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READING THE PROBLEMATIC ROOTS OF NON-COMPLIANCE WITH CONSTITUTIONAL COURT DECISIONS

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ABSTARCT:

Many petitioners have filed or been petitioned by justice seekers for the juridical problems they faced with the Constitutional Court. One of the issues raised was related to a legislative product called the Law, which was considered by the applicant to be a product that was contrary to the constitution (1945 Constitution). In the trial held by the Court, there was a judicial review) which was granted or vice versa was rejected, so that the losing party was public as the party that did not win the case in the Court. Nevertheless, the implications of the Constitutional Court's decision are not only related to the applicant, but also to many parties, because the Law is a product oriented to the people's interests. In such conditions, the phenomenon so far has been partially read, that many parties have not demonstrated compliance with the Constitutional Court's decision, even though this Court's decision is final and binding. As an institution that carries the nation's noble mandate with the task of guarding the constitution, surely this phenomenon (disobedience to the Constitutional Court's decision), becomes a worrying phenomenon, so that further deconstruction and study needs to be done. The formulation of the problem in this paper is how is the root of the problematic non-compliance with the Constitutional Court's decision? How is the idealization of efforts that can be made by the Constitutional Court in responding to non-compliance with its decisions? In this paper, the methodology is in terms of the type of juridical normative research, the approach is statutory and conceptual, and the analysis usescontent analysis.

KEYWORDS: non-compliance, verdict, material test, problematics.

INTRODUCTION:

The legal world is almost never devoid of public discourse and lawsuits along with the problems that occur, especially the problem of constitutionality. Lots researchers, observers, and experts who raise juridical themes as objects the study. Among those at issue was the Constitutional Court's decision. There is a strong impression lately that shows, that the Court did not become special state instrument, because in addition there are several ethical and judicial problems which has several times overwritten the figure of the Constitutional Court judge, also several decisions relating to judicial review that has not been complied with by a number of parties.

From the reality so far, not a few juridical products (Laws) that have been submitted to the Constitutional Court for a material test as a result of the substantial legislation product are considered by elements of society to contain flawed or paradoxical values with the constitution (the 1945 Constitution). However, the Constitutional Court's decision is not automatically carried out by related parties or the applicant/respondent. The Constitutional Court's verdict does indeed exist. But the verdict can really be a test for legislative products. It has been proven, for example, that there are a number of legislative products which have not been submitted for a year

before a judicial review to the Constitutional Court, which then by the Constitutional Court, it turns out that the existence of the legislation product has been canceled, even the cancellation has an overall impact on making juridical dysfunctionalization.

The amount and speed with which legislative products are submitted by judicial review or canceled by the Constitutional Court is a reality that can at least be read as a slap to legislative performance. The accusation of some parties if the legislature works carelessly or follows the sponsor's message cannot be blamed, because it seems that its legacy products are full of serious illnesses that make the Court have to play its role as a doctor who needs treatment.

Unfortunately, patients do not always adhere to the doctor's "instructions". There are patients who refuse to follow him, including "patients" who should obey the Constitutional Court's decision. Ironically, not a few of these patients come from the national leadership group or are trusted in strategic positions. Some of the political effects of non-compliance cannot be categorized lightly, and instead pose a serious threat to the sustainability of Indonesia as a rule of law. Although on the one hand it can be recognized that the legal product is part of the product of the struggle for aspirations or the interests of political forces, but it is not necessarily the exclusive interests and particular groups that take precedence in making national law. If these interests are put forward, then the macro interests abandoned people. As a result, it is not excessive if the Court then cancels the legislation product which is subject to moral and moral defects, even though there are those who do not obey it.

Based on the backgraund, then the problem can be formulated as follows: how is the root of the problematic non-compliance with the Constitutional Court's decision? How is the idealization of efforts that can be made by the Constitutional Court in responding to non-compliance with its decisions?

