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RESEARCH ARTICLE

The Concretization of Legal Norms Based on the 3C Theory by MacCormick (A Review of the Indonesian Constitutional Court's Decision No: 011/PUU-III/2005 and 012/PUU-III/2005)

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Abstract

This paper aims to examine the concretization of legal norms made by the Constitutional Court related to the 3C theory by MacCormick. The type of research used is juridical-normative. The approaches used in this research are legislation, conceptual, and cases. This research uses primary, secondary legal materials and non-legal materials. Furthermore, legal materials are analyzed by logical-deduction based on the normative and philosophical perspectives. After that, it is presented in a systematic writing to answer the problems that have been formulated. The results showed that the concretization of legal norms made by the Constitutional Court in a case Number 011/PUU-III/2005 and Number 012/PUU-III/2005 in line with 3C theory by MacCormick.

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INTRODUCTION

Hans Kelsen is known for his theory "Stufenbau des Recht" or "The Hierarchy of Law". The essence of this theory is the legal norm is a tiered arrangement and any lower legal norms derived from the higher norm. A legal included in the norm system is dynamic (nomodynamics) because the law was always formed and removed by the competent institutions or authorities that formed it, so in this case do not see from the content of norm, but in terms of the prevail or its formation.

In the case of law is a system of norms, the legal norms is tiered, ranging from the most abstract norm to the most concrete norm. In the legal system in a country, then every rule always comes from the rules on it. Instead, the rules are a source of rules under it. And so on up to the highest peak of the regulations. Adolf Merkl argued about "stairwell structure of legal order". This Merkl theory is about the legal stage (die Lehre vom Stufenbau der Rechtsordnung), namely that the legal is a system of hierarchical order, a system of conditioned norms and conditioned and legal action. The conditioned norm contains a condition for the making of other norms or actions. The making of this hierarchical is manifested in the form of regression from the higher legal system to the lower. This process is always a process of concretization and individualization.

Should, norms contained in these regulations do not conflict with the norms contained in the rules on it, and does not conflict with the norms contained in the regulations equal. Abstract norms which will be elaborated on concrete norm, will awake its interpretation. Elaboration of this norm is referred to as the concretization of norm. The compatibility of these norms, particularly in the use of grammar, referred to as consistent. The compatibility of spirit for the norms contained in the regulations, referred to as coherent. In conjunction with the Constitution, Kelsen states that the Constitution has highest position in the national law, because it is the basis for the national legal system. Constitution is the fundamental law.

In Indonesia, the peak of law rule is the Constitution of the Republic of Indonesia 1945 (Constitution 1945). Norms contained in the act, as a form of regulation that its hierarchy under the Constitution of the Republic of Indonesia 1945, of course it must not conflict with the norms contained in the Constitution of 1945. Similarly, norms contained in an act should not conflict with the norms contained in other act. In order to maintain the orderly norm, can be seen the authority of the Constitutional Court (MK) and the Supreme Court (MA). The Constitutional Court is authorized to examine laws against the Constitution of the Republic of Indonesia 1945. While, the Supreme Court is authorized to examine the laws and regulations under the act to the act.

Montesquieu argued that the ideal situation is when the interpretation is not required or its role is very small. It can be achieved if legislation is poured in clear form. Terms of clarity regarding are: 1. the style of narrative should be solid and simple. It means that the narration by using great expressions and rhetoric merely superfluous and misleading. Preferred terms should as far as possible is absolute and not relative, thus opening the possibility for individual differences of opinion; 2. the regulations should limit themselves to things that are real and actual with avoiding the things that are metaphorical and hypotheses; 3. the regulations should not be too high, because it is intended for people with moderate intelligence; the regulation is not an exercise in the use of logic, but only the simple reasoning that can be done by ordinary people; 4. Do not be the central issue to be confused with exceptions, limitations or modifications, except in matters that are indispensable; 5. Rules may not contain arguments. Very dangerous to give detailed reasons for the rule, therefore such it will only open the door for disagreement; and 6. It should be considered by the full maturity and have practical utility and it should do not shake things are elementary in reasoning and justice as well as *la nature des choses*. The weak regulations, unnecessary and unjust will cause people do not respect the law and destroy the authority of the state.

With this concept, it wants to achieve is to keep the process of norm concretization awake its consistency. No different interpretations of a norm formulation. With a strict interpretation, it will be easier for the judge to deliver a verdict against a concrete event that put to him.

