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## **The Constitutional Court's Decision on the Amendment of Law No. 1/1974 on Marriage**

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### **ABSTRACT**

*This research was conducted to determine the impact of Constitutional Court Decision No. 46/PUU-VIII/2010 related to the position of children out of wedlock and Constitutional Court Decision No. 69/PUU-XIII/2015 on marriage agreements on the amendment of Law No. 1/1974 on marriage. This research used juridical normative methods with a statutory approach. In addition, the data analysis used is descriptive qualitative. The results of the research indicate that there are three decisions of the Constitutional Court with the verdict "granted", including the following Constitutional Court Decision Number 46/PUU-VIII/2010; Constitutional Court Decision Number 69/PUU-XIII/2015; and Constitutional Court Decision Number 22/PUU-XV/2017 regarding the age limit of marriage. Constitutional Court Decision Number 22/PUU-XV/2017 has been followed up with the amendment of Law No. 16/2019 concerning Amendments to Law No.1/1974 on Marriage. However, Constitutional Court Decision Number 46/PUU-VIII/2010 and Constitutional Court Decision Number 69/PUU-XIII/2015 were omitted in the Law No. 16/2019 amendment. Therefore, the law-forming apparatus needs to implement the legislative review and executive review mechanisms that can be used as an effort to amend a statutory regulation through the legislative and executive institutions, in this case, Constitutional Court Decision Number 46/PUU-VIII/2010 and Constitutional Court Decision Number 69/PUU-XIII/2015. In addition, it is also essential to strengthen the system for monitoring the follow-up of Constitutional Court decisions that are final and binding.*

**Keywords:** *Constitutional Court's Decision, Judicial Review, Marriage Law*

## INTRODUCTION

Since the reformation, the 1945 Constitution of the Republic of Indonesia has been amended four times. These changes occurred in 1999, 2000, 2001 and 2002. These changes have strengthened the position of the three state branches of jurisdiction: the judiciary, legislative and executive.<sup>1</sup> After the third amendment of the 1945 Constitution, the Constitutional Court was officially enacted in 2003 as one of the judicial representatives as stipulated in Article 24 Paragraph (2) of the 1945 Constitution. In addition to the Supreme Court, which consists of the general, religious, military and state administrative courts, there are other judicial authorities, such as the Constitutional Court. Regarding judicial authority, the Constitutional Court has the authority to hear cases at the first and final hearing.<sup>2</sup>, and its decision is final as explained in Article 24 C Paragraph (1) of the 1945 Constitution and does not open opportunities for appeal, cassation or other legal remedies.<sup>3</sup> The Constitutional Court has an essential role as an independent authority, free from interference from other institutions in upholding law and justice. One of the authorities exercised by the Constitutional Court is to examine the law against the 1945 Law. Testing the law is usually called a judicial review. According to Article 51 Paragraph (3) of Law No. 24/2003 on the Constitutional Court, there are two types of judicial reviews, such as (1) formal judicial review of a law (*formele toetsing*), judicial review of a law is conducted because the applicant considers the process of forming the law not to fulfil the provisions under the Constitution; (2) Material testing of laws (*materieele toetsing*), testing of a law is conducted because there is content material in paragraphs, articles, and parts of the law that the applicant considers contrary to the Constitution. a legal institution that authorizes the executive body of judicial power or other bodies appointed by the Constitution to be able to conduct a review or judicial review through legal interpretation or constitutional interpretation to provide a juridical solution.<sup>4</sup>

Based on the Constitutional Court's decision, it can be known whether a law the applicant tests is contrary to the 1945 Constitution. The Constitutional Court's decision to grant a petition for judicial review of a law against the 1945 Constitution, either in whole or in part, has changed the provisions of a law. The

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<sup>1</sup> Dr. Mardian Wibowo, "Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia," in *Bimbingan Teknis Hukum Acara Penyelesaian Perkara Perselisihan Hasil Pemilihan Gubernur, Bupati, Dan Walikota Secara Serentak Tahun 2018 Bagi KPU, KPUD, Dan KIP Angkatan II* (Bogor: Pusat Pendidikan Pancasila dan Konstitusi MKRI, 2018), 1–22.

