overruling the constitution* is a court practice of giving a new judicial opinion, replacing the previous opinion (Mahkamah Konstitusi, 2018). In line with the statement of *Abbe de Sieyes* stated that: "A constitution is a body of obligatory laws, or it's nothing." The same thing was also explained by Jimly Asshiddiqie that the constitution must be upheld, and the norms contained in the constitution should not only be allowed to be on paper (Huda, 2012) ^[5]. So it can be seen that *Overruling the constitution* is one of the efforts of the Constitutional Court in playing its role as a *sole interpreter of the constitution*. The Constitutional Court's Decision Number 25/PUU-XIV/2016 states: "There is a fundamental reason for the Constitutional Court to change the constitutionality assessment in the previous decision because the previous assessment has repeatedly created legal uncertainty and causes injustice...". The Constitutional Court's statement in the decision shows that the practice of *overruling the constitution* in the interpretation of the constitution is the right step, as long as it is used to seek constitutional truth and uphold justice.

Overruling the constitution is not a new thing; the practice of state administration shows that the Constitutional Court has several times taken this action. The following is an example of an act of overruling the constitution that the Constitutional Court has carried out (Mahkamah Konstitusi, 2018):

First, Regarding the holding of simultaneous or separate elections as stated in the Constitutional Court's Decision Number 51-52-59/PUU-VI/2008, the Court rejected the applicant's request for review of Article 3 paragraph (5) of Law Number 42 of 2008 concerning the General Election of the President and Vice President. Article *a quo* states, "Elections for President and Vice President are held after the elections for members of the House of Representatives, Regional Board, and Regional Legislative Council." The rejection of the application makes the *a quo* article considered constitutional and in line with Article 6A paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which is used as a touchstone. So in 2009, the Presidential Election was held after the election of House of Representatives, Regional Board, and Regional

Legislative Council members. The practice of *overruling the Constitution* by the Constitutional Court can be seen from the Constitutional Court's Decision Number 14/PUU-XI/2013; with the request for the same article, the Court accepted the review of the *a quo* article and stated that the *a quo* article was unconstitutional. This implies that in 2009 the Presidential Election was held simultaneously with the general election for members of the legislature.

Second, The practice of overruling the constitution by the Constitutional Court is also seen in casu of the rights of former convicts to occupy public positions. In the decision of the Constitutional Court Number 14-17/PUU-V/2007, the Court stated that they rejected the application and stated that the convict could still hold public office as long as the *a quo* provisions were not related to criminal acts born of *culpa levis* and criminal acts for reasons certain political parties by taking into account the nature of certain positions that require different requirements. While different things are shown in the Constitutional Court's Decision Number 4/PUU-VII/2009, the Court partially granted the applicant's request in this decision. The implication is that former convicts can still run for office as long as they openly and honestly admit they are ex-convicts. In this decision, the Constitutional Court also provides limitation conditions, namely: limited validity for 5 (five) years after the convict has finished serving his sentence, the *a quo* provisions do not apply to elected officials, not recidivists, and are excluded for prisoners who have publicly acknowledged that they are ex-prisoners.

Furthermore, in the Constitutional Court's Decision Number 42/PUU-XIII/2015, the Court also granted the applicant's request. In this decision, the difference is that the Constitutional Court reduced the limitation conditions in the previous decision. The requirements that must be met are only 1 (one) condition, namely: ex-prisoners who are honest and open to the public as ex-prisoners.

Third, The position of the Corruption Eradication Commission (KPK), as stated in the Constitutional Court's Decision Number 012-016-019/PUU-IV/2006, states that the Corruption Eradication Commission is included in the state institution exercising judicial power. This refers to Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stated: "Other institutions whose functions have a relation with the judicial power shall be regulated by law." Thus, the Constitutional Court interprets the Corruption Eradication Commission as a state institution exercising judicial power, which has the function of investigating and prosecuting corruption cases carried out by state institutions. However, the Constitutional Court overruled the constitution of the *a quo* decision, through the Constitutional Court Decision Number 36/PUU-XV/2017; the Court defined the Corruption Eradication Commission as a state institution of executive power; this refers to Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which explains that: "The President of the Republic of Indonesia shall hold the power of government following the Constitution." The implication is that constitutionally the Corruption Eradication Commission has an equal position with the Police and the Attorney General's Office.

