

## Judicial Order in the Examination of the Constitutionality and Legality of Health Financing Norms

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### ABSTRACT

This study examines the role of judicial orders in healthcare financing in Indonesia through decisions by the Constitutional Court (*MK*) and the Supreme Court (*MA*). It employs a normative approach with qualitative analysis to explore the role of judicial orders in regulating healthcare financing, focusing on decisions from both *MK* and *MA*. The analysis reveals that the *MK*, through Decision No. 63 of 2012, emphasizes the shared responsibility of the state and individuals in healthcare services, while Decision No. 72 of 2019 upholds the principle of non-regression. The *MA*, in Decision 7P of 2020, annulled the *BPJS* premium increase for violating the principle of social justice. This study underscores the importance of legislative responses to judicial decisions to establish a sustainable, fair, and inclusive healthcare financing system aligned with constitutional mandates.

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## INTRODUCTION

Every human being has the right to access healthcare services as an inherent human right from birth until the end of life (Sembiring & Pangaribuan, 2024; Siregar, 2023). Article 25(1) of the Universal Declaration of Human Rights (1948) affirms every individual's right to a standard of living adequate for their health and well-being, including basic necessities such as food, housing, medical care, and social security (Gunawan Widjaja, 2024). Accordingly, the state bears a fundamental responsibility to provide healthcare services as a fulfillment of its citizens' basic needs. Health, as a human right, must be respected, protected, and fulfilled by the state to uphold human dignity (Afifah & Paruntu, 2015; Ardinata, 2020).

Article 34(2) of the 1945 Constitution of the Republic of Indonesia mandates the state to establish a social security system for all citizens and empower vulnerable communities in accordance with human dignity. To realize this mandate, the government enacted Act No. 40 of 2004 on the National Social Security System (hereinafter referred to as Act No. 40 of 2004) and Act No. 24 of 2011 on the Social Security Administering Body (hereinafter referred to as Act No. 24 of 2011). These laws aim to provide comprehensive social security for all citizens to fulfill basic living needs and create a prosperous, just, and equitable society (Afifah & Paruntu, 2015).

The national health insurance system in Indonesia implements mandatory social health insurance for all citizens, dividing participants into *PBI* (subsidized by the government for the poor and underprivileged) and *Non-PBI* (self-paying) categories (Mardiansyah, 2018). This division has been criticized as discriminatory, as healthcare should be the state's responsibility without discrimination. Social Security Administering Body (*BPJS*) is also deemed to have fallen short of the 1945 Constitution's mandate to provide adequate social security, particularly for the weak and underprivileged (Ardiansah & Silm, 2020).

Criticism of *BPJS* highlights the roles of the Supreme Court (*MA*) and Constitutional Court (*MK*) in ensuring state policies align with the 1945 Constitution. The *MA* reviews regulations against statutory laws, while the *MK* examines laws against the Constitution (Lestari, 2024). According to Mahfud MD, the *MK* tests the constitutionality of laws and resolves disputes between individuals or institutions, whereas the *MA* reviews the legality of regulations and adjudicates concrete cases (Mahfud, 2015). Saldi Isra notes that the 1945 Constitution does not clearly separate the functions of the *MA* and *MK*. While the *MK* addresses constitutional matters and the *MA* resolves issues of justice, their jurisdictions often overlap in practice (Isra, 2015).

Judicial orders have played a pivotal role in shaping regulations in strategic sectors such as healthcare financing in recent years (Badan Legislasi Dewan Perwakilan Rakyat Republik Indonesia, 2023). Although the Supreme Court (*MA*) and the Constitutional Court (*MK*) have distinct functions, including their respective powers of judicial review over the constitutionality or legality of legislation, both significantly contribute to upholding justice principles, either as a Court of Law or a Court of Justice (Isra, 2015; Mahfud, 2015). Judicial orders are generally implicit and provide recommendations to legislators to amend norms

deemed inconsistent with the Constitution. These decisions also directly impact the executive branch and act as a supervisory mechanism to ensure constitutional compliance, with a primary emphasis on their implementation by the legislature (Putri & Ali, 2020).

Through judicial review, *MK* and *MA* decisions rectify regulations that conflict with constitutional principles and social justice. For instance, *MK* rulings have consistently emphasized the importance of a social security system that encompasses all citizens without undermining the principle of mutual cooperation, as demonstrated in Constitutional Court Decision No. 63/PUU-X/2012 (hereinafter Decision No. 63 of 2012); Decision No. 12/PUU-VIII/2010 (hereinafter Decision No. 12 of 2010); Decision No. 72/PUU-XVII/2019 (hereinafter Decision No. 72 of 2019); Decision No. 6/PUU-XVIII/2020 (hereinafter Decision No. 6 of 2020); Decision No. 138/PUU-XII/2014 (hereinafter Decision No. 138 of 2014); Decision No. 82/PUU-X/2012 (hereinafter Decision No. 82 of 2012); Decision No. 70/PUU-IX/2011 (hereinafter Decision No. 70 of 2011); Decision No. 007/PUU-III/2005 (hereinafter Decision No. 007 of 2005); and Supreme Court Decision No. 7 P/HUM/2020 (hereinafter Decision 7P of 2020).

