

# CONSTITUTIONAL COURT DECISIONS WITH DEFERRED EFFECT IN JUDICIAL REVIEW OF STATUTES AGAINST THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA

## DECISÕES DO TRIBUNAL CONSTITUCIONAL COM EFEITO DIFERIDO NA REVISÃO JUDICIAL DE ESTATUTOS CONTRA A CONSTITUIÇÃO DE 1945 DA REPÚBLICA DA INDONÉSIA

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### Abstract

Normatively, the Constitutional Court Law and the Law on the Establishment of Legislation only recognize non-self-executing decisions, as they require further action by the legislature or the President. However, in practice, the Constitutional Court frequently issues self-executing decisions, including those that reinterpret or redefine legal provisions. This raises constitutional challenges, particularly due to the lack of a clear legal basis and the potential conflict with the Court's original philosophical and historical role as a judicial body. This study aims to examine: (1) the rationale behind the Court's issuance of non-self-executing decisions; (2) the legal certainty regarding their implementation; and (3) the future framework for managing such decisions. Findings indicate that non-self-executing decisions are issued when norms fall under the domain of open legal policy, thereby deferring action to the legislature or the President. Legal certainty can be strengthened by introducing delayed enforceability and time limits for follow-up action. The study

### Resumo

*Normativamente, a Lei do Tribunal Constitucional e a Lei sobre o Estabelecimento da Legislação reconhecem apenas decisões não autoexecutáveis, pois exigem ação adicional por parte do legislativo ou do Presidente. No entanto, na prática, o Tribunal Constitucional frequentemente emite decisões autoexecutáveis, incluindo aquelas que reinterpretam ou redefinem disposições legais. Isso levanta desafios constitucionais, particularmente devido à falta de uma base legal clara e ao potencial conflito com o papel filosófico e histórico original do Tribunal como órgão judicial. Este estudo visa examinar: (1) a justificativa por trás da emissão de decisões não autoexecutáveis pelo Tribunal; (2) a segurança jurídica quanto à sua implementação; e (3) a estrutura futura para o gerenciamento de tais decisões. Os resultados indicam que decisões não autoexecutáveis são emitidas quando as normas estão sob o domínio da política jurídica aberta, adiando assim a ação para o legislativo ou o Presidente. A segurança jurídica pode ser fortalecida*



recommends revising relevant laws to provide a legal foundation for decisions involving new norms, conditional constitutionality, and deferred implementation while maintaining the principle that such decisions require legislative or executive follow-up within a specified timeframe.

**Keywords:** Constitutional Court Decision. Judicial Review. Non-Self Executing.

*introduzindo aplicabilidade retardada e prazos para ação de acompanhamento. O estudo recomenda a revisão das leis pertinentes para fornecer uma base legal para decisões envolvendo novas normas, constitucionalidade condicional e implementação diferida, mantendo o princípio de que tais decisões exigem acompanhamento legislativo ou executivo dentro de um prazo especificado.*

**Palavras-chave:** *Decisão do Tribunal Constitucional. Revisão Judicial. Não Autoexecutável.*

## 1 INTRODUCTION

The Constitutional Court of the Republic of Indonesia (MK) was established based on the mandate of the Third Amendment to the 1945 Constitution of the Republic of Indonesia as a constitutional guardian institution that functions to ensure the compliance of all state organs with the principles of constitutionalism (Bachtiar, 2015). Constitutionally, Article 24C paragraph (1) of the 1945 Constitution grants the Constitutional Court authority to review laws against the Constitution, resolve disputes over the authority of state institutions, decide on the dissolution of political parties, and adjudicate election result disputes. In carrying out its authority, the Constitutional Court serves as a constitutional interpreter, protector of the constitutional rights of citizens, and guardian of human rights values (Asshiddiqie, 2015).

The Constitutional Court decisions are final and binding, thus having permanent legal force and must be carried out by all parties without a mechanism for further legal remedies (Maulidi, 2019). Unlike decisions of general courts that only bind the parties involved, Constitutional Court decisions apply *erga omnes* and have a status equivalent to that of laws, so constitutional judges indirectly carry out a normative function within the state constitutional system (Hardani & Wardhani, 2019; Siahaan, 2005). In the practice of judicial review of laws, the Constitutional Court applies several models of decisions, namely the annulment of norms, conditionally constitutional decisions, conditionally unconstitutional decisions, and the postponement of the enforcement of

decisions, which reflect the flexibility of the Constitutional Court's role in maintaining the balance between legal certainty and constitutional justice (Fauziah & Arrasuli, 2023).

In the review of laws against the 1945 Constitution, there are four models of Constitutional Court decisions, namely declaring a norm to be in conflict with the 1945 Constitution and not having binding legal force, conditionally constitutional decisions, conditionally unconstitutional decisions, and the postponement of the enforcement of decisions (Fauziah & Arrasuli, 2023). The first through third models are generally self-executing in nature because they can be implemented directly, whereas the postponement of the enforcement of decisions is classified as non-self-executing because it requires follow-up action. Article 10 of the Constitutional Court Law also demonstrates variations in decision outcomes that can develop into the formation of new norms or conditional decisions. Interestingly, practice shows that Constitutional Court decisions are more frequently self-executing in nature, which can be directly operationalized without prior changes to the law, thereby strengthening the Constitutional Court's role as a guardian of the constitutionality of legal norms.

