

Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law

Standardisasi Regulasi Tindak Lanjut Putusan Mahkamah Konstitusi pada Perkara Pengujian Undang-Undang Omnibus

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Abstract

The re-examination of the Job Creation Law in 2023 highlights a serious issue in the national legislative system, specifically the follow-up to the Constitutional Court's (MK) decisions in judicial review cases (PUU) concerning the Omnibus Law. The urgency of this research stems from the high demand among lawmakers for drafting laws in the omnibus format and the potential for judicial review of such laws. This research contributes to addressing the follow-up to the Constitutional Court's decisions by focusing on the choice of legislative forms as a response to these rulings. The research employs normative legal methods with conceptual, legislative, and case-based approaches. The findings emphasize the need to standardise the type of regulation to ensure the executability of the Constitutional Court's decisions. The ideal regulatory form for implementing the Court's rulings on the Omnibus Law is a law. Therefore, it is necessary to legitimise the use of laws as the standard form of follow-up to the Constitutional Court's decisions on the Omnibus Law to maximise the executability of these rulings.

Abstrak

Pengujian kembali Undang-Undang Cipta Kerja pada tahun 2023 menandakan adanya permasalahan serius dalam sistem legislasi nasional, khususnya terkait tindak lanjut Putusan Mahkamah Konstitusi (MK) tentang Pengujian Undang-Undang (PUU) Omnibus. Penelitian ini penting dilakukan karena penyusunan undang-undang dengan format omnibus semakin diminati oleh pembuat undang-undang, serta adanya potensi judicial review. Penelitian ini berkontribusi kepada addressat putusan MK, yaitu terkait dengan pilihan bentuk legislasi yang tepat untuk menindaklanjuti putusan PUU omnibus. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan konseptual, perundang-undangan, dan kasus. Hasil penelitian menunjukkan bahwa diperlukan standardisasi jenis regulasi untuk menjamin eksekutabilitas putusan MK. Jenis regulasi yang paling ideal sebagai tindak lanjut atas Putusan MK tentang PUU Omnibus adalah undang-undang. Oleh karena itu, legitimasi atas gagasan undang-undang sebagai bentuk tindak lanjut atas Putusan MK tentang PUU Omnibus perlu ditegaskan, dengan harapan dapat memaksimalkan eksekutabilitas putusan MK.



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A. INTRODUCTION

1. Background

Since the enactment of Law Number 6 of 2023 concerning the Ratification of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation (Job Creation Law 2023), various labor organizations have filed lawsuits with the Constitutional Court (MK), challenging the validity of Law Number 6 of 2023.¹ Previously, a coalition of labor organizations had similarly filed a lawsuit against Law Number 11 of 2020 on Job Creation (Job Creation Law 2020), in which the Constitutional Court ruled in favor of the petitioners. In its decision, the Court held that the establishment of the Job Creation Law was unconstitutional and would not have binding legal force unless it was interpreted as “no improvement has been made within two (2) years from the date this decision was rendered.”²

The issuance of the 2023 Government Regulation in Lieu of Law on Job Creation (Perppu on Job Creation 2023) cannot be considered a violation of Constitutional Court Decision No. 91/PUU-XVIII/2020.³ This is because the current regulatory framework for the formation of legislation lacks specific guidelines regarding the type of legal instrument that should be used to comply with the Court's decisions, particularly those related to judicial review.⁴ Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) merely emphasizes that the Court's decisions are final and binding, without specifying the appropriate legal product required for implementing such decisions. This absence of clear regulatory guidance underscores the need for a standardized approach to ensure compliance with final and binding rulings.⁵

In this context, the parties addressed by the decision may further regulate the implementation of the Constitutional Court's ruling. Several Constitutional Court decisions have been followed up with various legal instruments, including amendments to existing laws, the creation of new laws, the issuance of Government Regulations (PP), Presidential

¹ Tunggal Anshari Setia Negara, Syahriza Alkohir Anggoro, and Imam Koeswahyono, “Indonesian Job Creation Law: Neoliberal Legality, Authoritarianism and Executive Aggrandizement Under Joko Widodo,” *Law and Development Review* 17, no. 1 (February 26, 2024): 155–97, <https://doi.org/10.1515/ldr-2023-0022.2020>.

² Sulistyowati Sulistyowati et al., “Government Regulation Substituting the Law on Job Creation in the Perspective of Constitutional Law,” *Jurnal Hukum* 39, no. 2 (December 29, 2023): 231, <https://doi.org/10.26532/jh.v39i2.33378>.

³ Dharma Setiawan Negara, Lufsiana Lufsiana, and Samuel Dharma Putra Nainggolan, “Constitutionality of PERPU Number 2 of 2022 Concerning Job Creation Based on the Ruling of the Constitutional Court Number 91/PUU-XVIII/2020,” *Al-Daulah Jurnal Hukum Dan Perundangan Islam* 13, no. 1 (April 1, 2023): 159–79, <https://doi.org/10.15642/ad.2023.13.1.159-179>.

⁴ Iskandar Muda, “Follow-up of Law-Making State Institutions to the Legal Message of the Constitutional Court Decision,” *Jurnal Konstitusi* 20, no. 1 (March 25, 2023): 19–35, <https://doi.org/10.31078/jk2012>.

⁵ Mohammad Agus Maulidi, “Problematika Hukum Implementasi Putusan Final Dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum,” *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (2017): 535–57, <https://doi.org/10.20885/iustum.vol24.iss4.art2>.

Regulations (Perpres), Ministerial Regulations, Supreme Court Regulations, Circular Letters, and, in certain instances, Government Regulations in Lieu of Law (Perppu), as exemplified by Constitutional Court Decision No. 91/PUU-XVIII/2020.⁶

The various forms of legal products used as a follow-up will also impact whether the Court's decision is implemented. If followed up with a law revision, it is likely to accommodate the material intended in the Constitutional Court's decision. It becomes problematic if the follow-up is in the form of legal products under the constitution without changing or improving the content of the article considered problematic, as it may still be used as a legal basis for the issuance of technical policies, whose legal products are usually in the form of decisions and/or circular letters.⁷ Moreover, following up on the Court's decision through a Circular Letter can reduce the significance of the decision, as Circular Letters are not laws or regulations, as they do not contain norms, confer authority, or create binding legal stipulations.⁸

The variety of legal instruments used as a follow-up to the Constitutional Court's decision can diminish the authority of the decision, making its implementation less effective or even unattainable. In this context, standardising the form of legal instruments as a follow-up to Constitutional Court decisions is essential to ensure the enforceability of such decisions.⁹ The enforceability of these decisions directly impacts the stability of government performance in specific areas addressed by the Court's rulings.¹⁰ This stability is achieved through government compliance with the Court's decision and the accommodation of public interests following the issuance of the ruling, thereby minimising potential opposition and rejection.¹¹

The ideal legal instrument for following up on the Court's decision in judicial reviews of laws, particularly those with an omnibus character, is through amendments or the

⁶ Mohammad Mahrus Ali and Meyrinda Rahmawaty Hilipito dan Syukri Asy, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru (The Implementation of Constitutional Court Verdict on Conditionally Constitutional and New Legal Norm)," *Jurnal Konstitusi*, 12, no. 3 (2015): 637, <https://doi.org/10.31078/jk12310>.