These decisions underscore that judicial orders act as the ultimate safeguard in ensuring healthcare financing regulations not only comply with legal standards but also uphold human rights, social justice, and the inclusivity of healthcare services. This affirms the judiciary's role as the primary guardian of justice in the healthcare financing sector.

## LITERATURE REVIEW

A judicial order is a legal mandate issued by the Constitutional Court (*MK*) to compel legislative authorities to concretely implement the court's decisions. This concept was first applied in Germany in a judicial review case concerning the Elementary School Act in Bavaria, where the Constitutional Court declared the law unconstitutional and invalidated it. The court set a deadline before the start of the new academic year for the legislature to revise the law (Siti Partiah, 2021). Similarly, in the United States, the Supreme Court has issued judicial orders in its rulings. Observing the implementation of judicial orders in Germany and the United States, this mechanism could be a solution to the challenges of enforcing *MK* decisions in Indonesia, by introducing judicial orders as a legal instrument to uphold Constitutional Court rulings (Akbar et al., 2019).

In Germany, the term "judicial order" refers to directives within rulings that must be adhered to by relevant parties, particularly in cases where decisions are declared invalid. Research shows that the German Federal Ministry of Justice applies pragmatic criteria to determine whether a ruling contains a judicial order, without distinguishing whether the directive is included in the dispositive section, legal considerations, or *obiter dicta*. It regards any concrete legislative recommendations as a judicial order that must be followed (Putri & Ali, 2020).

Research by Intan Permata Putri and Mohammad Mahrus Ali (2019) identified the presence of judicial orders in several *MK* decisions that are final and binding, even when the dispositive states "inadmissible," aimed at ensuring

the enforcement of these decisions and fostering constitutional awareness among stakeholders (Putri & Ali, 2020). This study highlighted three decisions containing judicial orders: Decision No. 105/PUU-XIV/2016, which declared that ignoring MK rulings constitutes an unlawful act; Decision No. 57/PUU-XV/2017, which emphasized the self-executing nature of MK rulings, effective without requiring regulatory amendments; and Decision No. 98/PUU-XVI/2018, which labeled the disregard of MK rulings as constitutional defiance (Putri & Ali, 2020).

## METHODOLOGY

This study employs a normative approach with qualitative analysis to examine the role of judicial orders in regulating healthcare financing, focusing on the Constitutional Court's (MK) decisions that ensure regulations align with the principles of social justice and human rights. These decisions include Constitutional Court Decisions No. 007/PUU-III/2005, No. 70/PUU-IX/2011, and No. 72/PUU-XVII/2019, as well as an analysis of the Supreme Court's (MA) Decision No. 7P/HUM/2020. Data was obtained from court rulings and legal literature to analyze the judiciary's contribution to shaping regulations that meet the legal standards and social justice principles in accordance with the 1945 Constitution.

## RESEARCH RESULT AND DISCUSSION

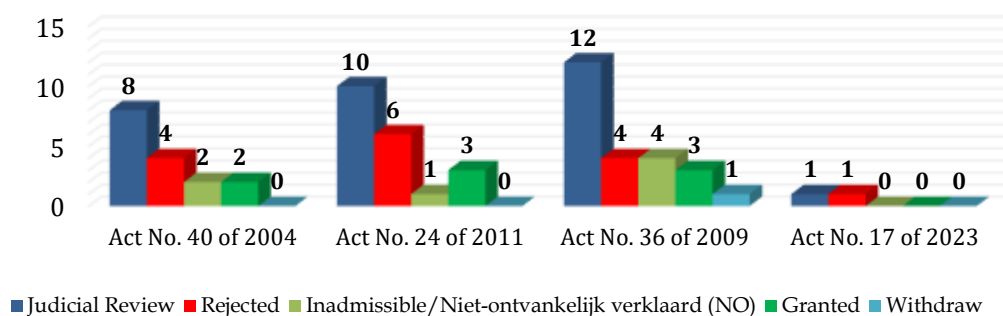
### *Judicial Review of Healthcare Financing Legislation*

The judicial review of legislative products by judicial institutions has a long and evolving history, beginning in the United States in 1803 with the landmark case of *Marbury v. Madison* (Adhari, n.d.) and the establishment of a specialized constitutional court in Austria in 1920 (Putra, 2018). Judicial review is the process of re-evaluating existing legal texts, reflecting a spirit of resistance and questioning the authority of the legislature as the law-making institution (Baehaqi, 2016).

Indonesia adopted the concept of judicial review through the third amendment to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). Article 24C(1) of the Constitution grants the Constitutional Court (MK) the authority to adjudicate at the first and final level, with rulings that are final and binding, in the judicial review of laws against the Constitution. Meanwhile, the authority to review regulations below the level of laws against laws is vested in the Supreme Court (MA) (Putra, 2018).

