



ANALYSIS ON CONSTITUTIONAL COURT DECISION NO. 96/PUU-XVIII/2020 FROM THE PERSPECTIVE OF CRITICAL LEGAL STUDIES THEORY

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Abstract

The establishment of the Constitutional Court is driven by a serious effort to protect the constitutional rights of citizens and uphold the constitution as the highest norm. Constitutional Court Decision No. 96/PUU-XVIII/2022 on the material review of Article 87 letters A and B of Law No. 7/2020 on the Constitutional Court, from the perspective of legal positivism, indicates that the Constitutional Court has exercised its authority in accordance with the governing law. Critical Legal Studies theory, as a branch of legal philosophy, offers a different perspective in evaluating legal products. This research aims to: first, understand the reasoning of the Constitutional Court judges in deciding the case; and second, assess the Constitutional Court's decision from the perspective of Critical Legal Studies theory. The research method employed is doctrinal research with a philosophical approach. The findings of this study reveal that the Constitutional Court ruled that the petitioner's argument concerning Article 87 letter A of Law 7/2020 is legally justified and no longer has binding legal force since the pronouncement of this Decision. However, the petitioner's request regarding Article 87 letter B of Law 7/2020 is deemed legally unjustified. According to the analysis of Critical Legal Studies theory on Constitutional Court Decision No. 96/PUU-XVII/2020, it is evident that there is a dominant ideology influencing the judges' considerations in the decision. The Constitutional Court merely relies on subjective values in deciding the case, disregarding procedural legal principles and pretending to maintain neutrality. The judges' reliance on political institution testimony demonstrates the inseparability of politics and law. The statement in the verdict regarding the selection of the Chairperson and Deputy Chairperson, who can only be reelected nine months after this decision, serves as evidence that the Constitutional Court aims to avoid any disadvantages and indirectly ensures the current Chairperson and Deputy Chairperson will continue to hold their positions.

Keywords:

Critical Legal Studies;
Constitutional Court; Judges
Tenure.

Kata Kunci:

Critical Legal Studies;
Mahkamah Konstitusi; Masa
Jabatan Hakim

Abstrak

Munculnya Mahkamah Konstitusi dilandasi dengan upaya serius memberikan perlindungan terhadap hak-hak konstitusional warga negara dan semangat penegakkan konstitusi sebagai *highest norm*. Putusan Mahkamah Konstitusi Nomor 96/PUU-XVIII/2022 tentang ujian materil terhadap pasal 87 huruf a dan b Undang-Undang nomor 7 tahun 2020 tentang Mahkamah Konstitusi, dalam dalam kacamata positivisme hukum Mahkamah Konstitusi telah menggunakan kewenangan sesuai dengan Undang-Undang yang mengaturnya. *Teori Critical Legal Studies* sebagai cabang aliran filsafat hukum memiliki pandangan berbeda dalam menilai setiap produk hukum. Penelitian ini dibuat dengan tujuan; pertama, guna mengetahui bagaimana argumantasi Hakim MK dalam memutuskan perkara tersebut dan kedua, bagaimana perspektif teori critical legal study menilai putusan MK tersebut. Metode penelitian yang digunakan adalah metode penelitian doktrinal dengan pendekatan filosofis. Hasil penelitian ini adalah Mahkamah Konstitusi berpendapat dalil Pemohon berkenaan dengan Pasal 87 huruf a UU 7/2020 beralasan menurut hukum dan tidak lagi mempunyai kekuatan hukum mengikat sejak Putusan ini selesai diucapkan. Namun, permohonan Pemohon sepanjang mengenai Pasal 87 huruf b UU 7/2020 adalah tidak beralasan menurut hukum. Menurut kajian *Teori Critical Legal Studies* terhadap putusan Mahkamah Konstitusi Nomor 96/PUU-XVII/2020 adalah bahwa terdapat ideologi tertentu yang dominan pada pertimbangan hakim dalam putusan tersebut. Mahkamah Konstitusi hanya menggunakan nilai-nilai subjektivitas dalam memutuskan perkara dan mengesampingkan asas hukum acara, serta hanya berpura-pura bersikap netral. Pertimbangan Hakim yang menggunakan keterangan lembaga politik menunjukkan bahwa politik tidak dapat dipisahkan oleh hukum. Pernyataan amar putusan terkait pemilihan Ketua dan Wakil Ketua yang hanya dapat dipilih lagi terhitung 9 (sembilan) bulan setelah putusan ini di putuskan, menjadi bukti bahwa Mahkamah Konstitusi tetap tidak ingin dirugikan dan secara tidak langsung Ketua dan Wakil Ketua Mahkamah Konstitusi yang menjabat saat ini akan tetap menjabat seterusnya.

