

The Role of the Constitutional Court in Reforming the Indonesian State System

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Keywords: The Role of the Constitutional Court, Reforming, The Indonesian State System.

Abstract: The amendment of the 1945 Constitution since the reformation has encouraged the establishment of a more democratic constitutional structure. These changes create state institutional structures that are in an equal position to checks and balances. One of the new state institutions established to strengthen the legal and democratic institutions in the Indonesian constitutional structure is the Constitutional Court, as one of the judicial institutions with the judicial power. The changes also confirm that judicial power is an independent power to conduct justice in order to uphold law and justice. This paper will discuss how the Constitutional Court as a state institution performs its constitutional function and role through its decisions which can influence and color the legal and constitutional reforms in Indonesia. The research method used in this study is the normative juridical method. The results showed that the verdict is the Crown of the judiciary; therefore, the achievements and role of the Constitutional Court as a judicial institution in coloring legal and constitutional reforms in the homeland are reflected in its decisions, for example: decisions to recognize simultaneous elections; political rights for the former members of PKI; recall rights of political parties; the use of KTP for voters unregistered in DPT; cancellation of regional regulations becomes the authority of the supreme court; 20% of the education budget allocation; individual candidates in the elections; religion or indigenous faith column in KTP; women can run for Governor or Vice of Governor; DPD members may not come from political party administrators.

1 INTRODUCTION

The dynamics of having state and law in the late 1990s experienced an era that was different from the previous one. This era was later known as the Reform Era which was a response to the previous era, New Order Era. The response as a result of the multidimensional crisis, coming from the constitution that refers to state and law practices, is no longer by the legal and democratic principles aspired when establishing this country (Sumadi, 2012). On that basis, among other things, the Amendment to the 1945 Constitution of the Republic of Indonesia as a necessity.

The amendment of the 1945 Constitution which stipulated the existence of a new state institution, the Constitutional Court, in the branch of the judicial power, cannot be said merely the presence of a new court which adds to the number of existing courts. However, the presence of the Constitutional Court must be considered as a part of the implementation of

the reform spirit that requires changes in having state life and law. Therefore, the amendment of the 1945 Constitution which states that sovereignty is in the hands of the people and carried out according to the Constitution, and also affirms that Indonesia is a state of law, the existence of the Constitutional Court is an essential substance in the amendment of the 1945 Constitution.

What is the importance of the Constitutional Court in the amendment to the 1945 Constitution? First, the Constitutional Court, with its function in handling some instances in the constitutional field, is to maintain the constitution to be carried out responsibly by the will of the people and the ideals of democracy. Second, the Constitutional Court is thus also intended to maintain the implementation of a stable state government, and also a correction of the state administration experience generated by multiple interpretations of the constitution. What really changes after the amendment of the 1945 Constitution, especially with the presence of the Constitutional Court with its decisions? The

question can be answered briefly, i.e., the constellation of state and legal institutions has changed.

If constitutionally MPR as a special people's representative institution is the legislator of the constitution, the Constitutional Court, based on the amendment of the 1945 Constitution, as a constitutional court, is the interpreter of the constitution through its decisions. Therefore, it has been explained that, in the perspective of legal science, the decisions of the Constitutional Court have changed the way of having state and the way of law through the interpretations of the constitution. The decisions of the Constitutional Court, especially those are related to the authority to examine the constitutionality of the law (judicial review), to the extent that the decisions are in the granting of the petition of the petitioner, always result in changes in legal norms contained in the laws being tested. Therefore, the decision of the Constitutional Court is like a legislative decision by a representative body of people that establishes a draft of law into a law (material authorization) which is then formally passed by the President (formal approval) (Asshiddiqie, 2006). That is why, Kelsen, as the initiator of the idea of establishing the first constitutional court in the world, i.e., in Austria in 1920 (Asshiddiqie, 2005), stated that the constitutional parliament and the court are both "legislators". Parliament is a legislator in a positive sense (positive legislator), while the constitutional court (*verfassungsgerechtshof*) is a legislator in a negative sense (negative legislator) (Kelsen, 2007).

The Constitutional Court, with its role as a "negative legislator" as aforementioned before, is a law-forming practice known since the mid-20th century. Therefore, the formation of law began to rely a lot on the role of constitutional justice, in addition to parliament. Therefore, the need to study and explore judicial review decisions that change legal norms in the law grows and develops everywhere throughout the world, especially in democratic law states (the democratic rule of law) or a democratic country based on law (constitutional democracies).