Distinguished from verdicts that invalidate specific statutory provisions, the inclusion of Constitutional Court Decisions in the State Gazette under Article 57(3) of the Constitutional Court Law provides sufficient general knowledge. This binds all state actors and citizens to abstain from applying or enforcing the unconstitutional material, making any breach an unlawful act that is void from inception (Ali et al., 2016).

However, the researcher posits that there is an absence of clear stipulations in Law Number 12 of 2011 concerning the Formation of Legislation or in the Constitutional Court Law that render Constitutional Court Decisions self-executing, explicitly govern their inclusion in the state gazette and their application, or address the subsequent obligations of the DPR or the President as law-making bodies. Regulations pertaining to Constitutional Court decisions are addressed in Article 10 paragraph (1) letter d of Law No. 12 of 2011, which provides:

*“material content that must be regulated by Law contains follow-up to Constitutional Court decisions; and/or”.*

Then in paragraph (2) it is emphasized that:

*“Follow-up to Constitutional Court decisions as referred to in paragraph (1) letter d is carried out by the DPR or the President.”*

The explanation of Article 10 paragraph (1) letter d states:

*“what is meant by ‘follow-up to Constitutional Court decisions’ is related to Constitutional Court decisions regarding the review of Laws against the 1945 Constitution of the Republic of Indonesia.”*

The content of the material is based on specific verses, articles, or sections of laws that have been identified in Constitutional Court rulings as conflicting with the 1945 Constitution of Indonesia. Paragraph (2) further explains that the implementation of these court decisions is aimed at avoiding gaps in the law.

Article 10 of Law Number 12 of 2011 as the normative basis for the implementation of Constitutional Court (MK) decisions still has fundamental weaknesses. This provision has not specifically accommodated the variations of models of law review decisions nor has it provided a binding mechanism to ensure follow-up by the legislature. As a result, there is no clear regulation regarding the implementation of conditionally constitutional decisions, conditionally unconstitutional decisions, and decisions that create new norms.

In practice, the Constitutional Court has increasingly issued self-executing decisions that take effect directly without requiring legislative follow-up. This type of decision can be immediately enforced from the moment it is pronounced and does not depend on the formation of new regulations (Candra et al., 2024). However, this phenomenon raises constitutional issues because there is no explicit legal basis at the level of law that grants the Constitutional Court authority to form the meaning of new norms, particularly in the model of conditional decisions.

Furthermore, the expansion of the Constitutional Court’s role through self-executing decisions also has the potential to disrupt the principle of separation of powers and the checks and balances mechanism. Theoretically, the Constitutional Court is positioned as a negative legislator with the authority to annul norms that are in conflict with the constitution, whereas the authority to form legal norms lies with the House of Representatives and the government as positive legislators (Mahmodin, 2016). Therefore, the dominance of self-executing decisions has the potential to shift the constitutional function of the Constitutional Court and weaken the role of the law-forming institution.

This study aims to address three main issues outlined in the background. Initially, it explores the underlying factor influencing the Constitutional Court's preference for

Non-Self Executing decisions that necessitate action from political bodies. Next, it delves into strategies for achieving legal certainty when the DPR or President respond to these Constitutional Court rulings. Third, how should the normative arrangement or regulation of Non-Self Executing decisions be formulated in the future to ensure their effectiveness and constitutionality in the constitutional system.

## 2 RESULTS AND DISCUSSION

### 2.1 Basis for the constitutional court providing non-self executing decisions

Constitutional Court decisions that are non-self-executing cannot be implemented directly and require legislative follow-up, either through amendments or the formation of new regulations. In this context, the judiciary serves as a checks and balances mechanism against the legislative institution to ensure that legal products are in line with the constitution (Mahmodin, 2016). Although some decisions require further regulation, their binding force remains in effect from the moment the decision is read and must be complied with by all parties. In the event of a conflict of norms, the Constitutional Court decision becomes the applicable legal basis (Safa'at, 2019). However, decisions that have an impact on a broader normative order, including the review of *beleidsregels*, remain categorized as non-self-executing because their application depends on regulatory adjustments to prevent a legal vacuum (Asy'ari et al., 2017).

The researcher interprets the Constitutional Court's role in producing non-self-executing decisions as a demonstration of its judicial competence. This interpretation aligns with the directives found in Article 10 of Law No. 12 of 2011, which prescribes the responsive actions required of the DPR or President following a judicial review decision. The interpretation of the relevant laws indicates they govern decisions that necessitate further legislative follow-up and lack direct enforceability.

However, in the period 2016-2019 and in the period 2021-2025, Constitutional Court Decisions experienced interesting dynamics to observe. In the period 2016-2019, the Constitutional Court decided 433 cases of judicial review of laws. Most of these requests were stated as rejected, inadmissible, lapsed and stated not authorized to adjudicate for various reasons and considerations. The remaining portion, approximately

15%, was stated as granted. Petitions were granted through decisions featuring multiple grant types. Meanwhile, from 2020 to 2025, the Constitutional Court finalized 673 cases (Constitutional Court of the Republic of Indonesia, 2025). This indicates that, over the preceding nine years, the Court has adjudicated a cumulative 1,106 cases. The recapitulation of decisions concerning judicial review of laws for the 2016-2019 and 2020-2025 intervals is provided in Tables 1 and 2.

