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International Journal of Business, Economics and Law, Vol. 24, Issue 5 (August)
ISSN 2289-1552
2021

IMPLEMENTATION OF THE CONSTITUTIONAL COURT DECISION IN CRIMINAL LAW

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ABSTRACT

Every nation has an alternate point of view in deciphering the law following the general set of laws took on. Indonesia itself sticks to the Common Law Framework, where the Common Law Framework makes composed guidelines the fundamental wellspring of law and is overwhelmed by classified laws. As opposed to the Customary Law Framework, where the fundamental wellspring of law is the law made by judges. The court's choice will be restricting on other comparative cases in a similar purview. In the Precedent-based Law Framework, judges play a significant part in making new laws. Criminal law (considerable) is essential for public law which can be deciphered as the guidelines administering the activities of lawful subjects. The capacity of criminal law is to decide the rights and commitments, what should and can't be possible, just as punishments for infringement of every person. Condemning in criminal law can cause languishing over the culprits, so its execution should be founded on composed guidelines. That is, in criminal law the standard of legitimateness contained in Article (1) of the Criminal Code is material. In its turn of events, the Draft Criminal Code gives the chance of sanctioning of laws that live in the public eye as the reason for criminal indictment. Be that as it may, as far as law and order, it is viewed as less assurance of legitimate sureness which is in opposition to the rule of lawfulness and the reason for law and order which ought to give conviction and apply overall (broadly). This article aims to determine the application of the Constitutional Court's decision in criminal law in Indonesia. The Constitutional Court Decision has varied many criminal cases in many laws, especially the Criminal Code and the Criminal Procedure Code. Decisions of the Constitutional Court, for example, eliminate or reduce some elements in the norms of criminal law so that the implementation will affect the handling of criminal cases at the technical level of law enforcement and justice. The nature of the Constitutional Court Decision which is not accompanied by a Constitutional order requires awareness of all elements of law enforcement and justice to carry out socialization and institutional internalization to implement the Constitutional Court Decision in handling criminal cases for the realization of a constitutional law state aspired by the 1945 Constitution of the Republic of Indonesia.

Keywords: Criminal Law, Law Enforcement, Constitutional Court Decision, Indonesian Constitution.

INTRODUCTION

Every nation has an alternate point of view in deciphering the law following the general set of laws took on. Indonesia itself sticks to the Common Law Framework, where the Common Law Framework makes composed guidelines the fundamental wellspring of law and is overwhelmed by classified laws. As opposed to the Customary Law Framework, where the fundamental wellspring of law is the law made by judges. The court's choice will be restricting on other comparative cases in a similar purview. In the Precedent-based Law Framework, judges play a significant part in making new laws.

The result of a State with a Common Law Framework is a more prominent energy and excitement in making composed guidelines. The way toward making laws is business as usual of the Lawmaking body. For instance, Indonesia knows about the expression "Program Legislasi Nasional" (prolegnas) which is a program coordinated by the public authority and completed by the DPR in doing its authoritative capacity in drafting and ordering laws (UU). Common law manages legitimate relations between individuals, where law authorization depends on the interests and drives of the gatherings. Public law directs the connection among residents and the state. The guideline concerns the public interest, where the state intercedes in law implementation (Octora, 2016).

Criminal law (considerable) is essential for public law which can be deciphered as the guidelines administering the activities of lawful subjects. The capacity of criminal law is to decide the rights and commitments, what should and can't be possible, just as punishments for infringement of every person. Condemning in criminal law can cause languishing over the culprits, so its execution should be founded on composed guidelines. That is, in criminal law the standard of legitimateness contained in Article (1) of the Criminal Code is material. In its turn of events, the Draft Criminal Code gives the chance of sanctioning of laws that live in the public eye as the reason for criminal indictment. Be that as it may, as far as law and order, it is viewed as less assurance of legitimate sureness which is in opposition to the rule of lawfulness and the reason for law and order which ought to give conviction and apply overall (broadly) (Renggong, 2014).

Article 24 of the 1945 Constitution specifies that legal force is the force of a free state to oversee equity to maintain law and equity. Prior to the revision (change) to the 1945 Constitution, this legal force was just practiced by the High Court and the legal climate under it. After the Correction to the 1945 Constitution, notwithstanding the High Court, the Sacred not really set in stone as the culprit of legal force so that there were 2 (two) legal force foundations that had equivalent situations with various specialists.