According to Andrey Marmor, interpretation can be defined as an understanding or explanation of the meaning of an object. Therefore, the concept of interpretation is narrower rather than explanation. Because only the meaning of the object that is the object of potential interpretations. Therefore, defining the interpretation for the attribution of meaning is a philosophical part of the analysis of meaning. Meanwhile, according to Dworkin's theory, legal as an interpretation. Every conclusion concerning the legal in particular cases as the result of interpretation. The actual interpretation is an attempt to present the object as bright as possible. Similarly, the interpretation includes evaluative consideration. According to Dworkin, interpretation is a "genre-dependent". Interpretation contains special limits, which determine the limits of interpretation of the object. Interpretation is an attempt to dig the actual intentions, goals, and so forth so that interpretator have relevance to the actual text to achieve meaning. Therefore, if the assumption is an intent of interpretator for the meaning of text, then interpretator required to present the meaning of text clearly.

Neil MacCormick makes a statement regarding the interpretation. MacCormick proposed that in each decision, the judge should consider the consistency and coherence. In addition, the judge should also consider the consequences of the decision. This is what is known as the "3C Theory by MacCormick".

I. IDENTIFICATION OF THE ISSUE

How concretization of legal norms made by the Constitutional Court in a case Number 011/PUU-III/2005 and Number 012/PUU-III/2005 in relation to the 3C theory by MacCormick?

II. METHOD OF RESEARCH

This type of research is juridical-normative. The approach used were: 1) Statute approach, is used in researching the various rules of law which the norm becomes the focus of this research, i.e the rule of law in the field of education in Indonesia; 2) Conceptual approach, is used to understand the concept of a system of legal norms, so the norm in the rule of law no longer allows ambiguous or vague understanding, so that the legal norms in the laws and regulations in Indonesia organized as a system of legal norms, particularly in the field of education; 3) Case approach, is used to examine the concretization of legal norms made by the Constitutional Court in the case of judicial-review, which in this case is legislation relating to the field of education.

The materials obtained are collected based on its urgency and relevance, and classified to be studied comprehensively. Furthermore, legal materials are analyzed logically-deductive (logical deduction) based on the normative and philosophical perspectives. And then, it presented in a systematic writing to answer the problems that have been formulated.

III. RESEARCH OUTCOMES AND DISCUSSION

Before exploring the aspects of consistency, coherence, and the consequences of the Constitutional Court decision, the researcher will describe in short the Constitutional Court's decision on a case Number 011/PUU-III/2005 and 012/PUU-III/2005.

The Constitutional Court's Decision on a Case Number 011/PUU-III/2005

In case No. 011/PUU-III/2005, one asked by the complainant is examination of Article 49 paragraph (1) concerning the act of the National Education System 2003.

Article 49 in the act of National Education System 2003 provides that:

- (1) Educational fund in addition to the salaries of educators and the service education fund are allocated at least 20% of the State Budget (APBN) in the education sector and at least 20% of the Regional Budget (APBD).
- (2) Salaries of teachers and lecturers appointed by the Government allocated in the State Budget (APBN).
- (3) Educational fund from the central and local governments for education units given in the form of grants in accordance with the legislation in force.
- (4) Educational fund from the central to the local governments is given in the form of grants in accordance with the legislation in force.
- (5) Provisions on the allocation of education funds referred to in paragraph (1), (2), (3) and (4) further stipulated by the government regulations.

Furthermore, the elucidation of SISDIKNKAS 2003 acts is stipulated that:

Article 49:

Paragraph (1): Fulfillment of education funding can be done gradually.

Paragraph (2), paragraph (3), paragraph (4), and paragraph (5): Self-explanatory.

Complainant argue that the elucidation of Article 49 paragraph (1) concerning the act of National Education System 2003 is contradictory to Article 31 paragraph (4) the Constitution of RI 1945.¹ The Constitution of RI 1945 stipulates that:²

Article 31:

- (1) Every citizen is entitled to education.
- (2) Every citizen is obliged to follow elementary education and the government is obliged to finance it.
- (3) The government shall manage and organize a national education system, which increases the faith and piety and noble character in the framework of the intellectual life of the nation, which is regulated by law.
- (4) The state prioritizes education budget of at least twenty percent of the State Budget to meet the needs of national education.**³
- (5) The government helping forward of science and technology to uphold religious values and national unity for the progress of civilization and prosperity of mankind.