<sup>2</sup> Wicipto Setiadi, "Dukungan Politik Dalam Implementasi Putusan Mahkamah Konstitusi," *Jurnal Rechtsvinding* 2, no. 3 (2013): 295–313.

<sup>3</sup> Ika Kurniawati and Lusy Liany, "Kewenangan Mahkamah Konstitusi Sebagai Negative Legislator Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945," *Adil: Jurnal Hukum* 10, no. 1 (2019): 111–35.

<sup>4</sup> Maruarar Siahaan, "Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi Dan Mahkamah Agung," *Jurnal Konstitusi* 17, no. 4 (2020), <https://doi.org/https://doi.org/10.31078/jk1742>.

decision must be followed and implemented by all interested parties.<sup>5</sup> The Court's Executorial Decision is realized by being included in the State Gazette for 30 days after it is issued so that the public can know it, and since then, the Court's decision must be implemented.<sup>6</sup> This research focuses on legislation regarding marriage. Every marriage is not only based on biological needs between a man and a woman that are recognized as legitimate but as an implementation of the process of human nature.<sup>7</sup> This statement is also supported in Article 1 of Law No. 1/1974 concerning marriage, which states that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family based on the Almighty God.<sup>8</sup> The Law No.1/1974 on marriage has been submitted to the Constitutional Court for judicial review several times. Among the many articles and paragraphs in the Law, Article 7 Paragraph (1) was submitted to the Constitutional Court for judicial review. The provisions of the Article state that marriage is only permitted if the male reaches the age of 19 years and the female has reached the age of 16 years. According to the applicant, this provision contradicts 1945 Constitution Article 27 Paragraph (1) related to legal standing and discrimination in the rights to education, health, and exploitation of girls. Regarding the judicial review of Article 7 (1) in Law No. 1/1974 on marriage against the norms of Article 27 Paragraph (1) of the 1945 Constitution, the Constitutional Court, through Decision Number 22/PUU-XV/2017, partially granted the petition of the petitioners. Constitutional Court Decision Number 22/PUU-XV/2017 states that Article 7 Paragraph (1) along the phrase "age 16 (sixteen) years" in Marriage Law No.1/1974 is contrary to Article 27 Paragraph (1) of the 1945 Constitution; article has no binding legal force, and subsequently the Constitutional Court instructed the House of Representatives and the Government as the law-making apparatus to amend Marriage Law No. 1/1974 at the latest within three years, especially concerning the minimum age of marriage for women. The provisions of Article 7 Paragraph (1) of Law No. 1/1974 concerning marriage are still valid until the amendment is made.<sup>9</sup>

On the other hand, two Constitutional Court decisions granted the petitioners: Constitutional Court Decision Number 46/PUU-VIII/2010 on the position of children out of wedlock and Constitutional Court Decision Number 69/PUUXIII/2015 on marriage agreements. Both are also categorized as decisions with the verdict "granted." The two Constitutional Court decisions should have

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<sup>5</sup> Bachtiar, *Problematisasi Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD* (Jakarta: Raih Asa Sukses, 2015).

<sup>6</sup> Fista Prilia Sambuari, "Eksistensi Putusan Judicial Review Oleh Mahkamah Konstitusi," *Lex Administratum* 1, no. 2 (2013): 17–24.

<sup>7</sup> Taufiqurrahman Syahuri, *Legislasi Hukum Perkawinan Di Indonesia: Pro-Kontra Pembentukannya Hingga Putusan Mahkamah Konstitusi* (Jakarta: Kencana Prenada Media Group, 2013).

<sup>8</sup> Kesekretariatan Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan* (Jakarta, 1974).

<sup>9</sup> Mahkamah Konstitusi, "Putusan Nomor 22/PUU-XV/2017," 2017.

been included in the Marriage Law No. 16/2019 amendment. The content material of the Constitutional Court's decision was not included in the amendment to Marriage Law No. 16/2019. Based on this background, this research will analyze the impact of the Constitutional Court's decision regarding the judicial review of Marriage Law No. 1/1974 on the amendment of Marriage Law No. 16/2019 on the Amendment to Marriage Law No. 1/1974 and the follow-up to the decision that was omitted in the amendment.

