

CONSTITUTIONAL CRISIS: INTENSIFYING DISOBEDIENCE TO THE DECISIONS OF THE INDONESIAN CONSTITUTIONAL COURT

CRISIS CONSTITUCIONAL: INTENSIFICACIÓN DE LA DESOBEDIENCIA A LAS DECISIONES DEL TRIBUNAL CONSTITUCIONAL DE INDONESIA

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ABSTRACT: A constitutional crisis is a scenario in which the norms stated in the constitution are present in the text but absent in context (constitution with semantic value), indicating an amputation of the impartiality of the Constitutional Court and disobedience to its decisions. Functionally, the Constitutional Court has the highest authority in maintaining the dignity of the constitution and guarding its values, to which all elements of the nation are accountable. In Indonesia, the constitutional crisis can be understood from three important events. First, the House of Representatives signed a waiver for Article 22 of the 1945 Constitution, approving a Government Regulation in Lieu of the Job Creation Law stipulated by the President. Second, the Court's impartiality principle was violated via dismissal of the Constitutional Judge, Aswanto. Third, the legislative and executive as well as the judiciary, in this case, the Supreme Court, disobeyed the Constitutional Court's decisions. These three events intensify the constitutional crisis.

Keywords: Constitution, Constitutional Crisis, Constitutional Court, Constitutional Disobedience.

RESUMEN: Una crisis constitucional es un escenario en el que las normas establecidas en la constitución están presentes en el texto, pero ausentes en el contexto (constitución con valor semántico), lo que indica una amputación de la imparcialidad de la Corte Constitucional y una desobediencia a sus decisiones. Funcionalmente, la Corte Constitucional tiene la máxima autoridad en el mantenimiento de la dignidad de la constitución y la custodia de sus valores, ante los cuales todos los elementos de la nación son responsables. En Indonesia, la

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crisis constitucional puede entenderse a partir de tres eventos importantes. En primer lugar, la Cámara de Representantes firmó una renuncia al artículo 22 de la Constitución de 1945, aprobando un Reglamento Gubernativo en lugar de la Ley de Creación de Empleo estipulado por el Presidente. En segundo lugar, se violó el principio de imparcialidad del Tribunal mediante la destitución del juez constitucional de Aswanto. En tercer lugar, tanto el poder legislativo y ejecutivo como el judicial, en este caso, la Corte Suprema, desobedecieron las decisiones de la Corte Constitucional. Estos tres hechos agudizan la crisis constitucional

Palabras clave: Constitución, Crisis Constitucional, Corte Constitucional, Desobediencia Constitucional

I. INTRODUCTION

The constitution is the result of political, social, and cultural processes; it is also an autobiography of the state, reflecting the diversity of its society and factors to be manifested in the future⁵. Therefore, the constitution is regarded as the highest norm in the country. As the basic law (*grondwet*)⁶, the constitution guides the administration of national life. In the context of Indonesia, the 1945 Constitution is considered as the state law.

The Indonesian Reformation Era was marked by amendments to the 1945 Constitution implemented in 1999–2002⁷. Thus, most of the content in the Indonesian Constitution was changed⁸, several state institutions were abolished as they were considered irrelevant in the administration, and a few state institutions were established based on necessity. One of the new institutions was the Constitutional Court, making Indonesia the 78th country⁹ to establish an administrator of judicial power other than the Supreme Court¹⁰. The Indonesian Constitutional Court has four powers and one obligation:

1. Review the laws against the constitution;
2. Resolve disputes over the authority of state institutions of which powers are granted by the constitution;
3. Decide on the dissolution of political parties;
4. Resolve disputes over general election results¹¹;
5. Decide on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.¹²

⁵ MANAN and HARJANTI (2015) p. ix.

⁶ ASSHIDDIQIE (2010) p. 72.

⁷ INDRAYANA (2008) p. 72

⁸ NGGILU (2014) p. 102.

⁹ ASSHIDDIQIE (2005a) p. 193.

¹⁰ BASUKI and JAELANI (2018) p. 2.

¹¹ Article 24B Paragraph (1) of the 1945 Constitution, Indonesia.

¹² Article 24B Paragraph (2) of the 1945 Constitution, Indonesia.