INTRODUCTION

The Constitutional Court is one of the institutions established based on the paradigm of the institutional structure of the Indonesian state, which underwent drastic changes from the constitutional reform in 1999 until 2002. The Constitutional Court serves as both a guardian and an interpreter of the Constitution through its issued decisions. The Constitutional Court strives to realize its institutional vision by upholding the constitution in order to achieve the ideals of a constitutional state and democracy.

The emergence of the Constitutional Court is driven by a serious effort to provide protection for the constitutional rights of citizens and uphold the constitution as the highest norm. All legislation below the 1945 Constitution must not contradict it. The Constitution represents the transfer of sovereignty from the people to the state, as the people willingly delegate some of their rights to the state through the constitutional process. This transfer is in

accordance with Article 1 paragraph (2) of the 1945 Constitution, which states, "Sovereignty is vested in the people and is implemented according to the Constitution." Furthermore, it is elaborated in more detail in Law Number 24 of 2003 concerning the Constitutional Court.

Constitutional Court Decision No. 96/PUU-XVIII/2022, issued by the Constitutional Court, involves the material review of Article 87 letters A and B of Law Number 7 of 2020 concerning the Constitutional Court. In this decision, the petitioner felt that their constitutional rights were violated. Article 87 letters A and B of Law Number 7 of 2020 potentially impede the petitioner's constitutional rights to obtain fair legal certainty and equal treatment before the law. Generally, from the perspective of legal positivism, the Constitutional Court has exercised its authority in accordance with the governing law in implementing and resolving this decision. However, Critical Legal Studies theory, as a branch of legal philosophy, offers a different viewpoint. Critical Legal Studies theory argues that law is indeterminate, blurring the boundaries between law, morality, and politics¹.

According to Critical Legal Studies theory, law is not neutral, and judges merely pretend to make neutral and unbiased decisions based on laws, precedents, or principles of justice. Judges are always influenced by their ideology, legitimacy, and mystification to strengthen the dominant class. Critical Legal Studies theory rejects the notion that judges are mere interpreters of the law and that a decision can be considered fair if it is based on existing laws. In reality, judges tend to favor one party (the powerful) and, as a result, oppress the weaker party².

RESEARCH METHODS

The type of research used in this study is normative legal research. Normative legal research is a scientific research procedure aimed at discovering truth based on the logical reasoning of legal knowledge (doctrinal) from its normative aspect. It is also referred to as library research, which is conducted by examining literature based on existing regulations and legal norms applicable in society. The primary data source used in this research is the Constitutional Court Decision No. 96/PUU-XVIII/2022 on the Material Review of Article 87 letters A and B of Law No. 7 of 2020 concerning the Constitutional Court. Secondary legal materials used include relevant written literature on Critical Legal Studies theory. The research analysis employs a descriptive-qualitative analysis method.

RESULTS AND DISCUSSION

Critical Legal Studies Theory

Critical Legal Studies is a modern legal philosophy movement. This movement seeks to challenge the strong attachment of liberal paradigms in legal studies or jurisprudence in America, which is characterized by the rule of law. According to Critical Legal Studies, the rule

¹ Munir Fuady, *Filsafat Dan Teori Hukum Postmodern*, (Bandung: Citra Aditya Bakti, 2005), 86.

² Nashriana, *Gerakan Studi Hukum Kritis (GSHK)*, (Fakultas Hukum: Universitas Sriwijaya, 2009), 17.

of law is merely a fiction that has never become a reality, as law is never neutral and is inseparable from political interests. Moreover, modern law has a liberal nature³.