2 RESEARCH METHOD

This study uses a normative juridical method (Soekanto and Mamudji, 1995). With this normative juridical approach, it will examine the decisions of the Constitutional Court that amend the Indonesian

constitutional legal system. The specification of this research is descriptive analysis, because it is expected to be able to provide a detailed, systematic, and comprehensive picture with the object to be studied, i.e., the relation of the role of the Constitutional Court through its decisions, in the renewal of the Indonesian state system.

3 DISCUSSION

In the 'common law' countries, the habit of studying court decisions is a necessity and is even considered as the main work of the world of higher education law and law enforcement tasks. The decisions of the previous court were considered to be the main source of law. Therefore, what was referred to law according to the 'common law' tradition, primarily, were the decisions of the courts themselves. Therefore, the legal system in Anglo-American countries is referred to as "judge-made law" or judicial law. It is the judge who holds the main position that creates legal norms, and the judge's decision is also the object of scientific study in the world of education and research. As a result, the term "science of law" refers to "jurisprudence", which is defined as a "civil law" as the decision of the previous judge which in Dutch was called '*jurisprudentie*' (Asshiddiqie, 2006).

It can be said that even though the judicial branch of power does not directly make law, the court interprets the law through decisions on cases that must be examined and tried. Judges who will try similar cases in the future must make the previous court decision as a reference. Therefore, it is said that in a 'common law' system, the law is judge-made law. Because, court decisions, especially higher courts are binding and are part of the law that must be used as a reference for subsequent legal decisions. In general, the court will try to be consistent in deciding cases that are similar to the same decision in the future. This principle is called "*stare decisis*", meaning "let the decision stand" (Kansil, 1986).

Meanwhile, in countries with the tradition of "civil law" like in Continental Western Europe, what is preferred is the written law made by parliament. The law is also the object of the study of legal science, while the decision of the previous court is considered important but not more important when compared to the written legislation as a source of law. Therefore, the needs and interests to discuss, study, and publish court decisions are often also

underestimated by 'jurist'. However, with the establishment of a constitutional justice institution and the development of the practice of "judicial review" which acts as a "negative legislator" as stated by Kelsen, the practice of forming law since the mid-20th century began to rely a lot on the role of constitutional justice, in addition to parliament. Because, the need to study and explore 'judicial review' decisions that change legal norms in law continues to grow and develop everywhere in the world, especially in the democratic rule of law or democratic countries based on law (constitutional democracies) (Asshiddiqie, 2005).

On the contrary, since the mid-20th century, there has also been a growing practice in "common law" countries that have begun to consider the role of the law as important. Even today, the production of legislation in the United States as a country with a "common law" tradition is far more than the production of laws in Germany, France, and the Netherlands which are countries with a "civil law" tradition. In fact, since the 1950s, new terms have emerged that intend to complete the term "jurisprudence" for the notion of legal science, i.e., "legislation" or legal science based on legislation (Duxbury, 2013). Even today, this term has not only grown increasingly popular, but has also increasingly become the object of study by legal experts, both in America, in Europe and Australia as a new perspective in legal studies (Wintgens, 2006). It means that in the 'common law' system, the role of statutory law is increasingly aligned with a court decision (judge-made law). Therefore, on the contrary, in the legal system of Indonesia and other 'civil law' countries, it is time to develop an understanding of the importance of the role of jurisprudence in order to further develop the Indonesian legal system in its theory and practice in the future.

3.1 Jurisprudence in Civil Law and Common Law Systems

Jurisprudence, according to the tradition of "civil law," is a court decision or "*vonnis*" that serves as one of the sources of law in the next legal decision-making process. Court decisions that already have legal powers that are final and binding (*inkrachtvangingwysde*), in essence, can no longer be changed. However, in the course of time, there is also a possibility that understanding of the contents of past decisions has shifted or changed according to the need to provide solutions for similar cases in the future, but with a different solution from the

previous decision. Even though the decisions have been repeated over and over again, at some time, they may change because of the need to meet the demands of justice that continue to develop in society. Such previous decisions are also referred to as ordinary "*jurisprudentie*", i.e., jurisprudent which is not or is not yet permanent.

