



The Execution of Decision Constitutional Court Which Makes An Open Legal Policy Regarding Elections in Indonesia

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Abstract- The Constitutional Court exercises its authority through generating legal outputs in the form of decisions pertaining to the judicial review of the Constitution, which possess legally binding efficacy. The term "Open Legal Policy" is occasionally found in several Constitutional Court judgements pertaining to elections. In actuality, the legislators did not promptly execute this decision. This study methodology employs normative legal research techniques, incorporating both a legislative and regulatory analysis as well as a contextual analysis. The findings of the research indicate: The prompt emphasizes the imperative nature of implementing the Constitutional Court's ruling, which encompasses a transparent legal framework pertaining to electoral processes, in order to uphold the constitutional entitlements of individuals during national elections. Furthermore, legislators are required to satisfy several features as a means of implementing the ruling of the Constitutional Court, which encompasses a broad legislative framework pertaining to elections in Indonesia.

Keywords: Open Legal Policy Regarding Election, Execution of Decision, Constitutional Court

I. Introduction

The Constitutional Court emerged as a prominent state institution, holding a position of equal importance alongside other established high state institutions, including the MPR, DPR, President, and Supreme Court. This development occurred following the successful implementation of the third amendment to the 1945 Constitution of the Republic of Indonesia. The legal basis that grants the authority of the judiciary to fulfill the objectives of the state, namely in contributing to the establishment of a global order founded on autonomy, enduring peace, and societal equity, is outlined in Article 24, paragraph (1). The Constitutional Court, being on par with other prominent state institutions, exemplifies the fundamental tenets of the separation of powers and checks and balances within the constitutional framework of Indonesia. These two principles need the division of powers among prominent state institutions that possess legislative, executive, and judicial duties. This division enables these institutions to exercise control and maintain equilibrium

among themselves, so preventing the concentration of power within a single branch. The two ideas embodied in this framework supersede the notion of ultimate sovereignty of the legislative institution and its status as the highest authority among other government bodies, sometimes referred to as parliamentary supremacy. The newly established judicial entity is endowed with a singular prerogative, specifically the evaluation of legislation in light of its conformity with the Constitution.[1]

The authority of the Constitutional Court produces legal products in the form of decisions regarding judicial review of the Constitution which have binding legal force. With the announcement of the Constitutional Court's decision, it also marks the journey of the parties in dispute regarding the interpretation of a norm or principle contained in a law as a statutory regulation whose hierarchy is below the Constitution towards the highest source of law in Indonesia, it has ended. In other words, this dispute was not solely for individual gain, even though in reality it was filed individually. However, the filing of the case is to achieve the welfare of society. If the Panel of Judges at the Constitutional Court decides that a law whose review is requested, both materially and formally, is contrary to the Constitution and is not binding, then this decision applies to all citizens as one law applies to all citizens. This characteristic functions for the sake of upholding the state constitution. Thus, the decision of the Constitutional Court is *erga omnes*, which means that the decision is binding on all citizens, state officials and state institutions.[2]

In several decisions of the Constitutional Court, the term Open Legal Policy is sometimes found. Talking about this term from the perspective of the Constitutional Court, open legal policy is a policy regarding the provisions in certain articles in the law which are the authority of the law makers. One of the Constitutional Court decisions regarding elections which contains the term Open Legal Policy is the Constitutional Court Decision Number 58/PUU-XVI/2018 concerning the constitutionality review of Article 222 of Law Number 7 of 2017 concerning General Elections.

