

The Binding Power of Constitutional Court Decisions Based on Law Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003

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ABSTRACT

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This study examines the final and binding nature of Constitutional Court decisions under Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 on the Constitutional Court, with particular emphasis on the relationship between constitutional finality, legal certainty, and justice. This study employs normative legal research using statutory and conceptual approaches. Legal materials are analyzed through statutory and authentic interpretation, complemented by philosophical analysis of constitutional adjudication. The findings demonstrate that Constitutional Court decisions acquire permanent legal force immediately upon their pronouncement and are not subject to appeal or other ordinary legal remedies. Their finality also establishes binding force beyond the litigating parties, reflecting the Constitutional Court's position as the guardian and authoritative interpreter of the Constitution. Although such finality may raise concerns regarding potential judicial errors and access to corrective remedies, it remains constitutionally justified by the supremacy of the Constitution, the institutional position of the Constitutional Court as a court of first and final instance, and the need to ensure legal certainty in constitutional disputes. Therefore, the final and binding character of Constitutional Court decisions constitutes an essential mechanism for maintaining constitutional authority, legal certainty, and stability within Indonesia's constitutional system.



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Introduction

The Constitutional Court occupies a fundamental position in Indonesia's constitutional system as one of the institutions exercising judicial power and safeguarding the supremacy of the Constitution. Its establishment was an important consequence of the constitutional reforms following the amendments to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Article 24 paragraph (2) and Article 24C of the UUD NRI 1945 establish the Constitutional Court as an independent judicial institution entrusted with resolving constitutional disputes and ensuring that the exercise of state power remains within constitutional boundaries. The establishment of the Constitutional Court therefore represents not merely an institutional reform, but also a fundamental transformation in Indonesia's constitutional architecture toward stronger constitutionalism, rule of law, and protection of constitutional rights.

Article 24C paragraph (1) of the UUD NRI 1945 grants the Constitutional Court the authority to adjudicate at the first and final instance, whose decisions are final, in reviewing laws against the Constitution, deciding disputes concerning the constitutional authority of state institutions, deciding the dissolution of political parties, and resolving disputes concerning general election results. In addition, the Constitutional Court is constitutionally obligated to decide upon the opinion of the House of Representatives concerning alleged violations committed by the President and/or Vice President. These constitutional powers demonstrate that the Constitutional Court performs a strategic function in maintaining the constitutional order and ensuring that state institutions exercise their authority in accordance with the Constitution.

One of the most distinctive characteristics of the Constitutional Court lies in the finality of its decisions. Article 24C paragraph (1) of the UUD NRI 1945, as further regulated under Law Number 24 of 2003 concerning the Constitutional Court and amended by Law Number 8 of 2011, establishes that Constitutional Court decisions are final. Finality means that a decision acquires legal force immediately upon its pronouncement and is not subject to appeal, cassation, judicial review, or other ordinary legal remedies. Furthermore, the final character of Constitutional Court decisions is inseparable from their binding force. In constitutional review cases, their legal consequences are not limited to the applicants or parties involved in the proceedings but may extend to state institutions and citizens generally. In this sense, Constitutional Court decisions possess an *erga omnes* character that distinguishes them from ordinary court decisions, which generally bind only the parties to a dispute.

The final and binding nature of Constitutional Court decisions is closely related to the principle of legal certainty. Constitutional disputes, particularly those involving the validity of statutory provisions, institutional authority, political parties, and election results, require authoritative and timely resolution. The absence of finality could prolong constitutional disputes and potentially disrupt the functioning of the state. From this perspective, placing the Constitutional Court as a court of first and final instance provides institutional certainty because no other judicial institution is constitutionally authorized to review or overturn its decisions. The finality of its decisions may therefore be understood as a logical consequence of the Constitutional Court's position as the guardian of the Constitution and an authoritative interpreter of constitutional norms.

Nevertheless, finality also raises a fundamental issue concerning justice. Constitutional judges, like other judges, may differ in interpretation, reasoning, and legal perspectives, and judicial decisions are not entirely immune from possible errors. When a Constitutional Court decision is perceived as legally or substantively problematic, the absence of a corrective judicial mechanism creates tension between legal certainty and substantive justice. Parties affected by the decision cannot pursue further legal remedies even when they believe that the decision has adversely affected their constitutional rights. This tension raises an important constitutional question: whether absolute finality should always prevail in the interest of legal certainty or whether the possibility of judicial error requires reconsideration of mechanisms for ensuring constitutional justice.

The issue becomes increasingly significant because Constitutional Court decisions may produce broad legal and institutional consequences. A decision declaring a statutory provision unconstitutional, for example, changes the legal status of the provision and may affect citizens, government institutions, courts, and subsequent legal processes. Consequently, the binding force of Constitutional Court decisions cannot be understood solely as a procedural consequence of a completed judicial process. It must also be examined from the perspective of constitutional supremacy, the institutional authority of the Constitutional Court, legal certainty, justice, and the obligation of state institutions and citizens to comply with constitutional adjudication.