## **RESEARCH METHODOLOGY**

This research used juridical normative methods with a statutory approach. The juridical-normative method is a method that is based on the primary legal material by examining theories, legal principles and law regulations related to this research. The juridical-normative method is based on the primary legal material by examining theories, legal principles, and legal regulations related to this research.<sup>10</sup> In addition, the data analysis used is descriptive qualitative. Descriptive qualitative research is a type of qualitative research that examines the characteristics of a phenomenon rather than explaining its underlying causes or mechanisms. This research involves collecting and analyzing data as words, pictures, or other non-numerical forms of information.<sup>11</sup> The primary data used in this research are Constitutional Court Decision No. 46/PUU-VIII/2010 related to the position of children out of wedlock and Constitutional Court Decision No. 69/PUU-XIII/2015 on marriage agreements on the amendment of Law No. 1/1974 on marriage. Meanwhile, the secondary data used in this research are theses, articles, and books related to the research topic.

## **RESULT AND DISCUSSION**

### **Constitutional Court Decision on the Examination of Laws against the Constitution**

According to Article 24 C Paragraph (1) of the 1945 Constitution and Article 10 Paragraph (1) letter a of Law No. 24/2003 as amended by Law No. 14/2014 on the Constitutional Court. The Constitutional Court has the authority to examine laws against the Constitution. Thus, the Constitutional Court can test and revoke a law if it is deemed contrary to the 1945 Constitution.<sup>12</sup> In addition, through its decision, the Constitutional Court can declare that the material formulation of a law does not have binding legal force because it is contrary to the Constitution. Furthermore, the Constitutional Court can revoke a law's validity because it does

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<sup>10</sup> Pratiwi Setiawan and Wahyu Tris Haryadi, "The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 1–9.

<sup>11</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D (2th Edition)* (CV. Alfabeta, 2019).

<sup>12</sup> Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*.

not follow the Constitution's mandate.<sup>13</sup> The final decision states that some material or the entire law can be declared invalid and binding. Therefore, all parties must comply with and implement the Constitutional Court's decision. Therefore, based on Article 57 Paragraph (3) of Law No. 4/2014 on the Constitutional Court, which contains "the decision of the Constitutional Court that grants the petition must be published in the State Gazette within a period of no later than 30 (thirty) working days after the decision is issued." This means that the Court's Executorial Decision is realized by being included in the State Gazette for 30 days after it is issued so that the public can know it, and since then, the Court's decision must be implemented. Thus, the decision can provide rights for every citizen, which has implications for changes in legislation where the House of Representatives is authorized to propose, discuss, amend, and enact laws. However, the final and binding decision is often not responded to positively by the law-making apparatus and the government, so the Constitutional Court's decision needs to be implemented. When the Constitutional Court's decision is ignored and not implemented, the decision becomes floating execution and creates legal uncertainty. In fact, in the perspective of a democratized state of law, the implementation of the Constitutional Court's decision is a legal obligation, especially if it relates to the fulfilment of the constitutional rights of citizens guaranteed and protected by the 1945 Constitution of the Republic of Indonesia as the supreme law of Indonesia.<sup>14</sup> Therefore, it is required that there is a collective awareness of all state institutions and other non-state entities to apply the decision of the Constitutional Court jointly. In addition, the final and binding decision of the Constitutional Court must also be accompanied by a judicial order directed at individuals or state institutions. This requires the statutory authorities to take immediate constitutional steps. After the decision, the Constitutional Court asks the majority of the House of Representatives and the government to revise the legal products that have been declared unconstitutional (corrective revision). The amendment must still be guarded by the decision and under the constitutional choices of the constitutional organs.

Although the decision of the Constitutional Court has binding force, that is *erga omnes*. In order to implement its decision, it no longer requires a decision of the authorized official. However, this is because the implementation of its decision is automatic. That is, since the decision of the Constitutional Court is read out in Court or within a certain grace period, the decision of the Constitutional Court is immediately binding and has legal consequences.<sup>15</sup>

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<sup>13</sup> Soimin and Mashuriyanto, *Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia* (Yogyakarta: UII Press, 2013).

<sup>14</sup> Bachtiar, *Problematika Implementasi Putusan Mahkamah Konstitusi Pada Pengujian UU Terhadap UUD*.