As the *guardian* of the constitution, the Constitutional Court is tasked with maintaining the dignity of the law¹³ while ensuring that the constitutional values are carried out responsibly by all elements of the nation¹⁴. The decision of the Constitutional Court is final and binding; no other legal remedy can be approached for amendments¹⁵. However, despite this nature, there have been several cases of disobedience to the decisions of the Constitutional Court not only by the legislative and executive bodies but also by the judiciary, that is, the Supreme Court¹⁶.

Disobedience to the final and binding decisions of the Constitutional Court reflects disloyalty to the constitution¹⁷. The Constitutional Court is functionally the guardian of the constitution¹⁸, and being straddled by state institutions is tantamount to disobedience to the constitution. If such disobedience persists, a much worse situation may emerge, such as a constitutional crisis.

Constitutional crisis is a scenario in which three events may occur: first, the constitution is only used as a state document with semantic value, its norms stated only in text but absent in context. Second, the Constitutional Court decision that is a form of guarantee for safeguarding the dignity of the constitution is ignored and violated by the legislative, executive, and judicial bodies. Third, political intervention dilutes the independence and impartiality of the Constitutional Court.

This study discusses events that reflect a constitutional crisis, especially the criteria for disobedience to a Constitutional Court decision. The required solution to prevent disobedience to the constitution is also outlined.

II. RESEARCH METHOD

The research approaches used in this study are as follows¹⁹: 1) the Constitutional Design Analysis, which includes the formulation of the Indonesian Constitution relating to the design of authority of the Constitutional Court and the nature of its decisions; 2) conceptual approach, which is reflected in the use of the concept of constitutional justice and of a constitutional crisis, developed through this paper; and 3) case study methodology, which is intended to help describe various events that make up a constitutional crisis, especially incidents of disobedience to Constitutional Court decisions. Primary legal materials with authoritative value, such as the Indonesian Constitution, Constitutional Court Laws, and Constitutional Court Verdicts, were used. Secondary sources included books and primarily journal articles that discuss issues of the Constitutional Court, deterioration of democracy, and the destruction of the constitution. The legal materials obtained were then analyzed and are presented below.

¹³ ASSHIDDIQIE (2005b) pp. 33-35.

¹⁴ NGGILU (2019) pp. 44-45.

¹⁵ LUMBUUN (2009) p. 68.

¹⁶ NGGILU (2019) p. 44

¹⁷ NGGILU (2019) p. 51. See also SAIFULLAH (2022) p. 163.

¹⁸ HANDAYANI and others (2019) p. 37.

¹⁹ MARZUKI (2011) p. 93.

III. CONSTITUTIONAL CRISIS IN DEMOCRATIC COUNTRIES

Jurists use several terms to describe the constitutional crises that occur in various countries. Aziz Huq and Tom Ginsburg used the term “constitutional retrogression”²⁰, while David Landau proposed “Abusive constitutionalism”²¹. Daly²² and Machado²³ used the term “constitutional damage”. Syah²⁴ used the term “constitutional crisis” to describe Sri Lanka when President Sirisena dissolved the Parliament and announced parliamentary elections in January 2019. The President’s action was considered a form of executive defiance of the constitution.

“Constitutional retrogression” requires three indicators, namely, a democratic electoral system, the right to speak, and legal integrity. Abusive constitutionalism focuses on democratic destruction through constitutional amendments, as happened in Venezuela and Colombia. By comparison, the “constitutional crisis” uses the constitution and the Constitutional Court as its main measure with three indicators. First, norms in the constitution are used only as accessories and only if they benefit the interests of the regime; otherwise, they lose their use. Second, the Constitutional Court that is designed as an institution to uphold the values of constitutionalism is disobeyed in its rulings not only by the government, in this case the President and legislative bodies, but also by fellow institutions holding judicial power such as the Supreme Court and the judiciary. The defiance of the President and legislative institutions is most evident from the lack of execution of the many decisions of the Constitutional Court that ordered changes or cancellations. In addition, with the absolute authority of the President in issuing Government Regulations in Lieu of Law, regulations that asymmetrically contradict the decisions of the Constitutional Court are implemented. As for the judiciary, Constitutional Court decisions are disobeyed in cases that are later tried and decided by the Supreme Court or other judicial bodies. Even when the Constitutional Court decision is part of the consideration, separate interpretations supplied by judges clearly deviate from the aforementioned decision. Finally, the amputation of independence and impartiality can further intensify the attack on the Constitutional Court.