METHODOLOGY:

The type of research described here is normative juridical research using a legislative and conceptual approach. The legal material consisting of primary, secondary and tertiary materials is obtained by means of documentation. The analysis technique is done with content analysis technique, which is describing the material with interpretative and comparative based analysis of various expert minds or other aspects.

RESULTS AND DISCUSSION:

Questioning the Politics of Legislation

The fact is easy to read, that not a few countries have done legislation or demonstrated the politics of legal reform. This was done in line with demands for reform or the Indonesian legal reform movement. Legal reform is carried out as a manifestation of the aspirations of the community, or at least the aspirations of a group of community members. Legal reform becomes the empirical and historical face of a society or nation (Husen, 2010). The face of the Indonesian nation was also read from its legacy products, which were carried out by "examination:".

Every political reform law reflects the reality of the struggle or upheaval of the interests of the people, which must be responded by the state. The state is fully responsible for the direction or political map of legal reform. Legal reform, ideally is a description of objective aspirations or "discussions" of factual conditions constructed by political forces trusted by the state. (Humaidah, 2010).

The juridical product is certainly not ideally contrary to the constitution (the 1945 Constitution) or as a constitutional product,

because the constitution is a source of sacred and fundamental footing for legal reforms such as Laws, Perpu, and so on. This synchronization in the politics of legal reform is actually in line with legal principles that the lower legal product must be in line with its main source (the 1945 Constitution). Unfortunately, in the course of time, not every product of legislation is substantially in line with the 1945 Constitution. It is proven that people who feel that their rights are impaired due to the product of legislation do not remain silent. They submitted an application to the Constitutional Court (MK) to request the cancellation, both the entire contents and some of the legislation products.

Students certainly understand that one of the functions inherent and inherent in parliament is the function of legislation. This function is carried out by carrying out the legislative process, namely the process of drafting and discussing a law. The process of national legislation underwent a transformation, both socially, legally and politically, along with the fundamental change in the political map of power since the fall of the authoritarian New Order regime more than a decade ago. Socially, the existence of parliamentary institutions after the change in the national political map, makes the House of Representatives no longer an accomplice to the regime of power controlled by the executive branch to spawn legislation in an effort to perpetuate the continuity of the regime's power. Political authoritarianism implemented by Soeharto has spelled out such a legislative body in carrying out its functions for supervise (check and balance) the executive agency. At that time, candidates for the people's representatives were first selected by the president, and candidates who had a bad record or were too critical of the government would not have the opportunity to become members of the DPR. The condition of the outbreak of political power must be acknowledged to support the re-running of one of the legislative bodies as a counterweight to the strength of the executive branch of power (checks and balances), this condition has begun to build public confidence that democracy has restarted in Indonesia, that the legislative body has regained its position as "the opposite "Executives as state organizers (Prasidi, in Sutrisno, 2016).

In developing countries, legal reform is a top priority. Therefore, in developing countries this legal reform always suggests a dual role. First, it was an attempt to break away from the circle of colonial legal structure. These efforts consisted of the elimination, replacement and adjustment (adoption and adaptation) of the provisions of colonial inheritance law to meet the demands of the national community. Second, legal reform plays a role in encouraging the development process, especially economic development that is indeed needed in order to catch up and developed countries, and more importantly is for the improvement of the welfare of citizens citizens (Nusantara, 1980). Such legal reforms certainly cannot be separated from the process and even the culture of legislative making carried out by the council.

The product of the legislation process is legislation (regulation). Legislation is the main tool for a rule of law to run a state based on law (rule of law). The legislative function must carry the mission of achieving the ideals of upholding legal reform, so that later the law will be an effective control for the administration of the state and a means for the fulfillment of the constitutional rights of citizens. In this legislative process should the DPR answer the challenges and problems of the chaotic Indonesian legal system (Dimas Prasidi, in Sutrisno, 2016).