The MK's judicial review authority is particularly relevant in assessing laws in the healthcare sector, given the high number of petitions for judicial review filed against such regulations. Research conducted by Ade Irawan Taufik in 2020 found that, prior to the enactment of Act No. 17 of 2023, healthcare laws were among the most frequently challenged laws in the MK, with 10 judicial review petitions filed against the 2009 Healthcare Act. Additionally, the 2004 Medical Practice Act was challenged in 4 petitions, the 2009 Hospital Act in 1 petition, the 2014 Health Worker Act in 3 petitions, and the 2013 Medical Education Act in 2 petitions (Taufik, 2020).

**The Judicial Review of Law No. 40/2004, Act No. 24/2011, Act No. 36/2009,  
 and Act No. 17/2023 in the Constitutional Court**



Source: Processed from the Constitutional Court of the Republic of Indonesia Decision Directory Website, 2024.

Judicial review data for Acts No. 40 of 2004, No. 24 of 2011, No. 36 of 2009, and No. 17 of 2023 reveal varying trends in constitutional reviews at the Constitutional Court (*MK*). For Act No. 40 of 2004, out of 8 petitions, 4 were rejected, 2 granted, and 2 declared inadmissible. Similarly, for Act No. 24 of 2011, out of 10 petitions, 6 were rejected, 3 granted, and 1 deemed inadmissible. Act No. 36 of 2009 recorded 12 petitions, with 4 rejected, 4 inadmissible, 3 granted, and 1 withdrawn. In contrast, Act No. 17 of 2023, still in its early implementation stage, has only seen 1 petition, which was fully rejected. These trends highlight the *MK*'s varied approaches, emphasizing not only the constitutional validity of norms but also their implementation's impact on citizens' constitutional rights. Decisions such as No. 63 of 2012, reinforcing shared responsibilities between the state and individuals in healthcare, and No. 6 of 2020, safeguarding social security benefits during program transitions, demonstrate the *MK*'s role in providing normative directives and judicial orders. Conditional interpretations in decisions like No. 82 of 2012 and No. 007 of 2005 further underscore the importance of aligning legal norms with social justice. Collectively, these rulings serve as both corrections to legal norms and guides for inclusive and constitutional policy implementation.

**1. Act No. 36 of 2009**

Decision No. 63 of 2012: The Constitutional Court (*MK*) rejected the petitioner's request in its entirety but emphasized, in its legal considerations, the state's responsibility in the healthcare sector. The *MK* affirmed that the state is obligated to provide healthcare services according to its financial capacity, without removing the individual's responsibility to maintain their own health. This decision highlights the principle of shared responsibility between the state and its citizens as mandated by Article 28H(1) of the 1945 Constitution. Additionally, the *MK* stated that the allocation of the healthcare budget is not determined by a specific percentage in the Constitution, which

grants flexibility to the government to allocate the healthcare budget based on development priorities and financial capacity. The *MK* also found that the issues raised by the petitioner were more related to the implementation of norms, not the constitutionality of the norms themselves. Therefore, the *MK* ruled that the implementation of the law was beyond its jurisdiction for further assessment. Nevertheless, the *MK* acknowledged the importance of improving healthcare policy implementation to achieve greater justice and effectiveness.

The essence of human rights protection is to preserve human existence by balancing rights and responsibilities, as well as individual and societal interests (Hakim & Kurniawan, 2022). In this context, individuals have a responsibility to maintain their own health and the health of others (Al-Fatih & Aulia, 2021), aligning with the *MK*'s assertion that the state must provide healthcare services according to its financial capacity while not neglecting individuals' responsibility for their own health.

In Decision No. 12 of 2010, the judicial review of Act No. 36 of 2009 on Health, challenged against the 1945 Constitution, was filed by healthcare workers, particularly nurses in remote areas of East Kalimantan, who felt disadvantaged by restrictions on pharmaceutical practices and specific criminal provisions. The *MK* considered that Article 108(1) aims to protect patients by ensuring that healthcare is provided by competent professionals. However, it acknowledged that the article's explanation was unclear and failed to reflect the realities of remote areas with limited pharmaceutical personnel. The *MK* also deemed the criminal provisions sanctions in Article 190(1) constitutional to ensure emergency assistance, although their implementation must consider field conditions. The *MK* identified conflicts between healthcare workers' obligations to provide emergency assistance and the restrictions on their pharmaceutical practices, which it resolved by interpreting that certain healthcare workers are permitted to perform limited pharmaceutical practices in the absence of pharmaceutical personnel, provided there are clear implementing regulations.

The court partially granted the petition and declared that the articles in question are constitutional with specific interpretations. It emphasized the importance of legal certainty in healthcare services, particularly in remote areas, to ensure public protection and the professionalism of healthcare workers. Decision No. 12 of 2010 reflects the principle that laws must be responsive to societal aspirations and regulatory needs tailored to real-world conditions (Nuryadi & Sh, 2016), as evident in the *MK*'s consideration of the implementation of legal norms in light of on-the-ground limitations.