Constitutionally, the authority of the Constitutional Court is determined in Article 24 C of the 1945 Constitution, i.e. the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine laws against the constitution, to decide disputes over authority, a state institution whose authority is granted by the constitution, decides on the dissolution of political parties and decides on disputes regarding election results (Yahya et al., 2019).

International Journal of Business, Economics and Law, Vol. 24, Issue 5 (August)
ISSN 2289-1552
2021

The judicial review authority from the Constitutional Court (judicial review) according to Jimly Asshiddiqie is an effort by the judicial institution to test legal products determined by the legislative, executive, and judicial branches of power in the context of applying the principle of "checks and balances" based on the separation of powers system (Isra, 2015).

Based on the description above, this article aims to determine the application of the Constitutional Court's decision in criminal law in Indonesia.

RESEARCH METHOD

The research method used in research on the implementation of Constitutional Court decisions in criminal cases is a normative-empirical legal research method with a statutory provision approach and a case approach (Soerjono, 1999). The main source in this research is in the form of secondary data or library materials. The secondary data in question includes legal materials. The sources of legal materials can be classified into 3 (three) types (Soerjono and Mamudji, 2006), namely:

1. Primary legal materials (primary resources or authoritative records) in the form of the constitution, laws, and regulations and implementing regulations, court decisions;
2. Secondary legal materials (secondary resources or not authoritative records) in the form of legal materials that can provide clarity on primary legal materials, such as literature, research results, papers in seminars, articles, and so on;
3. Tertiary legal materials (tertiary resources) in the form of legal materials that can provide guidance and clarity on primary legal materials and secondary legal materials such as those from dictionaries/lexicons, encyclopedias, and so on.

This exploration is graphic logical examination, which depicts and gives clarifications about realities and exact investigation on winning law, related with importance lawful hypotheses on harmonization between a legitimate substance in Draft of Indonesia Criminal Code and different guidelines outside the code. This exploration is coordinated to address the inquiry.
The data collecting process is done by literature study, to collect legal theories, legal principles, and legal norms in written regulations.

CONSTITUTIONALISM AND RULE OF LAW

Constitutionalism is a concept of transplants from the west which spread to the whole world including Asia as part of the spreading mission of the rule of law doctrine. Starting from the 1990s, most of the eastern European countries began to reform the law including amending their constitutions; Most countries in Latin America have recognized the need for rule of law in legal reform and have begun to take steps towards rule of law. In Asia, constitutionalism is part of a package of legal reforms to support the success of legal reform relating to the investment and market economy.

Carl Friederich asserts that constitutionalism requires the principle of power separation, accountability from government, and guarantee of human rights. Charles Howard McIllwain states that constitutionalism has a special essence: it is a limitation on government, the antithesis of arbitrariness, and the opposite of despotism (McIlwain, 1947). Mark Tushnet argues that the component of constitutionalism includes: commitment to the rule of law, independent justice, and free and open elections (Tushnet, 2006).

Although the procedural aspects of constitutionalism are generally understood to be a product of the Anglo-Saxon or common law legal traditions, the European legal traditions of continental Europe also have similar legal structures in the form of *rechtstaat* or law-based state. Constitutionalism concepts in the continental European legal tradition are closely related to *rechtstaat*. According to the concept of *rechtstaat*, state and government actions must be in line and limited by law. Constitutionalism based on *rechtstaat* is a practice used by continental European legal traditions-based states including Germany, Japan, and Indonesia. Constitutionalism based on *rechtstaat* and rule of law is the same principle because they both originate from one root of the old German traditions.

Mark Tushnet also states two elements of constitutionalism. In Tushnet's understanding, there are currently two dimensions of constitutionalism today, namely institutions or government structures on one part and human rights on the other side (Tushnet, 2006). According to Tushnet, institutional aspects in the study of constitutionalism consist of issues that are similar to what is often referred to as the "thin" version of rule of law, while the human rights aspect is an aspect commonly referred to as the "thick" version of rule of law. Constitutionalism at this stage is similar to the substantial aspects of the rule of law in the common law tradition or the *rechtstaat* in the continental European tradition.

