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## Harmonization of Derivative Legislative Products Post-Constitutional Court Decision

**Arief Fahmi Lubis**

Sekolah Tinggi Hukum Militer, Indonesia

Corresponding Email: [arieffahmilubis0@gmail.com](mailto:arieffahmilubis0@gmail.com)

*Received: 29-11-2024      Reviewed: 13-12-2024      Accepted: 31-12-2024*

### Abstract

A ruling by the Constitutional Court constitutes a judicial product, necessitating harmonization and synchronization between the Constitutional Court's decisions and subordinate regulations. This process is essential for the legislative body to ensure legal coherence. This study aims to demonstrate that insufficient communication between institutions may impede the timely alignment and harmonization of laws amended by the Constitutional Court with regulations beneath the statutory level, thereby creating conflicts among legal provisions. This qualitative research employs a descriptive approach to systematically and factually collect data, reflecting the situation during the study. The findings underscore the critical need to harmonize derivative legal products after Constitutional Court rulings.

**Keywords:** post-decision, Constitutional Court, legal harmonization, legal certainty

### Introduction

Legal certainty is fundamental to maintaining national stability and resilience in a rule-of-law state. Legal certainty ensures that all citizens, institutions, and government bodies fulfill their rights and obligations based on established legal norms (Nurhaliza, 2024). One key mechanism for ensuring legal certainty is the legislative process, which involves formulating and enacting laws that serve as the state's legal foundation. However, the legislative process in Indonesia is often plagued by many challenges, including inconsistencies between regulations, conflicts of interest, and policy contradictions (Tresnadipangga et al., 2023). Such discrepancies can generate legal uncertainty, which undermines national resilience. According to (Moh. Mahfud MD, 2018), legal uncertainty creates vulnerabilities that erode public trust in law enforcement. This underscores the critical need for an effective and efficient legislative process to uphold legal legitimacy and prevent instability.

The existence of the Constitutional Court as the guardian and interpreter of the Constitution is a cornerstone in the framework of state institutions. The Constitutional Court employs various mechanisms to fulfill its role in upholding constitutional values. Article 1,

Paragraph 3 of the 1945 Constitution of the Republic of Indonesia is a foundational provision that prevents arbitrary actions within the governance process (Nyoman Nidia Sari Hayati et al., 2021). This article underpins the entire concept of statehood, making it imperative that every action taken by the state—particularly those affecting citizens—is grounded in legal authority. The Constitutional Court's presence is essential for providing independent and objective oversight of state administration and ensuring adherence to the protection of human rights and democratic principles (Dugaswara, 2020). This framework underscores the Constitutional Court's critical function in realizing the principles of a rule-of-law state, acting as a counterbalance to maintain national stability.

## **Literature Review**

Legal disharmony arises when there is a misalignment between one legal norm and another. According to L.M. Gandhi, such disharmony can stem from fundamental differences in general legislation or norms, including conflicting views and aspirations regarding objectives, principles, legal systems, and the distribution of authority. Based on his observations in practice, Gandhi identifies several key causes of legal disharmony; (Tresnadipangga et al., 2023)

1. Discrepancies between various laws or regulations: The increasing number of regulations creates challenges in comprehensively understanding or identifying all applicable laws. Consequently, provisions that assume all individuals are aware of the prevailing laws may become ineffective;
2. Conflicts between laws and their implementing regulations;
3. The divergence between statutory provisions and government agency policies, such as implementation guidelines (Indonesian: *petunjuk pelaksanaan* [JUKLAK]) that contradict the laws they are intended to enforce;
4. Inconsistencies between legal provisions and judicial precedents or circular letters issued by the Supreme Court;
5. Contradictory policies within central government agencies;
6. Differences between central government policies and those of regional governments;
7. Disparities between legal provisions and specific definitional formulations;
8. Conflicts in the distribution of authority among government agencies due to an unsystematic and unclear allocation of powers.

Based on the foregoing explanation, it can be concluded that harmonization is a deliberate effort or process to align legal principles and systems to ensure legal simplicity, utility, certainty, and justice. As a procedural aspect of legislative development, legal harmonization seeks to resolve conflicts and inconsistencies among legal norms within regulations. This process ultimately fosters a cohesive national legal framework that is synchronized, coordinated, balanced, integrated, consistent, and fully adherent to foundational legal principles.