Existing legal scholarship has extensively discussed the Constitutional Court's authority, judicial review, and the final character of its decisions. However, an important analytical issue remains concerning the constitutional justification for combining finality with binding force and the implications of such a construction for the relationship between legal certainty and justice. Much of the discussion tends to emphasize that Constitutional Court decisions are final because the Constitution expressly provides so, while the underlying constitutional rationale and the consequences of eliminating further legal remedies require deeper analysis. This creates a need to examine finality not merely as a positive legal rule but as part of the constitutional design of judicial power in Indonesia.

This study addresses this gap by examining the final and binding nature of Constitutional Court decisions through an integrated normative and constitutional analysis. The novelty of the study lies in connecting the normative construction of finality under the UUD NRI 1945 and Law Number 8 of 2011 with its constitutional rationale and its implications for legal certainty and justice. Rather than treating finality merely as the absence of further legal remedies, this study analyzes it as a constitutional mechanism arising from the supremacy of the Constitution and the position of the Constitutional Court as a court of first and final instance.

Accordingly, this study aims to analyze two principal issues: first, the legal and constitutional nature of Constitutional Court decisions in adjudicating constitutional cases; and second, the binding force of Constitutional Court decisions under Law Number 8 of 2011 concerning Amendments to Law Number 24

of 2003 concerning the Constitutional Court. Through these issues, the study seeks to provide a clearer understanding of the constitutional foundation of final and binding decisions and their significance for legal certainty, constitutional justice, and the Indonesian constitutional system.

Method

This study employs normative legal research, also referred to as doctrinal legal research, to examine the final and binding nature of Constitutional Court decisions within the Indonesian constitutional system. Normative legal research positions law as a system of norms consisting of constitutional provisions, statutory regulations, legal principles, judicial decisions, and legal doctrines. This research design is appropriate because the issues examined concern the normative construction, constitutional foundation, and legal consequences of the final and binding character of Constitutional Court decisions.

The study applies two primary approaches: the statutory approach and the conceptual approach. The statutory approach is used to examine the legal framework governing the position, authority, and decisions of the Constitutional Court, particularly the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, and Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003. Relevant provisions are analyzed systematically to determine the normative basis for the Constitutional Court's position as a court of first and final instance and the legal consequences arising from the finality of its decisions.

The conceptual approach is employed to analyze legal concepts and doctrines relevant to constitutional adjudication, including final and binding decisions, *erga omnes*, *res judicata*, constitutional supremacy, legal certainty, and justice. Scholarly perspectives concerning constitutional courts, judicial authority, constitutional interpretation, and the binding effect of judicial decisions are used to develop the analytical framework. The study also considers the historical and philosophical foundations underlying the establishment of the Constitutional Court and the constitutional design of the finality of its decisions.

The legal materials consist of primary and secondary legal materials. Primary legal materials include the UUD NRI 1945, legislation governing the Constitutional Court, relevant Constitutional Court decisions, and other statutory provisions related to judicial power and constitutional adjudication. Secondary legal materials comprise legal textbooks, journal articles, scholarly works, and authoritative legal doctrines concerning constitutional law, judicial review, constitutional interpretation, and the legal effect of court decisions. These materials are selected based on their relevance to the legal issues examined in this study.

The legal materials are analyzed qualitatively through systematic legal interpretation, statutory interpretation, authentic interpretation, and conceptual analysis. Historical and original-intent perspectives are also employed where necessary to understand the constitutional rationale underlying the formulation of Article 24C of the UUD NRI 1945. The analysis is conducted by identifying relevant legal norms, examining their relationships within the constitutional framework, interpreting their legal meaning, and synthesizing statutory provisions with legal doctrines and constitutional principles. The results are then used to formulate normative arguments concerning the finality and binding force of Constitutional Court decisions and their implications for legal certainty and justice within Indonesia's constitutional system.

Results and Discussion

The Essence of the Constitutional Court's Decision in Decisions on Constitutionality Cases.

As a constitutional court, the Constitutional Court (MK) has unique characteristics that distinguish it from general or ordinary courts. One of these characteristics is that the Constitutional Court's decisions are final and provide no other legal remedies. This differs from decisions of judicial institutions within the Supreme Court (MA), which provide other legal remedies, including judicial review (PK) and/or clemency.

Regarding the final nature of the Constitutional Court's decision, this is stated in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states:

"The Constitutional Court has the authority to adjudicate at the first and final level, with its decisions being final, to test laws against the Constitution, to decide on disputes over the authority of state institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding election results."

This provision was then derived into Article 10 paragraph (1) of the Constitutional Court Law. Article 47 of the Constitutional Court Law emphasizes this final nature by stating that the Constitutional Court's decision has permanent legal force from the moment it is pronounced in a plenary session that is open to the public.