⁷ Lalu Hedwin Hanggara, "Diskursus Keberlakuan UU Cipta Kerja Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020," *Al-Qisth Law Review* 5, no. 2 (2022): 233–60, <https://doi.org/10.24853/al-qisth.5.2.233-260>.

⁸ Tri Sulistyowati, Ali Ridho, and M Imam Nasef, "Constitutional Compliance Solution to Law Testing Rulings in the Constitutional Court," *Jambura Law Review* 3, no. Spesial Issue (April) (May 1, 2021): 117–34, <https://doi.org/10.33756/jlr.v3i0.10735>.

⁹ Abdurrachman Satrio, "Constitutional Retrogression in Indonesia Under President Joko Widodo's Government: What Can the Constitutional Court Do?," *Constitutional Review* 4, no. 2 (December 31, 2018): 271, <https://doi.org/10.31078/consrev425>.

¹⁰ I. Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, and Abdul Kadir Jaelani, "Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia," *Bestuur* 7, no. 1 (2019): 36–46, <https://doi.org/10.20961/bestuur.v7i1.42700>.

¹¹ Mukhlis et al., "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 237, <https://doi.org/https://doi.org/10.15294/lesrev.v7i2.72156>.

formation of new regulations. However, this process can take considerable time, as it involves extensive stages and discussions. Meanwhile, the structure of the Omnibus Law, which consolidates various laws, is urgently needed by many stakeholders because it ensures legal certainty across several regulatory areas unified within the Omnibus Law.¹² In this context, the follow-up to the Court's decision must be expedited to safeguard the legal certainty of the many parties reliant on the provisions of the Omnibus Law.

The model for ensuring both accuracy and expediency in the legal instruments that follow up on the Court's decisions regarding the judicial review of omnibus laws must be immediately developed and implemented, considering that this legislative method will continue in the future with the inclusion of omnibus law provisions in Law No. 13 of 2022, which amends Law No. 12 of 2011 on the Formation of Legislation.¹³ These changes signify that the opportunity to create laws with an omnibus character will be significantly expanded. One notable example is the Omnibus Law in the health sector, which has already faced considerable opposition and has the potential to be challenged in the Constitutional Court.¹⁴ Therefore, the reconstruction of regulations as a follow-up to the Constitutional Court's decisions on judicial reviews of omnibus laws must be promptly addressed.¹⁵ A solution must be found to ensure that governmental stability and the protection of citizens' constitutional rights are maintained following the Court's rulings.¹⁶

The standardisation of the legal instruments used to follow up on the Court's decisions in judicial reviews of omnibus laws is primarily applicable to decisions involving a material review, particularly for decisions that introduce new norms or are conditionally unconstitutional.¹⁷ This is because such decisions require the legislature to amend or implement the ruling delivered by the Constitutional Court.¹⁸ Although the current judicial review of the omnibus law pertains only to a formal review, anticipatory measures should

¹² Sodikin, "Paradigma Undang-Undang Dengan Konsep Omnibus Law Berkaitan Dengan Norma Hukum Yang Berlaku Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (2020): 143–59, <https://doi.org/10.33331/rechtsvinding.v9i1.393>.

¹³ Ni'matul Huda, Idul Rishan, and Dian Kus Pratiwi, "Fast-Track Legislation: The Transformation of Law-Making Under Joko Widodo's Administration," *Yustisia Jurnal Hukum* 13, no. 1 (April 30, 2024): 117, <https://doi.org/10.20961/yustisia.v13i1.71061>.

¹⁴ Audy Amelia Siregar, "Legal Studies on Omnibus Law Issues in Indonesia," *International Asia Of Law and Money Laundering (IAML)* 1, no. 4 (October 21, 2022): 270–78, <https://doi.org/10.59712/iaml.v1i4.50>.

¹⁵ Sri Lester, "Kajian UU Cipta Kerja Terhadap UU Kesehatan Dan UU Tenaga Kesehatan," *Magistra Law Review* 2, no. 1 (2021): 21–39.

¹⁶ Sardjana Orba Manullang, "Indonesian Law and Human Rights Expert's View on The Constitutional Court's Decision Against the Manpower Law from The Omnibus Law," *Linguistics and Culture Review* 6, no. 1 (December 26, 2021): 1–14, <https://doi.org/10.21744/lingcure.v6nS5.2043>.

¹⁷ Moh. Thohir and Didik Sukriono, "Implementation Authority Of The Constitutional Court In The Indonesian Constitutional Law System," *International Journal of Business, Law, and Education* 4, no. 2 (December 22, 2023): 1495–1503, <https://doi.org/10.56442/ijble.v4i2.350>.

¹⁸ Wolfgang Babeck, "Constitutional Duties," in *Writing Constitutions* (Cham: Springer International Publishing, 2024), 561–78, https://doi.org/10.1007/978-3-031-39622-9_16.

be taken in preparation for potential material reviews. These steps are necessary to ensure that any follow-up to the Court's decision is carried out appropriately and effectively.¹⁹

This research was conducted to complement several previous studies on the follow-up to Constitutional Court decisions, as many of these studies did not address the ideal type of legislation needed to implement such decisions. Some of these studies include: First, research by Yohanes Suhardin and Henny Saida Flora,²⁰ titled "The Existence of the Constitutional Court Decision After the Enactment of the Job Creation Perppu Stipulation Law." In their research, they concluded that there was a form of neglect concerning Constitutional Court Decision No. 91/PUU-XVIII/2020 with the issuance of the Perppu on Job Creation. Their study primarily focuses on identifying arguments for this alleged neglect. In contrast, the author of the present research seeks to identify the ideal form of legal instrument as a follow-up to the Constitutional Court's decision in judicial review cases concerning omnibus laws.²¹

Additionally, in the study by Agus Maulidi, titled "Questioning the Executorial Power of the Final and Binding Decisions of the Constitutional Court," Agus critically examines the final and binding nature of the Constitutional Court's decisions in light of the uncertainty surrounding their implementation through statutory law products. In this article, Agus also highlights the need to limit the Constitutional Court's authority in judicial reviews of legislation and stresses the importance of establishing clear deadlines in every Constitutional Court decision concerning judicial review cases.²²

Furthermore, Mohammad Mahrus Ali's research, titled "Follow-up to Constitutional Court Decisions that are Conditionally Constitutional and Contain New Norms," highlights the existence of various legal instruments used to follow up on the Court's decisions, which in some cases, has the potential to create regulatory disharmony.²³ The key difference between that study and the current research lies in their focus. While Ali's study examines the range of legal follow-up forms to the Constitutional Court's decisions, the author's research seeks to identify the ideal legal instrument to ensure the effective implementation of the Court's decision in the context of judicial review of omnibus laws.