The understanding of Critical Legal Studies can be found in a paper titled "Critical Legal Studies: An Overview," published by the Legal Information Institute at Cornell Law School. The paper explains that:

"Critical Legal Studies (CLS) is a theory that challenges and overturns accepted norms and standards in legal theory and practice. Proponents of this theory believe that logic and structure attributed to the law grow out of the power relationship of the society. The law exists to support the interests of the party or class that forms it and prejudice that legitimize the injustice of society. The wealthy and the powerful use the law as an instrument for oppression in order to maintain their place in hierarchy."

The main point of the paper is that Critical Legal Studies is a theory that opposes the norms and standards in legal theory and practice that have been commonly used. Supporters of this theory believe that the logic and structure associated with law arise from societal power. Law exists to support the interests of the parties or classes that shape it, and it is merely a collection of beliefs and prejudices that legitimize social injustice. The wealthy and powerful use the law as an instrument of oppression to maintain their position in the social hierarchy.

According to the history, Critical Legal Studies emerged as a new thought in the 20th century, particularly in the 1970s in the United States, as a rejection of dominant traditional Western legal thinking. This movement is a continuation of the American Legal Realism school of thought, which sought a different approach to understanding law, breaking away from the prevailing Socratic understanding. Critical Legal Studies represents the implementation of the development of legal empiricism, particularly influenced by American Legal Realism.

After 1937, legal realism argued that the pursuit of objectivity and an impartial legal thought system was merely an illusion. The realist movement created a distrust of the judiciary and increased the power of experts and government officials. According to the realists, law and morality were separate. In contrast, contemporary thought states that there is a close relationship between law and morality. Critical Legal Studies adopts the perspective of realism, which places law in an empirical context. Additionally, Critical Legal Studies is influenced by left-leaning paradigms in social sciences, such as Marxism, Structuralism, the Frankfurt School, and neo-Marxism⁴.

Although Critical Legal Studies theory originated in the United States, its movement was heavily influenced by Neo-Marxian thinkers associated with The Frankfurt School of German Social Philosophy, such as Max Horkheimer, Theodor Adorno, and Herbert Marcuse, as well as Neo-Marxists from Italy like Antonio Gramsci. This further demonstrates the

³ I Dewa Gede Atmadja, *Filsafat Hukum Dimensi Tematis dan Historis*, (Malang: Setara Press, 2013), 148.

⁴ Rizky Saeful Hayat, Konsep Dasar Critical Legal Studies: Kritik atas Formalisme Hukum, *HERMENEUTIKA*, VOL. 5, NO. 2, Agustus 2021, 237

interconnectedness between Critical Legal Studies and Critical Theory, which was initially developed by The Frankfurt School of German Social Philosophy⁵.

In the United Kingdom, the Critical Legal Studies movement was formed during a conference on Critical Legal Studies in 1984. During that year, legal experts were invited to discuss a critical approach to law, considering the significant gap between law in theory (law in books) and law in practice (law in action), as well as society's failure to respond to issues occurring in the community.

Simply put, there are three dominant perspectives within the Critical Legal Studies theory. First, according to Roberto M. Unger, an attempt is made to integrate two competing paradigms: the conflict paradigm and the consensus paradigm. According to Unger, law can arise from two aspects, sometimes as a result of conflict and sometimes as a result of consensus. In this regard, Unger strives to view law as a projection of social reality in the form of a shared agreement to mitigate conflicts among individuals or social groups.

Second, the critical paradigm proposed by David Kairys views liberal law as oppressive to the weak and reinforcing to the capitalists, resulting in high social inequality. Here, law is seen as the most powerful and essential tool for sustaining a capitalist-oriented system. David Kairys' thinking is also heavily influenced by Marxist traditions. The political orientation of this line of thought tends toward humanistic socialism⁶.

Third, the critical paradigm expressed by Duncan Kennedy is based on the eclectic method he employs, which combines a structural-phenomenological perspective with a neo-Marxist perspective. In this case, Kennedy integrates these two perspectives to contribute to the reconstruction of Critical Legal Studies thinking. The political orientation of this line of thought is similar to the second group, namely humanistic socialism.