Based on these provisions, the final nature indicates at least 3 (three) things, namely (1) that the Constitutional Court Decision immediately obtains legal force; (2) because it has obtained legal force, the Constitutional Court Decision has legal consequences for all parties related to the decision. This is because the Constitutional Court Decision is different from general court decisions which only bind the parties to the case (interparties). All parties are obliged to comply with and implement the Constitutional Court Decision.

In the Constitutional Court's decision regarding the Judicial Review of Laws (PUU), for example, when the Constitutional Court decides that a law is contrary to the Constitution and declares it to have no binding force, the decision is not only binding for the party filing the case at the Constitutional Court, but also binds all citizens, just as laws are binding in general for all citizens.

On that basis, the Constitutional Court's decision is *erga omnes*; and (3) because it is the first and final court, there are no other legal remedies that can be taken. A decision that has no legal force that can be taken means that it has permanent legal force (*in kracht van gewijsde*) and has binding power (*resjudicata pro veritate habetur*).

In practice, the final nature of the Constitutional Court's decisions is often questioned. There is a growing suspicion that the finality of the Constitutional Court's decisions has also consecrated the Constitutional Court to a superbody constitutional organ. This means that, through its final decisions, the Constitutional Court wields extraordinary power, surpassing that of other state institutions.

This issue also led to the Constitutional Court being unable to be controlled by any institution. In line with this, a philosophical issue that subsequently arose was the thwarting of opportunities for justice seekers (*justisiabelen*) to pursue legal action against Constitutional Court decisions, especially when the decision was perceived as unfair. This demonstrates that the provision regarding the finality of Constitutional Court decisions, despite being stipulated in the 1945 Constitution, inherently leaves room for potential injustice.

Based on this argument, some believe that, for the sake of justice and truth, Constitutional Court decisions should be amended if they are clearly flawed or fatally wrong. Rather than protecting citizens' constitutional rights, it's possible that such decisions could actually degrade them.

Legal remedies are the rights of interested parties. Therefore, the parties themselves must actively file them with the competent court if they so desire. Judges cannot force or prevent parties from exercising their right to pursue legal remedies. In other words, the question of whether a court decision is final or not is directly related to its fairness. Therefore, the demand that court decisions not be automatically final, necessitating the opening of other legal remedies, is closely related to the aspect of justice.

The normative imperative that states the final nature of the Constitutional Court's Decision contains at least some philosophical, legal, social, political, and theoretical problems. When parties perceive the injustice of the Constitutional Court's Decision, while no other legal remedy is available, there is no other recourse but to accept, obey, and implement the decision. This means that even though justice is shackled and restricted by the Constitutional Court's Decision, justice seekers have no choice but to carry out the will of the decision. It is at this point that the issue of justice in the final nature of the Constitutional Court's Decision is suspected, particularly from the perspective of justice seekers.

The crucial question to address is whether the finality of the Constitutional Court's decision truly guarantees the realization of justice. Or, conversely, does this provision actually hinder the attainment of justice for those seeking it? Court decisions are law. As Van Apeldoorn stated, law is not limited to binding statutory regulations but also manifests in court decisions, which are also regulatory and coercive.

Based on the questions and hopes as stated above, it is important to investigate and examine why the amenders of the 1945 Constitution designed the Constitutional Court as a first and final instance court whose decisions are final.

To understand the meaning of a provision in the 1945 Constitution, as stated in the Explanation of the 1945 Constitution before the Amendment, the Constitution of any country cannot be properly understood by simply reading the text. To truly understand the intent of a provision in a country's Constitution, it is necessary to study how the text was created, understand the explanations, and also understand the context in which the text was formulated. In this way, the intent of the statutory provisions will be understood, and even the events or thoughts that underlie and encompass them. In this regard, the method of interpretation plays a crucial role, in this case using the original intent method.

The original intent approach is part of the originalism school. In principle, there are two major theories within the originalism school: original intent theory and original meaning theory.

- a. Original intent theory states that the interpretation of a written constitution is (should be) in accordance with what was intended by the people who designed or formulated the constitution;

- b. Original meaning theory looks at the meaning of a text based on when the text was formulated.

In interpreting the meaning of the constitution, the interpreter does not try to enter a person's mind, but rather based on the words spoken by someone based on the meaning of the words when they were used. This means emphasizing how the "text" is understood by someone based on the meaning in the history of the constitution when it was first formulated or implemented. Using different terms, Steven D. Smith more clearly describes the difference between original intent theory and original meaning theory. Smith uses the term "enactors intentions" for original intent theory and uses the words (in Historical Context) for original meaning theory.

According to Steven D. Smith, "enactors' intentions" assume that interpretation is based on the intentions of the drafters of the constitution. Meanwhile, in the historical context, words have meaning, given by something like the "rules of language" at the time, regardless of the semantic intentions of the drafters. If the drafters intended A but used words that (according to the rules of language) meant B, then B is correct.