Fourth, relating to the state's right to water management, as contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, essentially emphasizes that the state has the right to the earth, water,

and natural resources beneath. In connection with this article, the state has the right to control water in Indonesia. Regarding the provisions of the *a quo* article, the Constitutional Court has carried out the practice of *overruling the constitution*, which can be seen from the Constitutional Court Decision Number 058-059-060-063/PUU-II/2004, the Constitutional Court Decision Number 008/PUU-III/2005, and the Constitutional Court Decision Number 36/PUU-X/2012, states that the state's right to control water will be fulfilled if the state manages its water in Indonesia. However, the Constitutional Court's Decision Number 85/PUU-XI/2013, the Constitutional Court stated that state control over water exists if the state is still in control. This state control is demonstrated by the water's management, regulation, management, and supervision. So that it can be clearly seen that the Constitutional Court has shifted the meaning of being controlled by the state from those that must be managed by the state alone to the involvement of the state in the management, regulation, management, and supervision of the water. This shift in meaning certainly has implications for the possibility of interference from other parties in water control in Indonesia.

In relation to the above example, Duxbury stated, "*Past events are respected as guides for present action, but not to the extent that judges must maintain outdated attitudes and a commitment to repeating their predecessors' mistakes.*" When translated into Bahasa Indonesia it means: "*peristiwa di masa lalu dihormati sebagai pedoman untuk tindakan saat ini, tetapi hakim tidak harus mempertahankan sikap dan komitmen sebelumnya untuk mengulangi kesalahan pendahulunya*". It can also be said that, in deciding cases in court, judges are bound by the right precedent and in line with the constitution. Meanwhile, the president who is not true does not have binding legal force, so the practice of *overruling the constitution* is used to correct previous opinions so that they are following the truth of the constitution (Kurnia, 2016)^[3].

Check and balances of the house of representatives and the constitutional court in the formation of laws as an effort to realize democratic government

Indonesia's constitutional practice still shows a large ego between state institutions, especially The House of Representatives and the Constitutional Court. Such a situation certainly causes ineffectiveness in the administration of the state. Some of the problems with the follow-up to the Constitutional Court's decision, namely:

The vacancy in the regulation regarding the criteria for the Constitutional Court Decision can be re-presented in legal products;

Lack of a system of checks and balances between the Constitutional Court and the House of Representatives in the formation of law in Indonesia.

In this regard, in order to realize a democratic government in Indonesia, a checks and balances mechanism is needed, especially between The House of Representatives and the Constitutional Court in forming laws. Furthermore, a system of checks and balances between government powers is aimed at making state institutions monitor each other's performance, so that power or authority superiority will not occur or can be minimized (Hosein, 2016)^[4].

Checks and balances aim to provide freedom from each branch of state power while avoiding interaction or interference between the powers of each state institution (Randall G. Holcombe, 2018). In line with this, Peter L. Strauss argues that the principle of checks and balances is an effort to create constitutional relations to prevent abuse of power between the branches of state power to prevent overlapping of the authority of state institutions (Laksono, 2017)^[12].

If examined further, the Constitutional Court's decision to conduct a judicial review does not directly affect the formation of laws but becomes an important factor that influences the legislative process (Laksono, 2017)^[12]. Thus, the inconsistent attitude of the Constitutional Court, as indicated by the overruling constitution became one of the factors that influenced The House of Representatives in conducting a legislative review. The amendment to the Constitutional Court's decision shows that the Constitutional Court as a state institution cannot be said to be always right. However, this cannot be a justification for legislators to ignore the Constitutional Court's Decision.

In line with this, Maruarar Siahhan stated that strengthening and empowerment are realized through the principle of *checks and balances*. One of the concrete forms is to make changes to the constitution so that the content material that is used as the basis in deciding the case loses its foundation, so that trust in the legal system based on the 1945 Constitution of the Republic of Indonesia as the highest law can be strengthened (Laksono, 2017)^[12].

Based on the explanation above, it is known that The House of Representatives and the Constitutional Court, either directly or indirectly, will influence each other in forming a law. This relationship of relevance is supported by Kathleen Barrett, who stated that the Constitutional Court's de facto influence over the legislative body (Barrett, 2014), namely: First, Constitutional considerations of the courts in the past will be one of the considerations in forming laws. Second, in formulating laws, the legislature considers its content material so that the Constitutional Court does not review it because it is contrary to the constitution. Third, the legislature will change the law to adjust to the Constitutional Court's decision. Fourth, the legislature will seek to seek the Constitutional Court's consideration in drafting the law. Fifth, the impact of direct action, namely people who are not satisfied with the laws issued by legislators, can apply for testing at the Constitutional Court.

