



Judicial Review of Constitutional Court Decisions (An Idea for Future Procedural Review System)

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Abstract—The Constitutional Court is one of the authorities responsible for examining laws against the 1945 Constitution of the Republic of Indonesia. The implementation of the duties and authority of the Constitutional Court in conducting material and procedural review of laws against the 1945's Republic of Indonesian Constitution is a process that is typically carried out by the Court of Constitutional Law. However, the procedural review of the Constitutional Court Decisions represents a novel approach for the Constitutional Court. On January 16, 2024, the Constitutional Court decided a case of procedural analysis of the 90/PUU-XXI/2023 Constitutional Court Decision. This event was notable for being the first instance in which the Constitutional Court handled a case of procedural review the constitutional court decision as contained in decision number 145/PUU-XXI/2023 of the Constitutional Court. The objective of this study is to provide a description of the theoretical rationality of the procedural review of the Constitutional Court Decision. The authors employed a normative method with a conceptual approach, namely the examination of principles and theories related to the procedural review of the Constitutional Court Decision. Researchers employ secondary data collection techniques to gather materials. In this study, several issues are examined, including the possibility of the Constitutional Court having the authority to procedurally review the Court of Constitutional Law Decision and the concept of methods review of the Court of Constitutions Decision from a progressive legal theory perspective.

Keywords— Constitutional Court Authority; Procedural Examination; Constitutional Court Decisions; Decision Number 145/PUU-XXI/2023.

I. INTRODUCTION

The Indonesian courts were frequently criticized for their lack of independence from the regime before to Soeharto's overthrow in 1998. From Soekarno's final years as president to Soeharto's new order administration as president of Indonesia's second term, the government maintained significant influence on the court. Interference was even expressly authorised by law.[1] After 1998, the judiciary in Indonesia underwent changes, among these was the Court formation. The establishment of the Constitutional Court of Indonesia has the dual purpose of maintaining and strengthening the constitutional foundations of the Indonesian state.[2] The Constitutional Court duties and authorities are defined by the Republic of Indonesia's 1945 Constitution (UD NRI Tahun 1945). The Court's role maintaining and strengthening these foundations is to facilitate the realization of the stated objectives and goals. The Constitutional Court was established as a result of the third amendment to the 1945 Constitution of the Indonesian, which, in addition to the Supreme Court and the judiciary under the Supreme Court, is one of the actors of judicial power. The ruling of the Constitutional Court status one of the holders of authority in Indonesian is confirmed in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states, "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment." The aforementioned sources of judicial authority include religious courts, military courts, state administrative courts, and the Constitutional Court. This latter entity is further elucidated in Article 2 of Law Number 24 of 2003 concerning the Constitutional Court, which states that the Court exercises independent judicial power to administer justice, thereby upholding the law and justice in the country.[3]

As one of the principal arbiters of the Indonesian legal system, the Constitutional Court plays a pivotal role in ensuring the long-term stability and integrity of the nation's judicial framework. That's to ensure that principles

rule of law are upheld in the administration of state affairs. As is well known, in the past the constitution in Indonesia was very vulnerable to amendment. Four avenues through which constitutional displacements could occur are identified: (1) Sanctioning by previous constitutional dictates, (2) Constitutional arrangements imposed by external power, (3) Constitutional changes resulting from amendment powers, and (4) Constitutional departure resulting from court interpretation.[4] Furthermore, The choice of rules is significantly impacted by the inclusion of enforcement considerations in constitutional analysis, which also implies that procedural constitutional limitations are preferable to normative ones that aim to uphold more comprehensive substantive principles.[5]

Furthermore, the Court of Constitutions, as the holder of judicial power in Indonesia, has four authorities granted directly by the 1945 Constitution of the Republic of Indonesia, as stated in Article 24C, paragraph (1), which reads: "The Constitutional Court has the authority to hear at the first and final levels whose decisions are final to test laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes over general election results." Furthermore, the Constitutional Court is obliged, in line with Article 24C of the 1945 Constitution of the Republic of Indonesia, to render a judicial decision on any opinions expressed by the House of Representatives concerning alleged violations of the Constitution by the President and/or Vice President.[6]