¹⁹ Kaharuddin et al., "The Idea of Adopting Fast Track Legislation as a Follow-Up to The Constitutional Court Decision on Material Testing," *Syiah Kuala Law Journal* 7, no. 3 (2023): 287-304, <https://doi.org/https://doi.org/10.24815/sklj.v7i3.34657>.

²⁰ Yohanes Suhardin and Henny Saida Flora, "The Existence of the Constitutional Court Decision After the Enactment of the Job Creation Perpu Stipulation Law", *USM Law Review Journal* 6, no. 1 (2023)

²¹ Yohanes Suhardin and Henny Saida Flora, "Eksistensi Putusan Mahkamah Konstitusi Pasca Disahkannya Undang-Undang Penetapan Perpu Cipta Kerja," *Jurnal Usm Law Review* 6, no. 1 (2023): 320, <https://doi.org/10.26623/julr.v6i1.6307>.

²² M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final Dan Mengikat Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 2 (July 11, 2019): 339, <https://doi.org/10.31078/jk1627>.

²³ Mahrus Ali and Rahmawaty Hilipito dan Syukri Asy, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru (The Implementation of Constitutional Court Verdict on Conditionally Constitutional and New Legal Norm)."

Based on these studies, most only discuss the implementation of the Constitutional Court's decisions, with the exception of the research by Mohammad Mahrus Ali, which addressed the follow-up to the Court's decision by outlining various types of regulations. However, Ali's research focuses on decisions that are conditionally constitutional and introduce new norms. In contrast, the present study examines the follow-up to the Constitutional Court's decision in the judicial review of the Omnibus Law. Therefore, the focus of this research differs from previous studies. The novelty of this research lies in its effort to determine the ideal type of regulation to follow up on the Court's decision in the context of the Omnibus Law, with the goal of maximising the decision's implementation.

2. Research Questions

The description above shows the importance of standardising the legal form of the Constitutional Court's decision. Thus, the problem in this study is: First, why does the follow-up to the Constitutional Court's decision on the judicial review of the Omnibus law need to be standardised?; Second, what is the ideal form of legal product as a follow-up to the Constitutional Court's decision on the judicial review of the Omnibus law?

3. Research Methods

This research was conducted using doctrinal research methods.²⁴ The approaches employed include conceptual, statutory, and case analysis through a descriptive and analytical lens. The primary legal materials used in this study include the 1945 Constitution of the Republic of Indonesia; Law No. 12 of 2011 on the Formation of Legislation; Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation; Law No. 24 of 2003 on the Constitutional Court; and Law No. 7 of 2020 on the Third Amendment to Law No. 24 of 2003 on the Constitutional Court. Additionally, secondary and tertiary legal materials consist of scholarly books, academic journals, conference proceedings, papers, court decisions, online sources, and legal dictionaries that specifically discuss the follow-up to the Court's decisions. These legal sources are then analysed using prescriptive-analytic techniques to provide insights into the regulatory framework that supports the consistency of legal instruments in following up on the Court's decisions in the judicial review of omnibus laws.

²⁴ Pradeep M.D., "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology, and Social Sciences* 4, no. 2 (2019): 95–103, <https://doi.org/10.47992/ijmts.2581.6012.0075>.

B. DISCUSSION

1. Standardizing the Types of Legislation as a Follow-up to the Constitutional Court's Decision on the Omnibus Law

The choice of legal instruments as a follow-up to the Court's decision is intended to ensure the decision's implementation.²⁵ Conceptually, all parties are required to comply with and enforce the Court's decision (*erga omnes*).²⁶ This is a logical consequence of the Constitutional Court's existence, as it is constitutionally tasked with upholding constitutional values.²⁷ Compliance with the Court's decisions can be viewed as part of the broader effort to foster loyalty and adherence to the Constitution. Conversely, defiance of the Court's decision can be seen as defiance of the Constitution itself.²⁸

In line with the above statement, Jimly Asshiddiqie emphasized that all parties must properly follow up on the Constitutional Court's decisions, as the institution is specifically designed to uphold constitutional values.²⁹ Jimly further explained that in fulfilling its duties, the Constitutional Court serves five key functions: as a guardian of decisions based on a democratic system, as the highest interpreter of the Constitution, as a protector of citizens' constitutional rights (*Hak Konstitusional Warga Negara*, HKWN), and as a protector of human rights (*Hak Asasi Manusia*, HAM).³⁰ Therefore, the implementation of the Court's decisions is essential as part of the broader effort to build a democratic constitutional system that prioritizes the protection of human rights.³¹

These facts demonstrate that, in practice, not all Constitutional Court decisions have been properly followed up by the parties addressed in the rulings. In some cases, legal instruments have been enacted that fail to remove provisions from one or more articles

²⁵ Luthfi Widagdo Eddyono, "The Constitutional Court and Consolidation of Democracy in Indonesia," *Jurnal Konstitusi* 15, no. 1 (March 29, 2018): 1, <https://doi.org/10.31078/jk1511>.

²⁶ Saldi Isra and Pan Mohamad Faiz, "The Indonesian Constitutional Court: An Overview," in *Courts and Diversity* (Brill | Nijhoff, 2024), 55–94, https://doi.org/10.1163/9789004691698_004.

²⁷ Thomas Horsley, "Constitutional Functions and Institutional Responsibility: A Functional Analysis of the UK Constitution," *Legal Studies* 42, no. 1 (March 29, 2022): 99–119, <https://doi.org/10.1017/lst.2021.32>.

²⁸ Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 153, <https://doi.org/10.33331/rechtsvinding.v11i1.867>.

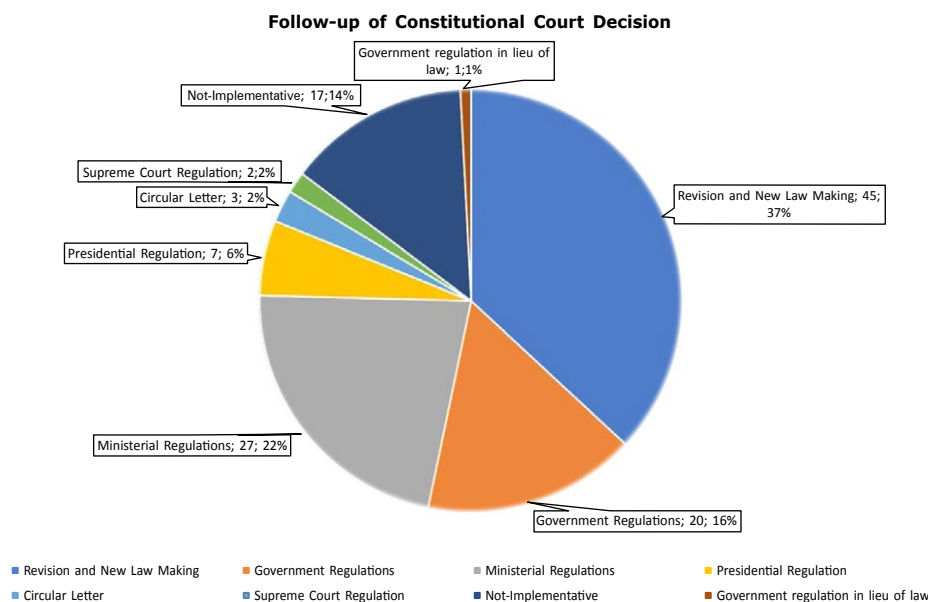
²⁹ Agung Ali Fahmi, Muwaffiq Jufri, and Ansori, "The Implementation of Islamic Value Absorption in Regional Regulations on Districts at Madura," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 1 (2020): 157–58, <https://doi.org/http://doi.org/10.19105/al-ihkam.v15i1.2682>.