In the petition, the complainant argues:⁴

That the elucidation of Article 49 paragraph (1) of the Constitution of the Republic of Indonesia No. 20 of 2003 concerning National Education System, contrary to the Constitution of the Republic of Indonesia 1945 Article 31, paragraph (4) which came into force from the date of enactment on August 10, 2002, states that "the state prioritizes education budget of at least twenty percent of the state budget and the regional budget to meet the needs of national education";

That the elucidation of Article 49 paragraph (1) of the Constitution of the Republic of Indonesia No.20 of 2003 concerning National Education System was able to legitimize non-fulfillment of the education budget should be at least 20% of state and regional budgets, then it is clearly contrary to the Constitution of the Republic of Indonesia 1945 Article 31, paragraph (4) above.

Thus, it is clear that the fulfillment of education funding under the Act of 1945 Article 31, paragraph (4) must not be less than 20% of the state or regional budgets and should be implemented since its enactment on August 10, 2002 for the fourth amendment of Act 1945;

¹ See the decision of case No.011/PUU-III/2005, page. 101

² Recheck Article 31 the Constitution of the Republic of Indonesia 1945

³ Bold by author

⁴ See the decision on case No.011/PUU-III/2005, page. 9-10

The Constitutional Court argues:

In essence, the implementation of the provisions of Constitution should not be delayed. Act 1945 by *expressis verbis* has determined that at least 20% of education budget should be given priority, as reflected in the state and regional budgets should not be reduced by the legislation that is hierarchically beneath it. Elucidation of Article 49 paragraph (1) the act of National Education System has also established a new norm that obscures the norms contained in Article 49 paragraph (1) that wish to explain, so that the provisions in the elucidation of Article 49 paragraph (1) is also contrary to the principles and theory of legislation which is commonly accepted in the science of law which is then poured in the Constitution of the Republic of Indonesia No.10 of 2004 concerning the Establishment of Legislation (vide the Constitutional Court's Decision No. 005/PUU-III/2005 in the petition for the elucidation of Article 59 paragraph (1) the Constitution of the Republic of Indonesia No. 32 of 2004 concerning local government.⁵

Furthermore, the Constitutional Court argues:

The presence of elucidation of Article 49 paragraph (1) the act of National Education System to be the reason for the Government, both central and local governments to not meet the limit of 20% of the education budget in the state and regional budgets, so that the argument of complainant is sufficiently grounded;⁶

Based on these considerations, the Constitutional Court decides that:

Argued that the elucidation of Article 49 paragraph (1) the Constitution of the Republic of Indonesia No. 20 of 2003 concerning the National Education System (State Gazette 2003 No.78, State Gazette of the Republic of Indonesia No.4301) is contradictory to the Constitution of the Republic of Indonesia 1945;

Argued that the elucidation of Article 49 paragraph (1) the Constitution of the Republic of Indonesia No. 20 of 2003 concerning the National Education System (State Gazette of the Republic of Indonesia 2003 No.78, State Gazette of the Republic of Indonesia No. 4301) does not have binding legal force;

The Constitutional Court's decision, it can be concluded that the fulfillment of 20% of the education budget should not be delayed because the constitution (Constitution RI 1945) stipulates so.

The Constitutional Court's Decision on Case a Number 012/PUU-III/2005

In the case No. 012/PUU-III/2005, the complainant submitted a petition for the examination of the Constitution of Republic of Indonesia No. 36 of 2004 concerning the State Budget for Fiscal Year 2005 (hereinafter referred to as the Act of State Budget 2005) to the Constitution of Republic of Indonesia 1945.

The complainant argues:⁷

That Act No. 36 of 2004 concerning the State Budget 2005 Article 5 establishes Total State Budget for Fiscal Year 2005 as referred to in paragraph (2) and (3) amount Rp. 397.769.309.661.000,00 (three hundred and ninety-seven trillion seven hundred and sixty-nine billion three hundred nine million six hundred and sixty one thousand rupiah);

Furthermore, the complainant put a variety of data, among other, that:⁸

In the appendix of budget limit based on a program that is an inherently part of Act No. 36 of 2004 concerning the State Budget 2005 in education sector, it is allocated about 6% of the budget state alone, of course it is violated our constitutional mandate that required to prioritize the allocation of education funding at least 20% of the State and Regional Budgets, its real about 79 trillion rupiah.

Furthermore, the complainant argues the linkage between the Act of State Budget 2005 with the Constitution of Republic of Indonesia 1945, namely:⁹

Act No. 36 of 2004 concerning the State Budget of 2005 is contrary to the Constitution of the Reepulic of Indonesia 1945, Article 31 paragraph (4) which came into force from the date of enactment on August 10, 2002, stated:

⁵ See the decision of case No.011/PUU-III/2005, page. 101-102

⁶ See the decision of case No. 011/PUU-III/2005, page. 102

⁷ See the decision of case No. 012/PUU-III/2005, page. 8

⁸ See the decision of case No. 012/PUU-III/2005, page. 8-9

⁹ See the decision of case No. 012/PUU-III/2005, page. 10

(4) The state prioritizes education budget of at least twenty percent of the state and regional budgets to meet the needs of national education.