**Table 1**

*Decisions on Judicial Review of Laws Year 2016-2019*

No	Year	Total	Decision					Lack of Jurisdiction
			Granted	Rejected	Inadmissible	Withdrawn	Dismissed	
1.	2016	96	19	34	30	9	3	1
2.	2017	131	22	48	44	12	4	1
3.	2018	114	15	42	47	7	1	2
4.	2019	92	4	46	32	8	2	0
<b>Total</b>		<b>433</b>	<b>60</b>	<b>170</b>	<b>153</b>	<b>40</b>	<b>10</b>	<b>4</b>

Source: Processed from recapitulation of Constitutional Court judicial review decisions of 2016-2019

**Table 2**

*Decisions on Judicial Review of Laws Year 2020-2025*

No	Year	Total	Decision					Lack of Jurisdiction
			Granted	Rejected	Inadmissible	Withdrawn	Dismissed	
1.	2020	89	3	29	43	14	0	0
2.	2021	99	14	44	29	11	0	1
3.	2022	124	15	53	37	18	1	0
4.	2023	136	13	57	41	25	0	0
5.	2024	158	18	77	31	22	8	2
6.	2025	67	14	20	21	11	1	0
<b>Total</b>		<b>673</b>	<b>77</b>	<b>280</b>	<b>202</b>	<b>111</b>	<b>10</b>	<b>3</b>

Source: Processed from recapitulation of Constitutional Court judicial review decisions of 2020-2025

Based on the table 1 and 2 above, the researcher then recategorized the granted judicial review decisions by categorizing self-executing decisions consisting of legally null and void, conditionally constitutional, and conditionally unconstitutional models, and non-self-executing decisions, namely the decision model stating postponement of decision implementation. As outlined in the table 3 below:

**Table 3***Constitutional Court Decision Models in Judicial Review Year 2016-2025*

No	Decision Model	Number of Decisions	Nature
1.	Legally Null and Void	24	Self-Executing
2.	Conditionally Unconstitutional/Conditionally Constitutional	107	Self-Executing
3.	Postponement of Decision Implementation	4	Non-Self-Executing

Source: Processed from recapitulation of Constitutional Court judicial review decisions of 2016-2025

Based on Table 3 above, it can be known that in decisions granting requests for judicial review of Laws, the Constitutional Court more often decides with self-executing decisions with a total of 131 (one hundred thirty-one) with 24 Decisions in the legally null and void model and 107 decisions in the conditionally unconstitutional model. Inversely proportional to postponement decisions that are categorized as non-self-executing decisions, the Constitutional Court only decided 4 Decisions in the last 10 (ten) years. This phenomenon becomes interesting when linked to the basis for forming Constitutional Court decisions which actually do not regulate self-executing decisions, and by implication only regulate non-self-executing decisions because they require follow-up from law-making institutions.

The difference in the character of Constitutional Court decisions between those that are self-executing and non-self-executing reveals a paradox in the practice of judicial review of laws. On one hand, non-self-executing decisions reflect a judicial restraint attitude by providing space for the legislature to carry out open legal policy, while on the other hand, self-executing decisions place the Constitutional Court as a relatively active actor to the extent that it potentially encroaches upon the authority of the legislative sphere (Bisariyadi, 2016). This paradox is influenced by the absence of clear regulation regarding the classification of the nature of Constitutional Court decisions. Historically, the tendency toward the issuance of non-self-executing decisions is apparent in Decision Number 6/PUU-III/2005, Decision Number 5/PUU-V/2007, Decision Number 26/PUU-VII/2009, Decision Number 37-39/PUU-VIII/2010, Decision Number 56/PUU-X/2012, Decision Number 7/PUU-XI/2013, as well as Decision Number 30 and 74/PUU-XII/2014, which place the norms under review as part of the legislative discretion of the legislature.

Constitutional Court decisions demonstrate that the legislature has a margin of appreciation in determining the content of legal norms, provided that they do not clearly conflict with the 1945 Constitution, do not contain an abuse of authority (*detournement de pouvoir*), and are not arbitrary (*willekeur*).

Therefore, constitutional Court decisions reveal the implementation of legal policies. When the Constitutional Court designates a norm as a policy decision made by legislators, it typically pertains to two main issues: age verification and the creation of institutions through legislation (Ajie, 2018). In both types of norms, the Constitutional Court in its decision clearly and explicitly states that this is a policy choice of lawmakers (open legal policy).

Factually, a judicial example is found in the review of Law Number 1 of 1974 on Marriage, adjudicated in Decision 22/PUU-XV/2017. The Constitutional Court, in a judicial act of restraint, rendered a ruling to postpone implementation, thus placing a judicial limitation on its constitutional review power. This judicial decision was classified as non-self-executing and contains the following judicial order:

- 1) The Court partially grants the Applicants' request;
- 2) The Court declares Article 7, paragraph (1) of Law Number 1 of 1974 concerning Marriage, to the extent it includes the phrase "age 16 (sixteen) years," unconstitutional and without legal force;
- 3) The Court declares that Article 7, paragraph (1) of the said Law shall persist in effect pending amendment, subject to the deadline imposed by this decision;
- 4) The Court orders the legislative branch to amend Law Number 1 of 1974 concerning Marriage, specifically to address the minimum marriage age for women, within a period not to exceed three years.