## **2. Act No. 24 of 2011**

Decision No. 72 of 2019: The Constitutional Court (*MK*) ruled that Article 57(f) and Article 65(2) of Act No. 24 of 2011 contravene the 1945 Constitution to the extent that they do not guarantee benefits and services that are equal to or better than those provided by PT TASPEN (Persero). The *MK* found that transferring social security programs from PT TASPEN to *BPJS* Employment could result in constitutional harm, including reduced financial benefits, loss

of administrative service convenience, and uncertainty regarding benefit continuity, violating the right to social security as guaranteed by Article 28H(3) and Article 34(2) of the 1945 Constitution. In its ruling, the *MK* ordered the government to ensure that the program transfer does not diminish participants' rights, including retaining family allowances, the 13th pension, rice allowances, and automatic claim conveniences. *BPJS* Employment is required to provide benefits and services that are equal to or better than those provided by PT TASPEN. The *MK* emphasized the principle of non-regression, which prohibits the reduction of social protection levels, and mandated the government, along with the legislature and relevant ministries, to formulate regulations and oversee the program transfer's implementation to ensure compliance with the principles of social justice as mandated by the 1945 Constitution.

The judges applied a systematic interpretation approach, which views laws as part of an integrated legal system. Consequently, no law can be interpreted in isolation but must always be analyzed in the context of its relationship with other regulations (Apriani, 2023). The model of Decision No. 6 of 2020 is similar to Decision No. 72 of 2019, as it legally annulled and declared certain provisions null and void while also being non-self-executing, requiring follow-up actions by the legislature (DPR RI, 2021).

The annulment of Article 57(f) and Article 65(2) of Act No. 24 of 2011 has legal implications for other provisions in the same law, necessitating follow-up actions from the legislature, either by revising parts or the entirety of the law. As indicated in Decision No. 72 of 2019, Decision No. 6 of 2020 also impacts other articles in Act No. 24 of 2011, such as Article 5(2)(b) and Article 6, which still designate *BPJS* Employment as the sole social security provider. Without amendments or replacements to provisions closely related to Article 57(e) and Article 65(1), there is potential for legal ambiguity regarding the number of institutions authorized to administer social security (DPR RI, 2021).

Decision No. 138 of 2014: The *MK* rejected a judicial review of Articles 15, 16, 17, and 19 of Act No. 24 of 2011, ruling that these provisions do not contravene the 1945 Constitution. The *MK* found that the requirements for registration, administrative sanctions, and premium collection under this law are essential measures to achieve the sustainability of a universal national social security system. Additionally, the *MK* clarified that abandoned children are entitled to healthcare services without administrative requirements such as birth certificates or family cards. The state, including *BPJS*, is obligated to provide direct healthcare assistance, allowing a declaration letter from the accompanying party as temporary administrative proof.

Although the petition was rejected, the *MK's* legal considerations emphasized the state's priority to register and provide assistance to abandoned children as *BPJS BPI* participants. This aligns with Article 34(1) of the 1945 Constitution, which states that the state cares for the poor and abandoned children, reflecting Indonesia's commitment to advancing the

welfare of its people. The fundamental rights of abandoned children, which are essentially the same as general human rights, are protected under Act No. 39 of 1999 and Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child. Abandoned children are entitled to their rights, including civil rights, family environment, health, education, and special protection. The Convention on the Rights of the Child, ratified by Indonesia, emphasizes the importance of protection as children require special attention due to their physical and mental immaturity. Many abandoned children come from impoverished families or live on the streets, often without family support (Sukadi, 2013).

Moreover, the phrase “cared for” not only includes the fulfillment of the need for food and clothing but also access to law and justice. In other words, the principle of equality before the law extends beyond mere legal equality to include equality in access to the legal system and justice. This understanding gave rise to the concept of “access to law and justice.” (Fauzi & Ningtyas, 2018).

Decision No. 82 of 2012: The MK adjudicated the judicial review of Article 15(1) of Act No. 24 of 2011, ruling it unconstitutional if it prevents workers from independently registering for social security when employers fail to fulfill their obligations. This provision was deemed inapplicable unless interpreted as requiring employers to bear workers’ social security rights. The MK ordered a reinterpretation of this provision to protect workers’ rights, ensuring legal certainty and justice.

The reinterpretation in Decision No. 82 of 2012 aligns with Rawls’ concept of justice, emphasizing fairness as a principle of reciprocity, ensuring the distribution of social benefits does not disproportionately favor the advantaged but also opens opportunities for the less fortunate, such as workers (Sudrajat, 2020). Conditional rulings do not annul a norm outright but impose guidelines and conditions under which the norm may remain valid. Decision No. 82 of 2012 established a new, urgent norm pending further legislative action to avoid a legal vacuum that could hinder citizens’ constitutional rights to social security (DPR RI, 2021).