Act No. 36 of 2004 concerning the State Budget of 2005 is already legitimized the non-fulfillment of the education budget should be at least 20% of state and regional budgets, then it is clearly contrary to the Constitution of the Republic of Indonesia 1945, Article 31 paragraph (4) above that has been clearly and unequivocally stated that, "The state prioritizes education budget of at least 20% of the state and regional budgets to meet the needs of education provision".¹⁰

Thus, it is clear that the fulfillment of education funding as the Constitution of the Republic of Indonesia 1945 Article 31 paragraph (4) must not be less than 20% of the State and Regional Budgets and should be implemented since its enactment on August 10, 2002 for the fourth amendment of constitution 1945.¹¹

Furthermore, the linkage with the complainant, it can simply be described that with the enactment of the Act of State Budget of 2005, the fulfillment of education funding be delayed and resulted in the complainant's constitutional rights be harmed, because:¹²

1. Compulsory education remains demand a charge, the fulfillment of compulsory education cannot be met, subsidized education funding was uneven and unfair, and is still far from sufficient criteria, educational infrastructure is still minimal so the output of education are still low-quality (contrary to the Article 31 paragraph (2) and (4) the Constitution of the Republic of Indonesia 1945).
2. Educator and educator salaries are still low and not appropriate (contrary to the Article 27 paragraph (2), Article 28D paragraph (2), Article 28H paragraph (1) and (3) the Constitution of the Republic of Indonesia 1945).

Petition of the complainant in the case No.012/PUU-III/2005 is should the Constitutional Court of the Republic of Indonesia is pleased to decide:¹³

1. To accept and grant the petition in its entirety;
2. To declare that Act No. 36 of 2004 concerning the State Budget of 2005 is contrary to the Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945;
3. To declare that Act No. 36 of 2004 concerning the State Budget of 2005 does not have binding legal force.

In its decision, the Constitutional Court gave some considerations that are interrelated with each other. In outline, the consideration of the Constitutional Court consists of two things, i.e education ¹⁴and State Budget acts. For the sake of discussion in this section, the writer will focus on the consideration of the Constitutional Court in the State Budget act.

Some Considerations of the Constitutional Court

- Constitutionality of the State Budget Act

The constitutionality of the State Budget act, the Constitutional Court argued:

In the Constitution of 1945 stipulated that the state budget is set each year by act. It means that the state budget is prepared on the basis of mutual agreement between the President and Parliament. However, the legislation of State Budget act is different from the other acts, the legislation of state budget comes from the President then discussed together with the Parliament by taking into consideration the Regional Representatives Council, while on the other Act the submission of legislation plan is the authority of Parliament although it can also submitted by the President. The act of State Budget has a time limit applies only for one fiscal year; it is different from other acts that do not limit the period of validity. The act of State Budget is required for each year, and if the State Budget act cannot be stipulated due to the Parliament does not approve the legislation plan submitted by the President, the Government runs the state budget the previous fiscal year. The enforcement of previous state budget intended to prevent a legal vacuum (*rechtsvacuum*), considering the state budget it is important to ensure the implementation of the government.¹⁵

- Substance of the State Budget Act

¹⁰ See the decision of case No. 012/PUU-III/2005, page. 10

¹¹ See the decision of case No. 012/PUU-III/2005, page. 10

¹² See the decision of case No. 012/PUU-III/2005, page. 13-16

¹³ See the decision of case No. 012/PUU-III/2005, page. 16

¹⁴ See the decision of case No. 012/PUU-III/2005, page. 56

¹⁵ See the decision of case No. 012/PUU-III/2005, pages. 58-59

The substance of the State Budget Act, the Constitutional Court argued:

The State Budget act is a financial plan that reflects a policy choice for the budget year. The policy options concerning estimates of revenue and expenditure are expected to occur in a future period. As a law which has binding force, especially the State Budget act particularly binds the Government in collecting revenues both from the aspect of amount and source of revenue and so is the spending. As planned, the State Budget act is open to revision or amendment if the assumptions used to the basic formulation experienced change, so that the necessary adjustments, but still within the time limit the enactment of the state budget, i.e one budget year.¹⁶

