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ABSTRACT

This article reviews the constitutional status of constitutionally guaranteed final decisions of the Constitutional Court. This is a very important status as it could lead to the position of the Court of Justice in the Constitutional Court. This article is opposed to this option. The status of the decisions of the Constitutional Court should be criticized on the ground that their purpose is prima facie rather than absolute. This article adopts an office stand as a solution, so that the court and the legislature have no supreme authority to interpret the constitution.

Keywords: Decisions of the Constitutional Court, Departmentalism, Finality

INTRODUCTION

The decision of the Constitutional Court of the Republic of Indonesia with regard to the judicial review of the constitutionality of the Act is final. The essential meaning of such a decision is interesting to be further assessed and reviewed, particularly in relation to its

purpose. Finally, because the Constitutional Court acts as first and last instance in the constitutional case, there are no legal recourse available to the Court.

Fajar Laksono Soeroso analyzed the problems in order to base his philosophy on the final outcome of the decision of the Constitutional Court. Fajar Laksono Soeroso is generally in favor of Fajar Soeroso decision on the grounds that the Constitutional Court is the supreme right; secondly, that constitutional law should be preserved; This argument could be classified as a formalist viewpoint, which only identifies the status and the other extremely important factors such as the relation between the Constitutional Court and the legislator, the House of Representatives, the Chairman and the Constitutional Court decision.

On the first point, the same author agrees that the Constitution is strict and explicit. However, if the initial point is linked to the second point, this should not be interpreted. If formally maintained, the position could involve supremacism by means of four constitutional amendments, namely controls and balances that is contrary to the main conception of post-political reform in 1998. Indonesian people in 1945 are therefore firmly committed to inspections and balances so as to prevent judicial supremacy and parliamentary supremacy and executive supremacy. Constitutional supremacy can only exist, and the constitutional obligation to monitor and balance should be prioritized rather than the supremacy of the judiciary.

Thus a school of thought is established in the interpretation of the condition of finality of the Court's decision to re-design the aim of the judicial review of an Act. This leads to It is based on a main argument that the constitution of 1945 only recognizes constitutional supremacy, not legal supremacy. The solution offered is departmentalism. The author further argues in view of this position that the finality, even the relative nature, of a decision of the Court of Justice is prima facie. In respect of their commitment to controls and balances, the legislator has an opportunity, including rejecting the decision by overriding, to re-interpret the decision of the Constitutional Court legally. In the public discussion currently underway on the President's attempt to recriminalize defamation, the Constitutional Tribunal found that elements of diffamation were inconstitutionalized and de-criminalized against the President of the Indonesian Penal Code (Juanamasta et al., 2019; Kalbuana et al., 2021; Luwihono et al., 2021; Prabowo et al., 2020; Prasetyo, Aliyyah, Rusdiyanto, Chamariah et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Nartasari et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Suprapti et al., 2021; Prasetyo, Aliyyah, Rusdiyanto, Tjaraka et al., 2021; Rusdiyanto, Agustia et al., 2020; Rusdiyanto, Hidayat et al., 2020; Rusdiyanto, Karman et al., 2020; Shabbir et al., 2021; Susanto et al., 2021).

DISCUSSION

The Judicial Supremacy Dilemma Position

Judicial supremacy can only be achieved by giving the judiciary of a State jurisdiction to enforce the Constitution by a legal review of the Act regarding constitutional interpretation. In principle, the potential for judicial supremacy is not enthusiastic to all legal scholars. A term of counter-most difficulties appeared when criticizing the practice of judicial review arising from the United States Supreme Court; the main questions commonly raised were the non-compatibility of practice with democratic principles. This is, in fact a criticism of the danger of judicial supremacy in interpreting a constitution by examining a court law that considers that it conflicts with the common conviction that a lawmaker who received a mandate from the people.

Judicial supremacy is theoretically an involvement of the institution of judiciary review. Consequently, in judicial reviews, judicial supremacy does not always occur. In the context of the judicial reviews of an Act, the concept of judicial supremacy obviously makes clear that "the Court defines an effective constitutional significance so that other government officials are bound not simply to respect the decision of the Court in a specific case, but also to respect the constitutional reasoning of the Court.