According to the state administration theory mentioned above, we know that constitutionalism implies institutional limitations where implementation is manifested in three branches of power limitation, namely the executive, legislative, and judicial branches. In Indonesia, the rule of law and justice are taken place at the judicial authority which is included in the regulation of judicial authority in the 1945 Constitution of the Republic of Indonesia. Next, we will discuss the construction of judicial power in the 1945 Constitution.

CONSTRUCTION OF JUSTICE POWER

Judicial power is directed from articles 24 to 25 of the 1945 Constitution of the Republic of Indonesia. Article 24 of the 1945 Constitution of the Republic of Indonesia controls the standards of law and order and equity which become the center in the legal interaction in Indonesia. Article 24 passage (1) underscores that judicial power is a free ability to oversee equity to uphold law and

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ISSN 2289-1552 2021

equity. From this arrangement, we can see that legal force is a free force. For this situation, opportunity implies boundless pressing factors and mediation from different parts of the force.

Perpetrators of judicial authority are regulated in Article 24 paragraph (2) which confirms that judicial power is administered by the Supreme Court and the Constitutional Court. This constitutional arrangement, lead us to the Constitutional Court has an equal position with the Supreme Court. Both are judicial power holders who have different authorities.

The authority of the High Court is controlled in Article 24A section (1) which affirms that the High Court has the position to mediate at the cassation level, look at the legal arrangements under the law illegal, and have different forces conceded by law. In the interim, as per Article 24C Passage (1 of the 1945 Constitution of the Republic of Indonesia has the power to settle at the first and last level whose choices are last to audit the law against the Constitution, choose arguments about the authority of state foundations whose authority is allowed by the constitution, and chooses the disintegration of ideological groups and resolves debates concerning the aftereffects of the overall political decision. Likewise, the Sacred Court is additionally given the commitment as directed in Article 24C section (2) Protected Court has the power to offer a choice on the input of the Place of Agents concerning supposed infringement done by the President as well as VP against the established.

Even though Constitutional Court and Supreme Court have an equal position in the judicial power if we look at the norms of the 1945 Constitution of the Republic of Indonesia incision of the Constitutional Court authority which could have implications for the Supreme Court. On the other hand, there is also the authority of the Supreme Court which has implications for the institutional Constitutional Court.

The authority of the Sacred Court which could have suggestions on the High Court is the power to settle at the first and last level whose choices are last to inspect the law against the Constitution and the position to choose disagreements regarding the authority of state organizations whose authority is conceded by the Constitution. Then again, The High Court has the option to propose 3 possibilities for sacred appointed authorities to be controlled by the President as managed in Article 24C passage (3) of the 1945 Constitution of the Republic of Indonesia.

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IMPLEMENTATION OF THE DECISION OF THE CONSTITUTIONAL COURT IN CRIMINAL LAW

In the previous section, we have discussed in general the two authorities of the Constitutional Court which could have implications for the Supreme Court. The first authority is the authority to adjudicate at the first and last level, the decision of which is final to examine the law against the Constitution. This authority is commonly mentioned as a constitutional review in the academic field. This authority can affect both formal and material consequences.

This authority will formally affect a temporary suspension of judicial review of the case's examination against the law by the Supreme Court that will be terminated until the verdict on the judicial review case is decided by the Constitutional Court. This is intended to avoid conflicts between judicial review conducted by the Constitutional Court and testing of regulations review against the law conducted by the Supreme Court. Therefore technically, every case that has been registered must be notified to the Supreme Court for delay requirement.

In addition, constitutional review which creates the Constitutional Court decision that invalidates certain constitutional norms can affect the institutional work of the Supreme Court as regulated in certain laws. This can be seen in most Constitutional Court decisions that have certain consequences in criminal cases.

According to a search of the Constitutional Court Decision on the review of the Criminal Code and the Criminal Procedure Code, it was found that several Constitutional Court Decisions have changed the legal norms in the Criminal Code and the Criminal Procedure Code. These changes are compiled in the following table 1 and Table 2.