- The obligation of the state in the State Budget act and its relation to the citizen's rights to education

In this case, the Constitutional Court argued:

Considering that in relation to the citizen's right to education as described above, the obligation of the state is as "obligation to result" and by utilizing the resources as much as possible, with good intention, the progressive realization. But with the presence of Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945 which determines to prioritize education budget at least 20 percent of the state budget, then the nature of the "obligation to result" in meeting the citizen's right to education has become stronger to be "obligation to conduct". Thus, if it is found in the State Budget act, allocation of at least 20 percent for education are not met, then the act is contradictory to the Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945.¹⁷

- Meaning of twenty percent of the education budget

In this case, the Constitutional Court argued:

In article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945 does not constrain what is included in the "education budget". In an effort to determine the components of the educational budget, for the approval with the President and the Parliament has been stipulated that are included in the education budget is education that directly enjoyed by the public as defined in Article 49 paragraph (1) of Act No.20 of 2003 concerning the National Education System (hereinafter called the act of National Education System), i.e funds for education in addition to educator salary and service education expenses. With the provision of Article 49 paragraph (1) concerning the National Education System, it will indirectly increase the nominal amount of the education budget than if the calculation of the education budget is included educator's salary and service education. A joint decision of the Government and the Parliament is motivated by intentions in order to implement the constitutional provisions well, because if in interpreting 20 percent contained in Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945 included educator's salary and service education, then we will get a nominal amount less in education budget. Thus, the Constitutional Court has reflected the good intention of the Government together with the Parliament to implement Article 31, paragraph (4) the Constitution of the Republic of Indonesia 1945. This is also already an agreement between the Parliament and the Government to always raise the percentage of the education budget from year to year so that a period of five years the provisions of the Constitution can be met.¹⁸

- The linkage of State Budget act with Article 49 Paragraph (1) the act of National Education System and its elucidation

In this case, the Constitutional Court argued:

The Constitutional Court has decide upon a case No. 011/PUU-III/2005 on the verdict states that the elucidation of Article 49 paragraph (1) SISDIDKNAS act does not have binding legal force to the reason for the elucidation of Article 49 paragraph (1) the act of National Education System showed a new norm which is different from the article elucidated. Therefore, the fulfillment of the provisions of Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945 concern 20 percent budget allocation is not done gradually and as described above with the Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945, the state has the obligation included in the state's obligation to fulfill it. The presence of education allocation in the State Budget act which is less than 20 percent is contrary to the Article 31 paragraph (4) the Constitution of the Republic of Indonesia 1945, which states that the budget is prioritized at least 20 percent, although it is evident that the Parliament and the President has been in good intention utilizing maximum resources and determined to perform realization progressively in the preparation of the state budget.¹⁹

¹⁶ See the decision of case No. 012/PUU-III/2005, page. 59

¹⁷ See the decision of case No. 012/PUU-III/2005, pages. 59-60

¹⁸ See the decision of case No. 012/PUU-III/2005, pages. 60-61

¹⁹ See the decision of case No. 012/PUU-III/2005, page. 61

The considerations above lead to the conclusion by the Constitutional Court that the act of State Budget 2005 is contradictory to the Article 31 paragraph (4) the Constitution of the Republic of Indonesia. However, to argue as no binding legal, the Constitutional Court suggests a number of considerations, namely:

- Legal

The Constitutional Court argued:

If the Constitutional Court declare the State Budget act does not have binding legal force, then as a legal consequence is the whole plan of revenue and expenditure contained in the state budget does not bind again to the President in accordance with Act No. 17 of 2003 concerning State Finance of Article 6 paragraph (1), as public finance management authority. The whole realization of revenue and expenditure based on the State Budget act had no legal basis anymore.²⁰

- Administrative

The Constitutional Court argued:

If on the Constitutional Court's decision that declared the State Budget act does not have binding legal force, then the President with the approval of Parliament must reconstitute the allocation of revenue expenditure has been realized in order for the education sector are fulfilled 20 percent by reducing the budgets of other sectors, would also create legal uncertainty in expenditures incurred by other sectors of the budget must be reduced. In addition to the administrative, the financial management is a very difficult thing to do because it would change the entire financial administration in Indonesia to be adjusted. It requires costs, energy and time are very difficult to calculate.²¹

- The interests of complainant

The Constitutional Court argued:

Moreover, it turns out that the previous year in the education budget is less than the nominal value or the amount of the budget that is being run, assuming the petition is granted, the fact, the complainant and all citizens who have the same interests as the complainant will be further disadvantaged.²²

The Constitutional Court's Decision

Already suggests several considerations as outlined above, the Constitutional Court argued that although the Act of State Budget 2005 is contradictory to the Constitution of the Republic of Indonesia 1945, but there are reasons objectively that led to the Act a quo may not said do not have binding legal force, so that the petition of complainant may not be stated does not have binding legal force.²³ Thus, the Constitutional Court decide that the Act of State Budget 2005 is contradictory to the Constitution of the Republic of Indonesia 1945, but it also decide that the Act of State Budget 2015 may not be stated does not have binding legal force.