The guarantee of the concept of judicial supremacy is the final status of the decision on constitutional implementation by means of the judicial review mechanism. The understanding can be referred to the view of Judge Robert Jackson, Supreme Court of America, in the Brown *vs.* Allen (1953) case, which said: "We are not final because we are unfailing. In other words, the decision of the Supreme Court is final, since no other legal remedies are available. Keith E. Whittington explained the above statement in relation to legal supremacy: "Judicial supremacy asserts that it is the constitution that judges say it is, not because there is no meaning in the Constitution, or because courts cannot be mistaken, but because there is no alternate interpretative authority outside the court." It was said. It can be concluded that, because the Constitution does not have an interpretative authority other than the judiciales, this could become an incentive to the judicial supremacy practices.

As mentioned above, the judicial supremacy of the constitutional interpretation leadership is of course a matter for judicial review. The term constitutional leadership is conceptualized in Whittington. If the concept of supremacy is simply formulated, it goes without saying that it is "who is [...] the most? Or: Who is to be responsible for the interpretation of the constitution?' The notion of judicial supremacy thus intrinsically implies that the judicial institution is the front line of a constitutional interpreter leading the other governments in the interpretation of the Constitution, monopolizing the meaning of the constitution to form the basis of future government actions (and other core governmental institution, which is legislator or lawmaker, has to comply to the interpretation product).

In contrast, lawmakers in the U.S. often oppose the practice of judicial supremacy. The Constitution of the United States of America gives no explicit guarantee as to the validity of the Supreme Court's interpretation of the constitution. This is different from Indonesia, while the finality of the decision by the Constitutional Court under the Indonesian Constitution of 1945 is guaranteed explicitly. This tends to make judicial supremacy practices in the United States of America unstable and has a striking political background in connection with the Supreme Court and Congress as legislators. One of these indications is the United States Supreme Court's claim that lawmakers and other governmental institutions should take their decisions into consideration in the United States.

Chief Justice Earl Warren declared in the Cooper v. Aaron case in the Supreme Court in 1958. This decision declared as a basic principle that the federal judiciary is the supreme authority in explaining the constitutional law and this principle, as a permanent and indispensable feature of our constitutional system, has been respected by this Court and the Country ever since. The interpretation of the 14th amendment set out by that Court in the Brown case follows that it is the supreme law of the country.

The Supreme Court's statement in Cooper v. Aaron points to the important importance of judicial supremacy in the enforcement of constitutional supremacy in all the institutions of government. To achieve constitutional supremacy, the judiciary is necessary to ensure its supremacy as the interpreter, and the constitutional interpreting can therefore bind other institutions of government.

Historically, the Cooper c. Aaron case was interesting because of the disobedience of Orval Faubus, the Governor of Arkansas, to the decisions of the Supreme Court, in the case of Brown c. the Education Board (1954). The Brown v. Board of Education decision is very important in the USA and orders the abolition of the very sensitive practice of racial segregation in the USA. In the opposition Faubus claimed that the decision of the Supreme Court "is not the law of the land" since Brown v Education Board Decision does not involve racial breakdown policies in public schools.

In the case of Cooper v. Aaron, the Supreme Court of the United States' position is quite fair in responding correctly to the opposition of the Brown v. BOE decision, which includes basic principles of constitutional law. This fairness can be seen in Whittington's view as follows: "Unless the Court acts as its last interpreter, the Constitution cannot serve as a coherent law, which understanding the Constitutional text replaces any others and which other

government officials are obliged to approve." Though, in the context of the constitution of the US, such opinions have no explicit constitutional basis, they should be made by government institutions, with the hope that there is a cohort, instead of the construction of logical thoughts linked inferentially to the function of the US Supreme Court in the implementation of the Constitution.

Opposition to Brown v. Board of Education and the reaction of the U.S. Supreme Court to the Cooper v. Aaron decision, as the Constitutional Court, would not take place unless the constitution guarantees the finality of its decisions. This means that the Supreme Court of the U.S, in view of the disobedience of other government agencies, should strive for its authority as a constitutional interpreter. In this respect, the authors question the Constitutional Court' s position rather than that of the US Supreme Court: should the other institutions in particular the legislator, with the guarantee of its decisions, comply with the constitutional interpretation product made by the Constitutional Court? The aim is, as promised, to re-interpret the finality of decisions of the Constitutional Court as regards the judicial review of an Act and to re-design its understanding of the finality of the relationship between the Constitutional Court and the legislator. The most important thing here, when faced with a lawgiver as a democratic decision-maker, is the Constitutional Court's position. The existential of a constitutional tribunal will be mutatis mutandis similar to that of the US Supreme court where Alexander M. Bickel has stated assertively that "judicial review is an institution that deviates into American democracy" if Indonesia is recognized as a democratic State.