Currently in Indonesia there are still many legal regulations that are not up to date,

but are still maintained. In order to approach the coming era, it is clear that the legal regulations require revision and if necessary totally changed with material that reflects the symptoms and phenomena of the current society. The problem is whether the process of change or legal renewal that took place in Indonesia has been carried out in accordance with normative methods and or in accordance with legal values in society? As suggested by legal experts. This question needs to be asked because the legal function is not merely a means of social control, but also has a function as a means of engineering or social reform (Harikhman, in Sutrisno, 2016).

Legal reform actually has broad meaning which includes the legal system. Friedman (1990) reminded that the legal system consists of legal structure (substance), substance / legal material (substance), and legal culture (legal culture). This idealism, at least has failed since the beginning when in terms of its juridical substance, it has been flawed or has normative contamination due to corrupt practices.

The legislation product submitted by the judicial review by the public to the Constitutional Court is inseparable from the quality of the legal norms formulated or produced by the council. If the juridical norms are of high quality or morally, philosophically, and justice is fulfilled in its formulation, surely the community will not be troubled or preoccupied with submitting a judicial review to the Constitutional Court. Mahfud MD, Chief Justice of the Constitutional Court reminded the inevitability of the phenomenon of political barter with legislation products. That is, in the drafting of the Draft Bill (Draft Law) towards ratification (becoming a Law), political forces may barter or bargain by entering into each other its strategic interests in the bill so that this bill can later become a juridical basis that accommodates their respective interests.

The statement of the former MK chairman means a warning to the public about the possibility of playing a political element in influencing and "polluting" the preparation of legal norms through political patterns of barter of interests. From Mahfud MD's message, the public was invited to think clearly, that not always a state product called legislation, is really a holy or sterile product from a sponsor's message that pollutes it. The problem is, what will become of a legal product in the future, if it is applicable in the community, it turns out a product that is full of sponsorship orders or a product of political interest barter. Indeed, this thought can be understood, because, political actors behind the "factory" of legislation, are elements of political parties (political parties) who are ordered to be creators, innovators, and successors in the field of national legal reform. They are a collection of strategic elements that are entrusted to give birth to approve the enactment of the bill.

In this realm, between smart ideas and ideas from groups who play or try to barter their interests clearly can color legislation products. They can play with political parties, strategic groups, the power of capital owners, and other elements, which are calculated to benefit them, both individually and exclusively. The advantages that he can obtain include various strategic interests which are accommodated and de jure.

Idrus Marham (2010) said that the legislative process was ineffective because it revealed various obstacles that made it difficult to reach an agreement in making strategic political decisions, due to the discovery of various subjective political interests that were difficult to meet. Even if an agreement is reached, it usually takes a long time. The patterns of political interaction that emerge tend to be colored by political intrigues, negotiations, and compromises with various lobbies, even political barter. As a result, in the

deliberation process of the bill, substantial-qualitative debate did not surface. Instead it is the fulfillment of the interests of political elites on micro efficiency, namely the optimization of the subjective interests of themselves and their groups which are short-term, and consequently bring "half-hearted democracy".

The political process in the DPR is not as simple as one might imagine. When examined, in the era of transition, the political process in the DPR cannot be separated from the development of macro (national) political structures that are characterized by a fragmentative circulation process of the political elite and the shifting pattern of power centralism marked by the spread of "centers of power". This phenomenon is very influential on the political process in the DPR (micro), given the link between the political elite in the DPR's micro structure and the political constellation that emerged in the macro (national) political structure. After the multiparty 1999 elections, the constellation and political map in the DPR changed. There is no longer a single major political force (Marham, 2010).

The Root Cause of Non-compliance

In the legal system adopted in various countries, there is a judicial power which among others has the authority to oversee and interpret the constitution. This power is exercised by the judicial authority implementing agency which can stand alone apart from the Supreme Court or be attached to be part of the Supreme Court's Functions. If it stands alone, the institution is often called the MK. Its existence is a new phenomenon in the world of state administration. Most established democracies do not recognize a stand-alone MK institution. Its functions are usually included in the functions of the Supreme Court in each country. One example is the United States. Its function as a judicial review in order to examine the constitutionality of a law, both in the formal sense or in the material review, is directly linked to the authority of the Supreme Court (Komara, 2009).