The book "The Critical Legal Studies Movement" written by Unger discusses how Unger initiates his critique of objectivism, which is based on the great effort of legal experts to seek a legal structure within which democracy and the market are built-in. The nation has chosen a particular type of society, namely a commitment to a democratic republic and a market system as essential components of the republic. However, the endless failures in finding a universal legal language regarding democracy and the market reveal that such a language never exists. Contract theory and property theory provide space for the endeavors of objectivists to articulate the inherent legal content aligned with the market, as well as the theories of protecting constitutional interests and legitimate goals of state action designed to reveal the essence of law in a democratic republic⁷.

In further development, the Critical Legal Studies approach has given rise to a second generation that focuses more on thoughts and struggles aimed at using the law to reconstruct a new social reality. They make concerted efforts to prove that beneath the surface of law and social order, which may appear neutral, there are biases based on culture, race, or gender. The

⁵ F.X. Adji Samekto, *Studi Hukum Kritis Terhadap Hukum Modern*, (Bandung: Citra Aditya, 2005), 54

⁶ Rizky Saeful Hayat, *Konsep Dasar*, *Op. Cit.*, 240

⁷ Roberto M Unger, *Gerakan Studi Hukum Kritis "The Critical Legal Studies Movement"* Terj. Narulita Yusron, (Bandung: Nusamedia, 2021), 4

second generation of Critical Legal Studies now manifests in forms such as Feminist Legal Theories, Critical Race Theories, Radical Criminology, and the Economic Theory of Law.

The emergence of the Critical Legal Studies movement attempts to oppose the liberal paradigm that argues that legal processes (in their formation or interpretation) occur in a context free or neutral from moral, religious, and political pluralism influences. Liberal thinking teaches that laws are made by parliaments representing the voices of the people, and in adjudication, judges merely interpret the law, not create it⁸.

Critical Legal Studies attempts to respond to the challenges of the time by basing its thinking on several common characteristics, namely:

- a. The Critical Legal Studies movement criticizes the dominant law with certain ideologies.
- b. The Critical Legal Studies movement criticizes the existing law for being politically biased and completely lacking in neutrality.
- c. The Critical Legal Studies movement has a strong commitment to individual freedom within certain limitations.
- d. The Critical Legal Studies movement is sceptical of abstract forms of truth and completely objective knowledge.
- e. The Critical Legal Studies movement rejects the distinction between theory and practice, fact and value, as values are not objective, universal, and immutable. It also rejects the distinction between morality and scientific knowledge, fact and value, and reason and desire.

The emergence of Critical Legal Studies aims to reject the assumptions made by traditional legal scholars that law is objective, law provides definite answers that can be understood, law is neutral, and law is autonomous.

Constitutional Court Decision Number 96/PU-XVIII/2022 on the Material Review of Article 87 Letter A and B of Law Number 7 of 2020 concerning the Constitutional Court

The term "constitution" originates from the French word "*constituer*," which means "to form" or "to establish." In Commonwealth countries or countries that use English as their national language, the term "constitution" is known as "constitute". The concept of a constitution can be broader in practice than the notion of a Basic Law, although some may equate it with the understanding of a Basic Law. Scholars of Political Science and Constitutional Law interpret the term "constitution" as something broader, encompassing both written and unwritten rules that bind and regulate the ways in which a government is organized in a State.

The decisions of the Constitutional Court are binding and final, emphasizing and upholding the values of justice. Justice is the main substance that ideally determines the decisions of the Constitutional Court.

⁸ Kasim, Ifdhal, *Gerakan Studi Hukum Kritis*, (Jakarta: Lembaga Studi Advokasi Masyarakat, 1999), 27

The Constitutional Court serves as the guardian and interpreter of the 1945 Constitution of the Republic of Indonesia. The constitutional system of a country, as regulated in its constitution, the democratic political framework, as well as the system of separation of powers and checks and balances, cannot be separated from the principles and exercise of authority to examine or review legislation (judicial review). The concept of judicial review is seen as a modern development in democratic governance based on the ideas of the rule of law, the principle of separation of powers, and the protection and advancement of human rights⁹.