<sup>15</sup> M. Ali Safa'at et al., *Hukum Acara Mahkamah Konstitusi (Edisi Revisi)* (Jakarta: Mahkamah Konstitusi, 2019).

### Three Constitutional Court Decisions with “granted” Verdicts

#### Constitutional Court Decision Number 46/PUU-VIII/2010 on Children's Status Out of Wedlock

##### 1. Applicant and Applicant's Legal Position

The applicants are women, individual Indonesian citizens with the legal capacity, legal relationships, and legal interests to file the petition. Whereas the existence of the article *a quo* caused a loss to the applicant's constitutional rights, that is, the right to legalise her marriage and her child's legal status. *A quo* is Latin for “the case”, i.e. *a quo* case means the case.<sup>16</sup> The applicant had to cover the costs of the applicant's life and support the child's care and maintenance. The applicants are Hj Aisyah Mochtar, aka Machica binti H. Mochtar Ibrahim and Muhammad Iqbal Ramadhan bin Moerdiono with lawyers named Rusdianto Matulatuwa; Oktryan Makta; and Miftachul I.A.A. who applied on 14 March 2017.

##### 2. Norms Requested for Judicial Review and Reasons for Application

The material norms requested are Article 2 Paragraph (2) and Article 43 Paragraph (1) of the Marriage Law against the 1945 Constitution norms of Article 28 B Paragraph (1) and Paragraph (2) and Article 28D Paragraph (1) of the 1945 Constitution. The provisions of Article 2 Paragraph (2) and Article 43 Paragraph (1) of the Marriage Law do not have binding legal force with all legal consequences.

##### 3. Constitutional Court Decision

The Constitutional Court decided to hear and partially grant the applicants' request, which stated that Article 43 Paragraph (1) of Law No. 1/1974 on Marriage states, “children born out of wedlock only have a civil relationship with their mother and her family”, the 1945 Constitution of Republic Indonesia is interpreted to eliminate civil relationships with men who can be proven based on science and technology or other evidence according to the law to have a blood relationship as the father.<sup>17</sup>

#### Constitutional Court Decision Number 69/PUU-XIII/2015 regarding the Marriage Agreement

##### 1. Applicant and Applicant's Legal Position

The applicants are women, individual Indonesian citizens with the legal capacity, legal relationships, and legal interests to file the petition. Whereas, the existence of the article *a quo* caused a loss to the applicant's constitutional rights, that is, the right to own property rights and building

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<sup>16</sup> Tanto Lailam, “Penafsiran Konstitusi Dalam Pengujian Konstitusionalitas Undang-Undang Terhadap UUD 1945,” *Jurnal Media Hukum* 21, no. 1 (2014): 559–84.

<sup>17</sup> Mahkamah Konstitusi, “Putusan Nomor 46/PUU-VIII/2010,” 2010.



rights for life because they are married to a foreigner, do not have a separation of property agreement; have never renounced their citizenship; and continue to choose Indonesian citizenship and live in this country. The applicant is Mrs. Ike Farida with lawyers named Yahya Tulus Nami, S.H., Ahmad Basrafi, S.H., Stanley Gunadi, S.H., Edwin Reynold, S.H., dan Ismayati, S.H who filed the application on 24 June 2015.

## 2. Norms Requested for Judicial Review and Reasons for Application

The material norms requested are Article 29 Paragraph (1), Paragraph (3), and Paragraph (4) and Article 35 Paragraph (1) of the Marriage Law against the 1945 Constitution norms of Article 28 B Paragraph (1), Article 27 Paragraph (1), Article 28 E Paragraph (1), and Article 28 H Paragraph (1) and Paragraph (2) of the 1945 Constitution. The provisions of these articles and paragraphs do not have binding legal force with all legal consequences.