The Constitutional Court of the Republic of Indonesia is a new state institution in the Indonesian constitutional system as a result of the amendment to the 1945 Constitution of the Republic of Indonesia. As a constitutional organ, this institution is designed to be the guardian and interpreter of the Constitution through its decisions.

In carrying out its constitutional duties, the Constitutional Court seeks to realize its institutional vision, namely the establishment of the constitution in order to realize the ideals of the rule of law and democracy for the life of nationhood and dignified statehood. This vision is a guideline for the Constitutional Court in exercising judicial power that it carries independently and responsibly in accordance with the mandate of the Constitution.

Although the Constitutional Court tries to carry out its noble duties, the fact is that the Constitutional Court's decisions are not always obeyed by parties affected by their implications.

First, the existence of 9 (Nine) MK judges was deemed unable to defeat the work of the DPR or the executive who had struggled to form a law, so that the ruling was deemed not quite right to be obeyed. Based on the Constitutional Court's ruling, the strategic political elite (on the council) needs to carry out a reconstruction of a political paradigm of legal reform that is free from fighting with the winged interests of groups and political parties. Fighting that is sometimes patterned as political barter which is sanctioned in the realm of legal reform will only result in the desecralization of legislative productivity.

If so, the world of potential law enforcement will continue to be the object of

laughter and abuse everywhere, when the supremacy of political interests (supreme of politics) is given a special place in controlling and coloring the entry of legal substance in the product of legislation. This means, it is up to the political elite that is being given the role of a reformer, wanting to continue opportunization in the politics of legal reform or to make choices in the form of maximizing and sacralizing the legislation performance. In this realm it can be read that non-compliance with the Constitutional Court's decision is related to political attitudes still lulled in opportunization, so the Constitutional Court's decision was considered identical with toy items.

The frequent occurrence of hostage to democratization also shows that the political elite in the DPR are involved in political processes that are loaded with various interests, thus creating various dilemmas in determining their rational choices and greatly influencing the process of political change. The dilemmas that arise, in the perspective of rational choice theory, are related to how the political elite work based on incentive structures in optimizing their subjective interests

If these subjective interests happen to be in harmony with the aspirations of reform, the political elite in the DPR tends to facilitate the democratization process. Conversely, if the subjective interests are at odds with or against the aspirations of reform, the political elite in the DPR will tend to hinder and hold the democratization process. So, the political elite in the DPR can become a political force that smooths or otherwise hinders the process of democratization.

On the other hand, the presence of political elites in the DPR through a democratic election process does not necessarily lead to policy ideas that encourage changes to the democratic regime, bearing in mind that they tend to minimize risks to their political interests, so they are reluctant to respond to changes towards the creation of a political regime democratic quickly, precisely, and fundamentally, even tend to be pro status quo. In determining their rational choices, the political elite in the DPR tend to optimize their relations with the political parties that shelter them, which are still dominated by the reality of patron-client and political oligarchy (Zahra, 2009). Relationships with political parties are like neo-dynastic relations which makes it difficult to bring out and process their brilliant ideas. Halim said (2010), when dealing with the power of political parties, not a few can be read by someone who was originally smart and smart, suddenly like a person stutterers who have never known the scientific world, including refusing to obey the Constitutional Court's decision.

Secondly, the Constitutional Court's decision is considered not to be truly upholding democracy and justice. There are judges that the decision of the Constitutional Court is not just and does not have a spirit of democracy, although not a few who say the decision of the Constitutional Court is in line with the aspirations of the people (Zahra, 2009).