Awareness of the importance of the principle of impartiality and independence of the institution of the Constitutional Court is the responsibility of the judiciary. Under executive or legislative powers, one way to weaken or subordinate the Constitutional Court is through budget allocations and changing provisions, including the extreme act of amputating the term of office of its judges with constitutional authority (i.e., authority to elect constitutional judges, which is given to the House of Representatives or the President) and use arguments that appear constitutional. Constitutional Court become of the main focuses because in other countries that experiencing constitutional crises, the most targeted

²⁰ HUQ and GINSBURG (2018) pp. 80-168.

²¹ LANDAU (2013) pp. 189-259.

²² DALY (2019) pp. 9-36.

²³ MACHADO (2013) p. 237.

²⁴ SYAH (2020) pp. 133-156.

institution is the Constitutional Court. This is because in countries that are experiencing a transition from authoritarianism to democracy, the Constitutional Court is the main actor functioning to maintain democracy by protecting its own independence and that of other state institutions and upholding human rights²⁵.

IV. INTENSIFYING DISOBEDIENCE TO CONSTITUTIONAL COURT RULINGS: REFLECTIONS ON THE INDONESIAN CONSTITUTIONAL CRISIS

As the constitution is considered the supreme law of the land, ensuring its proper implementation is the critical work of the Constitutional Court. The Indonesian Constitutional Court does not only ensure adherence to laws²⁶ made by the legislative body but also performs other functions as the guardian of democracy, protector of human rights, and protector of citizens' constitutional rights²⁷. Despite its central and strategic position, the Constitutional Court decision is widely straddled and disregarded, especially by the institutions that are supposed to follow its rulings. This form of disobedience has resulted in delayed constitutional justice.

Disobedience to Constitutional Court decisions is reflected in the failure to follow its decisions in review of the constitutionality of laws by the House of Representatives²⁸. In 2013–2018, 24 Constitutional Court decisions were not followed by legislators²⁹, namely, the House of Representatives³⁰ and other arms of the government³¹. This situation indicates that the House of Representatives or Dewan Perwakilan Rakyat (DPR) actually carried out legislative omissions³², a behavior in which legislators do not perform their obligations in amending laws that have been cancelled either in part or in whole by the Constitutional Court. These conditions showed the negative behavior of the legislature, which is believed to produce conflicting regulations and ideological flaws³³. As such, 1,491 requests for reviewing the constitutionality of laws were submitted to the Constitutional Court in the period of 2003–2022, of which 281 case rulings were granted petitions³⁴.

The defiance of the Constitutional Court's decision by the House of Representatives worsens with the amputation of the independence of a constitutional judge, such as in the case of the replacement of Constitutional Judge Aswanto. His term was not extended be-

²⁵ Satrio (2018) pp. 271–300.

²⁶ PUBLIC RELATION OF CONSTITUTIONAL COURT (2021).

²⁷ Putri and Ali (2019) p. 886.

²⁸ Dewi and others (2016) p. 239.

²⁹ Sulistyowati and others (2019) p. 75.

³⁰ The House of Representatives of the Republic of Indonesia holds the power to form laws, as stated in Article 20 Paragraph (1) of the 1945 Constitution, Indonesia.

³¹ The President has the authority to submit draft laws to the House of Representatives of the Republic of Indonesia, as stated in Article 5 Paragraph (1) of the 1945 Constitution, Indonesia.

³² Grzybowski (2009) p. 1.

³³ Anggono (2016) p. 4.

³⁴ Tohadi Tohadi (2022) p. 21.

cause he was considered to have performed poorly by the House of Representatives³⁵. Such performance assessment is based on the number of laws formed by the House of Representatives but annulled by the Constitutional Court, which is what happened in the case of Judge Aswanto³⁶.

Aswanto's appointment was indeed proposed by the representatives of the people as mandated by the constitution and stipulated in Article 24C Paragraph (3)³⁷, which confirms that the Constitutional Court has nine judges appointed by the President. Of the nine, three each are nominated by the Supreme Court, the House of Representatives, and the President. However, Aswanto or other judges are not subject to the interests of these institutions but rather to the values of constitutionalism. Indeed, the arrangement for the appointment of constitutional judges is regulated in the Indonesian Constitution, but a constitutional order explains the regulation of their appointment and detention.