## 3. Constitutional Court Decision

The Constitutional Court decided to hear and declare that it granted some of the applicants' requests, such following:

- a. Article 29 Paragraph (1) of the Marriage Law is contrary to Article 28E Paragraph (2) of the 1945 Constitution and has no legal force to ensure that it is not interpreted to mean, "during or before the marriage is held, the two parties by mutual agreement may form a written agreement authorized by a marriage registrar, after which the contents shall also apply to third parties concerned."
- b. Article 29 Paragraph (3) of the Marriage Law is contrary to Article 28E Paragraph (2) of the 1945 Constitution and has no legal force to ensure that it is not interpreted to mean, "the agreement shall be valid from the date of marriage, unless otherwise specified in the marriage agreement."
- c. Article 29 Paragraph (4) of the Marriage Law contradicts Article 28E Paragraph (2) of the 1945 Constitution. It has no legal force to ensure that it is not interpreted to mean, "during the marriage, a marital agreement, whether concerning marital property or any other agreement, cannot be amended or revoked, unless both parties agree to amend or revoke and the amendment or revocation does not prejudice a third party."<sup>18</sup>

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<sup>18</sup> Mahkamah Konstitusi, "Putusan Nomor 69/PUU-XIII/2015," 2015.

## Constitutional Court Decision Number 22/PUU-XV/2017 regarding the Amendment of Marital Age Limit

### 1. Applicant and Applicant's Legal Position

The applicants are women, individual Indonesian citizens who are married under 16 years old. Whereas the existence of the article *a quo* caused obstruction or even threat to the fulfilment of their constitutional rights, such as the right to access education; the right to receive health care; and the right to grow and develop, guaranteed by the 1945 Constitution. The applicants are Endang Wasrinah, Maryanti, and Rasminah with lawyers named Supriyadi Widodo Eddyono, S.H., Dian Kartikasari, S.H., Robert Sidauruk, S.H., Erasmus A.T. Napitupulu, S.H., Ajeng Gandini Kamilah, S.H., Lia Anggiasih, S.H., Rio Hendra, S.H., Anggara, S.H., Dewi Yani, S.H., Yohana Wardhani, S.H., Ade Novita, S.H., Wahyudi Djafar., Wahyu Wagiman, S.H who filed the application on 23 March 2017.

### 2. Norms Requested for Judicial Review and Reasons for Application

The material norm petitioned for is Article 7 Paragraph (1) of the Marriage Law against the norm of the 1945 Constitution Article 27 Paragraph (1). The provisions of Article 7 Paragraph (1) along the phrase "16 (sixteen) years old", the Marriage Law has violated the principle of "All citizens are equal before the law", thus contradicting Article 27 Paragraph (1) of the 1945 Constitution. The *a quo* provision creates legal distinction and discrimination against girls in health rights, education rights, and the risk of child exploitation.<sup>19</sup>

### 3. Constitutional Court Decision

The Constitutional Court's decision was to hear and partially grant the applicants' request, which stated that Article 7 Paragraph (1) along the phrase "age 16 (sixteen) years" of Law No. 1/1974 on marriage was contrary to the 1945 Constitution and had no binding legal force, and ordered the legislators to make changes to the Marriage Law No. 1/1974 within a maximum period of 3 (three) years, especially concerning the minimum age of marriage for women. Before the amendment is enacted, the provisions of Article 7 Paragraph (1) of Law No. 1/1974 on marriage remain valid.<sup>20</sup>

Only one of the three decisions of Constitutional Court, Constitutional Court Decision No. 22/PUU-XV/2017 on the change of marriage age limit, was accompanied by a judicial order to the legislators to immediately make changes by amending Article 7 Paragraph (1).

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<sup>19</sup> Taufiqurrohman Syahuri, *Marriage Law Legislation in Indonesia* (Jakarta: Prenadamedia Group, 2013).

<sup>20</sup> Mahkamah Konstitusi, "Putusan Nomor 22/PUU-XV/2017."



### **Amendments to Law No. 1/1974 on Marriage After the Three Constitutional Court Decisions Granting the Petitioners' Requests**

After applying for 45 years, Law No. 1/1974 on Marriage was finally amended to become Marriage Law No.16/2019 on 15 October 2019. The amendment to the Marriage Law is one of the laws passed by the House of Representatives for the 2014-2019 period at the end of its period on 16 September 2019. The Marriage Law No.16/2019 was passed to realize the equal rights of men and women in obtaining the right to form a family; the right to survival, growth, development; and the right to protection against acts of violence and discrimination, as stated in the Constitutional Court Decision Number 22/PUU-XV/2017 on 13 December 2018. Based on these considerations, the legislator (in this case the Government together with the House of Representatives) changed the age limit for marriage from 19 (nineteen) years for men and 16 (sixteen) years for women to 19 (nineteen) years for both men and women.