The Constitutional Court aims to safeguard the constitution, as stated in Article 24C, paragraphs (1) and (2) of the 1945 Constitution. The Constitutional Court has the authority to handle specific constitutional cases, including:

1. The Constitutional Court has the power to adjudicate, at the first and final levels, cases of judicial review of laws against the 1945 Constitution, with its decisions being final;
2. Settling disputes over the authority of state institutions granted by the 1945 Constitution;
3. Deciding on the dissolution of political parties;
4. Resolving disputes regarding the results of general elections;
5. Additionally, the Constitutional Court is obliged to provide a ruling on the opinion of the People's Consultative Assembly (DPR) regarding alleged violations by the president and/or vice president according to the 1945 Constitution.

Article 56 of Law Number 24 of 2003 concerning the Constitutional Court governs three types of decision orders, namely inadmissible petitions, granted petitions, and rejected petitions. Constitutional Court Decision No. 96/PUU-XVIII/2020, with the petitioner Dr. Ir. Priyanto, S.H., M.H., M.M., a practicing lawyer, authorized Oktavia Sastray A, S.H., Ignatius Supriyadi, S.H., LL.M., Sidik, S.H.I., M.H., Redondo, S.H., Arief Rizaldi, S.H., and Janteri, S.H., as legal advisors and lawyers based at the Law Office of P. Hadisaputro. The subject matter of this petition is the material review of Article 87, letters (a) and (b) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Law 7/2020) in relation to the 1945 Constitution of the Republic of Indonesia (UUD 1945).

- a. Constitutional judges currently serving as the Chief Justice or Deputy Chief Justice of the Constitutional Court shall continue to hold their positions until the end of their terms based on the provisions of this law;
- b. Constitutional judges who are serving at the time this Law is enacted are deemed to meet the qualifications according to this Law and their term of office ends

⁹ Herbert Hausmaninger, *The Austrian Legal System*, Wien: 2003 dalam Jimly Asshiddiqie, *Model-model Pengujian Konstitusional di Berbagai Negara* (Jakarta: Sinar Grafika, 2010), 8.

upon reaching the age of 70 (seventy) years, provided that their overall term of service does not exceed 15 (fifteen) years.”

According to the Applicant, the wording of Article 87 letter a of Law No. 7/2020 is contrary to the Applicant's constitutional rights as stipulated in Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to fair legal certainty and equal treatment before the law. The substance of Article 87 letter a of Law No. 7/2020 contains legal uncertainty because it contradicts or is not in line with the provisions of Article 4 paragraph (3) of Law No. 7/2020, which clearly and definitively states that: "The Chairperson and Deputy Chairperson of the Constitutional Court are elected from and by the members of the constitutional judges for a term of 5 (five) years starting from the date of appointment of the Chairperson and Deputy Chairperson of the Constitutional Court."

Regarding the provision of Article 87 letter a of Law No. 7/2020 stating that "The Constitutional Judge currently serving as the Chairperson and Deputy Chairperson of the Constitutional Court shall continue to hold office until the end of their term...", the phrase "continue to hold office" seems to have replaced the word "elected" as stipulated in Article 4 paragraph (3) of Law No. 7/2020. It gives the impression that the positions of the Chairperson and Deputy Chairperson of the Constitutional Court in Article 87 letter a of Law No. 7/2020 are no longer "elected" but determined in another way, even though the Chairperson and Deputy Chairperson of the Constitutional Court must be elected from and by the Constitutional Judges.

Regarding Article 87 letter b of Law No. 7/2020, the Applicant intends to request the Constitutional Court to declare the provision of Article 87 letter b of Law No. 7/2020 conditionally unconstitutional. According to the Applicant, the wording of Article 87 letter b of Law No. 7/2020, which "considers the Constitutional Judge currently serving as meeting the requirements," indirectly makes it permanent for Constitutional Judges who do not meet the qualifications to hold their positions for up to 15 (fifteen) years. This means that the Applicant's constitutional right to have an equal opportunity in the government is being denied. By making it permanent, there will be no re-election to replace Constitutional Judges who do not meet the requirements as intended in Article 15 of Law No. 7/2020. The absence of a re-election closes the opportunity for the Applicant to participate in the process of selecting Constitutional Judges.