Overrides to Congress

The views opposed to judicial supremacy in the interpretation of the Constitution, represented by the President of the United States, Thomas Jefferson, initiate the idea of departmentalism. Whittington explained the departmentalism concept of Thomas Jefferson:

The Jefferson idea that the constitution is interpreted equally by each branch of government in performing its own duties [...]. The interpretation of the Constitution of the Court may prove convincing or appropriate by departmentalists, but there is no special institutional power to decide what the Constitution means. Judiciary has made many efforts to rectify the Constitution, but there is no responsibility of the other branches of government to accept the interpretation by the Court of the Constitution itself.

The concept of departmentalism places government institutions in an equal position in function and authority with regard to interpretation of the constitution, including the judicial institution. Consequently, only other government institutions regarded the interpretation product of a judicial institution as a convincing measure.

In conceptual theory, the institution of judicial review can be regarded as a solution to the problem of absolutism that could arise in parliamentary supremacy. The nature of parliamentary supremacy is explained by Jeffrey Goldsworthy:

Every statute which this House passes is legally valid and therefore it is legally obligated to comply with that by all citizens and officials, including courts. The judicial duty is therefore to interpret and apply each Statute in a manner consistent with the legal authority of the Parliament in implementing it and its obligation to comply with it accordingly.

The institution of judicial review was located on the opposite side of supremacy of parliament. Therefore, an extremely dangerous solution is from one opposite end to the other.

In one letter from Thomas Jefferson to Abigail Adams, he expressed explicitly his criticism about the implication of a legal review of the law towards legislators: "The opinion which gives judges the right, not only for themselves but also for the Legislature, to decide what laws are constitutional and what they would not do in their sphere of action. Legislative tyranny (with supremacy of the parliament) superseded by juridical tyranny (with judicial supremacy) obviously, when assessed from the perspective of constitutionalism principles, is not an ideal constitutional situation. Both extreme opposites, issues and solutions, should be thoroughly

assessed. Unfortunately, the third amendment to the Constitution of 1945, which was intended to start the Constitutional Court, missed the assessment. Late but never before thought of, the logical implication was the potential of judicial supremacy by the Constitutional Court, which is difficult to reconcile with the principles of constitutionalism.

Carl Howard McIlwain explains that the concept of constitutionalism contains the sense of anti-thesis despotic/arbitrary government: 'Constitutionalism has an essential quality in all the successive phases: it is a legal limit on the government; it is an antithesis of arbitrary rule; it is a despotic government and the rule of will instead of the law.' Furthermore, McIlwain stated that "the legal limits to arbitrariness, and the full political responsibility of government to the governed," are two fundamental elements of the concept of constitutionalism. The potential of judicial supremacy as regards the interpretation of the constitution made by the Constitutional Court is widespread because it is the guarantee of its decisions if its preconditions have been fulfilled. On the one hand, the guarantee granted by the Constitution gives the House of Representatives and the President an important juridical implication as a limitation of the legislative authority. However, on the contrary, this creates another problem, as the decisions of the Constitutional Court do not contain legal remedies available. The Constitutional Court has thus fulfilled the requirements of the constitutional interpretation to be classified as parallel to the concept of judicial supremacy since according to the Whittington opinion:" Judges argue that the Constitution is not because it does not have objective importance or because the tribunals cannot be wrong, but because there is no alternative.

Thomas Jefferson's opinion that the competence of judicial review can reform a judicial institution as a 'despotic branch' that goes against the principles of constitutionalism, is hardly denied by the author with such a tendency. Here is the relevance of the departmentalism in responding to problems concerning the institution of judicial review to the relationship between the judiciary (the Constitutional Court) with the competence of the judicial review officer and the legislator (the Chambers of Deputies and the President) which reviews the legislative product. The need to control the judicial institution is consistent with the common understanding of the problems arising in conjunction with the concept of judicial supremacy. Departmentalism, in accordance with Thomas Jefferson's opinion, provides the logic of a constitutional-democratic to conduct inspections and balancing between government institutions.