Table 1: Statute book of criminal law (criminal code)

Number	Decided Number	Reviewed	Result
1	013-022/PUU-IV/2006	Article 134 Criminal Code	The humiliation to President and vice president may be suspected of sanctions in the form of prison or fines.
2	013-022/PUU-IV/2006	Article 136 bis Criminal Code	Sanctions for insulting the President and Vice President if the insult is carried out outside an insulted presence can be applied if the insult is done in public or not in public and attended by a minimum of 4 people.
3	013-022/PUU-IV/2006	Article 137 Criminal Code	• Public written Humiliation toward the President and Vice President through broadcasting, displaying, or posting publicly containing writings or paintings and is known by

International Journal of Business, Economics and Law, Vol. 24, Issue 5 (August)
ISSN 2289-1552 **2021**

			many people will be subjected to sanctions in the form of prison or fines. • If the humiliator recommits the humiliation crime while doing work, in less than 2 years after the previous crime, then the humiliator cannot or will be prohibited from working.
4	6/PUU-V/2017	Article 154 Criminal Code	Any person who expresses feelings of hostility, hatred, or contempt for the Government may be subject to sanctions in the form of imprisonment or fines.
5	6/PUU-V/2007	Article 155 Criminal Code	• Anyone who commits a crime against the Government by broadcasting, displaying, or pasting an article intended to be publicly aware will be subject to sanctions in the form of imprisonment or fines. • If the person recommits the crime in his job less than five years after the sentence, this person can be prohibited from doing his work.
6	1/PUU-XI/2013	Article 335 Paragraph (1) point 1 Criminal Code	Any person who unlawfully forces others to commit criminal acts does not commit or condone violence or threats against that person himself or others.

Table 1: Criminal event (criminal code) law number 8 of 1981

Number	Decided Number	Reviewed	Result
1	65/PUU-VIII/2010	Article 1 number 26 and 27, Article 65, Article 116 paragraph (3) and Article (4), and Article 184 paragraph (1) letter a	The definition of "WITNESS" in the provisions of the Article is contrary to the 1945 Constitution and Has No Legal Bound, as long as it is not addressed to: "a person who can provide information in the context of the investigation, prosecution and trial of a crime that is NOT ALWAYS he hears, sees and experiences himself".
2	65/PUU-IX/2011	Article 83 paragraph (1), Article 83 paragraph (2)	Revoke Article 83 paragraph (2) of Law Number 8 of 1981 concerning Criminal Procedure.
3	69/PUU-X/2012	Article 197 paragraph (2) letter "k"	• Article 197 paragraph (2) letter "k" conflicts with the 1945 Constitution of the Republic of Indonesia, if it is interpreted as a conviction letter that does not contain the provisions of Article 197 paragraph (1) letter k of the quo Law result in a null and void verdict. • Article 197 paragraph (2) completely becomes, "Failure to fulfill the provisions in paragraph (1) letters a, b, c, d, e, f, h, j, and l of this article results in a null and void verdict".
4	98/PUU-X/2012	Article 80	The phrase "interested parties" in Article 80 of Law No. 8 of 1981 is interpreted as "including victim-witnesses or reporters, non-governmental organizations or community organizations"
5	114/PUU-X/2012	Article 244	Revoke the phrase, "except for the acquittal" in Article 244 of Law Number 8 of 1981 concerning Criminal Procedure.
6	3/PUU-XI/2013	Article 18 paragraph (3)	The phrase "immediately" in Article 18 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure, must be interpreted "immediately and not more than 7 (seven) days".
7	34/PUU-XI/2013	Article 268 paragraph (3)	Revoke Article 268 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure.
8	21/PUU-XII/2014	Article 184, Article 11 letter a, Article 77 letter a.	• The phrases "preliminary evidence", "sufficient preliminary evidence" and "sufficient evidence" are contrary to the 1945 Constitution of the Republic of Indonesia as long as it does not mean that "preliminary evidence", "sufficient preliminary evidence" and "sufficient evidence "Is a minimum of two pieces of evidence. • Article 11 letter a of the Law contradicts the 1945 Constitution of the Republic of Indonesia as long as it does

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ISSN 2289-1552 2021

			not address the determination of the suspect's search and seizure. • Article 77 letter a does not have binding legal force insofar as it does not address the determination of the suspect, search, and seizure.
9	130/PUU-XIII/2015	Article 109 paragraph (1)	Article 109 paragraph (1) is binding as long as the phrase "the investigator notifies the public prosecutor" is not interpreted "the investigator is obliged to notify and submit a warrant for the commencement of the investigation to the public prosecutor, reported and the victim/reporter not more than 7 (seven) days after the issuance of the investigative order ".