Based on Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "the Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final, review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, deciding on the dissolution of political parties, and deciding disputes over general election results". In theory, the Constitutional Court's decision containing the Open Legal Policy must be implemented immediately. Against this decision there is no opportunity to submit legal remedies or extraordinary legal remedies. However, in reality, the decision containing an open legal policy regarding elections is not immediately implemented by the legislators

II. Methods

This research uses normative legal research. This research uses legal sources in the form of statutory regulations, court decisions, legal theory, and expert opinions. The approach used is a statutory approach which is carried out by examining all statutory regulations relating to election issues. The legal materials used are primary legal materials and secondary legal materials. Primary legal materials are legal materials consisting of statutory regulations, official minutes, court decisions and official state documents including the 1945 Constitution, Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning Constitutional Court, Law Number 7 of 2017 concerning General Elections, and Constitutional Court Decision Number 58/PUU-XVI/2018. Meanwhile, secondary legal materials are legal materials consisting of; law books, legal journals containing basic principles (principles of law), views of legal experts (doctrine), results of legal research, legal dictionaries, legal encyclopedias. The reason for this writing using normative legal research is because it is to overcome legal problems regarding the implementation of the constitutional court's decision which contains an open legal policy regarding elections in Indonesia.[3]

III. Research Questions

1. Why does the constitutional court need to give a decision that contains open legal policy regarding elections in Indonesia?
2. How is the execution of the constitutional court decision which contains an open legal policy regarding elections in Indonesia?

IV. Result and Discussion

1. The Urgency Of The Constitutional Court In Providing A Decision Containing An Open Legal Policy Regarding Elections In Indonesia

According to Mukhtie Fadjar, the concept of an open legal policy emerged as a result of the constitutional law of the Republic of Indonesia in 1945, which required the regulation of specific norms in subsequent regulations (laws), albeit with only general principles offered. The legislation that is enacted must possess a precise regulatory framework. These particular arrangements encompass open or unrestricted spaces for lawmakers to decide upon, provided they adhere to the prescribed rules outlined by the Constitutional Law of the Republic of Indonesia in 1945. An Examination of Legal Policy In the context of the Constitutional Court, the legislature is granted the authority to modify legal norms.

By examining the assortment of rulings pertaining to the Open Legal Policy rendered by the Constitutional Court, a recurring theme emerges regarding the conceptual understanding of Open Legal Policy. As per the Constitutional Court's interpretation, the term "concept" refers to a scenario wherein a statutory provision is formulated without being regulated in the Constitutional Law of the

Republic of Indonesia 1945. Alternatively, it may also pertain to a statutory provision that emerges as a result of implementing a specific directive from the Constitutional Law of the Republic of Indonesia 1945, rendering it unenforceable. The assessment of legality is conducted, and the legislative body retains the authority to modify the norms of law at any given moment. The Constitutional Court's notion of an open legal policy is granting legislators the ability to control matters that are not specifically addressed or governed by the Constitution of the Republic of Indonesia in 1945. This is done with the aim of ensuring a well-organized administration of the state or government.[4]

Legislators can effectively adopt an open legal policy by fulfilling their obligation to establish both organic and inorganic laws. In the context of organic laws, the adoption of an open legal policy may be facilitated by the presence of provisions within the Constitution that encompass the concept of selecting laws or policies, or by the existence of interpretive authority over the language employed in each paragraph and article of the 1945 Constitution of the Republic of Indonesia. Consequently, the constitutionality of a given phrase can be ascertained if the legislator interprets it in alignment with the constitutional objectives. When creating laws pertaining to inorganic substances, politicians.[5]

According to Article 24C, paragraph (1) of the 1945 Constitution, the pronouncement made by the Constitutional Court is deemed final and binding. Consequently, the pronouncement of the Constitutional Court decision, delivered orally during the proceedings of the Constitutional Court, possesses enduring legal validity. It is imperative to enforce court judgements that possess legally binding authority. The judgement rendered by the Constitutional Court in a case pertaining to the judicial review of a statute possesses a binding effect on both state authorities and citizens, in contrast to ordinary court rulings which only bind the parties involved. When a legislation undergoes judicial scrutiny, its abstract and universally applicable norm is subjected to evaluation. The petition for review is grounded in the applicant's constitutional rights, but its underlying purpose is to advocate for the legal interests of the entire community, specifically the preservation of the constitution. The adoption of the paradigm of open legal policy is a concept that has been embraced by the Constitutional Court in its decision-making process.[6]

