

Ineffectiveness of Enforcement of the Constitutional Court's Decision in Indonesia

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Abstract

According to the Indonesian Constitution, the Constitutional Court holds the authority to judicial review the constitutionality of legislation, and the decision shall be final and binding. Data from the official website of the Constitutional Court shows that there is a steady increase in the number of judicial review petitions submitted to the Constitutional Court which indicated the importance of existence of the Constitutional Court in Indonesia because more people use the Constitutional Court to test the constitutionality of a norm in the legislation. But in the reality the decisions of the Constitutional Court are often ignored and not adhered to.

For example, the Supreme Court has sentenced a defendant for imprisonment under articles 76 and 79 letter c of Law No. 29/2004 on Medical Practice, whereas imprisonment in that article has been declared unconstitutional by the Constitutional Court decision No. 4/PUU-V/2007. There is also a Supreme Court Circular Letter No. 7/2014 which states that the judicial review in criminal cases can only be done once, whereas the Constitutional Court has stated that the judicial review can be done more than once through the decision No. 34/PUU-X/2013. These Constitutional Court's decisions ultimately do not have binding effect and so it will remain the detriment of society.

This paper aims to understand the problems of enforcement of the Constitutional Court's decisions in judicial review petitions, and explain about how and why these problems occurred, and what solution can be done to address this problems.

Keywords: Indonesia, Constitutional Court's Decision, Judicial Review, Legislation
Not applicable

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Introduction

According to Article 24C Paragraph (1) Indonesian Constitution 1945, the Constitutional Court holds the authority to judicial review the constitutionality of legislation, and the decision shall be final and binding¹. The Court has authority to declare a norm does not have binding legal force if the Court considers that the norm is contrary to the constitution. The Court is an institution that commissioned the constitution to keep the whole law there is run in line with the constitution, or in another language, the Court may be referred to as the “Guardian of Constitution”².

Based on data from the official website of the Constitutional Court³, since the first time Constitutional Court issued a decision in 2003 until August 25, 2016, the number of the Constitutional Court decisions are (approximately) 842 decision. The details of the decision are as follows:

Table 1.
The Number of Constitutional Court Decision Based on Registration Year

Year	Number of Decision
2003	21
2004	23
2005	20
2006	22
2007	23
2008	33
2009	65
2010	77
2011	86
2012	118
2013	106
2014	117
2015	107
2016	24
	842

From the 842 decisions, Constitutional Court has reviewed 3009 norm, whether a law as overall, articles, paragraphs, phrases, words, or request the interpretation of a norm, stating conditional constitutional and stating conditional unconstitutional. From 3009 norm that has reviewed, Constitutional Court has "changed" (approximately) 502 norm, with details as follows:

¹ Explanation of Article 10 Paragraph 1 Law No. 8 of 2011 on Forming Legislation

² Jimly Asshiddiqie (n.d). Sejarah Constitutional Review Dan Gagasan Pembentukan Mahkamah Konstitusi, retrieved from <http://jimlyschool.com/read/analisis/276/sejarah-constitutional-review-gagasan-pembentukan-mk/>

³ www.putusan.mahkamahkonstitusi.go.id

Table 2.
The Number of Norm That Has Been Changed

Year	Decision of Norm											
	C	RL	RA	RE	RP	RN/L	RPh	RWo	CC	CU	In	Add
2003	-	3	1	-	4	2	8	-	-	-	1	-
2004	-	-	3	-	1	-	4	1	-	-	1	-
2005	-	-	-	2	3	1	1	1	1	-	-	-
2006	-	1	6	-	6	1	5	-	-	-	-	-
2007	-	-	2	-	1	-	12	1	10	-	-	-
2008	-	1	-	-	5	6	-	-	2	1	1	-
2009	-	1	4	1	12	-	8	2	11	5	1	-
2010	-	2	13	-	7	2	8	4	3	9	2	1
2011	2	-	4	1	16	8	11	1	-	15	-	-
2012	-	-	9	5	12	5	17	2	1	46	-	1
2013	1	2	10	-	8	2	10	1	-	26	-	2
2014	-	1	1	1	5	-	1	1	-	42	-	2
2015	-	-	1	3	1	4	4	3	-	24	2	-
2016	-	-	-	-	1	-	-	-	-	2	-	-
Total	3	11	54	13	82	33	89	17	28	170	8	6