According to the Court, such provisions create dual meaning (ambiguity) due to the use of the phrase "term of office." The phrase "term of office" mentioned in Law No. 7/2020 is used in two different meanings/contexts, namely the term of office as a Constitutional Judge and the term of office as the Chairperson or Deputy Chairperson of the Constitutional Court. The lack of clarification on which meaning/context of "term of office" is referred to in Article 87 letter a of Law No. 7/2020 has created legal uncertainty and therefore contradicts the 1945 Constitution. Additionally, the Chairperson and Deputy Chairperson of the Constitutional Court cannot directly hold office without going through the process of selection from and by constitutional judges. Thus, the process of selecting the Chairperson and Deputy Chairperson

of the Constitutional Court must be returned to the core essence mandated in Article 24C paragraph (4) of the 1945 Constitution.

The Court believes that the Applicant's argument regarding Article 87 letter a of Law No. 7/2020 is legally valid, or in other words, Article 87 letter a of Law No. 7/2020 no longer has legal binding force from the time this Decision is pronounced. However, to avoid administrative issues/effects arising from the previous decision, the current Chairperson and Deputy Chairperson of the Constitutional Court are declared valid until the election of the Chairperson and Deputy Chairperson as mandated by Article 24C paragraph (4) of the 1945 Constitution. Therefore, within a maximum period of 9 (nine) months from the pronouncement of this Decision, the election of the Chairperson and Deputy Chairperson of the Constitutional Court must be conducted.

The main issue regarding Article 87 letter b of Law No. 7/2020 raised by the Applicant is the constitutionality of Transitional Provisions, so the Court needs to provide legal considerations regarding the existence of Transitional Provisions in a law. The concept of transitional provisions is a domain of the science of legislation. Basically, transitional provisions are legal norms in a regulation intended as a "bridge" between the validity of the old norm (law) and the validity of the new norm (law) or substitute norm. Thus, transitional provisions contain adjustments to existing regulations at the time the new regulation becomes effective, in order for the new regulation to run smoothly and not create legal problems.

The Court has found legal facts regarding the intentions/wishes of the legislators regarding Article 87 letter b of Law No. 7/2020. The legislators intend to "maintain the existence of Constitutional Court judges currently serving to be considered as still meeting the requirements according to this law" (vide Written Explanation of the President and the Parliament in Case No. 90-96-100/PUU-XVIII/2020), which can be interpreted as the intention to extend the terms of the current serving judges without having to go through reselection or similar legal actions. Based on this, the Court does not find any defects in the intention or intensity regarding the provision of Article 87 letter b in conjunction with Article 15 of Law No. 7/2020 that would result in the aforesaid provision violating the 1945 Constitution.

The existence of different interpretations as argued by the Applicant, as if Article 87 letter b of Law No. 7/2020 negates the provision of Article 15 of Law No. 7/2020 regarding the minimum age requirement of 55 (fifty-five) years for Constitutional Judges, unjustly benefits Constitutional Judges who are below 55 (fifty-five) years of age at the time Law No. 7/2020 was enacted. According to the Court, if referring to the statements of the legislators, Constitutional Judges who are below 55 (fifty-five) years of age at the time Law No. 7/2020 was enacted are still intended by the legislators to continue serving as Constitutional Judges because, in terms of age, they already meet the requirements based on the previous law that served as the basis for their appointment.

Once the Court has clarified the true intent (original intent) of the Legislative Body in the enactment of Law No. 7/2020, the Court concludes that the provision of Article 87 letter b of Law No. 7/2020 is not in conflict with Article 28D paragraph (1) of the 1945

Constitution. The interpretation of the wording of Article 87 letter b of Law No. 7/2020 by the Court should be understood solely as a transitional rule that connects the application of the new rule in line with the old rule. According to the Court, the assumption of constitutional harm constructed by the Applicant in the present case is essentially similar to assumptions of constitutional harm regarding age limitations, whether age limitations for specific positions or other age limitations. Therefore, the Applicant's arguments regarding Article 87 letter b of Law No. 7/2020 are legally groundless.

Analysis on Constitutional Court Decision No. 96/PUU-XVIII/2022 on the Material Review of Article 87 Letters A and B of Law No. 7 of 2020 on the Constitutional Court from the Perspective of Critical Legal Studies Theory.