³⁰ Nurus Zaman, "Constitution in Legal Political Perspective," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68, <https://doi.org/10.21107/tlr.v4i1.16487>.

³¹ Adelia Kartika et al., "Comparative Study of the Constitutions of Indonesia and China Regarding the Existence of Atheists," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 40–47, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article/view/19/4>.

previously declared unconstitutional or conditionally unconstitutional.³² These legal instruments include government and institutional regulations, and in some instances, even circular letters. The diagram below illustrates the various forms of such legal instruments.

Diagram 1.
Various Forms of Follow-up Legal Products to the Constitutional Court's Decisions in the Judicial Review



Source: Processed by the author from various sources

The emergence of various forms of legislation in implementing the Constitutional Court's decisions has created opportunities for incomplete compliance, as some rulings are followed up without amending articles that have previously been declared invalid or in need of revision. The issuance of several legal instruments, such as internal regulations of state institutions, as an implementation of the Court's decisions, may mislead the public into believing that these regulations reflect full compliance by state institutions.³³ However, the legislators addressed by the Court's decision should take concrete steps to ensure its proper implementation.

One example of this phenomenon is the follow-up to the Constitutional Court's decision through the issuance of regulations by state institutions. This can be observed in Constitutional Court Decision No. 34/PUU-XI/2013, which declared that Article 268

³² Abdul Kadir Jaelani, I. Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Executability of the Constitutional Court Decision Regarding Grace Period in the Formulation of Legislation," *International Journal of Advanced Science and Technology* 28, no. 15 (2019): 816–23.

³³ Mahrus Ali and Rahmawaty Hilipito dan Syukri Asy, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru (The Implementation of Constitutional Court Verdict on Conditionally Constitutional and New Legal Norm)," 637.

paragraph (3) of the Criminal Procedure Code, limiting judicial reviews to one, is contrary to the 1945 Constitution and therefore has no binding legal force. In response, the Supreme Court issued Supreme Court Circular Letter (SEMA) No. 7 of 2014 on the Submission of Applications for Judicial Review in Criminal Cases, which contradicts the Court's decision by continuing to limit judicial reviews to one instance.³⁴

The issuance of the circular letter mentioned above does not lead to the full implementation of the Court's decision.³⁵ Instead, it only partially implements the Constitutional Court's ruling, creating the appearance that the decision has been addressed through a circular letter, while in reality, it disregards both the order and substance of the decision.³⁶ Regarding these two issues, the Court's decision has yet to be followed up with the necessary amendments to the articles previously declared invalid or non-binding. Moreover, relying on circular letters to follow up on such decisions diminishes the authority of the Court's ruling, as circular letters are not part of the hierarchy of laws and regulations and do not contain norms, authority, or binding stipulations.

The issuance of the circular letter mentioned above does not effectively implement the Court's decision. Instead, it only partially addresses the ruling, creating the appearance that the decision has been followed up, despite the fact that the circular letter disregards both the order and substance of the decision. In these two issues, there has been no follow-up in the form of improvements or amendments to the articles previously declared invalid and/or non-binding. Moreover, relying on circular letters to implement the Court's decision undermines its authority, as circular letters are not part of the hierarchy or types of laws and regulations, given that they do not contain norms, authority, or binding stipulations. As a result, the form of follow-up to the Court's decision in this instance is inconsistent with the standing of the Constitutional Court's rulings and fails to ensure harmonisation within the legal framework.³⁷

The potential for inadequate implementation of the Constitutional Court's decision in judicial review cases necessitates a concrete solution regarding the legal instruments used to implement the verdict. In particular, the variations in the Constitutional Court's rulings

³⁴ Agung Barok Pratama, Aminah, and Mohammad Jamin, "Analisis Yuridis Pengaturan Ideal Peninjauan Kembali Perkara Pidana Pasca Putusan Mahkamah Konstitusi Nomor 34/PUU-XI/2013," *Jurnal Hukum Dan Pembangunan Ekonomi* 5, no. 2 (2018): 29–39, <https://doi.org/10.20961/hpe.v5i2.18258>.

³⁵ Hari Purwadi et al., "Resolving the Judiciary Tensions between the Constitutional Court and the Supreme Court of Indonesia," *Journal of Indonesian Legal Studies* 9, no. 1 (May 9, 2024): 317–52, <https://doi.org/10.15294/jils.vol9i1.4635>.

³⁶ I Ketut Sukawati Lanang Putra Perbawa, "Legal Policy in the Decision of the Constitutional Court and the Formation of Law," *Journal of Law and Sustainable Development* 11, no. 12 (December 14, 2023): e2179, <https://doi.org/10.55908/sdgs.v11i12.2179>.

³⁷ Mahrus Ali and Rahmawaty Hilipito dan Syukri Asy, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru (The Implementation of Constitutional Court Verdict on Conditionally Constitutional and New Legal Norm)," 637.

have evolved alongside the development of decision models introduced by the Court, including conditionally constitutional, conditionally unconstitutional, limited constitutional, and decisions that formulate new norms.³⁸

In this context, standardisation becomes increasingly urgent due to the legislative model associated with the enactment of the Job Creation Law. This standardisation is crucial because omnibus laws encompass multiple fields of law consolidated into a single form.³⁹ The implication—if such a law is declared conditionally unconstitutional by the Constitutional Court—would be significant, as it could trigger public demands for the swift formation of similar omnibus law models.⁴⁰ Additionally, the potential for numerous lawsuits arising from the unification of these laws must be anticipated by standardising the follow-up to the Constitutional Court's decisions, ensuring that the process does not create further controversy or lead to potential challenges of the follow-up regulations in the Court.

2. The Ideal Type of Legislation as a Follow-up to the Constitutional Court Decision on the Omnibus Law Judicial Review

Before determining the most suitable type of legal instrument to follow up on the Court's decision, it is crucial to first examine the potential and obstacles associated with each legal instrument in implementing the Court's ruling. A detailed analysis is essential as part of a scientific effort to ensure that the chosen legal instrument has undergone rigorous study and consideration. This approach will help ensure that the instrument can be effectively implemented, thereby maximising the enforcement of the Court's decisions, particularly in the context of judicial reviews concerning omnibus laws.⁴¹

This explanation aims to determine the binding force of a legal instrument that will be chosen as the ideal means to implement the Court's decision. Beginning with legal instruments in the form of laws, this option is often considered the most suitable follow-up to the Court's decision. There are several reasons for this. First, in simple terms, when a law is subject to judicial review, a Court decision that mandates the revision of an article or part of an article should logically be followed by amending the relevant provisions of the law under review. Since the issue typically lies in the content of the article being tested,

³⁸ Nurrahman Aji Utomo, "The Dynamics of the Relation Between Judicial Review and the Making of Laws," *Jurnal Konstitusi* 12, no. 4 (2015): 826–48, <https://doi.org/10.31078/jk1248>.