Information:

C	: Change Norm	RPh	: Repeal Phrase
RL	: Repeal Law as Overall	RWo	: Repeal Word
RA	: Repeal Article Constitutional	CC	: Conditional
REA	: Repeal Explanation of Norm Unconstitutional	CU	: Conditional
RP	: Repeal Parapgraph	In	: Interpretation
RN/L	: Repeal Number/Letter	Add	: Add New Norm

From the 842 decisions, there are 5 laws which is still has binding force, that most often to be reviewed to the Constitutional Court. They are:

Table 3.
5 Laws That Most Often to be Reviewed to Constitutional Court

No.	Laws	Number of Review
1.	Law No. 8 of 1981 on Criminal Procedure Law	49
2.	Law No. 8 of 2015 on Amandement of Law No. 1 of 2015 on Determination of Regulation in Lieu Of Law No. 1 of 2014 on the Election of Governors, Regents and Mayors into Law	37
3.	Law No. 8 of 2012 on the Election of Members of House of Representative, Regional House of Representative, and Regional Representative Board	30
4.	Law No. 42 of 2008 on the Election of President and Vice President of Republic	30
5.	Law No. 30 of 2002 on Corruption Eradication Commission	17

With that authority, the entire decision of the Constitutional Court should be followed and immediately executed. Moreover, if we look at the number of cases in the Court per year are illustrated in Table 1 above, the data showed, in general, there is a steady increase in the number of judicial review petitions submitted to the Constitutional Court. This indicates that people are increasingly using the Court to review the constitutionality of a norm and hope the Court with its decision to protect community rights set out in the constitution. This certainly reinforces that decision of the Court should be followed and immediately executed. But in the reality the decisions of the Constitutional Court are often ignored and not adhered to.

As first example is the Article 335 Paragraph (1) Criminal Code which contains "unpleasant act" phrase. On January 16, 2014, the Constitutional Court has stated that the phrase contrary to the Constitution of 1945 and does not have binding legal force through decision No. 1/PUU-XI/2013. However, in fact, on the same day, the Bekasi District Court, through decision No. 1234/Pid.B/2013/PN.BKS, punished a defendant named Mulyadi Mulya for committing "unpleasant acts" and impose imprisonment for 1 year. Then, on appeal, the Bandung High Court upheld the decision by the decision No. 219/Pid.B/2014/PT.BDG on September 16, 2014. Bandung High Court stated that the defendant guilty of "unpleasant act" and turn punishment into imprisonment for 4 months.

The second is the case of dr. Bambang. On October 30, 2013, the Court of Cassation at the Supreme Court still impose imprisonment against dr. Bambang for violating Article 76 and Article 79 letter c of Law Number 29 Year 2004 regarding Medical Practice with the Supreme Court decision No. 1110 K/Pidsus/2012. In fact, on June 19, 2007, the Constitutional Court has removed the provision imprisonment on those articles with Decision No. 4/PUU-V/2007. The Supreme Court argued that judges have the independence in consideration until the verdict. Furthermore, the Head of Legal and Public Relations of Supreme Court, Ridwan Mansyur, mention that not all of Constitutional Court decisions have binding force⁴.

Third, the issuance of the Supreme Court Circular Letter No. 7 of 2014 which restricts review in a criminal case can only be done one time. In fact the Constitutional Court has stated that review in a criminal case can be done more than one time with decision No. 34/PUU-X/2013. In this circular letter, Supreme Court mentions that Constitutional Court only stated unconstitutional for rules of review in the Criminal Procedure Code and does not immediately abolish the rules of review can only be done one time in Article 24 Paragraph (2) of Law No. 48 of 2009 on Judicial Power and Article 66 Paragraph (1) of Law No. 14 of 1985 jo. Law No. 5 of 2004 jo. Law No. 3 of 2009 on the Supreme Court, so that the Supreme Court set the review in a criminal case still only be done one time with this circular letter based on rules in Judicial Power Law and Supreme Court Law.