The researcher's analysis of Constitutional Court Decision No. 96/PUU-XVIII/2020 using Critical Legal Studies theory reveals the presence of dominant judicial arguments based on a particular ideology. The Court's considerations predominantly reflect the use of arguments characterized by the ideology of legal liberalism. This can be observed in the Court's opinion regarding Article 87 Letter B of Law No. 7 of 2020. The theory of liberalism has given rise to subjective values within the judges, namely their personal assessments of the petitioner's reasons concerning Article 87 Letter B of Law No. 7 of 2020. As a result, it leads to errors in the interpretation or intent of the petitioner's request. The Court views the petitioner's assumptions of constitutional harm based on age limits, whether related to specific positions or other age limits, as unfounded. Therefore, in the final decision, the Constitutional Court rejected some of the petitioner's arguments regarding Article 87 Letter B of Law No. 7 of 2020 by stating that they are not legally justified.

Critical Legal Studies theory provides an insight into the above situation by stating that the Constitutional Judges who decided on this case merely employed dogmatic approaches based on liberalism, which only focuses on subjective values. The adoration of subjective values is seen as potentially hindering the stability of social values within society, with implications for the formation of law. Liberalism tends to lead law towards a more dominant reliance on personal judgments by judges or the adoption of subjective values rather than collective values. Considering these factors, Critical Legal Studies firmly states that law is only used as a vessel to accommodate the ruling elite's interpretations in governing society. The subjectivity applied by the judges serves as evidence of their bias towards a particular dominant perspective.

Furthermore, the judges' arguments indicate that the prevailing law is biased and lacks neutrality. This is demonstrated by the fact that the Constitutional Court, as a legal institution responsible for issuing legal products, has shown political favoritism by considering Article 87 Letter B as a Transitional Provision and the non-neutral considerations of the judges in Constitutional Court Decision No. 96/PUU-XVIII/2020, which relied on the explanation provided by the DPR (People's Consultative Assembly).

According to Jimly Asshiddiqie, transitional provisions are temporary in nature (transitory laws).

"Legislators are also advised to avoid formulations in transitional provisions that contain hidden changes to provisions already established in other legislation. Changes to legislation should be made by introducing new definitions in general provisions or by explicitly creating new substantive provisions or entirely new legislation. Therefore, changes to regulated legal norms should not be smuggled in vague and covert language within transitional provisions of legislation."

Substantially, transitional provisions carry the weight of Legal Politics, aimed at preventing legal vacuums and "selection politics" to align the application of existing laws with new principles, circumstances, and demands. This statement aligns with Critical Legal Studies' assertion that law does not exist in isolation but is a product of politics, with a significant influence on the legal world.

Furthermore, there is an argument by the judges that does not provide specific boundaries to individual freedom. The rejection by the judges of the petitioner's request regarding Article 87 Letter B of Law No. 7 of 2020 indirectly implies that, according to the petitioner, the provision has caused tangible constitutional harm. The petitioner argues that the term of office for the Chief and Deputy Chief Justices of the Constitutional Court should be calculated from their appointment dates, and their terms should end with the appointment of new Chief and Deputy Chief Justices. Therefore, the current Chief and Deputy Chief Justices of the Constitutional Court should conclude their terms as Chief and Deputy Chief Justices until the appointment of new Chief and Deputy Chief Justices, as stipulated in Article 4 Paragraph (3) of Law No. 7 of 2020.

In Decision No. 96/PUU-XVIII/2020, the Constitutional Court follows the positivist legal approach. However, Critical Legal Studies does not agree with positivism, which claims that law ensures determinacy, justice, and certainty. From the perspective of Critical Legal Studies, the law is always biased and influenced by ideology, legitimacy, and mystification to strengthen dominant classes. The intended determinacy of the law is susceptible to various interpretations. Critical Legal Studies strongly rejects the distinction between theory and practice. However, the judges' argument regarding the main issue of Article 87 Letter B of Law No. 7 of 2020, challenged by the petitioner, proves the existence of a gap between theory and practice in this decision.