Regardless of the conflict between the two (original intent theory and original meaning theory), it can be concluded that an interpretation using the original intent approach is necessary to understand the intention, spirit, or spiritual situation, in this case the intention, spirit, or spiritual situation of the formulators of the 1945 Constitution so that in the end they agree on the provisions regarding the final nature of the Constitutional Court's decision. In full, Article 24C Paragraph (1) states:

"The Constitutional Court has the authority to adjudicate at the first and final level, with its decisions being final, to test laws against the Constitution, to decide on disputes over the authority of state institutions whose authority is granted by the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding election results."

In this context, what needs to be explored in depth through the original intent is the formulation of the sentence that states "...has the authority to adjudicate at the first and final level, the decision of which is final...". This formulation is translated into the Constitutional Court Law by emphasizing that the Constitutional Court's decision is "final and binding."

By tracing the original intent, we can understand the intention of the drafters of the 1945 Constitution Amendment in agreeing to this formulation. The editorial formulation, which essentially states that "The Constitutional Court has the authority to adjudicate at the first and final level, whose decisions are final..." has emerged since the First Amendment, when Ad Hoc Committee I (PAH I) of the MPR Working Body (BP) discussed changes to the provisions regarding the MA. After intensive discussions in PAH I, PAH I finally submitted the resulting formulation to the BP MPR. At the 5th BP MPR meeting on October 23, 2001, the PAH I Leadership submitted a report on the progress of the implementation of PAH I's duties to the BP MPR. Regarding the formulation in question, PAH I, through Jacob Tobing, submitted a report. In the report, the formulation of Article 24A paragraph (2) states, "The Constitutional Court has the authority to hear cases from the first and final levels, the decisions of which are final, to test laws (and laws and regulations below them) against the Constitution, decide on disputes over authority or competence between (state) institutions, decide on the dissolution of political parties (upon legitimate demands), and decide on disputes regarding the results of general elections.

From the discussions during the First and Second Amendments, discussions took place around the need for the establishment of the Constitutional Court. The discussions are still trying to deepen the matters related to the establishment of the Constitutional Court. If it is established, will the Constitutional Court be ad hoc or permanent? Will the Constitutional Court be placed as part of the MPR, part of the Supreme Court, or stand alone. On these occasions, there has been no discussion regarding the nature of the Constitutional Court's decisions. Even after careful examination, discussions regarding the nature of the Constitutional Court's decisions are very rare. Concrete proposals regarding the final and binding nature of the Constitutional Court's decisions only first emerged in the 51st Plenary Meeting of the MPR's BP PAH I on July 29, 2000. The BP MPR formulated the authority of the Constitutional Court in Article 25B paragraph (2) and paragraph (3), as follows:

Article (2) The Constitutional Court has the authority to materially test laws, issue decisions on conflicts between laws, (Alternative 1: issue decisions on disputes over authority between state institutions, between the central government and regional governments, and between regional governments. Alternative 2: not necessary), and exercise other authorities granted by law) Article (3) The Constitutional Court's decision is a first and final level decision. In the 51st Plenary Meeting of the First PAH of the MPR BP on July 29, 2000, the final views of the factions were presented regarding the finalization of the Second Amendment. In this case, Hamdan Zoelva from the PBB Faction stated, among other things:

“In this proposed amendment to the Constitution, we have all agreed to the existence of a Constitutional Court. We have also agreed that this Court will have the authority to materially review laws and to issue decisions on conflicts between laws. Constitutional Court decisions are decisions of the first and final instance. (bold by the Author). Therefore, no attempt can be made to overturn Constitutional Court decisions. However, provisions regarding the final nature of Constitutional Court decisions have not been accommodated. In the formulation of Article 25B, which was reported as a draft amendment to the Constitution at the MPR Annual Session on August 7-18, 2000, especially the proposal to establish a Constitutional Court, it has not been found. In its development, the Second Amendment failed to agree on the concept and formation of the Constitutional Court. As a result, the MPR granted itself the authority to test laws against the Constitution.....”

The discussion on the Constitutional Court continued with the Third Amendment. On that occasion, the nature of the Constitutional Court's decisions was first touched upon and discussed. As is known, the First Advisory Council (PAH I) requested the MPR Expert Team to formulate a draft of the Third Amendment. The idea of the final and binding nature of the Constitutional Court's decisions was only touched upon by Prof. Jimly Asshiddiqie, a member of the PAH I BP MPR Expert Team, in the Expert Team's formulation. Jimly Asshiddiqie stated:

We then propose to elaborate on the provisions of Article 24, adding Article 24A. The Constitutional Court has the authority to adjudicate cases at the first and final levels, to review the material of laws and regulations under the law, to render decisions on conflicts or disputes between state institutions, between the central and regional governments in implementing laws and regulations, and to exercise other powers granted by law.