In judicial review, the constitutional court plays a significant role in rendering decisions on judicial review.[7] Among the primary functions of the Constitutional Court is to evaluate consistency legislation. In testing laws against the Constitution, the Constitutional Court employs two distinct testing systems: material testing and procedural review. Both of these have differences. In material testing, the object of the test is the material aspects of the content of the law. This means that the content of a law must be assessed to determine whether it is contrary to the norms contained in the constitution. If it is determined that the law's provisions conflict with the constitution, then content of the legislation must be adjusted. Moreover, procedural examination places greater emphasis on the procedures, processes, or procedures employed in the formation of laws as legal products. Procedural examination aims to ascertain to what extent lawmakers comply with the process for enacting legislation. "Are there any procedures that are not in accordance with the established order, or any stages that are not passed in compliance with the rules and laws?"[8]

The Constitutional Court has been responsible for adjudicating numerous cases of judicial review of laws against the Constitution. These cases have encompassed both material and procedural judicial reviews of laws. Nevertheless, on 16 January 2024, a rare and singular occurrence transpired: the procedural review of the Constitutional Court decision. In the typical case, the applicant submits a request for material or procedural review of a law. In this instance, however, the applicant did not submit a request for a procedural review of the law itself, but rather a procedural review of the Constitutional Court decision. The application was filed by Denny Indrayana and Zainal Arifin Mochtar, the plaintiffs, who sought a procedural review of Article 169 letter q of Law Number 7 Year 2017 as interpreted by Court of Constitutionalism in 90/PUU-XXI/2023.

Moreover, in 145/PUU-XXI/2023, the Court rejected the Petitioners' request in its entirety. The Court has also emphasized that, in the event that the decision of the Constitutional Court contains an issue of alleged violations, the object of the request can be submitted for review of the issue of constitutionality, provided that it isn't hindered according to the clauses of the norms of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021 or carried out through a legislative review to the legislators. The Court has also emphasized that, in the event that the decision of the Constitutional Court contains an issue of alleged violations, the object of the request can be submitted for review of the issue of constitutionality. Furthermore, the Court's legal considerations indicate that the procedural review request advanced by the Petitioners, namely the procedural review of Article 169 letter q of Law Number 7 of 2017, which the Court has explained through Decision No. 90/PUU-XXI/2023, is a novel concept within the Indonesian legal system. Moreover, practice of procedural a norm resulting from a Constitutional Court decision is not only unusual but also has the potential to create new legal uncertainty. This goes against the constitutional guarantee with reasonable legal confidence, which the Court is responsible for safeguarding. Despite rejection of the Petitioners' petition in its entirety by the Constitutional Court, there was a concurring opinion from Constitutional Judges Arief Hidayat and Enny Nurbaningsih.

In a recent statement, Constitutional Judge Arief Hidayat highlighted that, in current legal landscape, a significant number of applications have been submitted to the Court seeking to have the Court reinterpret the norms of Letter q of Article 169 of the Election Law, which are direct contradiction with 1945 Constitution. Nevertheless, several applications questioned the process of forming Decision 90/PUU-XXI/2023, including the Petitioner's application. In the context of the normal situation, it is now required that the Supreme Court decisions are definitive and obligatory stipulated in Article 24C, paragraph (1) of the 1945 Constitution. However, in light evolution of judicial review in the Constitutional Court, particularly in the wake of Decision 90/PUU-XXI/2023, Constitutional Judge Arief Hidayat posited that the Court, as the ultimate arbiter of constitutional interpretation, should redefine the scope of "final and binding" to encompass only exceptional circumstances. In such circumstances, the justice-seeking community is limited to submitting a procedural review of the problematic Constitutional Court decision by excluding constitutional judges who are suspected or have a real conflict of interest with the case in question. Furthermore, he asserted that the discourse to procedurally review the Constitutional Court Decisions was

deliberately raised as part of an academic discourse that requires continuous study and research by legal experts, academics, practitioners, and stakeholders. In addition, the decision serves as a catalyst for prioritizing substantive justice over procedural justice, which is carried out in an equitable and balanced manner, with the objective of establishing a just, certain, and beneficial legal code that aligns with societal needs. The law, in essence, serves humanity, not humanity serving the law. As a constitutional judge and academic, I am compelled to engage in the discussion of the procedural review of court decisions, which the Constitutional Court itself has employed in the event of an anomalous circumstance. This deliberate action was part of my efforts to develop constitutionalism through scientific thinking and the expansion of knowledge, particularly in the legal profession.”[9]

In light of the aforementioned considerations, the authors are motivated to conduct further procedural examination of the Constitutional Court Decision. This entails determining the viability of applying a procedural examination of the Constitutional Court Decision within the Indonesian legal framework, and the theoretical rationale behind such an examination.