³⁹ Febriansyah Ramadhan and Ilham Dwi Rafiqi, "Study of Constitutional Court Decisions Cancelling All Norms in The Law," *Legality : Jurnal Ilmiah Hukum* 29, no. 2 (July 28, 2021): 286–308, <https://doi.org/10.22219/ljih.v29i2.15434>.

⁴⁰ Nila Amania, "Problematika Undang-Undang Cipta Kerja Sektor Lingkungan Hidup," *Syariati : Jurnal Studi Al-Qur'an Dan Hukum* 6, no. 02 (2020): 209–20, <https://doi.org/10.32699/syariati.v6i02.1545>.

⁴¹ Dian Ayu Widya Ningrum, Al Khanif Al Khanif, and Antikowati Antikowati, "Format Ideal Tindak Lanjut Putusan Mahkamah Konstitusi Untuk Mengefektifkan Asas Erga Omnes," *Jurnal Konstitusi* 19, no. 2 (2022): 314, <https://doi.org/10.31078/jk1924>.

the most appropriate course of action is to amend the article or section that the Court has identified as problematic, particularly in relation to upholding constitutional principles and protecting citizens' rights.⁴²

It is also important to note that the position of laws as legal instruments directly under the Constitution is strategic and can be effectively used as a follow-up to the Court's decision in cases of judicial review. From a hierarchical perspective within Indonesia's system of laws and regulations, both in theory and practice, laws hold the highest position in terms of explaining and elaborating on the materials and fundamental principles contained in the Constitution.⁴³ According to Jimly Asshiddiqie, laws should maintain the highest hierarchy compared to other legal instruments, such as regulations. In his explanation, Jimly provides examples and comparisons of the position of laws in various countries, including the Netherlands and the United States. In the Netherlands, the legal instrument *wet* holds the highest position under the Constitution (*grondwet*). Similarly, in the United States, legislative acts are directly subordinate to the Constitution.⁴⁴

Article 7 paragraph (1) of Law No. 12 of 2011 on the Establishment of Legislation places MPR Decrees as legal instruments directly under the Constitution. However, if these decrees contain regelling norms, they do not possess constitutional authority. The existence of such legal instruments is intended to accommodate the continued validity of several MPR Decrees (TAP MPR) enacted before the amendment of the 1945 Constitution of the Republic of Indonesia, which are still considered necessary and valid. Jimly Asshiddiqie further explained that some of these TAP MPRs remain valid because their subject matter has not yet been regulated by law, while their provisions are essential for addressing public interests.

The re-recognition of MPR Decrees in this law does not affect the MPR's authority, as it is no longer empowered to issue such decrees following the constitutional amendments.⁴⁵ Jimly Asshiddiqie firmly argues that the existence of MPR Decrees in the current constitutional framework lacks a constitutional basis if they contain regulatory norms. Furthermore, the revocation of the MPR's authority to issue TAP MPR after the amendment of the 1945 Constitution reinforces the position of laws as the highest legal instruments for interpreting

⁴² Malik Eman and Darwati Darwati, "Formal Testing of Creational Law in Constitutional Court Decisions," in *Proceedings of the 2nd Multidisciplinary International Conference, MIC 2022, 12 November 2022, Semarang, Central Java, Indonesia* (EAI, 2023), 324–35, <https://doi.org/10.4108/eai.12-11-2022.2327375>.

⁴³ Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, "Handling of The Covid-19 Pandemic by The Government in View from The Legal Products Formed," *Trunojoyo Law Review* 5, no. 1 (March 20, 2023): 18–40, <https://doi.org/10.21107/tlr.v5i1.19410>.

⁴⁴ Jimly Asshiddiqie, "Building A Constitutional Aware Culture to Create A Democratic Law State," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 8, no. 1 (April 1, 2023), <https://doi.org/10.22373/petita.v7i2.128>.

⁴⁵ Ahmad Gelora Mahardika, "Politik Hukum TAP MPR Melalui Amandemen Undang-Undang Dasar 1945," *Legislasi Indonesia* 16, no. 3 (2019): 345.

the foundational rules mandated by the Constitution in the form of regulations. In this context, choosing to implement the Court's decision through laws is the appropriate course of action.⁴⁶

Ideally, the position of laws as a follow-up to the Constitutional Court's decision is based on their hierarchical structure within the Indonesian legislative system. Due to their position, laws serve as a reference for various legal instruments subordinate to the Constitution. This pivotal role is not shared by other legal instruments with a lower hierarchical standing. Consequently, the harmonisation of regulations can be achieved, as the norms established in the law will provide the legal foundation for the substantive material in several legal instruments under the law.⁴⁷

Furthermore, there is a similarity of functions between laws and the Constitutional Court—both interpret and incorporate the Constitution. As Jimly Asshiddiqie explained, laws serve as the highest legal instruments for translating the rules contained within the Constitution. This aligns with the role of the Constitutional Court, which is also tasked with upholding constitutional values.⁴⁸ One of the Court's key functions is to review the constitutionality of laws against the 1945 Constitution of the Republic of Indonesia. In this regard, the Court's decisions in judicial review cases reinforce the constitutional values or principles embedded within laws, thereby elevating their standing in accordance with constitutional standards. It is therefore accurate to assert that such decisions have significant implications for preserving constitutional integrity and maintaining standards within the broader regulatory framework of legislation.⁴⁹

However, the implementation of the Constitutional Court's decisions through legislation faces certain obstacles, particularly concerning the execution timeline. The process of amending and/or drafting a law as a follow-up to the Constitutional Court's decision is time-consuming, as it must undergo a series of processes and discussions between the legislative and executive branches. If a law is the chosen instrument, it may create a legal vacuum during the period following the Constitutional Court's decision. Although the Second Amendment to the Law on the Formation of Laws and Regulations has shortened the time frame for drafting laws as a follow-up to the Court's decisions, the process still requires a significant amount of time. In summary, the binding force and obstacles related to implementing the Court's decisions in judicial review cases through legislation, as described above, can be illustrated in the table below:

⁴⁶ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2018), 175–76.

⁴⁷ Jimly Asshiddiqie, "Konstitusionalisme Dalam Pemikiran Soepomo," in *Soepomo Pergulatan Tafsir Negara Integralistik Biografi Intelektual, Pemikiran Hukum Adat, Dan Konstitusionalisme*, 1st ed. (Yogyakarta: Thafa Media, 2015), 77–78.