However, Prof. Dr. Soewoto Mulyosoedarmo, as a member of the PAH I Expert Team, stated that the Constitutional Court should be considered at the provincial level, so that this institution is not the sole judicial body at the first and final level. In response, the PDI-P faction also stated:

...concurrently, from the faction's perspective, in this case, it is necessary to establish a Constitutional Court. Issues that need to be aligned include the limits of authority, the position of the Supreme Court and the Constitutional Court within the state system, and it is important to consider that the Constitutional Court is not the sole judicial body of first and last instance.

Contrary to this opinion, Agun Gunanjar Sudarsa, a member of PAH I from the Golkar faction, emphasized that the Supreme Court, as the highest court, should also carry out the functions of the Constitutional Court. As the highest court, it exercises the authority to adjudicate and examine cases at the cassation level. This means that the Constitutional Court's status is proposed to be made part of the Supreme Court.

At the 35th Meeting of PAH I MPR, Pataniari Siahaan from the PDIP faction stated that the 9 (nine) members of the Constitutional Court were intended to ensure that the trial could be short, fast, but representative.²⁵ In the end, the results of the work of PAH I BP MPR regarding the draft amendments to Chapter IX of the 1945 Constitution were reported at the 5th Meeting of BP MPR, 23 October 2001. Regarding the Constitutional Court, Jacob Tobing conveyed the formulations produced by PAH I BP MPR, including:

Article 24A paragraph (2):

The Constitutional Court has the authority to hear cases from the first and final levels, the decisions of which are final, to test laws (and laws and regulations below them) against the Constitution, decide on disputes, authority or competence between institutions (state), decide on the dissolution of political parties (upon legitimate demands) and decide on disputes regarding the results of general elections.

The formulations resulting from the discussion of PAH I BP MPR were then submitted to the MPR Annual Session which was held from 1 November to 10 November 2001. In the 2001 MPR Annual Session, the draft of the Third Amendment to the 1945 Constitution, including the draft of Chapter IX on Judicial Power, was discussed in Commission A MPR.

During the discussions in Commission A, there was little discussion about the nature of the Constitutional Court's decisions. In fact, no one questioned the nature of the Constitutional Court's decisions or its existence as a judicial institution that adjudicates cases at the first and final instance. The issue that drew much discussion was the Constitutional Court's position within the state structure, whether it would be part of the Supreme Court or stand alone. Furthermore, the Constitutional Court's powers were also highlighted, particularly whether it could only review laws against the Constitution or could also review all laws and regulations.

The results of the discussion in Commission A of the MPR were reported to the 6th Plenary Session of the MPR, 8 November 2001. Jacob Tobing presented the Draft Third Amendment to the 1945 Constitution. In relation to the Constitutional Court, the formulation has been compiled into Article 24C which consists of 6 (six) paragraphs. In relation to the Constitutional Court's decision, it is stated in Article 24C paragraph (1), namely:

The Constitutional Court has the authority to adjudicate at the first and final level, the decisions of which are final, to test laws against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide on disputes over the results of general elections.

The draft was then brought to the 7th Plenary Session of the MPR to obtain the final views from the factions before being ratified as part of the Third Amendment to the 1945 Constitution. In general, although they provided input, the final views conveyed by the factions basically firmly agreed with the formulation of the reported draft.

Finally, in the Third Amendment to the 1945 Constitution in 2001, the establishment of the Constitutional Court was agreed upon and officially placed as one of the judicial authorities in Indonesia, in addition to the Supreme Court and the judicial bodies below it. The formulation of Article 24C as reported was then ratified as the final formulation. If examined closely, the formulation of Article 24C paragraph (1) clearly shows that the Constitutional Court is the first and final level judicial body, to adjudicate cases of judicial review of laws, disputes over the authority of state institutions whose authority is granted by the Constitution, the dissolution of political parties, and disputes over general election results. Thus, in exercising its authority, the Constitutional Court does not recognize any appeal or cassation mechanisms.

Based on the discussion in the Amendment to the Law, the idea of the final nature of the Constitutional Court's Decision is actually inseparable from the agreement to establish the Constitutional Court as a court of first and final instance. This means that the agreement on the Constitutional Court as a court of first and final instance has the consequence that there is no legal mechanism in other courts that can appeal or correct the decision. Therefore, as stated by Maruarar Siahaan, the final and binding nature of the Constitutional Court's decision, the measure to determine whether a court's decision is final and has binding legal force is the existence or not of a body authorized by law to review the court's decision, as well as the existence or not of a mechanism in procedural law regarding who and how the review is carried out.