Analysis to the Constitutional Court's Decision

Atienza argued five (5) aspects of rationality that needs to be integrated in any statute, namely:²⁴ 1. linguistic rationality, that every law must be clear and has a precision to avoid the problem of ambiguity and vagueness; 2. legal-formal rationality, that the law must not only be valid (valid general, abstract, impersonal, and permanent) but also coherent, moderation, not contradictory, non-retroactive, and announced to avoid the problem of antinomy, moderation and gaps in order to create a system of perfectly legislation; 3. teleological rationality, that the law is beneficial in achieving the ultimate goal. That is, to be gained through the law is not impossible or merely symbolic; 4. pragmatic rationality, that the law is not only beneficial but also socially effective and economically efficient in any concrete legal events; and 5. ethical rationality, that the substance of law must be fair and correct.

Rationality as noted above is a closely relation with the 3C theory by MacCormick, which will be used as a tool of analysis to find, understand, and explain the decision of the Constitutional Court as follows.

Consistency and coherence

²⁰ See the decision of case No. 012/PUU-III/2005, page. 62

²¹ See the decision of case No. 012/PUU-III/2005, page. 62

²² See the decision of case No. 012/PUU-III/2005, page. 62

²³ See the decision of case No. 012/PUU-III/2005, pages. 62-63

²⁴ Victor Imanuel W. Nalle cited Atienza's opinion through the writing of Imer B. Flores. See Victor Imanuel W. Nalle, *Konstruksi Model Pengujian Ex Ante terhadap Rancangan Undang-Undang di Indonesia dalam Jurnal Konstitusi*, Volume 10 Nomor 3, September 2013, Committee and Secretary General of The Constitutional Court of the Republic of Indonesia, Jakarta, 2013, page. 445

In terms of consistency, the Constitutional Court has to maintain consistency regarding the fulfillment of the education budget by at least twenty percent, among the provisions in the Constitution of the Republic of Indonesia 1945, the provisions of the act of National Education System 2003, elucidation of the act of National Education System 2003, and the State Budget 2005. The consistency can be seen as follows:

- a) Article 31, paragraph (4) the Constitution of the Republic of Indonesia 1945: “The state prioritizes education budget of at least twenty percent of the State Budget and the Regional Budget to meet the needs of national education”.
- b) This provision outlined in the act of National Education System 2003, which is in Article 49 Paragraph (1): “The funding of education in addition to the salaries of educators and cost service education is allocated at least 20% of State Budget in the education sector and at least 20% of the Regional Budget”.
- c) The elucidation of Article 49 Paragraph (1) concerning the act of National Education System 2003: “The fulfillment of the educational funding can be carried out gradually”. It is considered to reduce Article 49 Paragraph (1), so that the Constitutional Court argues that the elucidation of Article 49 Paragraph (1) concerning the act of National Education System 2003 is contrary to the Constitution of the Republic of Indonesia 1945.
- d) The elucidation of Article 49 Paragraph (1) concerning the act of National Education System 2003 is the “entrance” to the non-fulfillment of the education budget by at least twenty percent in the act of State Budget 2005, which turned out to be only seven percent. Therefore, the Constitutional Court decides that the act of State Budget 2005 is contrary to the Constitution of the Republic of Indonesia 1945.

In terms of coherence, the Constitutional Court has been keeping the coherence between the “spirit” of the Constitution of the Republic of Indonesia 1945, the act of National Education System 2003 and the State Budget 2005. Its coherence can be seen as follows:

The Constitution of the Republic of Indonesia 1945 put “education” as fundamental together with the “general welfare” as stated in the fourth paragraph of the preamble of the Constitution of the Republic of Indonesia 1945. The determination of education budget of at least twenty percent in the body of the Constitution of the Republic of Indonesia 1945, making “education” as the only field which is expressly determined the amount of its budget. So, what about the “general welfare”? In various legislation, welfare is a condition to be achieved. The best way to achieve welfare is “education”. It can be seen, especially in the act of RPJPN 2005-2025, act of labor 2003, act of National Education System 2003, and act of higher education 2012. Therefore, the fulfillment of the educational needs should be realized as soon as possible. Efforts to realize as soon as possible are to provide a portion of the education budget of at least twenty percent of state and regional budgets. Elucidation of Article 49 Paragraph (1) concerning the act of National Education System 2003 does not show that spirit. Its implication is the preparation of the State Budget no longer focus on the spirit of “education” toward the “general welfare”.