In judicial practice, especially in the Supreme Court of the Republic of Indonesia, to determine whether a 'jurisprudence' can be said to be paste jurisprudent or ordinary jurisprudence, a Special Team is formed to evaluate and determine through examination and notation, before officially approved by the Chairperson of the Supreme Court and published in the annual jurisprudence book. It means that not all Supreme Court rulings or court decisions that have been used as repeated references by judges in deciding similar cases can be said to be "*pastejurisprudentie*" before the Supreme Court formally determined it.

From the results of the examination and notation by the Supreme Court Team, the extent to which a decision has met the standard of permanent jurisprudence law can be determined. The results of the examination and notation are recommended to the Chairperson of the Supreme Court for their ratification as a decision that is considered to have truly met the standards of jurisprudence law. Therefore, in general, it can be understood that 'permanent jurisprudence' is the decisions of judges, whether at the first level, the appeal level, or even the Supreme Court's decision that has permanent legal force, on cases that are not yet clear, the legal rules that have the content of justice and truth have been followed repeatedly by the next judge in deciding the same case, which decision has been tested academically by a team or jurisprudence assembly in the Supreme Court and recommended as permanent jurisprudence that is binding and must be followed by judges in the future' (Kamil and Fauzan, 2004).

Whereas, non-permanent jurisprudence is a decision that has permanent legal force but has not been through examination and notation tests by teams or assemblies in the Supreme Court and there are no recommendations for permanent jurisprudence. More detailed criteria regarding jurisprudence can also be seen from the results of BPHN's research in 1995, stating that a judge's decision can be called jurisprudence (permanent) if the judge's decision meets the following 5 elements (Lotulung, 1997):

- 1). The decision on a legal event that has not been clearly regulated in the legislation;
- 2). The decision has permanent legal force;
- 3). The decision has been repeatedly used as a basis for deciding the same case;
- 4). The decision has fulfilled the feeling of justice; and
- 5). The decision is justified or stipulated by the Supreme Court as permanent jurisprudence.

In the tradition of “civil law” which usually relies on “statutory law” or legislation, the existence of jurisprudence is not prioritized as in the “common law” tradition which instead prioritizes the “precedent” principle and is commonly called “judge-made law”. However, in the tradition of “civil law”, the judges also have reason to create law through this jurisprudence, namely (Lotulung, 1997):

- 1). If the provisions in the existing law are not clear enough or vague so that it requires a comprehensive legal interpretation;
- 2). The existing laws are considered outdated or no longer in line with the sense of justice and community legal awareness; and
- 3). The law does not regulate legal actions submitted to the court

Because of these three reasons, the judge needs to create law through jurisprudence. Two principles that are mutually contradictory with one another, which is commonly used about this jurisprudence in practice, are (Lotulung, 1997):

- 1). Precedent principles, i.e. judges are bound and must not deviate from the decisions of previous judges or judges who are higher in similar cases; and
- 2). The principle of freedom, namely that the judge is independent and free, not bound by judges’ decisions that are higher or equal in level.

In the Indonesian legal system, the existence of jurisprudence as a source of formal law that creates the law is based on Article 22 AB (Staatsblad 1847 No. 23) and Article 10 Law No.48/2009 on Judicial Power. Both determined that “the Court must not refuse to examine, hear, and decide on a case that is filed on the pretext that the law does not exist or is unclear, but must examine and try it”. In the absence of the provisions of laws or legislation that have already been regulated, the judge must dig, follow, and understand justice and legal values that live in the community. This is also by the general principles

that apply, “*ius curia novit*” which means that the judge is considered to know the law (Siahaan, 2005).

If the decision of the previous judge is followed by the judge below or the judge afterward, the decision of the previous judge is called “jurisprudence” which can be a source of formal law. Laws created by judges (judge-made law) in the form of verdicts (*vonnis*) are called “*in concreto*” laws, which, in reality, produce new laws which are usually understood to be limited only in the form of binding parties. It is because the legal provisions contained in court decisions are individual and concrete norms; whereas the law created by the legislators and the bodies authorized to form other laws and regulations (regulators) is called the law “*in abstracto*” which is binding in general and abstract. Because, the methods contained in it are “general and abstract norms” (Asshiddiqie, 2006).