Given that the Constitutional Court's authority is a constitutional attribution, there are no mechanisms or legal regulations under it that can assess its decisions as products of authority. As a sole court that is not subordinate to any other court, the Constitutional Court's decisions are immediately binding and there is no room for other legal remedies. In this case, the lack of legal remedies is intended to allow the Constitutional Court, through its decisions, to resolve issues and provide legal certainty quickly in accordance with the principle of speedy and simple justice. If legal remedies were available, it is very likely that the Constitutional Court's decisions would be continuously challenged, giving rise to legal certainty issues. However, the Constitutional Court adjudicates constitutional issues, which require legal certainty and are bound by time limits related to the continuity of the constitutional agenda.

There is an implicit spirit, given that the Constitutional Court is a court with extraordinary authority, especially when it adjudicates constitutional cases, so simple and expeditious trials are needed to ensure legal certainty. This is as Pataniari Siahaan stated, that the Constitutional Court is the first and final hearing, and its hearings are unlike those in the courts we are accustomed to, so it can be expected that in a Constitutional Court hearing, all issues will be resolved in one hearing.

Recognizing the Constitutional Court's extensive authority with its final and binding decisions, the Constitutional Amendments paid great attention to the careful selection of the Constitutional Court's members. This is evident from the conclusions reached in the follow-up meeting of the PAH I BP MPR on the discussion of the draft amendments to Chapter IX of the 1945 Constitution on October 10, 2001. Point 2 of the conclusion states:

Membership of the Constitutional Court is agreed to be filled by people who have integrity and an impeccable personality, act as statesmen who master the constitution and state administration issues, do not hold concurrent state and government positions, and fulfill other requirements stipulated by law.

Although a proposal was later agreed upon stating that the Constitutional Court would have nine members, consisting of three nominated by the President, three by the Supreme Court, and three by the House of Representatives, this requirement remains the main principle, regardless of who the members or constitutional judges are, how they are selected, and by whom they are nominated. The important thing is that the decisions rendered must be respected by both parties.

No party may take any action that contradicts or contradicts the decision. In other words, the binding force of a court decision is intended to resolve a problem or dispute and establish rights or legal rights.

When a party submits and entrusts a dispute to a court or judge for examination and adjudication, this implies that the parties will submit to and comply with the decision rendered. Therefore, both parties must respect the court's decision. Neither party may act contrary to the decision.

A verdict is the essence of justice, the core and purpose of all judicial activities or processes, containing the resolution of cases that have burdened the parties since the beginning of the process. According to Sudikno Mertokusumo, a judge's verdict is a statement by a judge, as a state official authorized to do so, uttered in court and aimed at ending or resolving a case or dispute between the parties.

For this reason, the answer to the problem of justice in the provisions on the final nature of the Constitutional Court's Decision is basically the answer to the question: what is the basis that supports the Constitutional Court's decision being a first and final level decision and no legal action can be taken to annul it?

First, the Constitutional Court's final decision is not only because it is the sole institution exercising its authority, but more than that, the Constitutional Court's final decision is attached to the essence of the Constitution's position as the highest law so that no other law has a higher position than it. The meaning of this statement, when a problem is presented to the Constitutional Court and the Constitution is the basis for its review, then the decision on the problem is absolutely final. This is because the parties have made an effort to seek justice and guarantee their rights where these efforts are linked to the law that has the highest degree of supremacy as the basis for its review.

The answer to the legal issues faced by the Parties through litigation at the Constitutional Court is provided by a law of the highest degree. The Constitution, as the highest law, guarantees the parties' rights through litigation at the Constitutional Court. This guarantee is provided by the Constitution in a judicial process conducted by its judges who interpret the Constitution, culminating in a final decision. In this context, the judicial process conducted at the Constitutional Court is truly the final judicial process because the administration of justice at the Constitutional Court uses the Constitution as a benchmark. The rationality of a judicial process with the highest law as its benchmark is that the decision rendered by the court is the final decision. This is because there is no longer a judicial process with a higher law as a reference for testing the decision. The Constitutional Court is an institution that carries out first-level and final-level justice, which is a logical consequence of the existence of the Constitution as the highest law.

Second, the final nature of the Constitutional Court's decision is nothing more than an effort to maintain and protect the authority of constitutional justice. The rationale is that if the Constitutional Court accommodates legal remedies, it is no different from a general court. In general courts, cases where legal remedies are filed against their decisions typically take a long time until the case is truly resolved (*inkracht*). The consequences include, among other things, the parties being held hostage in terms of time, effort, and costs, all of which contradict the principle of a speedy, simple, and low-cost justice system.