This decision is a decision containing postponement of the applicability of a decision, categorized as a non-self-executing decision because it requires follow-up in the DPR or President. Therefore, the amendment to the Marriage Law, stated in Law Number 16 of 2019, emphasized that marriage is only allowed when both parties are at least 19 years old, as stated in Article 7, paragraph (1).

Therefore, the Constitutional Court delivers judgments in the non-self category by considering norm articles, paragraphs, or sections in laws that are reviewed and approved by the Court, but are also seen as part of an open legal policy.

## 2.2 Legal certainty of follow-up to decisions categorized as non-self-executing

There exist multiple instances of Constitutional Court decisions that have not been adequately implemented by the relevant law-making institutions or addressees. A notable example is Constitutional Court Decision Number 92/PUU-X/2012. In this ruling, the Court declared that all provisions within Law Number 27 of 2009 and Law Number 12 of 2011, which diminish the constitutional authority or reduce the functions, duties, and powers of the Regional Representative Council (DPD) as intended by the 1945 Constitution, must be deemed unconstitutional. The decision further affirmed the DPD's constitutional rights under Article 22D paragraphs (1) and (2), encompassing the submission of bills, participation in legislative discussions, contributions to the national legislative program, and providing consideration on draft laws. Significantly, the substance of this ruling was later integrated into Law Number 17 of 2014.

A fairly popular non-self-executing decision can be seen from Constitutional Court Decision Number 91/PUU-XVIII/2020 which reviewed the Job Creation Law, especially in numbers 3, 4, 5, and 6 of the Decision, which reads:

- (3) Stating that the enactment of Law Number 11 of 2020 regarding Job Creation goes against the 1945 Constitution of Indonesia and is only legally binding if no changes are made within two years from the date of this decision;
- (4) Until the necessary revisions are implemented within the specified deadline, Law Number 11 of 2020 on Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to State Gazette of the Republic of Indonesia Number 6573) will continue to be enforced as stated in this ruling;
- (5) The Constitutional Court directs the law-making body to carry out corrections within a maximum span of two years following this decision. In the event that no improvements are instituted within that timeframe, the legal status of Law Number 11 of 2020 concerning Job Creation will become irrevocably unconstitutional;
- (6) Stipulating that, in the event improvements to Law Number 11 of 2020 concerning Job Creation are not finalized within the stipulated two-year period, the laws, articles, or material content previously revoked or amended by that Law shall be revived and restored to effect;

(7)The Court declares a postponement of all strategic and broadly impactful actions and policies, and further prohibits the issuance of new implementing regulations related to Law Number 11 of 2020 concerning Job Creation.”

Law Number 1 of 2022 concerning Financial Relations Between Central Government and Regional Governments employs the omnibus law model. It completely revokes Law Number 28 of 2009 concerning Regional Taxes and Levies and Law Number 33 of 2004 concerning Financial Balance between Central Government and Regional Governments. Furthermore, it partially revokes Law Number 11 of 2020 concerning Job Creation, specifically Article 114, Article 176(4) as stipulated in Article 252, and Item 7 of said law (Tams, 2005). The MK previously declared the Job Creation Law to have a procedural defect because it did not conform to the mechanism for the formation of legislation under Law Number 12 of 2011. However, legislative practice continued to repeat the omnibus law pattern.

Law Number 1 of 2022 concerning Financial Relations Between Central Government and Regional Governments employs the omnibus law model. It completely revokes Law Number 28 of 2009 concerning Regional Taxes and Levies and Law Number 33 of 2004 concerning Financial Balance between Central Government and Regional Governments. Furthermore, it partially revokes Law Number 11 of 2020 concerning Job Creation, specifically Article 114, Article 176(4) as stipulated in Article 252, and Item 7 of said law.

Beyond its partial revocation of the Job Creation Law, the HKPD Law effects the revocation of designated articles within Law Number 23 of 2014 on Regional Government. The affected articles comprise: Article 1 numbers 30, 38, and 47-49; Article 245 insofar as concerning Regional Taxes and Levies; Article 279; Article 285(2) letter a numbers 1-4; Articles 288-291; Article 296; Article 302; Article 324; and Article 325 of the said law, which had been amended several times, with the latest amendment being Law Number 11 of 2020.

Analytically, the HKPD Law's use of the omnibus model is misaligned with the Constitutional Court's ruling on the Job Creation Law. The Court found the Job Creation Law formally flawed due to its non-conformity with the legislative principles in Law Number 12 of 2011, which lacks provisions for the omnibus model. While the decision

pertains specifically to the Job Creation Law, its core legal interpretation, prohibiting the use of the omnibus model for law formation carries universal effect (*erga omnes*).