As a comparison, the practice of congressional overrides in the United States may be mentioned in developing a theoretical framework which is more appropriate to understand the future institutional relationship between the Constitutional Court and the legislator as regards the authority of governmental institutions to interpret the Constitution. In addition, the author will explain the underlying framework before going into the Congressional Overrides practice in detail. Congressional over rides is a response to the institutional position of a judicial institution which has counter-most difficulty with its relationship with the legislature. The Congressional Overrides practice describes as an effort to monitor the judiciary institution by the legislature. The Congressional Overrides itself, of course, signifies that Congress disagrees about the Supreme Court's interpretation of the Constitution through its decisions. The focus of the Congress in overriding is to involve the judiciary in the making of policy or judicial legislation that diminishes the legislative power in its power. Of course the practice overlooks the efforts made by judicial institutions to overcome the counter-majority problem. Practice that includes the 'addition of a new statute or the modification of an existing statute.' This action has to annul, as long as it concerns the enforceability of an act, the decision of the Supreme Court.

In the context "where an interpretation by the Supreme Court reveals an ideologically fragmented Court, it relies on the plain meaning of a text, and it ignores legislative signals, or refuses positions taken by federal or state or local governments," the practice for congressional overrides commonly pursued is William N. Eskridge, Jr. According to this argument, overrides by Congress appear to be in the spirit of checks and balances, in particular as the remedial action against decisions of the High Court which the Congress considered incorrect.

In a Constitution amendment, congressional overrides can also be done. Such a mechanism, however, is rare. Historically, there are several practices of constitutional overrides.

Firstly, the case of Chisholm *vs.* Georgia (1793). This problem involves the Supreme Court of the U.S. decision which receives a complaint against Georgia from a citizen of external nationality. The XI Amendment to the Constitution of the USA was reversed in this decision which stated: "Any lawsuit or equity that was brought against one of the US by the citizens of an outside State, or by the citizens, or subjects of a foreign State, shall not be construed as extending to that judicial power of the United States." Second, the case of Dred Scott against Sandford (1857). This case concerns the omission of Dred Scott's right to claim a former African-American slave claiming protection in accordance with a clause on equal protection. The decision was overriding by the XIII Amendment to the Constitution of the USA, in which: 'No Slavery nor Unintentional Servitude existed in the United States or any place subject to its jurisdiction except as punishment for the crime of which the party was duly convicted,' and the XIV Amendment to the Constitution of the United States of America; Any State shall not make or enforce any legislation that abridges citizens of the United States' privileges or immunities [...]."

Thirdly (1895) (Pollock *vs.* Loan & Trust Co.) of the farmers. This case concerns the decision by the US Supreme Court that the Congress Act, which made the tax uniform, was unconstitutional. The case was overridden by the 16th Constitution Amendment of the US of America, which states: "The Congress shall have power to impose and collect income taxes, irrespective of the sources, without distribution between the various States and regardless of census or listing." Fourth, case of Oregon versus Mitchell (1970). This case concerns the decision of the Supreme Court, which ruled on the constitutionality of the Congress Act (Voting Rights Act 1970), relating to the regulation of voting rights in the regional elections for a citizen of 18 years of age. This Act reduces the requirements of 21 years of age for citizens to have voting rights in the federal or regional government elections to 18 years. The XXVI Amendment to the US of America, which stated that: "Not denied or shortened by the U.S. or the State on account of their age, shall the right of citizens of the United States who are eighteen years or older to voting."

In addition, the Congress and the regional legislative institution have reacted in overrule cases in the form of a significant Act against the decisions of the US Supreme Court concerning the abolition of the death penalty in the Criminal Act. In Furman *vs.* Georgia (1972) a highly progressive judgment was issued by the US Supreme Court that the death penalty was unconstitutional because it is a practice of cruel and unusual penalty, so that its existence in the Act violated VIII the Constitutional amendment of the United States. As a result of the Furman versus Georgia case, the Supreme Court of the USA revokes the entire federal law and the regional State Act containing capital punishment. The majority of the regional and government states opposed the decision, which takes the opposite view that the death penalty isn't always cruel and unusual. Regional and federal governments "revive" the death penalty by "adding new laws on death penalty and additional procedural safeguards against arbitrary and capricious executions."