3.2 The Constitutional Court and Its Development

The establishment of a constitutional court as a separate institution because of the need for a court that specifically examines the product of the law (as Kelsen calls statute and customary law) which is contrary to the constitution. This idea started with Kelsen, who proposed the establishment of an institution named “*Verfassungsgerichtshof*” or the Constitutional Court. This idea was then accepted unanimously and adopted into the 1920s Constitution which was passed in the Constitutional Convention on 1 October 1920 as the Austrian Federal Constitution (Asshiddiqie, 2006).

According to Kelsen (Kelsen, 1961), the possibility of conflicts arises between higher and lower norms, not only related to statutes and court decisions but also relates to the relationship between the constitution and the law. This is an unconstitutional problem of the law. A statute only applies and can be enforced if it is by the constitution and does not apply if it is contrary to the constitution. A law is only valid if it is made based on the provisions of the constitution. Therefore, a body or court is needed specifically to declare the unconstitutionality of existing law. The constitutional court was originally an institution that was intended only to examine the constitutionality of a law against the constitution. Therefore, the constitutional court is often referred to as the “guardian of the constitution.”

In its development, the basic concept of constitutional court formation in various countries is closely related to the development of the principles and theories of modern constitution adopted by various countries that adhere to the principles of constitutionalism, the principle of the rule of law, the principle of checks and balances, the principles of democracy and the guarantee of the principle of human rights protection free and impartial judiciary and political experience from each country. The existence of a constitutional court is needed to uphold these principles. After being formed for the first time based on the 1920 Vienna Constitution, the constitutional court continued to be adopted by various countries. Now, the constitutional court has existed in 78 countries including Indonesia (Asshiddiqie and Fakhri, 2003).

3.3 Constitutional Court in the Indonesian State Administration System

The constitutional system basically contains two aspects, namely aspects related to the power of state institutions and their relations with each other among the state institutions and the relations between state institutions and citizens. Both aspects can be seen in the constitution of a country (Hoesein, 2009). The constitutional system regulated in the constitution of a country and a democratic political format, as well as a system of separation of state power as well as checks and balances, cannot be separated from the principles and implementation of authority to test or test legislation (judicial review).

In Indonesia, changes to the 1945 Constitution provide a new color in the constitutional system. One of the fundamental changes in the 1945 Constitution is the amendment of Article 1 paragraph (2) stating "Sovereignty is in the hands of the people and carried out according to the Constitution". This provision implies that people's sovereignty is no longer carried out entirely by the People's Consultative Assembly but carried out according to the provisions of the Constitution (Asshiddiqie, 2006). Also, the amendment of the 1945 Constitution has given birth to a state institution that functions as a guardian and interpreter of the constitution, i.e., the Constitutional Court.

In essence, the formation of the Constitutional Court needs to be done because our nation carries out fundamental changes to the 1945 Constitution.

In the context of the First Amendment to the Fourth Amendment of the 1945 Constitution, our nation has adopted new principles in the constitutional system, namely, among other things, the principle of separation of powers and 'checks and balances' as a substitute for the previous parliamentary supremacy system. With these changes, the principle of the rule of law adopted is reinforced (a) by regulating the law enforcement mechanism starting from the enforcement of the constitution as the highest law. As a result of these changes, (b) it is deemed necessary to establish a mechanism to decide which authority disputes that may occur between institutions that have equal status with one another, which its authority is determined in the Constitution, (c) it needs to institutionalize the existence of legal roles and judges who can control the processes and products of political decisions that only base themselves on the principle of 'majority rule'. Therefore, the functions of the judicial review of the constitutionality of the law and the process of legal review of the demands for dismissal of the President and/or Vice President are linked to the function of the Constitutional Court. Also, (d) it is also necessary to have a mechanism to decide on various disputes arising which cannot be resolved through the usual court process, such as disputes over election results and demands for the dissolution of a political party.

3.4 Decision of the Constitutional Court in the Reformation of the Indonesian State System

As we know that one of the Constitutional Court's authorities granted by the 1945 Constitution is to have judicial review of the laws against the 1945 Constitution. It is carried out with the 1945 Constitution benchmarks. It can be carried out materially or formally. The material review involves testing the material of the law so that what is questioned must be clear which parts of the law conflict with what provisions of the Constitution. The review can consist of only one chapter, one article, one sentence or one word in the relevant law. While the formal review is testing the process of forming the draft of law into law whether it has followed the applicable procedure or not.