Furthermore, the parties concerned, in this case, the legislators, have 4 (four) choices in dealing with the Constitutional Court's Decision (Laksono, 2017)^[12], including First, accept, and voluntarily comply with the Constitutional Court's Decision. Second, ignore the Constitutional Court's Decision so that the Constitutional Court's Decision becomes ineffective. Third, trying to reject the Constitutional Court's decision through certain procedures or by canceling the articles in the constitution that became the test stone for the Constitutional Court's Decision. Fourth, through extreme actions, namely, attacking the Constitutional Court by reducing the authority or power of its institutions.

The Constitutional Court's decision is final and binding. However, even so, as the example described above, in its implementation, there are still cases of neglect of the

Constitutional Court's Decision. Thus the position and binding power of the Constitutional Court Decision must be contained in the 1945 Constitution of the Republic of Indonesia, not only in the law relating to the Constitutional Court.

In addition to these things, the neglect of the Constitutional Court's Decision is also caused by the absence of coercive instruments owned by the Constitutional Court for the implementation of the Constitutional Court's Decision. Since its establishment until now, compliance with the Constitutional Court's Decision has been carried out based on legal awareness and self-respect from other state institutions without any coercion.

Although it has been decided by the Constitutional Court, in terms of the formation of laws, political factors play a very large role. Article 23 paragraph (1) letter b of Law Number 12 of 2011 concerning the Establishment of Legislation confirms that the Constitutional Court's Decision is included in the open cumulative Legislation Program, which means that the draft law can be entered into stages National Legislation Program, outside of the general National Legislation Program

stages (Fajarwati, 2017) ^[2]. But even so, politics plays a very big role, as happened in the initial process of its formation.

Based on the description above, in the context of *checks and balances* in the administration of a democratic government, the author hopes there will be awareness and mutual respect between state institutions. In this regard, the Constitutional Court is expected to convey the constitutional mandate through the Constitutional Court's Decision carefully, and as far as possible, not give the impression of interfering with the authority of legislators but aims to guide so that it is in line with the constitutional mandate so that legislation products are free from constitutionality issues similar to the law. before testing (Laksono, 2017) ^[12].

On the other hand, legislators must be sensitive in reading the constitutional mandate given by the Constitutional Court in its decision. Thus, the implementation of a system of checks and balances in a democratic government system can be achieved in Indonesia.

Conclusions

Based on the description above, it can be concluded that in the context of realizing responsive law, there are 2 (two) efforts, namely through legislative review and overruling the constitution. Legislative review is an action by the legislator on the Constitutional Court's decision against a law whose norm has been canceled by the Constitutional Court.

Even though the Constitutional Court's decisions are final and binding, the facts show that several Constitutional Court decisions are ignored and not followed up through legislative review, or even the canceled norms are re-incorporated in a new law. The tendency to ignore the Constitutional Court Decisions by other state institutions, especially The House of Representatives and the President, is influenced by the declaratory nature of the Constitutional Court Decisions. This has implications for its implementation, which is influenced by the political will of the state institution.

While the overruling constitution is interpreted as a practice of the Court giving a new judicial opinion, replacing the previous opinion, the Constitutional Court has carried out this action several times to find a substantial truth.

Based on this, to realize a democratic government, checks and balances are needed in forming laws and mutual respect between state institutions. The Constitutional Court, in providing the interpretation of the constitution, is expected to convey it carefully, and the legislature is expected to be sensitive to the mandate given by the Constitutional Court. Thus the resulting law products can reflect the values of the constitution, and the goals of the state to make the people happy can be achieved. As an effort to strengthen the binding power of the Constitutional Court Decisions, the statement of the "binding" nature of the Constitutional Court Decisions, which so far has only been contained in the law, is expected to be emphasized in Article 24C of the 1945 Constitution of the Republic of Indonesia, to strengthen the binding power of the Constitutional Court Decisions, especially against state institution whose authority is given by the 1945 Constitution of the Republic of Indonesia. And to prevent the occurrence of constitutional justice delay in the future, it is necessary to have an agency or institution that is given a role to ensure that the Court's decision is obeyed.

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