In history, not a few found philosophers who are apathetic and never believe in the law (this can be read when responding to the Court's decision). Because, for them, as subsequently summarized in the Hobbesian doctrine, auctoritas non veritas facit legem , kekuasaanlah who created the law, not the truth. Moreover, history records, since the Greek era, philosophers have always been killed by "legal rulers" which he never trusted; from Socrates who was forced to gulp poison, Al-Hallaj who was hanged, Suhrawardi who was maqtul (killed), to Sheikh Siti Jenar who was beheaded. Even now the law is still like

that. Law is not born from the womb of truth. He was born from the womb of the rulers.

Third, the level of legal education in some elements of society is still low or not yet feasible, so they do not know how the MK works. Perhaps the MK is known to stand in this country, but they do not understand the urgency of the existence of the Court in the life of society and the state. In this condition, they also do not understand what is the point of having to comply with legal norms.

Fourth, there are many parties who understand or understand if the Constitutional Court's decision is violated or not obeyed, there are no sanctions that deal with the matter of punishment or there is no special institution such as the police or prosecutors who will take care of the offenders. Each party related to the Constitutional Court's decision is only bound by the decision that binds it into force, but there are no instruments that force it to comply with it.

There are obstacles in the implementation of decisions of the Constitutional Court, and there are no sanctions for legislators who ignore and do not comply with these decisions. This is because the Constitutional Court does not have an executing instrument or institution that guarantees the implementation of its decision. The Constitutional Court also has no coercive power and cannot execute its own decisions (Widayati, 2017).

Ironically, there are many who do so that come from those who understand the norms and even the unit leaders, these leaders should set an example for constitutional compliance.

Since the 5th century before the Christian era, namely during the time of the Antique Greeks in the City of Athens, the desire for quality leaders had arisen. For example the philosopher Plato, Republican writer, who initiated the philosopher-quality leader as the controller of the state. According to him, they were the ones who could be relied on to become wise leaders, the bestari partners to manage the country. According to this philosopher, people who are incompetent (in terms of wisdom), must be prevented from leading the country because it will only plunge the country into tyranny (CJ Friedrich, 1969; KR Popper, 2002).

The role of the Constitutional Court

One of the judicial institutions given the mandate from the state to conduct judicial review is the Constitutional Court. We can understand that there are a number of reasons for the need for a constitutionality law to be tested, including: First, because the Act can be classified as a political product of two institutions, namely the President and the House of Representatives elected by the majority of the people based on the principle of rule by majority, which does not necessarily guarantee truth and justice based on the 1945 Constitution. Secondly, the will of the people is entirely reflected in the 1945 Constitution, whereas the Act can reflect the will (interests) of leaders or political elites in the parliament. Third, concerning the regulation of constitutional protection in relation to the review of the Law

The constitution of the 1945 Constitution in a democratic rule of law still causes problems, not only because it is not yet clear in nature, but also because of the many products of legislation made since the New Order came to power, which are classified as authoritarian, repressive, and contrary to the 1945 Constitution (Once, 2008). Jimly Asshiddiqy (2005) considered the existence of the Constitutional Court to be a separate institution due to the need for a court that specifically tests the products of the Law (in terms of Hans Kelsen, statute and customary

law) that are in conflict with the constitution (basic law).

John Marshal stated the reasons for the importance of judicial review, namely:

a. The judge vowed to uphold the constitution so that if there are regulations that contradict the constitution, a material test must be conducted.

b. The constitution is the supreme law of the land, so there must be an examination of the regulations under it so that the supreme law is not bypassed.

c. Judges must not refuse a case, so if someone submits a request for judicial review must be fulfilled (Mahfud, MD, 2009).

On the basis of that description, the Court can indeed show its role as guardian of the constitution by at least doing a number of things, first, reminding the public or parties related to the Constitutional Court's decision to understand the interests of the constitutional authority in the future. This can be faced with obstacles about the attitude of politicians who do not think long-term, that what they do can have a comparative impact on social and state life. They may only weigh with consideration or pragmatism benchmarks if what they do is to benefit the ordering group, sectoral interests, or special political ambitions.