## **Research Method**

This study employs a normative juridical approach. Normative legal research is a type of legal research that relies primarily on the analysis of legal literature and the use of secondary data (Almeida et al., 2016). The research refers to the legal norms contained in written regulations (statutory law), judicial decisions, and unwritten legal norms that are recognized and evolve within society. In addition, the study utilizes several approaches, as follows:

1. Statutory approach: This approach involves analyzing all laws and regulations relevant to the legal issues under investigation. It is applied to examine the legal foundations of the problems being studied. The researcher views law as a comprehensive closed system (its legal norms are interrelated and mutually dependent), all-inclusive (the law adequately addresses all legal issues without gaps), and systematic (the norms are structured hierarchically and interconnect in an organized manner). (Qamar et al., 2017)
2. Conceptual approach: This approach involves examining and analyzing the underlying thought framework, conceptual structure, or theoretical foundation of the legal issues under investigation, drawing on established perspectives and doctrines within legal theory. The conceptual approach is particularly useful when existing legal provisions are either absent or inadequate for addressing the issue at hand. It allows researchers to explore issues that may not yet be fully regulated by law. (Ali, 2022)
3. Analytical approach: This approach focuses on understanding the meanings embedded in the terms used within statutory provisions, both conceptually and in practice. It also analyzes how these terms are applied in legal rulings and real-world legal contexts. (Diantha, 2017)

## **Result and Discussion**

Establishing the Constitutional Court within Indonesia's constitutional framework is based on four fundamental pillars (Pócza, 2024). First, it upholds the principle of constitutionality, which ensures a balanced power distribution in the state's governance, thereby preventing arbitrary actions. Second, it functions as an instrument of checks and balances, fostering mutual oversight and control. In this regard, the presence of the Constitutional Court within the judiciary is crucial for effectively implementing checks and balances, ensuring no overlap in the exercise of state power as prescribed by the 1945 Constitution. Third, the Court contributes to fostering a clean and accountable government, where the administration is attuned to the people's interests and adheres to the principles of good governance (Rahman, 2024). Fourth, the Court is vital in safeguarding human rights, as unchecked power is prone to arbitrary actions. Therefore, the Constitutional Court is expected to exercise independent and objective oversight over state administration to ensure it remains grounded in protecting human rights and democratic principles. These foundational elements support the existence of the Constitutional Court as a key institution in realizing the ideals of a rule-of-law state, serving as a stabilizing mechanism for the nation's governance. (Ramadhan et al., n.d.)

The legislative process in Indonesia comprises a series of critical legal stages designed to produce equitable and just regulations. It is vital for citizens who wish to actively engage in

public policy formation to understand the processes through which laws are created and amended. Indonesia's Law on the Formation of Legislation contains specific provisions addressing this participatory process. In principle, the public is entitled to provide input, either orally or in writing, during the legislative procedure (Raga Nata & Ramadhani Baskoro, 2023). For effective public participation, draft regulations must be accessible (Anggoro, 2024). Nearly every discussion of draft regulations—especially those with broad public impact—triggers controversy. Such controversy can be viewed positively as expressing public opinion, where citizens must discuss policies that directly affect them (Ulum & Sukarno, 2023). Therefore, regulations that govern the public should involve the public in their formulation, ensuring the quality of the legislative process (Dluhosch & Horgos, 2023). However, these controversies also reveal a latent issue within the legislative framework: the lack of harmonization among stakeholders, which can undermine the effectiveness of the legislative process. Rejection may arise due to regulations that either adversely affect the public or are not properly understood, which can be broken down as follows:

1. Root Causes
  - a. Inadequate coordination in regulating derivative regulations following Constitutional Court rulings
  - b. Divergent interpretations among law enforcement agencies regarding the implementation of Constitutional Court decisions
  - c. Persistent regulatory overlaps that remain unresolved between new and existing regulations
2. Trends
  - a. Disharmony resulting from amendments introduced by Constitutional Court rulings
  - b. Legal uncertainty in the implementation of laws across various law enforcement agencies
  - c. Continued inconsistency between regulations
3. Implications
  - a. Reduced effectiveness in law enforcement due to regulations that no longer align with current conditions
  - b. Gaps in legal enforcement stemming from varying interpretations of implementation
  - c. Regulatory overlaps that exacerbate legal uncertainty

Based on the background and issues outlined above, it can be observed that the process of harmonizing derivative legal instruments following Constitutional Court rulings has not been fully optimized. The key points are as follows:

1. Institutions involved in the implementation of Constitutional Court rulings, such as the House of Representatives (Indonesian: *Dewan Perwakilan Rakyat* [DPR]) and the government (Riqiey, 2023), often fail to coordinate effectively when regulating derivative laws after a Constitutional Court ruling. This lack of coordination reflects the absence of an efficient harmonization process. While Constitutional Court rulings are *erga omnes*, from a normative perspective, these rulings necessitate follow-up actions from the relevant institutions addressed by the decision (Nurhaliza, 2024). Since the Constitutional Court's authority to review laws is linked to the legislative function, implementing such rulings

requires a legislative process. Law is a political product shaped by the legislative body, while Constitutional Court rulings are judicial products. Consequently, harmonization and synchronization between the regulations tested by the Constitutional Court (judicial) and subordinate regulations require legislative intervention. The lack of communication between these institutions results in delayed adjustments and harmonization of regulations amended by the Constitutional Court with existing laws, thereby creating conflicts between different legal provisions. (Suhardin & Flora, 2023)<sup>v</sup>

Integrating technology across governmental institutions and ministries is crucial for facilitating coordination in response to regulatory changes prompted by Constitutional Court rulings. Digitalizing the legislative process can enhance transparency, streamline procedures, and improve communication and coordination among agencies responsible for implementing legal adjustments. This approach seeks to harmonize amended policies and functions to ensure compliance with Constitutional Court decisions. Through digitalization, central government bodies responsible for drafting laws can more effectively oversee the creation and implementation of policies at subordinate levels, including ministerial regulations, regional ordinances, and similar instruments (Taufiqurrahman, 2023). This system is expected to enhance legal certainty for the public, ensuring a cohesive and efficient regulatory framework.

2. Differences in interpretation among law enforcement agencies regarding implementing Constitutional Court rulings have led to inconsistencies and ambiguities in formulating harmonious regulations. The process of legal harmonization post-Constitutional Court rulings has not been fully optimized. Discrepancies between regulations continue to persist, further compounded by varying legal interpretations that complicate the enforcement of Constitutional Court decisions across different levels of government. Challenges to harmonization are primarily due to limited resources and time constraints (Fadhilah et al., 2023). In addition, global issues such as investment and human rights require a coherent, integrated legal framework that avoids contradictions. Legal uncertainty will likely increase without addressing harmonization, and the absence of concerted efforts will exacerbate legal inconsistency, undermining public trust.

Furthermore, politicizing the legal process contributes to legislation's disorderly interpretation and implementation. Constitutional Court rulings are sometimes used as a pretext to amend laws, even when the ruling's reasoning does not directly address the issue. This selective application of Constitutional Court decisions—where some rulings are followed while others are disregarded—poses a serious concern (Kurniansyah & Siregar, 2023). In reality, Constitutional Court decisions should primarily be viewed as the Court's attempt to preserve the integrity of the 1945 Constitution of the Republic of Indonesia. Should the legal reasoning underlying a ruling be perceived as flawed, the appropriate course of action would be to petition for a re-examination (retesting) of the law or norm in question by the Constitutional Court.

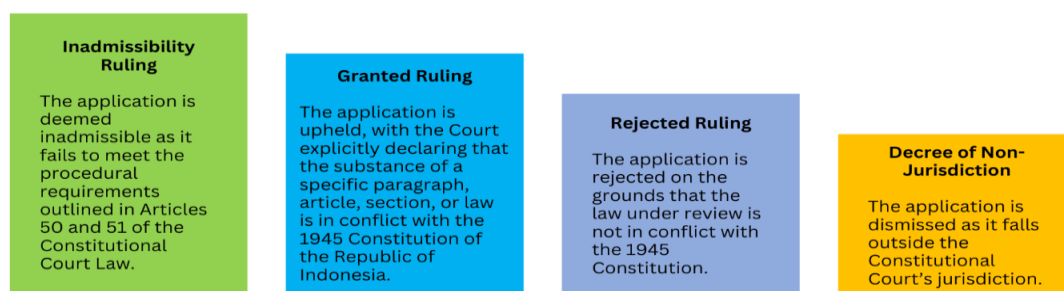
3. Differences in interpretation among law enforcement agencies regarding implementing Constitutional Court rulings result in inconsistent or conflicting interpretations when formulating harmonious regulations and give rise to regulatory overlaps. These overlaps may stem from a lack of awareness regarding regulation changes, whether due to Constitutional Court rulings or amendments made by legislators. Such overlaps lead to

disharmony in the legal framework, creating legal uncertainty and undermining the consistency of the regulatory system.