Those examples above illustrate that there are problems in the implementation of the decision of the Court in practice, where the decision of the Court was often not obeyed and not executed. I identify that this problem is caused three factors, they are ignorance of the norms that have been changed by the Court, disobedience to the

⁴ Kasus dr Bambang, Putusan MK Mengikat Semua Pihak Tanpa Terkecuali!. (September 17, 2014). Retrieved from <http://news.detik.com/berita/2692625/kasus-dr-bambang-putusan-mk-mengikat-semua-pihak-tanpa-terkecuali>

decision of the Constitutional Court, and obscurity about implementation of the decision itself.

Literature Review

For Indonesian matter, I didn't review any literature. I just access informations from some medias that inform about Constitutional Court's condition in Indonesia and arguments from many people about that. But, for comparison study with another countries, I reviewed some literatures from internet, that most of them are from journal, to find Constitutional Court's sytem in another country and get similarities with Indonesian system as much as possible. And after reviewed all of the literature, I found that some countries have the same root system with Indonesia, like Austria, Spain, Germany, Italy, Columbia, and Hungary. But, in implementation, Italy and Germany are the countries that have most similarities system with Indonesian system, so Italy and Germany are the countries that I use in comparison study.

Methodology and Methods

This research is descriptive study. I start with describe some Constitutional Court's decisions that are not obeyed and implemented with the factors that cause it. Then I review those decisions and factors based on some datas, laws and arguments about it. I made comparison study to look how the system in another country. After all, I conclude and suggest about how the system is suppost to be based on my review and comparison study.

Discussion

As I said before, 3 factors that made Constitutional Court's decision is not obeyed and implemented are ignorance, disobedience, and obscurity of the decisions. These 3 factors are the main topic to describe in my research.

1. Ignorance of Constitutional Court's Decision

I found 2 decisions to describe this factor. First, as I described before, decision No. 1/PUU-XI/2013 that stated "unpleasant act" phrase at article 335 Paragraph (1) Criminal Code unconstitutional. In the same day, there is someone who was sentenced for committing "unpleasant acts" and impose imprisonment for 1 year.

Second, on December 13, 2004, Constitutional Court issued a decision number 06 / PUU-II / 2004, which stated that Article 31 of Law No. 18 of 2003 on Advocate unconstitutional. But, in 2008, the Indonesian Legal Resource Center (ILRC) presented their research to the Chairman of Constitutional Court at the time, Jimly Asshiddiqie, that there are law enforcement officers that still prohibits legal clinic to provide legal assistance to the community by using Article 31 Law No. 18 of 2003⁵. Polices are the officer that most often still use this article. Asshiddiqie also stated the same thing considering he had received a letter from

⁵ Ali. (May 29, 2008). Masih Ada LBH Kampus yang Dilarang 'Berpraktek'. Retrieved from <http://www.hukumonline.com/berita/baca/hol19342/masih-ada-lbh-kampus-yang-dilarang-berpraktek>

the Regional Police Sragen, Central Java, who questioned whether the article has been repealed. These decisions clearly shows us about ignorance of Constitutional Court's decision and the decision is ultimately not executed.

2. Disobedience to Constitutional Court's Decision

The second factor is disobedience to the Constitutional Court's decision, even though the parties who do not obey know and aware of any decision of the Court. At least, there are 3 decisions to describe this factor. For the first and second decision, I have described them before in "introduction" section, first is dr. Bambang's case which is disrespect for the decision No. 4 / PUU-V / 2007 and the second is issuance of Supreme Court Circular Letter No. 7 of 2014 which is disobey to decision No. 34 / PUU-X / 2013.

Third, On May 16, 2016, the Constitutional Court with decision No. 33/PUU-XIV/2016 stated that prosecutor can't apply a review in criminal cases, as has been clearly regulated in Article 263 Paragraph (1) Criminal Procedure Code. The Court considered the essence of the Review itself, which basically is the right of a convicted person, not a right of the State or the victim, so the prosecutor, who representing the State at the Court, can't apply a review.

Respond to this decision, Attorney General, H.M. Prasetyo stated that the prosecutor will continue to apply for a review on the grounds that there is jurisprudence that allows it. Additionally, Prasetyo also said that the prosecutor representing the interests of the State and the victim, so it should be allowed to apply review in criminal cases⁶.