II. LITERATURE REVIEW

A. *An Abstract Review of the Authority of the Constitutional Court (An Idea for the Future Procedural Review System)*

The Constitutional Court, established in the third amendment, exerts a significant impact on the Indonesian state administration. The examination of laws embedded in one of its authorities provides new dynamics regarding the unconstitutionality of laws, whether they be words, sentences, or phrases. This process can result in cancellation of the law itself. The number of laws examined as well as invalidated through the Supreme Court indicates that the caliber of laws produced by the legislature has a negative impact on society when the law is enacted and applied within the community. In the authority to test laws, Muhammad Andi Anwar's thesis initiated an abstract review of testing by exemplifying the testing of laws in France, Italy, Germany, and Austria. The intention is to ensure that the community is better protected from the birth of laws that could be detrimental to the constitutional order. The methodology employed in this study is normative legal research, which entails an examination of existing literature.

This concept is not a novel idea in Indonesia. Dahlan Thaib, Professor of the Islamic University of Indonesia, states in his book “Kedaulatan Rakyat, Negara Hukum, dan Konstitusi” that in order to maintain the implementation of the 1945 Constitution, there needs to be a control mechanism in our legal system on the constitutionality of the various laws that are enacted. 1945 Constitution control mechanism law, several alternatives must be considered. One such alternative is that if the DPR has approved a draft law, then before it is passed by the President to become law and bind all citizens, the law is submitted to the Supreme Court to discuss whether there are things that conflict with the 1945 Constitution. Dahlan Thaib's proposal was presented prior to the establishment of the Constitutional Court. Consequently, prevailing view at the time was that the review should be conducted by the Supreme Court. In the future, examination of draft laws that have not yet been enacted will be referred to as an abstract review. An attempt to prevent the enactment of a bill that has not yet been enacted.[10]

The aforementioned research, conducted by Muhammad Andi Anwar, shares certain similarities with this study. Both studies examine the authority to review a legal product. The author's research, however, will diverge from that of Muhammad Andi Anwar in that the object of the research will be the procedural review process of a Constitutional Court decision. The procedural review process of a constitutional court decision represents a relatively new and distinctive area of legal inquiry. Indeed, the procedural represents inaugural examination of such a process in the context of constitutional law.

B. *The Idea of a Procedural Review of the Law in the Constitutional Court*

This study examines the concept of procedural review of the law in the Constitutional Court. The objective of this research is to identify two key elements: the reasons for the necessity of a procedural review of law in the Constitutional Court and the concept of a procedure review law in Constitutional Court.

The findings indicated the existence of two distinct phenomena. Firstly, it demonstrated that there is a rationale for the implementation of procedural review in the Constitutional Court. The results indicated that three factors were identified as factual justifications for the necessity of procedural review in the practice of procedural review in Court of Constitutionalism. Secondly, regarding the idea of procedural review in the Constitutional Court, the authors employed Rubinfeld's analysis, which incorporates doctrine, legitimacy, and interpretation approaches. The findings of the study challenged the assumption that the procedural review does not have a clearly delineated role in the 1945 Constitution. Rubinfeld's analysis indicates that the 1945 Constitution also provides for the defense of individuals' fundamental rights during the proper legislative procedure. The research also presents a novel perspective that the court should not be limited to considering due process in the context of procedural order but should also assess the quality and rationality of the process of lawmaking. At this juncture, the Constitutional Court is assigned with evaluating and determining

legitimacy lawmaking process, which is outlined in the 1945 Constitution with several distinct normative frameworks.[11]

The preceding description suggests that the proposed study will offer a discussion of new concepts connected procedural review Constitutional Court Decisions. In contrast, previous study conducted by Eid Rishan describes the concept of procedural review. This study will examine the concept of procedural review Constitutional Court Decisions.