Transitional provisions are legal norms in legislation intended as a "bridge" between the enforcement of old norms (laws) and the enforcement of new norms (laws), or replacement norms, to ensure a smooth transition without legal complications. However, Article 87 Letter B of Law No. 7 of 2020's transitional provision explicitly grants certain privileges to the affected parties due to changes in legislation, rather than merely avoiding harm, which is one of the basic principles and objectives of formulating transitional provisions in legislation. The lawmakers intentionally delve deep into one of the most fundamental dimensions of judicial independence and impartiality, particularly concerning the Constitutional Court.

In this decision, the Constitutional Court has also disregarded the principle of the Constitutional Court's procedural law, namely the principle of *nemo iudex in propria causa*,

which states that no one can be a judge in their own case. Although the Court's acceptance of this case is based on the absence of another forum to adjudicate this request, the Court should not reject hearing a petition submitted to it on the grounds of legal ambiguity or uncertainty. This case concerns the constitutional interests of the nation and the state, not solely the interests of the Constitutional Court institution or individual judges currently in office.

CONCLUSION

Constitutional Court Decision No. 96/PUU-XVIII/2020 concerns the constitutional review of Article 87, letters (a) and (b) of Law No. 7 of 2020 concerning the Constitutional Court against the 1945 Constitution of the Republic of Indonesia (UUD 1945). The petitioner argues that their constitutional rights have been violated in obtaining equal opportunities in governance. The Constitutional Court holds that the petitioner's argument regarding Article 87, letter (a) of Law No. 7 of 2020 is legally justified, meaning that Article 87, letter (a) of Law No. 7 of 2020 no longer has legal binding force since the issuance of this Decision. However, the petitioner's request concerning Article 87, letter (b) of Law No. 7 of 2020 is legally unfounded.

From the perspective of Critical Legal Studies, this decision is dominated by the ideology of legal liberalism. The fact that the decision partially grants the petitioner's request proves that the Constitutional Court only uses subjective values in deciding cases. In this decision, the Constitutional Court has also disregarded the procedural law principle of the Constitutional Court, which should serve as limitations for the judges. The Constitutional Judges, in deciding the case, do not genuinely pursue justice but only pretend to be neutral. The judges' considerations that rely on political institution information also indicate that politics cannot be separated from the law. The operative clause of the decision regarding the selection of the Chief and Deputy Chief Justices, which can only take place nine months after the issuance of this decision, is evidence that the Constitutional Court seeks to avoid any disadvantage and indirectly ensures that the current Chief and Deputy Chief Justices will continue to hold their positions.

REFERENCES

- F.X. Adji Samekto, *Studi Hukum Kritis Terhadap Hukum Modern*, (Bandung: Citra Aditya, 2005)
- Herbert Hausmaninger, *The Austrian Legal Sistem*, Wien: 2003 dalam Jimly Asshiddiqie, *Model-model Pengujian Konstitusional di Berbagai Negara* (Jakarta: Sinar Grafika, 2010)
- I Dewa Gede Atmadja, *Filsafat Hukum Dimensi Tematis dan Historis*, (Malang: Setara Press, 2013)
- Kasim, Ifdhal, *Gerakan Studi Hukum Kritis*, (Jakarta: Lembaga Studi Advokasi Masyarakat, 1999)
- Munir Fuady, *Filsafat Dan Teori Hukum Postmodern*, (Bandung: Citra Aditya Bakti, 2005)
- Nashriana, *Gerakan Studi Hukum Kritis (GSHK)*, (Fakultas Hukum: Universitas Sriwijaya, 2009)

Rizky Saeful Hayat, Konsep Dasar Critical Legal Studies: Kritik atas Formalisme Hukum, *HERMENEUTIKA*, VOL. 5, NO. 2, Agustus 2021

Roberto M Unger, *Gerakan Studi Hukum Kritis "The Critical Legal Studies Movement"* Terj. Narulita Yusron, (Bandung: Nusamedia, 2021)

Soekanto, Soerjono Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Rajawali Press, 2009)

Undang Nomor 7 Tahun 2020 Tentang Mahkamah Konstitusi

Putusan Mahkamah Konstitusi Nomor 49/PUU-IX/2011

Putusan Mahkamah Konstitusi Nomor 96/PUU-XVIII/2020