3. Obscurity of Constitutional Court's Decision

Obscurity of Constitutional Court's decision in question is obscurity in implementing the Constitutional Court's decision, because at some of the decisions, the decision requires the advanced settings to be implemented. This is related to the nature of the Constitutional Court as a negative legislator, which can't create new norms, but only can declare whether a norm of constitutional or unconstitutional. As a result of this system, Constitutional Court can't set new norms arising from the decision of the Court, whereas the new norms are needed so the Constitutional Court's decision can be executed. For example is the Obscurity in Implementation of the Constitutional Court Decision No. 16/PUU-XII/2014.

On December 23, 2014, the Court issued a Decision Number 16/PUU-XII/2014, which essentially changed the election system of Commissioner of the Judicial Commission (JC Commissioner). Before the decision, according to Article 28 Paragraph (3) letter *c jo.* Article 28 Paragraph (6) of Law No. 18 of 2011 *jo.* Law No. 22 of 2004 on the Judicial Commission, the system is the Selection Committee, that is formed by the President, gives 21 candidates of JC

⁶ Rakhmat Nur Hakim. (June 16, 2016). Jaksa Agung: Meski MK Nyatakan Tak Bisa, Kami tetap Ajukan PK. Retrieved from <http://nasional.kompas.com/read/2016/06/06/19043121/jaksa.agung.meski.mk.nyatakan.tak.bisa.kami.tetap.ajukan.pk>

Commissioner to the President, which will then be submitted to the Parliament to select and assign 7 from 21 candidates. After that, the Parliament will submit 7 candidates chosen to the president to be sworn in as JC Commissioner. After the decision, the President form a Selection Committee Election of JC Commissioner, which will submit 7 candidates to the President. And then, the President will submit 7 candidates to the Parliament and the Parliament has the authority to approve or disapprove 7 candidates that is submitted by the President. Later, Parliament approved the candidates and submit them to the President for then appoint as JC Commissioner.

From the system that exists today, there is a obscurity of electoral system of JC Commissioner regarding the implementation of the system of approval by the Parliament itself because the approval system can lead to double interpretation. The first interpretation is the Parliament approve 7 candidates of JC Commissioner in a package system, which means that Parliament can only approve or not approve 7 candidates as a whole becoming JC Commissioner or not approve the seven 7 candidates as a whole. The second interpretation is the Parliament may approve some of JC Commissioner candidates and did not agree the other candidates.

In my opinion, the interpretation that should be used is first interpretation, because if we use the second interpretation, the approval system is not different with selection system by Parliament, which that system has been declared unconstitutional by Constitutional Court. But in fact, the last selection of JC Commissioner used the second interpretation. Parliament just approved 5 of 7 candidates. This interpretation cause another obscurities, they are:

- i. How to fill in the blank position after some candidates isn't approved to be JC Commissioner? Is that Selection Committee will reopen the selection to select some candidates in same amount to candidates that isn't approved, or Selection Committee just select candidates from the candidates that aren't selected in first term. In the last selection, mechanism that be choosen is the second mechanism. But, this mechanism doesn't have legal basis because there is no regulation about it, especially after the decision.
- ii. According to Article 29 of Law No. 22 of 2004 *jo.* Law No. 18 of 2011 on Judicial Commission, the term of office is five 5 years. Such conditions exist today, where the election of seven 7 JC Commissioner is not at the same time, clearly raises obscurity about how the term of office of JC Commissioner, especially between the first selected with the last elected. Is it in same period, which that 7 commissioners will end the term of office at the same time even the start of term of office is not the same, or is it based on the laws, which will impact the JC Commissioners KY will not end term of office at the same time.

Before formulating the solution of these problems, we should also compare the practice of the implementation of decision of Constitutional Court in a few countries, especially the countries that has the same characteristics as the Constitutional Court in Indonesia. With characteristic of Constitutional Court of Indonesia, based on

Constitution 1945, Constitutional Court is separate from the Supreme Court⁷ and the only institution that can test the constitutionality of an Act of the Constitution 1945⁸. It can be concluded that Constitutional Court of Indonesia is using the "Austrian Model" or "Kelsenian Model", where the most prominent characteristic of this model is the Constitutional Court is an independent judicial institution and also the only institution with has authority to review the constitutionality of an Act of the constitution, otherwise known as "Centralized Model". Model of this Constitutional Court encountered in some countries, such as Austria⁹, Italy¹⁰, Germany¹¹, Spain¹², Hungary¹³, Columbia¹⁴, and several other countries, especially those that embrace the Continental European legal systems.