III. METHOD

The authors employed a conceptual approach to normative legal analysis, encompassing a comprehensive examination of legal principles pertaining to constitutional court authority and the procedural review conducted within the court. This methodology entails a methodical examination of applicable laws with the objective of identifying shortcomings, suggesting legal modifications, and providing valuable perspectives to enhance law enforcement in specific contexts. The analysis is deductive, with the major premise being the tenets of progressive legal theory, while the minor premise is Constitutional Court Decision No. 145/PUU-XXI/2023. Moreover, this research centered description of the theoretical rationality of the procedural review of the Constitutional Court Decisions and to determine if it is possible that the process review of the Constitutional Court Decisions is applicable in Indonesia in the future.

A. IV. RESULT AND DISCUSSION

Constitutional Court Decision Number 145/PUU-XXI/2023 as Basis for Developing the Concept of Procedural Review of Constitutional Court Decisions

The 3rd Amendment to the 1945 Constitution established the Constitutional Court, an institution of judicial power entrusted with judicial review jurisdiction.[12] A crucial legitimizing role for judicial review is played in the establishment of political authority. This role is fulfilled by judicial review in two ways: first, it validates election results as the result of an impartial and competitive democratic process; and second, it gives legitimacy to legislation and executive actions that are upheld for constitutional violations.[13] The background to Constitutional Court Decision No. 145/PUU-XXI/2023 is inseparable from that of Decision No. 90/PUU-XXI/2023, that has provided given new interpretation Article 169 letter *q* of Law 7/2017. The matter at issue in this case concerns the process of forming Decision 90/PUU-XXI/2023, which is considered irregular and not in accordance with several articles of the 1945 Constitution and other relevant legislation.

The Petitioners contend that Article 169, paragraph *q*, of Law 7/2017, as amended by Decisions Number 90/PUU-XXI/2023, also considered by Anwar Usman, then constitution Judge, despite his apparent conflict of interest in the case. Consequently, when he is involved Decision No. 90/PUU/XXI/2023, it becomes evident Decision in question does not meet the formal requirements and is therefore invalid. Consequently, the Plaintiffs want the Court to deem Law 7/2017's Article 169 letter *q* unconstitutional and with no binding legal force, as made by the Court through Decision No. 90/PUU-XXI/2023. This is uphold the restoration of constitutional justice. The case brought forth by the plaintiffs is notable for its procedural review of a legal standard that the court has interpreted through Decision No. 90/PUU-XXI/2023. This is a concept that is not commonly found within the legalistic framework of law. It is therefore imperative to re-establish constitutional justice through this course of action. Consequently, it is of paramount importance to adopt a forward thinking legal strategy to effectively address case at hand (*a quo*).

In their submission, the plaintiffs propose that the Constitutional Court should apply progressive legal principles in this case. They cite the views of Professor Satjipto Rahardjo, who maintains that progressive legal principles involve law enforcement that relies on the judge's confidence in finding substantive justice in order to ensure the judge's freedom and autonomy. This approach enables the judge to transcend the limitations of legal formalism. According to Professor Satjipto Rahardjo, progressive law enforcement represents a movement that breaks through stagnation and the status *quo*, with the goal of ensuring that the law serves humanity in an effective and just manner. One of the methodologies employed is to tear down and liberate existing structures (rule-breaking), then build a new one (rule-making). This transition occurs within the context of a single, continuous process.[14]

The application of a progressive legal approach by Constitutional Court an appropriate strategy to address contemporary legal concerns. In Indonesia, the concept of progressive law is also recognized and embraced in the 1945 Constitution. Article 24, paragraph (1) and Article 28D, paragraph (1) of the 1945 Constitution indicate judicial power not only enforces the law, but also ensures justice. The plaintiffs contend that it would be reasonable to apply a procedural review of the articles in question, given that the Constitutional Courts decisions are regarded as of equal standing legal system itself. Once the Constitutional Court renders a choice, legislators are not obliged to amend the law in question; the Court's decision is, in effect, a law in and of itself. In light of these developments, it becomes evident that when the legal conceptual framework,

which is excessively positivistic, is unable to achieve substantive justice, it is necessary to advocate for a more progressive approach to law and judicial activism. This is a worthwhile endeavor, as evidenced by the message from Professor Satjipto Rahardjo, which states, “Humans and the law, not the other way around.”[9]