The Constitutional Court's decision in judicial review of the laws against the 1945 Constitution consists of three types of decision, namely: granted, rejected and unacceptable. Application for judicial review of the law against the 1945 Constitution, in

which its decision is to state that the application cannot be accepted if a) the applicant does not fulfill the legal standing as an applicant; b) the applicant does not clearly state that the establishment of the law does not fulfill the provisions and/or material of the contents of the law deemed to be contradictory to the 1945 Constitution. The petition was granted if the petition was grounded or the law petitioned for review contradicted the 1945 Constitution. To the judicial review which was granted, the Constitutional Court stated expressly the part of the petition that was granted and stated that it was contrary to the 1945 Constitution. Therefore, the provisions above did not have binding legal force. An application can also be granted if the establishment of a law does not fulfill the provisions for the establishment of law based on the 1945 Constitution. Meanwhile, the application is rejected if the application submitted does not contradict the 1945 Constitution both its formation and the material in part or whole.

In the development of the Constitutional Court's decision, there are six types of decision ruling in judicial review of the law against the 1945 Constitution, namely: granted; granted overall; granted for some; rejected; rejected under certain constitutionality conditions, and cannot be accepted. One type of interesting decision is that the verdict is amended "but rejected" however, in its legal considerations, it provides constitutionality conditions or states one of the provisions in the conditionally constitutional. Conditionally constitutional in the Constitutional Court's decision is a decision stating that a statutory provision does not conflict with the constitution by giving requirements to state institutions in the implementation of a statutory provision to pay attention to the interpretation of the Constitutional Court on the constitutionality of the statutory provisions that have been tested. If these conditions are not fulfilled or interpreted otherwise by the state institutions implementing them, the provisions of the laws that have been tested can be submitted for review by the Constitutional Court.

In the legislation, it is stated that the Constitutional Court has the authority to adjudicate at the first and final levels in which its decisions are final. Theoretically, the word "final" means the Constitutional Court's decision to have permanent legal force after it has been pronounced in a court session that is open to the public and no legal effort can be taken against the decision. The meaningful binding nature of the Constitutional Court's decision

does not only apply to the parties but all Indonesian people. Also, the Constitutional Court's decision which is final and binding leads to some legal consequences in its application. The Constitutional Court's decision because the object is related to the common interest and everyone so that the nature of the petition in the Constitutional Court is not faced to face as a dispute in the civil or administrative court. The decisions made by the Constitutional Court include the judicial review, where the law itself is generally binding on all citizens, then by being declared not binding, the law does not only have binding legal force against the party requesting the Court, but also all citizens. Basically, because of the nature of the case being tried in the Constitutional Court, the decisions made by the Constitutional Court are *erga omnes*. The *erga omnes* decisions can also change the existing governance system. Several Constitutional Court decisions have changed the state administration system in Indonesia, such as:

3.4.1 Authority of the House of Representatives Which Only Determines Agreement or Disagreement Related to the Results of Selection of Supreme Court Justice Candidates by the Judicial Commission

Constitutional Court Decision Number 27/PUU-XI/2013 dated January 9, 2014, affirms the position of DPR in determining the candidate for judges in AGUS should be limited to approval or not giving approval to the prospective Chief Justice proposed by the Judicial Commission, and the Chief Justice submitted by the Judicial Commission to the House of Representatives is only one candidate for Chief Justice for every one vacancy with a copy submitted to the President.

3.4.2 The authority of the Regional Representative Council to not Only Propose a Specific Bill but also Discuss the Bill

The Constitutional Court Decision Number 92/PUU-X/2012 dated March 27, 2013, emphasizes and clarifies the authority of the Regional Representative Council in the process of making the Law. Whereas at the time of discussing the bill, input from the Regional Representative Council is an integral part. Also, the Regional Representative Council must be

actively involved in the process of discussing a bill together with DPR and the president.

3.4.3 Role and Position of the State in the Management of Water Resources

Decisions of the Constitutional Court Number 058-059-060-063/PUU-II/2004 and 008/PUU-III/2005 dated July 19, 2005, affirm that Water Utilization Rights and concession permits are licensing systems in which its issuance must be based on water resource management patterns where the arrangement of the pattern has involved the broadest participation of the community.