For comparison, the author only chose Italy and Germany. This is due to this 2 countries have an interesting development regarding the implementation of the decision of the Constitutional Court. Implementation of the Constitutional Court decision that the authors mean here is in the context of whether there is any legislation as a follow-up decision of the Court, given the Court in Kelsenian models shaped negative legislator who need a piece of legislation from positive legislator (legislature), so that the norm is modified by the Court can be binding on all parties.

1. Italy

Italian Constitutional Court, or *Corte Costituzionale*, formed under Article 134-137 Italian Constitution 1948¹⁵. Italian Constitutional Court's decision should be applied since publication¹⁶, that under Part III of Act No. 839, dated December 11, 1984 and Article 21 of Presidential Decree No. 1092 dated December 28, 1985, must be made in the Official Gazette. Once the decision is published, the Court then announced to the Parliament and the Government on the decision, so that Parliament can act according to the constitution procedure if they deem it

⁷ Article 24 Paragraph 2 Indonesian Constitution 1945

⁸ Article 24 Paragraph 1 Indonesian Constitution 1945

⁹ Hans Kelsen. *Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution*. In *The Journal of Politics Vol. 4, No. 2 (May, 1942)*, pp. 183-200. Retrieved from <http://www.jstor.org/stable/2125770>

¹⁰ Gianluca Gentili. *Concrete Control of Constitutionality in Italy*. Retrieved from <http://www.jus.unitn.it/cocoa/papers/PAPERS%203RD%20PDF/Concrete%20Control%20Italy%20edit%20ok.pdf>

¹¹ Martin Borowski. *The Beginnings of Germany's Federal Constitutional Court*. In *Ratio Juris. Vol. 16 No. 2 June 2003 (155-86)*. Retrieved from <http://www.direitointemporaneo.com/wp-content/uploads/2014/02/The-Beginnings-of-Germany-s-Federal-Constitutional-Court.pdf>

¹² Enrique Guillen Lopez, *Judicial Review in Spain: The Constitutional Court*. In *41 Loy. L.A. L. Rev. 529 (2008)*. Retrieved from <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2616&context=llr>

¹³ Zoltán Szente, *The Political Orientation Of The Members Of The Hungarian Constitutional Court Between 2010 And 2014*. Retrieved from https://uwpress.wisc.edu/journals/pdfs/CSv01n01_06Szente_FINAL_web.pdf

¹⁴ Luz Estella Nagle. *Evolution of The Columbian Judiciary and The Constitutional Court*. Retrieved from <https://mckinneylaw.iu.edu/iiclr/pdf/vol6p59.pdf>

¹⁵ *supra* note. 10

¹⁶ *The Constitution Of The Italian Republic, 1948 (Last Amendment June 12, 2003)*, par. 1. See also Italian Law No. 87 of 11 March 1953, *The composition and procedures of the Constitutional Court*, Section 30

necessary¹⁷. In addition, when the Italian Constitutional Court ruling handed down, the judge can not use the usual norm declared unconstitutional by the Constitutional Court¹⁸.

On development, the Constitutional Court decision was very slow response by Parliament so that a legal vacuum. This prompted the Italian Constitutional Court to then produce a decision in the "*Sentenze Interpretative di Riggio*", where the Italian Constitutional Court will endorse only 1 interpretation is considered constitutional and can be used. However, this decision is deemed not to have *erga omnes* effect and often not run by the Judges. On that basis, the Court Italy later issued a variant of the decision of the newly named "*Sentenze Interpretative in Accoglimento*" where Italian Constitutional Court endorse 1 interpretation is causing a norm becomes unconstitutional, and Judge remarkable free to use the interpretation of anything other than the interpretation that led to that norm becomes unconstitutional. In connection with its authority under the constitution can only be stated that a legal norms be unconstitutional, the decision of this variant is considered to have *erga omnes* effect and run by ordinary judge¹⁹.