In the realm of politicians, long-term macro interests related to the identity of Indonesia as a rule of law are not made as a priority.

For him, the most important thing is to propose a bill or be a passenger on the political vehicle of national law burning. If the Constitutional Court vigorously reminds politicians, it is possible that changes will occur.

Second, the Constitutional Court always tries to remind the petitioners and related parties about their sacredness in obeying the judge's decision, which is identified with obeying the idealism of the law. When the philosopher Celsus was asked about the law, he answered " Ius est ars aequi et boni," or law is an art (in applying) the value of goodness and propriety (Faqih and Wahid, 2017). Aristotle formulated that the law has a sacred duty which is to give to everyone who he has the right to receive it.

Third, the idealization of the Constitutional Court always seeks to remind the petitioners and related parties about their sacredness in obeying the judges' decision, which is identified with supporting the realization of juridical norms as instruments of renewing public and state life.

In the realm of third, in line with Roscoe Pound who argue that the law beridealisme manipulating the public or the law is a tool of social change (as a tool of social Engeneering), point of law as a tool to modify or update the community toward a better, more advanced or more progressive. Understanding of law as " a tool of social engineering " or " social engineering by law " was also explained by Soerjono Soekanto, that law was a tool to change society, in the sense that law might be used as a tool by agents of change. And an agent of change is a person or group that has the trust of the community as a leader or more social institutions. The vanguard of change leads the community in changing the social system and in carrying out it is directly involved in the pressures to make changes, and may even cause changes in other social institutions. A social change desired or planned, always under the control and vanguard of these changes "(Abidin, 2010)

Fourth, the idealization of the Constitutional Court always seeks to remind the petitioners and related parties about the obligation to comply with the verdict of identic judges by supporting the realization of law enforcement, on the contrary the failure of identical law enforcement by failing to voice justice, egalitarianism, humanity, and civilization. Laws can be upheld by law

enforcement officials who position themselves as the "mouth of the law" (la bauche de laloi), but the law they enforce is limited to meeting the domain of the interests of the formalization of law, and not the philosophy of interests that express the protection of human rights (justice seeker).

The well-known legal sociologist Satjipto Rahardjo once reminded that the failure of law enforcement is not merely seen from the pros and cons of the mental apparatus in implementing it, but must also be traced from the root of its making (Sutrisno, 2016). When there are many defects in the process of making this, which are then entrusted or "intended" by elitist groups who play or collaborate with exclusive interests, then it is not expected that law enforcement will be realized in society or the country.

Fifth, the Constitutional Court can also certify cooperation with many parties in disseminating its decisions, in addition to carrying out many activities with the theme of Education and learning of the constitution in the community. The move of the Constitutional Court to "go down the mountain" is important to verify public awareness of the constitution, which is in the midst of this very accelerating change.

CONCLUSION:

Constitutional learners, especially the Constitutional Court event law certainly understand, that in the trial held by the Constitutional Court, there was a judicial review which was granted or otherwise there was rejected, so that by the losing public party (applicant or respondent) as a party that was not win in the case at the Constitutional Court. Thus, the implications of the Constitutional Court's decision are not only related to the applicant in judicial review, but also to many parties, because the Law is a product oriented to the people's interests. In such conditions, the phenomenon so far has been partially read, that many parties have not demonstrated compliance with the Constitutional Court's decision, even though this Court's decision is final and binding.

As an institution that carries the nation's noble mandate in charge of guarding the constitution, such a phenomenon (disobedience to the Constitutional Court's ruling), is a worrying phenomenon, so it needs to be deconstructed by the Constitutional Court and those who support the performance of the implementation of the constitutional mandate. Many things specifically the idealization can be done by the Constitutional Court to "treat" a disease with a pattern of defiance of its decision.

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