The US Supreme Court does not respond negatively in support of the Furman v. Georgia case and has actually annulled the overrides to this situation. In contrast, the United States' Supreme Court understands the override laid down in the decision Furman v. Georgia. In the Gregg *vs.* Georgia (1976) judgment, Judge Stewart gave a view to the United States Supreme Court, which stated that:

Despite the continuous debate on the morality and utility of capital punishment from the 19th century, it is now obvious that a large proportion of the American society still considers it to be an adequate and necessary criminal sanction. The legislative response to Furman is the most striking evidence of society's endorsement of the death penalty for killing. New statutes have been introduced by legislatures in or more countries that provide for at least a number of crimes that lead to the death of another person. And in 1974 the US Conference issued a death penalty statute for the death of a pirate aircraft.

Moreover, in this case the U.S. Supreme Court also recognizes as overriding of the Furman v Georgia decision with the phrase 'capital sanctions' the legality of capital punishment in the new criminal law, provided appropriate proceedings safeguards have been given to death penalty litigants as long as they are constitutional.

The practice above describes a good constitutional dialog in the constitutional interpretation process between the United States' Supreme Court and the legislature and the regional states that are overridden. Such a practice should prevent competition with the legislator between a judicial inspection body, while each case claims supremacy. Such practice may also prevent the judiciary from critical allegations concerning its counter-majority position in a democratic country (Alexandre Bickel), also in the form of a deviant institution.

The legitimacy of the institution of legal review may depend theoretically on the correctness of its product for the interpretation of its constitution. An error could therefore lead to a very serious problem of legitimacy. One of the reasons why judicial review gives the judiciary such great authority is its institutional character that hardly acts as a civic tyrant (the least dangerous branch). In Federalist No. 78 Alexander Hamilton said the following:

Anybody who takes the different power departments closely into account must recognize that the judiciary is always the least hazardous to political rights in the constitution in a government in which they are separated from one another, because of their ability to annoy or injure them. Not only does the executive hand over the awards, but it holds the sword. It is not just the bag that is controlled by the legislature, it also sets out the rules governing the duties and rights of each citizen. The judicial authorities, on the opposite hand, have nothing to do with the sword or the bag, nor can they take any action on the strength or wealth of society. It may be said that it has no strength nor will but only judgment; finally, the executive arm has to depend on the help to make its decisions effective.

However, the weakness of Hamilton's argument shows Altman that "the courts are being abused with little democratic controls."

The critics of Altman's criticisms contradict the assumption that, although the judicial body is less dangerous, it can also abuse the power which allows the other government body or citizens to become tyrannical. Here is Thomas Jefferson's ideas about departmentalism relating to the judicial review of an Act. Departmentalism relativizes the dominant role of the judicial institution in conducting judicial review and gives the legislator space to participate in the interpretation of the Constitution. This is very positive to avoid an incomprehension in constitutional interpretation of the judicial institution so that the legislature can correct mistakes.

Finality of the Decision of the Constitutional Court

The USA is different from Indonesia. As a constitutional judiciary having jurisdiction to conduct a judicial review of a Act, the existence of the Constitutional Court cannot be equivalent to that of a practice of the US Supreme Court based on M. V. Madison (1803). The guarantee of the assignment of the judicial review authority, together with its final status, is one of the main differences between the two systems. Thus, in its relations with the legislator, the position of the Constitutional Court is much stronger than that of the Supreme Court of America. That's a problem, however. The far too strong position of the Constitutional Court can serve as an incentive for greater judicial supremacy. This condition is not desired if an error is contained in the product of the interpretation of the constitution because no legal remedies are available for the decision of the Constitutional Court. Therefore, the need for a comparison with US practice that hopefully provides institutional insight for the resolution of problems.

Though constitutionally the decision of the Constitutional Court is definitive, the author intends to develop the view or conception that its position, as proposed by Thomas Jefferson, is nevertheless in the context of departmentalism: "The other branches of government are not responsible to regard the Constitution's readings of the Court as the Constitution itself." In the preceding statement it is worth emphasizing that in the context of a judgment of the

Constitutional Court the finality is prima facie and that the legislature neither has any obligation to comply nor is fully bound by the interpretation by the Constitutional Court and by its implication. These ideas ought to be interpreted as inherent principles in Indonesia's 1945 Indonesian Constitutional System which is committed to checks and equilibrium in the core governmental institutions, especially between the Constitutional Court and the legislator.