In the presence of regulatory overlaps, the harmonization of regulations becomes essential. The primary goal of harmonization is to establish coherent and consistent norms across legal provisions, thereby ensuring order within the legal system established by the state. Without harmonization, regulations subordinate to the law may lose efficacy and relevance. The harmonization of regulations, particularly within a hierarchical structure, is crucial. Without harmony among regulations within the hierarchy, that hierarchy's meaning and integrity are effectively nullified. (Mudatsir & Samsuri, 2023)

Harmonizing legal regulations can be classified into two categories: vertical harmonization (aligning regulations across different hierarchical levels) and horizontal harmonization (aligning regulations within the same hierarchical level). A key strategy for achieving harmonization and synchronization within Indonesia's legal framework is the concept of omnibus law. Derived from the Latin term "*omnibus*," meaning "*for everything*," an omnibus law refers to a single regulation designed to replace multiple existing regulations. To minimize regulatory overlaps, it is crucial to identify and classify the existing regulations in Indonesia, making the consideration of omnibus law a practical approach. In the context of Constitutional Court rulings, challenges arise regarding their implementation. As previously mentioned, while Constitutional Court rulings are self-executing, legislative bodies and subordinate regulations do not always promptly adapt to these decisions. To mitigate regulatory overlaps arising from Constitutional Court rulings, it is essential to identify and categorize the types of rulings, distinguishing between those involving negative and positive legislator decisions.

**Types of Constitutional Court Rulings**  
(Article 56 of the Constitutional Court Law and Article 48A in conjunction with Article 43 of Constitutional Court Regulation No. 06/PMK/2005)



**Source:** Presentation by a representative of Indonesia's Coordinating Ministry for Political, Legal, and Security Affairs during a Limited Working Meeting of the National Resilience Council on September 23, 2024

In addition to the types of rulings explicitly regulated under the Constitutional Court Law, as outlined in the preceding figure, other categories of Constitutional Court decisions are not formally codified in the Constitutional Court Law. These include as follows;

1. **Rulings Declaring Legal Nullity:** These decisions render a law, either in its entirety or partially, null and void due to its incompatibility with the 1945 Constitution of the Republic of Indonesia. Such rulings are legally binding and immediately effective upon their

pronouncement by the Court. In these instances, the Constitutional Court functions as a negative legislator, issuing declarative statements to annul unconstitutional provisions.

2. Conditionally Constitutional Rulings: These rulings address legal lacunae by declaring certain provisions constitutionally valid.
3. Conditionally Unconstitutional Rulings: These decisions specify that the provisions under review are deemed unconstitutional unless they meet the conditions set forth by the 1945 Constitution of the Republic of Indonesia. The provisions are declared invalid and inapplicable if these conditions are not met.
4. Rulings with Deferred Implementation (Limited Constitutional Validity): These rulings permit temporary enforcement of a constitutionally deficient provision, granting it binding legal force for a specified transitional period. This mechanism facilitates an adjustment phase for addressing inconsistencies with the Constitution while considering the practical implications of immediate nullification.
5. Rulings Formulating New Norms:
  - a. Under Indonesia's Law No. 24/2003 on the Constitutional Court, Articles 56 and 57 have been interpreted to limit the Constitutional Court's authority to that of a negative legislator, commonly understood as the power to annul laws, either in whole or in part, including the provisions contained within those laws.
  - b. Legal scholars such as Prof. Mahfud M.D., Prof. Jimly Asshiddiqie, and Prof. Maria support the view that the Constitutional Court functions as a negative legislator. In contrast, other scholars argue that the Constitutional Court may also act as a positive legislator, subject to considerations of justice, public benefit, urgent circumstances, and the need to address a legal vacuum to prevent legal disorder within society. Given the divergence of opinion regarding the Constitutional Court's role as either a negative or positive legislator and in the interest of ensuring legislative order following Constitutional Court rulings, granting the Court positive legislator powers would enable it to address legal gaps by issuing rulings that directly establish clear and binding regulations. This would enhance legal certainty without the need for a lengthy legislative process.

## **Conclusion**

The primary challenges in the legislative process following Constitutional Court rulings include the lack of uniformity in the procedural steps for drafting new laws in response to these rulings, the suboptimal harmonization of derivative legal products, and the limited active public participation in the legislative process post-ruling. To address these issues, it is recommended to enhance the harmonization of derivative legal products through the following strategies:

1. A comprehensive evaluation of all legal products affected by Constitutional Court rulings;
2. The optimization of harmonization units to ensure effective and efficient implementation of legal product harmonization post-ruling, with real-time accessibility for all stakeholders;
3. Developing a digital system for early detection of regulatory overlaps and the automatic synchronization of conflicting provisions.

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