⁴⁸ Ainun Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 46–60, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article>.

⁴⁹ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 179.

Table 1.
Binding Force and Potential Obstacles to Follow-up the Constitutional Court's Decisions Through Laws

No.	Supporters	Obstacles
1	The decision to review a law is to review the law, so the follow-up should be regulated in an equivalent regulation. In other words, the Constitutional Court's decision to review a law should be followed up with amendments and/or the creation of a new law.	The long duration of drafting and amending laws after the Constitutional Court's Decision may create a legal vacuum.
2	The position of the Law, which hierarchically has the highest position under the Constitution in regulations that regulate, has a strategic role in ensuring the harmonisation of legislative arrangements after the Constitutional Court Decision.	
3	The relationship between the functions of the legal products of the Law and the institutional tasks of the Constitutional Court, which both translate the intent of the constitutional rules, is believed to further strengthen the noble messages of the constitution in the system of laws and regulations in Indonesia after the Constitutional Court decides on the case of judicial review of the law.	

Source: Compiled by the author from several references

The following legal instrument has the potential to be the ideal choice for implementing the Court's decision: a Government Regulation in Lieu of Law (Perppu). The Perppu, when used as a follow-up to the Constitutional Court's decision, offers several advantages. First, in the hierarchical structure of legislation, a Perppu holds the same status as a law, although its issuance must be justified by an element of emergency.⁵⁰ After the Court's decision is issued, this hierarchical position plays a significant role in legislative harmonisation efforts. If the follow-up to the decision is a Perppu, it can serve as a reference for the issuance of implementing legal instruments whose hierarchical position is below that of the law or Perppu.

The issuance of a Perppu as a follow-up to the Court's decision in the field of judicial review can also address the legal vacuum that may arise after the decision is issued.⁵¹ Since a Perppu can be enacted relatively quickly without the need for lengthy discussions and procedures between the legislative and executive branches, it expedites the implementation of the Court's decision, avoiding the prolonged process associated with amending or drafting laws. This swift action helps prevent any legal uncertainty following the Court's decision

⁵⁰ Saru Arifin, "The Quality of Indonesia's COVID-19 Legislation," *The Theory and Practice of Legislation* 12, no. 3 (September 11, 2024): 317–43, <https://doi.org/10.1080/20508840.2024.2365034>.

⁵¹ Encik Muhammad Fauzan, *Hukum Tata Negara Indonesia* (Malang: Setara Press, 2016), 199.

and provides clarity for parties seeking legal certainty on the measures to be taken after the ruling is issued.

The use of a Perppu as a follow-up to the Court's decision is not without challenges; even if this legal instrument is chosen, it may introduce new problems within the legislative system. These challenges include the question of “*compelling urgency*” after the Court's decision is issued. Not all decisions will create the urgency required for the issuance of a Perppu. While the issuance of a Perppu is the President's prerogative,⁵² to prevent its misuse as a tool of power, the Constitutional Court, through Decision No. 138/PUU-VII/2009, established three conditions that define “*compelling urgency*,” which is the primary requirement for the issuance of a Perppu. These three conditions are:⁵³ 1) There is an urgent need to resolve legal issues swiftly under the law; 2) The required law does not yet exist, resulting in a legal vacuum, or the existing law is inadequate; 3) The normal legislative process cannot overcome the legal vacuum because it would take too long, while the urgent situation requires immediate resolution.

Second, the issuance of a Perppu as a follow-up to the Constitutional Court's decision in a judicial review case provides only a temporary solution, as the validity of a Perppu is limited to situations of emergency, which are not likely to persist for long. Once the state of emergency is deemed to have ended, the Perppu must be submitted to the legislative branch for approval. If approved, the Perppu becomes a law; if rejected, its validity ceases. This process may hinder the full implementation of the Constitutional Court's decision, as multiple stages must still be navigated, and there is always the potential for rejection by the legislature.⁵⁴

The opportunities and challenges associated with using a Perppu as a follow-up to the Constitutional Court's decision can be outlined in the table below:

Table 2.
Opportunities and Obstacles of Perppu as a Follow-up to the Constitutional Court's Decision

No.	Opportunities	Obstacles
1	Perppu has a hierarchical structure with laws that can harmonise legislation under the law after reading the Constitutional Court Decision.	Not all of the Constitutional Court's decisions in law review cases are like emergencies, which means that not all of the Constitutional Court's decisions can be followed up with a Perppu.

⁵² Mas Pungky Hendra Wijaya and Mohammad Zulfikar Ali, “Legislation Impediments in Reorganising Government Bodies in Indonesia,” *BESTUUR* 9, no. 1 (August 12, 2021): 1, <https://doi.org/10.20961/bestuur.v9i1.51633>.

⁵³ Susi Dwi Harijanti, “Perppu Sebagai Extra Ordinary Rules: Makna Dan Limitasi,” *Paradigma Hukum Pembangunan* 2, no. 1 (2017): 77–91.

⁵⁴ Akhmad Safik, “Law-Making Process in Indonesia An Analysis On the National Legislation Program (Prolegnas),” *Jurnal Magister Ilmu Hukum* 1, no. 1 (July 17, 2021): 20, <https://doi.org/10.36722/jmih.v1i1.728>.

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| 2 | The process of issuing Perppu, which is relatively faster than the Law, will avoid the potential legal vacuum after reading the Constitutional Court Decision. This will certainly provide legal certainty for parties interested in issuing regulations after the Constitutional Court Decision. | The validity duration is short and requires further stages to be approved as a law. This process will hinder the implementation of the Constitutional Court Decision. Not to mention, the potential for rejection from the executive branch is still open. |
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Source: Compiled by the author based on several references

The next option for regulation as a follow-up to the Constitutional Court's decision involves legislation subordinate to laws, which, in several previous decisions, has often been implemented through various forms of regulation. These include government regulations, presidential regulations, ministerial regulations, and agency regulations, such as the Election Commission Regulations (KPU), Supreme Court Regulations (Perma), and circular letters, such as the Circular Letter of the Director General of Industrial Relations and Labour Social Security No. B.31/PHIJSK/I/2012 on the Implementation of Court Decision Number 27/PUU-IX/2011, dated 20 January 2012.⁵⁵

The advantage of this form of regulation lies in its relatively short issuance period, allowing it to quickly fill the legal vacuum following the Constitutional Court's decision. However, these regulations do not alter the substance of the problematic articles that have infringed upon citizens' constitutional rights. Additionally, the binding force of such regulations may create disharmony within the legislative system, particularly with circular letters, which do not contain enforceable norms, as these legal instruments are not part of the hierarchical structure of Indonesia's legislative system.⁵⁶

Based on the above arguments, a law is the most appropriate type of legal instrument to follow up on the Constitutional Court's decision concerning the Omnibus Law. This legal instrument is preferable because the articles in the Omnibus Law that were deemed problematic by the Constitutional Court should be amended through the drafting or revision of laws. Moreover, in several decisions, the Constitutional Court has explicitly directed the legislature to amend and improve articles declared unconstitutional. Additionally, the binding force of laws positions this legal instrument as ideal for implementing the Constitutional Court's decision in judicial review cases involving the Omnibus Law. The concept of standardising the form of legal instruments in response to Constitutional Court decisions in judicial review cases concerning the Omnibus Law applies specifically to decisions that establish new norms or are deemed conditionally unconstitutional. If the

⁵⁵ Syukri Asy'ari, Meyrinda Rahmawaty Hilipito, and Mohammad Mahrus Ali, "Model Dan Implementasi Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang (Studi Putusan Tahun 2003-2012)," *Jurnal Konstitusi* 10, no. 4 (2016): 675, <https://doi.org/10.31078/jk1046>.