### **3. Act No. 3 of 1992 and Act No. 40 of 2004**

Decision No. 70 of 2011: The Constitutional Court (MK) emphasized the importance of conditional constitutional interpretation of Article 4(1) of Act No. 3 of 1992 and Act No. 40 of 2004. The Court ruled that this provision must be interpreted to grant workers the right to register themselves as participants in social security schemes if their employers fail to fulfill their obligations. This interpretation aims to protect workers’ rights to social security as stipulated in Article 28H(3) and Article 28D(1) of the 1945 Constitution, while also providing guidance to social security administrators and employers to ensure the protection of workers’ constitutional rights. In its dispositive ruling, the Court granted the petitioners’ request, provided a conditional interpretation of the provision, and ordered a rereading of Article 4(1) and Article 13(1) with an interpretation that better protects workers. The Court

also instructed the publication of this decision in the State Gazette of the Republic of Indonesia as a form of public oversight.

Decision No. 007 of 2005: The Constitutional Court provided interpretative guidance on Article 5 of Act No. 40 of 2004, clarifying that Article 5(1) should be interpreted as establishing a national-level social security administering body without restricting the authority of regional governments to carry out social security functions in accordance with Article 18(5) of the 1945 Constitution. Meanwhile, the multiple interpretations of Article 5(2), (3), and (4), which created legal uncertainty, were declared to have no binding legal force. In its dispositive ruling, the Court declared Articles 5(2), (3), and (4) unconstitutional, while maintaining the constitutionality of Article 5(1), provided it is interpreted in line with the Court's guidance. The Court also instructed that this decision be published in the State Gazette to ensure its implementation and accessibility.

The interpretations in these *MK* rulings aim to protect workers' rights to social security as stipulated in Article 28H(3) and Article 28D(1) of the 1945 Constitution, while also providing guidance to social security administrators and employers to safeguard the constitutional rights of workers. These conditional constitutional rulings reflect the discretion exercised by judges to fill legal gaps and ensure legal certainty in state administration. Since the *MK* does not have the authority to create new legal rules, these rulings seek to reinterpret existing norms without altering the substance of the laws under review, relying solely on the judges' legal interpretations (Fajarwati, 2015).

Therefore, in the context of implementing *MK* decisions, conditional unconstitutional rulings are considered more effective in their execution, as the tested norm is essentially declared inconsistent with the 1945 Constitution and the petition is granted. As a result, the parties receiving the decision are compelled to follow up on the ruling, given that their petition has been substantively accepted by the *MK* (Rahman, 2020).

As previously explained in earlier Constitutional Court (*MK*) rulings, which balance the protection of constitutional rights with practical needs, a similar principle is reflected in the Supreme Court's (*MA*) decision reviewing the Presidential Regulation No. 75 of 2019 on Health Insurance. In Decision No. 7P of 2020, the *MA* reviewed provisions regarding the increase in premiums for *PBPU* participants and *BPJS*, which were deemed inconsistent with the principles of humanity, social justice, and the public's financial capacity. Based on these considerations, the *MA* annulled the provisions, asserting that imposing excessive financial burdens on the public during difficult economic conditions cannot be justified.

### ***The Relationship Between Judicial Review Rulings and the Formation of Norms in Healthcare Financing Legislation***

Judicial orders are a consequence of judicial reviews aimed at protecting constitutional rights violated by laws that are either unrepresentative or laden with specific interests (hidden agendas). In Indonesia, this phenomenon is

evident in the high number of laws tested against the 1945 Constitution since the establishment of the Constitutional Court (*MK*) (Siti Partiah, 2021). Judicial orders can thus be understood as legal mechanisms requiring court-issued directives to be complied with and implemented by relevant parties and citizens. These orders contain recommendations or guidance for recipients to consider specific aspects in adhering to changes mandated by the court (Tauda, 2024). Legally, although *MK* decisions in judicial reviews are declarative, they possess constitutional force in forming new norms or nullifying norms that conflict with the Constitution. The *MK* is only authorized to invalidate norms deemed unconstitutional (Putri & Ali, 2020).

Often, *MK* rulings are accompanied by judicial orders directed at individuals or state institutions (Indrayana & Mochtar, 2007; Suhariyanto, 2016). *MK* decisions, which are final and binding, are expected to take immediate effect for all parties once publicly pronounced in an open hearing (Nurbaningsih, 2015). The final nature of *MK* decisions is absolute due to the Constitution's position as the supreme law, which cannot be overridden. This finality is intended to uphold the authority of constitutional adjudication, avoid prolonged litigation as seen in ordinary courts, and reduce the burden of time, effort, and cost. Despite potential errors, *MK* decisions must remain final, relying on judges' perspectives to resolve disputes without alternative mechanisms to replace this finality (Soeroso, 2016).

As outlined earlier, the final and binding nature of *MK* decisions aims to uphold constitutional adjudication's authority and ensure swift and efficient legal certainty. In this context, judicial orders serve as critical instruments to support the implementation of *MK* decisions.