The dismissal of Judge Aswanto is not in accordance with the criteria of dismissing constitutional judges, namely, age of 70 years, resigning, being sentenced to imprisonment based on an intractable decision, and committing an ethical violation³⁸. The dismissal is not only a concrete form of the House of Representatives ignoring the Constitutional Court Law, but also an orchestration of the use of political power in undermining the principle of impartiality of the judiciary, especially the Constitutional Court.

The culmination of the rivalry between the House of Representatives and the Constitutional Court that led to the dismissal of Judge Aswanto is closely related to the Constitutional Court Decision Number 91/PUU-XVIII/2020, which in essence states that Law Number 11 of 2020 on Job Creation is declared conditionally unconstitutional³⁹. The process of forming this law does not maximize public participation. The public participation is an important aspect in this era of constitutional democracy⁴⁰ because it will make 'the law is in accordance with the interests of the community as the holder of the highest sovereignty and the legitimacy of the community toward the law will be stronger⁴¹. In its ruling, the Constitutional Court ordered the DPR to improve the law within 2 years by optimizing meaningful participation.

Commission 3 Chairman Bambang Wuryanto presented the argument that Aswanto was replaced due to being unable to safeguard the interests of the people's representatives⁴². This case shows the superficial institutional understanding of the Commission 3 Chairman and DPR because the constitutional design of the Constitutional Court attaches independence in deciding every case that the judges decide despite being elected by the DPR,

³⁵ Komisi III, The House of Representatives of Indonesia (2022).

³⁶ HARDIANTORO (2022).

³⁷ The regulation for the selection of constitutional judges in the Constitution of the Republic of Indonesia is indeed limited because the Basic Law delegates further arrangements on the mechanism for appointing and dismissing constitutional judges as regulated in the Constitutional Court Law.

³⁸ Article 23 of Law No. 7, 2022.

³⁹ Constitutional Court Decision (2021): p. 416.

⁴⁰ ELKINS, GINSBURG and BLOUNT (2008) pp. 361-382.

⁴¹ CROMBRUGGE (2017) pp. 13-36.

⁴² KOMPAS (2023).

President, and the Supreme Court. The Constitutional Court performs the function of ensuring that legislation passed by the DPR and the President in the form of laws does not violate the constitution.⁴³

The amputation of the independence and impartiality of the Constitutional Court through the dismissal of Constitutional Justice Anwar Usman reflects a constitutional crisis. This scenario is also a marker of the “democratization dilemma” raised by Blokker,⁴⁴ which states that the actions of rulers make use of constitutionalist discourse but subtly distort the principles and values of modern constitutionalism. The dismissal of Justice Aswanto is constitutionally postulated as a normal replacement and in accordance with the constitutional authority of the House of Representatives but is actually a form of amputation of the principle of impartiality and independence of the judiciary that is the hallmark of modern constitutionalism.⁴⁵ Aswanto’s dismissal reveals that the Constitutional Court is similar to a company under the House of Representatives where constitutional judges are directors that can be replaced at any time by “shareholders”. In this direction, Aswanto’s successor, Guntur Hamzah, was elected by the House of Representatives without undergoing a fit and proper test as stipulated in the constitutional law.⁴⁶

Nowadays, the House of Representatives has increasingly and publicly demonstrated its intervention and intimidation to the Constitutional Court such as in a press conference conducted by its Eight Factions, among others: Gerindra, Golkar, Nasional Demokrat (Nasdem), Partai Keadilan Sejahtera, Partai Persatuan Pembangunan, Partai Kebangkitan Bangsa, Partai Amanat Nasional, and dan Partai Demokrat. Gerindra party faction representative Habiburokhman expressly stated that if the Constitutional Court is to decide the application for judicial review of the Election Law related to the electoral system from an open to a closed proportional system, then the House of Representatives is prepared to use its authority to revise the Constitutional Court Law, amputate its ruling,⁴⁷ and cut down its budget allocation⁴⁸. Although the Constitutional Court ultimately rejected the application for judicial review of the electoral system⁴⁹, the House of Representatives has already shown plans to use its authority with unconstitutional purposes, namely, to undermine the impartiality and independence of the Constitutional Court as guaranteed by the 1945 Constitution of the Republic of Indonesia.