⁵⁶ Mahrus Ali and Rahmawaty Hilipito dan Syukri Asy, "Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru (The Implementation of Constitutional Court Verdict on Conditionally Constitutional and New Legal Norm)," 163.

decision establishes new norms, it should compel lawmakers to amend the substance of the relevant articles or paragraphs in line with the new norms contained in the decision.⁵⁷ In cases where the decision is conditionally unconstitutional, the standardisation of legal instruments through amendments to the law should also be implemented, as such rulings typically require legislators to make changes in order for the conditionally unconstitutional provisions to become constitutional.

Although a law is considered the ideal legal instrument to follow up on the Constitutional Court's decision in judicial review cases with an omnibus character, this choice raises several issues. First, there is currently no legal basis obligating the parties addressed by the decision to follow up through the enactment of a law.⁵⁸ Second, the process of drafting and enacting a law as a follow-up to the Constitutional Court's decision in an omnibus judicial review case is time-consuming and involves multiple stages. In this context, law-making institutions must navigate formal procedures that extend the legislative process, especially if the proposed amendments are not included in the national legislative program (Prolegnas).⁵⁹

As a solution, the regulatory framework pursued by the state must provide clear guidelines for the formulation of follow-up actions to the Constitutional Court's decisions in judicial review cases concerning omnibus laws.⁶⁰ These decisions must be followed up with amendments and/or the creation of new regulations, as required by the rulings. While the requirement for such follow-up through legislative amendments was implicitly provided in Article 59 paragraph (2) of Law Number 8/2011 concerning Amendments to Law Number 24/2003 on the Constitutional Court (MK Law), this provision was declared to no longer have binding legal force following the Constitutional Court's Decision No. 49/PUU-IX/2011 on Tuesday, October 18, 2011. As a result, the Constitutional Court Law no longer regulates the follow-up procedure after a decision is issued.⁶¹

The only legal reference for following up on the Constitutional Court's decision through legislation is Article 10 paragraph (1) letter d of Law No. 12/2011 on the Formation of Legislation. This provision includes an option for regulating material that must be

⁵⁷ Mark Cammack, "Legal Certainty in the Indonesian Constitutional Court: A Critique and Friendly Suggestion," *Constitutional Democracy in Indonesia*, 2023, 275–98, <https://doi.org/10.1093/oso/9780192870681.003.0014>.

⁵⁸ R. Wahjoe Poernomo Soeprapto, "Meaningful Participation Through Online Channels in Legislation Making in Indonesia via Dpr.Go.Id Page," *Trunojoyo Law Review* 6, no. 2 (2024): 190, <https://doi.org/https://doi.org/10.21107/tlr.v6i2.25960>.

⁵⁹ Vera Wheni S. Soemarwi, Yeremia Wijaya, and Arturo Richie Gunawan, "The Absence of Constitutional Court's Decision Follow Up: Is It A Loss?," *Jurnal Konstitusi* 19, no. 3 (August 30, 2022): 720–40, <https://doi.org/10.31078/jk19310>.

⁶⁰ Eugenia Brandao Da Silva and Lin Asyiqoh, "The Idea of Legal Pluralism in Dispute Resolution of Village Head Election in Madura," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 61–83, <https://doi.org/ejournal.pustakaparawali.com>.

⁶¹ Ni'matul Huda, "Problematika Pengaturan Tindak Lanjut Putusan Mahkamah Konstitusi Dalam Perkara Pidana Oleh Mahkamah Agung," *Jurnal Hukum Ius Quia Iustum* 27, no. 3 (2020): 437–57, <https://doi.org/10.20885/iustum.vol27.iss3.art1>.

addressed through law, one of which is the follow-up to a Constitutional Court decision. Furthermore, paragraph (2) states that the DPR or the President is responsible for carrying out the follow-up to the Constitutional Court's decision. However, this provision does not explicitly require the parties addressed by the Constitutional Court's decision to follow up through the formation of a law. The potential of this provision should be fully realised if there were an affirmation that the obligation to follow up on the Constitutional Court's decision through law, as stipulated in Article 59 paragraph (2) of the Constitutional Court Law, remains valid.⁶² Therefore, it is essential to reaffirm the obligation to follow up on such decisions through the formation of legislation to ensure the executory power of the Constitutional Court's decisions is properly implemented.

The next legal construction related to the duration required for amending or drafting new laws is to provide expedited procedures in the formation of laws resulting from the Constitutional Court's decision in the judicial review of the Omnibus Law.⁶³ To date, the practice of forming laws following the Constitutional Court's decisions has often placed the draft regulations in an open cumulative category within the National Legislation Program (Prolegnas), with the formation process and stages still requiring considerable time. The limited acceptability of the Constitutional Court's decisions in Prolegnas indicates that this approach cannot be relied upon to meet the need for accelerated lawmaking following the Court's rulings.

In 2021, there was an urgency to follow up on the Constitutional Court's decisions.⁶⁴ During that year, the Constitutional Court handled 121 law review cases, consisting of 71 cases registered in 2021 and 50 cases registered in the previous year. Of these, the Court decided 99 cases, while 22 remained under examination. The case breakdown is as follows: 14 decisions were granted, 39 decisions were refused, 34 were deemed inadmissible, 11 cases were withdrawn, and one decision ruled that the Constitutional Court had no authority. Furthermore, out of the 14 granted decisions, only one was included in the open cumulative list of Prolegnas due to the Constitutional Court's decision—namely, the Bill to Amend Law No. 11 of 2020 concerning Job Creation.⁶⁵ Thirteen other granted decisions have yet to be included in the open cumulative list of Prolegnas. Based on this data, the urgency for more Constitutional Court decisions to be incorporated into the Prolegnas list

⁶² Yuniar Riza Hakiki and Taufiqurrahman Taufiqurrahman, "The Idea of Structuring National Legislation Based on The Ratio of Decidendi & Obiter Dictum Constitutional Court Decision," *Jurnal Konstitusi* 20, no. 1 (2023): 78–99, <https://doi.org/10.31078/jk2015>.

⁶³ Bagus Hermanto and Nyoman Mas Aryani, "Omnibus Legislation as a Tool of Legislative Reform by Developing Countries: Indonesia, Turkey and Serbia Practice," *The Theory and Practice of Legislation* 9, no. 3 (September 2, 2021): 425–50, <https://doi.org/10.1080/20508840.2022.2027162>.