The performance of water resources management will be supervised directly by the stakeholders. With the licensing system, exploitation of water resources will be controlled by the Government.

Permit applications, both for obtaining water business rights and concession permits, must be rejected if the permit application is not in accordance with the water resources management pattern that has been prepared, because the state in exercising water rights includes activities: (1) formulating policies (*beleid*); (2) carrying out management actions (*bestuursdadd*); (3) making arrangements (*regelendaad*); (4) managing (*beheersdaad*); and (5) supervising (*toezichthoudendaad*).

3.4.4 Regional Head Elections on Election Era and Regional Head Elections on Non-Election Era

Decision of the Constitutional Court Number 072-073/PUU-II/2004 dated 22 March 2005 affirms that the direct election of regional heads and regional vice heads (Pilkada) must be held based on the principles of the Election, namely direct, public, free, confidential, honest and fair and organized by an independent organizer as required by the 1945 Constitution. KPUD as derivatives of KPU as the constitutional organ of the election organizers are independent in order to ensure the quality of the election by the 1945 Constitution. DPRD intervention to KPUD will make the election not qualified. The implementation of the regional elections as described is an election. Therefore, disputes over election results can be the authority of the Constitutional Court based on the expansion of the understanding of the election.

3.4.5 Political Rights of Former Members of Banned Organizations in Elections

The Constitutional Court's Decision Number 11-17/PUU-I/2003 dated February 24, 2014, assess that in the matter of limiting the right to vote in elections, it is usually only based on considerations of inability, such as age and illness, and the impossibility of having to vote. It has a permanent legal force which is generally individual and not collective.

The Court rules that individuals who are former members of the Indonesian Communist Party (PKI) and mass organizations under its auspices should be treated equally with citizens of other countries without discrimination, including to be legislative candidates.

3.4.6 Settlement of Disputes over Regional Head Election Results as Long as There is No Regulating Law

Constitutional Court Decision Number 97/PUU-XI/2013 dated May 19, 2014, is based on the interpretation of the original intent, basically the authority of the state institution which is clearly and clearly described in the 1945 Constitution. It is a limitation, so it is not possible to be granted other authority. Moreover, this other authority is given by low-level regulations which hierarchically are under the constitution. Therefore, from this perspective, the authority of the Constitutional Court is also limited, so that it cannot, but Pilkada is not the authority of the Constitutional Court. However, before a special judiciary is formed which adjudicates disputes over the results of regional head elections, the Constitutional Court is still given the authority to adjudicate disputes over the results of regional head elections.

3.4.7 Simultaneous Election

Constitutional Court Decision Number 14/PUU-XI/2013 dated January 23, 2014 states that the election of the president and vice president must be carried out simultaneously with the election to elect members of representative institutions (DPR, DPRD, DPD) starting in 2019 and so forth. Meanwhile, the requirements to submit a pair of candidates for president and vice president are the authority of the legislators while still paying attention to the provisions of the constitution.

3.4.8 Education Budget Allocation

Constitutional Court Decision Number 11/PUU-III/2005 dated October 19, 2005, assesses that education in Indonesia has been left behind. Therefore, it is the time for education to be the main priority of development in Indonesia by giving priority in the budget sector for funding fulfillment. Education can be done in stages, even though the 1945 Constitution requires that the education budget be prioritized at least 20% of the state budget.

3.4.9 Individual Candidates in the Regional Heads Election

Constitutional Court Decision Number 005/PUU-V/2007 dated July 23, 2007, rules that the nomination of regional heads and regional vice heads, other than through political parties or joint political parties, can also be constitutionally through individuals with conditions that are determined proportionally to the nomination submitted by political parties or a combination of political parties.

3.4.10 The Right of Recall of Political Parties to the Members of the House of Representatives

The Constitutional Court's Decision Number 008/PUU-IV/2006 dated September 28, 2006, confirms that the recall of Members of the House of Representatives conducted by the political party carrying it does not violate the constitution.

3.4.11 Voters Who Are Not Registered in the DPT Can Use Voting Rights

Constitutional Court Decision Number 102/PUU-VII/2009 states that voters who are not listed in the Final Voter List (DPT), can still use their voting rights by using the KRP or passport according to the address listed in the identity, by registering at KPPS local one hour before the voting at TPS.