There is an urgency to form normative regulation concerning the mechanism for the follow-up of Constitutional Court decisions, particularly those that are non-self-executing, in order to guarantee legal certainty and the effectiveness of decision implementation. In this context, the authority to form norms following Constitutional Court decisions remains with the legislature through the application of the judicial deferral mechanism, namely the granting of a certain time limit for the House of Representatives to follow up on Constitutional Court decisions. The concept of judicial deferral has been applied in various countries, among others Italy, Germany, Austria, Romania, and South Korea (Bisariyadi, 2017). It is also considered an effective instrument to ensure the readiness of decision implementation with a clear and measurable time limit (Sulistyowati et al., 2021).

Although there are views stating that postponement has the potential to give rise to delay of justice, Safa'at affirms that the absence of technical regulation for follow-up does not reduce the final and binding nature of Constitutional Court decisions so that they remain obligatory to be carried out by all related parties (Safa'at, 2019). In line with that, Dixon and Issacharoff emphasize that temporary postponement is an institutional strategy to ensure the effectiveness of court decision implementation, without reducing the essence of substantive justice (Dixon & Issacharoff, 2016). Therefore, judicial deferral can be positioned as a constitutional mechanism that maintains the binding force of Constitutional Court decisions while at the same time encouraging the harmonization of the legislative system.

The practice of judicial deferral with time limitations is also applied by Constitutional Courts in several countries. In the case of *Minister of Home Affairs v. Fourie*, the Constitutional Court of South Africa postponed the enforcement of the decision concerning same-sex marriage on the consideration that

*"...however, in the development of the common law system it needs to be temporarily stopped to be in line with the constitution and parliament can implement laws that are appropriate"* (SAFLII, 2005).

The court then granted a one-year time limit to parliament to adjust the regulations, which was subsequently realized through the formation of the Civil Union

Act (Bisariyadi, 2016). Meanwhile, the Constitutional Court of Austria applied the concept of margin of tolerance by granting a time limit of up to 18 months for the legislature to follow up on the annulment of norms, so that the effectiveness of the decision is maintained without disrupting the stability of the legal system (Sulistiyowati et al., 2021)

A comparison of the follow-up systems of Constitutional Court decisions shows that the strengthening of the judicial deferral mechanism against non-self-executing decisions can be carried out through the addition of norms in the Constitutional Court Law that grant the MK authority to establish postponement and time limits for the implementation of decisions by the legislature (Sulistiyowati et al., 2021). The margin of tolerance model in judicial deferral implies the existence of a time limitation, in which if within the determined time period the legislature does not follow up on the MK decision, then the decision shall apply *mutatis mutandis* as a norm that is binding on the public. This legal construction is in line with Article 73 of Law Number 12 of 2011 which stipulates that a bill that has been jointly agreed upon by the House of Representatives and the President remains in force if it is not signed by the President within 30 days.

This research affirms the importance of regulating time limits for follow-up to Constitutional Court (MK) decisions that are final and binding but do not take effect immediately (non-self-executing). If within a certain period the legislature does not implement said decision, then the Constitutional Court decision should automatically take effect as a legal norm in the relevant law. This mechanism is deemed capable of addressing the issue of non-compliance by the House of Representatives and the President in following up on Constitutional Court decisions.

Normatively, this research recommends three main points, namely: (1) the need for a legal basis at the level of law for the Constitutional Court in imposing conditional decisions (conditionally constitutional and conditionally unconstitutional) as well as the formation of new norms that are non-self-executing; (2) firm regulation concerning the nature of the enforceability of Constitutional Court decisions that require follow-up from the legislature; and (3) the establishment of a clear time limit for the law-forming institution to implement Constitutional Court decisions. Therefore, legal reform or reconstruction of regulations in Law Number 12 of 2011 and the Constitutional Court Law is needed.

### 2.3 Arrangement of constitutional court decisions categorized as non-self executing in the future

The models of law review decisions by the Constitutional Court are in principle divided into four forms, namely decisions declaring norms legally null and void, conditionally constitutional decisions, conditionally unconstitutional decisions, and decisions with postponement of implementation (Fauziah & Arrasuli, 2023). Of the four models, the first three are self-executing in nature because they can take effect directly, whereas the postponement of implementation model falls into the non-self-executing category because it requires follow-up from the legislature.

Historically, the legally null and void model was first applied in Constitutional Court Decision Number 011-017/PUU-I/2003, which declared certain norms to be in conflict with the 1945 Constitution and not having binding legal force. Subsequently, the conditionally constitutional model was introduced through Decision Number 10/PUU-VI/2008, whereas the conditionally unconstitutional model was first applied in Decision Number 4/PUU-VII/2009, which imposed limitations on the application of norms to protect the constitutional rights of citizens. As for the postponement of implementation model, it began to be applied in Decision Number 016/PUU-IV/2006, which granted a three-year transitional period before the norm was declared fully invalid on the basis of structural and national policy considerations (Asy'ari et al., 2017).

Self-executing decisions differ from non-self-executing decisions in that they do not require follow-up from legislative bodies for judicial review at the Constitutional Court. Once self-executing decisions are announced, they come into effect right away. The decision is then published in the official state gazette. Publishing decisions in the state gazette as per Article 57 paragraph (3) of the Constitutional Court Law is legally effective in preventing all parties from enforcing norms that have been deemed unconstitutional and lack legal authority. If that decision is violated, then that violation can be qualified as a violation of law and it is null and void from the beginning (*ad initio*) (Ali et al., 2016).