In addition to Constitutional Court Decision No. 22/PUU-XV/2017, there are actually 2 Constitutional Court decisions that granted the applicant's request, namely Constitutional Court Decision No. 46/PUU-VIII/2010 on the legal position of children out of wedlock and 69/PUU-XIII/2015 on marriage agreements. However, the changes that occurred in the Amended Marriage Law were only in relation to Article 7 on the age of marriage and the addition of Article 65A on the transition of marriage age provisions from the provisions of the Marriage Law to the amendment to the Marriage Law in accordance with Constitutional Court Decision Number 22/PUU-XV/2017. Thus, the Amended Marriage Law has not implemented the mandate of Constitutional Court Decision No. 46/PUU-VIII/2010 on the status of children out of wedlock and Constitutional Court Decision No. 69/PUU-XIII/2015 on marriage agreements.

The two Constitutional Court decisions missed in the amendment to Marriage Law No.16/2019 indicate a disregard for the Constitutional Court's decision. When the Constitutional Court's decision is not followed up, it actually becomes a floating execution that can cause legal uncertainty. Implementing the Constitutional Court's decision in a democratic state is a necessity, especially when it comes to the constitutional rights of citizens that must be fulfilled based on the 1945 Constitution, the supreme law and the Constitution of Indonesia.<sup>21</sup> Thus, the Constitutional Court's decision should be used as a philosophical and juridical basis in the consideration when following up on the Constitutional Court's decision on the draft law. In addition, when the Constitutional Court states in its verdict that a legal norm that is expressly declared to be contrary to the 1945 Constitution, it should automatically not be re-expressed in the formation of a law. The material of the law must be in accordance with the decision or spirit contained in the Constitutional Court's decision. Therefore, lawmakers must understand the legal

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<sup>21</sup> Daniel Ang and Hans Tjio, "The Inherent Weakness of Floating Charges," in *Malayan Banking Bhd v Bakri Navigation Co Ltd*, 2020, 1–15.

considerations and opinions of the Constitutional Court that form the background of the primary considerations of the decision.<sup>22</sup> Meanwhile, the revised Marriage Law No. 16/2019 only changes in Article 7. Meanwhile, Constitutional Court Decision No. 46/PUU-VIII/2010 on the status of children out of wedlock which states that Article 43 Paragraph (1) is contrary to the 1945 Constitution and Constitutional Court Decision No. 69/PUU-XIII/2015 on marriage agreements, which states that Article 29 Paragraphs (1), (3), and (4) of Marriage Law No. 1/1974 are contrary to the 1945 Constitution Article 28E Paragraph (2) and are not changed in the revision of Marriage Law No. 16/2019. The two Constitutional Court decisions in the revision of Marriage Law No. 16/2019 have also omitted one of the bases for the formation of legislation, that is, the philosophical basis. Philosophical basis is a consideration that in the formation of a law must consider the life perspective, awareness and legal ideals which include the atmosphere of spirituality and philosophy of the Indonesian people originating from Pancasila and the Preamble of the 1945 Constitution.

In this case, the final and binding decision of the Constitutional Court requires the inclusion of a judicial order addressed to the law-making apparatus and other individuals. After issuing a final Constitutional Court decision, the Constitutional Court can instruct the House of Representatives and the President to amend laws contrary to the 1945 Constitution. This is the main problem, as formal provisions governing the implementation of the final decision still need to be created. This is in accordance with the theory expressed by Lawrence Milton Friedman that the law will be appropriately implemented if the three components of the law, such as substance, structure, and legal culture, operate simultaneously to form an integration.<sup>23</sup> Concerning the 3 Constitutional Court decisions on Marriage Law No. 1/1974, with the verdict granting the applicant's judicial review, only one decision was accompanied by a judicial order: Constitutional Court Decision No. 22/PUU-XV/2017 on the age of marriage. In addition to some of the articles being considered incompatible with the 1945 Constitution so that they are not legally binding, it was also accompanied by a request to the House of Representatives and the Government to amend the article with a maximum time limit of 3 years.