Regarding the importance of judicial orders in implementing *MK* decisions, the Constitutional Court Law provides three types of rulings for judicial reviews of legislation against the 1945 Constitution: Granted, Rejected, and Inadmissible. However, in practice, the *MK* issues six types of more nuanced rulings (Dewi, 2021). In judicial review cases, the *MK* has the authority to declare that specific words, phrases, articles within a law, or even the entire law, lack binding legal force (Putra, 2022). Over time, *MK* rulings have evolved to include interpretations providing guidance, directions, conditions, and even the creation of new norms. These rulings can be categorized into two types: conditionally constitutional and conditionally unconstitutional decisions (Dewi, 2021).

Conditionally Unconstitutional Decisions refer to norms deemed unconstitutional if they fail to meet the conditions set by the *MK* in its rulings. These decisions have four distinct characteristics: first, they contain a conditional unconstitutionality clause in their dispositive ruling; second, the ruling grants the petition; third, the dispositive ruling includes an interpretation or conditional unconstitutionality for the norm being reviewed; fourth, substantively, these rulings are similar to conditionally constitutional decisions (Rahman, 2020).

Conditionally Constitutional Decisions are issued when a norm under review can be interpreted differently, potentially causing legal uncertainty and violating citizens' constitutional rights. These rulings aim to provide clear interpretations to prevent uncertainty or violations of citizens' rights. They have five main characteristics: first, the norm being reviewed remains constitutional

as long as it is applied according to the stipulated interpretation or conditions; second, the ruling denies the petition; third, the conditional clause may appear in the legal considerations or dispositive ruling; fourth, it requires reassessment if implementation does not align with the conditions of constitutionality; fifth, it encourages legislative review by lawmakers, either explicitly or implicitly (Rahman, 2020).

Although conditionally constitutional rulings aim to clarify the interpretation of reviewed norms, their implementation often faces challenges related to legislative compliance. Mandates that are typically fulfilled involve obligations to refine or enact laws within a specific timeframe, with consequences for non-compliance. Conversely, mandates that remain unfulfilled often lack deadlines or consequences. The *MK* formulates these mandates with the intent of addressing legal gaps, avoiding interference in legislative authority, and aligning with the urgency and relevance of constitutional issues. The *MK* also prefers to frame its mandates persuasively, fearing that explicit mandates might be ignored by lawmakers (Laksono, 2017).

In principle, *MK* rulings do not require an enforcement agency, as judicial review decisions issued by the *MK* carry legal force equivalent to laws and take immediate effect upon publication in the State Gazette (Eka N.A.M. Sihombing & Cynthia Hadita, 2022). However, the mere publication of *MK* rulings in the State Gazette without follow-up by legislators is insufficient. This is because, within Indonesia's legal system, the primary source of law is statutory regulations, with laws being a key component, while *MK* decisions are often disregarded. For *MK* rulings to have more significant influence, legislative follow-up is necessary (Eka N.A.M. Sihombing & Cynthia Hadita, 2022; Hsb, 2016). In some cases of judicial review concerning healthcare financing regulations, certain rulings have been followed by regulatory updates, while others have not been implemented, as illustrated in the table below.

**Table: Status and Updates of Laws Subjected to Judicial Review**

Legislation	Judicial Review Rulings	Update Status
Act No. 36 of 2009 on Health	Decision No. 63 of 2012 Decision No. 12 of 2010	Followed up through Act No. 17 of 2023 on Health
Act No. 24 of 2011 on the Social Security Administering Body ( <i>BPJS</i> )	Decision No. 72 of 2019 Decision No. 6 of 2020 Decision No. 138 of 2014 Decision No. 82 of 2012	Not yet followed up
Act No. 3 of 1992 on Labor Social Security and Act No. 40 of 2004 on the National Social Security System	Decision No. 70 of 2011 Decision No. 007 of 2005	Not yet followed up
Presidential Regulation No. 75 of 2019 on Amendments to Presidential Regulation No. 82 of 2018 on Health Insurance	Decision No. 7P of 2020	Followed up through Presidential Regulation No. 64 of 2020 on the Second Amendment to Presidential Regulation No. 82 of 2018 on Health Insurance

Act No. 17 of 2023 was enacted as part of Indonesia's Health Transformation Plan, comprising six main pillars: primary healthcare transformation, referral healthcare services, health resilience, healthcare financing, human resources, and health technology. This law reflects the government's commitment to addressing pressing issues in the health system, such as inequality in access, workforce shortages, and service capacity, despite triggering intense public debate (Gamalliel & Fuady, 2024).

The *omnibus* approach, previously applied to the 1992 Health Law, served as a reference for drafting Act No. 17 of 2023. Historically, the use of the *omnibus* approach in health legislation began with the 1992 Health Law, which unified various concepts and definitions in healthcare, including health technology issues. However, the 1992 Health Law was later updated through the 2009 Health Law, which introduced conceptual ambiguities due to numerous derivative regulations. This situation prompted a consolidation effort through Act No. 17 of 2023, which shares similar patterns and goals with its predecessor, albeit with several variations (Gunawan Widjaja, 2024).