⁶⁴ Gusti Ayu Ketut Rachmi Handayani, Karjoko, and Jaelani, "Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia," 37.

⁶⁵ Hakiki and Taufiqurrahman, "The Idea of Structuring National Legislation Based on The Ratio of Decidendi & Obiter Dictum Constitutional Court Decision," 91.

highlights that the current method of following up on the Court's decisions is insufficient to ensure the executability of the rulings.⁶⁶

The concept of accelerating the formation of laws resulting from the Constitutional Court's decision in judicial review cases can be achieved through the implementation of Fast Track Legislation (FTL).⁶⁷ The FTL method is commonly practiced to address urgent legal needs, though not necessarily in emergency situations. It is not the only term used to describe the expedited process of drafting laws, as some countries also refer to this model as "motion urgency" to denote the acceleration of the legislative process.⁶⁸

FTL practices are prevalent in countries such as the United Kingdom (UK) and Ecuador, while the motion urgency model is commonly used in New Zealand. In the UK, the FTL approach refers to a model of drafting laws where the requirements and stages are completed more quickly and concisely than in the usual legislative process. Although this model is relatively fast and similar to a Perppu in terms of time, the drafting and stages of FTLs still adhere to the standard procedures for lawmaking. Procedurally, the steps remain the same; however, the time allocated for each stage is shortened, with an average duration of no more than 30 days.⁶⁹

The implementation of FTL in the UK is subject to strict conditions and limitations, guided by predetermined standards, and is typically invoked to address urgent legal needs within the community. These standards include:⁷⁰ a) correcting errors in legislation; b) responding to court decisions; c) ensuring the law applies at a particular moment; d) upholding the UK's international commitments; e) making budgetary changes; f) addressing economic crises; g) implementing counter-terrorism measures; h) preserving the unity of the UK; and i) responding to public outcry.

Meanwhile, the practice of motion urgency in New Zealand involves the expedited formation of laws, which are processed more quickly than under the usual legislative procedures.⁷¹ The New Zealand government has established four categories of issues that

⁶⁶ A'an Efendi and Fradhana Putra Disantara, "Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?," *Yuridika* 37, no. 2 (August 5, 2022): 345–82, <https://doi.org/10.20473/ydk.v37i2.33364>.

⁶⁷ Martitah Martitah et al., "Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation," *Journal of Indonesian Legal Studies* 8, no. 2 (November 5, 2023), <https://doi.org/10.15294/jils.v8i2.69262>.

⁶⁸ Bayu Aryanto, Susi Dwi Harijanti, and Mei Susanto, "Menggagas Model Fast-Track Legislation Dalam Sistem Pembentukan Undang-Undang Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 2 (2021): 187, <https://doi.org/10.33331/rechtsvinding.v10i2.703>.

⁶⁹ Dian Kus Pratiwi, Muhammad Addi Fauzani, and Ahmad Ilham Wibowo, "Potensi Pengaturan Dan Praktek Pembentukan Undang-Undang Secara Cepat Di Indonesia (Studi Terhadap Pembentukan Revisi Undang-Undang Tentang Komisi Pemberantasan Tindak Pidana Korupsi Dan Undang-Undang Mahkamah Konstitusi)," *Jurnal Legislasi Indonesia* 19, no. 4 (2022): 502–17.

⁷⁰ Wicipito Setiadi, "Fast Track Legislation Sebagai Bentuk Percepatan Supremasi Hukum" (Bandung: Fakultas Hukum Universitas Pajajaran, 2020), 39.

⁷¹ Christine Reh et al., "The Informal Politics of Legislation," *Comparative Political Studies* 46, no. 9 (September 5, 2013): 1112–42, <https://doi.org/10.1177/0010414011426415>.

may be addressed through the motion urgency model: 1) to expedite laws addressing urgent parliamentary needs related to unexpected issues, such as correcting errors made by legislative bodies or addressing economic stability; 2) to manage and complete the legislative queue; 3) for tactical reasons, such as addressing public sentiment or political considerations; and 4) matters related to the state budget.⁷²

Based on these practices, the Constitutional Court's order to amend a law can be considered a valid circumstance for applying expedited law formation procedures, as seen in both the FTL model in the UK and the motion urgency model in New Zealand. This indicates that there is potential for the Constitutional Court's decisions to be followed up with law amendments through the FTL model within Indonesia's legislative system, particularly in the context of law formation as a follow-up to the Constitutional Court's decision in the judicial review of the Omnibus Law.⁷³

The reduction in the time required for lawmaking offered by the FTL model is significant, as it allows for a more efficient legislative process. This is particularly relevant when amendments to specific articles or paragraphs are mandated by a court order. Typically, the court's ruling does not call for an overhaul of the entire law, but rather the modification of specific articles or paragraphs as requested by the petitioners. These amendments should be made swiftly, as the instructions and considerations are clearly outlined in the court's decision.⁷⁴ The lawmaking body is primarily tasked with incorporating the amendment points as specified in the ruling.⁷⁵

C. CONCLUSIONS

This research concludes that the standardisation of types of legislation as a follow-up to the Constitutional Court's decisions in the judicial review of the Omnibus Law must be implemented immediately to avoid the proliferation of regulations that lead to the decisions being ignored by the parties addressed. This is especially necessary when numerous regulations need to be amended based on the Constitutional Court's decisions. The urgency of standardisation arises from the fact that some decisions have been followed up with various regulations, including those issued by state institutions, whose substance contradicts the Constitutional Court's rulings. This research suggests that a law is the ideal

⁷² Aryanto, Harijanti, and Susanto, "Menggagas Model Fast-Track Legislation Dalam Sistem Pembentukan Undang-Undang Di Indonesia," 179.

⁷³ Agnes Fitryantica and Regy Hermawan, "Fast-Track Legislation Mechanism as an Alternative to the Formation of Legislation in Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 3 (November 30, 2022): 423, <https://doi.org/10.30641/kebijakan.2022.V16.423-432>.

⁷⁴ Nurus Zaman et al., "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 9, no. 2 (2024): 611-29, <https://doi.org/10.22373/petita.v9i2.299>.

⁷⁵ Febri Sianipar and Hari Prasetyo, "Legal Implications Of Positive Fictive Application After The Law Of Job Creation Law Is Declared Conditionally Unconstitutional," *JASSP* 3, no. 1 (May 22, 2023): 12-20, <https://doi.org/10.23960/jassp.v3i1.98>.

legal instrument to follow up on the Constitutional Court's decisions, particularly in judicial review cases concerning the Omnibus Law. A law is the most suitable mechanism to ensure that the rulings are implemented properly and effectively. However, following up through legislation requires a specific strategy to address the lengthy process of amending laws in response to the Constitutional Court's decisions. The proposed strategy is to introduce a provision mandating the use of the fast-track legislation model. This approach aims to expedite the lawmaking process and ensure that the Constitutional Court's decisions are implemented promptly and in accordance with the rulings.

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