Third, the risk of Constitutional Court Decisions containing errors or mistakes cannot be eliminated, although they can be minimized. This is inseparable from the fact that constitutional judges are ordinary human beings who naturally have weaknesses that make it possible for them to make mistakes. However, regarding this matter, as stated by Moh. Mahfud MD, Constitutional Court Decisions must remain final because, (1) the choice of verdict depends on the perspective and theory used by the judge; (2) *hukumul haakim yarf'ul khilaf*, which means that the judge's decision resolves differences; and (3) there is no better alternative to eliminate the final nature. Therefore, the idea of the need to provide space for other legal remedies for Constitutional Court Decisions is something that cannot be justified because it has no constitutional basis. In accordance with the Constitution, let alone other parties, the Constitutional Court itself is not given the authority to review decisions that have been handed down. Therefore, the desire to file other legal remedies against the Constitutional Court Decision means having to change its constitutional provisions first. This aligns with Sri Soemantri Martosoewignjo's opinion, stating that, regardless of the reason, the Constitutional Court's decision is final and binding. There are no other legal remedies, including a judicial review. If a Constitutional Court decision is to be appealed, the only way is to amend the 1945 Constitution. The Constitution stipulates that the Constitutional Court's decision is final.

So, what about the injustice that might arise from the Constitutional Court's decision? Should it be allowed to persist? Aristotle stated that the word "just" has more than one meaning. "Just" can mean "according to law" and "what is proportionate" or "what is appropriate." Therefore, someone who disregards the law can also be considered unjust, because anything based on law can be considered just.

Based on the above description, the author states that there is no problem with the aspect of justice in the provision stating that the Constitutional Court's decision is final if the parties understand at least the three things above from the beginning. In fact, the provision of finality also ensures the realization of the Constitutional Court judicial institution as a guardian of the constitution as desired by the amendments to the Constitution while also realizing law that is based on justice, legal certainty, and benefit in resolving constitutional cases.

The Binding Power of Constitutional Court Decisions Based on Law Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003

The establishment of the Constitutional Court as a Special Tribunal separate from the Supreme Court, carrying out special duties, is a concept that can be traced long before the modern nation-state, which basically tests the harmony of lower legal norms with higher legal norms. The modern history of judicial review, which is the main characteristic of the Constitutional Court's authority, in the United States is carried out by the Supreme Court, starting with the case of *Marbury versus Madison* (1803). The Supreme Court of the United States, which was then chaired by Chief Justice John Marshall, decided a dispute that was essentially not what was requested to be decided by his authority as Chief Justice.

The plaintiffs (William Marbury, Dennis Ramsey, Robert Townsend Hooe, and William Harper) petitioned the Chief Justice of the Supreme Court to order the government to issue a writ of mandamus to hand over their appointment papers. However, the Supreme Court, in its ruling, confirmed that the John Adams administration had fulfilled all the requirements stipulated by law, thus deeming William Marbury and his associates entitled to their appointment papers. However, the Supreme Court itself stated that it had no authority to order government officials to hand over the letters in question. The Supreme Court stated that what the plaintiffs requested, namely that the Supreme Court issue a writ of mandamus as stipulated by Section 13 of the Judiciary Act of 1789, was unjustifiable because the provisions of the Judiciary Act itself contradict Article III, Section 2 of the United States Constitution. It was on the basis of this interpretation of the constitution that this case was decided by John Marshall. Thus, the debate over this controversial ruling spread to mainland Europe.

Hans Kelsen, a highly influential 20th-century legal scholar, was asked to draft a constitution for the Republic of Austria, which emerged from the ruins of the Austro-Hungarian Empire in 1919. Like Marshall, Kelsen believed that the constitution should be treated as a superior set of legal norms (higher than ordinary laws and enforced as such). Kelsen also recognized the widespread distrust of the ordinary judiciary to carry out such a constitutional enforcement task, and so he designed a special court separate from the ordinary courts to oversee laws and invalidate them if they were found to be in conflict with the Constitution. Although Kelsen designed this model for Austria, Czechoslovakia established the first Constitutional Court based on it in February 1920. It was not until October 1920 that Kelsen's draft was implemented in Austria.

After World War II, the idea of a Constitutional Court with Judicial Review spread throughout Europe, with the establishment of a Constitutional Court separate from the Supreme Court. However, France adopted this concept differently, establishing a Constitutional Council (*Conseil Constitutionnel*). Former French colonies followed suit. To date, 78 countries have adopted the idea of establishing a Constitutional Court, with Indonesia being the 78th country to do so.

The establishment of the Constitutional Court in Indonesia, as stipulated in the 1945 Constitution of the Republic of Indonesia, affirms that sovereignty rests with the people and is exercised according to the Constitution. Furthermore, it also emphasizes that Indonesia is a state of law, requiring that all actions or deeds of the authorities have a clear legal basis or legitimacy, whether based on written or unwritten law.

In line with the constitutional principles above, one of the important substances of the amendment to the 1945 Constitution of the Republic of Indonesia is the existence of the Constitutional Court as a state institution that functions to handle certain cases in the constitutional field, in order to maintain the constitution so that it is implemented responsibly in accordance with the will of the people and the ideals of democracy.