By adopting the "*omnibus*" approach, the law amalgamates and revises 13 existing health laws into a single legislation containing 458 articles within less than twelve months (Gamalliel & Fuady, 2024). Sentiment analysis of the Health Bill before its enactment into Act No. 17 of 2023 revealed potential judicial review challenges due to widespread dissent, indicating non-compliance with legislative principles such as clarity of purpose and legal certainty. The bill is likely to face constitutional challenges in the Constitutional Court if it is found to be inconsistent with the 1945 Constitution or other laws (Kurniawati, 2024). The "*omnibus*" approach, which was also used in the Job Creation Law (Aspan & Setiawan, 2023; Sembiring et al., 2022), is often criticized as problematic and non-inclusive, especially in countries with common law systems (Gamalliel & Fuady, 2024).

In the Academic Manuscript of the Health Bill 2023 (Badan Legislati Dewan Perwakilan Rakyat Republik Indonesia, 2023), Constitutional Court rulings were also used as a basis for evaluating and analyzing related legislation, including Decision No. 007 of 2005, Decision No. 51/PUU-IX/2011, Decision No. 82/PUU-X/2012, Decision No. 72/PUU-XVII/2019, Decision No. 6/PUU-XVIII/2020, and Decision No. 82/PUU-XII/2015. However, after the enactment of Act No. 17 of 2023, Act No. 40 of 2004 was not included as part of the *omnibus* law in Act No. 17 of 2023. As a result, the health *omnibus* law has yet to accommodate constitutional mandates outlined in Constitutional Court rulings related to the National Social Security System and the Social Security Administering Body.

As outlined by Gamalliel and Fuady (2024) and Kurniawati (2024), the legislative process for the health *omnibus* law aimed to strengthen the health system. However, the two-week public hearings were perceived as a formality, fostering distrust among the public and healthcare professionals (Gamalliel & Fuady, 2024). The lack of public engagement sparked debates, and the 2023 Health Law is likely to be subject to judicial review in the Constitutional Court (Kurniawati, 2024).

Public and professional objections and distrust were followed by a judicial review petition filed against Act No. 17 of 2023 on Health in the Constitutional Court. In Decision No. 130/PUU-XXI/2023, the Constitutional Court rejected the petition, with dissenting opinions from four justices. The main point of disagreement concerned the lack of involvement of the Regional Representative Council (*DPD RI*) in drafting Act No. 17 of 2023 on Health (Rambe et al., 2024).

The dissenting opinions of four Constitutional Court justices in Decision No. 130/PUU-XXI/2023 highlighted the importance of *DPD* involvement in the discussion and review of Act No. 17 of 2023 on Health. Any *omnibus* law affecting the sector should involve the *DPD*. Decisions such as Constitutional Court No. 92/PUU-X/2012 and No. 79/PUU-XII/2014 emphasize the *DPD*'s authority to ensure regional representation, central-regional harmony, and constitutionally valid legislative procedures. The *DPD* is granted the right to propose, participate in discussions, and provide opinions on bills related to regional autonomy, central-regional relations, regional formation, natural resource management, and financial balance. These decisions also assert that the *DPD* must be involved in drafting the National Legislative Program (*Prolegnas*) and bill discussions as mandated by Article 22D of the 1945 Constitution. The Court criticized the "top-down" nature of *Prolegnas* formulation, which fails to provide room for the *DPD* to convey regional aspirations, and stated that provisions in the Act No. 17 of 2014 on Legislative Bodies (*MD3* Act) and Act No. 12 of 2011 on the Formation of Legislation (*P3* Act), as amended by Act No. 13 of 2022 restricting the *DPD*'s role are unconstitutional (Ria Casmi Arsa, 2015; Toding, 2017; Widiarto, 2015).

The Constitutional Court (*MK*) in Decision No. 72 of 2019, Decision No. 6 of 2020, and Decision No. 82 of 2012 declared that Articles 57(e) and (f) and Articles 65(1) and (2), as well as Article 15(1) (conditionally unconstitutional) of Act No. 24 of 2011, are inconsistent with the 1945 Constitution and therefore have no binding legal force. The annulment of Articles 57(e) and (f) and Articles 65(1) and (2) of Act No. 24 of 2011 has implications for other provisions, such as Articles 5 and 6, which designate *BPJS* Employment as the sole social security provider. These provisions must be revised by lawmakers to align with the rulings, which emphasize that social security programs can be administered by multiple entities in line with the spirit of Act No. 40 of 2004, which recognizes diverse institutions in the administration of social security, rather than a single monopoly (DPR RI, 2021).

The *MK*'s rulings in several cases related to Act No. 40 of 2004 highlight that the establishment of social security administering bodies must be regulated by law with clear provisions to avoid misinterpretation. In Decision No. 007 of 2005, the Court emphasized that the formation of such bodies must comply with legal requirements, while Decision No. 70 of 2011 criticized the ambiguity of Article 13(1), which hinders the implementation of workers' rights. Article 52 of Act No. 40 of 2004, which was not declared unconstitutional, is considered vital for addressing legal gaps and ensuring legal certainty in the implementation of social security. Therefore, the recommendations from the Monitoring Center for the Implementation of Laws under the House of Representatives (*DPR RI*'s) The Expertise Body stresses the need to amend certain provisions of Act No. 40 of

2004, establish appropriate social security administering bodies, and synchronize regulations to create a more effective and harmonious social security system (DPR, 2012).