For the community, with the inclusion of self-executing decisions in the state gazette, they can know or can be considered to know which provisions or articles can no longer be used as a legal basis. This means that self-executing decisions without the need

for follow-up by law-making institutions, those decisions can directly apply immediately. Therefore, most judicial review decisions by the Constitutional Court do not automatically take effect, suggesting that the Court has transformed into an institution capable of creating new norms through its conditionally constitutional or conditionally unconstitutional decisions.

Categorically, Law No. 12 of 2011 establishes that the follow-up to Constitutional Court decisions falls within the category of material to be regulated by law, as per Article 10(1)(d). The law categorically assigns the duty of follow-up to the categories of the DPR or the President in paragraph (2). The elucidation categorically defines this follow-up as pertaining to the Constitutional Court's decisions on judicial review of statutes.

The content of the material refers to specific verses, articles, or sections of laws that have been declared unconstitutional by the Constitutional Court of Indonesia for being inconsistent with the 1945 Constitution. There are no specific guidelines for implementing decisions, as the current rules only address decisions that require further action, indicating that Law No. 12 of 2011 does not cover self-executing decisions.

In addition to Law No. 12 of 2011, guidelines on how the Constitutional Court handles cases involving the review of laws can also be found within the Constitutional Court Law, specifically in Article 57 Sections (1), (2), and (3) of the law.

- (1) It is prescribed that when the Constitutional Court declares the substance of legal provisions unconstitutional, those provisions are prescribed as having no binding legal force.
- (2) It is further prescribed that a law found by the Court to have been enacted unconstitutionally is prescribed as having no binding legal force.
- (3) A prescription exists that decisions granting petitions be prescribed for inclusion in the State Gazette within thirty working days of their pronouncement.

If referring to the provisions in Law No. 12 of 2011 and the Constitutional Court Law above, there is no regulation regarding Constitutional Court decision models as discussed in this research. However, rules governing the different types of decisions made by the Constitutional Court are clearly outlined in Article 73 section (1) subsection c and section (2) of Constitutional Court Regulation Number 2 of 2021 on Procedures for Judicial Review of Laws. It describes the required verdict content: (1) In materially justified cases: granting the petition, declaring provisions unconstitutional, and

mandating gazettal. (2) In conditionally unconstitutional cases: granting the petition, declaring provisions unconstitutional subject to a specified interpretation, and mandating gazettal. (3) The regulation describes the Court's discretionary power to add further verdicts as deemed necessary.

The findings of this research show that the practice of the Constitutional Court (MK) in issuing self-executing decisions gives rise to a number of constitutional issues, both from normative and theoretical aspects. From the normative side, the authority of the Constitutional Court to assign new meaning to the norms or articles under review, including through the model of conditionally constitutional and conditionally unconstitutional decisions, does not yet have a firm legal basis at the level of law. The absence of such explicit regulation causes self-executing decisions, particularly those that create new norms and take effect directly without a follow-up mechanism, to lack strong legal legitimacy.

Theoretically and philosophically, this practice is also considered to be not in line with the objective of the establishment of the Constitutional Court as a constitutional guardian institution that functions to review and annul legislative norms that are in conflict with the Constitution, not as a creator of new norms. The expansion of the Constitutional Court's authority to the point of creating norms while simultaneously enforcing them directly has the potential to weaken the position of the law-forming institution, particularly the House of Representatives, thereby disrupting the balance of power among state institutions. This condition is in conflict with the principles of checks and balances and separation of powers that form the foundation of the constitutional system.

This research also affirms that the non-self-executing decision model more accurately reflects the ideal constitutional position of the Constitutional Court. Decisions that require legislative follow-up are considered more representative because they continue to place the law-forming institution as the primary actor in the norm-forming process. The follow-up mechanism as regulated in Law Number 12 of 2011 and the Constitutional Court Law serves as an important instrument to maintain the balance between judicial authority in annulling norms and legislative authority in formulating new norms.

Based on these findings, this research recommends legal reform to clarify the position and character of Constitutional Court decisions in the review of laws. Regulation at the level of law is needed so that the Constitutional Court has a clear legal basis in employing conditional decision models, while at the same time limiting its authority so that it remains within the corridor of judicial power. Therefore, the Constitutional Court is to be placed as an institution that functions to correct unconstitutional norms and return them to the legislature for follow-up, not as an institution that creates and implements norms directly without a legislative process.

The concept of judicial restraint affirms that the Constitutional Court should limit its role to the function of norm review, whereas the formation and alteration of norms remain within the authority of the legislature. Constitutional Court Decision Number 22/PUU-XV/2017 concerning the age of marriage demonstrates the application of this principle through the postponement of the enforceability of the decision and the granting of space to the legislature to carry out changes to the norms. This approach reflects an effort to maintain separation of powers professionally, that is, so that each branch of power carries out its functions and authority in accordance with its constitutional mandate (Maulidi, 2019). Furthermore, judicial restraint is necessary to prevent the judiciary from transforming into a dominant actor that exceeds its adjudicative function or acts as "philosopher kings" that has the potential to undermine the principle of separation of powers and the essence of constitutionalism (Stephens et al., 2015).