In 145/PUU-XXI/2023, the Court rejected Petitioners’ request in its entirety. The Court holds that The Constitutional Court ruling doesn’t recognize the existence of an invalid decision, despite the fact that during the process of making decisions carried out by constitutional judges, it is proven that one of the judges who participated in deciding the case violated ethics. This does not necessarily result in the decision being invalid or void. Besides, the Court has emphasized that for rulings rendered by the Supreme Court that are suspected of containing issues of alleged violations, the object of the request can be submitted for review of the issue of constitutionality, provided that it isn’t hindered by the provisions of the norms of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021 or carried out through a legislative review to the legislators. Moreover, in its legal considerations, the Court stated that the Petitioners’ argument for a procedural review of Article 169 letter *q* of Law 7/2017, as interpreted in Decision No. 90/PUU-XXI/2023, is novel within the Indonesian judicial system. [9]

Despite the rejection of the petition by the Constitutional Court, there were concurrent opinions delivered by Enny Nurbaningsih and Arief Hidayat, Constitutional Judges. Of particular interest is the concurring opinion delivered by Hidayat Arief, his reasoning is noteworthy in light of the decision. However, their reasons for concurring may diverge from those of the majority panel. [15]. A concurring opinion is considered distinct from the main opinion if it offers an argument that differs from the majority viewpoint of the other judges, but does not alter the ultimate outcome of the decision.[16]

In his concurring opinion, Arief Hidayat noted that, in the context of recent developments, particularly following Decision No. 90/PUU-XXI/2023, a significant number of applications have been submitted to the Court regarding efforts to have the Court reinterpret the norms of Article 169 letter *q* of the Election Law, which are odds with the 1945 Constitution. Nevertheless, several applications questioned the process of forming Decision 90/PUU-XXI/2023, including the Petitioner’s application. In the normal situation, it has become a necessity that the Court’s decision definitive and obligatory as stipulated. However, upon examination of the dynamics and developments pertaining to judicial review in the Constitutional Court, particularly in light of Decision 90/PUU-XXI/2023, Arief Hidayat posited that in light of this recent development, the Court as the final interpreter of the constitution should consider a reinterpretation of the meaning of final and binding, which should be applied in situations that deviate from the norm. In such circumstances, the justice-seeking community is limited to submitting a formal review of the problematic Constitutional Court decision by excluding constitutional judges who are suspected or have a real conflict of interest with the case in question (*a quo*). The goal is to achieve a restorative justice as a consequence of an allegedly problematic and unconstitutional process. Furthermore, he stated that the discourse to conduct a procedural review of the Constitutional Court Decisions was deliberately raised as part of an academic discourse that requires continuous study and research by legal experts, academics, practitioners, and stakeholders. In addition to serving as a catalyst to prioritize substantive justice over procedural justice, which is achieved in a proportional and balanced manner, the objective is to realize a just, certain, and beneficial legal framework that is in alignment with the interests of society. The law is, after all, a human construct designed to serve humanity, not the reverse. As both a constitutional judge and an academic, he was motivated to initiate a discourse on the procedural review of court decisions. This process is typically carried out by the Constitutional Court itself in instances of abnormal situations, as is evident from the case in question. This was deliberately done as part of an effort to develop the notion of constitutionalism through scientific thinking and the expansion of knowledge, especially in the field of law.[9]

In contrast to the concurring opinion of Arief Hidayat, the discourse concerning procedure review of The Constitutional Court decisions was initiated. Authors propose most viable strategy for addressing this challenge is to adopt a progressive legal theory approach. In essence, progressive legal theory represents an ongoing quest for an enduring truth that is not limited by time, beginning with an examination of the societal norms and regulations that are intended to facilitate human wellbeing, equity, and prosperity. The defining characteristics of progressive legal theory are composed of the law must focus on humans, be pro-justice, have a responsive type, and seek to build a constitutional legal state based on conscience.[17]

B.

Progressive Legal Theory as An Approach to the Procedural Review of Constitutional Court Decisions

One of the legal theories that encompasses a positivist approach to the law is progressive legal theory, which also recognizes the law as an inherent aspect of social reality. This theory acknowledges the influence of various forms of power in the creation of law, viewing it as a social phenomenon. Additionally, it considers law not in isolation but within the context of real-world circumstances. These characteristics differentiate progressive legal theory from other legal theories.[18] Progressive law by Satjipto Rahardjo is a powerful legal theory that has influenced many legal discourses and practices in Indonesia. Court rulings demonstrate that

litigants, experts, and court judges frequently employ this legal concept since they serve as legal texts that document and explain the trial process.[19]