Consequence

In terms of consequences, the Constitutional Court also pays attention to it. It can be seen through the consideration of the Constitutional Court as described above.

According to MacCormick, in the application of law should be used the linguistic consistency to pursue the principles and coherence of legal principles and social values of the legal consequences.²⁵ Consistency of “the education budget of at least twenty percent of state and regional budgets” has been realized by the Constitutional Court. Coherence to the principle of “priority budgeting” has also been realized by the Constitutional Court. Consistency and coherence are realized by the Constitutional Court to decide that the elucidation of Article 49 Paragraph (1) of the act of National Education System 2003 “contrary to the Constitution of the Republic of Indonesia 1945” and “does not have binding legal force”. The Constitutional Court also decided that the act of State Budget 2005 “contrary to the Constitution of the Republic of Indonesia 1945”.

If refers to the opinion of Klaus Mathis’, that the consequences include Consequentialism in the Regulatory Process and Consequentialism in the Application of Law,²⁶ then in terms of the decision of this Constitutional Court, its scope is Consequentialism in the Application of Law.

²⁵ See Raimo Siltala, *Law, Truth, and Reason –A Treatise on Legal Argumentation-*, Springer Dordrecht Heidelberg London New York, 2011, page. 249

²⁶ Klaus Mathis, *Consequentialism in Law*, dalam K. Mathis (ed.), *Efficiency, Sustainability, and Justice to Future Generations*, Law and Philosophy Library 98, DOI 10.1007/978-94-007-1869-2_1, © Springer Science+Business Media B.V. 2011, hal. 4-5

According to Lubbe-Wolff, the type of consequences referred to in this context, the distinction between legal and real consequences.²⁷ Referring to the opinion of Lubbe-Wolff, then in terms of the Constitutional Court's decision can be associated with real consequences, that is the validity-actual consequences and application of the parts of law.

The real consequences can be seen in two ways, namely "the consequences of micro- and macro level real. In practice, the assessment of the micro-level real affect the parties, whereas the macro-level real affect the entire community.

The assessment of micro-level real consequences on the decision on case No.012/ PUU-III/2005 is reflected in the consideration of the Constitutional Court, that:

Additionally, that the previous year of education budget is less than the nominal value or the amount of budget that is being run, assuming the petition is granted, the fact of the complainant and all citizens who have the same interests as the applicant will be further disadvantaged.²⁸

The assessment of macro-level real consequences on the decision on case No.012/PUU-III/2005 is reflected in the consideration of the Constitutional Court, that:

Under the act of the Constitutional Court in the case of judicial law, if the constitutional court believes the request is founded, the verdict stated the petition is granted. On the basis of description as mentioned above, the Constitutional Court held that the petition is groundless, however, if the Constitutional Court declared the petition is granted, it is based on Article 23 paragraph (3) shall apply the provisions of the State Budget 1945 previous year. It is impossible to apply to a quo petition, because it will cause chaos (governmental disaster) in the financial administration of the state, which can lead to legal uncertainty (rechtsonzekerheid) and consequently can be even worse when it turns on the education of State Budget before is small in amount.²⁹

According to MacCormick, there are three important elements which have an important role in the interpretation, i.e consistency, coherence, and consequences. The first two is a decision that makes sense in the legal system. While the latter is the decision to create a sense that is acceptable to all parties (the universal).³⁰

In elaborating on the consequences, Flavia Carbonell suggested that in fact there are two types of consequences, namely the consequences of legal and extra-legal.³¹ Legal consequence is the effect of decision according to the legal system or the legal implications that may arise from a decision that is internal. The use of legal consequences which are used in the search for consistency and coherence of the rules based on the constitution and norms in the legal system to avoid legal gaps (conflict of rules) and deregulation. Examples of the use of legal consequences argumentation is when a judges to avoid legal uncertainty, avoiding the gap normative (conflict of normative), to avoid a legal vacuum, avoiding losses on the rights of third parties, and to reject the possibility of losses in the future.³² Legal consequences according to Carbonell Flavia led to the "consistency and coherence" in Cormick's view. This is reflected in the Constitutional Court's decision stating that the act of State Budget 2015 is contrary to the Constitution of the Republic of Indonesia 1945.