The phenomenon of Constitutional Court decisions that are self-executing and that form new norms does not only impact legal uncertainty, but also has the potential to weaken the authority of the Constitutional Court as a constitutional guardian, reduce the authority of the House of Representatives as the holder of legislative power, and disrupt the checks and balances mechanism among the branches of power. Based on the research findings, the majority of Constitutional Court decisions are in fact self-executing and can be directly operationalized, even becoming the basis for the formation of implementing regulations, despite the fact that norm formation is in principle a legislative authority. Therefore, going forward, Constitutional Court decisions that form norms should be placed as non-self-executing decisions, so that they continue to require follow-up from the legislature to maintain the balance of power.

Although the Constitutional Court remains authorized to issue decisions that are conditionally constitutional and conditionally unconstitutional, their enforceability should not take effect directly before legislative follow-up is carried out. To address the issue of non-compliance by the legislature, legal certainty is needed through the application of a mechanism for the postponement of the enforceability of decisions (limited constitutional verdict) with a certain time limit (Asy'ari et al., 2017). This model provides a transitional space for norms that are in conflict with the constitution to continue to apply temporarily on the basis of the utility of law, while at the same time ensuring the existence of an obligation for follow-up. Therefore, a legal basis at the level of law is needed that regulates the authority of the Constitutional Court in issuing conditional decisions and norm formation that is non-self-executing, as well as the affirmation that the enforceability of Constitutional Court decisions is only indirect in nature and requires follow-up.

The need for clarification is evident from the previous explanation, which highlights the necessity to revise or reconstruct the regulations stipulated in Law Number 12 of 2011 and the Constitutional Court Law. This necessity is explicitly stated in Article 10 paragraph (1) letter d of Law Number 12 of 2011, which dictates that the statutory regulations must include actions taken in response to Constitutional Court rulings. Additionally, Article 10 paragraph (2) underscores that the aforementioned actions in response to Constitutional Court rulings, as mentioned in paragraph (1) letter d, must be carried out by either the House of Representatives (DPR) or the President.

As for in the Constitutional Court Law, regulations regarding Constitutional Court decisions are regulated in Article 57 Paragraph (1), (2) and (3) in the Constitutional Court Law:

- (1) Decisions made by the Constitutional Court determine that certain passages, clauses, or sections of laws are not in accordance with the 1945 Constitution of Indonesia, rendering them legally ineffective.
- (2) If the Constitutional Court renders a decision stating that laws were not formed in accordance with the 1945 Constitution of Indonesia, those laws are not legally binding.
- (3) The State Gazette must publish Constitutional Court Decisions that are approved within 30 working days from the date of the decision.

Therefore, based on this legal construction, reconstruction is needed for both laws to accommodate legal needs related to legal basis at the law level for the Constitutional Court in providing judicial review decisions with decision models or variants such as conditionally constitutional decisions, conditionally unconstitutional and forming new norms but non-self-executing in nature. Then the legal need to accommodate the nature of Constitutional Court decisions to only have one nature of applicability namely not applying directly (non-self-executing) or requiring follow-up which is still not regulated in Law No. 12 of 2011 or in the Constitutional Court Law.

Based on the entire description above, there is urgency for Legal Reform of Regulations for Decisions Categorized as Non-Self Executing and Legal Reform of Regulations regarding Follow-up by Law Makers to Non-Self Executing Decisions in the future. There are legal reasons and urgent needs for legal reform or legal reconstruction in Law No. 12 of 2011 as well as in the Constitutional Court Law, which is simply described as legal reconstruction regarding regulation of non-self-executing Constitutional Court decisions that should be in the future, as described in the Table below:

**Table 4**

*Legal Reconstruction of the Nature of Constitutional Court Decisions That Do Not Apply Directly in the Future*

Legislation	Existing Construction	Reconstruction
Article 10 paragraph (1) letter d and Article 10 paragraph (2) of Law Number 12 of 2011 concerning Formation of Legislation	<p>Article 10 paragraph (1) letter d: “material content that must be regulated by Law contains follow-up to Constitutional Court decisions; and/or”.</p> <p>Article 10 paragraph (2): “Follow-up to Constitutional Court decisions as referred to in paragraph (1) letter d is carried out by the DPR or the President.”</p> <p>Explanation of Article 10 paragraph (1) letter d: what is meant by “follow-up to Constitutional Court decisions” is</p>	<p>Between Article 10 paragraph (2) and Article 11, insert 1 (one) paragraph namely paragraph (2a) so Article 57 reads as follows</p> <p>Article 10 paragraph (2):</p> <p>(2) Follow-up to Constitutional Court decisions as referred to in paragraph (1) letter d is carried out by the DPR or the President.</p> <p>(2a) Constitutional Court Decisions that require follow-up are Constitutional Court Decisions that are not directly applicable or contain verdicts ordering the DPR or President to follow up Constitutional Court Decisions in the formation of laws.</p> <p>(2b) In the case that Constitutional Court Decisions are not followed up by the DPR or President within a maximum period of 30 (thirty) days counted from when decided as referred to in paragraph (1d), the Interpretation of Constitutional Court Decisions on the material content of verses, articles, and/or parts of</p>