3.4.12 Cancellation of Regional Regulations Becomes the Authority of the Supreme Court

Constitutional Court Decision Number 137/PUU-XIII/2015 dated April 5, 2017, affirms the governor's decision position is not part of the legislative regime. It cannot be made as a legal product to cancel Regency/City Regional Regulation. As a result, the cancellation of

Regency/City Regional Regulation becomes the authority of the Supreme Court.

3.4.13 Women Can Nominate Themselves as Governors or Vice Governors of Yogyakarta Special Region

Constitutional Court Decision Number 88/PUU-XIV/2016 dated August 31, 2017, abolishes the phrase "which includes, among other things, the history of education, employment, siblings, wife and children", in Article 18 paragraph (1) letter m of the DIY Privileges Act. As a result, women/wives may also run for Governor or Vice Governor of DIY.

3.4.14 Religion Column on KTP for Believers

The Constitutional Court Decision Number 97/PUU-XVI/2018 dated November 7, 2017, affirms that religion or indigenous faith can be included in the religious column in the Identity Card (KTP) and Family Card (KK).

3.4.15 Members of the Regional Representative Council Cannot be Filled by Political Party Administrator

The Constitutional Court Decision Number 30/PUU-XIV/2018 dated July 23, 2018, confirms the prohibition on the nomination of Members of the Regional Representative Council from political party administrators. Therefore, DPD cannot be filled by political party administrators. "Administrators of political parties" in this decision, are administrators starting from the central level to the lowest level by the organizational structure of the political parties. It is considered that, first, DPD is a form of regional representation; second, to prevent political distortion of the double representation of political parties in making decisions, especially important political decisions such as the amendment to the 1945 Constitution; third, even though the authority of the DPD is limited, all of them are oriented to regional interests that must be fought nationally based on the postulate of balance between national and regional interests. Fourth, DPD members are elected through elections based on individual nominations, rather than from the political parties; fifth, the existence of the DPD cannot be separated from the existence of Regional Representatives as one of the elements of the MPR consisting of political representation and regional representation; and sixth, DPR and DPD have many fundamental differences as a representative body.

4 CONCLUSIONS

The definition of law in the Constitutional Court's decisions amendment or dictum and the ratio decidendi of a decision. It will be clearer when the Constitutional Court decision is analyzed based on the decision structure. In the Constitutional Court's decision which grants an application to examine the constitutionality of the law, in addition to the amendment or dictum which states that the unconstitutionality of the norm is reviewed and that it is not legally binding, there are also legal considerations. In these legal considerations, there are legal considerations as '*obiter dicta*' and legal considerations as '*ratio decidendi*'. Legal considerations as the '*ratio decidendi*' are substantially constitutional interpretations which are actually law. Therefore, in the perspective of the hierarchy of norms, the law can be said to be in a position under the constitution and above the law. By such a position of legal norms, none of the state institutions, whether within the ranks of government, representative institutions, or the judiciary, can ignore it, but legally it must carry out it in good faith. Such neglect of the law can be said to be 'disobedient' to the constitution or to the law itself.

In the perspective of the judicial process, the Constitutional Court's decision does not only qualify that a norm is in constitutional or unconstitutional law, which is based on this decision. It must be understood that such matter is as a stage that is at the end of the series of proceedings to adjudicate in the petition for the constitutionality of the law. Because it is just one stage of a series of judicial processes, other stages precede it which are not less important, i.e., the stage of the constitution. At this situation, the judge through the verification process reviews the reasons which become the basis for the request to examine the constitutionality of the law norms. Subsequently, the judge employs the sharpness of the reading of the constitution which does not only have constitutional legal norms but also philosophies and moral teachings, etc. in the life of the nation and state. By carrying out the process of constellation and qualification, the judge digs and extracts it from the constitution and then presents it in a decision to become a legal consideration as a '*ratio decidendi*' an amendment or decision.

The Constitutional Court's decision which grants the constitutionality of the law is declarative and constitutive. Based on the nature of such decisions, there is no institution called execution which is the implementation of court decisions that are carried

out by force through state instruments. The Constitutional Court's decision must be carried out by legal subjects who become *adressat*. When the decision is not implemented, so that there is a party who is harmed, the aggrieved party can take the available legal remedies. What is clear to the Constitutional Court as a legislator, even though it is negative, as well as DPR together with the President as a legislator, is no longer related to the implementation.

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