In its development, the Italian Constitutional Court then no longer provide any interpretation of the norm, but allow ordinary judge to interpret these norms in real cases with "*constitutionally adequate interpretation*". This is changing the face of the constitutionality of a norm of the constitution in Italy, because the shift system of the Court that "centralized model" into a "decentralized model", which is practiced in Constitutional Court "American model" in which the judge ordinary also has the authority to interpret a norm in the law²⁰.

2. Germany

German Constitutional Court or the Federal Constitutional Court (FCC), was first set out in the Basic Law dated May 23, 1949 which is then regulated under the Federal Constitutional Court Act (BVerGG), promulgated on March 12, 1951²¹. FCC decision is binding for Parliament, the Courts, and the Public Authority and shall be published in the Federal Law Gazette's like a law²².

¹⁷ *Ibid.* par 2

¹⁸ *supra* note. 10 and 15

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *supra* note. 11

²² Siegfried BROSS. Reflections on the Execution of Constitutional Court Decisions in a Democratic State under the Rule of Law on the Basis of the Constitutional Law Situation in the Federal Republic of Germany. Presented in Confrence "*Execution Of The Decisions Of Constitutional Courts: A Cornershone Of The Process Of Implementation Of Constitutional Justice*" On "*The 10th Anniversary Of The Constitutional Court Of Azerbaijan Baku, Azerbaijan 14-15 July 2008*". Retrieved from

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2009\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2009)001-e).
When this paper was presented, Siegfried BROSS was FCC Judge

In practice, the decision FCC nothing followed up with legislation. One example is in the case of "Exercise to Parental Custody"²³, or the implementation of the custody of their parents. In 1957, legislators amended the "Equal Rights Act" (*Gleichberechtigungsgesetz*) by regulating the concept of "the joint parental power of both parents," meaning father and mother have joint custody of children, of who had custody of the child is given only to the father. However, no amendment of Article 1628 Civil Code which entitles the father to choose when in the condition of both parents do not agree on child custody. Only under certain circumstances this right may be deprived of a father. FCC then states this rule does not have the force of law (BVerfGE 10, 59). 20 years later, the legislature responded to this decision with amendments to legislation which since January 1, 1980, the law stipulates that if no agreement is reached on the parents regarding custody of the child, then the court can make a decision to whom custody of the child granted.

In another case, there was the decision FCC that have not responded to the legislation, namely Decision on Aviation Security Act in 2006²⁴. The decision stated Article 14 Paragraph (3) Aviation Security Act unconstitutional and does not have the legal binding effect. This article authorizes the Federal Defense Minister ordered the army to shoot down the plane, in the case of the passenger plane hijacked by terrorists on the territory of Germany and the air is recognized intended to be used as weapons to kill more people. This provision was canceled by the FCC on the grounds that these provisions violate the humanity, especially to determine a person's life. Until now, there has been no legislation against the decision.

In the development, there are several variants of the FCC decision regarding the implementation of the decision. The first variant is acts as a "substitute Legislature"²⁵ to make transitional provisions for the norm declared unconstitutional until their new rules replace the norm. This ruling contained in the decision on abortion. This ruling was based on the question whether the exemption from penalty for the termination of pregnancy (abortion) is done until the twelfth week, provided in Article 218 Criminal Code (*Strafgesetzbuch*) is in line with the constitution. FCC declared this provision unconstitutional because the legislature is under an obligation to make abortion as a punishable if there is no special reason to do the abortion. Since the provision invalidated by the decision FCC, the FCC set a transition arrangements with validity until the enactment of a provision amended.