In addition to the above disobedience by the House of Representatives, a real form of defiance is performed by the government. The Constitutional Court declared Article 1 number 23, Article 4 Paragraph (2), Article 44, Article 45, Article 45, Article 48 Paragraph (1), Article 59 letter a, Article 61, and Article 63 of Law Number 22 of 2001 concerning Oil and Gas and the phrase “implementing agency” (BP Migas) as unconstitutional⁵⁰. In

⁴³ BUTT (2012) pp. 175-195.

⁴⁴ BLOKKER (2018) pp. 437-470.

⁴⁵ ROZNAI (2014) p. 62.

⁴⁶ HIDAYAT (2022).

⁴⁷ DETIKNEWS (2023).

⁴⁸ REPUBLIKA (2023).

⁴⁹ CONSTITUTIONAL COURT DECISION (2022)

⁵⁰ CONSTITUTIONAL COURT DECISION (2012)

practice, the government did not implement the decision to abolish the implementing body but instead outmaneuvered it by changing the name of the institution from Oil and Gas Implementing Agency (BP Migas) to Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas). However, its duties and functions are the same as the BP Migas institution that was declared unconstitutional by the Constitutional Court⁵¹.

Disobedience to the decisions of the Constitutional Court by the President as the head of state and the government is also reflected in the issuance of Government Regulations in Lieu of Laws⁵². This regulation was issued after a Constitutional Court decision stated that the Job Creation Law formed by the People’s Legislative Assembly and the Government was unconstitutional owing to the lack of meaningful participation⁵³. A major feature in a constitutional democracy⁵⁴ is public participation in the formation of legal policy,⁵⁵ including the formation of a law. Under the pretext of compelling urgency, President Joko Widodo issued the regulation formed on the basis of the full subjectivity of his office. The incident reflects an attitude of dictatorship⁵⁶; instead of complying with the Constitutional Court decision while encouraging access to public participation in improving the Job Creation Law, the President established a Government Regulation in Lieu of Law, which in fact did not open any space for public participation due to its subjective basis. Zainal Arifin Mochtar strongly criticized the President, who seemed to take refuge in the proposition of “compelling urgency” to issue the regulation. According to Zainal⁵⁷, the issuance does not meet the formal requirement of a compelling emergency; the President’s actions reflect a forced emergency.

The abovementioned action of the President ignores the provisions of Article 24C that states that Constitutional Court decisions are final and binding, which means that they should be obeyed by all elements of the nation, including the government. Rather, the President’s action is a constitutional instrumentalization⁵⁸ in which he used his constitutional authority stipulated in Article 22 of the Constitution of the Republic of Indonesia Year 1945. However, the issuance of the regulation also ignores the final and binding decision of the Constitutional Court, which is expressly stated in Article 24C of the Basic Law.

This constitutional instrumentalization carried out by the President is not the first instance of disobedience. President Joko Widodo also established Government Regulation in Lieu of Law (Perpu) Number 2 of 2017, which enabled the government to dissolve organizations without the need for judicial mechanisms⁵⁹. This act clearly ignores an important principle and feature in the teachings of modern constitutionalism, namely, the right of citizens to express and organize themselves as guaranteed by the Indonesian Constitu-

⁵¹ Presidential Regulation No, 9, 2012

⁵² Government Regulation In Lieu of Law No. 2, 2022.

⁵³ CONSTITUTIONAL COURT DECISION (2012) p. 416.

⁵⁴ ELKINS and others (2008) pp. 361-382.

⁵⁵ CROMBRUGGE, (2017) pp. 209-218.

⁵⁶ ROSSITER (2009) p. 3.

⁵⁷ MOCHTAR (2023).

⁵⁸ SATRIO (2018) pp. 271-300.

⁵⁹ SATRIO (2019) pp. 175-195.

tion. This action is a form of constitutional instrumentalization,⁶⁰ which is formally constitutional but substantively counter-constitutional.

In this case, President Joko Widodo targeted the Indonesian Hizbu Tahrir Organization as a hardline Islamist group that successfully mobilized the masses to overthrow his ally, Basuki Tjahaya Purnama, the governor of Jakarta. The President's critics were silenced by legal instruments such as the information and technology law, the Criminal Code, which targets activists who use the hashtag "ChangePresident"⁶¹ as a movement against the Joko Widodo government. In addition, threats, and intimidation in the campus environment, specifically of a Professor of Constitutional Law at the Islamic University of Indonesia, in a discussion planned at Gadjah Mada University raised the issue of Presidential Impeachment⁶². This condition is observed by Ozan Varol, who states that the authoritarian leadership strategy in modern times is to undermine democracy by constitutional means⁶³, which seems to be occurring in Indonesia.