From the generally speaking MK Choice, the most incredible MK Choice is MK Choice No. 34/PUU-XI/2013, which states Article 268 passage (3) of Law No. 8 of 1981 concerning Criminal System Law, which diagrams a solicitation for reexamination that must be applied once, doesn't have restricting legitimate power.

This choice was reinforced by choice No. 66/PUU-XIII/2015 and choice No. 45/PUU-XIII/2015 which concluded that the Protected Court Choice No. 34/PUU-XI/2013 passed mutatis mutandis likewise applies to the object of the request for these two choices, specifically Article 66 section (1) of the High Court Law and Article 24 passage (2) of the Judicial Power Law.

With this decision, the Constitutional Court should not prohibit the submission of judicial review by the Supreme Court more than once as long as there is a novum from certain cases. This decision will certainly emerge in a change in management within the Supreme Court. In addition to the Constitutional Court Decision regarding the review, many Constitutional Court Decisions have implications for criminal justice that must be known by advocates, police investigators, prosecutors, and judges within the Supreme Court.

It is shown from the example mentioned above that it is unavoidable that the constitutional court plays an important role and even legally has certain legal superiority about institutions from other branches of power, such as the executive and legislative branches (Asshiddiqie and Syahrizal, 2012). This is affected by the development of practice, the constitutional court acts as a negative legislator who has changed the norms of criminal law (Kelsen, 1942).

In contrast to other legal domains where the Constitutional Court, being both negative and positive legislator, in the criminal sphere, the Constitutional Court limits itself to being a negative legislator because the Constitutional Court Decision in its substance gives meaning to a norm of the law, either expanding or narrowing the norm. However, it is limited not to change something that was not previously a crime into a criminal act, which results in a person being convicted in the form of deprivation of one's freedom. This can be seen for example in the Constitutional Court Decision regarding Application for Expansion of Adultery.

Apart from the Criminal Code and Criminal Procedure Code, several Constitutional Court Decisions also eliminate and reduce the norms of criminal law in many articles in other laws, for example, the Constitutional Court Decision in Judicial Review of Plantation Law and other Laws.

The ascent of constitutionalism is trailed by the rise and development of new sacred courts in the realm of the political framework as a feature of the regulation of established designs. This is by all accounts a characteristic marvel given the way that the part of protected courts has for some time been related with the two-second elements of the Constitution, specifically procedural and considerable goals. For instance, Mauro Cappeletti (1970), clarified the part of the protected court as a technique for making compelling the positive qualities expressed by the constitution; notwithstanding it's anything but an institutional column in the partition of forces. Montesquieu for this situation expressed that the partition of forces in an established way was fundamentally founded on the presence of free protected settling.

The fundamental problem of the Constitutional Court Decision is the failure of constitutional order to force law enforcers and legislators to comply. Even though the final and binding words have been stated explicitly in the 1945 Constitution and the Constitutional Court Law, they are often ignored by the Law organs (Syahrizal, 2007). Not all decisions of the Constitutional Court can affect legislative bodies and other state institutions or other non-judicial actors. The execution of the Constitutional Court Decision emphasizes self-respect and legal awareness without coercion (Lotulung, 1994). This is seen in the SEMA Polemic regarding a phenomenal review.

The solution to this problem is not simple because it requires constitutional communication, especially since the 1945 Constitution of the Republic of Indonesia does not provide constitutional construction regarding the executorial institutional relationship for the Constitutional Court Decision.

CONCLUSION

The Constitutional Court Decision has varied many criminal cases in many laws, especially the Criminal Code and the Criminal Procedure Code. Decisions of the Constitutional Court, for example, eliminate or reduce some elements in the norms of criminal law so that the implementation will affect the handling of criminal cases at the technical level of law enforcement and justice.

The nature of the Constitutional Court Decision which is not accompanied by a Constitutional order requires awareness of all elements of law enforcement and justice to carry out socialization and institutional internalization to implement the Constitutional Court Decision in handling criminal cases for the realization of a constitutional law state aspired by the 1945 Constitution of the Republic of Indonesia.

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