This progressive legal theory was first proposed by Professor Satjipto Rahardjo. This theory is of interest to study because it represents an alternative to rule-centred legalism. In contrast to the traditional approach, where the emphasis is on rules and procedures, the paradigm is reversed, with honesty and sincerity becoming the foundation of effective law enforcement practice. The spirit of law enforcement is imbued with compassion, care, and commitment to pursuit of justice. The law's orientation is now towards human interests (welfare and happiness), which are also seen as the ultimate goal. Law enforcement personnel become the vanguard of change. This logic is employed in the process of legal revitalization. The focus of change is no longer on regulations per se, but rather on the creativity of law actors in actualizing the law at the appropriate time and place. The implementation of change can be initiated without the necessity of awaiting regulatory amendments (alterations to the law), as progressive law actors are able to provide progressive interpretations of existing regulations.[20] Progressive law can be employed as alternate and a law enforcement solution that upholds social justice ideals.[21]

Progressive law is founded on the premise that law is an institution that aspires to guide person towards simply, thriving, and cheerful life. In other words, progressive law aims to emancipate individuals in their thinking and actions within the context of the law, thereby enabling the law to fulfill its inherent obligation to serve humankind and humanity.[22]

In his analysis of progressive law, Professor Rahardjo suggests that it is a form of judicial discretion which allows judges to interpret substantive justice in a manner that is consistent with their own values and beliefs. This approach liberates limitations precedent and confines the legislation itself. According to Professor Satjipto Rahardjo, progressive law enforcement represents a movement that breaks through stagnation and the status quo, with the objective of ensuring that the law serves humanity in an effective and just manner. This process entails the dismantling of existing structures and norms, followed by the construction alternative institutions (rule-making). These actions occur within a single continuum.[14] A progressive approach to legal reform is well suited to addressing contemporary legal needs. It offers a promising framework for the Court's efforts in this direction. In Indonesia, the idea of progressive laws is also recognized and embraced in the 1945 Constitution. Paragraph (1) of Article 24 and paragraph (1) of Article 28D of the 1945. Constitution indicate judicial power not only enforces law, but also justice.

It is conceivable that a procedural review of articles in the law which have been interpreted by a decision of the Constitutional Court or, in other words, a procedural review of the Constitutional Court's decision may be undertaken. This is so since the Constitutional Court's decision is considered to be of equal status with the law. In the event that the Constitutional Court reaches a decision, it isn't necessary for legislature to enact amendments. Rather, the decision of the Court becomes the law. In light of these developments, when the legal conceptual framework, which is excessively positivistic, is unable to achieve substantive justice, the progressive legal approach can serve as a reference point for analysing the problem. This is a worthwhile endeavor, as Professor Satjipto Rahardjo asserts, "law for humans, not humans for law."

The approach to progressive legal theory, however, cannot necessarily be employed in the procedural review of the Constitutional Court decision at any given time, given that it is both unusual and has the potential to cause legal uncertainty. Therefore, it is necessary to give considerable thought to the application of the concept of a procedural review of the Constitutional Court's current decision. One of the considerations related to legal certainty.

V. CONCLUSION

The procedural review of the Constitutional Court decisions represents a novel and distinctive aspect of the Indonesia's evolution of law. The notion of procedural review first emerged in Constitutional Court Decision Number 145/PUU-XXI/2023. In accordance with notion progressive legal theory, it is highly probable that the procedural review of the Constitutional Court decisions is applicable in the future, given that the Constitutional Court decisions are regarded as being on par with law. In the event that the Constitutional Court reach a judicial decision, it is not necessary for the legislature to enact amendments to the law, as the Constitutional Court decision has become law in and of itself. In light of these developments, when the legal conceptual framework, which is excessively positivistic, is unable to achieve substantive justice, the progressive legal approach can serve as a reference point for analysing the problem. However, it should be noted that the progressive legal theory approach is not necessarily straightforward. It necessitates legal considerations from the other side to assess if procedural review of the Court of Constitutions decision appropriate at the present time.

To achieve justice and ensure legal certainty, it is imperative that the legislators conduct research into the feasibility of procedural review of the Constitutional Court decisions. Should this be deemed possible, the legislators may then amend the Constitutional Court's Law Number 7 of 2020 by including or adding the authority to the procedural review of the Constitutional Court decisions.

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