Further, disobedience to Constitutional Court decisions can occur in the context of implementing its provisions in disputes over the results of general elections⁶⁴. In its decision, the Constitutional Court annulled the success of the candidate pair determined by the West Waringin City General Election Commission⁶⁵, which strangely rejected this decision⁶⁶ based on a vote of its members⁶⁷. In addition to this dissent by a regional election commission, the Central Election Commission recently disregarded a Constitutional Court ruling. The commission is constitutionally authorized to hold general elections and issued the General Election Commission Regulation (PKPU) Number 10 of 2023 concerning the Nomination of Members of the People's Representative Council, Provincial and Regency/City People's Representative Councils, and the General Election Commission Regulation (PKPU) Number 11 of 2023 concerning the Nomination of Individuals Participating in the General Election for Members of the Regional Representative Council. These regulations provide space for former prisoners to run for legislature without having to wait for a period of 5 years after serving a sentence of confinement/imprisonment as stipulated by the Constitutional Court in Decision Number 87/PUU-XX/2022 and Decision Number 12/PUU-XXI/2023. The action of the General Elections Commission was called by Former Commissioner of the Corruption Eradication Commission, Bambang Wijayanto, a counter-constitutional action that presents a new norm in PKPU to contradict the Constitutional Court decision⁶⁸.

Defiance of the constitution is also committed by judicial institutions. Constitutionally, judicial power in Indonesia is distributed between two institutions. First, the Supre-

⁶⁰ Satrio (2018) pp. 271-300.

⁶¹ Warburton and Aspinall (2019).

⁶² Satrio (2020).

⁶³ Varol (2015) pp. 1673-1742.

⁶⁴ Nggilu (2019) p. 42.

⁶⁵ Constitutional Court Decision (2010).

⁶⁶ Minutes of General Election Commission of West Waringin City No. 397/BA/VI/2010, 2010.

⁶⁷ Soerose (2013) p. 230.

⁶⁸ PerluDEM (2023).

me Court is authorized to function as a cassation court, test regulations under and against the law⁶⁹, and execute other powers granted by law. In carrying out the duties of the Supreme Court, judicial bodies within its scope include the general judicial, religious court, military court, and state administrative court environments (state administrative court)⁷⁰. The second holder of judicial power based on constitutional design is the Constitutional Court. As an institution of judicial power with final and binding decisions in every exercise of its authority, the decisions of this court must be obeyed by all judicial institutions, namely, the Supreme Court and its subject judicial bodies, who in practice show non-compliance.

The following are certain cases in which Constitutional Court decisions were defied by the Supreme Court:

1. The decision of the Constitutional Court states that judicial review by the Supreme Court is postponed if the law used as its basis is still under review by the Constitutional Court until a decision is reached⁷¹. However, the Supreme Court issued a Circular Letter to all its courts stating that it has the authority to exercise judicial review rights that are still being tested although the law used as their basis is under review by the Constitutional Court⁷².
2. The decision of the Constitutional Court recognizes Peradi, the only advocate organization referred to in the Advocate Law. Thus, the authority given to prospective advocates to conduct educational activities is implemented only through this organization and oath-taking is performed under the High Court throughout Indonesia. However, the Chief Justice of the Supreme Court issued a letter⁷³ addressed to the Chief Justice of the High Courts of Indonesia stating that advocates who are affiliated with organizations other than Peradi are also eligible for oath-taking. This directive disregards the Constitutional Court decision.
3. The decision of the Constitutional Court states that political party officials are not allowed to contest for the Regional Representatives Council⁷⁴, which the General Election Commission has followed and regulated in the form of General Election Commission Regulations⁷⁵. However, this regulation of the Chairman of the General Election Commission was annulled by the Supreme Court⁷⁶, making the rivalry between the two courts evident.

In addition to the incident of intensifying disobedience to the Indonesian Constitutional Court decisions and the amputation of the court's impartiality in the form of the dismissal of Constitutional Judge Aswanto, another important event that intensifies the

⁶⁹ Article 24A Paragraph (2) of the 1945 Constitution, Indonesia.