	<p>related to Constitutional Court decisions regarding the review of Laws against the 1945 Constitution of the Republic of Indonesia.</p> <p>Explanation of Article 10 paragraph (2) states: “follow-up to Constitutional Court decisions is intended to prevent legal vacuums”.</p>	<p>laws or Perppu is declared valid to become part of the Amendment to the Law or Perppu.</p> <p>(3c) The DPR or President in forming Laws may not include again material content of verses, articles and/or parts of Laws or Perppu that have been declared contrary to the Constitution and have no binding legal force.</p> <p>(3d) The DPR or President in forming Laws may not include provisions different from the material content of articles, paragraphs, or parts of Laws or Perppu that have been interpreted by the Constitutional Court.</p>
<p>Article 57 Constitutional Court Law</p>	<p>Constitutional Court Decisions whose decision verdict states that the material content of verses, articles, and/or parts of laws are contrary to the 1945 Constitution of the Republic of Indonesia, the material content of those verses, articles, and/or parts of laws have no binding legal force.</p> <p>Constitutional Court Decisions that grant requests must be included in the State Gazette within a maximum period of 30 (thirty) working days from when the decision is pronounced.</p>	<p>Between paragraphs (1) and (2) insert 2 (two) paragraphs, namely paragraphs (1a) and (1b), and add one paragraph after paragraph (3) to become (3a) so Article 57 reads as follows:</p> <p>Constitutional Court Decisions whose decision verdict states that the material content of verses, articles, and/or parts of laws are contrary to the 1945 Constitution of the Republic of Indonesia, the material content of those verses, articles, and/or parts of laws have no binding legal force.</p> <p>(1a) In the case that the substance of the request is legally justified, the decision verdict states:</p> <ol style="list-style-type: none"> <li>1) Grants the Applicant’s request in part/in full;</li> <li>2) Declares that the material content of verses, articles, and/or parts of laws or Perppu are contrary to the 1945 Constitution and have no binding legal force.</li> <li>3) Orders the inclusion of the Decision in the State Gazette of the Republic of Indonesia</li> </ol> <p>(1b) In the case that the Court is of the opinion that the request for material review is conditionally unconstitutional, the decision verdict reads:</p> <ol style="list-style-type: none"> <li>1) Grants the Applicant’s request.</li> <li>2) Declares that the material content of verses, articles, and/or parts of laws or Perppu are contrary to the 1945 Constitution and have no binding legal force as long as they are not interpreted ...;</li> <li>3) Orders the inclusion of the Decision in the State Gazette of the Republic of Indonesia,</li> <li>4) Orders the DPR or President to follow up the decision within a maximum of 30 (thirty) days from when the decision is pronounced</li> </ol> <p>(1c) In the case it is deemed necessary, the Court may add decision verdicts other than those determined as referred to in paragraphs (1a) and paragraph (1b)</p> <p>(1d) For Decisions as referred to in paragraphs (1b) and (1c), the nature of Constitutional Court decisions does not directly apply before being followed up by the DPR or President or after 30 (thirty) days from being decided.</p>

		<p>Constitutional Court Decisions whose decision verdict states that the formation of laws does not meet the provisions for forming laws based on the 1945 Constitution of the Republic of Indonesia, those laws have no binding legal force.</p> <p>Constitutional Court Decisions that grant requests must be included in the State Gazette within a maximum period of 30 (thirty) working days from when the decision is pronounced.</p> <p>(3a) In the case that Constitutional Court Decisions are not followed up by the DPR or President within a maximum period of 30 (thirty) days counted from when decided as referred to in paragraph (1d), the Interpretation of Constitutional Court Decisions on the material content of verses, articles, and/or parts of laws or Perppu is declared valid to become part of the Amendment to the Law or Perppu.</p> <p>(3b) The DPR or President in forming Laws may not include again material content of verses, articles and/or parts of Laws or Perppu that have been declared contrary to the Constitution and have no binding legal force.</p> <p>(3c) The DPR or President in forming Laws may not include provisions different from the material content of articles, paragraphs, or parts of Laws or Perppu that have been interpreted by the Constitutional Court.</p>
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### 3 CONCLUSION

Normatively, Non-Self Executing Constitutional Court (MK) decisions are issued when the norm being reviewed is considered as open legal policy, so its implementation is left entirely to the DPR or President as lawmakers. Nevertheless, in practice the majority of Constitutional Court decisions are actually self-executing. Problems arise because there are still Constitutional Court decisions that are not followed up by legislative or executive institutions, thus creating legal uncertainty. To overcome this, a mechanism for postponing the applicability of decisions and clear time limits (limitations) for the DPR or President in following up those decisions is needed to ensure legal certainty.

In the future, arrangements for Non-Self Executing Constitutional Court decisions require legal reconstruction through amendments to the Constitutional Court Law and the

Law on Formation of Legislation. These amendments need to accommodate and provide a firm legal basis for the Constitutional Court to form new norms through various decision models, such as conditionally constitutional decisions, conditionally unconstitutional, or decisions containing new interpretations, while still adhering to the principle of non-self-executing nature. In addition, law amendments must regulate obligations and deadlines for the DPR or President to follow up Constitutional Court decisions, thus creating a guaranteed and sustainable follow-up system.

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### Authors' Contribution

All authors contributed equally to the development of this article.

### Data availability

All datasets relevant to this study's findings are fully available within the article.

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