Thus, through amendments to the Constitution, provisions regarding the Constitutional Court are regulated in Article 24C of the 1945 Constitution of the Republic of Indonesia, which consists of six paragraphs, namely as follows:

1. The Constitutional Court has the authority to adjudicate at the first and final level, the decisions of which are final, to test laws against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide on disputes regarding the results of general elections.
2. The Constitutional Court is obliged to issue a decision on the opinion of the People's Representative Council regarding alleged violations by the President and/or Vice President according to the Constitution.
3. The Constitutional Court has nine constitutional judges appointed by the President, three of whom are nominated by the Supreme Court, three by the House of Representatives, and three by the President.
4. The Chief Justice and Deputy Chief Justice of the Constitutional Court are elected from and by the constitutional judges.

5. Constitutional judges must have integrity and an impeccable personality, be just, statesmen who master the constitution and state administration, and must not hold concurrent positions as state officials.
6. The appointment and dismissal of constitutional judges, procedural law and other provisions regarding the Constitutional Court are regulated by law.

In accordance with the Constitution, the Constitutional Court in Indonesia was to be established by August 17, 2003. Therefore, four days earlier, on August 13, 2003, Law No. 24 of 2003 concerning the Constitutional Court was issued. The Constitutional Court's existence simultaneously ensures the stability of the nation's government and serves as a correction to past experiences in state administration resulting from multiple interpretations of the constitution.

Several considerations for the establishment of the Constitutional Court as stated in Law Number 24 of 2003 concerning the Constitutional Court are :

1. That the Unitary State of the Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which aims to realize a life order for the nation and state that is orderly, clean, prosperous and just.
2. That the Constitutional Court as one of the actors of judicial power has an important role in efforts to uphold the constitution and the principles of the rule of law in accordance with its duties and authorities as stipulated in the 1945 Constitution of the Republic of Indonesia.
3. That based on the provisions of Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia, it is necessary to regulate the appointment and dismissal of constitutional judges, procedural law and other provisions regarding the Constitutional Court.
4. That based on the considerations as referred to in letters a, b, and c and to implement the provisions of Article III of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia, it is necessary to establish a Law concerning the Constitutional Court.

The position of the Constitutional Court's decision in the Constitutional Court Law is regulated in Article 10 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. In this article, it is emphasized that the Constitutional Court's decision is final for all of its authorities. In detail, regarding the position of the Constitutional Court's decision in the Constitutional Court Law, it is regulated in Part Seven of the Constitutional Court Law. Article 45 regulates in detail regarding the Constitutional Court's decision starting from theory to practice in decision-making at the Constitutional Court. For example, regarding the Constitutional Court's decision in testing laws against the 1945 Constitution, it is regulated in detail in Article 59 of the Constitutional Court Law. In Article 59 paragraph (1) of the Constitutional Court Law, it is stated that the Constitutional Court's decision regarding testing laws against the 1945 Constitution is submitted to the DPR, DPD, President, and MA. Furthermore, in Article 60 of the Constitutional Court Law, it is stated that the material content of paragraphs, articles and/or sections in laws that have been tested cannot be requested for re-testing. This article clearly emphasizes the Constitutional Court's final decision. However, over time, this article has become a sleeping law, meaning it is not fully binding in practice. Based on Victor Santoso Tandiasa's experience, the content of a paragraph, article, and/or section within the same law can still be challenged by the Constitutional Court, provided the applicant's reasons (*posita*) differ from those for the previous challenge. Therefore, as long as the applicant has different reasons (*posita*), the content of the same paragraph, article, and/or section within the same law can still be challenged by the Constitutional Court.

Conclusion

From the description and discussion above, the following conclusions can be drawn:

1. That, the essence of the Constitutional Court's decision is absolutely final and binding because the Constitutional Court in issuing each decision makes the Constitution as its touchstone or basis for testing in the sense that there are no further legal remedies that can be taken afterward, considering that the position of the Constitutional Court's decision is attached to the essence of the Constitution's position as the highest law so that there is no other law that has a higher position than that. In addition, it is clear that the Constitutional Court's decision is said to be and should be final and binding because the position of the Constitutional Court itself has been regulated in the Constitution and Law as the first and last court where if referring to these provisions then it is also appropriate that the decision issued by the Constitutional Court cannot be subject to any legal remedies after its pronouncement. Therefore it can be understood that the interpretation of each case tried by the Constitutional Court is only done once because if the interpretation is done repeatedly it is feared that it can cause legal uncertainty which will certainly have a negative impact on the law enforcement process in

- Indonesia, then it is also appropriate that the decision issued by the Constitutional Court is final and applies bindingly.
2. Binding Power of Constitutional Court Decisions Based on Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003, the position of the Constitutional Court's decisions in the Constitutional Court Law is regulated in Article 10 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, in this article it is emphasized that the Constitutional Court's decisions are final for all the authorities it has. In detail, regarding the position of the Constitutional Court's decisions in the Constitutional Court Law, it is regulated in Part Seven of the Constitutional Court Law. Article 45 regulates in detail the Constitutional Court's decisions starting from theory to practice in decision-making at the Constitutional Court.

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