Meanwhile, a consequence of extra-legal (according to Flavia Carbonell) has similarities with "consequences" in MacCormick's view. According to MacCormick, the actual consequences is proposed or used as a reason to support a decision or reject to decide for some reason cannot be accepted, harmful, or result in unfavorable, both for the legal system and for society. Therefore, the consequence is a factor or reason for making a decision.³³ This is reflected in the consideration of the Constitutional Court that the petition is groundless. However, if the Constitutional Court declared the petition is granted, it will apply the provisions of the State Budget previous year (State Budget, 2004). It is impossible to apply to the petition for the complainant because it will lead to chaos (governmental disaster) in the state financial, which can lead to the legal uncertainty (rechtsonzekerheid) and consequently can be even worse when it turns on the education budget of previous State Budget is small.

²⁷ *Ibid.*, pages. 5-6

²⁸ See the decision of case No. 012/PUU-III/2005, page. 62

²⁹ See the decision of case No. 012/PUU-III/2005, page. 62

³⁰ Flavia Carbonell, Reasoning by Consequences: Applying different Argumentation Structures to the Analysis of Consequentialist Reasoning in Judicial Decisions, *COGENCY* Vol. 3, No. 2 (81-104), Summer 2011, page. 88

³¹ *Ibid.*, *hal.* 85-86

³² *Ibid.*

³³ *Ibid.*, page. 88

Another important aspect of the consequences, according to Cormick are aspects of the necessary and relevance of the decision justification (necessary and relevant). Justification based on the consequences in this context, guaranteeing the nature and quality of decisions.³⁴ In relation to the case No.012/PUU-III/2005, it is reflected through the Constitutional Court's decision which states that:

Although the act on State Budget is contrary to the Constitution of the Republic of Indonesia 1945, but there are quite objective reasons that led to the act cannot be declared no binding legal effect, so therefore where the petition must be declared unacceptable.³⁵

According to the author, this decision is monumental. On the one hand, the Constitutional Court stated that the act of State Budget 2005 is contrary to the Constitution of the Republic of Indonesia 1945, but on the other hand the Constitutional Court did not state that the act on State Budget 2005 does not have binding legal force. This is where the quality of the Constitutional Court's decision. On the one hand uphold the constitution, and on the other hand protect the rights of complainant. However, besides these two things, the Constitutional Court also pays attention to the public interest. Moreover, in decide that, the Constitutional Court did not come out of the sign law.

The Constitutional Court's decision demonstrates its ability in understanding a legal as an instrument to achieve order through the rule of law, or in the view of Paul Craig referred to as "a balanced constitutionalism".³⁶ Order in question of course is a fair order. A fair in question of course pays attention to the entire interest. The interests in question are individual, public and social interests.³⁷

As described above, the authors conclude that the Constitutional Court's decision on case No.012/PUU-III/2005 in the case of a petition for the act of State Budget 2005 has considered consequences aspect. If look at the Constitutional Court's decision as described above, it is suitable to the 3C theory by MacCormick, i.e consistency, coherence, and consequences. In giving a decision, the Constitutional Court not only sees the consistency and coherence, but also at the consequences.

IV. CONCLUSION

Based on the results of research and discussion above, it can be concluded that in addition considers consistency and coherence factors, the Constitutional Court also considered the factor of consequences. On the one hand, by looking the consistency and coherence factors, the Constitutional Court has guaranteed the constitutional rights of citizens. On the other hand, by considering consequences, the Constitutional Court has guaranteed the public interest, the rule of law and the financial administration of state. By considering the factor of consistency and coherence as well as the consequences, the Constitutional Court has made the concretization of legal norms by building a solid structure of legal norms.

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³⁴ *Ibid.*

³⁵ See the decision of case No. 012/PUU-III/2005, pages. 62-63

³⁶ As cited in Jürgen Bast. "The Constitutional Treaty as a Reflexive Constitution", *German Law Journal*, 6(11): 1433-1452

³⁷ Regarding a fair order, can be re-checked on Chapter II (Library Review), when the authors elaborates the used concept. When elaborate the concept of "law", then one of its part "the purpose of law". According to Van Apeldoorn that the purpose of law is integrated to the some interest as Roscoe Pound's view. The both of opinion is integrated by Peter Mahmud Marzuki. Check also Peter Mahmud Marzuki, *Penelitian Hukum* (Edisi Revisi), Kencana Prenada Media Group, Jakarta, 2013, pages. 96-97

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