The second variant is when the FCC declared an unconstitutional norm but still have the force of law²⁶. In a decision like this, the FCC set a time limit for the legislature to amend the rules declared unconstitutional by the FCC. For the duration of the deadline, there are no specific rules and different in each case. When the FCC cancel rules in inheritance and gift law, FCC gives a 1 ½ year to

²³ Elke Luise Barnstedt. Judicial Activism in the Practice of the German Federal Constitutional Court: Is the GFCC an Activist Court?. Retrieved from <http://www.juridicainternational.eu/?id=12698>

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ *Ibid*

be amended. When FCC declared that Article 1685 Civil Code unconstitutional, FCC gives one 1 year for an amendment to those rules. There was also originally FCC did not give a deadline for amendments, but then give the deadline, when there is a provision that the principle of equality requires that remuneration in the form of a one-off payment taken into account in calculating the benefit replacement pay short-term financed from contributions, such as allowances unemployment and sickness benefits, if the one-off payment are subject to social insurance contributions. This rule was removed FCC to enforce these provisions remain indefinitely amendment. Apparently, this rule is not amended and then problems due to this rule occurs again. Finally, the FCC set a time limit amendment for 1 year provided that if these provisions have not legislated, then the rule can not be used anymore.

The third variant is the FCC stating a rule is unconstitutional and does not have binding legal force, as well as allow time for amendments to these rules, which if until the time limit specified these provisions have not changed, then the decision FCC executable (BVerfGE 101, 158 (160) . It is happen in phase 2 last example of the second variant. The decision included this variant is a decision declaring the law on financial compensation between the Federal Republic of Germany and the constituent countries (the so-called Länder) unconstitutional, but ordered subsequent implementations of the law until a certain time limit (in this case until December 31, 2004) to prevent life at the state level were largely paralyzed in the Federal Republic of Germany²⁷. Decision FCC be applicable in the case of the legislature did not leave the new regulations in line with the Constitution . Federal Constitutional Court is reacting this way after the legislature has repeatedly ignoring the mandate given to FCC regulations (eg in BVerfGE 72, 330 and 86, 148).

About legislation of FCC decision, there is an interesting thing that happened in 1987. Prior to that year, no one can deny that the rules that have been declared unconstitutional can no longer be adopted and addressed the Parliament and promulgated by the President. However, in 1987, the FCC argued that the legislature could have been legislating rules that have been declared unconstitutional by the FCC when deemed necessary, because it is the discretion of the legislature to legislating. However, there is "The principle of mutual loyalty between constitutional bodies (*Verfassungsorganentreue*)", which limits it happens because this principle states that the legislature prohibited from legislating rules that have been declared unconstitutional by the FCC²⁸.

²⁷ *Ibid*

²⁸ Anke Eilers. The Binding Effect Of Federal Constitutional Court Decisions Upon Political Institutions. Presented in Seminar "*The Effects of Constitutional Court decisions*" (Tirana, 28-29 April 2003). Retrieved from [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2003\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2003)018-e) . When this paper was represented, Anke Eilers was clerk of FCC Judge, Rudolf Mellinshof

Conclusion

After seeing the problems of implementation of Constitutional Court's decision the solution can be done so that the decision of the Constitutional Court in Indonesia can be implemented with the maximum is by legislating norms were amended by the Constitutional Court with a legislation. It is due to several things, among others:

1. With the legislation, then the public will have easier access to the norms that have been altered by the decision of the Court, because the norms are already directly become part of the Act where these norms are.
2. With the legislation, there is no longer any reason to not comply with the decision of the Court because the norms that have been altered by the decision of the Court is already a part of the Act which automatically become legally binding for all citizens of Indonesia.
3. With the legislation, then the resulting legislation will be able to also regulate matters have not been regulated in the decision of the Court, for example, the legal consequences that arise due to changing norms based on the decision of the Court. For example, as in the example of the selection of JC Commissioner.

However, it must be followed with regulation that basically Constitutional Court only can declare that a norm constitutional or unconstitutional, and the legislature will be set further in the new rules. The Court can only provide provisions concerning transitional rules and time limits of legislation on the Constitutional Court's decision provided that if within the period legislature legislating the decision, then the transitional provisions made by the Court applies as the enactment legislation. It is more respect for the authority of the Constitutional Court and the legislature, in which the Court fixed exercise its authority to protect the constitution by setting the transitional provisions and deadlines in legislation and legislatures still run the authority to set a law to be obeyed society. Of course, the legislature should not be set back rules that have been declared unconstitutional, but can only manage what has been declared unconstitutional by the Constitutional Court and its implications arising from the decision of the Court with the freedom possessed by the legislature.

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