⁷⁰ SUBIYANTO (2012). pp. 661-680.

⁷¹ Constitutional Court Decision (2004) and Constitutional Court Decision (2018a)

⁷² SULISTYOWATI and others (2021) p. 128

⁷³ Letter of the Chief Justice of the Supreme Court No. 73/KMA/HK.01/IX/2015, 2015.

⁷⁴ CONSTITUTIONAL COURT DECISION (2018b).

⁷⁵ Regulation of General Election Commission No. 26, 2018.

⁷⁶ Dr. Oesman Sapta vs. Chairman of the General Election Commission (2018).

constitutional crisis is the neglect of constitutional norms by the House of Representatives in the exercise of its legislative powers.

Article 22 Paragraph (1) of the 1945 Constitution states that the President, in a state of emergency, can issue a Government Regulation in Lieu of Law. The President's power to form regulations shows absolute authority⁷⁷, given that at other times, the power to form a regulation, especially a law, must be discussed and mutually agreed upon by the DPR and the President⁷⁸. In the context of a Government Regulation in Lieu of a Law, such regulation can be formed directly by the President. However, control over the issuance of Government Regulations in Lieu of Laws by the President is carried out by the House of Representatives in the form of giving approval in the session after the regulations are formed⁷⁹.

The implementation of a plenary meeting regarding the third session in 2023⁸⁰, which should be the highest forum for decision making, includes the approval of the Government Regulation in Lieu of the Job Creation Law⁸¹ formed by the President, which was in fact not approved by the House of Representatives⁸². This condition denotes the neglect of the provisions of Article 22 Paragraph (2) that basically states that approval of a Government Regulation in Lieu of Law must be carried out at the subsequent session (Plenary Meeting of the Period of the DPR Session). This indicates that the Government Regulation in Lieu of Law has lost its validity and thus must be revoked by the President.

V. FORCED POWER FORMULA TO SUPPRESS DISOBEDIENCE TO CONSTITUTIONAL COURT DECISIONS

One of the main differences between the judicial power held by the Supreme Court and that held by the Constitutional Court is that the former has a unit within its institutional scope that has the function of executing the decisions of the Supreme Court and its judicial bodies in the general court, state administrative court, religious court, and military justice. Meanwhile, the Constitutional Court does not have a special unit that institutionally functions to implement its decisions.

The intensifying disobedience to rulings of the Constitutional Court results in the unhealthy administration of a constitutional democratic state and creates uncertainty about the values of constitutional justice embedded in Constitutional Court decisions. Therefore, a formula is required to suppress forms of such disobedience.

Efforts to suppress disobedience through the moral consensus of state institutions⁸³ cannot be used as the only formula for increasing adherence to decisions of the Constitutional Court. Additional measures are required as a coercive power for state institutions to

⁷⁷ PRAYITNO (2020) p. 463.

⁷⁸ PERMAQI (2017) p. 408.

⁷⁹ See more in Article 22 Paragraph (2) of the 1945 Constitution, Indonesia, and the Explanation of Article 52 Paragraph (1) of LAW No. 12, 2011.

⁸⁰ The House of Representatives of Indonesia (2023).

⁸¹ Government Regulation In Lieu of Law No. 2, 2020.

⁸² PEOPLE'S CONSULTATIVE ASSEMBLY (2023).

⁸³ SOEROSO (2013) p. 248.

ensure their adherence to the decisions of the Constitutional Court. Certain measures are suggested below:

1. The inclusion of a follow-up period by the adresat in the Constitutional Court decision⁸⁴ is very important, especially for non-self-executing decisions. Thus far, in several cases decided by the Constitutional Court, the absence of this grace period allows the adresat to not follow case decisions reviewing the constitutionality of the law (e.g., the House of Representatives).
2. Establishment of a body or unit directly under the Constitutional Court to monitor the implementation of decisions. This unit or body must also be attached with the authority to remind the decision adresat, especially the House of Representatives, President, and the other institutional entities that do not obey the decisions of the Constitutional Court. Vice versa, through this mechanism, the President, House of Representatives, or other institutional entities can provide clarification regarding the non-follow-up of the Constitutional Court decisions, which are supposedly final and binding⁸⁵.
3. The imposition of administrative sanctions in the form of forced money or dwangsom, a terminology from the Netherlands that is familiar in Indonesia as a former Dutch colony. Forced money or dwangsom is a common practice in the Indonesian State Administrative Court as stipulated in Article 116 of Law Number 51 of 2009. If the adresat does not enforce the court decision, the court may assign forced money to a determined party. Dwangsom is also interpreted by Rocky Marbun⁸⁶ as a forced claim or additional punishment for the defendant in the context of the State Administrative Court. The imposition of forced money or dwangsom can also be considered to force the adresat of the Constitutional Court decision to obey. In the case of disobedience to the decision, then the party is charged with forced money (dwangsom) to be deposited with the state. The imposition of forced money or dwangsom does not necessarily eliminate the obligation of parties to follow the Constitutional Court decision⁸⁷.
4. Acts of disobedience to Constitutional Court decisions can be qualified as unprofessional conduct, which is considered and assessed as improper behavior⁸⁸. In the Indonesian context, every profession and position in the legislative, executive, and judiciary are bound by a code of ethics, one of which is attachment to provisions of laws and regulations. Therefore, non-compliance with laws and regulations is behavior as a form of unprofessional conduct. Disobedience to the decision of the Constitutional Court means the same as non-compliance with the constitution and laws, and thus can be qualified as unprofessional conduct to be processed through an ethics trial and be subject to ethical sanctions. For example, disobedience to the de-

⁸⁴ HANDAYANI and others (2019) p. 42.

⁸⁵ LUMBUN (2009). pp. 192-223.

⁸⁶ SUYANTO (2022) pp. 34-47.

⁸⁷ SUYANTO (2022) pp. 34-47.

⁸⁸ MARCUM (2010) p. 1.

cision of the Constitutional Court carried out by judges within the Supreme Court or even the Chief Justice himself can be tried by the Supreme Court Oversight Board and the Judicial Commission. Meanwhile, disobedience by the General Elections Commission can be considered an ethical violation and be examined and tried by the Honorary Board of Election Organizers. Meanwhile, if a violation of ethics in terms of disobedience is committed by the House of Representatives, then the Honorary Court can conduct the examination and trial. If the President disobeys the Constitutional Court ruling, then the People's Consultative Assembly can be asked to hold trial.

5. Expansion of the meaning of contempt of court. Contempt of court itself is defined as an act that deliberately defies or violates authority or thwarts judicial duties and is carried out by a person by being a party to the case at trial or deliberately disobeying a valid court order⁸⁹. The Indonesian Criminal Code includes a contempt of court arrangement in Chapter VI, Book II, Articles 325–335 with the term 'criminal act against the administration of justice'. The latest law on the Criminal Code, Law Number 1 of 2023, is also reflected in the concept of contempt of court as stipulated in Article 293. This provision individually criminalizes all those who damage buildings and court equipment, including those that result in law enforcement who temporarily carry out their duties or if witnesses who give testimony at the time of trial are injured or even die. The expansion of the meaning of contempt of court is not only interpreted as making noise in the trial but disobedience to court decisions, including those of the Constitutional Court, given that acts of defiance are the worst form of damage to the prestige and dignity of the judiciary. With this expansion of the meaning of contempt of court, anyone who disobeys the Constitutional Court decision can garner criminal consequences⁹⁰. Although the aspect of defiance to court decisions, especially the Constitutional Court, is directed at the coalification of contempt of court, this measure needs to be used as a last resort. When various other formulas have been applied and failed, and cause repeated acts of defiance, then the imposition of contempt of court can be the last measure to be taken.

VI. CONCLUSIONS

The House of Representatives neglected the provisions for the formation of regulations, particularly Article 22 Paragraph (2) of the 1945 Constitution, with the amputation of the principle of impartiality of the Constitutional Court in the form of the dismissal of Constitutional Judge Aswanto. The increasing defiance of Constitutional Court decisions indicates a constitutional crisis. The application of feasible measures, such as including a grace period for implementing Constitutional Court decisions, application of criminal and administrative sanctions, and the ethical prosecution of acts of disobedience to Constitutional Court decisions as unprofessional conduct, can help suppress the intensifying dis-

⁸⁹ JOHNY (2009) pp. 135-144.

⁹⁰ NGGILU (2019) p. 58.

obedience to state institutions, namely, the legislative, executive, and judiciary bodies, and in this case, the Supreme Court.

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