The Indonesian legal system recognizes legislative review and executive review. This mechanism can be pursued in following up the two Constitutional Court Decisions (Decision No. 46/PUU-VIII/2010 on the Status of Children out of Wedlock and No. 69/PUU-XIII/2015 on Marriage Agreements) that were omitted in the revision of Marriage Law No. 16/2016. Legislative review and executive review can be used as an effort to change a law and regulation through the legislature and the executive. The process of legislative review and executive

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<sup>22</sup> Soimin and Mashuriyanto, *Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia*.

<sup>23</sup> Intan Permata Putri and Mohammad Mahrus Ali, "Karakteristik Judicial Order Dalam Putusan Mahkamah Konstitusi Dengan Amar Tidak Dapat Diterima," *Jurnal Konstitusi* 16, no. 4 (2019): 883–904.

review can simply be understood as the process of forming ordinary laws, both in the formation of new laws and amendments to existing laws. This is as mentioned in the 1945 Constitution Article 5 and Article 20. In addition, Article 43 Paragraphs (1) and (2) of Law No. 12/2011 states that draft laws can originate from House of Representatives or the Government proposals. The legal analysis and evaluation process is conducted on existing regulations in terms of achieving their objectives and the benefits and impacts of implementing these laws and regulations in society. The analysis and evaluation activities are conducted carefully in order to produce suitable recommendations. Recommendations can be in the form of legislation that is still valid, amended, or revoked.

## **CONCLUSION AND SUGGESTION**

### **Conclusion**

During 2003-2009, there were 3 Constitutional Court decisions with the verdict “granted”, consisting of Constitutional Court Decision No. 46/PUU-VIII/2010 on the status of children out of wedlock; Constitutional Court Decision No. 69/PUU-XIII/2015 on marriage agreements; Decision No. 22/PUU-XV/2017 on the minimum age of marriage. From the 3 (three) Constitutional Court decisions with the verdict “granted”, not all of them were used as material for amendment in Marriage Law No.16/2019. The amendment to Marriage Law No.16/2019 only relates to Article 7 regarding the age of marriage in accordance with Decision Number 22/PUU-XV/2017. The Constitutional Court’s ruling on the age of marriage (Decision No. 22/PUU-XV/2017) has been followed up by reforming Marriage Law No. 1/1974 into Marriage Law No. 16/2019. However, there are also 2 (two) Constitutional Court decisions with granted verdicts that were missed in the amendment of Marriage Law No. 16/2019, these are Constitutional Court Decision No. 46/PUU-VIII/2010 on the status of children out of wedlock and Constitutional Court Decision No. 69/PUU-XIII/2015 on marriage agreements. These two decisions were not included in the Marriage Law No. 16/2019 amendment.

The law-making apparatus (House of Representatives and the Government) has been suboptimal in providing a positive response to the final and binding decisions of the Constitutional Court. This can be identified from the omission of 2 (two) Constitutional Court decisions with the ruling granted in the amendment to Marriage Law No. 16/2019 (Constitutional Court Decision No. 46/PUU-VIII/2010 on the status of children out of wedlock and Constitutional Court Decision No. 22/PUU-XV/2017 on the age of marriage).

### **Suggestion**

The law-making apparatus (House of Representatives and the Government) can follow up the Constitutional Court’s Decision with the verdict “granted” (Decision No.46/PUU-VIII/2010 on the status of children out of wedlock and Constitutional Court Decision No.69/PUU-XIII/2015 on marriage agreement)

which was omitted in the amendment of Marriage Law No.16/2016 with legislative review and executive review mechanisms that can be used as an effort to amend a law through the legislative and executive institutions. The law-making apparatus (House of Representatives and the Government) always makes the Constitutional Court Decision the primary reference in forming laws that follow the Constitutional Court Decision. In addition to the collective awareness of all state institutions and other non-state institutions, it is also essential to strengthen the system in monitoring the implementation of the final decision of the Constitutional Court, such as the inclusion of judicial orders in each of its decisions, the existence of special executors in following up on its decisions, and the cancellation of legal products issued without reference to the Constitutional Court's decision.

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