Although the above ideas are not specifically supported under the constitution, they must still be recognized within a constitutional system based on a strong commitment to controls and balances in order to guarantee healthy constitutionalism, which is a lack of serious rivalry between the legislator and the Constitutional Court. The substantive argument for justifying the concepts is that it is based more on constitutional supremacy than supremacy of the parliament or judiciary. For the sake of the implementation of constitutional supremacy, no parliamentary supremacy or judicial supremacy shall exist. There are checks and balances to support the supremacy of the Constitution. The Constitutional Court shall, through judicial reviews, correct errors in constitutional interpretation made by a legislator or legislator. Therefore, it is only logical to apply the opposite formula that errors can also be corrected by the lawgiver through overrides when interpreting the Constitutional Court.

The finality of the decision of the Constitutional Court is prima facie to be seen in the spirit of checks and balances. The Indonesian Constitution of 1945 does not explicitly mention this, it can however be referred to in the Indonesian Constitutional of 1945. The author believes that thomas Jefferson's departmentalism asset can gain a position in Indonesia's constitutional system to solve the above problem without the need to explicitly regulate it. The main argument is that it is not possible to bind incorrectness and apply rules to others. It should be corrected instead. This is the importance of departmentalism, and even greater is the institutionalization of Congressional overrides as constitutional through a constitutional convention.

The author maintains that the Court's judicial review should not be interpreted as a game situation with zero sum. The judicial review should provide the Constitutional Court with room for dialog and deliberation, in order specially to establish a dialectic process to ensure constitutional righteousness. The position of judicial supremacy does not correspond to the principle of constitutional supremacy. It is important to remember that the Constitutional Court's interpretation products have an inherent possibility of error. This is a very serious issue because of the counter-majoritarian difficulties facing the Constitutional Court institutionally.

Through the extreme situation, the position of judicial supremacy would only be justified. A legal supremacy situation is legally an explicit violation of the constitution by the legislator in making laws such as violations of human rights. This is in keeping with Tom Ginsburg's views that a judicial review is justified on the basis of the argument: 'judicial review may ensure that minorities remain part of the system, strengthen legitimacy and save democracy from itself.' 42 The inability of the minority to protect against a majority the fundamental interest in a democratic dispute must be compensated for by the presence as a warranty of the judicial review institution, so that in the name of a majority, the interests of the minority will not be sacrificed. With this type of theoretical framework Ginsburg recognizes that the constitution of judicial reviews is positive and counter-majoritarian, which is "judgmental examination may be counter-majoritary but not counter-democratic."

The practice of overriding by the legislator towards the Constitutional Court's decision, in accordance with the departmentality, will need an opportunity to reinterpret the finality of the constitutional court's judgement, particularly as a corrective measure in the light of the misinterpretation in their decisions by the constitutional court. The reasoning should be more convincing, compared with the decision of the Constitutional Court, in order to avoid arbitrarily override. A legislator opposite to the Constitutional Court must convincingly show that a significant mistake occurs from the ruling, and the error cannot be left, but should be rectified. The split Constitutional Court decision, which, by simple majority (5/4), is a powerful signal for the lawmaker to override with the basis that, in its decision on the issue of constitutionality, the Constitutional Court itself has no firm basis in its decision on an Act.

The legislator had, in practice, itself over ruled the ruling of the Constitutional Court. In the answer to the decision of the Constitutional Court on the judicial review of the State Budget Act (APBN) on the basis of Article 31(4) of the Indonesian Constitution of 1945, the state budget for education allocated 20%. Otherwise, the practice of judicial review by the Constitutional Court tends toward departmentalism by recognizing legislatures' open legislative policy and by making constitutional decisions on the condition of avoiding the high-tension of rivalry with the legislator. In Indonesia, it can be concluded that departmentalism's approach to the constitutional interpretation is subsequently accommodated, particularly in the relationship between the Constitutional Court and the legislator.

CONCLUSION

Indonesia's 1945 Constitution has a strong commitment to checks and balances to ensure constitutional supremacy. Although the final status of the decision of the Constitutional Court is constitutionally guaranteed, that does not preclude the chance of a constitutional dialog in line with the approach of the departmentalism. Dialog will be needed here between Constitutional Court as well as the legislator to ensure constitutional justice in terms of constitutional interpretation. In this position the definitive status of the 1945 Indonesian Constitutional Court decision becomes state action and not absolute. In addition, through the constitutional convention process, overrides can be institutionalized by the legislator. The decision depends later on the lawmaker, whether or not he or she reacts to the decision of the Constitutional Court.

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