The concept of an Open Legal Policy is a novel and previously unfamiliar notion. In contrast, the concepts of Communitarian, Public Policy, and Social Policy are relatively less familiar within the realm of public policy study. The term "policy" in the realm of public policy holds a broad and inclusive

connotation, as it consistently pertains to the jurisdiction of officials or authorized entities to execute specific activities that lack explicit restriction within statutory frameworks.[7] The Constitutional Court Decision Number 58/PUU-XVI/2018 concerning the controversial open legal policy is one example. Presidential Threshold in Article 222 of the Election Law which states that "Candidate Pairs are proposed by Political Parties or Associations of Political Parties participating in the election who meet the requirements to obtain at least 20% (20) votes." % of the total number of seats in the DPR or obtaining 25% (25%%) of valid votes nationally in the election of members of the DPR, before the enactment of the Presidential Election Law." This shows that the Constitutional Court has an open legal attitude and delegates authority to legislators to determine the application of the Presidential Threshold. In reality, the most striking political compromise is the presidential threshold. Even within the Constitutional Court itself, it seems unclear in laying the basis for partisanship whether on judicial activism or judicial restrictions. In decisions containing the open legal policy mentioned above, the Constitutional Court is often trapped in the meaning of negative legislature and positive legislature.[5]

2. The Execution Of The Constitutional Court Decision Which Contains An Open Legal Policy Regarding Elections In Indonesia

All state institutions, whether regulated internally or externally by the Constitutional Law of the Republic of Indonesia 1945, are obligated to adhere to the rulings of the Constitutional Court in matters pertaining to elections. This is due to the integral nature of the Constitutional Court within the Indonesian state, which upholds the principle that every state administrative institution must fulfill its responsibilities within the boundaries established by the constitution, known as constitutional supremacy. The jurisdiction of judicial review exercised by the Constitutional Court is often regarded as a paramount authority, necessitating its prioritization in the process of law formulation and subsequent implementation. The alignment of the interpretation of norms law sought by the Constitutional Court with the norms contained in The Constitutional Law of the Republic of Indonesia 1945 has been achieved by the issue of the Constitutional Court's ruling on elections. At the theoretical level, the decision made by the Constitutional Court pertaining to elections can be implemented without the need for any legal recourse. Furthermore, this decision holds ultimate authority and must be adhered to by all members of the citizenry.[8]

Nevertheless, it is important to note that in practice, certain state institutions may have challenges in effectively implementing the provisions outlined in the Constitutional Court's ruling. This may

be observed in cases involving the President and the DPR, for instance. The primary determinant of non-compliance within these two institutions can be attributed to their possession of authority in the formulation of legislation, particularly in relation to the enforcement of decisions made by the Constitutional Court (as evidenced by the open cumulative list of laws and regulations). Beyond the purview of the executive branch and the legislature, individuals lack the authority to modify, eliminate, or rescind any aspect of a law, be it in the form of paragraphs, articles, specific sections, or the legislation in its whole. The link between the two entities is highly interconnected in terms of the presence of a legal framework.[9]

According to Article 47 of Law Number 8 of 2011 in conjunction with Law Number 14 of 2003 pertaining to the Constitutional Court, it is explicitly stated that the decisions made by the Constitutional Court possess enduring legal validity once they have been announced in an open plenary session accessible to the public. This article suggests that once a decision has been made or announced, it is necessary for the corresponding actions to be implemented simultaneously. This circumstance will evidently pose challenges and render it unfeasible to deliberate on the determination of pursuing the implementation of the Constitutional Court's ruling subsequent to its perusal. The challenge arises from the requirement of a lengthy and time-consuming process to establish new legal instruments, whether through modifications or the creation of new laws, when the desired decision-making entity is a legislative body. The process of enacting legislation is inherently characterized by its formal and procedural nature. The observed challenge in solidifying the substance of the Constitutional Court's verdict arises from its public announcement during plenary sessions. This practice pertains to the revision of the Law on the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council. Efforts to incorporate some conditions into legislation cannot be directly updated. In such cases, it is often necessary to convene a consultative meeting or engage in discussions with the Constitutional Court. The purpose of these interactions is to ascertain the original objective behind the decision.[10]