In light of the *MK*'s rulings and related legal developments, it is crucial for lawmakers to promptly amend provisions that are inconsistent with constitutional principles and the spirit of Act No. 40 of 2004, while ensuring clarity in drafting laws governing the social security system. These amendments should also align the existing provisions with the principle of multiple institutions in the administration of social security, as outlined in the 2020–2024 and 2025–2029 National Legislative Programs, through proposed revisions to Act No. 24 of 2011 and Act No. 40 of 2004, submitted by the *DPR* and the government.

Presidential Regulation No. 75 of 2019, which raised *BPJS* Health premiums by 100%, was in effect for only about two months before being annulled by the Supreme Court (*MA*) through Decision No. 7P of 2020 on February 27, 2020. The *MA* ruled that Articles 34(1) and (2) of the regulation were inconsistent with Act No. 40 of 2004 and Act No. 24 of 2011. Consequently, Presidential Regulation No. 75 of 2019 was invalidated, and *BPJS* Health premiums reverted to the provisions in Presidential Regulation No. 82 of 2018 (Daming, 2020). The *MA*'s judicial review decision provided various considerations for improving the performance, management, and service system of *BPJS* Health's social health insurance, emphasizing the importance of balance and fairness in premium rates among participants and addressing budget deficits (Kusuma Putri et al., 2022).

From the various debates surrounding Presidential Regulation No. 64 of 2020, two primary perspectives have emerged. Government supporters argue that the President's decision to amend Presidential Regulation No. 75 of 2019 into Presidential Regulation No. 64 of 2020 aligns with the options provided in Decision 7P of 2020, which allowed the government to repeal, amend, or enforce the regulation. They also cite Article 65(3) of Act No. 24 of 2011, which provides a legal basis for the government to take special measures to maintain the financial sustainability of *BPJS* in times of crisis. On the other hand, opponents argue that Presidential Regulation No. 64 of 2020 disregards the concerns and objections raised by the House of Representatives (*DPR*), which had rejected the *BPJS* Health premium increase. They contend that, although the Supreme Court annulled Presidential Regulation No. 75 of 2019, the new policy still imposes a burden on the public (Daming, 2020).

The relationship between judicial review rulings by the Constitutional Court (*MK*) and the formation of legislative norms in the context of healthcare financing highlights the importance of constitutional oversight mechanisms to ensure that laws align with the country's fundamental principles. In several cases, the *MK* has issued conditionally unconstitutional rulings, affirming that provisions in laws are inconsistent with the Constitution unless revised or amended to meet specified constitutional standards. Such rulings prompt lawmakers to act swiftly in revising or creating new regulations.

However, despite the absolute legal authority of *MK* decisions, their implementation in legislative norm formation often encounters obstacles. This is

due to a lack of concrete follow-up actions by lawmakers, with decisions sometimes ignored or delayed. For example, several *MK* rulings related to Act No. 24 of 2011 and Act No. 40 of 2004 have yet to be fully addressed, demonstrating that, while the *MK* provides clear decisions, the main challenge lies in how lawmakers integrate these decisions into practical policies.

In the case of Act No. 17 of 2023, although the *MK* did not grant the judicial review petition, dissenting opinions from some justices highlighted the need for a more inclusive legislative process. This underscores that judicial review serves not only as a mechanism to annul norms but also as a means to encourage lawmakers to exercise greater caution in formulating policies directly related to the constitutional rights of citizens, particularly in the healthcare sector.

## **CONCLUSIONS AND RECOMMENDATIONS**

Judicial reviews of healthcare financing legislation demonstrate that the Constitutional Court (*MK*) plays a critical role in balancing the constitutionality of norms with the implementation of policies that directly impact citizens' constitutional rights. In several rulings, the *MK* has provided interpretations that are responsive to real-world conditions, such as healthcare services in remote areas or adjustments to social security programs, requiring normative adaptations to ensure greater inclusivity and fairness. These decisions reflect efforts to protect social rights, such as the right to health and social security, by offering interpretations that consider social justice and the balance between state obligations and individual responsibilities. Additionally, the trend of judicial reviews concerning laws related to health, social security, and *BPJS* highlights the importance of revising or amending norms that are deemed inconsistent with principles of social justice and citizens' constitutional rights. Thus, judicial review serves not only to correct legal norms but also as a guide for implementing policies that are more equitable and responsive to societal needs.

## **ADVANCED RESEARCH**

The findings of this study open opportunities for further research in healthcare financing and judicial oversight. Future research may include comparative studies on judicial orders in various countries, analysis of public perceptions of judicial interventions, and the development of a sustainable healthcare financing framework aligned with judicial mandates. Through a multidisciplinary approach, this research is expected to deepen understanding of the judicial role in creating a more equitable and sustainable healthcare system while ensuring alignment between the legal framework and societal needs.

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