The optimal implementation of the Constitutional Court's ruling, which encompasses an open legal policy on elections, can be achieved through the establishment of Constitutional Dialogue and Collaborative Action between the Constitutional Court and legislators. As per the research conducted by Meuwese and Snel, the fundamental aspect of constitutional dialogue among state institutions entails active participation in discussions pertaining to the interpretation of constitutional principles. It is imperative for these actors to engage in attentive listening and gain insights from

the perspectives put forth by other state institutions. This collaborative process facilitates the potential for revising and refining their own viewpoints. In a state of solitude. The objective of constitutional dialogue is to attain an optimal equilibrium between constitutional principles and public policy, so facilitating a discourse that embodies a moderate approach between judicial supremacy and parliamentary supremacy.[11]

An alternative approach involves amending the Constitutional Court Law and the P3 Law by the inclusion of the subsequent clause: Lawmakers are prohibited from reintroducing any substantive content, articles, paragraphs, or sections into the Law that have been deemed inconsistent with the 1945 Constitution and lack legal validity as determined by the Constitutional Court. Lawmakers are prohibited from including measures in legislation that deviate from the interpretation of the content, article, paragraph, or section of the law as determined by the Constitutional Court. In light of the editorial provided, it is evident that there is a need to rephrase the user's text in order to align There is an expectation for the alignment between the ruling of the Constitutional Court and subsequent modifications to the Law, stemming from the Constitutional Court's decision. This principle is also applicable to the concept of Decisions, which pertains to the establishment of a policy inside the legal framework, sometimes referred to as an open legal policy.[11]

The ruling rendered by the Constitutional Court holds significant potential as a foundational and guiding element for the Positive Legislature in its pursuit of crafting an inclusive legislative framework. Nevertheless, lawmakers have the autonomy and obligation to engage in comprehensive deliberations, encompassing socio-economic policy and the legislative formation process. Legislators are required to satisfy certain features when executing Constitutional Court rulings that encompass an open legal policy.[12] Legislators must be consistent with the decisions Constitutional Court. So the legislators must ensure that the resulting regulations are consistent with the decisions issued by the Constitutional Court. Legislators must conduct an analysis court's decisions and ensure that the contents of this law do not violate the constitutional rights stipulated by the Constitutional Court.

1. Protection of human rights. Legislators must pay attention to and protect human rights as guaranteed by the constitution and interpreted by the Constitutional Court. Here legislators must consider decisions concerning the protection of human rights in designing a new legal policy.

2. Legal certainty or legal certainty. This aspect means that legislators must ensure that the policies made provide adequate legal certainty for the community and take into account the decisions Constitutional Court regarding the legal provisions that have been stipulated to avoid legal uncertainty that could be

detrimental to society.

3. Public Consultation Process.

Proportionality and Balance. aspects where legislators must consider the principles of proportionality and balance in designing a legal policy must ensure that the limitations imposed by the law must be in line with the objectives to be achieved and do not exceed the limits required.

In adopting the Open Legal Policy regarding elections in the formation of laws and regulations, it is very important to integrate the interpretation Constitutional Court's decision as one main sources of reference. However, it should be remembered that in the final decision regarding legal policy, it remains in the hands of legislators by considering various relevant factors.

V. Conclusion

Open legal policy in the formation of laws can be implemented with a mandate to form organic and inorganic laws that contain legal options for the authority to interpret phrases in each paragraph and article in the NRI Constitution. Efforts to implement the execution of constitutional court decisions that contain open legal policies regarding elections can be done optimally by building constitutional dialogue and collaborative action between the constitutional court and lawmakers, so that it is necessary for lawmakers to be consistent with constitutional court decisions, guaranteeing human rights, legal certainty and public consultation processes.

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